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FORTNIGHTLY CASE LAW BULLETIN

(16-05-2023 to 31-05-2023)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

8.	Supreme Court of Pakistan	Procedure to conduct regular inquiry; Requirements of competent authority to conduct the departmental inquiry and duty of Service Tribunal; Object of departmental inquiry; Purpose of cross-examination; Deprivation of accused officer to cross-examine the departmental representative will infringes right of fair trial	Civil law	8
9.		Power of the Federal Government to enter into tax treaty; Effect of agreement between countries; Exemption from tax of Pakistan Source income under tax treaty; Interpretation of treaty under Article 31 of the Vienna Convention on the Law of Treaties, 1969; Doctrine of merger; Power of Supreme Court to review its judgment; Pre-requisites for filing a review petition and effect of frivolous or vexatious review petition; Grounds for filing review available in CPC and effect of minor irregularities having no significant impact on judgement to trigger review		10
10.	Lahore High Court	Maintainability of Intra Court Appeal where Writ Petition seeking annulment of order of Area Magistrate for constitution of District Standing Medical Board dismissed	Criminal law	13
11.		Availability of security of tenure for the employees/officers of local government under local government laws; Applicability of section 186 of the Act XXXIII of 2022;Effect of Act XXXIII of 2022 till holding of the local government elections under the Act and the Act of 2013; Transfer of employees/officers prior to period specified in the law or rules	Service Law	14
12.		Definition of "Ind-at-Talab" mentioned in Nikahnama; Category of dower payable on demand; Presumption of dower when no details about mode of payment are specified in the Nikahnama	Family Law	17
13.		Nature of Regulations of NADRA under section 45 of the Ordinance and status of Rules of 1973 being adopted by NADRA, under regulation 23 of the Regulations; Position of employees of NADRA and applicability of Rules of 1973 upon them	Service Law	18
14.		Procedure after granting leave to appear and prescribed format of summons for service under order XXXVII CPC; Legal effect of non-issuance of summons in Form No. 4, Appendix-B CPC when the limitation to file leave to defend starts; Difference in service of summons	Civil Law	20
15.		Entitlement of unmarried sister of deceased employee with family pension when deceased succeeded by two sons	Service Law	21
16.		Fate of subsequently filed writ petition when earlier pending writ petition agitating same cause of action withdrawn without seeking permission to file	Civil Law	22

		another writ petition		
17.		Authority of Commissioner in Land Revenue to amend an assessment order by making alterations or additions; Purpose of Section 214A of the Income Tax Ordinance, 2001; Rational exercise of discretionary power; Definition of The words "finalize" and "finalization"	Tax Law	23
18.		Inquiry by the Speaker before accepting resignation of the member of the National Assembly	Election Law	24
19.		Circumstances in which grandfather is liable to maintain his grandchildren; Execution of decree against the person not party to suit; Modes for the enforcement of decree under section 13 of family court act 1964; Adoption of procedure of cpc for execution of decree by family court	Family Law	25
20.		Impediment in importing the vintage car; Writ against Customs Department for the release of an imported vintage car	Taxation Law	27
21.		Defendant's right to cross-examine a co-defendant; Discretion of court to allow cross-examination of own witness of party and its exception	Civil Law	27
22.	Lahore High Court	Following the principles of natural justice by Public functionaries; Retrospective effect of amendment in Section 25-B(7) of the LDA Act, 1975, brought in the year 2013		29
23.		Direct invoking constitutional jurisdiction by detained person without any just cause; Curtailment of fundamental rights of citizen by executive	Constitutional Law	30
24.		Interference by the appellate court on refusal of court below to proceed with the contempt	Civil Law	30
25.		Denial of the right to cross-examination vitiates the proceedings of a departmental enquiry	Service Law	31
26.		Reinstatement in service after exercising right of voluntary retirement		32
27.		Bar to invoke constitutional jurisdiction for release without first filing a representation before Government of Punjab in detention under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960; Reasons behind passing a detention order by competent authority; Registration of FIR as basis to issue a detention order	Criminal Law	33
28.		Role of fair investigation in conclusion of a fair trial; stage at which case can be dropped as per the Punjab Anti-Corruption Establishment Rules, 2014		34
29.		Necessity of filing a representation before Government of Punjab prior to filing the writ petition in detention; Reasons behind passing a detention order by competent authority		35

30.		Necessity of Impleading revenue officer in civil suit challenging the validity of mutation; Framing of issues at belated stage regarding a fact which is not mentioned in pleadings through application of party	Civil Law	36
31.		Nature of detention order and circumstances for its issuance; Regulation of laws regarding preventive detention and expression "adequate remedy" in Article 199 under Constitution; Bar of invoking the constitutional jurisdiction of High Court in case of availability of other remedy; Circumstances for passing preventive detention order by the Authority under the Law; Power of High Court in its constitutional jurisdiction to set aside detention order	Constitutional Law	37
32.	Lahore High Court	Effect of significant delay in lodging the FIR and noticeable delay in conducting the identification parade; Value of identification test parade in non-mentioning of description/ features of accused during investigation and before trial court; Importance of mentioning the features of the dummies in the report of identification parade; Value of disclosure of co-accused regarding nomination of an accused; Consequences of not deciding of objection of the accused taken at the time of identification parade; Reliability of dishonest improvements by witness to fill the lacunas in line with other prosecution evidence; Lead of medical evidence in commission of offence; Effect of non-associating any witness of vicinity while effecting the recovery; Conviction recorded on the basis of corroborative piece of evidence; Inference from evidence based merely on the high probabilities in finding of guilt against an accused person	Criminal Law	39
33.		Reflection of life in denial of fundamental rights; Use of word “inviolable” in Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973	Constitutional Law	42
34.		Effect when no details about mode of payment of dower are specified in the Nikahnama; Importance of Nikahnama in the shape of documentary proof over the oral depositions with respect to the relevant columns of Nikahnama	Family Law	42
35.		Status of sole marginal witness prior to promulgation of Qanoon-e- Shahadat Order, 1984; Limitation for cancellation of document; Validity of decree against the minor when he/she was not sued through guardian-ad-litem; Powers of revisional court while upseting the concurrent findings	Civil Law	43
36.		Rationale underlying the application of principle of depreciation; consideration of principle of appreciation in case of dowry articles	Family Law	45

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Fida Hussain v. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, and others.
Civil Petition No.1777 of 2020
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1777_2020.pdf

Facts: The petitioner filed Civil Petition for leave to appeal directed against the judgment passed by the Peshawar High Court whereby the writ petition filed by the respondent No.7 was allowed which was regarding the eligibility of the respondent No.7 to be appointed as a Patwari.

Issue: Whether a *de novo* inquiry is justified where a competent authority decided to file an inquiry report without taking any action thereon, with proper reasoning?

Analysis: In our view also, the holding of inquiry under Civil Servant Laws on the allegation of misconduct is a routine affair and a common phenomenon which is triggered after the issuance of a show cause notice and statement of allegations, and when Inquiry Report is submitted to the competent authority then it is their domain, with proper sense of duty, to impose the penalty keeping in mind the gravity of charges, if proved, during the inquiry. It is not mandatory that, in all circumstances, the competent authority should agree with the recommendations of the Inquiry Officer or Inquiry Committee, but in case the competent authority decides to impose a penalty greater than that recommended by the Inquiry Officer, then obviously some reasons are to be assigned with proper application of mind, after providing a right of personal hearing to the accused, and in case the competent authority decides to file the Inquiry Report without taking any action thereon, with proper reasoning, then obviously in this second limb there would be no justification to expect a *de novo* inquiry to start from scratch in each and every case without any lawful justification.

Conclusion: A *de novo* inquiry is not justified without any lawful justification where a competent authority decided to file an inquiry report without taking any action thereon, with proper reasoning.

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2. **Supreme Court of Pakistan**
Muhammad Aqil v. Muhammad Amir & others.
Civil Appeal No. 32-K of 2018
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a.32_k_2018.pdf

Facts: Through this Civil Appeal, the petitioner has challenged the judgment of the High Court whereby his Second Appeal against the judgment of the Learned First Appellate Court by which his suit for specific performance of agreement to sell

was dismissed by reversing the judgment and decree passed in favour of appellant and against the respondents by the Learned Trial Court, was partially allowed.

Issues: i) Whether a *de facto* guardian without having express permission from the Court, can alienate the immovable property of minor?
ii) Whether it is necessary for the minor to challenge the agreement to sell executed by a *de facto* guardian, after attaining majority?

Analysis: i) Section 361 of Mohammadan Law deals with *de facto* guardians and Section 364 deals with alienation of immovable property by *de facto* guardians which reads as, "A *de facto* guardian (section 361) has no power to transfer any right or interest in the immovable property of the minor. Such a transfer is not merely voidable, but void." The only power that a *de facto* guardian can exercise relates to disposal of movable property in terms of Section 368. Prior to Independence, the Allahabad High Court in Mt. Auto vs. Mt. Reoti Kaur (AIR 1936 All 837) dealt with the matter of ratification of an agreement made by a person during the age of minority. This principle has been reaffirmed by this Court in various cases.
ii) We would like to note since we are in agreement with the impugned judgment that the agreement to the extent of Mst. Maria Siddique was *void ab initio,* we find that there was no need for Mst. Maria to challenge the said sale agreement since the same did not infringe or alter any of her legal rights in the suit house whatsoever.

Conclusion: i) A *de facto* guardian without having express permission from the Court, cannot alienate the immovable property of minor.
ii) It is not necessary for the minor to challenge the agreement to sell executed by a *de facto* guardian, after attaining majority because the same does not infringe or alter any of his/her legal rights being void.

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3. **Supreme Court of Pakistan**
Shujat Hussain v. Provincial Election Commissioner, Balochistan & others.
C.M.A.No.3652 of 2023 In/ and C.A.No.364 of 2023
Mr. Justice Iijaz Ul Ahsan, Mr. Justice Munib Akhtar,Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._364_2023.pdf

Facts: Through the instant appeal in terms of the order of the learned High Court the appellant has assailed under section 9(5) of the Election Act 2017, the order of Election Commission of Pakistan in which the re- poll of the election sought under section 37 of the Balochistan Local Government Act, 2010 read with sections 8 and 9 of the 2017 Act was allowed.

Issues: i) Whether the election for the office of the Chairman of the Union Council is exclusive subject of Balochistan Local Government Act, 2010 therefore for the hearing of the election petition the Election Commission have to appoint an Election Tribunal?
ii) Whether an appeal before Supreme Court is general right under section 9(5) of

Election Act 2017?
iii) Whether determination of election dispute by the Election commission beyond its jurisdiction can be challenged by way of a writ petition before the High Court?

Analysis: i) It is common ground that the election in question, i.e., to the office of the Chairman of the Union Council is an election under the 2010 Act. The contesting private respondent sought to call in question the election to this office. That could only have been done by an election petition and not otherwise. Section 38 of the 2010 Act provides, in its sub-section (1), that for the hearing of the election petition the Election Commission shall appoint an Election Tribunal in terms as therein stated by a notification. Therefore, the proper remedy for the contesting private respondent was to file an election petition under section 37 of the 2010 Act and not by taking recourse to sections 8 and/ or 9 of the 2017 Act...when the Election Commission failed to constitute an Election Tribunal and instead chose itself to decide the matter, the same is not sustainable in the eyes of law. The proper course for it was to constitute an Election Tribunal under section 38 of the 2010 Act and for the election dispute to be then resolved in terms as provided in that statute, and to the extent not expressly provided for therein then, as provided in section 229(1), also by reference and regard to, and application of, Chapter IX of the 2017 Act (which relates to election disputes).
ii) The election dispute and its resolution lay essentially within the four corners of the 2010 Act. Now, an appeal to this Court under section 9(5) is not a general right; it lies only against an order made "under this section".
iii) When the determination of the election dispute by the Election Commission in the facts and circumstances was beyond jurisdiction and without lawful authority, as it acted in terms of an inapplicable provision of the wrong statute. Then its purported decision could therefore be challenged by way of a writ petition to the High Court…

Conclusion: i) Yes, the election for the office of the Chairman of the Union Council is exclusive subject of Balochistan Local Government Act, 2010 therefore for the hearing of the election petition the Election Commission have to appoint an Election Tribunal.
ii) An appeal before Supreme Court is not a general right under section 9(5) of Election Act 2017.
iii) Yes, the determination of election dispute by the Election commission beyond its jurisdiction can be challenged by way of a writ petition before the High Court.

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4. **Supreme Court of Pakistan**
Allied Bank Limited v. The Commissioner of Income Tax, Lahore etc.
Civil Petition No.6-L of 2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._6_l_2023.pdf

Facts: The Income Tax Reference was decided against the petitioner vide the impugned judgment, hence, the instant petition for leave to appeal.

Issues: i) Whether the powers exercised by the Commissioner under Section 122(5A) of the Ordinance can be delegated to the Additional Commissioner under Section 210 of the Ordinance 2001?
ii) What is the obligation of the court while interpreting fiscal or taxing statutes?

Analysis: i) Section 122(5A) of the Ordinance stipulates that subject to sub-section (9), which requires that the taxpayer must be provided with an opportunity to be heard, the Commissioner may amend, or further amend, an assessment order if he considers the assessment order as erroneous is so far as it is prejudicial to the interest of revenue. Section 210(1) of the Ordinance specifically empowers the Commissioner to delegate all or any of the powers or functions conferred upon or assigned to the Commissioner under the Ordinance to any officer of Inland Revenue subordinate to the Commissioner, except the power of delegation. Importantly, Section 210(1A) removes any ambiguity as to the power of the Commissioner to delegate his powers provided under Section 122(5A) by stipulating that the Commissioner shall not delegate the powers of the amendment of assessment contained in Section 122(5A) to an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue. Section 211(1) of the Ordinance then further fortifies that where by virtue of an order under Section 210 of the Ordinance, an officer of the Inland Revenue exercises a power or performs a function of the Commissioner, such power or function shall be treated as having been exercised or performed by the Commissioner.
ii) It is well settled that a literal approach is to be adopted while interpreting fiscal or taxing statutes and the Court cannot read into or impute something when the provisions of a taxing statute are clear. While interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein, and it cannot imply something which is not expressed or import provisions in the statute so as to support any assumed deficiency.

Conclusion: i) The powers exercised by the Commissioner under Section 122(5A) of the Ordinance can be delegated to the Additional Commissioner under Section 210 of the Ordinance.
ii) While interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein, and it cannot imply something which is not expressed.

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5. **Supreme Court of Pakistan**
Mehtab Publication (Pvt.) Ltd v. Pakistan Electronic Media Regulatory Authority (PEMRA), etc.
C.M.A No.9009/ 2022 in Civil Petition No. 361 of 2020.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._9009_2022.pdf

Facts: The petitioner filed an application for restoration of his petition, which was dismissed for non-prosecution, on the sole ground that the petitioner, as well as, the learned counselfor the petitioner did not receive any information regarding the fixation of his case.

Issue: What is the formal procedure for informing the advocates regarding fixation of a case before the Supreme Court of Pakistan?

Analysis: It is clarified that the process of informing the Advocates regarding fixation of case is through the supply of the cause list to the respective Advocate-on-Records (AORs) under Order IV, Rule 19 of the Supreme Court Rules, 1980. Otherwise, informally as a matter of tradition and by way of standing practice, the cause lists are also put up in the Bar Rooms and SMS messages are also sent to the learned Advocates by the Court. However, the procedure covered by the Rules is the supply of cause list to the AORs. In case of a petitioner in person, notices are served to the petitioner under Order III, Rule 9 of the Rules.

Conclusion: The formal procedure for informing the Advocates regarding fixation of a case before the Supreme Court of Pakistan is through the supply of the cause list to the respective Advocate-on-Records (AORs) under Order IV, Rule 19 of the Supreme Court Rules, 1980.

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6. **Supreme Court of Pakistan**
Hilal Khattak v. The State & another.
Criminal Petition No.461 of 2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._461_2023.pdf

Facts: The petitioner seeks leave to appeal against an order of the High Court, whereby the High Court has dismissed his application for post-arrest bail in case FIR registered for the offences punishable under Sections 302, 311, 324, 452, 365, 337- A(ii), 148 and 149 of the Pakistan Penal Code 1860.

Issues: i) Whether question of vicarious liability of an accused can be looked into at the bail stage?
ii) What are the exceptions to rule of granting bail in non-prohibitory clause offences?
iii) Whether offence of housebreaking by night is a grave offence and also violates the fundamental right guaranteed by Article 14 of the Constitution of Pakistan?

Analysis: i) Although the question of vicarious liability of an accused can also be looked into at the bail stage and it is not an absolute rule that it must always be left to be determined in trial.
ii) The argument of the learned counsel for the petitioner, we find, is based on a mistaken understanding of the legal position regarding grant of bail in offences

that do not fall within the prohibitory clause of Section 497(1), CrPC. It is true that in such offences, bail is to be granted as a rule, but not as of right. Bail can be refused in such offences when the case of the accused falls within any of the three well established exceptions: (i) likelihood to abscond to escape trial; (ii) likelihood to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) likelihood to repeat the offence.

iii) We may observe here that it is the sanctity and privacy of home, as guaranteed by Article 14 of the Constitution of Pakistan, that the offences of house-breaking committed after having made preparation for causing hurt or fear of hurt have been categorised by the legislature as grave offences under Section 455 (when committed at daytime) and Section 458 (when committed at night), punishable with imprisonment upto ten years and fourteen years respectively. It is said that 'the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose'. It would be the worst position of a society if its people do not feel safe and secure even within their houses. Failure to provide protection to its citizens in their houses would amount to the failure of the State. All the organs of the State, including the judiciary, should therefore enforce the laws protecting the privacy of home strictly in letter and spirit.

Conclusion: i) The question of vicarious liability of an accused can also be looked into at the bail stage and it is not an absolute rule that it must always be left to be determined in trial.

ii) The exceptions to rule of granting bail in non-prohibitory clause offences are (i) likelihood to abscond to escape trial; (ii) likelihood to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) likelihood to repeat the offence.

iii) The offence of housebreaking by night is a grave offence and also violates the fundamental right guaranteed by Article 14 of the Constitution of Pakistan.

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7. **Supreme Court of Pakistan**
M/s Pak Suzuki Motors Company Limited through its Manager v. Faisal Jameel Butt and another.
Civil Appeal No.797 of 2017
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._797_2017.pdf

Facts: Respondent No.1 purchased a motor vehicle from the appellant, through respondent No.2 who is a car dealer. On discovering certain defects in the vehicle, respondent No. 1 issued legal notices to the appellant and respondent No.2 and thereafter filed a claim under Section 25 of the Punjab Consumer Protection Act, 2005 before the District Consumer Protection Court which was allowed. The appellant filed an appeal under Section 33 of the Act before the High Court,

which was subsequently dismissed through the impugned judgment. Hence, this civil appeal.

Issues: i) Whether evidence can be led or looked into in support of a fact or a plea that has not been taken in the pleadings?

ii) Whether as per the provisions of the Consumer Protection Act 2005, expert evidence is necessary to ascertain the technical manufacturing defects in the vehicle?

iii) Whether the admission of a co-defendant is binding on the other defendant?

iv) When the 30-day limitation period stipulated under Section 28(4) of the Consumer Protection Act 2005 commence?

v) Where the limitation period has expired, whether a right accrues in favour of the other side which cannot be lightly brushed aside?

Analysis: i) It is settled law that a litigant is required to plead all material facts that are necessary to seek the relief claimed and then to prove the same through evidence. Parties are required to lead evidence in consonance with their pleadings and no evidence can be led or looked into in support of a fact or a plea that has not been taken in the pleadings.

ii) Where the defects alleged are of such a nature that require expert inspection or probe, the onus to provide such expert evidence falls on the consumer who is alleging that the product is defective or faulty. Where such defects are alleged by the consumer, a Consumer Court, before deciding that a certain product is defective or faulty, must satisfy itself that sufficient expert evidence is available and can be relied upon to ascertain the defects so alleged instead of merely placing reliance on the statement of a consumer who may not be from the related field of expertise and therefore, not competent to address the technicalities forming part of the alleged defects, especially where the claim of the consumer is denied by the manufacturer. To this effect, Section 30(1)(c) of the Act allows the Consumer Court to invite expert evidence, if required, where the claim alleges that the products are defective and do not conform to the accepted industry standards. No expert evidence was produced by respondent No.1 or invited by the Consumer Court to ascertain whether the alleged defects existed in the vehicle. Therefore, respondent No.1 failed to prove that the vehicle was defective in construction or composition as required under Section 5 or that it was otherwise defective for the purposes of any other provision of the Act.

iii) It is settled law that the admission of a co-defendant is not binding on the other defendant.

iv) When the consumer obtains knowledge of the defect or fault in the product or the service, the 30-day limitation period stipulated under Section 28(4) of the Act commences. It is during this period that the consumer has to first put his grievance before the manufacturer or service provider, seeking rectification of the defect or fault in the product or service, or damages, and provide 15 days to the manufacturer or service provider to remedy the same, as required under Section 28(2). It is only after the manufacturer or the service provider responds to the

written notice, or where he fails to respond within the stipulated 15-day period, that the consumer can file a claim before the Consumer Court if the cause of action still subsists.

v) It is settled law that that limitation is not a mere technicality, and where the limitation period has expired, a right accrues in favour of the other side which cannot be lightly brushed aside.

Conclusion: i) Evidence cannot be led or looked into in support of a fact or a plea that has not been taken in the pleadings.

ii) As per the provisions of the Consumer Protection Act 2005, expert evidence is necessary to ascertain the technical manufacturing defects in the vehicle.

iii) The admission of a co-defendant is not binding on the other defendant.

iv) The 30-day limitation period stipulated under Section 28(4) of the Consumer Protection Act 2005 commences when the consumer obtains knowledge of the defect or fault in the product or the service.

v) Where the limitation period has expired, a right accrues in favour of the other side which cannot be lightly brushed aside.

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8. **Supreme Court of Pakistan**
Raja Muhammad Shahid v. The Inspector General of Police & others.
Civil Petition No.545 -K of 2021
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._545_k_2021.pdf

Facts: The petitioner has filed this Civil Petition for leave to appeal against the judgment only to the extent of the fate of Appeal filed by him before the Service Tribunal which was dismissed by the common judgment.

Issues: i) What is the procedure to conduct regular inquiry?

ii) What are the requirements of competent authority to conduct the departmental inquiry and what is the duty of Service Tribunal under law?

iii) What is the object of departmental inquiry?

iv) What is the purpose of cross-examination?

v) Whether depriving the accused officer from right of cross-examination to departmental representative will infringe his right of fair trial?

Analysis: i) A regular inquiry is triggered after issuing show cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow an even-handed and fair opportunity to the accused to place his defence and if any witness is examined against him, then a fair opportunity should also be afforded to cross-examine the witnesses.

ii) The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and the delinquent civil servant should be provided a fair opportunity of being heard and

if the order of the competent authority based on inquiry report is challenged before the Service Tribunal then it is the legal duty of the Service Tribunal to give some reasons and there should be some discussion of evidence on record which is necessary to deliberate the merits of the case in order to reach a just conclusion before confirming, reducing or setting aside the penalty.

iii) It was held in the case of Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others Vs. Zahid Malik (2023 SCMR 603), that the primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence can only be thrashed out from the outcome of inquiry.

iv) The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross- examination, which is not a mere formality, but is a valuable right to bring the truth out. The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies.

v) Depriving the accused officer from right of cross-examination to departmental representative who lead evidence and produced documents against the accused is against Article 10-A of the Constitution in which the right to a fair trial is a fundamental right. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned.

Conclusion: i) A show cause notice is issued with statement of allegations and if the reply is not found suitable then inquiry officer is appointed for the commencement of regular inquiry.

ii) Authority conducting the departmental inquiry should be impartial and if the order of the authority is challenged then it is the legal duty of the Service Tribunal to give some reasons to deliberate the merits of the case.

iii) The object of conducting departmental inquiry is to grasp whether a case of misconduct is made out or not.

iv) The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood.

v) Depriving the accused officer from right of cross-examination to departmental representative will infringe his right of fair trial.

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9. **Supreme Court of Pakistan**
Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi etc v. M/s MSC Switzerland Geneva & others etc.
Civil Review Petitions No.432-K to 459-K of 2022 in Civil Petitions No.672-K to 692- K of 2021 & 694-K, 724-K to 729-K of 2021.
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._432_k_2022.pdf

Facts: These Review Petitions have been brought to implore the review of the order passed by this Court whereby the Civil Petitions filed by the petitioner were dismissed and leave was refused.

Issues: i) Whether the Federal Government has power to enter into tax treaty?
ii) Whether the agreement made under law with the other countries shall have any effect?
iii) If any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty whether it would be exempted from tax under this Ordinance?
iv) How the treaties are interpreted under Article 31 of the Vienna Convention on the Law of Treaties, 1969?
v) What is the doctrine of merger?
vi) Whether the Supreme Court has the power to review its judgment?
vii) What are the pre-requisites for filing a review petition?
viii) What if the review petition is found frivolous or vexatious?
ix) What grounds are available in CPC for filing review application?
x) Whether irregularities having no significant effect or impact on the judgment will be sufficient to warrant the review of a judgment or order?
xi) On what grounds review application can be filed before the court?

Analysis: i) Pursuant to the powers conferred under Section 107 of the 2001 Ordinance, the Federal Government may enter into a tax treaty, including tax information exchange agreement, multilateral convention, inter-governmental agreement or a similar agreement with a mechanism and ways and means for the avoidance of double taxation or the exchange of information for the prevention of fiscal evasion or avoidance of taxes including automatic and spontaneous exchange of information with respect to taxes on income imposed under the 2001 Ordinance, or any other law for the time being in force.
ii) Subject to Section 109, where any agreement is made shall have effect in so far as it provides the purposes for at least one of the following: (a) relief from the tax payable under the 2001 Ordinance; (b) the determination of the Pakistan-source income of non-resident persons; (c) where all the operations of a business are not carried on within Pakistan, the determination of the income attributable to operations carried on within and outside Pakistan, or the income chargeable to tax in Pakistan in the hands of non-resident persons, including their agents, branches, and permanent establishments in Pakistan; (d) the determination of the income to be attributed to any resident person having a special relationship with a non-resident person; and (e) the exchange of information for the prevention of fiscal

evasion or avoidance of taxes on income chargeable under the 2001 Ordinance and under the corresponding laws in force in that other country.

iii) Whereas the exactitudes of sub-Section (1) of Section 44 of the 2001 Ordinance, accentuates that any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty shall be exempt from tax under this Ordinance.

iv) The interpretation of treaties as envisaged under Article 31 of the Vienna Convention on the Law of Treaties, 1969 is a process of progressive encirclement where the interpreter starts under the general rules whereunder (1) A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose; (2) The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

v) The doctrine of merger presupposes the existence of two independent things, the greater of which would swallow up or may extinct the lesser one by the process of absorption. It is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased, an absorption or swallowing up so as to involve a loss of identity and individuality.

vi) The Supreme Court has the power to review its judgment under Article 188 of the Constitution, subject to the provisions of any Act of Parliament and of any rules made by this Court. In the same parlance, Order XXVI of the Supreme Court Rules, 1980 is germane to the "Review Jurisdiction" wherein, subject to the law and the practice of the Court, this Court may review its judgment or order on grounds similar to those mentioned in Order XLVII, Rule 1, CPC and in a criminal proceeding, on the ground of an error apparent on the face of the record.

vii) The prerequisite of filing a review application is that the Advocate signing the application shall specify, in brief, the points upon which the prayer for review is based and shall add a certificate in the form of a reasoned opinion that review would be justifiable in that particular case.

viii) It is clearly provided in the Order XXVI of the Supreme Court Rules, 1980 that, in case the Court comes to the conclusion that the Review Application was vexatious or frivolous, the Advocate or the Advocate-On-Record drawing the application shall render himself liable to disciplinary action.

ix) Under Order XLVII, Rule 1, CPC, an aggrieved person may file an application for review of the judgment and order on the ground of discovery of new and important information or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

x) Every judgment articulated by the Courts of law is presumed to be a solemn and conclusive determination on all points arising out of the lis. Mere irregularities having no significant effect or impact on the outcome would not be sufficient to warrant the review of a judgment or order, however, if the anomaly or ambiguity is of such a nature so as to transform the course of action from being one in the aid of justice to a process of injustice, then obviously a review petition may be instituted for redressal to demonstrate the error, if found floating conspicuously on the surface of the record, but a desire of re-hearing of the matter cannot constitute a sufficient ground for the grant of review which, by its very nature, cannot be equated with the right or remedy of appeal.

xi) The clemency by dint of review is accorded to nip in the bud an irreversible injustice, if any, done by a Court such as misconstruction of law, misreading of the evidence and non-consideration of pleas raised before a Court that would amount to an error floating on the surface of the record, but where the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. Review by its nature is neither commensurate to a right of appeal or opportunity of rehearing merely on the ground that one party or the other conceived himself to be dissatisfied with the decision of the court, nor can a judgment or order be reviewed merely because a different view could have been taken.

Conclusion: i) The Federal Government has power to enter into tax treaty.

ii) Agreement shall have effect in so far as it provides the purposes for at least one of the following: (a) relief from the tax payable under the 2001 Ordinance; (b) the determination of the Pakistan-source income of non-resident persons; (c) where all the operations of a business are not carried on within Pakistan (d) the determination of the income to be attributed to any resident person having a special relationship with a non-resident person; and (e) the exchange of information for the prevention of fiscal evasion or avoidance of taxes on income chargeable under the 2001 Ordinance and under the corresponding laws in force in that other country.

iii) Any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty shall be exempt from tax under this Ordinance.

iv) The interpretation of treaties as envisaged under Article 31 of the Vienna Convention on the Law of Treaties, 1969 is a process of progressive encirclement where the interpreter starts under the general rules.

v) The doctrine of merger presupposes the existence of two independent things, the greater of which would swallow up or may extinct the lesser one by the process of absorption.

vi) The Supreme Court has the power to review its judgment under Article 188 of the Constitution, subject to the provisions of any Act of Parliament and of any rules made by this Court.

vii) The prerequisite of filing a review application is that the Advocate signing the application shall specify, in brief, the points upon which the prayer for review is based and shall add a certificate in the form of a reasoned opinion.
viii) If Review Application was vexatious or frivolous, the Advocate or the Advocate-On-Record drawing the application shall render himself liable to disciplinary action.
ix) Under Order XLVII, Rule 1, CPC, an aggrieved person may file an application for review of the judgment and order on the ground of discovery of new and important information.
x) Mere irregularities having no significant effect or impact on the outcome would not be sufficient to warrant the review of a judgment or order.
xi) The clemency by dint of review is accorded to nip in the bud an irreversible injustice, if any, done by a Court such as misconstruction of law, misreading of the evidence and non-consideration of pleas raised before a Court that would amount to an error floating on the surface of the record.

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10. **Lahore High Court**
Nauman Anjum v. Area Magistrate, etc.
Intra Court Appeal No.28717/2023
Mr. Justice Ali Baqar Najafi, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC2625.pdf

Facts: Appellant has directed this Intra Court Appeal under Section 3 of Law Reforms Ordinance, 1972 against the order of Single Judge in Chamber, whereby his Writ Petition seeking annulment of order of Area Magistrate, Daska was dismissed.

Issue: Whether Intra Court Appeal is maintainable against the order of Single Judge of High Court where Writ Petition seeking annulment of order of Area Magistrate for constitution of District Standing Medical Board, was dismissed?

Analysis: An appeal under Section 3 is not competent before the Division Bench of this Court, against the order of learned Single Judge passed in a writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, arises out of the proceedings, which at least provided one appeal, one revision or review to any Court, Tribunal or authority against the "original order". (…) From the above notification, it is manifestly clear that opinion of First Medical Examiner, can be challenged in appeal by an aggrieved person before the District Standing Medical Board and second appeal lies before the Provincial Standing Medical Board in Appellate/Supervisory capacity. This "Three Tier Structure" for conduction of medico legal work has been recognized by the apex Court in case reported as "Mst. Lubna Bibi ..Vs.. Azhar Javed Abbas and another (2022 SCMR 946)". (…) For what has been discussed above, we have no doubt in our mind that against the "original order" i.e. opinion of Initial Medical Examiner, two tier remedy of appeal i.e. before District Standing Medical Board and Provincial Standing Medical Board was available to the appellant, therefore, irrespective of the fact

that what was impugned/challenged in the writ petition, instant Intra Court Appeal is not maintainable.

Conclusion: Intra Court Appeal is not maintainable against the order of Single Judge of High Court, where Writ Petition seeking annulment of order of Area Magistrate for constitution of District Standing Medical Board is dismissed, as the opinion of First Medical Examiner, can be challenged in appeal by an aggrieved person before the District Standing Medical Board and second appeal lies before the Provincial Standing Medical Board in Appellate/Supervisory capacity.

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11. **Lahore High Court**
Ashfaq Ahmad v. Govt. of Punjab etc.
Writ Petition No.27705/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2668.pdf

Facts: The petitioners are employees of the LG&CDD, Punjab and posted as Chief Officers & District Officers at Municipal Corporation and District Councils. Employees/officers of the local government, including the petitioners, have been transferred through the impugned transfer orders. In this Petition alongwith connected petitions, the petitioners have challenged two transfer orders to their extent, passed by the Secretary, Local Government & Community Development Department. The petitioners have also challenged three separate impugned orders passed by the Chief Secretary, whereby their respective representations were declined.

Issues: i) Whether security of tenure for the employees/officers of local government was not specifically available under previous local government laws?
ii) Whether section 186 of the Act XXXIII of 2022 is only applicable to chief officers and no other officers?
iii) Whether Act XXXIII of 2022 shall remain in abeyance till holding of the local government elections under the Act and the Act of 2013 will remain in field?
iv) Whether employees/officers can be transferred prior to period specified in the law or rules made thereunder?
v) Whether employees of the LG&CDD, Government of Punjab, can be transferred before expiry of their ordinary tenure of two years', prescribed under Section 186 of the Act XXXIII of 2022?

Analysis: i) Cursory glance of above mentioned local government laws manifests that though the security of tenure for the employees/officers of local government was not specifically available under the Ordinance of 1979 and the Act of 2013, however, the Transfer Policy was in field and subsequently the Act of 2019, the Ordinance of 2021, the Act XIII of 2022 and the Act XXXIII of 2022 provided statutory security of ordinary tenure of two years to the officers of the local government.
ii) The aforesaid Section 186 must be read in conjunction with Section 185 of the

Act ibid, which provides that every local government shall have such number of Chief Officer from prescribed service and such number and description of other officers and servants as the Secretary may from time to time determine. Sub-section (2) of Section 185 of the Act XXXIII of 2022 further provides that all officers of a local government shall be appointed by the Secretary in the prescribed manner. The words "such other officers of the local government that may be specified by the Secretary", mentioned in Section 186 of the Act ibid, are actually referring to those other officers who are to be "determined" and "appointed" by the Secretary under Section 185 of the Act XXXIII of 2022, and there is no requirement under Section 186 ibid for specifying other officers for security of tenure to said officers. It is neither the case of the respondents that any such separate list of other officers has ever been specified by the Secretary under any of the laws, referred above, for security of tenure nor any rules or parameters have been framed for the Secretary to specify the other officers, only to whom the security of tenure shall be available under Section 186 of the Act XXXIII of 2022. If the above argument of the respondents is accepted then the discretion of the Secretary under Section 186 of the Act XXXIII of 2022 will not only be arbitrary being without any parameters but same will also be discriminatory and violative of the Article 25 of the Constitution. Merely because the word "specified" used in Section 186 and the words "determined" and "appointed" used in Section 185 of the Act XXXIII of 2022, do not mean that the other officers determined and appointed by the Secretary under Section 185 ibid will be different from "other officers" specified by the Secretary under Section 186 of the Act ibid. The word "specified", as defined in Black's Law Dictionary, means to mention specifically; to state in full and explicit terms; to point out; to tell or state precisely or in detail. The word "appoint" mean to designate, ordain, prescribe, nominate, whereas the word "determine" means to bring to conclusion, to decide, to settle. When the number and description of the other officers is "determined" by the Secretary under Section 185(1) of the Act XXXIII of 2022 and the officers of local government are appointed by him under Section 185(2) ibid, this means that the officers have been specified for the purpose of Section 186 of the Act ibid. The terms "determined" and "appointed" require application of mind to determine and appoint officers, whereas the word "specified", is only a ministerial job to mention or specify those officers determined and appointed, hence, these terms are to be read holistically and not in isolation.

iii) Plain reading of repeal and savings clause (under Section 204) and interim authorities and continuation of public service (under Section 205) of the Act XXXIII of 2022, shows that the Act XIII of 2022 was repealed, however, the repeal shall not affect previous operation of the laws, demarcated and notified areas, rights of privileges, penalties, investigations or anything done or action taken under the repealed local government laws. Section 205 of the Act XXXIII of 2022 also provides that all offices, agencies and authorities, established under the Act XIII of 2022, shall continue providing public services and all officers and servants of the defunct local government shall continue to discharge their

respective duties till they are assigned or transferred to any other local government. However, nowhere in Sections 204 & 205 of the Act XXXIII of 2022, it is provided that till such time the new local governments are established, the provisions of the Act XXXIII of 2022, including Section 186, shall not apply for the security of tenure to the officers of local government. The above legal position is also supported by the fact that various instructions/orders (appended with CM No.1 of 2023) were issued under the Act XXXIII of 2022 and not under the Act of 2013… Therefore, it cannot be said that the Act XXXIII of 2022 shall remain in abeyance till holding of the local government elections under the Act ibid.

iv) The Hon'ble Supreme Court in the case of "Syed Mahmood Akhtar Naqvi" supra held that when the ordinary tenure for posting and transfer has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied except for compelling reasons, which should be recorded in writing and are judicially reviewable.

v) In all afore-noted judgments, the law settled by the august Supreme Court of Pakistan as well as by various High Courts is that postings and transfers exclusively fall under the domain of competent authority and in the exigencies of service, transfer and posting can be made but such discretion must not be exercised in arbitrary or fanciful manner rather same should be exercised judiciously, with equity and fair play. Therefore, when ordinary tenure for posting has been specified in law then such tenure cannot be varied except for compelling reasons, which should be recorded in writing and must be justiciable. Ordinary tenure of two years for employees of local government in above mentioned laws apparently is in line with Article 140A of the Constitution, which envisages establishment of local government system to promote good governance, effective delivery of services through institutionalized participation of the people at low level through local governments and its employees.

Conclusion: i) The security of tenure for the employees/officers of local government was not specifically available under the Ordinance of 1979 and the Act of 2013, however, the Transfer Policy was in field and subsequently the Act of 2019, the Ordinance of 2021, the Act XIII of 2022 and the Act XXXIII of 2022 provided statutory security of ordinary tenure of two years.

ii) Section 186 of the Act XXXIII of 2022 is applicable to chief officers and other officers who are to be "determined" and "appointed" by the Secretary under Section 185 of the Act.

iii) It cannot be said that the Act XXXIII of 2022 shall remain in abeyance till holding of the local government elections under the Act and the Act of 2013 will remain in field.

iv) Employees/officers cannot be transferred prior to period specified in the law or rules made thereunder except for compelling reasons, which should be recorded in writing and are judicially reviewable.

v) Employees of the LG&CDD, Government of Punjab, cannot be transferred

before expiry of their ordinary tenure of two years', prescribed under Section 186 of the Act XXXIII of 2022.

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12. **Lahore High Court**
Samina v. Additional District Judge etc.
Writ Petition No.5278/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2773.pdf

Facts: The petitioner filed a suit for recovery of maintenance allowance and dower against the respondent No.3 during subsistence of marriage. The suit was decreed. The respondent filed Appeal and the appellate court, dismissed the appeal against entitlement of maintenance allowance, however, accepted the appeal against dower and declined the same on the ground that the dower being deferred cannot be claimed during subsistence of marriage. The respondent did not challenge the said judgment and decree, however, the petitioner being aggrieved has filed this constitutional petition.

Issues: i) How the word "Ind-at-Talab" mentioned in Nikahnama can be defined?
ii) Whether dower payable on demand is prompt or deferred dower?
iii) Whether dower will be presumed as payable on demand, when no details about mode of payment are specified in the Nikahnama?

Analysis: i) The word "Ind-at-Talab" is the word of Urdu language and its English translation is "on demand" as per "OXFORD Urdu—English Dictionary" of Oxford University Press as well as "FEROZSONS Urdu—English Dictionary" of Ferozsons (Pvt.) Ltd. The Urdu to Urdu Dictionary i.e. defines the word "Ind-at-Talab" in following terms:-…The above dictionary meanings/translations of "Ind-at-Talab" make it abundantly clearly that the dower in-question is payable on demand.
ii) In this regard, Para-290 of the Muhammadan Law defines "Prompt" & "Deferred" dower… In terms of Para-290 of Muhammadan Law and the law settled by Hon'ble Supreme Court in Saadia Usman's case supra, the "prompt dower" is payable on demand, whereas "deferred dower" is payable on dissolution of marriage either by death or divorce unless time is stipulated between the parties for payment of deferred dower.
iii) The above interpretation is also supported by Section 10 of the Muslim Family Laws Ordinance, 1961 (Ordinance), according to said provision where no detail about the mode of payment of dower is spelled out by the parties in Nikahnamma or marriage contract, the entire amount of dower shall be presumed to be payable on demand and not necessarily means payable on dissolution of marriage by death or divorce.

Conclusion: i) The word "Ind-at-Talab" mentioned in Nikahnama means payable on demand.
ii) Dower payable on demand is a prompt dower.
iii) Where no detail about the mode of payment of dower is spelled out by the

parties in Nikahnamma or marriage contract, the entire amount of dower shall be presumed to be payable on demand and not necessarily means payable on dissolution of marriage by death or divorce.

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13. **Lahore High Court**
Muhammad Shahbaz Najam v. Federation of Pakistan etc.
Writ Petition No.26318/2017
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2829.pdf

Facts: The petitioner was employee of National Database Registration Authority. He was charge sheeted for misconduct and after inquiry and show cause notice, he was removed from service. The departmental appeal of the petitioner was also dismissed. Hence this constitutional petition has been filed.

Issues: i) Whether Regulations of NADRA under section 45 of the Ordinance are non-statutory?
ii) Whether Rules of 1973 being adopted by NADRA, under regulation 23 of the Regulations, have the status of non-statutory?
iii) Whether employees of NADRA are civil servants therefore, Rules of 1973 are applicable to them?

Analysis: i) The honourable Supreme Court in "Maj. (Retd.) Syed Muhammad Tanveer Abbas vs. Federation of Pakistan through Secretary Ministry of Interior and others" (2019 SCMR 984) already held that the Regulations of NADRA under section 45 of the Ordinance are non-statutory. In said case, constitutional petitions were filed before learned Sindh High Court by various employees of NADRA against their orders of termination. The Division Bench of learned Sindh High Court dismissed the Constitutional Petitions on the ground that Regulations are framed by the Authority under Section 45 of the Ordinance, hence, they are non-statutory. The said judgment was challenged before the Hon'ble Supreme Court of Pakistan, where the appeals were dismissed and the August Supreme Court of Pakistan held that Regulations of NADRA are non-statutory in nature…In view of above discussion, there is no doubt that the Regulations framed by NADRA under section 45 of the Ordinance are non-statutory.
ii) Under section 44 of the Ordinance, the Federal Government may by notification in official gazette make rules for carrying out the purpose of this Ordinance, whereas under section 45 of the Ordinance, the authority may by notification in the official gazette make regulations not inconsistent with the provisions of this Ordinance or rules. Under section 45(2) of the Ordinance, the regulations may also provide for appointment of Registration Officers, Members of staff, Experts, Consultants, Advisors, other Officers and employees, and terms and conditions of their service. In pursuance to section 45 of the Ordinance, the authority framed regulations termed as "The National Database and Registration Authority (Application for National Identity Card) Regulations, 2002" (Regulations). Under regulation 23 of the Regulations, the laws which are

applicable to civil servants including Rules of 1973 were adopted by NADRA for applying the same to employees of NADRA… The honourable Supreme Court in "M.H. Mirza vs. Federation of Pakistan through Secretary, Cabinet Division, Government of Pakistan, Islamabad and 2 others" (1994 SCMR 1024) held that mere adoption of statutory rules of the Government or their application by reference will not automatically lend a statutory cover or content to those rules… The same view was also expressed by this Court in "Kamran Ahmad vs. Water and Power Development Authority through Chairman and 3 others (2014 PLC (C.S.) 332). Learned Sindh High Court in "Muhammad Mateen Khan vs. Federation of Pakistan through Secretary, Ministry of Interior Islamabad and 3 others" (2020 PLC (C.S.) 1), specifically dealt with the proposition in hand and held that by adoption under regulation 23 to the Rules of 1973 by NADRA, the same will not attain the status of statutory enactment/regulations but are basically instructions for the internal control or management of Respondent Authority.

iii) The perusal of provisions of Rules of 1973 shows that under Rule 1(2) thereof, same are only applicable to civil servants and not to employees of Authority who are not civil servants. The petitioner being employee of NADRA is not a civil servant but an employee of an authority, therefore, Rules of 1973 on its own are not applicable to petitioner and have been made applicable only by way of adoption and reference under Regulation 23 of the non-statutory regulations. The legal position would have been totally different and constitutional petition would be maintainable due to statutory intervention, if Rules of 1973 were applicable to NADRA employees by virtue of provisions of the Rules of 1973 itself without same being adopted under Regulation 23 of the Regulations. In such eventuality, merely because Rules of 1973 were also adopted under Regulation 23 by NADRA besides being otherwise applicable to its employees, the same would amount to statutory intervention and writ petition be maintainable in view of law settled by august Supreme Court in Pakistan Defence Officers Housing Authority supra. The Rules of 1973 being only applicable to civil servants and have been applied to employees of Authority i.e. NADRA only by virtue of adoption under Regulation 23 of the non-statutory Regulations, therefore, for all intent and purpose, the Rules of 1973 cannot have superior status to non-statutory Regulations under which they were adopted.

Conclusion: i) The Regulations framed by NADRA under section 45 of the Ordinance are non-statutory.

ii) Rules of 1973 being adopted by NADRA, under regulation 23 of the Regulations, have the status of non-statutory.

iii) Employees of NADRA are not civil servants but employees of an authority, therefore, Rules of 1973 on its own are not applicable to them.

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14. **Lahore High Court**
Muhammad Ali Khalid v. Muhammad Talha.
RFA No. 6825 of 2020
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2619.pdf

Facts: Through this Regular First Appeal, order and decree passed by the Additional District Judge, has been assailed, by virtue of which while rejecting an application for leave to appear and defend the suit filed by the appellant, a suit for recovery of Rs.2,000,000/- under Order XXXVII CPC filed by the respondent against the appellant has been decreed.

Issues: (i) Which procedure will be followed by the court after granting leave to appear and defend the suit under order XXXVII CPC?
(ii) Which is prescribed Format of summons for service of the defendant in suit under Order XXXVII CPC?
(iii) What is the legal effect, where the summons is not issued to a defendant in Form No. 4, Appendix-B CPC and in such eventuality when the limitation to file leave to defend starts?
(iv) What is difference in service of summons in regular suit and the suit filed under Order XXXVII CPC?

Analysis: (i) Order XXXVII CPC is a special dispensation. Under this Order and unlike in a regular civil suit, procedure has been provided to file and proceed with the suit filed on the basis of negotiable instruments, as contemplated in the Negotiable Instruments Act 1881. In a suit filed under this Order, which is summary in nature, under Rule 3 of the said Order, a defendant who has been served, within stipulated time has to seek leave to appear and defend the suit and once the leave is granted, the suit shall be converted into a regular civil suit and will be decided in accordance with the general procedure prescribed in CPC.
(ii) Unlike the regular civil suit where summons for service of the defendant are issued under Order V Rules 1 & 5 CPC, the format of which is given in Form No. II Appendix-B CPC in a suit filed under Order XXXVII CPC, under Rule 2 of the said Order, a defendant has to be issued summons in the specific format as given in Form No. 4 Appendix-B CPC.
(iii) Where the summons is not issued to a defendant in Form No. 4, Appendix-B CPC, it will be presumed that he has not been served and his limitation for filing the application for leave to appear and defend the suit would start from the date when he appeared before the court and filed such application. (…) Be that as it may, since the appellant was never served through the prescribed summons as contemplated in Order XXXVII Rule 2 and Form 4, Appendix-B CPC thus the publication in the newspaper could not be issued, hence, this cannot be said that he was ever served, therefore, as and when he appeared before the trial court with his application for leave to appear and defend the suit, his limitation for filing such an application would start from the day he enters appearance therefore the

trial court erred in law in dismissing the application for leave to appear and defend the suit being barred by time and decreed the suit.
(iv) Unlike a regular civil suit, where defendant is called to appear in the court, either himself or through a representative, in a suit filed under Order XXXVII CPC defendant can only contest the suit subject to grant of leave to appear and defend the suit, that too on an application filed by him within 10 days of his service of summons (see Order XXXVII Rule 3 CPC), issued in the format given in Form 4, Appendix-B CPC (see Order XXXVII Rule 2 CPC). The text of the said summons would show that unlike summons issued in Form 2, Appendix-B CPC, the defendant is cautioned about the time line in which he has to file such an application and it is a sine qua non that the summons is to be accompanied by a copy of plaint.

Conclusion: (i) Once the leave to appear and defend the suit is granted in suit under Order XXXVII CPC, the suit shall be converted into a regular civil suit and will be decided in accordance with the general procedure prescribed in CPC.
(ii) Under Order XXXVII CPC, the defendant has to be issued summons in the specific prescribed format as given in Form No. 4 Appendix-B.
(iii) Where the summons is not issued to a defendant in Form No. 4, Appendix-B CPC, it will be presumed that he has not been served and his limitation for filing such an application would start from the day, when he enters his appearance.
(iv) In regular civil suit defendant is called to appear in the court, either himself or through a representative through summons issued in Form 2, Appendix-B CPC whereas in a suit filed under Order XXXVII CPC he can only contest the suit subject to grant of leave to appear and defend the suit, that too on an application filed by him within 10 days of his service of summons, issued in the format given in Form 4, Appendix-B CPC.

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15. **Lahore High Court**
Mst. Gul Baha v. G.M. Pakistan Railways, etc.
W.P.No.15570 of 2022
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC2839.pdf

Facts: Real brother of the petitioner was employee of respondent-department as Head Clerk, who has expired, where after, petitioner applied for a succession certificate for seeking family pension of the deceased brother, which was allowed. Subsequently, time and again petitioner has been approaching the respondents for seeking family pension, however, the needful has not been done, therefore, this petition.

Issue: Whether unmarried sister of deceased employee is entitled to family pension if the deceased employee is succeeded by two sons?

Analysis: Where a civil servant, who was entitled to receive or has been receiving pensionary benefits, expires, after his demise, his pension will be

received/transferred to his family members, a complete chart/resume according to their preferential right has been given in under Rule 4.10 of the West Pakistan Civil Services Pension Rules, 1963. If the sons of deceased are above the age of 24 years and no other legal heir of the deceased, who is entitled to receive the family pension, is available then in view of Rule 4.10(2)(B)(iv) of the Rules, unmarried sister of deceased is entitled to receive the family pension.

Conclusion: If the sons of deceased are above the age of 24 years and no other legal heir of the deceased, who is entitled to receive the family pension, is available then in view of Rule 4.10(2)(B)(iv) of West Pakistan Civil Services Pension Rules, 1963, unmarried sister of deceased is entitled to receive the family pension.

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16. **Lahore High Court,**
Ghulam Ahmad Shah alias Munir Ahmad Shah v. Chairman Federal Land Commission, Islamabad and others,
W.P. No. 15863 of 2014,
Mr. Justice Shahid Karim, Mr. Justice Muzamil Akhtar Shabir.
https://sys.lhc.gov.pk/appjudgments/2017LHC5712.pdf

Facts: This constitutional petition is filed by petitioner with prayer to set aside the orders passed by respondent authorities resuming his land whilst holding it being in excess of prescribed limit under the MLR 115 of 1972, to undo consequently attested mutation and to set aside the direction of the respondent authorities requiring him to surrender the area of his choice.

Issue: What would be fate of subsequently filed writ petition if, after its filing, the earlier filed writ petition agitating same claim on basis of same cause of action is withdrawn without seeking permission to file another writ petition?

Analysis: The relief claimed by petitioner in earlier petition was similar to the relief claimed in subsequently filed petition based on same cause of action. Subsequent petition was filed and came up for hearing on the same date of withdrawal of the earlier petition and the petitioner did not seek permission to file petition afresh whilst withdrawing earlier filed writ petition. The principle of Order XXIII, Rule 1 of the Code of Civil Procedure, 1908 has been made applicable also to the writ petition for that purpose.

Conclusion: If a party withdraws earlier filed writ petition without seeking permission to file fresh one, then subsequently filed writ petition is hit by provision of the Order XXIII, Rule 1 of the Code of Civil Procedure, 1908 and the party is precluded from re-agitating the same by filing another writ petition.

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17. **Lahore High Court**
Commissioner Inland Revenue v. Muhammad Afzal Cheema.
Income Tax Reference No.64481 of 2022
Mr. Justice Shahid Karim, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC2750.pdf

Facts: Through the instant income tax reference under Section 133(1) of the Income Tax Ordinance, 2001 the petitioner has assailed the order passed by the Appellate Tribunal Inland Revenue.

Issues: i) Whether Commissioner In Land Revenue has vested with authority to amend an assessment order by making alterations or additions?
ii) What is the purpose of Section 214A of the Income Tax Ordinance, 2001?
iii) Whether the exercise of any discretionary power must be rational and have a nexus with the object of the underlying legislation?
iv) What is the definition of the words "finalize" and "finalization"?

Analysis: i) The Commissioner has been vested with authority under Section 122, subject to the provisions of that section, to amend an assessment order under Section 120 by making such alterations or additions as the Commissioner considers necessary. For the purpose of amendment of assessment, not only sub-section (2) of Section 122 of the Ordinance specifies a period of limitation of five years from the end of the financial year in which the Commissioner has issued or treated to have issued the assessment order to the taxpayer but a prohibition has been stipulated on passing such order after expiry of the period of limitation prescribed.
ii) The purpose of Section 214A ibid apparently is to give a separate overriding power to the Board to permit any act or thing to be done under the statute within such time period as it may deem appropriate, which is independent of any other provision of the Ordinance that provides a time frame. Thus, while applying the principle of harmonious construction, it is found that the Board apparently has the power under Section 214A of the Ordinance to permit passing of an order under the aforesaid section within such time as it may consider appropriate. This, however, does not mean that in exercise of its discretionary power under Section 214A of the Ordinance, the Board can run riot to extend time whenever and for however long it feels expedient to do so. In exercise of such discretionary power, the Board cannot destroy vested rights or reopen past and closed transactions.
iii) It is trite law that the exercise of any discretionary power must be rational and have a nexus with the object of the underlying legislation. Arbitrariness is the antithesis of the rule of law. Whenever the legislature confers a wide ranging power, it must be deemed to have assumed that the power will be: firstly, exercised in good faith; secondly, for the advancement of the objects of the legislation; and thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897 reiterates the principle that statutory power is to be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment and further clarifies that an executive authority must give reasons for

its decision.

iv) The words "finalize" and "finalization" have not been defined in the Ordinance or the Notification, therefore, the same are to be construed in terms of ordinary grammatical meanings thereof as contained in the English Dictionary. It is abundantly clear that "finalization" is synonym for closing, completion, culmination of something which is already in progress or has already been commenced.

Conclusion: i) Yes, Commissioner In Land Revenue has vested with authority to amend an assessment order by making alterations or additions but subject to the provisions of section 122 the Income Tax Ordinance, 2001.

ii) The purpose of Section 214A ibid apparently is to give a separate overriding power to the Board to permit any act or thing to be done under the statute within such time period as it may deem appropriate.

iii) Yes, the exercise of any discretionary power must be rational and have a nexus with the object of the underlying legislation.

iv) The words "finalize" and "finalization" have not been defined in the Ordinance or the Notification but in English Dictionary it is synonym for closing, completion, culmination of something which is already in progress or has already been commenced.

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18. **Lahore High Court**
Muhammad Riaz Khan Fatyana & 29 others v. Speaker National Assembly & others.
W.P No.8360 of 2023
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC2719.pdf

Facts: Through this writ petition, the petitioners have challenged the notification of the Election of Pakistan (ECP) de-notifying them as Members of the National Assembly on account of their impugned resignations.

Issue: Whether an inquiry is essential for the Speaker as to the genuineness and validity of a resignation not tendered personally by the member of the National Assembly before accepting it?

Analysis: The first principle is that the resignation has to be submitted by the member himself and if that is not the case then the acceptance of the resignation by the Speaker in the absence of expressed authorization by the member concerned is not valid. The Speaker is under a duty to inquire into the matter before he allows the resignation to take effect to gauge and determine the genuineness or validity of the resignation. An inquiry is an essential part of the acceptance or rejection of the resignation and the magnitude of the inquiry is at the discretion of the Speaker and will depend on the facts of each case. In case the member had himself appeared and presented his resignation, perhaps the Speaker is not required to

draw an inference that the resignation was not voluntary and so there was hardly any need for an inquiry. In case the resignation is not presented personally and is sent through a messenger, the Speaker is required to satisfy himself that the transmission is by an authorized person. The resignation could not take effect unless it is voluntary and intended to reach the Speaker in a manner chosen by the member of the Parliament himself. In the present case, the Speaker National Assembly himself harboured doubts regarding the genuineness and validity of the resignation and did call upon the individual members to appear before him for verification. Moreover, the resignations were not submitted by the members personally and it can be inferred that those members did not choose the manner in which the resignations were submitted to the Speaker National Assembly. The Speaker National Assembly must ascertain personally whether it was signed by the member who had resigned his seat, whether it was voluntary and whether it was intended to act as a resignation. Unless three requirements of the resignation were satisfied, it was dangerous to set down a general rule that the resignation must be accepted once it is received by Speaker National Assembly without more. Moreover, the National Assembly has itself laid stress upon the need for verification and for a proper inquiry to be conducted in the Rules of Procedure and Conduct of Business in the National Assembly, 2007.

Conclusion: An inquiry is essential for the Speaker as to the genuineness and validity of a resignation not tendered personally by the member of the National Assembly before accepting it.

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19. **Lahore High Court**
Muhammad Siddique v. Amna Bibi etc.
W.P.No.52429 of 2020
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC2702.pdf

Facts: The petitioner is grandfather of respondent No.2, who instituted a suit for recovery of maintenance and dowry articles along with her mother (respondent No.1) against respondent No.5, who is son of the petitioner. Suit was decreed exparte against which respondents No.1 and 2 preferred an appeal, which was partly accepted by way of judgment and decree. In order to get the fruits of the decree, the "respondents" filed an execution petition before the learned Judge Family Court, who by way of its order proceeded to attach the property measuring 26-Kanal 7-Marla owned by the petitioner for the purpose of auction to get the decree satisfied. The petitioner objected the order, however, his objections were turned down. Feeling aggrieved, the petitioner challenged the said order through an appeal before the learned Additional District Judge, but of no avail and the appeal was dismissed, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: (i) Under what circumstance the grandfather is liable to maintain his grand children?
(ii) Whether decree can be executed against person who was not party to the suit and is there any exception in this facet?
(iii) What are the modes provided under section 13 of Family Court Act 1964 for the enforcement of decree?
(iv)Whether family can court adopt the procedure contained in CPC for execution of decree?

Analysis: (i) The liability of grandfather though starts when the father is poor and infirm and the mother is also not in a position to provide maintenance to her children but such liability of grandfather is dependent upon the fact that he should be in easy circumstances. In order to saddle the grandfather with the liability to pay maintenance to the grandchildren, it is thus imperative to first determine that father of the children is poor and infirm and mother is also having no source of income coupled with the fact that grandfather is in easy circumstances. The determination of such question cannot be made unless grandfather is a party to the suit having a fair opportunity to explain his status and position.
(ii) Law to this effect is well-settled that a decree cannot be executed against a person, who is alien to the proceedings with only one exception as ordained in section 145 of the Code of Civil Procedure (V of 1908) where a decree can be enforced in certain conditions against a surety/guarantor. It is an oft repeated principle of law that executing Court cannot go beyond the decree.
(iii) Needless to observe that section 13 of the Family Courts Act, 1964 prescribes the modes for the enforcement of decree. (…) The Family Court is vested with the power to execute its own decree for payment of money by adopting modes provided for recovery of arrears of land revenue including selling the property of judgment debtor.
(iv) Family Court can never be helpless to get its decree executed. The process of execution cannot shift towards the grandfather merely on the ground that decree could not be satisfied against the father (judgment debtor). The Family Court cannot assume the role of spectator rather it can adopt the procedure contained in "CPC" for the execution of the decree.

Conclusion: (i) The liability of grandfather though starts when the father is poor and infirm but such liability is subject to if he is in easy circumstances and also he was party to the suit having a fair opportunity to explain his status and position.
(ii) Decree cannot be executed against a person, who is alien to the proceedings with only one exception as ordained in section 145 of CPC which is against a surety/guarantor.
(iii) The Family court is vested with power under section 13 of Family Court Act 1964 to adopt any mode provided for recovery of arrears of land revenue including selling the property of judgment debtor.

(iv) Family court can adopt the procedure contained in "CPC" for the execution of the decree and it can never be helpless to get its decree executed.

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20. **Lahore High Court,**
The Collector of Customs, Dry Port, Lahore v. Bilal Akbar etc.
ICA No.1197 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC2653.pdf

Facts: This Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972 set in challenge order passed by the learned Single Judge allowing relevant writ petition directing appellant department to release imported vehicle, which respondent No.1 claimed to have purchased as a "Vintage Car" being exempted from Customs, Regulatory Excise duties, Sales Tax and Withholding Income tax.

Issues: i) What is the impediment in importing the vintage car of 1967 model in Pakistan?
ii) Whether a writ can be issued to the Customs Department for the release of an imported vintage car?

Analysis: i) The Gazette of Pakistan, Extra, April 18, 2016 [Part-II], on subject of "Eligibility and Condition" for Pakistan Nationals to import/gift a vehicle, prescribes that cars older than three years shall not be allowed to be imported under gift, personal baggage and transfer of residence schemes.
ii) The question of domain/jurisdiction of the Ministry of Commerce & Trade and Ministry of Finance, Economic Affairs, Statistics and Revenue Division, Government of Pakistan regarding the import of vintage vehicle is the most important issue. Ministry of Commerce has to sanction importability or relaxation in Import Policy 2016.

Conclusion: i) The Import Policy Order issued under Section 3(I) of the Imports and Exports (Control) Act, 1950 does not expressly permit import of vintage cars.
ii) No writ can be issued to the Customs Department for the release of imported vintage car.

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21. **Lahore High Court**
Atta Muhammad v. Addl. District Judge, etc.
W.P. No.25275 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC2639.pdf

Facts: The petitioner assailed the vires of order and judgment passed by Civil Court and District Court respectively, whereby petitioner's request to cross-examine one of the defendant's witnesses was turned down by the said Courts.

Issues: (i) Whether a defendant has right to cross-examine a co-defendant? If so, in what circumstances?
(ii) Whether the right to allow a party to cross-examine a witness of his own is discretionary with the court?

(iii) Whether there is any exception to the exercise of discretionary power of a court to allow a party to cross-examine a witness of his own?

Analysis: (i) The procedure of examination of witnesses is synchronized by Articles 130 to 161 of the Qanun-e-Shahadat Order, 1984. Article 130 aims to regulate procedure as to production and examination of witnesses in the Court, while Article 132 elaborates three stages that might come while recording statement of a witness. First stage is examination-in-chief by the party who has produced a witness, second stage is cross-examination by the opposite party and third stage is re-examination, optional with the party calling the witness. It may be observed that there is no specific provision in the Qanun-e-Shahadat Order, 1984, providing opportunity to a defendant to cross-examine a co-defendant; however having regard to the object and scope of cross-examination, it is settled principle of law that when a statement is made against the interest of a party to the proceedings, before that evidence could be acted upon, the party should have an ample opportunity to cross-examine the witness, who had given the evidence against him. It is only after such an opportunity is given and the witness is cross-examined then evidence becomes admissible.…evidence becomes admissible after only it passes through the process of cross-examination by the adverse party regardless of the fact that the adverse party is a plaintiff or co-defendant. However, the condition precedent is the conflict of interest. There is another eventuality where a witness can be declared hostile when he resiles from earlier statement or material part thereof which may also be in the form of joint pleadings or examination-in- chief. Permission to cross-examine the witness would also be granted where the statement is contrary to the evidence which the witness was expected to give.

(ii) Needless to say that the right to allow a party to cross-examine a witness of his own is discretionary with the Court and this discretion is to be exercised judiciously. Article 150 of the Qanun-e-Shahadat, Order, 1984, confers on the Court a wide discretion in allowing a party calling a witness to put such questions to him as might be put in cross-examination by the adverse party, where the evidence given by the witness is unfavourable to the party calling him, or is contrary to the evidence which the witness was expected to give. In such a case, the Judge should permit such statements to be tested by cross-examination if the evidence is to be relied upon.

(iii) Undeniably, a party is bound by the evidence it produces i.e. party producing a witness is bound by whatever statement the witness makes however when an adverse statement is made by a witness the party producing the witness may get the witness declared hostile and seek permission from the Court to cross-examine her for getting rid of her adverse testimony. However, there is one exception that such permission should not be allowed by the Court if it reaches to the conclusion that the object of such cross-examination is to cover up the lacuna in the evidence.

Conclusion: (i) Yes, a defendant has right to cross-examine a co-defendant in case of conflict

of interest between them or when he resiles from earlier statement or material part thereof which may also be in the form of joint pleadings or examination-in-chief.
(ii) Yes, the right to allow a party to cross-examine a witness of his own is discretionary with the court.
(iii) Yes, such permission should not be allowed by a Court if it reaches to the conclusion that the object of such cross-examination is to cover up the lacuna in the evidence.

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22. **Lahore High Court**
Tahir Jameel v. Lahore Development Authority through its Director General, Lahore & others.
Writ Petition No.12812 of 2019
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC2633.pdf

Facts: The petitioner assailed correspondence issued by respondent No.2 / Director Land Development-I, Lahore Development Authority, Lahore, whereby petitioner was advised to contact his vendors in order to recover the claimed compensation. Petitioner also sought direction from High Court for respondent-LDA to grant exemption in his favour for the land acquired for development of Muhammad Ali Johar Town Scheme, Lahore.

Issues: (i) Whether Public functionaries are obliged to follow principles of natural justice while deciding a matter adversely against a person?
(ii) Whether amendment in Section 25-B(7) of the LDA Act, 1975, brought in the year 2013, can be applied retrospectively?

Analysis: (i) Any order passed against an aggrieved person, without providing him / her proper hearing or giving any reasons, is unsustainable in the eye of law as the public functionaries are obliged to follow the principles of natural justice while deciding rights of the parties.
(ii) It is by now a well settled law that an amendment in a section or its substitution which curtails substantive right or accrued right cannot itself have a retrospective operation unless the legislature elected to give it retrospective effect. Therefore, substituted or amended section of a statute cannot obliterate accrued or vested rights. In the instant case, as the section 25-B was added through an amendment in the year 2013 whereby substantive rights of the awardees were curtailed without giving it retrospective effect therefore this amendment cannot affect the accrued rights before the said amendment.

Conclusion: (i) Yes, public functionaries are obliged to follow principles of natural justice while deciding a matter adversely against a person.
(ii) No, amendment in Section 25-B(7) of the LDA Act, 1975, brought in the year 2013, cannot be applied retrospectively.

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23. **Lahore High Court**
Sarfraz Ali v. Chief Secretary etc.
Writ Petition No.32094/2023
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC2645.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has questioned the legality and validity of impugned order passed by respondent No.3/Deputy Commissioner whereby his son detainee was ordered to be arrested and detained for a period of thirty days with immediate effect.

Issue: i) Whether a person detained without any just cause can directly invoke the constitutional jurisdiction?
ii) Whether fundamental rights of the citizens can be curtailed by the executive?

Analysis: i) When a person is detained without any just cause, it amounts to violation of his fundamental rights; he may invoke the jurisdiction of this Court directly under Article 199 of the Constitution, without having course to alternate remedy.
ii) Right of liberty, peaceful assembly and freedom of speech and expression has been enshrined in the Constitution as fundamental rights of every citizen and the same cannot be curtailed merely at the whims of the executive.

Conclusion: i) Yes, a person detained without any just cause can directly invoke the constitutional jurisdiction.
ii) Fundamental rights of the citizens cannot be curtailed by the executive.

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24. **Lahore High Court**
Muhammad Ali v. Dr. Ali Raza Anwar, Chairman PAEC, Pakistan Secretariat, Islamabad.
I.C.A.No.118 of 2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC2854.pdf

Facts: Through this Intra Court Appeal filed under Section 19 of the Contempt of Court Ordinance, 2003, the appellant has called in question order passed by learned Single Judge of this Court, whereby petition under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, filed by the appellant for proceeding against the respondent for committing contempt of court for non-compliance of order, has been dismissed.

Issues: i) Whether the appellate court does ordinarily interfere in the order where the court itself refused to proceed with the contempt on the ground that there was no reason to proceed with the same?
ii) Is there any situation when appellate court can interfere in an order passed in contempt of court petition refusing to initiate proceedings against the contemnor?

Analysis: i) Where a court itself passed an order and refused to proceed with the contempt of court matter on the ground that there was no reason to proceed with the same, the appellate court does not ordinarily interfere in the order passed by the said court.

ii) The principle laid down by the superior court is that the appellate court can interfere in an order passed in contempt of court petition refusing to initiate proceedings against the contemnor where some serious question of law is prima facie made out or some case of grave miscarriage of justice is established either by reason of the fact that the findings sought to be impugned could not have been arrived at by any reasonable person or that the findings are so ridiculous, shocking or improbable that to uphold such finding would amount to a travesty of justice. Therefore, only when the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can the same be interfered with by the appellate court.

Conclusion: i) The appellate court does not ordinarily interfere in the order where the court itself refused to proceed with the contempt on the ground that there was no reason to proceed with the same.

ii) When the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can be interfered with by the appellate court.

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25. **Lahore High Court**
Dr. Sajid Iqbal v. University of Sargodha and Others.
Writ Petition No. 7682/2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC2796.pdf

Facts: The petitioner, head of the mathematics department, was removed from service by the syndicate of the University of the Sargodha on the complaint of harassment by a female student. The petitioner filed an appeal with the Ombudsperson Punjab which was dismissed. He unsuccessfully challenged the Ombudsperson's order through representation to the Governor of Punjab. His review petition before the Governor was also met with the same fate. Finally, he filed this constitutional petition.

Issue: Whether the denial of the right to cross-examination vitiates the proceedings of a departmental enquiry?

Analysis: Cross-examination is vital to test the credibility of a witness. Taylor writes: "Cross-examination is justly regarded as one of the most efficacious tests by means of which the law has devised for the discovery of truth and by means of which the situation of the witness with respect to the parties and to the subject of litigation, his interest, his motives, his inclination and prejudices, his character, his means of obtaining correct and certain knowledge of the facts to which he

bears testimony, the manner in which he has used the means, his power of discernment, memory and description are fully investigated and ascertained." In Ghulam Rasool Shah and another (2011 SCMR 735), the Supreme Court of Pakistan ruled that cross-examination is the most reliable method for judging the credibility of a witness. Statements admitted without cross-examination result in injustice. Hence, a reasonable opportunity for cross-examination must be provided. Even in a domestic inquiry, the person charged with misconduct has a right to cross-examine the witnesses brought against him. In Meenglas Tea Estate v. Its Workmen (AIR 1963 SC 1719), the inquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. Article 10 of the Constitution, which guarantees the right to a fair trial, also applies to departmental inquiries. While the right to cross-examination is vital to the inquiry process, it is an essential component of a right to a fair trial as well. In the present case, the Inquiry Committee has violated the petitioner's constitutional and statutory rights by denying him an opportunity to cross-examine the witnesses testifying against him.

Conclusion: Yes, the denial of the right to cross-examination vitiates the proceedings of a departmental enquiry.

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26. **Lahore High Court**
Muhammad Ayyaz Akhtar v Chairman, State Life Insurance Corporation of Pakistan & another.
Writ Petition No. 1338 of 2017
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5719.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the vires of order of authority while praying that the petitioner be reinstated with all back benefits and arrears under the law.

Issue: Whether an employee can seek reinstatement in service after exercising right of voluntary retirement?

Analysis: Once right of voluntary retirement under the scheme is exercised and availed the benefits thereunder then he is now estopped by his conduct to challenge the same for seeking reinstatement in service at this stage. No one can be allowed to approbate and reprobate in the matter.

Conclusion: An employee cannot seek reinstatement in service after exercising right of voluntary retirement.

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27. **Lahore High Court,**
Abdul Rauf v. Govt. of Punjab, etc.,
Writ Petition. No. 32503of 2023,
Mr. Justice Farooq Haider.
https://sys.lhc.gov.pk/appjudgments/2023LHC2697.pdf

Facts: This writ petition seeks to quash detention orders of Deputy Commissioner passed under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960 as well as to direct release of petitioner's brothers detained under said orders.

Issues: i) Whether a person detained under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960, is barred to invoke constitutional jurisdiction for his release without first filing a representation before Government of Punjab?
ii) What reasons should be available with competent authority to pass a detention order under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960?
iii) Whether mere registration of an FIR can be basis to issue a detention order under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960?

Analysis: i) Right to file petition for issuance of writ namely habeas corpus is one of fundamental rights provided by the constitution of Islamic Republic of Pakistan, 1973, in all matters of illegal confinement.
ii) There must be material available against the detenus to establish that they were acting or were about to act in any manner, which was prejudicial to the public safety or maintenance of the public order. There should be referred or produced some material to prove that detenus are members of any banned group, proscribed organization or involved in any anti-State activities. Mere apprehensions cannot be basis for curtailing right/liberty or freedom of any citizen otherwise guaranteed by the constitution of Islamic Republic of Pakistan, 1973.
iii) Allegations levelled against detenus in FIR case are first to be established during investigation, then to be proved during trial and detenus will face proceedings of said FIR separately as per law, but such FIR cannot be *per se* made basis for issuance of detention orders and in this regard Article 13 (a) of the constitution of Islamic Republic of Pakistan, 1973 can be advantageously referred. When law requires a thing to be done in a particular manner, it should have been done in that manner otherwise same would be deemed as illegal in the light of maxim "*A communi observantia non est recedendum*".

Conclusion: i) If arrest of a person for the purpose of "Preventive Detention" cannot be legally justified, then he cannot be barred from invoking constitutional jurisdiction for his immediate release.
ii) Before passing detention order of a person under Section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960, the competent authority

should have reasons based on solid material to believe that said person has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order.

iii) Mere registration of an FIR cannot be *per se* made basis for issuance of detention order under section 3 (1) of the West Pakistan Maintenance of Public Order Ordinance, 1960.

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28. **Lahore High Court,**
Muhammad Aslam v. Regional Directorate ACE Lahore, etc.
Writ Petition No.670 of 2023,
Mr. Justice Farooq Haider.
https://sys.lhc.gov.pk/appjudgments/2023LHC2687.pdf

Facts: Consequent upon petitioner's application, inquiry was conducted and concluded on note that allegations leveled against respondent Patwari were found correct. Resultantly, F.I.R. under Section: 5 2(47) of the Prevention of Corruption Act & Section 161 PPC was registered followed by first cancellation report prepared on score that complainant was neither joining investigation himself nor was he producing his witnesses, which cancellation report was disagreed. However, the second cancellation report was agreed with by Special Judge, Anti-Corruption, Lahore vide order impugned in this constitutional petition with further prayer of petitioner for re-investigation of the case.

Issues: i) What is the role of fair investigation in conclusion of a fair trial?
ii) At what stage of investigation, a case can be dropped as per the Punjab Anti-Corruption Establishment Rules, 2014?

Analysis: i) Fair investigation is mandatory for the fair trial as is guaranteed by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. The basic purpose of fair investigation is to conclude that allegation stands established or not. Investigation has to be carried out in the manner as provided in Punjab Police Rules as well as Code of Criminal Procedure, 1898. Rule 25.2(3) of the Police Rules, 1934 requires an investigating officer to dig out the truth and bring it before the court of justice, which necessitates him to firstly issue notice under Section 160 of Code ibid for summoning complainant/witnesses for joining investigation and if same remains ineffective, then to get issued warrants for their arrest in the shape of Form No.VII as provided in Schedule-V and under Section 90 of the Code ibid. If such warrants also remain unsuccessful, then he is required to get issued proclamation, as per Form No.V provided in Schedule-V and under Section 87 of the Code ibid and in case of failure, he is obliged to get issued the order of attachment to compel the attendance of complainant/witnesses through Form No.VI provided in Schedule-V and under Section 88 of the Code ibid. Aforementioned are the mandatory provisions of law to be complied with and to adopt each & every mode for procuring presence of persons concerned for the purpose of investigation and ultimately thrashing out the veracity of allegations leveled in the crime report i.e. first information report, through collecting relevant evidence during the process.

ii) If cancellation report is prepared without concluding that allegation leveled in the case has been established or not, rather it is based on ground that

complainant/witnesses did not join investigation, that too,without mentioning that all modes of process for compelling their attendance through warrants, Writ, proclamation and attachment were adopted as well as without annexing any proof in this regard, then it means that rules for procedure regarding summoning of witnesses, documents and penalty for disobeying the same, in addition to or substitution of the provisions of the Code ibid has not been followed. Law does not favour dropping any case on technicality for want of joining investigation by complainant/ witnesses, without applying all modes for their summoning to ensure conclusion of investigation on merits.

Conclusion: i) The purpose of investigation is to dig out the truth through all means and to bring it before the court of justice otherwise ultimately it causes harm to fair trial.
ii) As per rule No. 10 (1) (a) of the Punjab Anti-Corruption Establishment Rules, 2014, a case can be dropped if the allegations are not found established on completion of investigation.

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29. **Lahore High Court**
Kamran Khan v. Govt. of Punjab, etc.
Writ Petition No.34019/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC2759.pdf

Facts: Through this petition under article 199 of the Constitution, the petitioner assailed the detention order of his brother passed under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960.

Issues: i) Whether prior to filing the writ petition against the order of detention, it is necessary to assail the same before the Secretary, Home Department through representation?
ii) Whether before passing detention order of a person under Section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960, the competent authority must have reasons to believe that said person within his territorial jurisdiction has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order?

Analysis: i) As far as objection raised by learned Assistant Advocate General, Punjab with respect to maintainability of instant petition due to non-filing of representation by the detenu before Government of Punjab, is concerned, suffice it to say that right to file petition of the nature of habeas corpus is remedy provided by the constitution of Islamic Republic of Pakistan, 1973 in all matters of illegal confinement as one of fundamental rights; it goes without saying that if arrest of a person for the purpose of "Preventive Detention" cannot be justified in the eyes of law, then there is no reason that why said person should not invoke jurisdiction of this Court for his immediate release.
ii) It is trite law that before passing detention order of a person under Section 3 of the Ordinance, the competent authority must have reasons to believe that said person within his territorial jurisdiction has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order. Mere

apprehension without any valid reason and also not supported by any cogent material, cannot be allowed to be made basis for curtailing right/liberty or freedom of any citizen which is even otherwise guaranteed by the constitution of Islamic Republic of Pakistan, 1973.

Conclusion: i) Prior to filing the writ petition against the order of detention, it is not necessary to assail the same before the Secretary, Home Department through representation.

ii) Before passing detention order of a person under Section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960, the competent authority must have reasons to believe that said person within his territorial jurisdiction has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order.

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30. **Lahore High Court**
Abdul Sattar Shah etc. v. Syed Mubarak Shah etc.
Civil Revision No. 522 of 2021
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2022LHC9603.pdf

Facts: Through this Civil Revision the petitioners have assailed the order by which the learned Additional District Judge during the pendency of appeal against the judgment and decree passed in favour of respondent in a suit for declaration regarding inheritance share by the learned Civil Judge, dismissed two applications of the petitioners filed under Order 1 Rule 10 CPC and the application for the settlement of the proposed issue.

Issues: i) Whether the revenue officer is necessarily to be impleaded in every civil suit challenging the validity of a mutation?

ii) Whether the court is bound to frame the issue upon the application of a party at a belated stage regarding a fact when the same is not mentioned in his / her pleadings?

Analysis: i) The revenue officer by name can be impleaded in the suit if the court feels it necessary and when there is a specific allegation against him for being the part of some illegal act otherwise the matters which are required to be decided on the basis of documents and the other related/relevant oral evidence, the Officials/Officers of Revenue Department are not necessary to be impleaded in such proposition, as the relevant record can be requisitioned and analyzed by the court.

ii) This is settled principle that nobody can be allowed to fill in the lacunas after the 07 years of decision passed by the learned Civil Court, this application has been tendered without mentioning any reason that why document was not mentioned in the written statement and was not tendered in the evidence. This is a private document which cannot be allowed to be placed on record at this stage and when the same was not mentioned in the written statement the court is not bound to frame the issue regarding the same.

Conclusion: i) The revenue officer by name can only be impleaded in the suit if there is a specific allegation against him for being part of some illegal act.

ii) The court is not bound to frame the issue upon the application of a party at a belated stage regarding a fact when the same is not mentioned in his / her pleadings.

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31. **Lahore High Court**
Imran Abbas Bhatti v. Govt. of Punjab etc.
Writ Petition No.31899 of 2023
Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC2764.pdf

Facts: All petitions have challenged the vires of the orders passed by the Deputy Commissioners of different districts, whereby different persons have been put under preventive detention on the reports of District Police Officers of the concerned districts to the effect that conduct of the said individuals was prejudicial to the public peace, mainly on the grounds that the said orders have been passed only on the basis of source reports of District Police Officers concerned but without showing any valid or clear reason and that too without adopting legal procedure and applying independent mind to the question whether Section 3 of the Punjab Maintenance of Public Order Ordinance, 1960 should be invoked against the detenues.

Issues: i) What is the nature of detention order and under what circumstances the same is issued?
ii) How the laws regarding preventive detention are regulated under the Constitution?
iii) What does the expression "adequate remedy" in Article 199 of the Constitution connotes?
iv) Whether a party is always debarred from invoking the constitutional jurisdiction of High Court that some other remedy is available?
v) When an order for preventive detention could be passed by the Authority under the Law?
vi) Whether High Court in its constitutional jurisdiction has power to set aside detention order?

Analysis: i) Preventive detention is "a form of administrative detention, ordered by the executive authorities, usually on the assumption that the detainee poses future threat to national security or public peace."
ii) Article 10 of the Constitution empowers the legislature to enact preventive detention laws to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan, or any part thereof, or external affairs of the country, or public order, or the maintenance of supplies or services subject to the safeguards and protections provided by clauses (4) to

(9) of the said Article.

iii) The expression "adequate remedy" in Article 199 of the Constitution connotes an efficacious, convenient, beneficial, effective and speedy remedy which should also be inexpensive and expeditious.

iv) if the procedure for obtaining relief through some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of relief meaningless, this Court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due.

v) For the purpose of passing an order for protective detention there should be sound material showing that the said individual/detenu was busy in any activity prejudicial to public safety or the maintenance of public order, in any of the documentary forms like SMS/Voice messages, WhatsApp Messages, social media accounts, Pamphlets/handouts, Posters, play cards, Photographs, Paintings, Caricatures, Books/Literature, Newspapers, Audio/Video CDs, Electronic and Digital material, Wall chalking, Banners/Pena flex, recording of demonstrations in Rallies, Material on Facebook, twitter or any other social media account, call records, geo-fencing through CDR, Speeches in Public Meetings, Radio & T.V. shows, Surveillance report in any form, reports from international agencies, suspicious transaction report from any financial institution, membership record of affiliated association or political party etc., but in the instant case no such record could be brought on record or even referred during the course of arguments.

vi) It cannot be said that detention order passed on the basis of material placed before the Court could not be set aside as this Court is not empowered to substitute its findings with that of the detaining authority, for the reasons that it is not a question of substitution of finding as this Court is not only within its Constitutional jurisdiction to examine the grounds for detention but to see as to whether detention order could be justified on such grounds and if some view, after having taken into consideration the material placed before it contrary to that of detaining authority is formed it does not amount to substitution.

Conclusion: i) Preventive detention is "a form of administrative detention, ordered by the executive authorities, usually on the assumption that the detainee poses future threat to national security or public peace.

ii) Article 10 of the Constitution empowers the legislature to enact preventive detention laws.

iii) The expression "adequate remedy" in Article 199 of the Constitution connotes an efficacious, convenient, beneficial, effective and speedy remedy which should also be inexpensive and expeditious.

iv) High Court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course

to obtain the relief which is due.

v) For passing an order for protective detention there should be sound material showing that the said individual/detenu was busy in any activity prejudicial to public safety or the maintenance of public order.

vi) High Court in its Constitutional jurisdiction could examine the grounds for detention and to see as to whether detention order could be justified on such grounds.

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32. **Lahore High Court**
Muhammad Imran alias Amanat Ali alias Maani v. The State.
Criminal Appeal No.95-J of 2016
Abdul Waheed v. Muhammad Imran alias Amanat Ali alias Maani etc.
Criminal Revision No.172 of 2016
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC2807.pdf

Facts: The appellant was convicted and sentenced by the trial court. Through this criminal appeal, the appellant assailed his conviction and sentences, whereas a criminal revision has also been filed by complainant for enhancement of sentences of the appellant.

Issues: i) What will be effect of significant delay in lodging the FIR?

ii) Whether identification test parade is of any value when description/ features of accused are not given during investigation before the police as well as before the learned trial court?

iii) If features of the dummies are not mentioned in the report of identification parade, whether it makes the whole process of identification parade null and void?

iv) Whether disclosure of co-accused regarding nomination of an accused can be used as evidence under article 38 of Qanun-e-Shahadat Order, 1984?

v) Whether noticeable delay in conducting the identification parade makes it doubtful in nature?

vi) If the objection of the accused taken at the time of identification parade was not decided whether it would be a serious lapse in identification test parade?

vii) Whether the witnesses who made dishonest improvements in their statements on material aspects of the case in order to fill the lacunas of the prosecution case or to bring their statements in line with other prosecution evidence are worthy of reliance?

viii) Whether medical evidence connects the accused with the commission of offence?

ix) Whether non-associating any witness of vicinity while effecting the recovery from the possession of an accused makes the recovery highly doubtful?

x) Whether a conviction can be recorded on the basis of corroborative piece of evidence?

xi) Whether in criminal cases the finding of guilt against an accused person can be based merely on the high probabilities that may be inferred from evidence?

Analysis: i) The significant delay in lodging the FIR convinces that the matter was reported to the police after due deliberation and consultation and the intervening time was consumed in calling the relatives of the deceased.

ii) A critical analysis of the statements of witnesses made it crystal clear that they could not mention any features of the assailants during investigation before the police as well as before the learned trial court except that their ages were between 20 to 30 years. The above noted material discrepancy, alone, is sufficient to diminish the evidentiary value of identification parade.

iii) No features of the dummies have been mentioned in the report of identification parade and this fact has also been endorsed by, learned Magistrate, who supervised the proceeding of identification parade. The above-mentioned shortcoming during identification test parade makes the whole process null and void.

iv) The appellant was nominated in this case on the basis of disclosure of co-accused as evident from the contents of application for holding identification parade of appellant and application for transfer of appellant but such type of evidence is hit by the provision of Article 38 of Qanun-e-Shahadat Order, 1984, and cannot be used as evidence against the appellant.

v) It is noteworthy that the appellant was arrested in this case after eight months and twenty three days of the occurrence and identification parade was conducted with the delay of six days after his arrest. Such noticeable delay in conducting the identification parade makes it doubtful in nature.

vi) Another important aspect of this case which has also shattered the authenticity of identification parade is that the appellant made objection before learned Judicial Magistrate at the time of proceeding of identification parade that when he was arrested, complainant and PWs were accompanying the local police and they also knew him previously. He filed petitions against the complainant as well as local police in the court of learned Sessions Judge, Sahiwal and Lahore High Court Lahore wherein SHO concerned was summoned by the court and due to this grudge, complainant and local police entangled him in this case. It is noteworthy that learned Judicial Magistrate has not decided the supra-mentioned objection of the appellant. In this way, there is serious lapse on his part.

vii) There is no cavil to the proposition that when the witnesses improve their statements to strengthen the prosecution case and the moment it is concluded that improvements were made deliberately and with mala fide intention, the testimonies of such witnesses become unreliable. The Hon'ble Supreme Court of Pakistan has observed in a plethora of judgments that the witnesses who made dishonest improvements in their statements on material aspects of the case in order to fill the lacunas of the prosecution case or to bring their statements in line with other prosecution evidence are not worthy of reliance.

viii) Medical evidence may confirm the ocular evidence with regard to the seat of injury, nature of the injury, kind of weapon used in the occurrence but it would not connect the accused with the commission of offence.

ix) So far as recovery of pistol at the pointation of the appellant from his residential house taken into possession through seizure memo and positive report of Punjab Forensic Science Agency, Lahore are concerned, it is noted that the investigating officer while effecting the recovery from the possession of appellant has not associated any witness of vicinity, which makes the recovery of pistol at the instance of the appellant highly doubtful.

x) It is settled proposition of law that unless direct or substantive evidence is brought on record, a conviction cannot be recorded on the basis of such evidence, howsoever convincing it may be.

xi) It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught.

Conclusion: i) The significant delay in lodging the FIR convinces that the matter was reported to the police after due deliberation and consultation.

ii) Identification test parade is of no value when description/ features of accused are not given during investigation before the police as well as before the learned trial court.

iii) If features of the dummies are not mentioned in the report of identification parade, it makes the whole process of identification parade null and void.

iv) Disclosure of co-accused regarding nomination of an accused cannot be used as evidence under article 38 of Qanun-e-Shahadat Order, 1984.

v) Noticeable delay in conducting the identification parade makes it doubtful in nature.

vi) If the objection of the accused taken at the time of identification parade was not decided it would be a serious lapse in identification test parade.

vii) The witnesses who made dishonest improvements in their statements on material aspects of the case in order to fill the lacunas of the prosecution case or to bring their statements in line with other prosecution evidence are not worthy of reliance.

viii) Medical evidence does not connect the accused with the commission of offence.

ix) Non-associating any witness of vicinity while effecting the recovery from the possession of an accused makes the recovery highly doubtful.

x) Unless direct or substantive evidence is brought on record, a conviction cannot be recorded on the basis of corroborative piece of evidence.

xi) In criminal cases the finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence.

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33. **Lahore High Court**
Abu Bakar Siddiq Bhutta. v Govt of Punjab, etc.
Writ Petition No. 32441/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC2661.pdf

Facts: Through this constitution petition the petitioner has challenged the vires of order passed by Deputy Commissioner, by which father of the petitioner has been put under preventive detention.

Issues: i) How is life reflected when dignity as a fundamental right has been denied?
ii) Why word "inviolable" has been used in the Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973?

Analysis: i) It is observed that the Constitution framers have rated the dignity a bit at lower level comparing to right to life and liberty, that was the reason it is seriated as Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973, five steps down from 'right to life and liberty' (Article-9 of the Constitution of the Islamic Republic of Pakistan, 1973) but experience tells that if an individual has all the fundamental rights except right to dignity, he cannot enjoy other rights with pleasure. Life without dignity means, a clutched and wish less creature living on borrowed crumbs.
ii) The word "inviolable" has been used in the Constitution only in Article 5 of the Constitution of the Islamic Republic of Pakistan, 1973 (Loyalty to State) and Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973 (Dignity of man etc.) which has a strong connotation showing importance and value in the context as to why only for Loyalty to State, Dignity of man and Privacy of home this term has been used.

Conclusion: i) Life without dignity means, a clutched and wish less creature living on borrowed crumbs.
ii) The word "inviolable" has a strong connotation showing importance and value.

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34. **Lahore High Court**
Mst. Aniza and another v. Additional District Judge and 02 others.
W. P. No. 38446 of 2016
Nasir Mehmood v. Aniza and 03 others
W. P. No. 35820 of 2016
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC2744.pdf

Facts: The petitioner (wife) and the minor instituted a suit for recovery of maintenance allowance and dower, whereas, the respondent (husband) filed a suit for restitution of conjugal rights. The suit of the petitioner and the minor was decreed

but claim of dower was declined. The suit of the respondent for restitution of conjugal rights was conditionally decreed subject to payment of maintenance allowance to the petitioner. Both parties filed writ petitions since they are directed against the same impugned judgments and decrees passed by Judge Family Court and Additional District Judge.

Issues: i) Whether dower will be considered as payable on demand, when no details about mode of payment are specified in the Nikahnama?
ii) Whether Nikahnama in the shape of documentary proof can be given due weight over the oral depositions with respect to the relevant columns of Nikahnama?

Analysis: i) Section 10 of the Muslim Family Laws Ordinance, 1961 stipulates that where no details about the mode of payment of the dower are specified in the Nikahnama, the entire amount of dower shall be payable on demand.
ii) There was no reason as to why the admitted Nikahnama in the shape of documentary proof was not given due weight over the oral depositions with respect to the relevant columns of Nikahnama especially when the Respondent could not bring on record any other Pert of the Nikahnama which was contradictory to Nikahnama produced.

Conclusion: i) Where no details about the mode of payment of the dower are specified in the Nikahnama, the amount of dower shall be payable on demand.
ii) Nikahnama in the shape of documentary proof can be given due weight over the oral depositions with respect to the relevant columns of Nikahnama.

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35. **Lahore High Court**
Abdur Rehman and 3 others v. Manzoor Ahmed and 6 others.
C. R. No. 1933 / 2012
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC2786.pdf

Facts: This Civil Revision brings a challenge to Judgments & Decrees passed by Civil Judge, and Additional District Judge, respectively, whereby, the suit for declaration filed by the Petitioners was dismissed and the suit for declaration instituted by the Respondents was decreed. The Petitioners filed two separate Appeals against the decision of the Trial Court which were dismissed and the findings of the Trial Court were maintained.

Issues: i) Whether prior to promulgation of Qanoon-e- Shahadat Order, 1984 one marginal witness was sufficient to prove the sale transaction?
ii) What is the limitation for cancellation of document?
iii) Whether decree of court would be valid and binding upon minor even he/she was not sued through guardian-ad-litem?
iv)Whether revisional Court while exercising jurisdiction can upset the concurrent findings recorded by the Courts below?

Analysis: i) Qanoon-e- Shahadat Order, 1984 was promulgated on 26.10.1984, whereas, if the Sale Deed was executed on 26.04.1984 and as such, it was required to be proved in terms of Section 68 of the Evidence Act which required that one marginal witness was sufficient to prove the sale transaction…

ii) Needless to mention that Article 91 to the First Schedule of the Limitation Act prescribes a period of 03 years for filing the suit for cancellation of document from the date of knowledge.

iii) It is importantly noted that in case titled, "Tanveer Mahboob and another v. Haroon and others" (2003 SCMR 480), it was observed that in a case in which a minor defendant in the suit was represented by his father or brother or sister as co-defendant without any conflict of interest with sincerity and they effectively defended the rights and interest of the minor in the property, it would be deemed that such rights were sufficiently safeguarded and mere fact that minor was not sued through guardian-ad-litem would not make the decree invalid and the same would be binding on the minor. It was also observed based upon the Judgment of Indian jurisdiction that non-fulfillment of formal requirement of appointment of guardian ad-litem of a minor defendant under Order XXXII, Rule 3, C.P.C. would not affect the proceedings in the suit and decree, if ultimately passed, unless it is shown that due to omission of appointment of guardian-at-litem of a minor, who was being represented by his natural guardian, the minor was caused prejudice and the objection would be of technical nature.

iv) It is a general rule that the Revisional Court while exercising jurisdiction vested under Section 115 of the C.P.C. does not upset the concurrent findings recorded by the Courts below. This principle is based on the premise that the Appellate Court is the final Court of fact but it is equally established that where there is gross misreading and non-reading of evidence or the Courts below have acted in exercise of their jurisdiction illegally or with material irregularity, the concurrent findings of facts are liable to be set aside in exercise of revisional jurisdiction.

Conclusion: i) Yes, prior to promulgation of Qanoon-e- Shahadat Order, 1984 one marginal witness was sufficient to prove the sale transaction.

ii) Article 91 to the First Schedule of the Limitation Act prescribes a period of 03 years for filing the suit for cancellation of document from the date of knowledge.

iii) Yes, decree of court would be valid and binding upon minor when represented by his father or brother or sister as co-defendant without any conflict of interest with sincerity even if he/she was not sued through guardian-ad-litem.

iv) Revisional Court while exercising jurisdiction vested under Section 115 of the C.P.C. does not upset the concurrent findings recorded by the Courts below.

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36. **Lahore High Court**
Muhammad Afzal v. Addl. District Judge, etc.
Writ Petition No.57778/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC2845.pdf

Facts: These petitions have laid challenge to the findings of the Appellate Court, rendered in proceedings emanating from the suits; for recovery of maintenance allowance and delivery expenses; for recovery of dowry articles or in alternate prevailing market price thereof; and for dissolution of marriage on the ground of cruelty along with recovery of the dower instituted by respondents.

Issues: i) What is the rationale underlying the application of principle of depreciation?
ii) Whether the principle of appreciation should be kept in mind inasmuch as if the principle of depreciation is to be considered in case of dowry articles?

Analysis: i) The rationale underlying the application of principle of depreciation is that the dowry articles are to be returned in their current position and if the same is not done, their price is to be paid as an alternate and since most of the value of dowry articles put to use during the subsistence of marriage do undergo depreciation on account of said daily use, therefore, while determining the alternate price, it is justifiable that the depreciation in value of such articles is to be taken into account.
ii) In case of articles such as the car, while determining/ascertaining amount of money as an alternate price, the principle of appreciation should be kept in mind inasmuch as if the principle of depreciation is to be considered with respect to one set of the dowry articles such as furniture, etc., which involves depreciation of articles on account of wear and tear, the principle of appreciation must also be taken into account with respect to such other articles that involves increase in value.

Conclusion: i) The rationale underlying the application of principle of depreciation is that the dowry articles are to be returned in their current position.
ii) The principle of appreciation should be kept in mind inasmuch as if the principle of depreciation is to be considered in case of dowry articles such as the car.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. Legis: 13-27/2004(P-II), the Punjab Criminal Prosecution Service (Constitution, Function and Powers) (Amendment) Ordinance (Ordinance II of 2023) has been withdrawn.
2. Section 20 of Provincial Assembly of the Punjab Secretariat Services Act, 2019 has been amended vide The Provincial Assembly of the Punjab Secretariat Services (Amendment) Ordinance 2023 (Ordinance IV of 2023).

3. Section 144 of Criminal Procedure Code, 1898 has been substituted vide Code of Criminal Procedure (Amendment) Ordinance 2023 (Ordinance VI of 2023).
4. In Punjab Agricultural Marketing Regulatory Authority Act, 2018, Amendments in section 4 & 15B have been made whereas section 5 has been omitted vide Punjab Agricultural Marketing Regulatory Authority (Amendment) Ordinance 2023 (Ordinance VI of 2023).
5. Vide Notification No. SOR-III(S & GAD) 1-3/2023, the schedule in the Punjab Fisheries Department Service Rules, 2011 has been amended.
6. Vide Notification No.118/PHC Punjab Healthcare Commission Human Resource Regulations 2023 has been made.
7. Vide Notification No. Estt.I-4/2023-PPSC/226 PPSC Regulation No. 12(b) has been amended.
8. Vide Notification No. SO (CAB-I) 2-18/2018, amendment has been made in the Punjab Government Rules of Business, 2011, in the second schedule under the heading "Primary and secondary healthcare department".
9. In exercise of powers conferred under sub-section (2) of section 10 of the colonization of Government Lands (Punjab) Act, 1912, Statement of the conditions for grant of leases of specified state lands for establishment of Gymkhana Clubs in Punjab has been issued.
10. The Supreme Court (Review of Judgments and Orders) Act, 2023 has been enacted to facilitate and strengthen the Supreme Court of Pakistan in the exercise of its powers to review its judgment and orders.
11. The Pakistan Maritime Zones Act, 2023 has been enacted to consolidate and amend the law relating to territorial sea and maritime zones of Pakistan.
12. Vide The Code of Civil Procedure (Amendment) Act, 2023, Code of Civil Procedure, 1908 (in its application to Islamabad Capital Territory) has been further amended whereby sections 6, 96, 100 to 103, 106, 114, 115 & 141 have been substituted, section 26, 27, 33, 111& 159 have been amended and sections 26A to 26 D, 27A & 75A have been omitted.
13. The Members of Majlis e Shoora (Parliament) Immunities and Privileges Act, 2023 has been enacted to provide for the members of Majlis-e-Shoora (Parliament) immunities and privileges.
14. Vide Notification No. Notification No. 2648/Ad-II, amendment in the Punjab Police Department (Ministerial Posts) Rules, 2017, has been made in the Schedule-I, at serial No. 05.

SELECTED ARTICLES

1. SPRINGER LINK

https://link.springer.com/article/10.1007/s11572-023-09662-y

The Right to Do Wrong: Morality and the Limits of Law, by Mark Osiel (Cambridge: Harvard University Press), 2019 by Daniel Muñoz

Can our rights protect us even as we do terrible things, like blowing all our money on champagne and voting for disastrous candidates? Jeremy Waldron says yes, on the grounds that rights would not truly protect our autonomy if they applied only to anodyne choices from permissible options, such as the choice between chocolate and vanilla ice cream. Waldron's critics push back, contending that "rights to do wrong" are incoherent or inessential to autonomy.

2. NATIONAL LAW REVIEW

https://www.natlawreview.com/article/how-law-firms-can-build-stronger-internal-culture

How Law Firms Can Build a Stronger Internal Culture by Stefanie M. Marrone

It's been an unprecedented few years for law firms. A global pandemic. Shifting to a hybrid remote environment. The Great Resignation. Quiet quitting. Five generations in the workforce. The rise of AI tools. A focus on mental health. Law firms have been forced to adapt and innovate, and quickly. It hasn't been easy for some firms. Others are thriving. It's never been more important for law firms to focus on improving and innovating its values, communication norms, time and output expectations of lawyers and professional staff, career development opportunities, social connections between colleagues and approach to decision making. This is all part of your firm's culture and can greatly impact your reputation and ability to recruit and retain people in such a competitive landscape.

3. YALE LAW JOURNAL

https://www.yalelawjournal.org/article/the-modern-state-and-the-rise-of-the-business-corporation

The Modern State and the Rise of the Business Corporation by Taisu Zhang & John D. Morley

This Article argues that the rise of the modern state was a necessary condition for the rise of the business corporation. A typical business corporation pools together a large number of strangers to share ownership of residual claims in a single enterprise with guarantees of asset partitioning. We show that this arrangement requires the support of a powerful state with the geographical reach, coercive force, administrative power, and legal capacity necessary to enforce the law uniformly among the corporation's various owners. Strangers cannot cooperate on the scale and with the legal complexity of a typical business corporation without a modern state and the legal apparatus it supplies to enforce the terms of their bargain. Other historical forms of rule enforcement, such as customary law among closely knit communities and commercial networks like the Law Merchant, are theoretically able to support many forms of property rights and contractual relations but not the business corporation.

4. YALE LAW JOURNAL

https://www.yalelawjournal.org/article/the-weaponization-of-attorneys-fees

The Weaponization of Attorney's Fees in an Age of Constitutional Warfare by Rebecca Aviel & Wiley Kersh

If you want to win battles in the culture war, you enact legislation that regulates firearms, prohibits abortions, restricts discussion of critical race theory, or advances whatever other substantive policy preferences represent a victory for your side. But to win the war decisively with an incapacitating strike, you make it as difficult as possible for your adversaries to challenge those laws in court. Clever deployment of justiciability doctrines will help to insulate constitutionally questionable laws from judicial review, but some of the challenges you have sought to evade will manage to squeak through.

5. HAVARD LAW REVIEW

https://harvardlawreview.org/print/vol-136/the-executive-power-of-removal/

The Executive Power of Removal by Aditya Bamzai & Saikrishna Bangalore Prakash

Whether the Constitution grants the President a removal power is a longstanding, far-reaching, and hotly contested question. Based on new materials from the Founding and early practice, we defend the Madisonian view that the "executive power" encompassed authority to remove executive officials at pleasure. This conception prevailed in Congress and described executive branch practice, with Presidents issuing commissions during pleasure and removing executive officers at will. While some Justices and scholars assert that Congress has broad legislative power to curb executive removals, their reading leads to a host of troubles. If, as some argue, Congress can limit the grounds for a presidential removal, what prevents Congress from likewise limiting the grounds for executive pardons, judicial judgments, and impeachment removals? The far-reaching legislative power that some scholars advance cannot be cabined to presidential removals. We also respond to a number of judicial and scholarly critiques, many grounded in claims about early statutes and practices. Though valuable, these critiques misunderstand or ignore certain practices, sources, and key episodes, like the events surrounding Marbury v. Madison. There was a widespread consensus that the President had constitutional power to remove, and early laws did not limit, much less bar, presidential removal of executive officers.