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FORTNIGHTLY CASE LAW BULLETIN

(16-08-2023 to 31-08-2023)

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**
Commissioner Inland Revenue v. M/s RYK Mills
Civil Petitions No.1842-L & 1843-L of 2022
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1842_l_2022.pdf

Facts: The petitioner seeks leave to appeal against order whereby the Excise Tax References ("ETRs") filed by the petitioner department were dismissed by the High Court.

Issues: i) What is the significance and purpose of a show cause notice?
ii) Whether the principles of natural justice apply for the purposes of issuance of show cause notices?
iii) What is the effect if a specific allegation is not put to the recipient of a show cause?
iv) Whether a fresh or supplementary notice can be issued to provide a more detailed or accurate statement of the issues?
v) Which is the highest authority for factual determination in tax matters?

Analysis: i) A show cause notice is a formal communication from an authority, informing the recipient of an alleged violation or non-compliance with a law, and providing them with an opportunity to respond to the said allegations. Therefore, a show cause notice is an important tool for enforcing the law, and to ensure that the recipient is given a fair and transparent opportunity to present their case before any adverse order affecting their rights and interests is passed.
ii) It embodies the principle of natural justice, which requires that parties to a dispute be given a fair hearing before any decision is made that may affect their rights or interests. The principles of due process and fairness mandate that the recipient of a show cause notice be given adequate time to respond and present their case, that they be given access to relevant evidence and information, and that they be given the opportunity to be heard before any action is taken against them. This ensures that the decision-maker is not biased, that the decision is based on the facts of the case and the relevant law, and that the recipient's rights and interests are protected. There are other principles of natural justice that also apply for the purposes of issuance of show cause notices, including the principle of impartiality, which requires that the decision maker be impartial, and the principle of reasons, which requires that the decision-maker provide reasons for their decision.
iii) When a specific allegation is not put to the recipient, thereby failing to provide the recipient with the opportunity to respond to the same, any adjudication on the said allegation would be against the right of due process and fair trial and therefore, in contravention to Articles 4 and 10A of the Constitution.
iv) Where there has been a significant change in the circumstances or situation that led to the issuance of the initial show cause notice, a fresh or supplementary

show cause notice may be required to address these changes; where the original notice was defective or incomplete, a fresh or supplementary notice would be required to be issued to provide a more detailed or accurate statement of the issues; and where the original notice does not fully address all of the issues or violations that need to be addressed, a fresh or supplementary notice should be issued to cover any outstanding matters. Ultimately, the decision to issue a fresh show cause notice should be predicated on a thorough and careful evaluation of the facts and circumstances of each case, guaranteeing that the principles of due process and fair trial are upheld.

v) It is now settled law that the highest authority for factual determination in tax matters is the Tribunal.

Conclusion: i) A show cause notice is an important tool for enforcing the law, and to ensure that the recipient is given a fair and transparent opportunity to present their case before any adverse order affecting their rights and interests is passed.

ii) The principles of natural justice that also apply for the purposes of issuance of show cause notices.

iii) When a specific allegation is not put to the recipient, any adjudication on the said allegation would be against the right of due process and fair trial.

iv) Where the original notice is defective or incomplete, a fresh or supplementary notice would be required to be issued to provide a more detailed or accurate statement of the issues.

v) The highest authority for factual determination in tax matters is the Tribunal.

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2. **Supreme Court of Pakistan**

The State through Deputy Director Law, Regional Directorate Anti-Narcotics Force, Punjab v. Tasnim Jalal Goraya (deceased) through LRs.

Criminal Review Petition No.05/2020

Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik

https://www.supremecourt.gov.pk/downloads_judgements/crl.r.p._5_2020.pdf

Facts: Through this criminal review petition the petitioner sought review of judgment passed in Criminal Appeal by Supreme Court on the main ground that the instant matter stood dismissed by this Court and thereafter Criminal. Appeal could not have been decided through judgment under review.

Issue: Whether offence committed in the foreign country prior to promulgation of the Control of Narcotic Substances Ordinance of 1995 attracts its provisions and the same aspect once dealt with can be reargued in review jurisdiction?

Analysis: Section 35-C of the Dangerous Drugs Act, 1930 does not envisage foreign conviction, which was for the first time introduced in section 37 of the Ordinance in 1995, hence the offence committed in the USA in the year 1993 could not possibly attract section 37 of the Ordinance of 1995. This aspect has been dealt

with in the judgment under review in great detail and the petitioner cannot be allowed to re-argue the case in review jurisdiction…

Conclusion: The offence committed in the foreign country prior to promulgation of the Control of Narcotic Substances Ordinance of 1995 does not attract its provisions and the same aspect once dealt with can also not be re-argued in review jurisdiction.

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3. **Supreme Court of Pakistan**
Sindh Revenue Board through its Secretary Government of Sindh, Karachi v. M/s Quick Food Industries (Pvt) Limited and another etc.
Civil Petition No. 414 of 2021 etc.
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._414_2021.pdf

Facts: A dispute arose between the parties on the interpretation of the value of taxable services. The Respondents filed the petitions before the High Court challenging inclusion of salaries in the gross amount charged in the levy of sales tax on services. The High Court concluded that the tax is to be levied only on the value of service, and cannot include salaries as they are not part of the service itself. These Civil Petitions impugn judgment passed by the High Court of Sindh, Karachi, along with its subsequent orders.

Issues: i) Whether salaries paid by the service provider to the security and manpower should be included while calculating the value of taxable service for the supply of security and manpower under the Sindh Sales Tax on Services Act, 2011 since it is a part of invoiced amount which shows the gross amount charged by the service provider for the service?
ii) What is purpose of delegated legislation?
iii) Whether tax can be levied through a delegated legislation if it is not leviable under the charging provision of the fiscal statute?

Analysis: i) Upon reviewing provisions of section 3 to 5 & 8 of the Sindh Sales Tax on Services Act, 2011 in conjunction, it becomes evident that the amount of sales tax on services levied is based purely on the value charged by the service provider for the service it renders, which value is determined by the service provider itself, establishing a connection between the consideration paid and the service provided. Moreover, for a service to be taxable, it must be listed in the First Schedule and involve an economic activity conducted as a business, profession, or trade, whether or not for profit. The service is treated under the Act as an economic activity and will not include the activities of the employee to carry out the service. In the provision of a service, some expenses are expenses incurred on behalf of the service recipients which are later reimbursed to the service provider, meaning that these expenses have no nexus with the service or its value. So far as the inclusion of salaries and allowances in the invoice is concerned, it is the Rules that require that the invoices be raised by the service provider to include all

required particulars such as the name, address, SNTN, description, tariff heading and other details of service provided, value exclusive Sindh sales tax, rate of Sindh sales tax, amount of Sindh sales tax, value inclusive of Sindh sales tax, etc. Therefore, the service provider has no choice but to include all of these amounts along with the amount for the value of the service as charged. However, inclusion of all such amounts on the invoice, does not warrant taxation on the total invoiced amount under the Act as the total invoiced amount does not constitute the gross amount charged on services rendered, and goes beyond the scope of tax. Therefore, the sales tax on services can only be levied on consideration paid for service provided or rendered, and salaries paid by the employer to the employees are not part of the service rendered for this purpose, and so are not taxable…

ii) Delegated legislation is intended to enforce the law and advance the purpose of the underlying legislation, without overriding it and while *minutiae* could be filled in, the parent statute could neither be added to nor subtracted from. It is settled law that if a rule goes beyond what the parent statute contemplates, it must yield to the statute.

iii) Especially in tax cases, where a tax could not be levied through a delegated legislation until and unless it was leviable under the charging provision of the fiscal statute. Hence, the scope or value of the tax could not be expanded than what the Act has proscribed through the Rules. So, irrespective of the amendments through which the provisos were omitted, salaries could not be included in the gross amount charged or taxed. Even if the amendments were brought about only to bring the salaries paid to the labour and manpower with the preview of the tax, the same still could not have been allowed being not only beyond the scope of the Act but also being inconsistent with it.

Conclusion: i) The sales tax on services can only be levied on consideration paid for service provided or rendered, and salaries paid by the employer to the employees are not part of the service rendered for this purpose, and so are not taxable. Inclusion of all amounts on the invoice, does not warrant taxation on the total invoiced amount under the Act as the total invoiced amount does not constitute the gross amount charged on services rendered, and goes beyond the scope of tax.

ii) Delegated legislation is intended to enforce the law and advance the purpose of the underlying legislature, without overriding it.

iii) A tax cannot be levied through a delegated legislation until and unless it was leviable under the charging provision of the fiscal statute.

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4. **Supreme Court of Pakistan**
Collector of Customs, Customs House, Lahore and another v. Wasim Radio Traders, Lahore, etc.
Civil Petitions No. 323-L to 326-L of 2014
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._323_l_2014.pdf

Facts: These Civil Petitions for leave to appeal have arisen out of orders passed by Lahore High Court involving a common question of law. The respondents imported various consignments for which they sought clearance under the Customs Act, 1969. The imported goods were assessed on the basis of Valuation Rulings. The respondents disputed the assessment made on the basis of given Valuation Rulings under section 25D of the Act.

Issues: i) Whether the Valuation Rulings issued under Section 25A of the Act are binding?
ii) What is the process in case of any conflict in the customs value?
iii) Whether section 81 of the Act can be invoked where a Valuation Ruling has been issued under section 25A of Act?
iv) Whether section 81 of the Act can be invoked as of right?

Analysis: i) The Valuation Rulings issued under Section 25 of the Act is a notified ruling, which is applicable and binding until revised or rescinded by the competent authority.
ii) Sub-section 2A of section 25A categorically provides that where there is a conflict in the customs value, the Director General Valuation shall determine the applicable customs value.
iii) This section is invoked where the officer of Customs, at the time of checking the goods declaration, is unable to satisfy themselves as to the correctness of assessment of the goods, as the goods require chemical or other testing or further enquiry. Accordingly, this section cannot apply where a valuation ruling has been issued as the valuation ruling represents the declared value for the assessment of the goods or category of goods, which the importer is required to pay. As the Valuation Rulings is a formal decision providing the assessment value of the goods the requirements of section 81 of the Act per se are not invoked. Consequently, where the goods are pre-assessed or capable of assessment, Section 81 does not apply.
iv) Section 81 of the Act cannot be claimed as of right because the conditions stipulated in section 81 of the Act have to be attracted, which means that the custom officer has to find that the goods cannot be assessed and has to conclude that some form of testing or further inquiry is necessary.

Conclusion: i) The Valuation Rulings issued under Section 25A of the Act are binding.
ii) The Director General Valuation shall determine the applicable customs value.
iii) Section 81 of the Act cannot be invoked where a Valuation Ruling has been issued under section 25A of Act.
iv) Section 81 of the Act cannot be claimed as of right.

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5. **Supreme Court of Pakistan**
Commissioner of Income Tax, Companies Zone, Islamabad v. Fauji Foundation Limited
Civil Petition No. 3121 to 3125 of 2021
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._3121_2021.pdf

Facts: Petitioner through these Civil Petitions has sought leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, against the judgment dated 18.01.2021, passed by the Islamabad High Court, Islamabad (High Court), whereby Income Tax References No.06 of 2003 and 53 to 55 of 2007 filed by the Petitioner, were dismissed.

Issue: Whether the income from interest on bank deposits should be considered and taxed as income from other sources or as income from business?

Analysis: … Where the dispute relates to determining whether it is business income or income from other sources, the facts have to be duly considered so as to determine the objects of the assessee company, its functions and its memorandum of association or foundation documents. Once the primary business and functions are verified, the business activities need to be assessed to see it in the perspective of the declared objects and functions. Hence, the actual work of the assessee, its tax returns and how it treats its income has to be considered, to determine whether its income is business income or income from other sources… Since the Foundation is a welfare Trust…the Foundation can invest in industrial undertakings or otherwise, and any surplus income from these undertakings are to be utilized for the benefit of the Foundation's beneficiaries. In this context interest from bank deposits is also surplus income, used to carry out the objectives of the Foundation. Hence, it is business income and not income from other sources.

Conclusion: Income from interest on bank deposits will be considered as income from business.

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6. **Supreme Court of Pakistan**
Shamshad Bibi, etc. v. Riasat Ali, etc.
Civil Petition No.1692-L of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1692_l_2022.pdf

Facts: Through this civil petition the petitioner has sought leave against the order, whereby the High Court allowed the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 and has remanded the matter to the trial court for recording of additional evidence. The civil revision was also subsequently allowed and the concurrent findings of the two competent courts were set-aside.

Issues: i) What are the eventualities to use the powers by the appellate court under Rule

27 of Order XLI CPC to allow additional evidence?
ii) What is the procedure for taking additional evidence?
iii) Whether power under Order XLI Rule 27 of the CPC is intended to be exercised to fill up lacunas?

Analysis: i) Rule 27 of Order XLI CPC empowers the appellate Court to allow additional evidence to be adduced, whether oral or documentary, after the recording of reasons. This power is circumscribed by three eventualities described in clauses (a) to (c) i.e. if the court, from whose decree the appeal has been preferred, has refused to admit evidence which ought to have been admitted; the appellate court, on being satisfied that the additional evidence was available but could not be produced before the trial court for reasons beyond the control of the party seeking its production; or the appellate court itself requires any such evidence so as to enable it to pronounce a judgment.
ii) Rule 28 of Order XLI describes the procedure for taking additional evidence and provides that the appellate court may either take such evidence or direct the court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the appellate court. Rule 29 of Order XLI further provides that where additional evidence is directed or allowed to be taken, the appellate court shall specify the points to which evidence is to be confined and record in its proceedings the points so specified.
iii) The power under Order XLI Rule 27 of the CPC is not intended to be exercised to fill up lacunas, or to make up any deficiency in the case, nor to provide an opportunity to the party to raise a new plea. The power essentially has to be exercised cautiously and sparingly and not to facilitate an indolent litigant. The court, before exercising its jurisdiction of allowing the recording of additional evidence, must be satisfied that the document sought to be adduced in evidence is not of the nature that could be easily fabricated, tampered or manufactured.

Conclusion: i) The powers of the appellate court under Rule 27 of Order XLI CPC to allow additional evidence must be used into exceptional eventualities as mentioned in analysis portion.
ii) Rule 28 and 29 of Order XLI describes the procedure for taking additional evidence.
iii) Power under Order XLI Rule 27 of the CPC is not intended to be exercised to fill up lacunas.

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7. **Supreme Court of Pakistan**
Mst. Faheeman Begum (deceased) through L.Rs and others v. Islam-ud-Din (deceased) through L.Rs and others
Civil Appeal No.1300 of 2019
Mr. Justice Sardar Tariq Masood, **Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1300_2019.pdf

Facts: This Civil Appeal is filed to challenge the judgment passed by the High Court, in

civil revision whereby the concurrent findings recorded by the lower fora were set aside and the suit of the instant appellants was dismissed.

Issues: i) Whether concurrent findings recorded by the lower fora can be treated as being so sacrosanct or sanctified and cannot be reversed by the High Court in revisional jurisdiction?
ii) Whether High Court can even exercise its suo motu jurisdiction to correct any jurisdictive errors committed by a subordinate Courts?
iii) Whether any party can challenge the legality of the mutation on a vague allegation of fraud when the mutation had been given effect in the revenue record?

Analysis: i) If the concurrent findings recorded by the lower fora are found to be in violation of law, or based on misreading or non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified that cannot be reversed by the High Court in revisional jurisdiction which is pre-eminently corrective and supervisory in nature.
ii) In fact, the Court in its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 ("CPC"), can even exercise its suo motu jurisdiction to correct any jurisdictive errors committed by a subordinate Court to ensure strict adherence to the safe administration of justice. The jurisdiction vested in the High Court under Section 115, CPC is to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law, or with material irregularity, or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality in the judgment of the nature which may have a material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law.
iii) The instant appellant had no locus standi to challenge the legality of the mutation on a vague allegation of fraud when (deceased) had never challenged the same in her life time and the mutation had been given effect in the revenue record.

Conclusion: i) If the concurrent findings recorded by the lower fora are found to be in violation of law, or based on misreading or non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified and can be reversed by the High Court in revisional jurisdiction.
ii) High Court can even exercise its suo motu jurisdiction to correct any jurisdictive errors committed by a subordinate Courts.
iii) No party can challenge the legality of the mutation on a vague allegation of fraud when (deceased) had never challenged the same in his/her life time and the mutation had been given effect in the revenue record.

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8. **Supreme Court of Pakistan**
Mst. Musarat Parveen v. Muhammad Yousaf and others
Civil Petition No.174-Q of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._174_q_2021.pdf

Facts: The suit filed by the predecessor of respondents No. 1-a to 1-f was decreed by the Trial Court. Application under Section 12 (2) CPC filed by the petitioner for setting aside the judgment and decree was dismissed and the objections filed by the petitioner on the execution were overruled. Being aggrieved, the petitioner filed appeal which was dismissed being time barred. Civil Revision filed by petitioner was also dismissed. Hence this civil petition for leave to appeal has been filed.

Issues: i) Whether power to condone the delay and grant an extension of time under section 5 of the Limitation Act, 1908 is discretionary?
ii) Whether any party can be permitted to choose his own time for the purpose of bringing forth a legal action at his own whim and desire?
iii) Whether law of limitation confer a right or ordains an impediment to enforce an existing right?

Analysis: i) This Court in case of Dr. Syed Sibtain Raza Naqvi Vs. Hydrocarbon Development and others (2012 SCMR 377) held that the two expressions "due diligence" and "good faith" in section 14 of Limitation Act, 1908 do not occur in section 5 of the Limitation Act, 1908 which enjoins only "sufficient cause". The power to condone the delay and grant an extension of time under section 5 of the Limitation Act, 1908 is discretionary.
ii) In the case of Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself.
iii) In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly

set the law in motion for the redress or remained indolent. In the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held by this Court that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact, this law has been premeditated to dissuade the claims which have become stale by efflux of time.

Conclusion: i) The power to condone the delay and grant an extension of time under section 5 of the Limitation Act, 1908 is discretionary.
ii) Any party cannot be permitted to choose his own time for the purpose of bringing forth a legal action at his own whim and desire.
iii) Law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right.

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9. **Supreme Court of Pakistan**
Syeda Ayesha Subhani v. The State, etc.
Criminal Petition No. 588-L of 2023
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._588_l_2023.pdf

Facts: Through this petition, the petitioner/complainant seeks leave to appeal against an order of High Court, whereby the High Court has allowed the post-arrest bail application of the respondent/accused and granted him bail on the statutory ground of delay in the conclusion of the trial. The petitioner prays for setting aside the order of the High Court and cancellation of the bail granted to the respondent.

Issues: i) Whether delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his first bail application on the statutory ground of delay, can be considered a fresh ground?
ii) Which interpretation of a provision of a criminal statute should be preferred when two interpretations are reasonably possible?
iii) What is purpose and objective of the 3rd proviso to Section 497(1), CrPC and when it becomes operative?

Analysis: i) The argument of the learned counsel for the petitioner is that once a bail application of the accused on the statutory ground of delay is dismissed, holding the accused responsible for causing the delay in the conclusion of the trial, his second bail application on the same ground for any subsequent period cannot be entertained. The argument does not appeal to us. Firstly, the entitlement of an accused to post-arrest bail on the statutory ground of delay in the conclusion of the trial is time-based. If the delay exceeds a year for no fault of the accused, in offences punishable other than death, the right of the accused to post-arrest bail ripens. This right continues to ripen for each period of one year starting from the arrest of the accused if he satisfies the court that he is not at fault for the delay in a

particular period of one year unless his case falls within the 4th proviso to Section 497(1), Cr.P.C. Secondly, denying this recurring right to post-arrest bail to the accused would, in our opinion, amount to giving the prosecution a license to delay the conclusion of the trial for an unlimited period of time after the dismissal of the first bail application of the accused on the statutory ground of delay. The accused would, in such an eventuality, be left confined as an under trial prisoner for an unlimited period of time at the mercy of the prosecution to conclude the trial as and when it pleases to do so. Thirdly, the accused shall have no incentive to attend the trial regularly and cooperate in the early conclusion thereof, after the dismissal of his first bail application, if his subsequent orderly conduct cannot entitle him to post-arrest bail despite non-conclusion of the trial for no fault of his in the next one year. Such a situation would be absolutely antithetical to the constitutional scheme of fundamental rights and make a mockery of the rights to liberty, fair trial and dignity of the accused guaranteed under the Constitution…We are, therefore, of the opinion that the delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his bail application on the statutory ground of delay, is to be considered a "fresh ground", not earlier available to him, for entertaining his second bail application, within the meaning and scope of that term as elaborated in Nazir Ahmed.

ii) It is a well-settled principle of interpretation in our jurisdiction that if two interpretations of a provision of a criminal statute are reasonably possible, the one that is favourable to the accused, not the prosecution, should be preferred.

iii) As the statutory right to be released on bail on the ground of delay in the conclusion of the trial flows from the constitutional rights to liberty, fair trial and dignity guaranteed under Articles 9, 10A and 14 of the Constitution of Pakistan, the provisions of the 3rd proviso must be fashioned in a manner that is progressive and expansive of these rights of the accused, who is still under trial, and his guilt being not yet proven, has in his favour the presumption of innocence…The purpose and objective of the 3rd proviso, as observed by this Court in Shakeel Shah, is to ensure that the trial of an accused is conducted expeditiously and that the pre-conviction detention of a person accused of an offence not punishable with death does not extend beyond the period of one year. If the trial in such an offence is not concluded within a period of one year for no fault of the accused, the statutory right to be released on bail ripens in his favour unless his case falls within any of the clauses of the 4th proviso. This right of the accused creates a corresponding duty upon the prosecution to conclude the trial within the specified period of one year. If any act or omission of the accused hinders the conclusion of the trial within a period of one year, no such right will accrue to him and he would not be entitled to be released on bail on the statutory ground of delay in conclusion of the trial. But if after the rejection of his plea for bail on this ground, the accused corrects himself and abstains from doing any such act or omission in the year following such rejection but the prosecution fails to perform its duty in concluding the trial within the specified period of one year, a

fresh right, that is to say, a fresh ground, would accrue in his favour. The 3rd proviso to Section 497, CrPC, thus, becomes operative as and when a period of one year passes but the trial is not concluded for no fault of the accused.

Conclusion: i) Delay in the conclusion of the trial that occurs for no fault of the accused in the year following the rejection of his first bail application on the statutory ground of delay, can be considered a fresh ground.
ii) If two interpretations of a provision of a criminal statute are reasonably possible, the one that is favourable to the accused, not the prosecution, should be preferred.
iii) The purpose and objective of the 3rd proviso to Section 497(1), CrPC is to ensure that the trial of an accused is conducted expeditiously and it becomes operative as and when a period of one year passes but the trial is not concluded for no fault of the accused.

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10. **Supreme Court of Pakistan**
Barkhurdar v. The State and Another
Criminal Petition No. 733-L of 2018
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._733_l_2018.pdf

Facts: The learned Trial Court convicted the petitioner under Section 9 (c) of the CNSA, 1997, as ten kilograms poppy plant was recovered from him. The learned High Court vide impugned judgment maintained the conviction and sentence recorded by the learned Trial Court.

Issues: i) What exactly is the substance termed as '*Poast*'?
ii) Whether cultivation of poppy straw on all counts can be considered a criminal act?

Analysis: i) As per definition clause of Control of Narcotics Substances Act, 1997("CNSA") after mowing, all parts of the poppy plant except seeds are considered to be poppy straw. It is only the basket, sack or pouch also known as *'Doda'*, excluding the seeds, which contains narcotic substance and all poppy straw may not necessarily be the '*poast'/doda* because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds.
ii) In common parlance, it has been seen that often stems and leaves of the poppy plants are used as animal food. The plant can reach the height of about 1-5 meters (3-16 feet). The poppy plant is a spontaneous plant and is often seen grown on roadsides. Poppy straw is derived from the plant Papaver somniferum, which has been cultivated in many countries of Europe and Asia for centuries. This has medicinal impact as well, which is largely used as a tonic for wellness of nervous system. The purpose of its cultivation was actually the production of poppy seeds.

The latter is used as a food stuff and as a raw material for manufacturing poppy-seed oil, which is used for making various varnishes, paints and soaps etc.

Conclusion: i) It is clear that '*Poast'* is the name given to that part of a poppy plant which has the shape of a basket, sack or pouch and it contains the seeds of such plant.
ii) Cultivation of poppy straw on all counts, unless it is proved that it is made for the sole purpose of extracting narcotics after a proper method, cannot be considered a criminal act.

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11. **Supreme Court of Pakistan**
Jamaluddin Rabail v. The State
Criminal Petition Nos. 41-K & 42-K OF 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._41_k_2023%20etc.pdf

Facts: Through the instant petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order passed by the learned Single Judge of the learned High Court of Sindh, with a prayer to grant pre-arrest bail (in Criminal Petition No. 41- K/2023) and post-arrest bail (in Criminal Petition No. 42-K/2023) in case registered under Sections 324/148/149 PPC.

Issues: i) Whether plea of consistency is applicable in a case of pre-arrest bail based on post arrest bail already granted to co-accused, particularly when the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings?
ii) Whether liberty of a person could be taken away merely on bald and vague allegations?

Analysis: i) As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner Jamaluddin because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency. (…) The Courts of this country are not meant to send the people behind the bars rather the purpose of the entire judicial system is to protect the liberty of the citizen against whom baseless accusation has been leveled keeping itself within the four corners of the law. The rational behind this principle would be defeated if on a technical ground a person is sent behind the bars.
ii) Judiciary as the custodian of the fundamental rights has been charged with a duty as a watch dog to see that none of the fundamental rights of the people are

abridged or taken away. This court in a number of cases has held that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.

Conclusions: i) Yes, the plea of consistency is applicable in a case of pre-arrest bail on the basis of post arrest bail already granted to co-accused who is ascribed with similar role, as if the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency.
ii) Liberty of a person cannot be taken away merely on bald and vague allegations.

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12. **Supreme Court of Pakistan**
Munawar Bibi v. The State
Criminal Petition No. 90-K OF 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._90_k_2023.pdf

Facts: The petitioner has assailed the order passed by the Single Judge of the High Court of Sindh, with a prayer to grant pre-arrest bail in case registered under Section 379 PPC.

Issues: i) Whether plea of consistency is applicable in a case of pre-arrest bail based on post arrest bail already granted to co-accused who is ascribed with similar role?
ii) Whether bail can be granted in offences not falling within the prohibitory clause as a rule and refusal is an exception?
iii) Whether the merits of the case can be touched upon by the Court granting pre-arrest bail?

Analysis: i) The co-accused of the petitioner, who was ascribed the similar role, has been granted post-arrest bail by the court of competent jurisdiction. In these circumstances any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be only limited up to the arrest of the petitioner because of the reason that soon after her arrest she would be entitled for the concession of post-arrest bail on the plea of consistency.
ii) The maximum punishment provided under the statute for the offence under Section 379 PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception.
iii) It is now established that while granting pre- arrest bail, the merits of the case can be touched upon by the Court.

Conclusions: i) Yes, the plea of consistency is applicable in a case of pre-arrest bail on the basis of post arrest bail already granted to co-accused who is ascribed with similar role.
ii) It is settled law that grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception.
iii) Yes, it is now established that while granting pre- arrest bail, the merits of the case can be touched upon by the Court.

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13. **Supreme Court of Pakistan**
Saad Zia v. The State etc.
Criminal Petition No. 150-L of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._150_l_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single Judge of the learned High Court, with a prayer to grant pre-arrest bail in case under Sections 302/324/148/149 PPC, in the interest of safe administration of criminal justice.

Issues: i) Whether any person nominated in the crime report can be dubbed as an accused?
ii) Whether absconsion can be made a ground to discard the relief sought by any accused?

Analysis: i) This is established principle of law that mere the fact that a person is nominated in the crime report does not dub him as an accused unless and until during the course of investigation the accusation against the said person is found to be correct.
ii) It is settled law that absconsion cannot be viewed as a proof for the offence. Mere absconsion cannot be made a ground to discard the relief sought for as disappearance of a person after the occurrence is but natural if he is involved in a murder case rightly or wrongly.

Conclusion: i) Any person nominated in the crime report cannot be dubbed as an accused.
ii) Absconsion cannot be made a ground to discard the relief sought by any accused.

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14. **Supreme Court of Pakistan**
Zafar Nawaz v. The State and another
Criminal Petition No. 717 of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._717_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by High

Court, with a prayer to grant post-arrest bail in case registered under Section 489-F PPC, in the interest of safe administration of criminal justice.

Issues: i) Whether grant of bail in the offences not falling within the prohibitory clause is a rule and there is any exception?
ii) Whether mere registration of other criminal cases of same nature against an accused disentitles him for the grant of bail?

Analysis: i) It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception.
ii) So far as the argument of the learned Law Officer that other cases of similar nature have been registered against the petitioner is concerned, mere registration of other criminal cases against an accused does not disentitle him for the grant of bail if on merits he has a prima facie case.

Conclusion: i) Grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception.
ii) Mere registration of other criminal cases against an accused does not disentitle him for the grant of bail if on merits he has a prima facie case.

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15. **Supreme Court of Pakistan**
Muhammad Aziz @ Mana v. The State etc.
Criminal Petition No. 62-L OF 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi , Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._62_l_2023.pdf

Facts: Through the instant petition u/A 185(3) of the Constitution, the petitioner has assailed the order passed by the learned Single Judge of the learned Lahore High Court with a prayer to grant pre-arrest bail in case FIR u/s 381/411.

Issue: Whether merits of the case may be touched upon by the Court while deciding pre-arrest bail?

Analysis: It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. Liberty of a person is a precious right which cannot be taken away without exceptional foundations … the possibility cannot be ruled out that the petitioner has been involved in the case by throwing a wider net by the complainant. Mere allegation of causing huge loss is no ground to decline bail to an accused. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court.

Conclusion: Merits of the case may be touched upon while deciding petition for grant of pre-arrest bail.

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16. **Supreme Court of Pakistan**
Abdul Rasheed v. The State and another
Criminal Petition. No. 294-L of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._294_l_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, whilst assailing the order of the learned Lahore High Court, Lahore, the petitioner has prayed for pre-arrest bail in case registered under Section 489-F PPC.

Issues: i) What would be effect of delay in registration of FIR under Section 489-F PPC, particularly when accused claims that he had given cheques in question to complainant on account of guarantee in connection with their joint business?
ii) Whether the absconsion alone can be made basis to decline relief of pre-arrest bail?

Analysis: i) If the complainant does not lodge FIR and remains quiet for three years after dishonoring of the cheques in question, his such conduct prima facie would support the stance of accused that cheques in question were given by him to complainant as a guarantee in connection with their joint business and the same were not meant for repayment of loan or fulfillment of an obligation within the meaning of Section 489-F PPC.
ii) It is settled law that absconsion cannot be viewed as a proof for the offence.

Conclusion: i) In the event of delay in registration of FIR under Section 489-F PPC and counter claim of accused that cheques in question were given by him to complainant on account of guarantee in connection with their joint business, the question of issuing said cheques towards repayment of loan or fulfillment of an obligation within the meaning of Section 489-F PPC can only be resolved by the learned Trial Court after recording of evidence.
ii) The absconsion alone cannot be made basis to decline relief of pre-arrest bail.

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17. **Supreme Court of Pakistan**
Muhammad Aslam v. The State
Criminal Petition No. 789 of 2023.
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._789_2023.pdf

Facts: The petitioner assailed an order passed by the Peshawar High Court, Peshawar, with a prayer to grant post-arrest bail in case FIR for offences under Sections 9(1) 3e, 6e, 9(2) 5-15 of Control of Narcotic Substances Act, 1997.

Issues: Whether the plea of lack of conscious knowledge by an accused passenger regarding the presence of narcotics in a car is justified for grant of post-arrest bail

when both the accused passenger and the co-accused driver belonged to a disciplined force and posted at same place at the relevant time?

Analysis: Nothing could be brought on record by the petitioner to suggest that the Police had any malice to falsely involve him in the present case. During the course of arguments, learned counsel contended that petitioner was merely sitting on the front seat of the car and the narcotics were not in his conscious knowledge. We have noted that the learned High Court has taken note of this argument and has rightly held that the "petitioner and the driver of the vehicle both belong to the disciplined forcethat is Pak Army and at the relevant time both were posted at the same place, therefore, the impugned transaction being a joint venture cannot be overruled at the moment."

Conclusion: The plea of lack of conscious knowledge by an accused passenger regarding the presence of narcotics in a car is not justified for grant of post-arrest bail when both the accused passenger and the co-accused driver belonged to a disciplined force and posted at same place at the relevant time.

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18. **Supreme Court of Pakistan**
Atta Ul Mustafa v The State & another
Criminal Petition No. 596-L of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._596_l_2022.pdf

Facts: The petitioner/accused has been convicted by the trial court in offences under sections 376-II/337-J, PPC. Then he filed his appeal before the High Court which was dismissed. Now, through this constitutional petition, filed under article 185(3), the petitioner has assailed the decision of the High Court.

Issues: i) Whether the courts can solely rely on the testimony of the victim of a sexual assault to convict the accused?
ii) What is the strict condition to rely upon the testimony of victim of sexual offence?
iii) Whether D.N.A, report can be treated as primary evidence?
iv) What is the duty of court, if the story narrated by the sexual offence victim, does not appeal to reason to the mind of a prudent man?

Analysis: i) It is a well settled that the testimony of a victim in cases of sexual offences is vital unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to solely rely on the testimony of the victim of a sexual assault to convict the accused.
ii) The strict condition for relying upon testimony of victim is that the same shall reflect that it is independent, unbiased and straightforward to establish the accusation against the accused and if the court finds it difficult to accept victim's version, it may seek corroboration from some evidence which lends assurance to

victim's version.
iii) The D.N.A, report cannot be treated as primary evidence and can only be relied upon for the purpose of corroboration.
iv) If the story narrated by the sexual offence victim does not appeal to reason to the mind of a prudent man then the court is duty bound to weigh the other materials and evidence on record to come to the conclusion of guilt or otherwise of the accused.

Conclusion: i) The courts can solely rely on the testimony of the victim of a sexual assault to convict the accused.
ii) The strict condition for relying upon testimony of victim is that the same shall reflect that it is independent, unbiased and straightforward to establish the accusation against the accused.
iii) D.N.A, report cannot be treated as primary evidence.
iv) If the story narrated by the sexual offence victim does not appeal to reason to the mind of a prudent man then the court is duty bound to weigh the other materials.

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19. **Supreme Court of Pakistan**
Abdul Rehman v. The State etc.
Criminal Petition No. 611-L of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._611_l_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the Single Judge of the High Court with a prayer to grant pre-arrest bail in the interest of safe administration of criminal justice.

Issues: i) Whether liberty of a person can be taken away merely on bald and vague allegations?
ii) Whether the merits of the case can be touched by the court while granting pre-arrest bail?

Analysis: i) It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.
ii) It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court.

Conclusion: i) Liberty of a person cannot be taken away merely on bald and vague allegations.
ii) The merits of the case can be touched upon by the court while granting pre-arrest bail.

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20. **Supreme Court of Pakistan**
Noman Khaliq v. The State and another
Criminal Petition No. 714 of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._714_2023.pdf

Facts: The petitioner assailed an order passed by the Islamabad High Court, Islamabad, with a prayer to grant post arrest bail in case registered under Section 489-F PPC.

Issues: i) Whether section 489-F PPC can be used as a tool for recovery of amount?
ii) Whether bail can be refused in offences not falling in prohibitory clause and liberty of a person can be taken away?
iii) Whether absconsion of an accused can be viewed as a proof of offence and same can be made ground to discard the relief sought?

Analysis: i) Supreme Court in the case of Abdul Saboor Vs. The State (2022 SCMR 592) has categorically held that Section 489-F of PPC is not a provision which is intended by the Legislature to be used for recovery of an alleged amount, rather for recovery of any amount, civil proceedings provide remedies, *inter alia*, under Order XXXVII of CPC.
ii) It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. [Supreme] Court in a number of cases has held that liberty of a person is a precious right which cannot be taken away without exceptional foundations.
iii) It is settled law that absconsion cannot be viewed as a proof for the offence and the same alone cannot be made a ground to discard the relief sought for.

Conclusion: i) Section 489-F PPC cannot be used as a tool for recovery of amount.
ii) Bail cannot be refused in the offences not falling within the prohibitory clause and liberty of a person is a precious right which cannot be taken away without exceptional foundations.
iii) Absconsion of an accused cannot be viewed as a proof for the offence and the same alone cannot be made a ground to discard the relief sought for.

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21. **Supreme Court of Pakistan**
Ch. Saeed Ahmed Khalil v. The State etc.
Criminal Petition. No. 701 of 2023
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._701_2023.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single Judge of the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case FIR registered under Sections 420/468/471 PPC.

Issues: i) If accused and his family members are nominated by complainant in his supplementary statement recorded after a considerable delay, what may be possible impact thereof at bail stage?
ii) If principal accused has been allowed post-arrest bail in the same case, what would be effect of declining pre-arrest bail to an accused on basis of technical ground?
iii) Whether mere registration of another criminal case of same nature against an accused disentitles him for the grant of bail?

Analysis: i) The nomination of the accused and his other family members by the complainant in his supplementary statement, recorded after lapse of more than three months and eight days of the occurrence, indicates his act of throwing a wider net.
ii) When the principal accused has already been granted post-arrest bail, then Court's order declining pre-arrest bail of accused on technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be limited only upto the arrest of the petitioner.
iii) Mere registration of another criminal case of same nature against an accused does not disentitle him for the grant of bail if on merits he has a prima facie case.

Conclusion: i) If the accused and his family members are nominated by complainant in his supplementary statement recorded after a considerable delay, the possibility cannot be ruled out that the complainant has involved the accused in the case by throwing a wider net.
ii) If principal accused has already been granted post-arrest bail and the Court declines pre-arrest bail to accused on technical ground i.e. considerations for pre-arrest bail and after arrest bail are different, then accused would become entitled to post-arrest bail soon after his arrest on the plea of consistency.
iii) Mere registration of another case of similar nature against the accused does not disentitle him for grant of bail.

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22. **Supreme Court of Pakistan**
Telenor Microfinance Bank Limited v. Shamim Bano & others etc.
Civil Petitions No. 329-K to 391-K of 2022
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._329_k_2022.pdf

Facts: These Civil Petitions for leave to appeal are directed against the impugned consolidated judgment of High Court whereby the order passed by the Additional District Judge, in Summary Suit and connected suits was maintained and the Miscellaneous Appeals were dismissed, and another impugned consolidated judgment passed by the High Court whereby the order passed by the Additional District Judge modified to the extent that the plaint was to be filed before the court of plenary jurisdiction rather than the Banking Court.

Issues: i) What is the meaning of "microfinance institution" and "microfinance services"?
ii) Whether the Banking Companies Ordinance and any other law for the time being in force relating to banking companies or financial institutions shall apply to microfinance institutions?
iii) Whether the summary procedure on Negotiable Instruments is meant for the High Court, District Courts and any other Civil Court?
iv) What is negotiable instrument?
v) What is the difference between a promissory note and a bill of exchange?

Analysis: i) According to Clause (i) of Section (2) (definition clause) of the MIO 2001, "microfinance institution" means a company that accepts deposits from the public for the purpose of providing microfinance services, and under clause (j) "microfinance services" means the financial and other related services specified in Section 6, the value of which does not exceed such amount as the State Bank may, from time to time, determine.
ii) Section 3 of the MIO 2001 provides that the provisions of the Ordinance shall be in addition to and, save as hereinafter provided, not in derogation of any other law for the time being in force, and Sub-section (2) explicates that, save as otherwise provided in the Ordinance, the Banking Companies Ordinance and any other law for the time being in force relating to banking companies or financial institutions shall not apply to microfinance institutions licensed under the Ordinance and a microfinance institution shall not be deemed to be a banking company for the purposes of the said Ordinance, the State Bank of Pakistan Act,1956 (XXXIII of 1956), or any other law for the time being in force relating to banking companies.
iii) According to Rule 1 of Order XXXVII, CPC, summary procedure on Negotiable Instruments is meant for the High Court, District Courts and any other Civil Court specially notified in this behalf by the High Court.
iv) A negotiable instrument is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time, with the payer usually named on the document. It typically contains all the terms pertaining to the debt, such as the principal amount, interest rate, maturity date, date and place of issuance, and issuer's signature.
v) The difference between a promissory note and a bill of exchange is that the latter is transferable and can bind one party to pay a third party that was not involved in its creation.

Conclusion: i) "Microfinance institution" means a company that accepts deposits from the public for the purpose of providing microfinance services, and "microfinance services" means the financial and other related services.
ii) The Banking Companies Ordinance and any other law for the time being in force relating to banking companies or financial institutions shall not apply to microfinance institutions.

iii) According to Rule 1 of Order XXXVII, CPC, summary procedure on Negotiable Instruments is meant for the High Court, District Courts and any other Civil Court specially notified in this behalf by the High Court.
iv) A negotiable instrument is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time, with the payer usually named on the document.
v) The difference between a promissory note and a bill of exchange is that the latter is transferable and can bind one party to pay a third party that was not involved in its creation.

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23. **Lahore High Court**
Muhammad Ashfaq & others v. Imran Nadeem etc.
C.M. No.41049 of 2023 U/S 12(2) C.P.C.
Mr. Justice Muhammad Ameer Bhatti HCJ
https://sys.lhc.gov.pk/appjudgments/2023LHC4385.pdf

Facts: Respondent no. 01 filed a constitutional petition seeking direction against DG, FDA Faisalabad for disposal of his pending application. The Court issued writ of mandamus. The petitioners have filed instant application under Section 12(2), C.P.C., for setting-aside above said order.

Issue: i) What is meaning of the writ of Mandamus?
ii) Whether a direction issued by High Court to any Authority for taking decision on allegedly pending/undecided application of any applicant empowers him to decide it against law or by overlooking the relevant facts and law?
iii) Whether incorrect decision of authority upon direction of mandamus of High Court, create any right in favour of any party to approach this Court to ask for recalling/setting-aside the order of mandamus?
iv) What will be mode of compliance of Court direction if the application, for disposal of which an order of mandamus has been passed, has already been decided?
v) Whether issuance of direction by High Court regarding disposal of pending application means that application must be decided in favour of petitioner seeking direction for disposal of application?
vi) Whether issuance of direction by High Court for disposal of pending application empowers the authority to exercise jurisdiction not vested in said authority?

Analysis: i) Article 199(1)(a)(i) of the Constitution empowers High Court to issue direction to the authorities working within its territorial jurisdiction who have failed to decide any pending matter and thus have not performed their duties as required by law. High Court can (and must) issue direction to every functionary to do the needful provided that this is done in accordance with law as it is their duty to act fairly, justly and reasonably in the discharge of the said duties.

ii) It is foremost duty rather legal obligation of authority to consider all aspects of the case, which were to be complied with by that Authority in letter and spirit after hearing all the parties. And in that eventuality, the Authority to whom a direction is issued by High Court is under obligation not only to receive all the relevant documents from both the parties but also by applying a judicious mind to decide it in accordance with law...

iii) If an authority makes an incorrect decision, it does not create any right in favour of any party to approach High Court to ask for recalling/setting-aside the order of mandamus, as that concerns only the decision of the pending application which was to be decided in accordance with law. If any illegality has been committed by the Authority while deciding the application by not giving due weight to the documentary evidence produced by the applicants, in such eventuality, the said order is liable to be challenged on the same grounds before an appropriate forum. Concealment of facts may be a good ground to challenge the validity of the order but it cannot be considered a ground for setting-aside the order passed by this Court.

iv) If High Court issues direction for disposal of a pending application, however, in the event, that had already been decided, then informing to the petitioner by sending its earlier order regarding his application, would be enough to the compliance of the order/direction of High Court because this direction did not provide another life to that application if it had already been disposed of/decided by that Authority.

v) Another impression also seen to be taken by the Authority where alleged application had been filed that the decision must be in favour of the applicant as was the case in this instance. It was never the intention of High Court while issuing direction to decide it in favour of the applicant but the only purpose of direction was to point-out to that Authority to perform its duty as required by law. This order was never issued to favour any of the parties. It only demands a resolution of the pending issue within the parameters of law.

vi) If an applicant files the application before an incompetent Authority, meaning an authority out of whose domain lies decision making powers on the said issue, however, upon receiving the direction from High Court that Authority assumes jurisdiction merely on the ground that it had been directed by High Court, which is wrong. It is the duty of any such Authority upon receiving any such direction from High Court to first decide its/his competency about decision making powers regarding the concerned matter and on the basis of that either return application or forward the same to the concerned competent Authority for its decision along with a copy of order of High Court. However, it must be stressed that assumption of jurisdiction on the basis of High Court's direction does not make any such incompetent authority's order in accordance with law even if such a decision arises under misconception that jurisdiction was assumed under direction of High Court.

Conclusion: i) Writ of Mandamus means High court can (and must) issue direction to every functionary to do the needful provided that this is done in accordance with law as it is their duty to act fairly, justly and reasonably in the discharge of the said duties.

ii) A direction issued by High Court to any Authority for taking decision on allegedly pending/undecided application of any applicant does not empower him to decide it against law or by overlooking the relevant facts and law.

iii) If any illegality has been committed by the Authority while deciding the application by not giving due weight to the documentary evidence produced by the applicants, in such eventuality, the said order is liable to be challenged on the same grounds before an appropriate forum but it cannot be considered a ground for setting-aside the order of mandamus.

iv) If High Court issues direction for disposal of alleged pending application, however, in the event, that had already been decided, then informing to the petitioner by sending its earlier order regarding his application, would be enough to the compliance of the order/direction of High Court.

v) Issuance of direction by High Court regarding disposal of pending application does not mean that application must be decided in favour of petitioner seeking direction for disposal of application.

vi) Issuance of direction by High Court for disposal of pending application does not empower the authority to exercise jurisdiction not vested in said authority.

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24. **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/2023LHC4512.pdf

Facts: This Sales Tax Reference is filed under section 47 of the Sales Tax Act, 1990 to seek the opinion on the certain questions of law which have arisen from the judgment rendered by the Appellate Tribunal, Inland Revenue.

Issues: i) Whether "the replacement parts constitute a distinguishable 'supply' on which tax is required to be charged and deposited, under the law, at the time of supply/replacement"?

ii) Whether the replacement of parts and supply, if treated as distinct transaction would result into imposition of tax twice for one taxable supply?

Analysis: i) The transaction of sale of vehicles is covered by the Sale of Goods Act, 1930. Section 12 thereof acknowledges that warranty forms an integral part of the sale contract…"Supply" means a sale or other transfer of the right to dispose off goods as owner, including such sale or transfer under a hire purchase agreement… the warranty assures the customers of replacement of the defective parts within the agreed period or the mileage free of charge… no separate consideration is charged

for the reason that consideration of such parts formed an integral part of the price of the contract which is received at the time of sale.
ii) It is axiomatic that sales tax charged and paid on the contractual consideration at the time of supply of motor vehicle includes such tax on auto parts to be replaced under the warranty…the cost of warranty replacements is incorporated in the price of the motor vehicle on which sales tax is charged. Absent the consideration in such transaction, it does not fall under the definition of 'supply'…replacement of auto parts under the warranty does not form part of supply of taxable goods.

Conclusion: i) Supply includes the replacement of parts in warranty, forming vital part of the basic contract for sale. Thus, it does not set up distinct supply.
ii) As the sales tax is paid at the entire contractual consideration including the warranty of replacement of parts. Therefore, replacement of parts is not supply of taxable goods hence not separately chargeable to tax.

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25. **Lahore High Court**
M/s Paragon Technologies v. Sui Northern Gas Pipelines Limited and others
W.P. No.4534 of 2023
Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2023LHC4474.pdf

Facts: The petitioner has approached this Court against the decision of the additional district judge upholding the judgment of the trial court which dismissed the application for restraining the respondent from making a demand on the bank guarantee issued on its behalf.

Issues: i) What is the autonomy principle in contract and what is its objective?
ii) What is the exception to the fundamental rule of payment under the bank guarantee independent of any dispute between the contracting parties?
iii) Whether the provisions of the Arbitration Act grant the power to the Court to issue interlocutory relief?
iv) Which tests are applied for the grant of interlocutory injunctions?
v) What are the pre-requisites before entering upon any inquiry into the three-pronged test?
vi) When the balance of convenience becomes an important factor in grant or refusal of interlocutory injunction?
vii) To what extent the court can go into the merits of the case involving complex factual issues in dispute at the interlocutory stage?
viii) Whether the Courts can make findings of fact or construe the provisions of contract between the parties?
ix) Whether the parties can freely enter into an agreement and whether the contract is autonomous from the resolution of any dispute arising in relation to the underlying contract?
x) What will be the effect of frequently granted injunctions in relation to trade and commercial issues?

xi) Whether mere allegations regarding breaches of contractual obligations shall be sufficient for an applicant to succeed in obtaining an interim injunction?
xii) What remedy is available to an aggrieved party against the decision of interim injunction as per the provisions of the Arbitration Act?

Analysis: i) Law is fairly well settled that the fate of an unconditional bank guarantee or a letter of credit being independent contracts is not dependent upon any dispute between the contracting parties and that payment thereunder has to be made if an unconditional undertaking has been made by the issuer. The payment obligation under both the instruments is dependent on documentary demands and the issuer is barred from making any determination of objective facts. This is called the autonomy principle. The premise on which this principle rests is that as between parties to documentary credit transactions a dispute related to the underlying transaction has to be pursued through a separate action for breach of the underlying contract and not by withholding payment under the letter of credit. "*pay first, sue later*" is the core objective underlying the autonomy principle.
ii) The fundamental rule of payment under the bank guarantee independent of any dispute between the contracting parties is excepted only where fraud is alleged as against the beneficiary of the bond/guarantee and the bank has notice of such fraud.
iii) Clause 4 of the Second Schedule of the Arbitration Act grants the power to the Court to issue interim injunctions. It is evident from the reading of the text of section 41 that the grant of injunction by the court in proceedings pending before it shall be governed by the provisions of the Code of Civil Procedure 1908 (the Code) whereas the court retains the power to issue interim injunction on basis of the power contained in the Second Schedule even when the matter has been referred to arbitration and proceedings are pending in that forum.
iv) The three tests applied for grant of interlocutory injunctions are well established in almost all the jurisdictions. These tests require an applicant to demonstrate that (a) there is a prima facie case by which it is meant that the applicant must be able to demonstrate to the satisfaction of the Court that there is a serious question to be tried in the sense that the claim is not frivolous (b) it will suffer irreparable loss and injury in case the relief is denied to it or in other words granting an injunction could cause less harm to the defendant compared to the likely harm the applicant would suffer from the refusal of such injunction, and (c) the balance of inconvenience favours it.
v) While making the determination at the interlocutory stage, the legal nature of the right involved must be central to any consideration of grant of injunction, which is another way of saying that the Courts must take into account the juridical nature of the dispute before entering upon any inquiry into the three tests. Although the guidelines are anchored in tradition and policy, it would be a fallacy to think that their application to cases is anything but uniform.
vi) Where the right asserted by the applicant is disputed or is in doubt, the balance of convenience becomes an important factor in grant or refusal of interlocutory

injunction. Where the decision depends upon the consideration of the preponderance of inconvenience, the onus is upon the applicant to demonstrate that his inconvenience would exceed that of the respondent.

vii) The central question facing the court is the extent to which it can go into the merits of the case involving complex factual issues in dispute at the interlocutory stage to identify which party has the better case particularly where the parties by agreement have agreed to refer the matter to arbitration. The classical model thus postulates that the Court as a matter of principle ought not to delve deep into controversy between the parties to make a forecast about the outcome of the case and that it would be sufficient for the Court to decide that the applicant has put forward a case that is arguable or at least not a frivolous one and after making this determination to move to discover whether the balance of convenience favours the grant of the injunction by striking a balance between the interests of the applicant and that of the beneficiary. In doing so, the Court should bear in mind the extent to which damages are likely to be an adequate remedy and the ability of the other party to pay the same.

viii) The Court, while exercising jurisdiction under section 20 of the Arbitration Act, can only go so far in determination of the so-called prima facie case test as the decision on the dispute falls within the jurisdiction of the arbitrators. It is thus imperative that the Courts must not make findings of fact or construe the provisions of contract between the parties particularly when they have expressly agreed to refer such dispute to arbitration.

ix) The legal principle dictates that the parties under the law must be able to bargain and agree upon the terms of their agreement by creating legal relationships as they desire. This is premised on the faith that both parties will freely come to an agreement that reflects their respective interests. The law has, however, built barriers to unfettered freedom of contract by placing certain limitations which include that the objective of the agreement and the consideration thereof must be lawful. It logically follows that the Courts shall treat the bond as an independent contract which is autonomous from the resolution of any dispute arising in relation to the underlying contract.

x) The policy considerations relate to trade and commercial certainty and the impairment the commercial instruments shall undergo if such injunctions are all too frequently granted. The Courts have granted due recognition to the fact that any restriction, even temporary, on payment under such bonds shall be disruptive of the contractual relationships essential to commerce.

xi) Mere allegations regarding breaches of contractual obligations in the plaint regarding fraud/unfair conduct shall be insufficient for an applicant to succeed in obtaining an interim injunction.

xii) By virtue of section 39 of the Arbitration Act, the decision to grant or refuse interim injunction is not appealable and accordingly the only course available to an aggrieved party is to avail the remedy of revision which in majority of cases would lie before the District Judge/Additional District Judge. Any party aggrieved by the decision of the District/Additional District Judge is required to approach

this Court in the Constitutional jurisdiction. The scope of such jurisdiction just like revision is to correct errors of jurisdiction.

Conclusion: i) The autonomy principle is that as between parties to documentary credit transactions a dispute related to the underlying transaction has to be pursued through a separate action for breach of the underlying contract and not by withholding payment under the letter of credit. "*pay first, sue later*" is the core objective underlying the autonomy principle.

ii) The only exception is where fraud is alleged as against the beneficiary of the bond/guarantee and the bank has notice of such fraud to the fundamental rule of payment under the bank guarantee independent of any dispute between the contracting parties.

iii) Clause 4 of the Second Schedule of the Arbitration Act grants the power to the Court to issue interim injunctions.

iv) The three tests applied for grant of interlocutory injunctions are well established in almost all the jurisdictions.

v) The Courts must take into account the juridical nature of the dispute before entering upon any inquiry into the three tests.

vi) Where the right asserted by the applicant is disputed or is in doubt, the balance of convenience becomes an important factor in grant or refusal of interlocutory injunction.

vii) The Court as a matter of principle ought not to delve deep into controversy between the parties to make a forecast about the outcome of the case.

viii) The Courts must not make findings of fact or construe the provisions of contract between the parties particularly when they have expressly agreed to refer such dispute to arbitration.

ix) The parties can freely enter into an agreement and it logically follows that the Courts shall treat the bond as an independent contract which is autonomous from the resolution of any dispute arising in relation to the underlying contract.

x) The policy considerations relate to trade and commercial certainty and the impairment the commercial instruments shall undergo if such injunctions are all too frequently granted.

xi) Mere allegations regarding breaches of contractual obligations in the plaint regarding fraud/unfair conduct shall be insufficient for an applicant to succeed in obtaining an interim injunction.

xii) The only course available to an aggrieved party is to avail the remedy of revision which in majority of cases would lie before the District Judge/Additional District Judge. Any party aggrieved by the decision of the District/Additional District Judge is required to approach this Court in the Constitutional jurisdiction.

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26. **Lahore High Court**
Tanveer Sarwar v. Government of Punjab and others
Writ Petition No. 63900/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4399.pdf

Facts: Through this Writ Petition the Petitioner has challenged the appointments of 22 officers made in their own pay and scale in the Punjab against various posts made through four notifications.

Issues: i) What does OPS indicate?
ii) What is the meaning of Public Interest Litigation?
iii) What is the principle of locus standi?
iv) Whether there is any exception to principle of locus standi?
v) What is the significance of expression "mala fide"?
vi) What is the nature and scope of writ of quo warranto?
vii) Is there any concept of OPS appointments in PCS Act and the PCS Rules and the same has any legal basis?

Analysis: i) OPS connotes appointing a civil servant against a post higher in scale than his basic pay scale. For example, appointing a BS-19 officer against a BS-20 or a higher position.

ii) Halsbury's Laws of India states that "lexically, the expression 'public interest litigation' means a legal action initiated in a court of law for the enforcement of public or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liability are affected." Dr Faqir Hussain states that "the raison d'être of public interest litigation is to break through the existing legal, technical, and procedural constraints and provide justice, particularly social justice, to a particular individual, class, or community who, on account of any personal deficiency or economic or social deprivation or State oppression are prevented from bringing a claim before the court of law." The courts consider PIL a "part of the process of participative justice" and an extremely important jurisdiction.

iii) In law, "locus standi means the right to bring an action, to be heard in court, or to address the court on a matter before it. Locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case."

iv) In S.P. Gupta vs President of India and others [1981 Supp. SCC 87: AIR 1982 SC 149)], the Supreme Court of India held that the traditional rule regarding locus standi is that judicial redress is available only to a person who has suffered a legal injury to property, body, mind or reputation as a result of any violation, actual or threatened, of the legal right or legally protected interest. This principle is, however, relaxed where an act or omission of the State or a public authority in violation of the Constitution or the law causes a public wrong or public injury. In such instances, any member of the public acting in good faith, who is not merely a busybody or a meddling interloper, but has sufficient interest in the proceeding, may file an action. (…) there is no legal necessity that the person applying for a writ of quo warranto should be an "aggrieved person" in the literal sense. Further, he is not required to demonstrate that he has a special interest in the matter or to explain which of his legal rights has been infringed. It is enough that the relator is

a member of the public and acts bonafide. This writ is more akin to public interest litigation, in which an individual seeks to remedy a wrong or vindicate a right for himself, for the good of society, or as a matter of principle.

v) The expression "mala fide" has a definite significance in legal phraseology. The same cannot possibly emanate out of fanciful imagination or even apprehensions. There must exist indisputable evidence of an oblique motive. It is a settled law that mala fides must be pleaded with particularity. Vague and general allegations are not acceptable. The court cannot conduct a roving inquiry to "fish out" a case.

vi) in a petition for issuance of a writ of quo warranto the High Court can only grant a declaration as to the person's authority to hold the questioned post but cannot issue a mandamus to restore or reinstate the applicant to office. (…) quo warranto proceedings are inquisitorial rather than adversarial, not only because a relator does not have to be a person aggrieved but also because a person who holds public office without a legal warrant is burdening the public exchequer and causing harm to others who may be entitled to the said office. The High Court can conduct such inquiry as it deems necessary in the facts and circumstances of a particular case, including an examination of the entire relevant record. This exercise can be done suo motu even if the parties concerned do not draw its attention to it. (…) on any such plea, the court must not only determine whether the respondent is holding the office under the order of competent authority, but also whether he is legally qualified for it or to continue to hold it, and whether any statutory provision has been violated in making the appointment. (…) the writ of quo warranto is discretionary, and the High Court is competent to inquire into the motives and conduct of the person challenging public office appointments.

vii) Section 4 of the PCS Act ordains that appointments to the civil service of the province or a civil post in connection with the affairs of the province shall be made in the prescribed manner by the Governor or by a person authorized by him on that behalf. Part-II of the PCS Rules defines the procedure for appointments to posts in the civil service of Punjab by promotion. Part-III and Part-IV deal with initial and ad-hoc appointments, respectively, and Part-V with relaxations. Rule 9 ordains that promotions or transfers to posts in various grades shall be made on the recommendation of the appropriate Committee or Board. Rule 10 states that the Selection Authority shall consider only officers with the prescribed qualifications and meet the conditions stipulated for this purpose. The crux of these provisions is that only the right officer can be posted to a particular position. A BS-19 officer shall be posted only against a BS-19 position and not to a higher one. (…) Rules 10-A, 10-B, and provide for appointments on acting charge, current charge, and officiating basis to deal with various contingencies when a post becomes vacant. (…) It is important to note that the seniority principle is followed in every case, subject to the conditions/criteria outlined in these provisions. The PCS Rules, including Rules 10-A, 10-B and 13, do not allow for appointments on an OPS basis. (…) It is declared that the concept of OPS appointments is alien to law. It violates Articles 4 and 25, the PCS Act and the

PCS Rules. S&GAD's notifications dated 17.05.1982 and 01.05.2000 also declare that it has no legal basis.

Conclusions: i) OPS indicates appointing a civil servant to a post higher in scale than his basic pay scale.
ii) 'Public interest litigation' means a legal action initiated in a court of law for the enforcement of public or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liability are affected and PIL is a "part of the process of participative justice" and an extremely important jurisdiction
iii) "locus standi means the right to bring an action, to be heard in court, or to address the court on a matter before it.
iv) Principle of locus standi is, relaxed where an act or omission of the State or a public authority in violation of the Constitution or the law causes a public wrong or public injury.
v) The expression "mala fide" has a definite significance in legal phraseology. Mala fides must be pleaded with particularity. Vague and general allegations are not acceptable.
vi) In writ of quo warranto the Court can grant a declaration as to the person's authority to hold the public office/questioned post.
vii) The concept of OPS appointments is alien to the law. It violates Articles 4 and 25, the PCS Act and the PCS Rules and it has no legal basis.

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27. **Lahore High Court**
Arshad Ali v. The State etc.
Crl. Misc. No. 2159/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4463.pdf

Facts: Through this application, the Petitioner seeks post-arrest bail in case FIR registered, for an offence under sections 9(1)6(c) of Control of Narcotic Substances Act, 1997.

Issues: i) What are the means used by drug traffickers while transportation of narcotics and contraband psychotropic substances within and beyond borders?
ii) Whether body packing is common way to traffic illicit drugs and body stuffing is similar form of it?
iii) Whether the law enforcement agencies should avoid administering albeit laxatives for retrieval of swallowed drug?
iv) Whether retrieval process of swallowed drugs may take more than one day?

Analysis: i) Drug traffickers transport narcotics and contraband psychotropic substances within and beyond borders through various means. These include concealing the goods in a large vehicle, luggage or clothing. Sometimes they attach the contraband to the outside of their bodies with adhesive tape, glue or straps, especially in places such as between the cheeks of the buttocks or between fat

rolls. Until the early 1990s, other inconspicuous places, such as the soles of cut-out shoes, inside belts, or the rim of a hat, were frequently employed.

ii) Body packing is another common way to traffic illicit drugs with a high street value like heroin. Body packers (referred to as "drug mules") swallow drug packets mostly made with latex sheaths due to their impervious quality. Predominantly, latex material includes the usage of latex gloves fingers, balloons, or multilayered condoms. The body packers take antimotility medicines after swallowing multiple packets to reduce intestinal motility and avoid passing out the drugs before reaching their destination. When they get there, they use laxatives, cathartics, or enemas to retrieve the contraband. The total amount of drug involved represents a supra-lethal dose. The rupture of one or more packets is a risk, resulting in sudden toxicity and overdose. Even if the packets do not burst, osmotic seepage across the latex wrapping may allow small amounts of drug to enter the bloodstream…Body stuffing is similar to body packing. It happens when people about to be apprehended by law enforcement swallow narcotic packets to avoid detection. Sometimes they insert them into the rectum or vagina. Body stuffing usually involves much smaller amounts of drugs than body packing, but overdose is still a hazard because the drugs are typically less securely packaged.

iii) Albeit laxatives help retrieve swallowed drugs, as adumbrated, law enforcement agencies should avoid administering them because, apart from raising legal and ethical issues, they may imperil the accused's life by doing so. They should promptly refer the accused to the hospital.

iv) Offenders with normal vital signs and normothermia may be discharged home after observation up to six hours. However, symptoms suggestive of drug intoxication may necessitate hospitalization for additional monitoring and decontamination. Body packers may need to be hospitalized for several hours or days until all the packets are passed. Individuals who come with serious symptoms or intestinal obstruction require surgical intervention. Some authors consider five days as sufficient time for passage of the drug packets, while others say that the time varies from 27 hours and seven days. Wong et.al. write that body packers who are managed conservatively should be observed in a hospital setting until all packets are evacuated. Packet count can be used to indicate a successful procedure. However, this method may not be reliable for the offenders who are uncooperative and refuse to disclose the exact number of packets in their bodies. Alternatively, passing two or three packet-free stools after continuous bowel irrigation for 12 hours plus negative abdominal radiology may be used as a guide to suggest complete clearance.

Conclusion: i) There are various means used by drug traffickers while transportation of narcotics and contraband psychotropic substances within and beyond borders as mentioned in analysis portion.

ii) Yes, body packing is another common way to traffic illicit drugs.

iii) Yes, the law enforcement agencies should avoid administering albeit laxatives

for retrieval of swallowed drug.
iv)Yes, retrieval process of swallowed drugs may take more than one day.

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28. **Lahore High Court**
Muhammad Aleem Khan etc v. CPO etc.
Crl. Misc. No. 1941/H/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4468.pdf

Facts: Through this application the petitioners have sought remedy against the refusal of copy branch of High Court to provide them copy of the USB containing video footage, which the Court made part of the file for use in that proceeding before the Supreme Court.

Issues: i) What provisions of law define the word "Document" and "Electronic Document"?
ii) Whether a public officer who has custody of public document, is bound to provide copy of the same upon demand?
iii) Whether Lahore High Court copy branch have any defined procedure for the issuance of certified copy of a USB?

Analysis: i) According to Merriam-Webster Dictionary, "document" means: (a) an original or official paper relied on as the basis, proof, or support of something; (b) something (such as a photograph or a recording) that serves as evidence or proof; (c) a writing conveying information (such as financial or historical documents);(d) a material substance (such as a coin or stone) having on it a representation of thoughts by means of some conventional mark or symbol; (e) a computer file containing information input by a computer user and usually created with an application (such as a spreadsheet or word processor)…Article 2(1)(b) of Qanun-e-Shahadat 1984 ("QSO") defines "document" in almost the same words as section 29 PPC though it gives its own Illustrations…Section 2(m) of the Electronic Transactions Ordinance, 2002, also defines "electronic document"… In general parlance, document means any embodiment of any text or image, howsoever recorded, and includes any data, text, images, sound, voice, codes, computer programs, software and/or databases or microfilm or computer generated microfiche or similar device.
ii) Article 87 provides for the issuance of certified copies of public documents. It ordains that every public officer who has the custody of a public document, which any person has a right to inspect, shall give that person a copy thereof on demand, subject to payment of legal fee, if any. It further states that the said officer shall give a written certificate at the foot of such copy that it is a true copy of the document in question, and shall sign it with his name and official title, and also mention the date and affix seal thereto, if authorized. Section 548 Cr.P.C. provides that if any person affected by a judgment or order passed by a criminal court desires to have its copy or of any deposition or other part of the record, it

shall be furnished to him on his application, subject to payment of fees, unless the court for some special reason, thinks fit to deliver it free of cost.
iii) Admittedly, the Lahore High Court Copy Branch does not have any defined procedure for the issuance of a certified copy of a USB. Therefore, seeking support from the law relating to the supply of certified copies of paper documents, it is directed as (a)The data in USB will be provided on an un-editable Compact Disc (CD), ensuring that no changes can be made to the digital copy.(b)A text file shall be inserted in the said Compact Disc containing the particulars, which the Copy Branch Agency stamps on every certified copy of the paper document it issues(c)The authorized officer of the Copy Branch shall give a written certificate in terms of Article 85(3) of QSO under the above table.(d)The applicant shall be liable to pay the cost of the aforesaid certified copy...According to Rule 6 (v) Part-B of Chapter 5 of Volume-V of Rules & Orders of Lahore High Court, Lahore, every application for an attested copy will be entertained subject to deposit of cost in advance as may be fixed by the Hon'ble Chief Justice from time to time.

Conclusion: i) Article 2(1)(b) of Qanun-e-Shahadat 1984 defines "document" in almost the same words as section 29 PPC though it gives its own Illustrations and Section 2(m) of the Electronic Transactions Ordinance, 2002, also defines "electronic document".
ii) Yes, a public officer who has custody of public document is bound to provide copy of the same upon demand, subject to payment of legal fee, if any.
iii) Lahore High Court copy branch does not have any defined procedure for the issuance of certified copy of a USB, however certain directions shall be followed according to law relating to the supply of certified copies of paper documents as mentioned in analysis portion.

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29. **Lahore High Court**
Waseem Ijaz v. Additional District Judge, Lahore & another
WP No. 2729 Of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5127.pdf

Facts: The petitioner, who stood surety on behalf of wife of respondent No. 2 in a petition under section 7 of the Guardian and Wards, 1890, for her appointment as guardian of her two sons subject to furnishing of surety bonds in the sum of Rs. 10 million, has called in question orders passed by Additional District Judge whereby the said court, for non-compliance of its orders, initiated proceedings against the petitioner.

Issues: i) Whether it is necessary for the court to ensure the presence of party for the provision of right of hearing to the party?
ii) What will be status of an adverse order if same is passed without providing right of proper hearing?

iii) Whether constitutional petition is not competent against an interim order?

Analysis: i) It is an inalienable right of a party to be provided a right of hearing which includes his right to be available before the court, for which purpose the court is required to ensure that proper notice has been served to the party requiring him to appear before the court and present his case. The said party is entitled for decision of any legal objection if raised by the said party through a speaking order.
ii) If an adverse order is passed without providing proper hearing such decision suffers from violation of fundamental principle of natural justice which is to be read as part of every statute as held in Hazara (Hill Track) Improvement Trust through Chairman and others vs. Mst. Qaisra Elahi and others that violation of principle of natural justice could be enough to vitiate even most solemn proceedings…
iii) Where an interim order appears to suffer some jurisdictional defect causing prejudice to the rights of a party, High Court under the Article 199 of Constitution is empowered to rectify the same.

Conclusion: i) For ensuring the right of hearing to party the court is required to ensure that proper notice has been served to the party requiring him to appear before the court and present his case.
ii) Violation of principle of natural justice will be enough to vitiate even most solemn proceedings and an adverse order which is passed without providing proper right of hearing will be liable to set aside.
iii) Where an interim order appears to suffer some jurisdictional defect causing prejudice to the rights of a party High Court under the Article 199 of Constitution is empowered to rectify the same.

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30. **Lahore High Court**
Sajjad Ahmad v. The State, etc.
Crl. Misc. No. 25688-B of 2023
Mr. Justice Anwaarul Haq Punnun
https://sys.lhc.gov.pk/appjudgments/2023LHC4421.pdf

Facts: Petitioner had been refused pre-arrest bail by the learned Additional Sessions Judge in case FIR registered under Sections 334/337-A(i)/337-L(2)/34 PPC, as such, he sought same relief through instant petition.

Issues: i) Whether tooth is a bone or is an organ of human body?
ii) Whether *itlaf* of tooth amounts to be *itlaf-i-udw* punishable under Section 334 PPC? If so, what would be impact of Section 337-U PPC while awarding punishment to a convict?

Analysis: i) The ectoderm is one of the primary layers of cells that exist in an embryo and the ectoderm cells differentiate into cells forming a number of external structures including skin, sweat glands, skin sensor receptors and hair follicles. Moreover,

the ectoderm forms the external surfaces of the eyes (cornea and lens), teeth (enamel), mouth, and rectum, as well as the pineal and pituitary glands. Human body is a symmetrically interwoven composite of seventy eight different organs including teeth.

ii) The word "Hurt" mentioned in Sections 332 PPC to 337-Z PPC is defined in Section 332 PPC as that it includes causing pain, harm, disease, infirmity or injury to any person or impairing rendering disable or dismember any organ of the body or a part thereof. Sections 333 PPC and 335 PPC respectively make it clear that dismemberment, amputation and severance of a limb and an organ constitute the offence of *itlaf-i-udw*, whereas destruction or permanent impairment of the functions, power or capacity of an organ of the body constitute offence of *itlaf-i-salahiyyat-i-udw*. The word *itlaf-i-udw* has been used in both the provisions of Section 333 PPC and 334 PPC, whereas Section 337-U PPC merely quantifies the punishment for (i) *itlaf* of a tooth other than a milk tooth, (ii) *itlaf* of a milk tooth, (iii) *itlaf* of twenty or more teeth and (iv) *itlaf* of a milk tooth resulting into impeding the growth of a new tooth.

Conclusion: i) Tooth is not a bone, but it is an ectodermal specialized organ of human body.

ii) *Itlaf* of a tooth is punishable under Section 334 PPC, however, the Court shall consider the explanatory and controlling position of Section 337-U PPC while awarding punishment to a convict.

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31. **Lahore High Court**
Shahid Imran v. The State etc.
Crl. Misc. No. 33583-B/2023
Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2023LHC4435.pdf

Facts: Through this application the petitioner seeks his pre-arrest bail, after having been denied the same relief by the Court of learned Addl. Sessions Judge, due to his alleged involvement in a criminal case registered under Sections 365-B, 376 of the Pakistan Penal Code, 1860.

Issues: i) Whether minors are most vulnerable class of individuals always dealt with distinctly while enacting provisions of law to cater and safeguard their interests.?

ii) What is the definition of "Child"?

iii) Whether the provisions of a treaty automatically incorporated into municipal law of a country or in this regard specific enactment of legislature is necessary?

iv) Whether competence of a girl to enter into a contract of marriage is dependent on attainment of puberty?

v) Whether a minor girl has any option to repudiate the marriage on attaining the puberty?

vi) Whether Federal Shariat Court has the jurisdiction to examine and decide the question regarding any law or provision of law, which is repugnant to the Injunctions of Islam?

vii) Whether Union Council is under a legal obligation to file a formal complaint against person violating the provisions of the Child Marriage Restraint Act, 1929?
viii) Whether prosecutor is under statutory duty to scrutiny the record regarding jurisdiction of special court?
ix) Whether grant of pre-arrest bail being a discretionary relief essentially rooted into equity?

Analysis: i) Under the Domestic and International Laws, the minors, being the most vulnerable class of individuals, have always been dealt with distinctly for substantial and valid reasons while enacting provisions of law to cater and safeguard their interests…the law giving bodies world over have always been taking measures by way of different pieces of legislation in this regard.

ii) For social re-integration of juveniles, the Juvenile Justice System Act, 2018, was enacted which defines child a person who has not attained the age of eighteen years…Certain other enactments have been enforced in Pakistan specifying age of majority for a minor/child as of eighteen years… Moreover, section 10 of the National Database and Registration Authority Ordinance, 2000 also prescribes entitlement of one for issuance of CNIC after attaining age of eighteen years… Reference of Article 1 of the UNCRC on the rights of child would not be out of context, which says that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

iii) The general rule is that the provisions of a treaty are not automatically incorporated into municipal law and a country's legislature must enact law to implement them. In Pakistan, even where such legislation has not been passed, the courts are required to interpret and apply every statute, as far as its language admits, in accordance with the principle of comity of nations and established rules of international law.

iv) Under uncodified Muslim law, which is mainly based upon the opinions of Muslim scholars, the competence of a girl to enter into a contract of marriage is dependent on attainment of puberty. Puberty is presumed at the age of fifteen years. According to "Fatawa Alamgiri", Page-93 of Vol-V, the lowest age of puberty as per their natural signs is 12 years in males and 9 years in females and if signs do not appear, both sexes are held to be adult on the completion of their age of 15 years. After copying out from Fatawa Alamgiri and Hedaya, the deduced principle is that a girl even having not attained puberty, but possessing discretion and sufficient understanding can enter into a contract of marriage, however; for its operation it will be dependent on the consent of the guardian, if there is one, but in the absence of any guardian it will take effect on her attaining of majority and ratifying the marriage contract…

v) According to Paragraph-24 of Muhammadan Law, "When a marriage of a minor is contracted by any guardian other than the father or father's father, the minor has the option to repudiate the marriage on attaining the puberty, technically which is called the "option of puberty" (Khyar-ul-bulugh). After

attaining puberty, right of repudiation of the marriage, in case of a female is lost if she had been informed of the marriage and she fails to repudiate the marriage without reasonable delay.

vi) Under Article 203-D(1) of the Constitution, the Federal Shariat Court has the jurisdiction to, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam. Moreover, under Article 203-GG of the Constitution, such decision of the Federal Shariat Court shall be binding on a High Court and on all Courts subordinate to a High Court

vii) The Union Council under section 9 the Act of 1929, is under a legal obligation to file a formal complaint against the persons liable to be punished, as discussed above, violating the provisions of the Act of 1929 before the Court to create deterrence in the society in general against such abuse of child marriage, yet the glaring shortfall, lapses, negligence and misconduct of state officials can palpably be found in existence somewhere behind the commission of almost all the offences. It may also be pointed out that in most of the cases, after abduction of the minor girls, the delinquents hurriedly maneuver Nikahnamas to use it as a shelter by pleading it the marriage conducted in violation of the Act of 1929, for saving their skin from the punishment of the offence, which they have committed.

viii) The Prosecutor, under Section 9(5) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, on receipt of report under Section 173 Cr.P.C, including a cancellation report or report for discharge of a suspect or an accused, is mandated to scrutinize the same…the procedure contained in the JJSA may be adopted in case of any dispute regarding the age of the abductee/victim. It has been observed that while ignoring investigation on the aspect of age of victim in cases of abduction/marriages alarmingly the Investigation officers usually fail in discharge of their duties in this regard. In this backdrop, in cases of abduction of minor female especially, the Prosecutor, under his statutory obligation, on scrutiny of the report/record has to find out as to whether besides the offence alleged against the accused, he/they have committed any other offence exclusively triable by a special Court and if he comes to a conclusion that the accused prima facie appears to have committed an offence under some other law, it will be quite lawful for him to refer the matter to the relevant department to achieve the object of better coordination amongst various limbs of justice system in line with the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, contained in its preamble so that the proper action may be triggered against the delinquent to bring the wrong doer to book.

ix) When petitioner was also found connected with the commission of offence during the course of investigation. Reasonable grounds thus exist to believe that the petitioner has committed non-bailable offence, the grant of pre-arrest bail being a discretionary relief essentially rooted into equity is only meant for

innocent person involved in the case on account of mala fide or ulterior motive…

Conclusion: i) Yes, minors are most vulnerable class of individuals always dealt with distinctly while enacting provisions of law to cater and safeguard their interests.
ii) A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
iii) The provisions of a treaty are not automatically incorporated into municipal law and a country's legislature must enact law to implement them but in Pakistan the courts are required to interpret and apply every statute in accordance with the principle of comity of nations even if such legislation was not passed.
iv) Yes, competence of a girl to enter into a contract of marriage is dependent on attainment of puberty.
v) Yes, a minor girl has an option to repudiate the marriage on attaining the puberty in form of "option of puberty" (Khyar-ul-bulugh).
vi) Yes, Federal Shariat Court has the jurisdiction to examine and decide the question regarding any law or provision of law, which is repugnant to the Injunctions of Islam.
vii) Yes, Union Council is under a legal obligation to file a formal complaint against person violating the provisions of the Child Marriage Restraint Act, 1929.
viii) Yes, prosecutor is under statutory duty to scrutinize the record regarding jurisdiction of special court.
ix) Yes, grant of pre-arrest bail being a discretionary relief essentially rooted into equity.

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32. **Lahore High Court**
Muhammad Moosa v. The State and another.
Crl. Misc. No. 2163-B of 2023
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC4390.pdf

Facts: By virtue of instant petition filed under Section 498 Cr.P.C., petitioner has sought pre-arrest bail in case FIR , in respect of offences under Sections 447, 511, 506-B, 148, 149, PPC.

Issues: i) Whether issuance of non-bailable warrants of arrest and declaring the accused person as proclaimed offender is a revisable order in the light of section 439-A, Cr.P.C?
ii) Whether noticeable absconscion loses some of normal rights guaranteed under the law?

Analysis: i) It may not be out of place to mention here that order passed by the learned Magistrate Section 30, qua issuance of non-bailable warrants of arrest and declaring the accuse person as proclaimed offender was a revisable order in the light of section 439-A, Cr.P.C. and the above mentioned order cannot be set aside by the Sessions Court while exercising its powers under section 498, Cr.P.C...It has been well settled by now that if any bail order is recalled under section

497(5), Cr.P.C. and against cancellation/recalling of bail order remedy under section 498, Cr.P.C. is not competent because the same is also revisable order…
ii) It has been well settled proposition of law that noticeable absconscion loses some of normal rights guaranteed under the law.

Conclusion: i) Yes, issuance of non-bailable warrants of arrest and declaring the accused person as proclaimed offender is a revisable order in the light of section 439-A, Cr.P.C. and the said order cannot be set aside by the Sessions Court while exercising its powers under section 498, Cr.P.C
ii) Yes, noticeable absconscion loses some of normal rights guaranteed under the law.

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33. **Lahore High Court**
Mst. Khursheed Begum (deceased) through Legal Heir v. Abdul Wahid Nasim and 3 others
RSA No. 43 of 2014
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC4367.pdf

Facts: The appellant No. 1 instituted a suit claiming that she is actual owner of suit property and she purchased the suit property in the name of her real son as benamidar who has stolen the title documents and managed to sell the suit property to respondent No. 1. Respondent No. 1 filed contesting written statement and also filed suit seeking possession of the suit property. Son of the appellant No. 1 filed third suit seeking declaration in his favour. The trial court dismissed the suit of appellant No. 1 and her son and decreed the suit of respondent No. 1. Mother and son instituted appeals which were dismissed. Hence regular second appeal and civil-revision have been filed.

Issues: i) When limitation period runs in suit for declaration against agreement?
ii) When right to sue accrues to a person against the other for declaration of right vis-à-vis a property?
iii) Whether courts are duty bound to look the limitation irrespective of the fact that limitation has been set up as a defence or not?

Analysis: i) The limitation for such suits is provided in Article 120 of the first schedule of Limitation Act, 1908… The time under above article of the Limitation Act runs from the date when the 'right to sue' accrues.
ii) The words 'right to sue' means that when a person has 'right to seek relief' under the relevant law. In cases titled "Saadat Khan and others vs. Shahid-Ur-Rehman and others" (PLD 2023 Supreme Court 362) and "Mst. Rabia Gula and others vs. Muhammad Janan and others" (2022 SCMR 1009) the provision of Article 120 of the Limitation Act and section 42 of the Specific Relief Act, 1877 are analyzed / dealt in detail and it has been concluded that right to sue accrues to a person against the other for declaration of right vis-à-vis a property when latter actually denies rights or when he is interested to deny in the sense of threat of

denial. The denial when actual it obligates the claimant to bring action, within the period of limitation given in the Limitation Act. When alleged wrongdoer or the one denying the right has done something explicitly to deny the rights by doing overt act that amounts to actual denial for which if the claimant has gained definite knowledge, then plea of threat of denial, cannot revive limitation. In cases of mere threat of denial, each threatened denial gives rise to fresh cause. It is settled that when right to sue arises largely depends upon the circumstances of each case… It is often observed that despite actual denials, giving rise to right to sue, the belated cases are filed on the basis of alleged threat of denial. Generally, at the ends of plaints in addition to the actual denial a sentence is added that 'the cause again accrued just few days ago". This is being done without pleading actual date of threatened denial or any prima facie proof thereof. In some of these cases, mostly the actual denials are through positive act(s) which are self-evident, patent and manifest.

iii) Section 3 of the Limitation Act commands that subject to sections 4 to 25 every suit after the period of limitation prescribed in first schedule has to be dismissed irrespective of the fact if the limitation is set-up as a defence or not. Section 3 ibid imposes duty on the Courts themselves to look into the matter and when from the statement in the plaint it is undoubtful that the suit is time barred then to proceed to reject it. The Judge cannot on equitable grounds enlarge the time provided by the law. Where the question of law of limitation is not a mixed question of law and fact as well as the suit on the face of the record is hit by limitation and when it became apparent or undoubtful to the Court, it becomes incumbent on the Court, whether the limitation is pleaded or not by litigant, to discharge the duty to reject the case.

Conclusion: i) Limitation period runs from the date when the 'right to sue' accrues in suit for declaration against agreement.

ii) Right to sue accrues to a person against the other for declaration of right vis-à-vis a property when latter actually denies rights or when he is interested to deny in the sense of threat of denial.

iii) Courts are duty bound to look the limitation irrespective of the fact that limitation has been set up as a defence or not.

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34. **Lahore High Court**
Nasir Abbas Bhatti v. Abid Hussain, etc.
C.R. No.9463 of 2022
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC4457.pdf

Facts: The petitioner has assailed the order & decree and judgment whereby suit of the petitioners for specific performance of agreement to sell was dismissed due to non-deposit of remaining sale consideration and appeal preferred there-against was also dismissed.

Issue: Whether transfer of the property which is subject matter of proceedings before Banking Court, absolve a plaintiff seeking specific performance of an agreement, to establish readiness and willingness to perform his part of the agreement?

Analysis: There is no cavil to the proposition that any transfer of the property subject matter of proceedings before a Banking Court are subject to the provisions of section 23 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and principles governing equity of redemption, however, the same does not absolve a plaintiff seeking specific performance of an agreement of his equitable burden to establish readiness and willingness to perform his part of the agreement.

Conclusion: Transfer of the property which is subject matter of proceedings before Banking Court, does not absolve a plaintiff seeking specific performance of an agreement, to establish readiness and willingness to perform his part of the agreement.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in the Punjab Excise, Taxation and Narcotics Control Department Service Rules, 1980, vide notification no. SOR-III(S&GAD) 1-5/2006 (PI)
2. Notification no. SOF (B&P 5-5-/2023(RM) of the Laboratories of Department of Fisheries Punjab
3. Amendment in the Punjab Board Military Police and Baluch Levy Service Rules,2009, vide *notification no. HP-II/9-II/2018(P)*
4. Amendment in the Punjab Weights and Measures (International System) Enforcement Rules,1976, notification no. SOR-(ICI& SD) 1-26/2023
5. Amendments in the Punjab Motor Vehicles Rules, notification no.SO (TR-I) 6-57/2021 (P-XIV)14

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Statutory-Violations-Of-Contract-Law-And-Their-Categorization-An-Unexplored-Realm

Statutory Violations of Contract Law and Their Categorization: An Unexplored Realm by Aditya Vaid

In order to understand public policy pertaining to contract, we first need to understand the definition of the term 'contract'. A contract is a legally enforceable agreement that governs rights and obligations between the relevant parties. If an agreement is formed wherein the object is deemed unlawful or against the practice of law, then such an agreement is deemed as void by the law as it is against public policy Section 23 of the Indian Contract Act overlaps the freedom of an individual to enter into contracts of their choice. There are some basic elements that are to be mandatorily fulfilled in order for a contract to be enforceable which include the following- Adequate consideration, legality,

capacity, Mutual Consent. The term 'Contract' plays a significant role in the modern-day life. Most modern-day corporations enter into multi-dollar agreements certified by legal practitioners who set the terms and conditions of their deals, making sure that they do not violate public liberty or policy. Through the theme "Public Policy in Relation to Contract law", I seek to conduct my research on how public policy decisions impact contract law. Through the course of this paper, I shall be conducting my research on what agreements are deemed as against public policy, how such agreements are in violation of a penal statue and legality of object while forming the agreement.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Human-trafficking-Or-a-modern-day-slavery

Human trafficking: Or a modern-day slavery by Ananya Tiwari

Ever since contemporary times, human Trafficking has been prevalent. It used to be disguised as devadasis or some other way to justify it. Now, we have democracy and freedom, yet Human Trafficking is a growing problem in our world. Since the known history of humankind, Human Trafficking, slavery and absolute denial of rights, even minimum human substance, were/are prevalent in the name of gods or kings' wishes. In the modern age, with the advent of rationalism and liberalism, it was thought that this menace of humanity would perish and all equal liberated human beings would co-exist in fraternity with human dignity and happiness. However, surprisingly even in the present era, it is modern-day slavery. The earliest form of recognized human Trafficking began with the African trade of enslaved persons. We claim to treat everyone equally, but have we eliminated this evil? No human being is for sale, yet they are robbed of their basic rights and dignity. Innocent people get tangled in this web through coercion, false interpretation or trusting someone they should not have trusted. Trafficking leaves a lot of detrimental scars, especially for children, like long-lasting psychological trauma, substance abuse, suicidal thoughts, sexually transmitted diseases, identity disturbance and confusion.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/responsibility-of-the-corporates-towards-environmental-preservation-protection-and-management

Responsibility of The Corporates Towards Environmental Preservation, Protection, And Management by Ritansha Lakshmi

A corporate must acknowledge the inter-relationship and the interdependency between human beings, nature and other life forms which in true sense are the essence of the well-being of the human race and to take a step forward to preserve and protect the ecosystem it must follow the policies which are in favour of our environment by adapting to the idea of ecocentrism rather anthropocentrism and make decisions or execute lines of action which are beneficial in terms of the objectives and values of the environment preservation, protection and management, regardless of it belonging to the category of polluting or non-polluting, protection of our environment should be the foremost concern of every socially and ethically responsible organization. And the corporate must take steps to make sustainable use of resources, establish a healthy and safe working environment for its workers and the people associated with it, to maintain ecological

balance, take active and positive steps to minimize waste generation, and preserve the environment at every cost.

4. MANUPATRA
https://articles.manupatra.com/article-details/Pre-Trial-Complications-in-CrPC

Pre-Trial Complications in CrPC by Pratham Gupta

The investigation, prosecution, and adjudication of criminal proceedings in India are governed by the Code of Criminal Procedure (CrPC). A criminal case's pre-trial phase is an essential time when many significant choices are taken that could influence how the trial turns out. This research article examines the pre-trial issues that can develop about investigations, arrests, custody, bail, and the gathering of evidence. These issues could have a big impact on the accused, the victims, and the legal system as a whole. For instance, if an investigation or prosecution takes longer than expected, the accused may be held longer than necessary and the fairness of the legal system may be compromised. Bail and custody matters can also be controversial, particularly when the accused is viewed as a flight risk or when there is a chance that evidence will be tampered with. Similar to how witness credibility or evidence admissibility issues can weaken the prosecution's case. Understanding the nature, extent, and opportunity that pre-trial problems under the CrPC bring to the Indian criminal justice system is crucial in this regard.

5. MANUPATRA
https://articles.manupatra.com/article-details/handbook-on-combating-gender-stereotypes

Handbook on Combating Gender Stereotypes by Supreme Court Of India

This Handbook offers guidance on how to avoid utilising harmful gender stereotypes, in particular those about women, in judicial decision making and writing. Each one of us sometimes employ stereotypes in our thoughts, words, and actions. We may rely on stereotypes inadvertently, because stereotypes are often internalised and ingrained in our thinking due to societal, cultural, and environmental conditioning. This can make it difficult to identify and avoid relying on stereotypes. However, challenging and overcoming stereotypes is essential to ensuring an equal, inclusive, and compassionate society. With respect to the judiciary, it is vital that judges not only avoid relying on stereotypes in their decision making and writing, but also actively challenge and dispel harmful stereotypes. If harmful stereotypes are relied on by judges, it can lead to a distortion of the objective and impartial application of the law. This will perpetuate discrimination and exclusion.

6. MANUPATRA
https://articles.manupatra.com/article-details/ligaturestrangulation-mark-on-the-neck-is-it-really-suicidemurder

Ligature/Strangulation Mark on The Neck – Is It Really Suicide/Murder by Anupam S Sharrma

It is often observed that on finding a ligature mark on the neck of a person, the investigating agency would be quick to carry out investigation prima facie treating the

case to be of either homicide or suicide, unmindful of the fact that it could very well also be a case of natural death whereafter a scene of crime might have been meticulously created to simulate suicidal hanging or homicide to falsely implicate other persons due to personal/political rivalry. In fact, it has been observed that postmortem examination primarily concludes the case to be one of suicide or homicide on the basis of position of ligature mark, cyanosis, petechiae and congestion of visceras. As a general rule, in ligature strangulation/suicide, the mark of ligature is positioned approximately horizontally, in contrast to hanging in most cases the mark slopes up to the point of suspension, situated high-up the neck, directed obliquely upwards the line of mandible on both sides of the neck to pass behind the angle of jaw and mastoid process and ending on the back of the scalp, leaving a gap in between the two ends of the ligature mark. In homicidal strangulation/murder, it may either totally encircle the neck or be seen only at the front. The latter situation arises when the ligature is pulled tightly from behind. In such cases, the mark may also be sloping if the ligature is pulled upwards from behind.

7. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/mental-health-and-family-law-understanding-impact-legal-outcomes-and-family-dynamics

Mental Health and Family Law: Understanding the Impact on Legal Outcomes and Family Dynamics by Erika Salerno Shadowens, Jailah D. Emerson

When deciding how to collaboratively raise children, the question of what serves the children's best interests frequently arises and sparks debate within legal contexts surrounding divorce and child custody. This contentious topic can be further complicated when questions about the status of a parent's mental health arise. However, a mental illness diagnosis does not have to result in the loss of one's parental rights.

8. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/reality-artificial-intelligence-family-office-realm

The Reality of Artificial Intelligence in the Family Office Realm by Angelica F. Russell-Johnson,Sarah Kerr Severson

Across industries, professionals are talking about the opportunity and utility of artificial intelligence (AI). In the estate planning and family office realms, two fields that require a distinctly human touch, advisors wonder how can artificial intelligence be leveraged, if at all? Artificial intelligence is the replication of human intelligence by a machine. Generative artificial intelligence (GenAI) takes this one step further by leveraging the power of computers, collected data, and machines to mimic the problem-solving and decision-making capabilities of the human mind. This leap in machine ability can be a powerful tool to streamline work product. Although advisors might be wise to integrate AI into their practices, estate planning and family office professionals should remember that a machine cannot replace the human relationships that we build with our clients.