LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-07-2023 to 31-07-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary Revenue Division/Chairman, Federal Board of Revenue, Islamabad v. Sus Motors (Pvt.) Ltd. and other connected petitions
Civil Appeals No. 565/2011, 772 to 780/2012, 768 to 772/2014, 1070/2015, 132 to 156/2017
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._565_2011.pdf

Facts: The forty-one appeals have been decided through single judgment. Forty out of these forty-one appeals involve the interpretation of section 81 of the Customs Act, 1969. There are four sets of impugned judgments in the said forty appeals, which have been rendered by four different Divisional Benches of the High Court. Hence, these civil appeals have been filed against the judgments passed by High Court.

Issue: Whether Collector of Customs is empowered to extend the period for final assessment/determination when goods could not be assessed/reassessed within the stipulated period?

Analysis: At the time of the enactment of the Act in 1969 its section 81 was titled Provisional assessment of duty1 which was substituted in 2005 by Provisional determination of liability. Section 81 has undergone a number of changes from time to time, however, to the extent of these cases it has in substance remained the same. Imported goods are assessed to duty when the bill of entry, later changed to goods declaration, is filed under section 80 of the Act. If however imported goods could not immediately be assessed to duty they would be provisionally assessed/reassessed by the concerned officer of Customs and within the stipulated period finally assessed/reassessed. If within the stipulated period the goods could not be assessed/reassessed the Collector of Customs was empowered in exceptional circumstances to extend the period for final assessment/determination… The learned Judges of the High Court in the said forty appeals had correctly applied the law, and did so in accordance with the stated precedent of this Court. It is also not the case of the appellants that the learned Judges had miscalculated the stipulated periods prescribed in section 81 of the Act. The learned Judges were also correct in observing that there were no circumstances of exceptional nature to justify the extension of the period.

Conclusion: The Collector of Customs is empowered in exceptional circumstances to extend the period for final assessment/determination when goods could not be assessed/reassessed within the stipulated period.

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2. **Supreme Court of Pakistan**
Asrar Ahmed and 5 others v. Chairman Pakistan Aeronautical Complex Board, Kamra and others
Civil Petitions No. 657 to 662 of 2020
Mr. Justice Umar ata Bandial, HCJ, Mr. Justice Amin-ud-Din khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._657_2020.pdf

Facts: Six Civil Petitions for leave to appeal were directed against the common Judgment dated 11.12.2019, passed by learned Federal Service Tribunal, Islamabad whereby the service appeals filed by the petitioners were dismissed wherein they claimed eligibility for promotion to the next higher grade as civil servant on the score that they opted to continue as civil servant.

Issues: i) Whether extending the first right of refusal in terms of PACB Ordinance, 2000 read with PACB Employees (Service) Rules, 2002 to opt the new service rules and service structure of the Board or to be governed by old rules, can be inferred as the violation or infringement of any fundamental rights?
ii) Whether contradictory demeanor of employees, by asserting an option to be governed under Civil Servants Act, 1973 without any proof on record and simultaneously by appearing in non-stop attempts of departmental examinations, is hit by the doctrine of approbate and reprobate?

Analysis: i) It is also beyond any logical comprehension that according to the petitioners they were forced to sit in the examination, but they never put forward any objection or reservation, nor anything was brought on record to show that they appeared in the examinations without prejudice to their right to challenge. It is clear from the conduct of the petitioners that, after failure in the departmental examinations, a fall back stand was set in motion that the promotion cases of the petitioners should be processed in accordance with the APT Rules, being civil servants, and not as the employees of the PAC Board without submitting their option at the relevant time when they were afforded an opportunity to segregate themselves from the purview of the PACB Rules, but they failed to do so despite receiving an evenhanded and fair opportunity. According to the respondents, nothing is available on their record to indicate that any option was ever tendered by the petitioners. The first right of refusal was extended in terms of Ordinance to opt the new service rules and service structure of the Board according to the scheme of restructuring and reorganization, which cannot be construed the violation or infringement of any fundamental rights of the petitioner but it was founded on consensual act of every individual employee without any compulsion or pressure and the particular portion or provision of law inviting options from the employees was never challenged by the petitioners if in actual fact considered to be ultra vires the Constitution or the law.
ii) The chronicles of the petitioners' case expounds that they intermittently appeared in the departmental examinations starting from the year 2012 to 2018, but nobody could qualify the examination which was a precondition for awarding

promotion. On one hand, the petitioners are asserting that they submitted the option but on the other hand, their never-ending and non-stop attempts in the departmental examination unambiguously corroborated that they never submitted any option in keeping with the requirements laid down in the PACB Ordinance. On the contrary, right through, the demeanor of petitioners signifies they assented and acquiesced to be governed by the PACB Ordinance and the PACB Rules, rather than being governed under the Civil Servants Act 1973 and the APT Rules. The plea of the petitioners is also hit by the doctrine of approbate and reprobate; the maxim *qui approbat non reprobat* (one who approbates cannot reprobate) is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument, which both grants a benefit and imposes a burden, cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument. For all intents and purposes, the doctrine is somewhat nip in the bud to a contradictory demeanor which activates in circumstances where a person has to pick and choose between two rights and he cannot pick out both. If he opted one between the two, then he cannot later on ask for the other.

Conclusion: i) The first right of refusal extended in terms of PACB Ordinance, 2000 to opt the new service rules and service structure of the Board, cannot be construed the violation or infringement of any fundamental rights of the petitioner especially when it was founded on consensual act employees without any compulsion or pressure.

ii) Act of an employee by appearing in non-stop departmental examination and asserting option to be governed by old laws is contradictory demeanor and thus hit by doctrine of approbate and reprobate.

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3. **Supreme Court of Pakistan**
Special Secretary-II (Law & Order), Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar
Civil Petition No.3750 of 2020
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3750_2020.pdf

Facts: The respondent filed writ petition after a lapse of 12 years for compensation on account of alleged damage to his house during the Army Operation of Rah-i-Nijat. High Court allowed the Writ Petition with the directions to the petitioners to pay the compensation to the respondent as estimated by the political agent in the year 2007. This Civil Petition for leave to appeal is directed against the judgment passed by the High Court.

Issues: i) Which law provides the procedure and mechanism of payment of compensation for damage caused by reason of any disaster in Khyber Pakhtunkhwa?

ii) Whether civil court has the ultimate jurisdiction to decide the claim of special

and/or general damages after recording evidence of the parties?
iii) Whether disputed questions of facts can be entertained and adjudicated in the writ jurisdiction?
iv) What is object of proceedings under Article 199 of the Constitution?
v) What is touchstone of jurisdiction conferred upon the High Courts under Article 199 of the Constitution?
vi) Whether principle of laches applies on constitutional petitions?

Analysis: i) In order to provide for an effective national disaster management system and for matters connected therewith or incidental thereto, the Provincial Assemblies of Balochistan, Khyber Pakhtunkhwa, and Punjab had passed Resolutions under Article 144 of the Constitution of the Islamic Republic of Pakistan, 1973, to the effect that Majlis-e-Shoora (Parliament) may, by law, regulate the national disaster management system to overcome unforeseen situations and, as a result of aforesaid Resolutions, the National Disaster Management Act, 2010 was promulgated. Originally, Section 39 of the 2010 Act was in relation to the compensation payable on requisition of any premises as rent to its owner, which was subsequently substituted by Khyber Pakhtunkhwa Act No.VI of 2012 and according to substituted Section 39, the procedure and mechanism of payment of compensation was laid down which accentuates that where by reason of any disaster, resulted in a substantial loss of life or human suffering or damage to and destruction of property or a large scale migration of the affected people consequent to the disaster, there shall be paid compensation to the affected people for the losses to the life or property, in addition to relief, rehabilitation, settlement activities, provided that amount of compensation shall be determined by the Provincial Government.

ii) The Civil Court had the ultimate jurisdiction to decide the claim of special and/or general damages after recording evidence of the parties and, in order to reach a just and proper conclusion, the right course was to approach Civil Court rather than the High Court in the Writ jurisdiction.

iii) It is a well settled exposition of law that disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction. The learned High Court in the impugned judgment itself observed that it cannot practically assess the amount of damage but, despite that, the petition was allowed in disregard of a crucial facet that in the constitutional jurisdiction, the High Court cannot go into miniature and diminutive details which could only be resolved by adducing evidence by the parties vice versa. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression “adequate remedy” signifies an effectual, accessible, advantageous and expeditious remedy.

iv) The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right and, therefore, the

right of the incumbent concerned which he seeks to enforce must not only be clear and complete but simpliciter and there must be an actual infringement of the right.

v) Whereas in the case of Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & others (2011 SCMR 1813), this Court intensely conversed the prerequisite and touchstone of jurisdiction conferred upon the High Courts under Article 199 of the Constitution and held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy. It should be equally inexpensive and expeditious. To effectively bar the jurisdiction of the High Court under this Article the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a petition under Art. 199. The other remedy in order to be adequate must be equally convenient, beneficial and effective and the relief afforded by the ordinary law must not be less efficacious, more expensive and cumbersome to achieve as compared to that provided under the Article.

vi) There is no exception to the rule that a delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if the remedy of filing a constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids the vigilant and not the indolent. Laches in its simplest form means the failure of a person to do something which should have been done by him within a reasonable time. If the remedy of constitutional petition was not availed within reasonable time, the interference could be refused on the ground of laches. Question of laches in constitutional petition is always considered in the light of the conduct of the person invoking constitutional jurisdiction.

Conclusion: i) Khyber Pakhtunkhwa Act No.VI of 2012 provides the procedure and mechanism of payment of compensation for damage caused by reason of any disaster in Khyber Pakhtunkhwa.

ii) Civil court has the ultimate jurisdiction to decide the claim of special and/or general damages after recording evidence of the parties.

iii) Disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction.

iv) The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right.

v) The touchstone to effectively bar the jurisdiction of the High Court under Article 199 of the Constitution is that the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a petition.

vi) Principle of laches applies on constitutional petitions and question of laches in constitutional petition is always considered in the light of the conduct of the person invoking constitutional jurisdiction.

4. **Supreme Court of Pakistan**
The President of Pakistan and others v. Justice Qazi Faez Isa
C.M.A. 2012 OF 2023 IN C.M. APPEAL NO. 81 OF 2021 and other connected petitions
Mr. Justice Umar Ata Bandial, HCJ
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._2012_2023_10042023.pdf

Facts: The appellants filed Civil Misc. Applications seeking the withdrawal of their curative review petitions filed against the Supreme Court's decision given in its review jurisdiction in Justice Qazi Faez Isa v. President of Pakistan (PLD 2022 SC 119).

Issue: Whether a curative review petition/second review petition is maintainable against a decision of the Supreme Court of Pakistan?

Analysis: The bar on filing a second review petition is declared in the Supreme Court Rules, 1980… This bar has also been affirmed by a 5 Member Bench of the Court in Khalid Iqbal Vs. Mirza Khan (PLD 2015 SC 50) at para 12. Therefore, under the current scheme of the law the appellants appear to be precluded from filing a review against the Subject Judgment because it has finally disposed of the review petitions filed against the original judgment… Insofar, as the principle of curative review petitions is concerned, it is not disputed by the appellants that the existence of this jurisdiction has hitherto not been considered by the Court. In fact, all the judgments cited by them in support of their curative review petitions reiterate what has been held above: that a second review is barred by law and that the Court alone is empowered, if so inclined, to re-visit, review or set aside any of its previous judgments/orders. Further a study of the Indian law on curative review reveals that it is a remedy altogether distinct from the *Suo Motu* exercise of jurisdiction by the Court. Whereas curative review has no standing in our jurisprudence the availability of *Suo Motu* review has long been accepted by the Court, albeit in the limited circumstances of doing complete justice under Article 184(3) and/or Article 188 read with Article 187 of the Constitution. It is of course clear that both types of judicial interventions, curative review and *Suo Motu* review, possess a similar purpose i.e., to correct a fundamental error in a previous judgment/order. However, the key difference, *inter alia*, between the two jurisdictions lies mainly in their mode and manner of invocation.

Conclusion: A curative review petition/second review petition is not maintainable against a decision of the Supreme Court of Pakistan.

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5. **Supreme Court of Pakistan**
National Database and Registration Authority (NADRA) through its Chairman, Islamabad and others v. Jawad Khan, Ghulam Saddiq, Amjad Ali
CIVIL PETITIONS NO.596 TO 598 OF 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._596_2021.pdf

Facts: The respondents qualified for the post of CSE but they were appointed as DEOs, therefore the respondents filed Writ Petitions in the High Court with this cause of distress and the High Court allowed the Writ Petitions with directions to NADRA to treat the present respondents/petitioners at par and to appoint them to the posts of CSE with effect from the date from which the petitioner was ordered to be appointed. These Civil Petitions for leave to appeal are directed against this judgment whereby the writ petitions were allowed with certain directions to the petitioner No.1, the National Database and Registration Authority ("NADRA").

Issues: i) What is the doctrine of legitimate expectation and what is its purpose?
ii) What are the essential prerequisites for lodging a right and entitlement under the doctrine of promissory estoppel?
iii) Whether doctrine of promissory estoppel is equivalent to estoppel?

Analysis: i) The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government or a public authority. When such a legitimate expectation is obliterated, it affords a locus standi to challenge the administrative action and even, in the absence of a substantive right, a legitimate expectation may allow an individual to seek judicial review of a wrongdoing; and in deciding whether the expectation was legitimate or not, the Court may consider that the decision of the public authority has breached a legitimate expectation and, if it is proved, then the Court may annul the decision and direct the concerned authority/person to live up to the legitimate expectation. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation.
ii) The essential prerequisites for lodging a right and entitlement under the doctrine of promissory estoppel are that there must be a promisor and a promisee, and the promisee suffered a loss due to renunciation of promise. In such a situation, the Courts may put into operation this doctrine for administering justice to an aggrieved person. It is not necessary in all circumstances for the attraction of this doctrine that the promisee who placed trust and dependence on the promise

should sustain harm, but what actually necessary is that the promisee should have changed his position in reliance on the promise and was caused prejudice.
iii) The doctrine of promissory estoppel cannot be repressed in line with equivalent constriction as estoppel in the stricto sensu, rather it is an equitable course of therapy developed by the Courts for doing justice against a valid cause of action.

Conclusion: i) The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. This doctrine is applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation.
ii) The essential prerequisites for lodging a right and entitlement under the doctrine of promissory estoppel are that there must be a promisor and a promisee, and the promisee suffered a loss due to renunciation of promise.
iii) This doctrine cannot be repressed in line with equivalent constriction as estoppel.

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6. **Supreme Court of Pakistan**
Muhammad Riaz v. Muhammad Ramzan and others.
Civil Petition No.446 -L of 2014
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._446_l_2014.pdf

Facts: Through this Civil Petition for leave to appeal is directed against the Judgment passed by the High Court in R.S.A. whereby the regular second appeal filed by the petitioner was dismissed.

Issues: i) Whether partial decree of Pre-emption is possible?
ii) Whether a person can approbate and reprobate or accept and reject the same instrument?

Analysis: i) It is a well-settled legal precept that no partial decree is possible in a pre-emption suit as the right of pre-emption is one of substitution, even in the case of pre-emption under statute law, unless the statute itself has made a departure in this regard to any extent. From the doctrine that the right of pre-emption is one of substitution it follows that, unless the statute conferring the right of pre-emption otherwise provides, the pre-emptor must take over the whole bargain, that is to say, the pre-emptor must seek pre-emption of the whole of the subject-matter of the sale and pay the entire price paid by the vendee as consideration. This, however, is subject to certain limitations which, at any rate, do not include the vendor's defective or want of title. Suffice it to say by way of example that a pre-emptor is not bound to seek pre-emption of the whole of the property sold and pay the full sale price if his right of pre-emption extends over only a portion of the

property sold or if a portion of the property is capable of pre-emption and the other is not. In case of any such limitation, partial pre-emption on payment of proportionate price may be permitted as of necessity and not because the pre-emptor wants it.

ii) When a person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This principle is founded on equity and justness with straightforward objective to prevent fraud and ensure justice, and though it is described as a rule of evidence, it may have the effect of constituting substantive rights as it impedes someone from averring a truth that is defined as contradictory to an already established truth...A person cannot approbate and reprobate or accept and reject the same instrument.

Conclusion: i) Partial decree of Pre-emption is possible but subject to certain limitations which, at any rate, do not include the vendor's defective or want of title.

ii) A person cannot approbate and reprobate or accept and reject the same instrument.

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7. **Supreme Court of Pakistan**
M. Hamad Hassan v. Mst. Isma Bukhari and 2 others.
Civil Petition No.1418 Of 2023
Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1418_2023%20.pdf

Facts: The respondent no. 01 filed a suit for recovery of dower, maintenance allowance and dowry articles, etc. against the petitioner which was decreed. The petitioner challenged the judgment and decree before appellate court which was dismissed being meritless while enhancing the annual increase of maintenance allowance from 10% to 20%. Being aggrieved, the petitioner filed a writ petition under Article 199 of Constitution which was dismissed being devoid of any merit, hence this petition.

Issues: i) Whether High Court in constitutional jurisdiction can reappraise the evidence and decide the case on its facts?

ii) Whether in the absence of a second appeal, the High Court ought to offer another opportunity of hearing after decision of appellate court on facts?

Analysis: i) In Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another (2023 SCMR 246) it was clarified that while the trial court is primarily responsible for assessing facts, the High Court can intervene as a corrective measure when actual findings are based on misreading or non-reading of evidence, or if the lower court's order is arbitrary, perverse, or in violation of the law or if the error is so obvious that it may not be acceptable, for example, when

the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumptions, clear legal errors, considering inadmissible evidence, exceeding or abusing jurisdiction, and taking an unreasonable view of evidence. Similarly, in the case of Arif Fareed v. Bibi Sara and others (2023 SCMR 413), this Court held that it is while some cases justify interference by the High Court, however, most do not. Thus, the legal position is that the constitutional jurisdiction cannot be invoked as a substitute for a revision or an appeal. This means that the High Court in constitutional jurisdiction cannot reappraise the evidence and decide the case on its facts. Interference is on limited grounds as an exception and not the rule.

ii) The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by reevaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.

Conclusion: i) High Court in constitutional jurisdiction cannot reappraise the evidence and decide the case on its facts. Interference is on limited grounds as an exception and not the rule.

ii) If the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing.

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8. **Lahore High Court**
M/s Honda Atlas Cars (Pakistan) Limited. v. Additional Collector, Legal, LTU, Lahore etc.
S.T.R No.93 of 2010
Mr. Justice Shams Mehmood Mirza, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4256.pdf

Facts: This Sales Tax Reference is filed to seek the opinion of this Court on the questions of law which are said to have arisen from the judgment rendered by the Appellate Tribunal, Inland Revenue.

Issues: i) Whether a transaction missing consideration did fall within the definition of supply as contained in the Sales Tax Act 1990 before the replacement of definition of supply by the Finance Act 2008?
ii) Whether the replacement of auto parts under the warranty did form part of supply of taxable goods before the replacement of definition of supply by the Finance Act 2008?

Analysis: i) The definition of "supply" in the Sales Tax Act 2009 at the relevant time was as follows. "Supply" includes sale, lease or other disposition of goods carried out for consideration and also includes …This definition was replaced by the Finance Act, 2008 in the following manner. "Supply" means a sale or other transfer of the right to dispose of goods as owner, including such sale or transfer under a hire purchase agreement, and also includes …It is evident that the expression "sale carried for consideration" was omitted in the subsequent definition of "supply".
ii) The contract of sale in the present case related to composite supply of vehicle and the service for replacement of defective parts. Both were bundled in one contract. The auto parts were supplied free of charge to the customers by the applicant under the warranty and at the time of such replacement no separate consideration was charged for the reason that consideration of such parts formed an integral part of the price of the contract which was received at the time of sale. It is thus axiomatic that sales tax charged and paid on the contractual consideration at the time of supply of motor vehicle included such tax on auto parts to be replaced under the warranty. In other words, the cost of warranty replacements was incorporated in the price of the motor vehicle on which sales tax had already been paid. Absent the consideration in such transaction, it does not fall under the definition of 'supply' as contained in the Act at the relevant time. Given the fact that the replacement of auto parts under the warranty did not form part of supply of taxable goods, the reliance by the learned counsel for the respondents on the definition of "taxable supply" is not apt.

Conclusion: i) A transaction missing consideration did not fall within the definition of supply as contained in the Sales Tax Act 1990 before the replacement of definition of supply by the Finance Act 2008.
ii) The replacement of auto parts under the warranty did not form part of supply of taxable goods before the replacement of definition of supply by the Finance Act 2008.

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9. **Lahore High Court**
Naveed Mushtaq Abbasi v Federation of Pakistan, etc.
W. P. No. 2376 of 2023.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC4155.pdf

Facts: During the interim period**,** composition of the Board of Governors of Pakistan Cricket Board was changed by the Election Commission through Notification, by replacing the Presidents of the Regions, including petitioner with President and new Management Committee of Pakistan Cricket Board, was appointed by Federal Government through Notification.

Issues: i) Whether the Election Commissioner, during interim period, has power to change the composition of Board of Governors of PCB Constitution, 2014?
ii) Whether the Federal Government is competent to renotify and change composition of Management Committee?
iii) Whether Constitution of PCB 2014, is manipulated to get the politically motivated results?
iv) Whether Constitutional Courts can interfere in policy making which is exclusive domain of the elected Government?
v) Whether four elected representatives from the regions on the basis of rotation are given effective representation from different parts of the country without political influence?

Analysis: i) Perusal of Paragraph 7(2) of PCB Constitution, 2014, reveals out that during the interim period, the powers of day-to-day management of the Board of Governors shall rest in the Election Commissioner but no long-term decision can be taken during interim period. Notification for change in composition of Board of Governors is a long-term decision having a permanent character, therefore, is beyond the scope of day-to-day management of Board.
ii) Federal Government is competent, under Section 3 of the Sports (Development and Control) Ordinance, 1962, read with Paragraphs 38 and 48, to renotify and change composition of Management Committee.
iii) Practice and history, shows that Chairman of Cricket Board is elected from the two members nominated by the Patron because the Government is always in a position to influence the representatives of Service Organizations and Departments. This Court expects and recommend that suitable amendments shall be brought in the Paragraphs No.7 and 10 of PCB Constitution, 2014 to ensure that sovereignty (policy making and management) in the Cricket Board is exercised by the elected representatives of the stakeholders who are effectively involved in the game of Cricket at grass root level.
iv) Though Constitutional Courts cannot and should not interfere in policy making which is exclusive domain of the elected Government, yet Courts can interfere or at least observe, where policy making infringes the fundamental right guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. Bedrock of the Constitution of Pakistan is exercise of sovereignty through elected representatives.
v) Clause (e) of the Paragraph 10, envisages that for first Election under the PCB Constitution, 2014, four representatives of the Regions shall be from top four finishing teams of the latest Quaid-e-Azam Trophy Tournament. It was convincingly explained that top four finishing teams of the tournaments, if given

representations in every Election of the BoG would restrict representation of regions, where the game of cricket is not developed. The Court is convinced and holds accordingly with direction that by excluding the Regions, already represented in earlier two BoGs, the Election of the representatives of four Regions shall be strictly in accordance with the regulation, if any. In absence of regulation, effective representation from different parts of the country without political influence shall be ensured. The purpose should be representation of the Regions for effective policy making and not to get a person of Government's choice elected as Chairman.

Conclusion: i) During interim period, Election Commissioner cannot change the composition of Board of Governors of Cricket Board.
ii) Federal Government is competent to renotify and change composition of Management Committee.
iii) Constitution of PCB 2014 is manipulated to get the politically motivated results and court expected and recommended that suitable amendments shall be brought in the Paragraphs No.7 and 10 of PCB Constitution, 2014.
iv) Constitutional Courts cannot interfere in policy making, yet it can interfere or at least observe, where policy making infringes the Fundamental Rights, under the Constitution of Islamic Republic of Pakistan, 1973.
v) Effective representation of four elected representatives from the regions on the basis of rotation from different parts of the country shall be ensured without political influence by excluding the Regions, already represented in earlier two Board of Governors, elections.

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10. **Lahore High Court**
M/s G.A Traders (Sole Proprietorship) v. Allied Bank of Pakistan
E.F.A No.22133 of 2023
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4195.pdf

Facts: Through this Execution First Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the Appellant has questioned the legality and propriety of Order passed by Banking Court, pursuant whereto the Objection Petition under section 19 of the Ordinance of 2001 filed by the Appellant, inter alia, seeking dismissal of Execution Petition was dismissed.

Issues: i) Whether any challenge to the Compromise Agreement or Consent Decree that once raised and finally decided till Supreme Court will hit by principle of res judicata?
ii) Whether a financial institution can claim from Court any additional mark-up beyond the contracted mark-up after the promulgation of the Ordinance, 2001?
iii) Whether executing court can extend the benefit of the new law by replacing the mark-up awarded by the Court under Act of 1997 with the award of only cost of funds permitted under the Ordinance of 2001?

Analysis: i) The default towards the liabilities rescheduled/ restructured or renewed through Deed of Compromise culminating into Consent Decree cannot be termed as inexecutable by seeking a declaration that under the Ordinance of 2001 it is only recoverable through cost of funds, more specifically when the matter already stood adjudicated by the Executing Court up till Supreme Court of Pakistan. The legal as well as factual points now being agitated before us are clearly hit by res judicata as the controversy inter se parties stood finally decided up till Supreme Court of Pakistan and at this stage if the Appellant coins a logic that the instant controversy was never agitated earlier in that case the present controversy will be hit by constructive res judicata.

ii) The position of law emerging after the promulgation of the Ordinance, 2001 is that in addition to the contractually chargeable markup, a financial institution cannot now claim from Court any additional mark-up except the cost which it had to bear for its finance stuck up with its defaulting customer. Thus the concept of earning further income in the shape of mark-up was replaced with the concept of compensating financial institutions with the cost of funds and that too is determinable by State Bank as envisaged under section 3 of the Ordinance of 2001. Thus the change in law i.e. withdrawal of Court's power to award mark-up beyond contracted period under the provisions of Act of 1997 with the award of cost of funds under the Ordinance of 2001 was clearly intended to remove the perception that the award of mark-up beyond the contracted mark-up is in the nature of interest.

iii) As at the time of passing of the decree in question the Act of 1997 was in force, therefore, notwithstanding the harshness of the Act of 1997, which permitted award of continuous mark-up beyond the contracted mark-up, the court being an Executing Court cannot now extend the benefit of the new law by replacing the mark-up awarded by the Court under Act of 1997 with the award of only cost of funds permitted under the Ordinance of 2001. This would amount to empowering the Executing Court to amend the decree.

Conclusion: i) Any challenge to the Compromise Agreement or Consent Decree that once raised and finally decided will either be hit by principle of res judicata and if omitted or relinquished to be raised earlier will surely be hit by principles of constructive res judicata.

ii) A financial institution cannot claim from Court any additional mark-up beyond the contracted mark-up after the promulgation of the Ordinance, 2001

iii) Executing court can extend the benefit of the new law by replacing the mark-up awarded by the Court under Act of 1997 with the award of only cost of funds permitted under the Ordinance of 2001. This would amount to empowering the Executing Court to amend the decree.

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11. **Lahore High Court**
Ghulam Ghous v. Province of Punjab through Secretary Higher Education Department and another
Writ Petition No.77143 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4149.pdf

Facts: Through instant petition, petitioner has called into question vires of order / letter issued by Government of the Punjab, Higher Education Department, whereby petitioner was held disentitled to get age relaxation in terms of Rule 3(v) of the Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976.

Issues: i) Whether period of continuous service of a Government servant shall be excluded while computing upper age limit?
ii) Whether rights of general age relaxation and exclusion of period served in Government employment can be pressed into service by Government employees seeking further employment?
iii) Whether employees of autonomous bodies can be considered as officials serving in connection with the affairs of the Government?
iv) Whether Government College University, Faisalabad is an Autonomous Body of the Higher Education Department, Government of Punjab and the Finance Department of the Government of Punjab has financial supervision over it?

Analysis: i) The Rules of 1976 have been framed by the Governor of the Punjab by deriving authority from section 23 of the Punjab Civil Servants Act, 1974 and are applicable to the recruitment of all posts. The afore-referred Rule specifically provides that period of continuous service of a Government servant shall be excluded while computing upper age limit. The above Rule does not specifically provide that it would apply to civil servants rather it is providing benefit to Government servants. Had the Rules making authority intended to extend benefit of this Rule to 'civil servants' only, it could have used these words in explicit terms in the said Rule. The term 'Government servant' connotes all Government servants including civil servants and not vice versa.
ii) Needless to say that general age relaxation and exclusion of period served in Government employment for the purpose of computation of upper age limit are two separate and distinct benefits / rights awarded to Government employees including contract employment. These rights can be pressed into service by Government employees seeking further employment. Rules 3(v) of the Rules of 1976 is a beneficial dispensation and is to be interpreted in a manner so as to advance the remedy.
iii) Autonomous Public Bodies are an emanation of the Government and are clearly a limb of the Government or even an agency of the State and recognized by and clothed with rights and duties, either by or under a Statute and thereby become extended arms of the Government. The employees of autonomous bodies are considered as officials serving in connection with the affairs of the Government and hence, can be stated to be in the service of Government i.e.

Government servants.

iv) It is pertinent to mention here that under Rule 2(c) of the Punjab Government Rules of Business, 2011, 'Autonomous Body' means a Body mentioned in Column No. 4 of the First Schedule while Rule 2(d) of the Punjab Government Rules of Business, 2011 states that "Business" means the work done by the Government. Similarly, Rule-3 deals with Allocation of Business and sub-rule (3) states that the business of the Government shall be distributed amongst several Departments in the manner indicated in the Second Schedule. The Government College University, Faisalabad has been mentioned as an Autonomous Body of the Higher Education Department, Government of Punjab in Entry No. (xiv) of Column No. 4 of the Serial No. 16 of the First Schedule. Moreover it is further mentioned at Serial No. 37 (xiv) under the Higher Education Department in the Second Schedule. So provision of higher education is business of the Government of the Punjab, which business is tasked to be performed by the Higher Education Department and the Government College University Faisalabad is the vehicle and tool through which such business of the Government is conducted. Furthermore, the Finance Department of the Government of Punjab is also obligated with financial supervision and oversight of the autonomous bodies (which includes the Government College University Faisalabad) as per Second Schedule.

Conclusion: i) Period of continuous service of a Government servant shall be excluded while computing upper age limit.

ii) Rights of general age relaxation and exclusion of period served in Government employment can be pressed into service by Government employees seeking further employment.

iii) The employees of autonomous bodies can be considered as officials serving in connection with the affairs of the Government.

iv) Government College University, Faisalabad is an Autonomous Body of the Higher Education Department, Government of Punjab and the Finance Department of the Government of Punjab has financial supervision over it.

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12. **Lahore High Court**
Abdul Hameed v. Station House Officer etc.
Writ Petition No. 72703/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4122.pdf

Facts: The petitioner sought quashment of FIR registered against him under section 489-F PPC on the ground that the alleged agreement between the parties was void and the consideration for the subject cheque was unlawful and against public policy.

Issues: (i) Whether a case FIR for an offence under section 489-F can be quashed on the basis that the issuance of the cheque originated from an unlawful contract i.e. bribery?

(ii) Whether both the bribe-giver and the bribe-taker are liable to be prosecuted for the offence of bribery?

Analysis: (i) Once the FIR is registered, the occurrence is regarded as a "case", and every step taken in the ensuing investigation under sections 156, 157, and 159 Cr.P.C. is a step taken in that case. The contents of the FIR do not guide or govern the Investigating Officer, and he is not under any obligation to establish that version. Instead, he must find out the truth. He is required to collect information from any number of people who appear to be acquainted with the facts of the occurrence. Every new piece of information he obtains during the process or the discovery of a new circumstance relevant to the commission of the offence does not require the registration of a separate FIR. Such additional information or knowledge is part of the ongoing investigation into the same case, which began when the FIR was registered. I am aware that the courts quash the criminal proceedings when the allegations in the FIR or the complaint, taken at face value and accepted in entirety, do not *prima facie* constitute an offence or make out a case against the accused. This principle cannot be applied to the present case. The Petitioner seeks quashing of the FIR rather than a private complaint. Even if his contention is accepted that Cheque No.D-15380129 is void because the consideration is unlawful and against public policy, an investigation is required to determine whether the crime of corruption has been committed. The State is interested in fighting corruption and prosecuting those who indulge in it.

(ii) Pakistan Penal Code expressly recognizes that the bribe-giver is the collaborator of the bribe-taker. The Explanation to section 109 PPC states that "an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment." In view of the fact that the bribe-giver is an accomplice of the bribe-taker, both are liable to be prosecuted.

Conclusion: (i) A case FIR for an offence under section 489-F cannot be quashed on the basis that the issuance of the cheque originated from an unlawful contract i.e. bribery.

(ii) Both the bribe-giver and the bribe-taker are liable to be prosecuted for the offence of bribery.

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13. **Lahore High Court**
Muhammad Ayub v. Secretary Primary & Secondary Healthcare Department etc.
Writ Petition No. 20192/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4270.pdf

Facts: The Petitioner joined the service of the Province of the Punjab, Health Department, as Hakeem in BS-15 and he retired on after serving for about 28 years. In 2016, the Governor of the Punjab upgraded all technical/non-technical personnel holding posts in BS-5 to BS-16. In 2018, the Director General Health Services Punjab (Respondent No.2) held that the Finance Department's notification dated 4.1.2016 did not apply to Hakeems. Therefore he declared their

upgradation to Senior Tabeeb/Hakeem (BS-16) illegal. The Petitioner first applied for review before and then filed an appeal against the order but they did not decide them. Two days before his superannuation, the Petitioner applied for issuance of his retirement order and pensionary benefits. Respondent No.5 wrote to the Petitioner that he had been drawing the salary of BS-16 until the day of superannuation and received money beyond his entitlement. By this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 the Petitioner impugns the order of Respondent No.5. Consequently, orders issued by Respondents No.2 and 4 also come under challenge.

Issues: i) Whether upgradation is distinct from promotion and what is its purpose?
ii) Whether Service Tribunals has jurisdiction over the matters relating to upgradation?
iii) Whether The Punjab Health Department (Tibb) Service Rules, 2018 applied retrospectively to the employees who are already upgraded?

Analysis: i) "Upgradation" is distinct from promotion. In Regional Commissioner Income Tax and another v. Syed Munawar Ali and others (2016 SCMR 859), the Supreme Court of Pakistan held that "upgradation" is not defined in the Civil Servants Act or the Rules framed thereunder. It applies to the posts and not the person occupying them. In Federal Public Service Commission v. Anwar-ul-Haq and others (2017 SCMR 890), the apex Court held that upgradation is carried out without necessarily creating posts in the relevant pay scales. It is done under a policy and a specific scheme. It is exclusively used for incumbents of isolated positions with no other advancement options, and its purpose is to overcome the issue of their stagnation and frustration.
ii) The Service Tribunal has exclusive jurisdiction under Article 212 of the Constitution in issues relating to the terms and conditions of persons who are or have been civil servants, including disciplinary matters. It is, however, well settled that upgradation does not form a part of the terms and conditions of service.
iii) The Punjab Health Department (Tibb) Service Rules, 2018 – were published in the Gazette on 20.6.2019. They cannot be applied retrospectively to the employees who are already upgraded. In Commissioner of Sales Tax (West), Karachi v. Messrs Kruddsons Ltd. (PLD 1974 SC 180), the Supreme Court held that rules could not operate retrospectively to impair existing rights or nullify the effect of final judgment. Similarly, Kohinoor Textile Mills Ltd. v. Commissioner of Income-Tax, Lahore (PLD 1974 SC 284) held that they could not have a retrospective effect.

Conclusion: i) "Upgradation" is distinct from promotion. It is done under a policy and a specific scheme and its purpose is to overcome the issue of stagnation and frustration of incumbents.

ii) The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants.
iii) The Punjab Health Department (Tibb) Service Rules, 2018 cannot be applied retrospectively to the employees who are already upgraded.

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14. **Lahore High Court**
Muhammad Farooq v. Zarai Taraqiati Bank Limited.
R.F.A. No. 299 of 2022
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Safdar Saleem Shahid
https://sys.lhc.gov.pk/appjudgments/2023LHC4277.pdf

Facts: Through this appeal filed under Section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 the appellant (judgment-debtor) has called in question the judgment & decree passed by learned Judge Banking Court whereby application for leave to defend filed by the appellant under section 10 of the Ordinance has been dismissed and the recovery suit filed by the respondent-bank under section 9 of the Ordinance was decreed against the appellant, in favour of respondent-bank.

Issues: i) Whether it is mandatory requirement for bank to produce on record not only the duly certified statement of accounts but plaint also required to be supported by relevant documents relating to grant of finance?
ii) Whether non-availability of original file with the bank, entitles the loanee for grant of leave to defend?

Analysis: i) In view of mandatory requirement of Section 9 of Ordinance, the respondent bank was required to produce on record not only the duly certified statement of accounts certified under the Bankers Books Evidence Act, 1891 but plaint also was required to be supported by relevant documents relating to grant of finance, which implies that the said documents in original were assumed to be actually maintained by the bank in its office… The requirements of both sections 9 and 10 of the Ordinance have been declared to be mandatory by the Honourable Supreme Court of Pakistan.
ii) Non-availability of original file with the respondent-bank, entitles the appellant for grant of leave to defend as the same raised substantial question of law and fact requiring recording of evidence for determination.

Conclusion: i) Yes, it is mandatory requirement for bank to produce on record not only the duly certified statement of accounts but plaint also required to be supported by relevant documents relating to grant of finance.
ii) Yes, non-availability of original file with the bank, entitles the loanee for grant of leave to defend.

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15. **Lahore High Court**
Parvez Elahi v. Care Taker Government of Punjab etc.
Writ Petition No. 45360 of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC4107.pdf

Facts: The petitioner requested for information about details of criminal cases and pending inquiries against him with further prayer to supply copies of said FIRs and inquiries and that the petitioner may not be arrested in unknown criminal cases with ensued consequences for grant of opportunity to approach the concerned Court, if any cases are found registered.

Issues: (i) Whether it is not necessary that one must be in the captivity to define it as in custody?
(ii) Whether the practice of police to arrest the accused intermittently at their wish in different cases one after another for conducting investigation separately amounts to denial of fundamental rights to life and liberty?
(iii) Whether a High Court while exercising powers under Article 199(1)(c) of the Constitution can exercise powers *ex debito Justitiae* and can grant a relief ?
(iv) Whether the arrest after arrest of an accused if based on *malafide* amounts to commission of offence u/s 337K of PPC?
(v) Whether section 54 of the Cr.P.C gives unbridled powers of arrest to police without warrant of arrest?

Analysis: (i) It is not necessary that one must be in the captivity to define it as in custody, rather restriction on his freedom of movement due to fear of arrest or threat to life amounts to, as in the custody… Therefore, when one cannot reach to the Court due to fear of arrest, his absence be given an opportunity for an explanation particularly in sheer or extreme cases of real exigency.
(ii) The practice of police to arrest the accused intermittently at their wish in different cases one after another for conducting investigation separately amounts to denial of fundamental rights to life and liberty…once an accused is arrested, he can be put into investigation for all cases registered against him and if the investigation cannot be completed within stipulated period during a physical remand, it can well be continued during judicial custody of accused in the jail with all just legal exceptions, of course with the permission of concerned Magistrate; therefore, arrest after arrest or successive remands in different cases amounts to denial of fundamental rights to life and liberty and also opposes to principle of due process.
(iii) The High Court under Article 199(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 is competent to pass appropriate orders on the application of any aggrieved person yet this appropriation must not violate any provision of law. However, when there is no express provision in the context of remedy sought for or which could cater to a situation as the justice demands then the Court can exercise powers *ex debito Justitiae* and can grant a relief not specifically prohibited by law.

(iv) The uncalled practice for arrest after arrest cannot be weighed in the light of object of law enforcement agencies, rather from the actions which speak intentions, alive in this case, and many others, they were so prompt and swift so as to leave desperation as foot prints in the book of history. Without collecting proper information and sufficient material rushing for an arrest stands in complete negation of dictum of Honourable Supreme Court in a case reported as "Mst. SUGHRAN BIBI versus The STATE" (PLD 2018 Supreme Court 595) which otherwise is binding on every organ of the State as per Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973. Any deflection of such dictum in the given situation amounts to a *malafide* action couched in ulterior motives for keeping the petitioner behind the bars at every cost….Putting somebody in captivity with threatened incarceration, of course indicate design either to obtain required information or to secure forced confession of alleged or supposed crime. People resist against injustice with inner strength both physical and mental but are prone to rely on support from outside world like friends, relatives, colleagues, community or general masses; therefore, captivity, particularly illegal, disconnects the person from outside world and breaks him down so badly as to accept everything before him to avoid danger to his health, mind, property and most of all the family. Producing such effects amounts to commission of offence u/s 337K of PPC which is a cognizable offence; therefore, arrest after arrest also falls in the same category….It is held that if it spurs out from the record that arrest in different cases is not being sought for the purpose of investigation but to keep the accused in physical custody of law enforcement agency for a longer period in order to kneel down him to their terms, then it is not only illegal but an offence, and bona fide of police for arrest in different cases is reflected if they put remand request with criminal record of accused.

(v) It is trite that section 54 of Cr.P.C. empowers the police to arrest without a warrant any person required in nine situations mentioned therein but it is only permissible and cannot be used as substitute of might is right, therefore, for effecting arrest, a warrant should be obtained and as per section 75 (2) of Cr.P.C. it remains operative until executed or cancelled by the Magistrate/Court concerned. therefore, whenever any arrest is required, law enforcement agencies are duty bound to submit information of all cases in which the arrest of accused is being sought. This command of law in fact provides opportunity to ensure the compliance of dictum laid down by Honourable Supreme Court in "Sughran Bibi Case" supra for collection of sufficient material before making arrest. The concerned Magistrate/Court are the Guardian of the Constitution and shall accord permission to arrest only if it does not oppose to fundamental right to 'safeguards as to arrest and detention' as enshrined in Article-10 of the Constitution. The request of police must be supplemented by an opinion of concerned prosecutor so as to convince the Magistrate/Court that material is or isn't available to give a go to the request of police.

Conclusion: (i) It is not necessary that one must be in the captivity to define it as in custody.
(ii) The practice of police to arrest the accused intermittently at their wish in different cases one after another for conducting investigation separately amounts to denial of fundamental rights to life and liberty.
(iii) When there is no express provision in the context of remedy sought for or which could cater to a situation as the justice demands then the High Court while exercising powers under Article 199(1)(c) of the Constitution can exercise powers *ex debito Justitiae* and can grant a relief not specifically prohibited by law.
(iv) The arrest after arrest of an accused if based on *malafide* amounts to commission of offence u/s 337K of PPC.
(v) Section 54 of the Cr.P.C does not give unbridled powers of arrest to police without warrant of arrest.

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16. **Lahore High Court**
Adeel Khalid Bajwa v. Bashir Ahmad Tahir,etc.
F.A.O. No.81002 of 2021
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4226.pdf

Facts: The instant appeal calls into question the legality, validity and propriety of order passed by the appellate court pursuant whereto the order passed by the trial court rejecting the plaint in a suit filed by respondent no.1 was set aside and the matter was remanded to the trial court with a direction to frame issue on the maintainability of the subject matter suit and proceed in accordance with law.

Issues: i) Whether under order VII rule 11 of the CPC, other material can be referred or relied upon by the Court except the plaint and its contents?
ii) Whether a person who is not a member/shareholder of company does have legal capacity, entitlement and/or locus standi to question the validity and legality of Board Resolution?
iii) Whether any remedy to question the validity of meeting or Board Resolution lies before the High Court or before Civil Court?
iv) Whether a shareholder of a company has any entitlement to question the transfer of its assets by such company to any third person?
v) Whether for the purpose of seeking rendition of accounts, it is essential that the defendant must be an 'accounting party' and on account of their legal relationship, the defendant is obliged to render the accounts?
vi) Whether power to reject the plaint under Order VII rule 11 of the CPC must be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiff would still not be entitled to any relief whatsoever?

Analysis: i) In view of the High Court Amendment notified on 22.08.2018 substituting the provisions of Order VII rule 11 (d) of the CPC from "whether the suit appears from the statement in the plaint to be barred by law" to "whether the suit appears from the record available with the Court to be barred by any law." The afore-

noted amendment has equipped the Court to seek assistance from the available record, while determining the fate of the suit under Order VII rule 11 of the CPC. Even otherwise the Court, besides the averments made in the plaint and other material on record which on its own strength is legally sufficient to completely refute the claim of the Plaintiff, can also look into for the purposes of rejection of the plaint.

ii) The Respondent No.1 who is not even a member/shareholder of Wincom does not have legal capacity, entitlement and/or locus standi to question the validity and legality of Board Resolution.

iii) The Civil Court had no jurisdiction to entertain the suit as the incorporated entities and all matters pertaining thereto are tried and adjudicated upon under the provisions of special law i.e. the Companies Act, 2017. The Section 5 of the said Act expressly bars the jurisdiction of Civil Court in the matters falling within the purview of the Companies Act, 2017 and the word 'shall' has been used in the Act, which makes it mandatory, especially, when there appears to be no mala fide or ill-will of the Court. The Companies Act, 2017 being a special law in such circumstances is to override the provisions of general law to the extent of any conflict or inconsistency between the two. Therefore, any remedy to question the validity of meeting or Board Resolution lies before the High Court and in this respect the jurisdiction of Civil Court is barred.

iv) Even if the Respondent No.1 claims to be a shareholder of Wincom LLC, he had no entitlement to question the transfer of its assets by Wincom to any third person. The said transfer of property in which Company has an interest can only be questioned by the Company or its Board.

v) The suit for rendition of accounts does not lie merely because that some accounts are maintained somewhere. Such suit lies only when one party is accountable to the other in some fiduciary capacity, e.g. as in the case of trustee and beneficiary, principal and agent, guardian and ward, person entrusted with control over some property for benefit of the other, etc. Therefore, for the purpose of seeking rendition of accounts, it is essential that the defendant must be an 'accounting party' and on account of their legal relationship, the defendant is obliged to render the accounts.

vi) For the purposes of determination whether the plaint discloses a cause of action or not, Court has to presume that every averment made in the plaint is true, therefore, power to reject the plaint under Order VII rule 11 of the CPC must be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiff would still not be entitled to any relief whatsoever.

Conclusion: i) Under order VII rule 11 of the CPC, other material can be referred or relied upon by the Court except the plaint and its contents.

ii) A person who is not a member/shareholder of company does not have legal capacity, entitlement and/or locus standi to question the validity and legality of Board Resolution.

iii) Any remedy to question the validity of meeting or Board Resolution lies

before the High Court.

iv) A shareholder of a company does not have any entitlement to question the transfer of its assets by such company to any third person.

v) For the purpose of seeking rendition of accounts, it is essential that the defendant must be an 'accounting party' and on account of their legal relationship, the defendant is obliged to render the accounts.

vi) Power to reject the plaint under Order VII rule 11 of the CPC must be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiff would still not be entitled to any relief whatsoever.

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17. **Lahore High Court**
Sui Northern Gas Pipelines Limited v. M/s Zam Zam CNG
R.S.A No.14411 of 2019
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4167.pdf

Facts: Through this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908, the Appellant, has questioned the concurrent findings contained in the Impugned Judgments and Decrees passed by the Trial Court and Appellate Court respectively.

Issues: i) When appeal to High Court under Section 100 of the CPC is maintainable?

ii) Whether second appeal can be filed to question the findings on facts?

iii) What will be the effect on limitation if objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires?

Analysis: i) Law clearly draws distinction between scope of first appeal and second appeal. Under Section 100 of the CPC, appeal only lies to High Court on the grounds that the decision is either contrary to law or it fails to determine some material issue of law or it suffers from substantial error or defect in the procedure provided by the Code or law.

ii) Meaning thereby that it does not lie to question the findings on facts especially when these findings are concurrent and nature of challenge raised by Appellant is bereft of material on record.

iii) There is consistency in the principles that if objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires, the Petition become barred by time.

Conclusions: i) Under Section 100 of the CPC, appeal only lies to High Court on the grounds that the decision is either contrary to law or it fails to determine some material issue of law or it suffers from substantial error or defect in the procedure provided by the Code or law.

ii) Second appeal to High Court does not lie to question the findings on facts especially when these findings are concurrent and nature of challenge raised by Appellant is bereft of material on record.

iii) If objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires, the Petition becomes barred by time.

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18. **Lahore High Court**
Government of Pakistan through Secretary Ministry of Housing and Works v. Muhammad Anwar Khan, etc.
C.M.No.72-C of 2010 in RSA No.146 of 2006
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4215.pdf

Facts: Instant Application under Section 12(2) of the CPC has been filed against the Judgment and Decree passed by this Court in Regular Second Appeal which was filed against the Judgment and Decree passed by learned Additional District Judge, being Appellate Court and Judgment and Decree passed by learned Senior Civil Judge, being Trial Court.

Issues: i) In which court application under section 12(2) CPC would lie, if an appeal /revision/constitutional petition is accepted and judgment etc. is reversed, varied, modified or affirmed on merits?
ii) In which court application under section 12(2) CPC would lie, if the appellate court did not dispose of matter on merits, but on some grounds other than on merit?

Analysis: i) In cases where a remedy of appeal/revision is provided against a judgment, order and decree, or a remedy of writ is availed, the appellate/revisional/constitutional forum records reasons on the consideration of the issues of law and/or fact and the judgment, decree or order of the subordinate court/forum will merge into the decision of the appellate court etc. irrespective of the fact that such judgment reverses, varies or affirms the decision of the subordinate court/forum and its decision will be operative and capable of enforcement on the principle of merger and the application under Section 12(2) of the CPC will be maintainable before the appellate/revisional/ constitutional forum, as the case may be. This will be the situation where an appeal/revision/ constitutional petition is accepted and judgment etc. is reversed, varied, modified or affirmed on merits.
ii) Where an appeal/revision/writ petition is not disposed of on merits, but on some grounds other than on merits, the exception to the rule of merger comes into field. The rule of merger becomes inapplicable where an appeal etc. has been dismissed on technical ground, such as dismissal for non-prosecution, lack of jurisdiction, lack of competence, barred by law or barred by time. In such a case where controversy falls within the noted exceptions, the forum for an application under Section 12(2) of the CPC is the one against whose decision the matter has come and been disposed of in the above manner by the higher forum.

Conclusion: i) Where an appeal/revision/ constitutional petition is accepted and judgment etc.

is reversed, varied, modified or affirmed on merits the application under Section 12(2) of the CPC will be maintainable before the appellate/revisional/ constitutional forum, as the case may be.

ii) The rule of merger became inapplicable if the Judgment and Decree passed by the Trial Court actually never merged into Order/Judgment passed by the Appellate Court etc. as it neither adjudicated controversy on fact nor on law and not reversed, modified or affirmed the decision on merits. Therefore, in such situation the final and only Court which passed the Judgment on merits in terms of Section 12(2) of the CPC is the Trial Court.

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19. **Lahore High Court**
Rehan Iqbal v. Abdul Haq, etc.
Writ Petition No.70519/2022
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4173.pdf

Facts: Through this Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner has called into question the legality and validity of Order passed by the learned Revisional Court, whereby the Revision Petition of the Respondents was allowed and Order passed by the learned Civil Judge allowing the application for setting aside ex-parte Judgment and Decree was set aside.

Issues: i) What is the mode of summoning when defendant is resident of some other district?

ii) When the court can order for substituted service?

iii) Whether adherence and observance to provisions contained in Order V CPC is mandatory?

iv) What is the limitation for setting aside ex-parte decree?

Analysis: i) The first obligation of the learned Trial Court was that if it had noticed that the Petitioner was resident of another District, the safest mode should have been to follow the provisions of Order V rules 21 and 23 of the CPC, which provides that if Defendant resides within the jurisdiction of another Court, the summons shall be sent by the Court by which it is issued either by one of its officers or by post to any Court having jurisdiction in the place where the defendant resides. Under rule 23 of Order V of the CPC, the Court to which summons are sent under rule 21 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record of its proceedings with regard thereto.

ii) The provisions of rules 16, 17 and 18 of Order V of the CPC were also ignored by the learned Trial Court as the said provisions are not illusory and it was bounden duty of the Court to ensure substantial compliance of these provisions before directing substituted service as unless provisions contained in rules 16, 17, 18, 21 and 23 are not satisfied, the order for substituted service under Order V

rule 20 of the CPC is nullity in the eyes of law as the Court for the said purpose has to satisfy itself that all the efforts to affect service in the ordinary mode have failed. Non-adherence to the mandatory provisions renders the process of service through publication invalid and edifice built automatically falls down.

iii) Adherence and observance to these provisions is mandatory as due service is the first fundamental right of every litigant, who is to defend his cause before the court of law. Therefore, it is not only a formality but a matter of importance that these provisions are duly complied with. According to law laid down by the Supreme Court of Pakistan in judgment reported as Mrs. Nargis Latif vs. Mrs. Feroz Afaq Ahmed Khan (2001 SCMR 99) "unless all efforts to effect service in the ordinary manner are verified to have failed, substituted service cannot be resorted to."

iv) Under Article 164 of the Limitation Act, 1908, a defendant may seek setting aside of ex-parte decree within a period of thirty days and Column No.III of the said Article provides that these thirty days are to be computed from the date of decree or where the summons were not duly served when the applicant had knowledge of the decree.

Conclusions: i) If defendant resides within the jurisdiction of another Court, the summons shall be sent to any Court having jurisdiction in the place where the defendant resides. The Court to which summons are sent shall, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue.

ii) It is bounden duty of the Court to ensure substantial compliance of provisions of rules 16, 17, 18 21 and 23 of Order V of the CPC before directing substituted service.

iii) Adherence and observance to provisions of Order V of the CPC is mandatory.

iv) Limitation for setting aside of ex-parte decree is thirty days from the date of decree or where the summons are not duly served when the applicant has knowledge of the decree.

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20. **Lahore High Court**
Amir Sajjad v. Ghulam Murtaza Ch.
Civil Revision No.15213/2023
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4182.pdf

Facts: These two connected Revision Petitions under Section 115 of the Code of Civil Procedure, 1908, emanated from consolidated Judgments and Decrees, are decided together. Pursuant to the Impugned Judgment and Decree passed by the Trial Court, counter suits filed by the parties seeking specific performance of agreement to sell and cancellation of said agreement to sell were dismissed. However, the Appellate Court maintained the Judgment and Decree passed in suit for specific performance of agreement to sell filed by the Petitioner, whereas the Judgment and Decree passed by the Trial Court in the suit filed by the Respondent was reversed and his suit was decreed.

Issues: i) What would be the consequence of not following the mandate of law in case where adverse party categorically pleaded that the subject matter agreement to sell was forged one alleging an interpolation with respect to date contained therein?
ii) Whether mere statement of the Plaintiff regarding death of a witness alleviates or exonerates him to prove the contents of a disputed document?

Analysis: i) If adverse party categorically pleaded that the subject matter agreement to sell was forged one alleging an interpolation with respect to date contained therein then, in such scenario, it cannot be accepted that the subject matter agreement to sell was an admitted document. Therefore, it becomes obligatory to produce the original document and in case of contention that original agreement to sell was with the adverse party, it was responsibility of the petitioner to follow the mandate contained in provisions of Article 76 of the *Qanun-e-Shahadat* Order, 1984 with respect to production of secondary evidence.
ii) When the subject matter agreement to sell bears names of two marginal witnesses but only one witness appeared before the Court and the other witness could not be produced as he had already died, then the Petitioner was under an obligation to prove his death and prove through secondary evidence the elements such as comparison of signatures and thumb impressions with admitted thumb impressions and signatures on other documents and he was required to prove signatures or thumb impressions of dead person through identification of his signatures from any one of his relatives like son, brother, etc. These steps should have been taken to adduce secondary evidence with the leave of the Court.

Conclusion: i) one of the fundamental consequences, in case where adverse party categorically pleaded that the subject matter agreement to sell was forged one, is that without following the mandate of law the petitioner was debarred to produce secondary evidence.
ii) Mere statement of the Plaintiff regarding death of a witness does not alleviate or exonerate him to prove the contents of a disputed document.

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21. **Lahore High Court**
Karam Elahi v. Ahmad Din, etc.
Civil Revision No.1432 of 2015
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC4189.pdf

Facts: The Petitioner has challenged the Judgments and Decrees passed by the learned Trial Court and the learned Appellate Court respectively, through this Civil Revision, pursuant whereto Suit for specific performance of agreement to sell filed by Respondent No.1 was conditionally decreed by the learned Courts below.

Issues: i) Would an oral agreement be valid in eyes of law?
ii) What would be the consequence of failure of Respondent/vendor to appear in the witness box?

iii) What would be evidentiary value of the deposition of the subsequent purchaser about the subject matter agreement to sell?

Analysis: i) It is not mandatory that an agreement to sell be written or printed on a stamp paper as the law fully acknowledges even an oral agreement**.**
ii) In case of non-appearance of Respondent being vendor in the witness box, Article 129(g) of the Qanoon-e-Shahadat Order, 1984 permits the Court to draw an adverse inference against the party who fails to appear in the witness box. Therefore, no matter how strong the written statement filed by Respondent /vendor was, it lost its efficacy as he did not make himself available for the cross-examination, and his written statement could not have been treated as substantive piece of evidence.
iii) A challenge by a subsequent purchaser would be hit by the principle of *lis-pendens*. Such purchaser would sink and sail with the vendor and does not have a *locus standi* to take up cudgels for and on behalf of the defendant or the vendor as he was not in a position to depose with respect to the existence and contents of the subject matter agreement to sell.

Conclusion: i) Under the law a contract can be in writing or oral and oral agreement would be valid and enforceable just like a written agreement provided it fulfills the requirements of valid agreement.
ii) The failure of the vendor to appear in written box, depose and rebut the evidence of the Respondent /Plaintiff has serious consequences as under the law it amounts to admission.
iii) The deposition of the subsequent purchaser about the subject matter agreement to sell was just hearsay.

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22. **Punjab Subordinate Judiciary Service Tribunal**
Ch. Mehmood ul Hassan v. Registrar, Lahore High Court, Lahore
Service Appeal No.25 of 2015
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2018LHC4206.pdf

Facts: Through instant appeal, the appellant has assailed order passed by respondent, whereby appellant's representation for grant of proforma promotion as District and Sessions Judge was declined.

Issues: i) What is the difference between deferment and supersession?
ii) Whether proforma promotion is to be given under well-established principles of law when the temporary embargoes (adverse remarks and complaint) are not existing?

Analysis: i) There is a difference between deferment and supersession in a way that deferment depicts temporary non consideration while supersession is done after due consideration and in case of supersession a person cannot claim proforma

promotion as of right.
ii) When the temporary embargoes (adverse remarks and complaint) are not existing, the proforma promotion is to be given under well-established principles of law.

Conclusion: i) There is a difference between deferment and supersession in a way that deferment depicts temporary non consideration while supersession is done after due consideration and in case of supersession a person cannot claim proforma promotion as of right.
ii) Proforma promotion is to be given under well-established principles of law when the temporary embargoes (adverse remarks and complaint) are not existing?

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23. **Punjab Subordinate Judiciary Service Tribunal**
Mian Shahid Mehmood-II v. The Registrar, Lahore High Court, Lahore
Service Appeal No.15 of 2015
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4137.pdf

Facts: Through these appeals, appellants have assailed vires of the show cause notices and subsequent notification, issued by the respondent / Registrar, Lahore High Court, Lahore, whereby appellants were retired from service under Section 12 of the Punjab Civil Servants Act, 1974. Appellants have also assailed orders dismissing their representations against adverse remarks appearing in their respective PERs and sought expunction of the adverse remarks.

Issues: i) What does the expression public interest imply?
ii) Whether an order passed by the competent authority under section 12(1)(i) of the Punjab Civil Servants Act 1974 must have reasonable nexus with the public interest?
iii) Whether there is a difference between retirement under section 12(i) of the Punjab Civil Servants Act 1974 and Section 4(b)(ii) of Government Servants (Efficiency and Discipline) Rules, 1973?
iv) Whether statutes, notifications, executive and administrative orders operate prospectively unless retrospective operation is expressly provided therein?
v) Whether notification which is duly published in the official gazette take effect from the date on which it was published except otherwise provided in the notification itself?
vi) Whether disciplinary proceedings once initiated against a civil servant under a specific law shall be culminated under the same law and not under the law came into existence on the same subject subsequently?
vii) Whether the competent authority for civil servants in Grade-19 and above, in terms of Explanation to section 12 of the Punjab Civil Servants Act 1974, is the Chief Minister?
viii) Whether as per Rule 2.1 of the Punjab Civil Servants Pension Rules, 1955

the period of previous service in a government department shall be added into twenty years of qualifying service for pension as contemplated under section 12(i) of the Punjab Civil Servants Act 1974?

ix) Whether section 12 of the Punjab Civil Servants Act 1974 is ultra vires of the constitution?

Analysis: i) The expression public interest implies a matter relating to the people at large, nation or a community as a whole and if the interest of general public or community is not involved in a matter, it cannot be brought within the purview of public interest.

ii) The requirement of public interest may vary from case to case, however an order passed by the competent authority under section 12(1)(i) of the Act of 1974 must have reasonable nexus with the public interest. The assessment of the performance of a civil servant to judge his suitability must not be based on the personal reasons or considerations not related to the public interest.

iii) There is basic difference between retirement under section 12(i) of the Act of 1974 and Section 4(b)(ii) of Government Servants (Efficiency and Discipline) Rules, 1973, as retirement in terms of former provision is not a punishment and civil servant get all service benefits without any stigma whereas compulsory retirement under latter provision is a punishment.

iv) As per the general rules of interpretation, these Rules would have a prospective effect for the reason that no expressed provision to the contrary is available therein. Consequently, the cases already pending and decided before enactment of aforesaid Rules would remain unaffected by the new legislation. Statutes, notifications, executive and administrative orders operate prospectively unless retrospective operation is expressly provided therein.

v) Notification which is duly published in the official gazette takes effect from the date on which it was published except otherwise provided in the notification itself.

vi) Disciplinary proceedings once initiated against a civil servant under a specific law shall be culminated under the same law and not under the law came into existence on the same subject subsequently.

vii) The argument of appellants that competent authority for civil servants in Grade-19 and above, in terms of Explanation to section 12 of the Act of 1974, is the Chief Minister, thus impugned retirement order has been passed by incompetent authority is totally misconceived. The Punjab Judicial Service Rules, 1994 regulate recruitment of the Punjab Judicial Service and prescribe conditions of service. Rule 3 provides that the service shall comprise the post of:- a) District and Sessions Judges; b) Additional District & Sessions Judges; c) Civil Judges-cum-Judicial Magistrates. Rule 4 provides that appointments to the service shall be made by the High Court. Admittedly, appellants were appointed by the High Court, thus the competent authority to pass their retirement order in terms of section 12 of the Act of 1974 is the High Court, which is comprised of the Chief Justice and Judges.

viii) It was brought to our notice that before entering into judicial service, said appellant had more than seven years' service at his credit in F.I.A., therefore, as per Rule 2.1 of the Punjab Civil Servants Pension Rules, 1955, the said period of service shall be added into twenty years of qualifying service for pension as contemplated under section 12(i) of the Act of 1974.

ix) So far as vires of Section 12 of the Act of 1974 is concerned, the Hon'ble Supreme Court in the case reported as Muhammad Qadeer and 2 others v. Secretary, Defence Production Division, Government of Pakistan and others (2003 SCMR 1804), observed that present section 13 of the Civil Servants Act, 1973 was in line with the principles laid down by the Shariat Appellate Bench of Supreme Court in case reported as Pakistan and others v. Public at Large and others (PLD 1987 SC 304), thus, validity and proprietary of section 13 was not disputed. Undeniably, section 12 of the Act of 1974 is *pari materia* to section 13 of the Civil Servants Act, 1973, therefore it is intra vires the Constitution.

Conclusion: i) The expression public interest implies to a matter relating to the people at large, nation or a community as a whole and if the interest of general public or community is not involved in a matter, it cannot be brought within the purview of public interest.

ii) An order passed by the competent authority under section 12(1)(i) of the Punjab Civil Servants Act 1974 must have reasonable nexus with the public interest.

iii) Yes, there is a difference between retirement under section 12(i) of the Punjab Civil Servants Act 1974 and Section 4(b)(ii) of Government Servants (Efficiency and Discipline) Rules, 1973.

iv) Statutes, notifications, executive and administrative orders operate prospectively unless retrospective operation is expressly provided therein.

v) Notification which is duly published in the official gazette takes effect from the date on which it was published except otherwise provided in the notification itself.

vi) Disciplinary proceedings once initiated against a civil servant under a specific law shall be culminated under the same law and not under the law came into existence on the same subject subsequently.

vii) The competent authority for civil servants in Grade-19 and above, in terms of Explanation to section 12 of the Punjab Civil Servants Act 1974, is not the Chief Minister but the High Court which is comprised of Chief Justice and Judges.

viii) As per Rule 2.1 of the Punjab Civil Servants Pension Rules, 1955 the period of previous service in a government department shall be added into twenty years of qualifying service for pension as contemplated under section 12(i) of the Punjab Civil Servants Act 1974.

ix) Section 12 of the Punjab Civil Servants Act 1974 is intra vires of the constitution.

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24. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Jameel Ahmed Khokhar v. The Registrar, Lahore High Court, Lahore
Service Appeal No.14 of 2013
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2018LHC4196.pdf

Facts: Through instant appeal, appellant has assailed vires of order passed by respondent, whereby appellant's representation for grant of proforma promotion as Senior Civil Judge was declined.

Issues: i) When proforma promotion can be granted?
ii) What is concept of proforma promotion?

Analysis: i) Proforma promotion can be granted in a case where an officer whose junior was promoted on regular basis but he was deferred due to the reason that he was facing a departmental inquiry provided eventually he was exonerated of the charge. Even otherwise, once an employee is reinstated into service after exoneration of the charges levelled against him, the period during which he remained either suspended or dismissed or compulsorily retired, cannot be attributed as a fault on his part.
ii) The concept of proforma promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his / her legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his / her right for such promotion or a legal restraint was posed against his / her claim owing to any departmental proceedings, inquiry etc., and the said obstacle is done away with ultimately. Then in such a situation his monetary loss and loss of rank is remedied through proforma promotion.

Conclusion: i) Proforma promotion can be granted in a case where an officer whose junior was promoted on regular basis but he was deferred due to the reason that he was facing a departmental inquiry provided eventually he was exonerated of the charge.
ii) The concept of proforma promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his / her legitimate turn due to any reason but not a fault of his own.

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25. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Raja Muhammad Shafique Javed v. The Registrar, Lahore High Court, Lahore
Service Appeal No.05 of 2017
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2018LHC4200.pdf

Facts: Through instant appeal, appellant has assailed vires of order passed by

respondent, whereby appellant's representation for grant of proforma promotion as Senior Civil Judge, Additional District & Sessions Judge and District & Sessions Judge, was declined.

Issues: i) Whether proforma promotion can be granted after retirement?
ii) What will be effect of reinstatement in service of employee after exoneration of charges against him on period during which he remained absent due to dismissal?
iii) What is concept of proforma promotion?

Analysis: i) A civil servant is entitled to be promoted even after his retirement through awarding proforma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own. If the civil servant was facing departmental inquiry leading to his dismissal from service, therefore, his promotion was deferred and eventually, he was reinstated into service with back benefits while exonerating him from the charges, thus, he became entitled for proforma promotion from the date on which he would otherwise have been promoted with consequential benefits.
ii) Once an employee is reinstated in service after exoneration of charges against him, the period during which he remained dismissed, cannot be attributed as a fault on his part, but it was due to the order passed by the employer. An employee/civil servant whose wrongful dismissal has been set aside, goes back to his service as if he were never dismissed from service. The restitution of employee, in this context, means that there has been no discontinuance in his service and for all purposes he had never left his post.
iii) The concept of proforma promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his / her legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his / her right for such promotion or a legal restraint was posed against his / her claim owing to any departmental proceedings, inquiry etc., and the said obstacle is done away with ultimately. Then in such a situation his monetary loss and loss of rank is remedied through proforma promotion.

Conclusion: i) A civil servant is entitled to be promoted even after his retirement through awarding proforma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own.
ii) An employee/civil servant whose wrongful dismissal has been set aside, goes back to his service as if he were never dismissed from service. The restitution of employee, in this context, means that there has been no discontinuance in his service and for all purposes he had never left his post.
iii) The concept of proforma promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his / her legitimate turn due to any reason but not a fault of his own.

26. **Punjab Subordinate Judiciary Service Tribunal**
Muhammad Ameen Shehzad v. Lahore High Court, Lahore through Registrar
Service Appeal No.11 of 2021
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4145.pdf

Facts: Through instant appeal, appellant has assailed vires of order passed by respondent, whereby appellant's representation for grant of proforma promotion as Senior Civil Judge, was declined.

Issues: i) How the term "proforma promotion" can be defined?
ii) Who is entitled to claim proforma promotion?

Analysis: i) Needless to say that proforma promotion means predating of promotion of a civil servant with effect from the date of promotion of his juniors for the purpose of payment of arrears and fixation of pay.
ii) It means that a civil servant who was entitled to be promoted from a particular date, but for no fault of his own, was wrongfully prevented from rendering service in the higher post, is entitled for proforma promotion and payment of arrears of pay/allowances and re-fixation of pay.

Conclusion: i) Proforma promotion means predating of promotion of a civil servant with effect from the date of promotion of his juniors for the purpose of payment of arrears and fixation of pay.
ii) A civil servant can claim proforma promotion who was entitled to be promoted from a particular date, but for no fault of his own, was wrongfully prevented from rendering service in the higher post.

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27. **Lahore High Court**
S.M. Iqtidar-ul-Hassan Bukhari v. Lahore High Court, Lahore through its Registrar, etc.
Service Appeal No.10 of 2003
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4132.pdf

Facts: The petitioner filed an application for placing on record necessary documents in an appeal against an order passed by the respondent No.1, whereby appellant's representation for expunction of remarks recorded in his Annual Confidential Report was declined.

Issues: (i) Whether a person can be dubbed as corrupt in his Annual Confidential Report without any cogent material or justification for recording such remarks?
(ii) Whether mentioning of an overall average performance of a civil servant in

his ACR can be treated as adverse remarks?
(iii) Whether a Reporting Officer can record adverse remarks of a civil servant unless proper counseling or advice of his performance is communicated?

Analysis: (i) Describing a person as reported to be corrupt is a very serious allegation which can spoil his whole career as a civil servant. Therefore, while examining ACRs, where a person is dubbed as corrupt we have to see as to whether there was any cogent material or justification for recording the remarks. It is true that ordinarily, in recording remarks or opinions, full reasons need not be given but the conclusions have to be based on facts and when in contest, as in this case the concerned officer should have plausible explanation to justify his conclusions.
(ii) Record shows that in the ACR for the period in question, overall performance of the appellant was average which as per well settled principles of law cannot be treated as adverse remarks unless same are treated so and duly communicated to appellant.
(iii) Needless to say that an officer is to be informed if his Reporting Officer or Countersigning Officer is not satisfied with his work and the communication of such dissatisfaction with advice or warning should be prompt so that the officer may exterminate the fault and improve his performance. The Reporting Officer should not record adverse remarks of a civil servant unless proper counseling or advice of his performance is communicated. The civil servant must be apprised his weak points and advised to improve and then adverse remarks should be recorded if the concerned civil servant failed to improve despite counseling. As the purpose of counseling is to improve the performance of the officer and not to insult him and the advice given orally or in written form would be beneficial for the officer improving his performance.

Conclusion: (i) A person cannot be dubbed as corrupt in his Annual Confidential Report without any cogent material or justification for recording such remarks.
(ii) Mentioning of an overall average performance of a civil servant in his ACR cannot be treated as adverse remarks unless same are treated so and duly communicated to him.
(iii) A Reporting Officer should not record adverse remarks of a civil servant unless proper counseling or advice of his performance is communicated.

LATEST LEGISLATION/AMENDMENTS

1. Vide Act XXXIV of 2023 the President has given assent to the Act of Majlis-e-Shoora i.e "The Finance Act 2023".
2. Amendment in "The Elections (Amendment) Act, 2023" vide Act No. XXXV of 2023.
3. Amendment in "The Export Processing Zones Authority (Amendment) Act, 2023" vide Act No. XXXVI of 2023.

4. Vide notification no. 104 of 2023 the Governor of Punjab has pleased to make the amendments in the "Punjab Local Governments (Accounts) Rules 2017".
5. Vide notification No. 105 of 2023, "Policies for transfer/disposal of state land of Colonies Department, Board of Revenue, Punjab" were issue by the Government of the Punjab.
6. Vide notification no. 106 of 2023 the Governor of Punjab has pleased to determine the rates of royalty of the minerals produced and carried away from the licensed or leased areas.
7. Vide notification No. 107 of 2023, the Government of the Punjab has Drafted rules in The Punjab Motor Vehicles Rules, 1969, in rule 42, in sub-rule(1) in the table, in clause (c).
8. Vide notification No. 108 of 2023, the Government of the Punjab has Drafted rules in The Punjab Motor Vehicles Rules, 1969, in rule 47, in sub-rule(1) in Second Schedule, for Sr. No. 10.
9. Vide Ordinance No. I of 2023, the President has promulgated "The National Accountability (Amendment) Ordinance, 2023".

SELECTED ARTICLES

1. Journal of International Criminal Justice
https://academic.oup.com/jicj/advance-article-abstract/doi/10.1093/jicj/mqad024/7231099?redirectedFrom=fulltext

Crimes *without* Humanity?: Artificial Intelligence, Meaningful Human Control, and International Criminal Law by Guido Acquaviva

The development of autonomous weapons systems (AWS) and, more generally, the role of artificial intelligence in warfare, may come to pose unprecedented challenges to criminal law, including by making it harder to link harm to individuals who can be held responsible, due to the pivotal role of the concepts of actus reus, mens rea *and causation in that domain. In this context, the notion of meaningful human control has been proposed to address some of the challenges of ensuring accountability for serious violations of international humanitarian law. One possibility might be to link — conceptually, or even legally — meaningful human control with the 'control theory' propounded at the International Criminal Court to assign criminal responsibility. Under this theory, the ascription of criminal responsibility to an individual as a direct perpetrator requires an assessment of whether they enjoy an effective ability to decide on the commission of a crime. This article elaborates on some of the issues posed by this approach, proceeding then to consider the most 'extreme' instance of AWS, i.e. the deployment of swarms of drones operating autonomously and coordinating their behaviour in a decentralized manner.*

2. **Human Rights Law Review**
https://academic.oup.com/hrlr/article-abstract/23/3/ngad016/7232311?redirectedFrom=fulltext

The Silences of International Human Rights Law: The Need for a UN Treaty on Violence Against Women by Julie Ada Tchoukou

In the face of women's disproportionate experience of violence and the growing scholarly literature and advocacy on this issue, there is no international treaty recognising violence against women (VAW) as a human rights violation in and of itself. The Convention on the Elimination of Discrimination against Women (CEDAW) does not include a definition of gender-based violence, violence against women or even domestic violence. Many soft law documents address VAW, including the CEDAW committee's general recommendations. However, even though soft laws are persuasive in developing norms, their non-binding character effectively means that States cannot be held responsible for violations. Currently, to accommodate VAW within various treaties, certain 'jurisdictional gymnastics' must be done. This article argues that a critical re-characterization is necessary. The reality of women's lives in many parts of the world necessitates an effective international legal framework that explicitly defines VAW, in all its forms, as a human rights violation.

3. **Manupatra**
https://articles.manupatra.com/article-details/Determination-of-the-Legal-Identity-of-AI

Determination of the Legal Identity of AI by Rohit Bishnoi & Tushar Dutt Dave

In Roman law, the terms 'person' and 'personality' refer to other entities or groups with legal rights and responsibilities who could stand up for their rights through representation. There is no issue of individuality under Greek and British law after 1846 because animals and trees can have rights and duties. Slaves were not regarded as "persons" in ancient times since they could not exercise rights and responsibilities. According to Hindu law, a spiritual "sanyasi" who has given up the world loses all property rights. Therefore, everything and human have separate identities and different rights. Technological changes are currently changing people's perspectives on values, conduct, and goals. Artificial intelligence, also known as machine intelligence or deep learning, is a type of technology that is slowly infiltrating all aspects of society, from some of the most critical to the mundane. Artificial intelligence (AI) is a science and a collection of computing technologies influenced by how people use their neurological networks to perceive, remember, think, and act. These new technologies assist a variety of industries, but there is concern that they may be misapplied or used in unexpected and potentially dangerous ways. In this situation, any necessary innovation must be both socially desirable and defensible. The purpose of this research paper is to determine the legal identity of Artificial Intelligence. As stated above, it is pertinent to do so due to the increase in digital revolutions and increase in the need for artificial intelligence. This paper will provide insight to the readers about the validity of AI to spread awareness among them. The research paper presents an introduction to defining the meaning of AI

and its aspects. It is followed by the legal system which identified the rights and duties of artificial intelligence. The next section presents the benefits of artificial intelligence for a better future ahead. The last section deals with the challenges posed by artificial intelligence which can create obstructions in the legal identity of AI.

4. **Manupatra**
https://articles.manupatra.com/article-details/Evidentiary-value-of-Forensic-Accounting-Auditing-and-Investigation-in-Financial-Crimes

Evidentiary value of Forensic Accounting, Auditing, and Investigation in Financial Crimes by Divishyaa T

This paper discusses the conflict that prevails in the law of evidence concerning the expert witness. Section 451 to Section 512 of the Indian Evidence Act mentions the provision related to third-party witnesses, which are now referred to as an expert witness. The paper is an attempt at a qualitative approach to support the reader's conclusive analysis. The paper discusses the admissibility of forensic accounting evidence in courts and addresses the lacunae in the expert opinion infrastructure between criminal and commercial cases. The paper also examines the previous judicial pronouncements to project the weightage of an expert witness under Indian Law. This paper examines how forensic accounting can be used to collect evidence for use in court cases involving financial crimes. The problems with forensic accounting are discussed. Recommendations based on the incorporation and inclusion of expert witnesses in the matter of financial crimes in the Indian Context are discussed.

5. **Manupatra**
https://articles.manupatra.com/article-details/Right-to-Information-in-Private-Unaided-Institution

Right to Information in Private Unaided Institution by Advocate Manish Kumar

The right to Information Act was passed to ensure transparent governance and a government that is effective, responsible, and accountable. It helps to improve democracy by serving as a check on the actions and choices of the administration. But recently, a number of governmental tasks that are vital to the public and seen as state welfare tasks, like education, have been privatised. However, despite the fact that these duties are mostly carried out by private organisations, the government has always governed and exerted control over them because they are in the public interest. However, because these private organisations were not included in the scope of the Right to Information Act, their management was free to direct their operations as they saw fit. To include Private Unaided Schools in its purview, the Chief Information Commission (CIC) attempted to interpret and correlate the term "information." But the lack of an express provision could make it difficult to use the right to information against private unaided schools. This Paper will look at the Right to Information Act's clauses and the higher courts' and CIC's rulings that are pertinent to private unaided schools. A public authority or other organisations that are created, managed, or mainly supported by the government may be asked for information by citizens. However, it is still unclear whether the definition of Section 2(h) applies to private institutions established by non-governmental

organisations (NGOs) that are not subsidized by the government but are governed in part by it.
