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FORTNIGHTLY CASE LAW BULLETIN

(16-08-2024 to 31-08-2024)

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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1. **Supreme Court of Pakistan**
The Monal Group of Companies, Islamabad v. Capital Development Authority through its Chairman and others, etc.
Civil Petition for Leave to Appeal No. 304/2022 and CMA No.891/2022, etc.
Mr. Justice Justice Qazi Faez Isa HCJ, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._304_2022_21082024.pdf

Facts: Two Civil Petitions for Leave to Appeal have been filed by the petitioner, who describes himself as the sole proprietor of The Monal Group of Companies, against the order of the Islamabad High Court. A first appeal against order and civil revision was dismissed and writ petition filed by Professor Zahid Baig Mirza was allowed, through the said short order of the Islamabad High Court.

Issues: i) Whether the permission to use land of National Park does confer its ownership or could ownership have been conferred on the RV & F Directorate, QMG Branch, QHQ, a non-legal entity?
ii) Whether constructing a restaurant in a designated national park is a clear violation of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979?
iii) Whether under the Pakistan Environment Protection Act, 1997, anyone undertaking any activity involving any change in the environment is required to submit an 'initial environment examinations' or ' an environment impact assessment' to the Environmental Protection Agency?
iv) Whether under the Islamabad (Presevation of Landscape) Ordinance 1966, anyone who removes, destructs, damage and alters the landscape is liable to criminal prosecution, imprisonment and fine?
v) Whether the fundamental right to life and to live it with dignity is to live in a world which has an abundance of all species?

Analysis: i) The Directorate and its Director-General asserted rights to the land of the National Park on the tenuously improbable premise that in the year 1910 the Veterinary, Remount and Farms unit of the British Army was allowed to use some land of the National Park for fodder. Major General, was the Director-General of the Directorate, who had affixed his signature and official stamp on the RV&FD Lease, through which Mr. Afzal was bestowed the favour of a seventeen year lease by the Directorate. However, the Directorate is not a legal entity. The Directorate bypassed the Government of Pakistan and directly took up the matter with CDA. It stated that through notification No.266 dated 23 April 1910 land was being 'utilized by Military Farm Rawalpindi for production of hay for Army animals.' Permitting the use of land does not confer its ownership, nor could ownership have been conferred on the Directorate, a non-legal entity. It also escaped the attention of the personnel of the Directorate that the only concerned statutory entity was the Wildlife Board.
ii) Constructing a restaurant in a designated national park is a clear violation of

the Ordinance. Unrestricted construction and commercial activities within a national park also denigrates its protected status. The Ordinance was enacted forty-five years ago with the stated object of 'protection, preservation, conservation and management of wildlife' and for the establishment 'of a National Park in the Islamabad Capital Territory'. Section 21(1) of the Ordinance stipulates that 'with a view to protecting and preserving scenery, flora and fauna in natural state', the Federal Government may declare any area to be a national park. On 28 April 1980 the Federal Government issued Notification No. S.R.O. 443(I)/80 and declared the areas mentioned therein as the Margalla Hill National Park, which included the Margalla Reserve Forest, the Military Grass Farms, certain villages, Rawal lake and the area surrounding it. Another notification (No. S.R.O. No. 3(15)/76-Capital Development Authority.III(3) was issued on 27 April 1980) under section 20 of the Ordinance through which 'Bannigallah hills bounded by Kurang river in the North, Mohra Noor in the West, Thal in the East and Belgh in the South' were declared as wildlife sanctuaries. Section 20 of the Ordinance states that a wildlife sanctuary is 'closed to public, and no exploitation of forest therein shall be allowed' and 'no person shall enter or reside' in it. One of the stated reasons being to secure the 'undisturbed breeding of wildlife'….. Subsection (2) of section 21 of the Ordinance states that a national park is accessible to the public only 'for recreation, education and research'…. The proviso to subsection (4) of section 21 stipulates that, 'Provided that the authorized officer may, for specific purposes, authorize the doing of any of the aforementioned acts.' Trees, shrubs, soil of the National Park were removed and the land cleared to construct the restaurants, which were not authorized by the Wildlife Board, nor could such authorization be given. Subsection (3) of section 21 allows certain acts to be carried out for public recreation, education and research…. However, the acts stated in the abovementioned proviso may only be allowed provided they do not 'impair the object for which it is declared a national park'. However, the construction and running of restaurants impaired the object of the national park and the same also had no nexus with public education and/or research. Therefore, the restaurants could not be allowed to operate.

iii) The Pakistan Environmental Protection Act, 1997 ('the PEPA') was enacted twenty-seven years ago 'for the protection, conservation and control of pollution.' Anyone undertaking any activity 'involving any change in the environment' is required to submit an 'initial environmental examinations' ('IEA') or 'an environmental impact assessment' ('EIA') to the Environmental Protection Agency ('EPA'). But the restaurants neither submitted an IEA nor an EIA to the EPA. The provisions of PEPA were disregarded and violated. The restaurant owners also disregarded the notices issued by EPA and the environment protection orders issued by it.

iv) Section 4 of the Islamabad (Preservation of Landscape) Ordinance, 1966 ('the Preservation of Landscape Ordinance') prohibits the removal, destruction, damage and alteration of landscape and anyone doing so, without first obtaining requisite permission from the Authority thereunder, is liable to criminal

prosecution, imprisonment and fine. The acts prohibited by the Preservation of Landscape Ordinance were also apparently committed, but no one faced prosecution thereunder.

v) The fundamental right to life, and to live it with dignity (respectively Articles 9 and 14 of the Constitution) is to live in a world which has an abundance of all species. It has by now been scientifically well established that if the earth becomes bereft of birds, animals, insects, trees, plants, clean rivers, unpolluted air, soil it will be the precursor of our destruction, and scientific research establishes that nothing in nature is without value and purpose.

Conclusion: i) The permission to use land of National Park does not confer its ownership nor could ownership have been conferred on the RV & F Directorate, QMG Branch, QHQ, a non-legal entity.

ii) Constructing a restaurant in a designated national park is a clear violation of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979.

iii) Under the Pakistan Environment Protection Act, 1997, anyone undertaking any activity involving any change in the environment is required to submit an 'initial environment examinations' or ' an environment impact assessment' to the Environmental Protection Agency.

iv) Under the Islamabad (Presevation of Landscape) Ordinance 1966, anyone who removes, destructs, damage and alters the landscape is liable to criminal prosecution, imprisonment and fine.

v) The fundamental right to life and to live it with dignity is to live in a world which has an abundance of all species.

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2. **Supreme Court of Pakistan**
Imran alias Mani v. The State
Criminal Shariat Appeal No. 2 /2018
Mr. Justice Qazi Faez Isa, Chairman, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan,
Mr. Dr. Muhammad Khalid Masud, Mr. Dr. Qibla Ayaz. (Ad-hoc Members Shariat Appellate Bench)
https://www.supremecourt.gov.pk/downloads_judgements/crl.sh.a._2_18.pdf

Facts: The Trial Court convicted and sentenced the appellant under section 302(b) read with section 34 of the Pakistan Penal Code, 1860 to death on two counts i.e. murder of two persons and zina with co-accused. Federal Shariat Court upheld the judgment of the trial court. Hence, this appeal.

Issues: i) Repercussions of the defective investigation.
ii) Duty of the Judges.

Analysis: i) Faulty and defective investigations and resultant prosecutions not only heap misery on the accused and his family but also on the family of victims, and leave crimes unaccounted. This travesty could have been avoided if the investigators

and prosecutors had done a better job.
ii) Judges must also be mindful of their duty to provide expeditious justice.

Conclusion: i) See above analysis no. i.
ii) It is the duty of the judges to ensure the speedy justice.

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3. **Supreme Court of Pakistan**
Shameem Khan v. The State
Criminal Shariat Appeal No. 05 of 2018
Mr. Justice Qazi Faez Isa, Chairman, Justice Naeem Akhtar Afghan, Justice Shahid Bilal Hassan, Dr. Muhammad Khalid Masud, Dr. Qibla Ayaz
https://www.supremecourt.gov.pk/downloads_judgements/crl.sh.a._05_2018.pdf

Facts: The appellant challenged his conviction and sentence u/s 302 (b) PPC, u/s 392 PPC and u/s 13 of A.O. by filing Jail Shariat Petition No.01(S) of 2018. The appellant was granted leave to appeal to reappraise the entire evidence available on record for safe administration of criminal justice.

Issues: i) Whether firing only once is a mitigating factor attracting alternate sentence of imprisonment for life?
ii) Rule for appraising of Confessional Statement.

Analysis: i) There are precedents of the Supreme Court that firing only once from a firearm is a mitigating factor attracting the alternate sentence of imprisonment for life.
ii) It is settled law that either a confessional statement is accepted in its entirety or discarded, therefore, if it contains something beneficial to the appellant that cannot be discarded.

Conclusion: i) Firing only once is a mitigating factor attracting the alternate sentence of imprisonment for life.
ii) See above analysis no. ii.

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4. **Supreme Court of Pakistan**
Chairman Federal Public Service Commission, Islamabad and others v. Dr, Humaira Sikandar and others.
Civil Petitions No 2547 and 2640 of 2023.
Mr. Justice Qazi Faez Isa CJ, Mr. Justice Naeem Akhtar Afghan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2547_2023.pdf

Facts: These Civil petitions arise due to a difference of opinion in the Federal Service Tribunal, where Acting Chairman, had expressed one view and other member, had expressed another view.

Issues: i) What procedure is to be followed in case the members of a Service Tribunal Bench differ in opinion on any point?
ii) Whether the Chairman mentioned in section 3A of the Service Tribunals Act, 1973 would also include an acting Chairman?

Analysis: i) To appreciate the point it would be appropriate to reproduce section 3A of the Act, as under:`3A. Benches of the Tribunal. -(1) The powers and functions of a Tribunal may be exercised or performed by Benches consisting of not less than two members of the Tribunal, including the Chairman, constituted by the Chairman.(2) If the members of a Bench differ in opinion as to the decision to be given on any point,—(a) the point shall be decided according to the opinion of the majority; (b) if the members are equally divided and the Chairman of the Tribunal is not himself a member of the Bench, the case shall be referred to the Chairman and the decision of the Tribunal shall be expressed in terms of the opinion of the Chairman; and (c) if the members are equally divided and the Chairman of the Tribunal is himself a member of the Bench, the opinion of the Chairman shall prevail and the decision of the Tribunal shall be expressed in terms of the opinion of the Chairman.'The above law states that whenever there is a difference of opinion on any point the same shall be decided according to the opinion of the majority. However, when members are equally divided weightage is given to the opinion of the Chairman, if he was a member of the Tribunal which had heard the matter. In the present case the appeals were heard by an acting Chairman, and not by the Chairman.

ii) An acting Chairman is made pursuant to section 3(7) of the Act which is reproduced hereunder:3 (7) At any time when- (i) the Chairman of a Tribunal is absent or is unable to perform the functions of his office due to any cause; or (ii) office of the Chairman is vacant, the most senior of the other members of a Tribunal shall act as Chairman till the Chairman resumes his office or the regular Chairman is appointed as the case may be.'Since the legislature in its wisdom did not mention an acting Chairman in section 3A(2)(c) of the Act we cannot insert such words therein or imply that a Chairman would also include an acting Chairman. Moreover, the general rule, and one of logic too, is that when there is a difference of opinion amongst adjudicators the matter is referred to a third adjudicator. However, the legislature created an exception to such a general rule, and having created the exception it must be construed strictly. By applying this rule of interpretation the weightage given to the opinion of the Chairman in clause (c) of section 3A(2) of the Act cannot be extended to include an acting Chairman.

Conclusions: i) Whenever there is a difference of opinion on any point between the members of a Service Tribunal Bench, the same shall be decided according to the opinion of the majority. However, when members are equally divided weightage is given to the opinion of the Chairman, if he was a member of the Tribunal which had heard the matter.

ii) As per clause (c) of section 3A(2) of the Service Tribunals Act, 1973, the Chairman does not include an acting Chairman.

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5. **Supreme Court of Pakistan**
Khalid alias Muhammad Khalid and others v. Collector of Customs (Adjudication), Custom House, Lahore, etc.
Civil Petition No. 3391 of 2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah, Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3391_2024.pdf

Facts: Both the appellants and the Collector of Customs preferred customs references against the Tribunal's judgment. During the pendency of these references, the appellants submitted an application to the Collector of Customs (Enforcement), Lahore, seeking implementation of the Tribunal's judgment and contending that its operation had not been stayed by the High Court in the reference proceedings. Receiving no response from the Collector of Customs (Enforcement), the appellants filed a writ petition in the Lahore High Court, praying that the Collector of Customs (Enforcement) be directed to comply with the Tribunal's judgment. The Lahore High Court dismissed the writ petition by impugned order, observing inter alia that the appellants could not seek implementation of the Tribunal's judgment since they themselves had assailed it in the reference proceedings. Hence, the appellants have approached Supreme Court through the present petition for leave to appeal.

Issues: i) What remedy is available when customs officials fail to implement a Tribunal's order that has not been suspended, and does the Tribunal have the authority to enforce its own orders?
ii) Does the Tribunal have the power to execute its orders under Sections 194-A and 194-B of the Customs Act, and can the High Court's writ jurisdiction be invoked for this purpose?

Analysis: i) There is no provision in the Customs Act that specifically provides for the power of the Tribunal to execute its orders. However, it is a well-established principle of statutory construction, as stated by Maxwell and approvingly cited by this Court in Ali Sher Sarki, that where a statute confers jurisdiction, it also grants, by necessary implication, the powers to do all such acts or employ all such means as are essentially necessary for its execution. An express grant of statutory power carries with it, by necessary implication, the authority to do all such acts that are necessary to make such a grant effective. A statute that expressly confers a substantive power upon a court or tribunal also impliedly grants all incidental and ancillary powers necessary for the effective exercise of that substantive power. These incidental and ancillary powers thus necessarily flow from the express substantive power…The powers of the Tribunal are, no doubt, limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, can only include such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective…As held in

Vishwabharathi6 by the apex court of a neighbouring jurisdiction, a statutory tribunal that has been conferred the power to adjudicate a dispute and pass an order on it also has the power to implement that order. Even if this power has not been specifically spelled out in the statute, it must be deemed to have been impliedly conferred upon the statutory tribunal. Courts and statutory tribunals must be held to possess the power to execute their own orders; for when a court or tribunal is conferred jurisdiction or substantive power to make an order, the power to execute such an order, being ancillary and incidental, is also impliedly conferred by the statute. This is necessary because the jurisdiction or substantive power would be useless if the order passed in exercise thereof could not be executed and enforced.

ii) The same principle applies to the jurisdiction and substantive power of the Tribunal under Sections 194-A and 194-B of the Customs Act. The power to execute an order passed under these express provisions of the Customs Act, being ancillary and incidental, is also impliedly conferred upon the Tribunal by the Customs Act. We thus conclude that the Tribunal has the power to execute orders passed in exercise of its appellate jurisdiction under Sections 194-A and 194-B of the Customs Act. Consequently, since an adequate remedy is provided by law, the writ jurisdiction of the High Court cannot be invoked for executing orders passed by the Tribunal.

Conclusion: i) A statutory tribunal that has been conferred the power to adjudicate a dispute and pass an order on it also has the power to implement that order. Even if this power has not been specifically spelled out in the statute, it must be deemed to have been impliedly conferred upon the statutory tribunal.

ii) The Customs Appellate Tribunal has the power to execute orders passed in exercise of its appellate jurisdiction under Sections 194-A and 194-B of the Customs Act, 1969. Consequently, since an adequate remedy is provided by law, the writ jurisdiction of the High Court cannot be invoked for executing orders passed by the said Tribunal.

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6. **Supreme Court of Pakistan**
Superintendent of Police Headquarters, Lahore etc v. Ijaz Aslam and others
Civil Petition Nos. 3105-L/23 to 3114-L/23 & 3119-L/23 to 3122-L/23
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah, Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3105_l_2023.pdf

Facts: The driver constables were appointed by the District Police. Subsequently, on the basis of a complaint, an investigation into the genuineness of their LTV driving licenses was carried out and after necessary verification, it was found that the traffic police had no record of their driving licenses and the same were found fake and bogus. They were dismissed as a result of regular departmental inquiry. However, dismissal order was challenged and Punjab Service Tribunal reinstated them in service. Hence this appeal.

Issues: i) Institutional autonomy and role of tribunal.
ii) Importance of Institutional Autonomy.
iii) Judicial scrutiny of institutional decisions and role of courts.
iv) Doctrine of unclean hands and its application on employment.
v) Power of Service Tribunal and its limitation.
vi) Whether discrimination may be alleged to take a benefit in violation of law?

Analysis: i) The imposition of punishment under the law is primarily the function of the competent authority i.e., Police department in this case, and the role of the Tribunal or Court is rather secondary unless it is found to be against the law or is unreasonable. This is because the department/competent authority, being the fact-finding authority, is best suited to decide the particular penalty to be imposed keeping in view a host of factors such as the nature and gravity of the misconduct, past conduct, the nature and the responsibility of the duty assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the department, as well as any extenuating circumstances.3 The underlying rationale is based on the concept of institutional autonomy which provides for a degree of self-governance and independence by a public sector institution.

ii) Autonomy is essential for ensuring that such institutions can function effectively, impartially, and according to their legal mandates. The autonomy of public institutions is not just a matter of administrative convenience, but a fundamental requirement for the effective functioning of a democratic society, as public sector organizations are guardians of the public interest.

iii) The role of the courts is not to second-guess institutions as certain matters are the province of institutions themselves. Thus, as long as the institutions pursue their institutional purpose and function, and as long as they abide by law, professional norms and best practices, they are largely entitled to regulate themselves.6Institutional decisions are, however, subject to judicial oversight and can be corrected if they suffer from any illegality, irrationality or procedural impropriety. Other than that, the courts must give deference to the institutional decisions and desist from second guessing them on the basis of their own subjective standards of leniency, compassion or fairness. Such decisions are best left to the institutions owing to their policy-making prerogatives and expertise.

iv) It is well settled law that when the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically. Once the appointment was sought on the basis of bogus licenses, such appointment cannot be legitimized. The principle at work here is often referred to as the “doctrine of unclean hands.” This legal doctrine holds that a person who has acted unethically, deceitfully, or with dishonesty should not be entitled to the benefits derived from such actions. When applied to employment, particularly in sensitive roles like the police service, this principle asserts that someone who gains their position through fraudulent means—such as by falsifying documents—cannot be trusted to uphold the integrity and responsibilities of that position. Furthermore, discovering the fraud, even several years after the fact, can still be ground for disciplinary action

because the initial appointment was obtained illegitimately. The rationale is that trust and integrity are foundational to public service roles, and a breach of this nature undermines the trust necessary for the role and could potentially have legal and institutional consequences. The principle maintains that the integrity of the institution and the trust placed in its officials are paramount, and therefore, any breach, regardless of when discovered, must be addressed decisively.

v) The Tribunal enjoys powers to set aside, confirm, vary or modify any order passed by the departmental authorities. However, such power is required to be exercised carefully, judiciously and after recording cogent reasons for the same keeping in view and considering the specific facts and circumstances of each case.10 All Courts and Tribunals seized of matters before them are required to pass orders strictly in accordance with the parameters of the Constitution, the law and the rules and regulations lawfully framed under the law. No court has the jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law. Any relief granted on the touchstone of subjective standards of leniency and compassion, rather than the law, cannot be sustained. Any such subjective decision disregards the importance of institutional autonomy; which rests on well-thought-out values, ethos, policies and internal disciple of the institution.

vi) The ground of discrimination as alleged by the respondents is also untenable in law as Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It only comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances are denied that benefit. But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the courts accept such a plea, that the same benefit must be allowed to them also in violation of law.

Conclusion: i) Institutional autonomy provides for a degree of self-governance and independence by a public sector institution. The role of the Service Tribunal or Court is secondary.

ii) Autonomy is essential for ensuring that such institutions can function effectively, impartially, and according to their legal mandates.

iii) Institutional decisions are open to judicial review and can be rectified if they involve illegality, irrationality, or procedural errors. Beyond this, courts should respect these decisions and avoid second-guessing them based on their own personal standards of leniency, compassion, or fairness.

iv) See above analysis no. iv.

v) See above analysis no. v.

vi) Discrimination can’t be alleged on the basis of other unlawful acts and illegalities.

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7. **Supreme Court of Pakistan**
Bashir Ahmed (deceased) through his L.Rs., etc. v. Nazir Ahmad, etc.
C.A. No. 197-L/2019
Bashir Ahmed (deceased) through his L.Rs., etc. v. Nazir Ahmad, etc.
C.M.A. 3759/2022
Bashir Ahmed (decd.) through his L.Rs., etc. v. Nazir Ahmad, etc.
C.M.A. 5618/2022
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._197_l_2019.pdf

Facts: A suit seeking decree of declaration, cancellation of documents and possession along with perpetual injunction was instituted by respondent No.1 against predecessor of appellants alongwith others, which suit failed up to the forum of the first Appellate Court. However, the High Court reversed concurrent decrees of the Trial Court and the Appellate Court, hence this appeal.

Issues: i) When and why the Courts have recognized the special significance of family arrangements and upheld them?
ii) Whether a simple memorandum created after the family arrangement has been made, intended either for record purposes or for informing the Court to effect necessary mutation, requires compulsory registration under Section 17 of the Registration Act, 1908?
iii) If the general powers of attorney is accompanied by a family settlement, then whether precautionary principles would be applicable requiring the agent, transferring principal's property, to communicate with principal to seek his instructions and consent?

Analysis: i) A family settlement involves members of the same family striving to resolve their differences and disputes to achieve a lasting resolution. Through these arrangements, family members aim to bring about harmony and goodwill by settling conflicting claims or disputed titles to promote peace within the family. The principles governing family settlement or arrangements may be that: (i) a family settlement has to be genuine, bona fide and must aim to resolve family disputes and conflicting claims by ensuring a fair and equitable distribution or allocation of properties among all family members; (ii) when an agreement is entered into to preserve the honor of a family and is reasonable, the Court will seize any justifiable reason to enforce the agreement and promote peace within the family; (iii) the settlement must be made willingly and should not be influenced by fraud, social or familial pressure and undue influence; (iv) a family settlements may well also be oral not necessary to be registered; (v) the registration of a family settlement is required only if the terms of the settlement are put into writing; (vii) in cases where the parties are not inclined to divide property permanently, they cannot be forced to do so and it is

considered a personal and family matter as well as there is no requirement for registering such an agreement; (viii) The members involved in the family settlement must have a pre-existing title, claim, or interest, even a potential claim, in the property that is recognized by all parties to the settlement, and if one party lacks a title but, under the arrangement, another party relinquishes all claims or titles in favour of that person and acknowledges them as the sole owner, a pre- existing title will be assumed; (ix) a genuine and bona fide family settlement can resolve current or potential disputes even if they do not involve legal claims, and as long as the arrangement is fair and equitable, it is final and binding on all parties involved and (x) Courts tend to favour maintaining the family arrangement rather than disturbing it on technical or trivial grounds, and where the Courts find that the family arrangement suffers from a legal deficiency or a formal defect, the principle of estoppel is invoked and applied to turn down the plea of the person who, being a party to family arrangement, seeks to set aside a settled dispute, and claims to revoke the family arrangement under which he himself has received some material benefits.

ii) The registration of a family settlement is required only if the terms of the settlement are put into writing. However, it is important to distinguish between a document that includes the terms and details of a family settlement and such memorandum which does not create or extinguish any rights in immovable property.

iii) According to the developed precautionary principles, the agent transferring the principal's property, in case a power of attorney is susceptible to doubt about its interpretation, is obliged to use all reasonable diligence to communicate with the principal and seek to obtain his instructions. Moreover, if the agent purchases principal's property himself or for his own benefit, then he should obtain the consent of the principal. However, the general powers of attorney accompanied by a family settlement are to be treated as a species apart and an exception to the aforementioned precautionary principles. While deciding the rights of party under the family settlement or claims to upset such settlement, the Court considers what most for the interests of a family is. Matters that would be fatal to the validity of a similar transaction between strangers are not objections to the binding effect of a family settlement or arrangement.

Conclusion: i) The Courts have recognized the special significance of family arrangements and upheld them when they are made in good faith.

ii) If a simple memorandum is created after the family arrangement has been made and it is intended either for record purposes or for informing the Court to effect necessary mutation, then such memorandum does not

require compulsory registration under Section 17 of the Registration Act, 1908.

iii) The family settlements are not governed by precautionary principles that apply to dealings between strangers and if the general powers of attorney are accompanied by a family settlement, then precautionary principles requiring the agent, transferring principal's property, to communicate with principal to seek his instructions and consent would not be applicable.

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8. **Supreme Court of Pakistan**
Rehmatullah v. The State
Crl.A. No. 23-Q/2020
Naseer Ahmad and Muhammad Younas v. The State
CrI.A.24-Q/ 2020
Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._23_q_2020.pdf

Facts: Appellants were tried by the learned Sessions Judge, pursuant to case registered Sections 302, 34 PPC. The Trial Court convicted the appellants under Section 302(b) PPC read with Section 34 PPC and sentenced each of them to suffer imprisonment for life. In appeal, the High Court upheld the judgment of the Trial Court. Hence, this appeal.

Issues: i) What is the settled principle for the cases where there is no direct evidence and the prosecution case hinges upon the circumstantial evidence?

ii) What would be the effect of a doubt of single circumstance found in the prosecution's evidence?

Analysis: i) It is settled by now that in such like cases every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused. But if any link in the chain is missing then its benefit must go to the accused.

ii) It is by now well settled that even a single circumstance, which creates reasonable doubt in the prosecution evidence, is sufficient to discard the prosecution case.

Conclusion: i) See above analysis no. i.

ii) Even if single circumstantial evidence is doubted, it shall be sufficient to discard the prosecution's case.

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9. **Supreme Court of Pakistan**
Hasrat Khan v. The State
Criminal Petition No. 69-Q of 2022
Mr. Justice Yahya Afridi, Mr. Justice Jamal Mandokhail, Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._69_q_2022.pdf

Facts: The Petitioner was convicted u/s 9(c) of the CNSA, 1997 and was sentenced to imprisonment for life with fine or in default of payment of fine to further undergo simple imprisonment. The benefit of section 382-B of Cr.P.C. was also extended to him. The Petitioner challenged his conviction and sentence before the High Court through criminal appeal, which was dismissed and the conviction and sentenced recorded by the trial court was upheld and maintained. Hence, the present petition.

Issue: Whether the samples have to be separated from each and every packet of narcotics substance recovered and each such sample has to be tested by the Chemical Examiner separately?

Analysis: The most striking feature of the present case is the gross negligence and callous attitude in the investigation of the present case; only one consolidated sample weighing 3.200 kilograms was separated from the recovered charas contained in 320 separate packets (total weight 320 kilograms) for chemical analysis. The mode and manner of obtaining sample in the present case was a clear violation of the law settled and declared by this court in the case of Ameer Zed v. The State (PLD 2012 SC 380); wherein it was clearly laid down that the samples had to be separated from each and every packet of the narcotics substance recovered and each such sample had to be tested by the Chemical Examiner separately.

Conclusion: The samples have to be separated from each and every packet of narcotics substance recovered and each such sample has to be tested by the Chemical Examiner separately.

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10. **Supreme Court of Pakistan**
Muhammad Asjad v. The State, etc.
Criminal Petition No. 809-L of 2017
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._809_l_2017.pdf

Facts: The petitioner was booked in case FIR for the offences under Sections 4/5 of the Explosive Substances Act, 1908 and Section 7 of the Anti-Terrorism Act, 1997. Following a trial, the Anti-Terrorism Court convicted the petitioner under Section 4 of Explosive Substances Act, 1908 and Section 7(l)(ff) of the Anti-Terrorism Act, 1997, sentencing him to simple imprisonment for life on each count, to run concurrently with the benefit of Section 382-B of the Code of Criminal Procedure, 1898. The convictions and sentences awarded to the Petitioner were

upheld by the High Court in appeal, leading to the present petition before this Court.

Issues: i) What is legislative intent to introduce statutory presumption under Section 27A of the ATA?
ii) What is the difference between Section 4 and Section 5 of the Explosive Substances Act, 1908?

Analysis: i) A careful reading of Section 27A of the Anti-Terrorism Act, 1997 clearly reveals the legislative intent to introduce this provision: to deter the illicit possession of explosive substance and facilitate the prosecution of explosives-related terrorism offences. And thus, the legislature introduced a presumption, albeit rebuttable, that possession of explosive substance, without lawful justification or unlawful concern, presumes a 'purpose of terrorism'.
ii) A joint reading of Sections 4 and 5 of the Explosive Substances Act, 1908, clearly sets out that: the former relates to possession of explosive substance shall be accompanied with a malicious intent to endanger life or cause serious injury to property; while the latter, on the other hand, criminalizes the mere possession of explosive substance, without there being any condition of the same being with a malicious intent to endanger life or cause serious injuiy to property. Notably the difference between Section 4 and Section 5 of the Explosive Substances Act, 1908 lies in malicious intent.

Conclusion: i) Through statutory presumption under Section 27A of the ATA, the legislature effectively shifted the burden of proof onto the accused, recognizing the inherent danger and potential for harm posed by the unauthorized possession of these destructive materials.
ii) A joint reading of Sections 4 and 5 of the Explosive Substances Act, 1908, clearly sets out that: the former relates to possession of explosive substance shall be accompanied with a malicious intent to endanger life or cause serious injury to property; while the latter, on the other hand, criminalizes the mere possession of explosive substance.

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11. **Supreme Court of Pakistan**
The Province of Balochistan through the Chief Secretary v. Karamat Ali and others
CMAs No. 597 & 598 of 2024 in ICAs 16 & 24/2023
Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan, Mr. Justice Shahid Bilal Hassan.
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._597_2024.pdf

Facts: Through this application, the respondents filed the Civil Miscellaneous Application before the Supreme court, wherein they prayed that the appellants be restrained from engaging any private counsel from pleading and conducting the

appeal on their behalf and furthermore, only allow the office of the Attorney General to plead and conduct it.

Issues: i) Whether the license to practice law confers twofold rights on an advocate before the Supreme court?
ii) What is the meaning of a right to plead?
iii) Whether Federation, ministries and Provincial Government can engage a private counsel?

Analysis: i) The license to practice law confers twofold rights on an advocate: the right to act and the right to plead. The right to act refers to taking steps to lay the case before the court, for instance making an application or presenting a petition or appeal. No advocate can exercise this right for any person unless he has been appointed by a document in writing signed by such person or his authorized agent or some other person duly authorized by him to make such appointment, and such document has been filed in the registry. A document appointing an advocate to act on behalf of any person is called Wakalatnama (power of attorney) Rule 15 of Order IV of the Supreme Court Rules, 1980 says that no advocate other than an Advocate On Record is entitled to act for a party in any proceeding in the Supreme court.
ii) The right to plead, as it suggests, is a right by which an advocate appears before the court to present and argue a position on behalf of a person or party. Rule 6 of Order IV of the Supreme Court Rules, 1980 enacts that no advocate other than an Advocate-on-Record shall appear or plead in any matter before Supreme Court unless an Advocate-on-Record instructs him. In line with this rule, Form No.5 of Sixth Schedule to the Supreme Court Rules, 1980 provides a specimen of the Power of Attorney to Advocate-on-Record, which, among other things, gives power to an Advocate-on-Record to appoint and instruct counsel.
iii) The engagement of a private counsel could only be sanctioned for compelling reasons and in the public interest and not to protect or save a particular individual or for any other ulterior reason.

Conclusion: i) The license to practice law confers twofold rights on an advocate: the right to act and the right to plead.
ii) The right to plead, as it suggests, is a right by which an advocate appears before the court to present and argue a position on behalf of a person or party.
iii) Yes, Federation, ministries and Provincial Government can engage a private counsel for compelling reasons and in the public interest.

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12. **Supreme Court of Pakistan**
Ali Gohar Khan v. Election Commission of Pakistan, Islamabad and others
Civil Petition No.2477 of 2024
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Naeem Akhtar Afghan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2477_2024_2108 2024.pdf

Facts: The petitioner's application seeking recounting of the votes was declined and then he withdrew his later filed writ petition for availing remedy before the Election Commission of Pakistan. The representation of the petitioner was accepted by Election Commission of Pakistan which order was assailed by another respondent through writ petition which has been accepted vide impugned order, hence this petition.

Issue: What is the pre-requisite for recounting the ballot papers under Section 95 (5) of the Elections Act, 2017?

Analysis: According to Section 95(5) of the Elections Act, 2017, before commencement of the proceedings for consolidating the results of the count, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made to that effect by a contesting candidate or his election agent.

Conclusion: The pre-requisite for recounting the ballot papers under Section 95 (5) of the Elections Act, 2017 is submitting an application for recounting before commencement of the proceedings of consolidating the results of the count.

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13. **Supreme Court of Pakistan**
Muhammad Nawaz v. The State, etc. and other petitions
Crl. Petition No. 522-L of 2018, Crl. Petition No. 1008-L of 2014, Crl. Petition No. 599-L of 2018, Crl. Petition No. 557-L of 2018
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._522_l_2018.pdf

Facts: The petitioner-convict and respondents were indicted in FIR lodged by brother of the deceased (Complainant), for offences under sections 302, 148, 149 of the Pakistan Penal Code ("PPC"),. The complainant dissatisfied with the police investigation, instituted a Private Complaint ("complaint") before the court of Additional Sessions Judge. The Trial Court convicted and sentenced three accused under section 302(b) PPC and sentenced them to death and two accused were convicted under section 302(b) PPC and sentenced for life each, whereas, one accused was acquitted of the charge. The convicts being aggrieved of their convictions and sentences, filed criminal appeals before the High Court, Lahore. A murder reference was sent by the Trial Court to the High Court for confirmation of death sentences. The complainant also filed a criminal appeal against the acquittal of one accused and a criminal revision seeking enhancement of sentence of two accused. The High Court dismissed the criminal appeal of with slight modification in the judgment by converting sentence of death to imprisonment for life, whereas, the appeals of three accused were accepted and they were acquitted of the charge. On the other hand, the criminal appeal and criminal revision filed by the complainant were also dismissed. During pendency of the appeal, one accused entered into a compromise with the legal heirs of the

deceased, on the basis whereof, the High Court allowed the appeal and acquitted him. The murder reference was answered in the negative. Feeling aggrieved, the convict filed criminal petition challenging his conviction. Similarly, complainant filed criminal petition challenging the acquittal of other accused.

Issues: i) Whether delay in registration of case FIR and conducting postmortem creates a probability of consultation and deliberations?
ii) Whether benefit of doubt can be extended to the accused when injuries were attributed to all accused persons jointly and other accused were acquitted of the charge?
iii) Whether seeking special leave to appeal is a condition precedent for challenging an order of acquittal passed by any court other than a High Court?

Analysis: i) After conducting the postmortem, the doctor in his report and in his court statement, opined that the probable time between death and postmortem was nine hours. The complainant did not explain the delay in taking the dead body from the scene of the occurrence to the hospital. Besides, the time of death mentioned by the complainant in the FIR is 7.30 a.m., but the FIR was registered after a delay of more than two hours, without any explanation in this behalf, therefore, there is a probability of consultation and deliberations before reporting the matter to the police by the complainant. Under such circumstances, false involvement of the petitioner in the case cannot be ruled out.
ii) Besides, in the postmortem report, the Doctor opined that the cause of death was excessive loss of blood and hemorrhagic shock as a result of injuries No. 5, 7, 9 and 11. These injuries were assigned by the complainant jointly to all the accused persons. It is a fact that except the petitioner, rest of the accused were acquitted of the charge by the High Court and one of them by the Trial Court on the same set of evidence. The complainant has ascribed injuries jointly to all the accused and did not single out the petitioner. Under such circumstances, it would not be safe to hold him alone responsible for causing death of the deceased. It is a well settled principle of law that while extending a benefit of doubt to an accused, it is not necessary that there must be multiple infirmities and doubts in the prosecution case. A single or slightest doubt in the prosecution case, would be sufficient to be extended its benefit in favour of an accused, as has been held by this Court in the case of Ahmad Ali. There are a number of flaws and contradictions in the statements of witnesses, which created doubts in the prosecution story, benefit whereof has already been extended by the fora below to rest of the accused… By entering into compromise with one of the co-accused, the legal heirs have limited the scope of allegation to the extent of said accused, therefore, the petitioner cannot be singled out for a single murder, in respect of which, more than one person has been charged. The role of the petitioner is similar to that of the other co-accused, therefore, he is also entitled for equal treatment, hence, deserves the benefit of doubt.
iii) The petitioner filed an appeal before the High Court against the order of

acquittal passed by the Trial Court. Under section 417(2) of the Cr.P.C., appeal against acquittal in a case instituted upon a complaint, can only be filed upon grant of special leave to appeal by a High Court. Thus, seeking special leave to appeal is a condition precedent for challenging an order of acquittal passed by any court, other than a High Court. The record of the High Court does not reflect that any request for seeking special leave to appeal was sought by the petitioner, while filing the appeal. Under such circumstances, without grant of special leave to appeal from the order of acquittal passed by a court subordinate to a High Court in a case instituted upon a complaint, the appeal filed by the complainant was incompetent before the High Court.

Conclusion: i) Delay in registration of case FIR and conducting postmortem creates a probability of consultation and deliberations.
ii) Benefit of doubt can be extended to the accused when injuries were attributed to all accused persons jointly and other accused were acquitted of the charge.
iii) Seeking special leave to appeal is a condition precedent for challenging an order of acquittal passed by any court other than a High Court.

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14. **Supreme Court of Pakistan**
Ghulam Shabbir v. The State etc.
Criminal Review Petition No. 103 of 2017 in Criminal Appeal No. 643 of 2009
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.r.p._103_2017.pdf

Facts: The petitioner was convicted and sentences by trial court u/s 302(b) and 307 of PPC. He filed appeal before High Court which was dismissed. He filed criminal appeal before Supreme Court which was also dismissed. The petitioner has filed the instant criminal review petition on the ground that he has already served his life term, therefore, has prayed for conversion of his death sentences into imprisonment for life.

Issues: i) Whether longstanding detention in prison up to or more than the period of imprisonment for life is distinct punishment, as provided by section 302(b) PPC and is a ground for lesser punishment?
ii) Whether delay in conclusion of criminal proceedings and then delay in execution of death sentence of a convict amounts to punish the convict twice for one and same act?
iii) Whether awarding of death sentence to a person deprives him of his constitutional rights to be treated in accordance with law?

Analysis: i) Longstanding detention in prison up to or more than the period of imprisonment for life is a complete and distinct punishment, as provided by section 302(b) PPC… The delay in conclusion of judicial proceedings and execution of sentence awarded to the petitioner was on account of the system, hence, was beyond his control. A longstanding delay upto or above the period of imprisonment for life is

one of the grounds necessary for awarding lesser punishment, keeping in view the principle of expectancy of life.

ii) After confirmation of death sentence by the High Court, the convict(s) are shifted to death cells, where they are kept for years and sometimes for decades, on account of delay in conclusion of criminal proceedings and thereafter, for execution of their sentence by the Executive. There is no doubt that after confirmation of death sentence, the convict must face its consequence but the delay in conclusion of criminal proceedings and thereafter, delay in executing the death sentence of a convict would amount to punishing him twice for one and the same act, which is neither permissible under the law nor under the injunctions of Islam.

iii) Awarding death sentence to a person does not mean that he/she be treated inhumanly by keeping them in death cell for long unlimited period of time. All prisoners living in death cell are not only deprived of their constitutional rights, but they also live under mental stress. Once the judgment attains finality, it must be implemented and executed at the earliest. Even otherwise, to enjoy the equal protection of law and to be treated in accordance with law is an inalienable right of every citizen enshrined in Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973. Likewise, Article 14 of the Constitution provides that the dignity of a man shall be inviolable. His conviction does not disentitle him from his constitutional rights. All the prisoners are subject to prison law and rules in vogue, but these must not be inconsistent with or in derogation of the fundamental rights.

Conclusion: i) Longstanding detention in prison up to or more than the period of imprisonment for life is a complete and distinct punishment, as provided by section 302(b) PPC and is one of the grounds necessary for awarding lesser punishment.

ii) Delay in conclusion of criminal proceedings and, thereafter, delay in executing the death sentence of a convict would amount to punishing him twice for one and the same act.

iii) Conviction does not disentitle a person from his constitutional rights.

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15. **Supreme Court of Pakistan**
Muhammad Jahangir v. The State etc.
Jail Petition No. 514/2016
Muhammad Lateef v. The State etc.
Criminal Petition No. 1011-L/2016
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/j.p._514_2016.pdf

Facts: After conclusion of the trial in case pertaining offence under Section 302 of the Pakistan Penal Code, 1860, the Trial Court convicted the petitioner and awarded him death sentenced as well as directed him to pay compensation to the legal heirs of the deceased under Section 544-A of the Code of Criminal Procedure, 1898. Thereafter, the petitioner preferred an appeal before the High Court as well as the

murder reference was sent to the High Court for confirmation or otherwise, wherein the death sentence of the petitioner was converted to the life imprisonment and the Murder Reference was answered in negative. Now, the petitioner has preferred jail petition seeking his acquittal, whereas the complainant has filed the criminal petition for leave to appeal seeking enhancement of the sentence of the petitioner.

Issues: i) What would be legal status of the dishonest improvements made in his supplementary statement by an eye-witness?
ii) Whether the conviction of an accused can sustain on the basis of medical evidence alone, particularly where the eye-witness account relied upon by the prosecution is unreliable and untrustworthy?
iii) How presumption of innocence associated with the accused is weighed in his favour when the court is not fully convinced beyond reasonable doubt regarding the guilt of the accused?

Analysis: i) If the material facts missing in the FIR are added later through supplementary statement by an eye-witness, it would show that such eye-witness has improved his version later on.
ii) The medical evidence mere corroborates the version of the complainant as stated in the FIR and, by its nature and character, the medical evidence cannot recognize a culprit in case of an un-witnessed incident.
iii) The presumption of innocence remains with the accused till the time the prosecution, on the basis of the evidence, satisfies the Court beyond a reasonable doubt that the accused is guilty. A reasonable doubt is a hesitation, which a prudent person might have before making a decision.

Conclusion: i) If a witness makes dishonest improvements in his supplementary statement, then such statement loses the significance in the eyes of law.
ii) The conviction of an accused cannot sustain on the basis of medical evidence alone, particularly where the eye-witness account relied upon by the prosecution is unreliable and untrustworthy.
iii) The mere presumption of innocence associated with the accused is adequate to warrant acquittal, unless the court is fully convinced beyond reasonable doubt regarding the guilt of the accused, following a thorough and impartial examination of all available evidence.

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16. **Supreme Court of Pakistan**
Zafar Ali Abbasi, Shakeel Ahmed Abbasi v. Zafar Ali Abbasi, Respondents and others
Criminal Appeal No. 577/2019 & Crl. P. 596/2016
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._577_2019.pdf

Facts: Complainant registered an FIR against the appellant for offences under sections 302, 324, 109, Pakistan Penal Code, 1860. The appellant was tried and convicted as sentenced to death under section 302(b), PPC. The appellant feeling aggrieved, filed an appeal before the High Court, which was dismissed. The appellant filed a petition before this Court, wherein leave to appeal was granted.

Issues: i) Whether the testimonies of related witnesses can be disregarded solely on this ground that they are relative to the deceased?
ii) Pre requisites to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984.

Analysis: i) We are conscious of the fact that just because the witnesses are related to the deceased, their testimonies cannot be disregarded; however, it is also important that testimonies of such witnesses have to be scrutinized with greater care and circumspection.
ii) In order to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must prove that a person accused of any offence, in custody of police officer, has conveyed an information or made a statement to the police, leading to discover of new fact concerning the offence, which is not in the prior knowledge of the police. Such information or statement should be in writing and in presence of witnesses. In absence of information or statement from a person, accused of an offence in custody of police officer, discovery of fact alone, would not bring the case of the prosecution under the said Article.

Conclusion: i) See above in analysis no. i.
ii) The prosecution must prove that a person accused of any offence, in custody of police officer, has conveyed an information or made a statement to the police, leading to discover of new fact concerning the offence, which is not in the prior knowledge of the police.

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17. **Supreme Court of Pakistan**
Muhammad Riaz etc. v. The State and others
Criminal Appeal No.144-L of 2020 and Civil Petition No.282-L of 2024
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._144_l_2020.pdf

Facts: The appellants faced trial before an Anti-Terrorism Court in case F.I.R for the offences under sections 302/324/148/149 of the Pakistan Penal Code, 1860 and section 7 of the Anti-Terrorism Act, 1997. After a regular trial, both appellants were convicted under sections 302(b)/149, P.P.C., and sentenced to death as *tazir* on four counts. Their appeal before the High Court was partially accepted whereby their sentence of death was converted to imprisonment for life.

Issues: i) Whether a joint recovery is admissible in evidence?

ii) Whether motive can be used either way and by either side i.e. for real or false involvement?
iii) Whether actions specified in subsection (2) of Section 6 of the A.T.A. qualify as terrorism if they are committed in furtherance of personal enmity or private vendetta?
iv) Whether a single circumstance can be sufficient to extend the benefit of doubt to an accused?

Analysis: i) A joint recovery is of no evidentiary value and is inadmissible in evidence.
ii) …when there are open hostilities between two groups, the motive factor may propel one side to commit a crime, and the same factor may possibly induce the other group to implicate their rivals. Even otherwise, the motive is a double-edged weapon, which can be used either way and by either side i.e. for real or false involvement.
iii) …any action constituting an offence, however grave, shocking, brutal, gruesome, or horrifying, does not qualify as 'terrorism' if it is not committed with the intent or purpose specified in clauses (b) or (c) of subsection (1) of Section 6 of the A.T.A. Furthermore, the actions specified in subsection (2) of Section 6 of the A.T.A. do not qualify as terrorism if they are committed in furtherance of personal enmity or private vendetta..
iv) It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons…

Conclusion: i) A joint recovery is inadmissible in evidence.
ii) Motive is a double-edged weapon, which can be used either way and by either side i.e. for real or false involvement.
iii) Actions specified in subsection (2) of Section 6 of the A.T.A. do not qualify as terrorism if they are committed in furtherance of personal enmity or private vendetta.
iv) A single circumstance can be sufficient to extend the benefit of doubt to an accused.

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18. **Supreme Court of Pakistan**
Postmaster General Balochistan v. Amanat Ali and others
Civil Appeal No.2384 of 2016 and C.M.A.3858/ 2016 in C.A.2384/2016 and Civil Appeal No.2385 of 2016 and C.M.A.3859/2016 in C.A.2385/ 2016
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2384_2016.pdf

Facts: The Civil Appeals with leave of the Court are directed against the judgments passed by the Federal Service Tribunal, Islamabad (Karachi Bench).

Issues: i) What powers does Section 5 of the Service Tribunal Act, 1973 grant the Tribunal while deciding an appeal?

ii) What are the limitations and restrictions on the Tribunal's discretion when altering the penalty awarded to a civil servant under the Service Tribunal Act, 1973?

iii) What is the concept of retribution?

iv) Who holds the primary authority to impose penalties, and under what conditions can a Tribunal or Court intervene in the punishment imposed by an administrative authority?

v) Whether the Tribunal could reduce a major penalty to a minor penalty in cases involving embezzlement of public funds?

Analysis: i) Indubitably, Section 5 of the Service Tribunal Act , 1973, empowers the Tribunal to confirm, set aside, vary or modify the order appealed against and for the purpose of deciding any appeal, the Tribunal shall be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents; and (c) issuing Commission for the examination of witnesses and documents.

ii) The law authorizes the Tribunal to make a decision on the question of penalty awarded to a civil servant by the departmental authority and may substitute the quantum of punishment in an appropriate manner in a suitable case within the statutory command but it must follow the limitations and restrictions of law in its exercise of discretion in a manner which may not offend the spirit of law.

iii) The philosophy of punishment is based on the concept of retribution, whichmay be either through the method of deterrence or reformation. The purpose of deterrent punishment is not only to maintain balance with the gravity of the wrong done by a person, but also to make an example for others as a preventive measure for reformation of the society, whereas the concept of minor punishment in the law is to make an attempt to reform the individual wrong doer.

iv) The award of appropriate punishment under the law is primarily the function of the concerned administrative authority and the role of the Tribunal/Court is secondary. The Court ordinarily would not substitute its own finding with that of the said authority unless the latter's opinion is unreasonable or is based on irrelevant or extraneous considerations or is against the law declared.

v) In our view, where public money and its embezzlement is involved or at stake, the responsible persons cannot be let free or exonerated with only a minor penalty, so while converting the major penalty of removal from service into any minor penalty, it is an onerous obligation of the learned Service Tribunal to exercise its jurisdiction of conversion of punishment with proper application of mind which obviously connotes and necessitates that the quantum of punishment be proportionate and complementary to the charge of misconduct even for a minor act of negligence and inefficiency committed by the delinquent in his duties; so

the punishment, even in the minor category as well, should also be of such kind that it may create at least some deterrence for the delinquent and other employees to be more vigilant and attentive to their duties in the future, rather than performing the tasks with callous attitude which is highly prejudicial and detrimental to the effective functioning and performance of the department.

Conclusions: i) Section 5 of the Service Tribunal Act, 1973, empowers the Tribunal to confirm, set aside, vary or modify the order appealed against and for the purpose of deciding any appeal, the Tribunal shall be deemed to be a Civil Court.
ii) See analysis portion No. ii.
iii) The philosophy of punishment is based on the concept of retribution, which may be either through the method of deterrence or reformation. The purpose of deterrent punishment is not only to maintain balance with the gravity of the wrong done by a person, but also to make an example for others as a preventive measure for reformation of the society, whereas the concept of minor punishment in the law is to make an attempt to reform the individual wrong doer.
iv) The award of appropriate punishment under the law is primarily the function of the concerned administrative authority and the role of the Tribunal/Court is secondary. The Court ordinarily would not substitute its own finding with that of the said authority unless the latter's opinion is unreasonable or is based on irrelevant or extraneous considerations or is against the law declared.
v) The case of embezzlement of public money cannot be exonerated and the major penalty could not be converted into minor penalty by the Tribunal.

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19. **Supreme Court of Pakistan**
Sakhib Zar v. M/s K-Electric Limited & others
Civil Petition No. 307-K of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._307_k_2023.pdf

Facts: The petitioner was terminated by means of an ex-parte proceeding. The petitioner challenged his termination of service by way of a grievance petition before the National Industrial Relations Commission (NIRC) and the single-member NIRC set aside the termination order. Being dissatisfied, the management preferred an appeal under Section 58 of the Industrial Relations Act, 2012 (IRA 2012) before the Full Bench of NIRC. The Full Bench of NIRC allowed the appeal; thereafter, the petitioner challenged the appellate order in the High Court by way of a constitution petition, which was dismissed. This civil petition for leave to appeal is directed against the judgment passed by the High Court.

Issues: i) Whether Courts ought to elect the interpretation which gives preference to the validity of statute rather than attributing mala fide to the legislature where more than one interpretation is possible?
ii) Whether courts have jurisdiction to examine the quantum of punishment

imposed by the employer?
iii) Is it right of an employer to trigger the disciplinary proceedings in accordance with the law to address the misconduct if committed by any employee?

Analysis: i) To be précised, the intention of the legislature in our sanguinity is predominantly gathered and judged from the language used in the statute which is to be comprehended in its natural and mundane wisdom. It is not within the province of the judiciary to legislate or question the wisdom of the legislature in making a particular law, nor can the judiciary refuse to enforce a law. Even in the case of challenge to the vires of a law, the burden always rests upon the person making such challenge to put on a view that the particular law is violative of any of the fundamental rights or the provisions of the Constitution and where more than one interpretation is possible, the Courts ought to elect the interpretation which gives preference to the validity of statute rather than attributing mala fide to the legislature.

ii) As soon as the act of misconduct is established and the employee is found guilty after due process of law, it is the prerogative of the employer to decide the quantum of punishment, out of the various penalties provided in law. The casual or unpremeditated observation that the penalty imposed is not proportionate with the seriousness of the act of misconduct is not adequate but the order must show that the Court and Tribunal/NIRC has applied its mind and exercised the discretion in a structured and lawful manner. No Court has any jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law. Without a doubt, the Court or Tribunal/NIRC in exceptional or appropriate cases or circumstances, may examine the quantum of punishment to figure out the proportionality and reasonableness and may also nullify or overturn such punishment if found out of proportion vis-à-vis the act of misconduct and in this scenario, the punishment awarded by the competent authority may be revisited and converted into some lesser or alternative punishment if provided under the law but in order to exercise such jurisdiction for mitigation, the set of circumstances of each and every case have to be considered minutely.

iii) The turn of phrase “Misconduct” expounded under the Standing Order Ordinance 1968, in fact represents the perpetration or commission of certain acts which are defined as misconduct and in the larger sense includes the defiance of rules and standards established by the employer which are to be followed at the place of work for harmonious and smooth functioning and administration of any industrial or commercial establishment. The certitude of the expression “misconduct” hints at such deeds and or comportment of an employee which are found in violation of labor laws and set in motion the disciplinary proceedings and action if any acts and omissions are committed within the meaning of clause 3 of Standing Order 15 of the Ordinance 1968. It is in the sphere and realm of the management to religiously concentrate for better management and administration of its business enterprise both in industrial or commercial venture that applicable labour laws are adhered to strictly vis-à-vis the rights and obligations of

employees and employer both to prevail congenial and peaceful working environment. One of the prime objectives of religiously enforcing the severities of misconduct and punishment provided under the Ordinance 1968 is to uphold the internal discipline and decorum and strict adherence to relationship of employer and employee which is indispensable for the systematized and closely controlled work mannerism and upholding ethical standards. In fact, addressing of misconducts aids, keeps an eye and protect the wellbeing of the organization and its employees in order to make sure that the work place is in a trouble-free environment. It is the prerogative and inherent right of employer to trigger the disciplinary proceedings in accordance with the law to address the misconduct if committed by any employee but the course of action for encountering any act of misconduct should stick to the principle of natural justice and the set of guidelines provided to ensure due process of law. The wrong handling of misconduct cases results in bad impact on the industrial relations and also tyrannize the trust level between the management and the workers, therefore, it is also essential for the employer to maintain transparency, uniformity and egalitarianism which insinuates compliance of all legal requirements with equal treatment to the employees without any discrimination or favoritism.

Conclusion: i) Where more than one interpretation is possible, the Courts ought to elect the interpretation which gives preference to the validity of statute rather than attributing mala fide to the legislature.

ii) The Court or Tribunal in exceptional or appropriate cases or circumstances, may examine the quantum of punishment to figure out the proportionality and reasonableness and may also nullify or overturn such punishment if found out of proportion vis-à-vis the act of misconduct.

iii) It is the prerogative and inherent right of employer to trigger the disciplinary proceedings in accordance with the law to address the misconduct if committed by any employee but the course of action for encountering any act of misconduct should stick to the principle of natural justice and the set of guidelines provided to ensure due process of law.

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20. **Supreme Court of Pakistan**
Muhammad Yousaf v. Province of Sindh and others
Civil Petition No. 982-K of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._982_k_2023.pdf

Facts: This civil petition for leave to appeal is directed against the order passed by the High Court, in constitutional petition, whereby the constitution petition filed by the petitioner for the relief of pensionary benefits was dismissed.

Issues: i) Whether credit earned leaves can be counted or adjusted as qualifying service for the purposes of pension?

ii) Whether any deprivation of lawful or accrued right amounts to cause serious impairment and defacement to the right to life under article 9 of the Constitution of Pakistan?

iii) How the word "pension" can be interpreted and whether pension can be delayed or denied without assigning any reason or providing any opportunity of hearing?

iv) Is it duty of head of the department/competent authority to keep a vigilant eye in order to ensure the swift payment of pensionary benefits?

Analysis: i) According to the respondents, the service of the petitioner was forfeited due to absence from duty without leave, but it is also a ground reality which was not controverted that the petitioner already had 811 earned leaves at his credit which were not counted or adjusted which seems to be a violation of the aforesaid rules in which all leaves (other than extraordinary leaves) are to be reckoned as qualifying service for the purposes of pension… Due process is a prerequisite that needs to be respected at all stratums. Right to fair trial is a fundamental right. In case of stringency and rigidity in affording this right, it is the function, rather a responsibility, of the court to protect this right so that no injustice and unfairness is done to anybody. The concept of natural justice is intended to restrain arbitrary actions within the bounds of upholding and protecting the supremacy of law. This fundamental principle is consistently and squarely applicable to the proceedings, whether judicial, quasi-judicial or administrative, except where the law specifically and unambiguously excludes its application in the peculiar facts and circumstances of the case. The solitary pragmatic importance of the rule of natural justice is to prevent injustice and miscarriage of justice, and ensure that justice is not only done, but is also manifestly and undoubtedly seen to be done. The learned High Court also did not advert to the crucial question that before taking such a drastic action, the petitioner was neither issued any show cause notice nor provided any right of hearing. Had the petitioner been provided the right to an audience and submit a reply, he could have presented valid reasons of his absence and claimed the adjustment of his 811 earned leaves as a matter of right permissible under the Rules…

ii) According to Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen and (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not require him to do. In the case of Shahla Zia v. WAPDA (PLD 1994 SC 693), this Court held that the word "life" is very significant as it covers all facets of human existence. The word "life" does not mean, nor can it be restricted to, only vegetative or animal life or mere existence from conception to death. The word "life" includes all such amenities and facilities which a person born in a free country is entitled to enjoy with

dignity, legally and constitutionally. According to Article 3 of the Universal Declaration of Human Rights (UDHR), everyone has the right to life, liberty and security of person, while under Article 23, everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; everyone, without any discrimination, has the right to equal pay for equal work; everyone who works has the right to just and favourable remuneration, ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection and everyone has the right to form and to join trade unions for the protection of his interests. In our view, right of accrued pension in accordance with law is also an integral part of one's lifeline for sustenance and salvation and after serving a long period, its denial without any lawful justification amounts to denying the right to life of a retired person who, on attaining the age of superannuation, solely depends on his pension for his livelihood as a source of income. The immensity of the expression "life" embedded in the Constitution under Article 9 has a manifold and multifarious understanding and interpretation, and it cannot be read in a restricted or limited sense, rather it should be read in its wholeness with all the fundamental rights, privileges, and obligations, and in case of any deprivation of lawful or accrued right, it amounts to cause serious impairment and defacement to the right to life.

iii) It is well-known that the catchword "pension" articulates the payment of a fix amount according to the scheme of pension in accordance with the law, rules and regulations or the pension scheme in vogue which is recompensed on a regular basis to a person on his superannuation. The foremost and predominant strength of mind is to afford and safeguard the economic refuge and shelter and recuperate old-age security. In general phenomena, the superannuation or stepping down is considered a second inning in which a retired person aspires to live up to his highly anticipated imaginings or dreams and devote time to his kith and kin and friends. After retirement, the timely payment of pension is considered as the main source of income for livelihood. Despite serving for a long time with sheer commitment, if the pensionary benefits are delayed or denied without any lawful justification or without assigning any reason or providing any opportunity of hearing, it would be a very sorry state of affairs, rather an appalling and deplorable situation for a person who performed his duties with utmost dedication and enthusiasm throughout his career but at the eve of his retirement, he is treated inhumanly, coldheartedly and gets nothing as done in this case, on the pretext of totally misconceived interpretation of some rule, even then, the pension could not have been denied without issuing show cause notice and providing opportunity of hearing to the petitioner.

iv) The payment of pensionary benefits are protected under the law, rules and regulations even in the private sector, where the scheme of pension in vogue is according to the organizational/management policy, so in all fairness, where the pension is payable, it is a vested right and not charity, alms or donation by the employer but a compensation of services rendered assiduously by giving blood,

sweat, toil, and tears. It is time and again seen in Court in various cases that after serving for a long period, when a person reaches his superannuation and submits his papers for starting pension, instead of fulfilling the requirements and helping out the past employee, the department started raising unwarranted glitches or complications to delay the pensionary benefits resting on unmerited or trivial pretexts including financial crunch, which has nothing to do with a retired employee. Even the widows and orphans of retired employees are faced with such a terrible and disgraceful situation for the payment of family pension which is a right and not charity. On the contrary, the employer is bound to process the pension claim as soon as the pension papers are filed after fulfilling all the requisite formalities but due to inordinate delay, this Court shows displeasure and observed in the case of Haji Muhammad Ismail Memon (supra) that everyone who is responsible in any manner in delaying the case of such retired officers/official or widows or orphan children for the recovery of pension/gratuity and G.P. Fund has to be penalized. Under the exactitudes of pension rules and regulations, the concerned department is obligated to immediately process the pension papers without putting it on hold or throwing it in shelves for an unlimited period of time. At the same time, it is also the onerous duty and obligation of the head of the department/competent authority and all other persons in the department who are engaged in the completion process to keep a vigilant eye in order to ensure the swift payment of pensionary benefits without unreasonable delay for protecting and safeguarding the interest of the retired employees and their families. They should also remember that in the near future, they will also relish the flavor of retirement and file their own papers for pension and step into the shoes of retired employees. In the self-accountability process with the honest motto of not dragging the payment of pensionary benefits of others, the persons responsible in order to change the culture of making delays should maintain a clearheaded policy to complete the process for pension fairly within a sensible time. If a swift process really comes into fashion by means of their sincere efforts then hopefully, at the time of their retirement, they may not face the same problems and hindrances that their past colleagues faces. As the saying goes, “as you sow, so shall you reap”.

Conclusion: i) Credit earned leaves can be counted or adjusted as qualifying service for the purposes of pension.

ii) Any deprivation of lawful or accrued right amounts to cause serious impairment and defacement to the right to life under article 9 of the Constitution of Pakistan.

iii) The word “pension” articulates the payment of a fix amount according to the scheme of pension in accordance with the law, rules and regulations. The pension cannot be delayed or denied without assigning any reason or providing any opportunity of hearing.

iv) It is the onerous duty and obligation of the head of the department/competent authority and all other persons in the department who are engaged in the

completion process to keep a vigilant eye in order to ensure the swift payment of pensionary benefits without unreasonable delay for protecting and safeguarding the interest of the retired employees and their families.

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21. **Lahore High Court**
Bilal Sikandar v. The State and another
Crl. Misc. No. 47663-B of 2024
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC3700.pdf

Facts: After dismissal of post-arrest bail petition by Additional Sessions Judge, the accused/petitioner has filed instant petition under section 497 of the Code of Criminal Procedure, 1898 seeking his post-arrest bail in case F.I.R registered for the offences under sections 302, 311 of the Pakistan Penal Code, 1860.

Issues: i) Whether a murder committed in the name or on the pretext of honour has to be calculated as a murder committed with premeditation in the background of honour?
ii) Whether an offender who committed an offence in the name or on the pretext of honour can be punished even the right of qisas has been waived or compounded?
iii) Whether conflict between medical evidence and ocular account can be appreciated at bail stage?
iv) Which material can be assessed to consider a case one of further inquiry?

Analysis: i) Being conscious of the fact that it had become an ignominious practice in the society, particularly after promulgation of Qisas and Diyat Ordinance, 2000, that after doing away with females, either she may be a wife, mother, daughter, or sister on the pretext of honour, real perpetrators were usually being let off after getting pardon from wali/walis, the legislature introduced certain amendments through the Criminal Law (Amendment) Act, 2004 (Act I of 2005), whereby the definition of an offence committed in the name or on the pretext of the honour was introduced. Similarly, clause (c) to section 302 of PPC was also amended and substituted through the Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act, 2016…In view of the above hinted amendment, an offence committed in the name or on the pretext of honour was excluded from the definition of 'qatl-i-amd' as contained in Section 302 Clause (c) of PPC, as the phrase "in the name or on the pretext of honour" inserted in the first proviso to Section 302(c) of PPC clearly indicates that the murder committed in the name or on the pretext of honour had to be calculated as a murder committed with premeditation in the background of honour.
ii) Similarly, certain amendments were also made in Section 345 of Cr.P.C., introducing sub-section 2-A…Similarly, as per provisions of sub-section (7) to Section 345 of Cr.PC, no offence shall be waived or compounded save as provided by this Section and section 311 of PPC. Another significant amendment

has been introduced by amending section 299 of PPC and introducing clause (ee) through the Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act, 2016, whereby an offence that has been committed in the name or on the pretext of honour has been categorized as an offence falling within the meaning of 'fasad-fil-arz'. As per provisions of section 311 of PPC, if the principle of fasad-fil-arz is attracted, the court may having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with death or imprisonment of life or imprisonment of either description for a term of which may extend to fourteen years as ta'zir. The sole proviso to this section further provides that if the offence has been committed in the name or on the pretext of honour, the punishment shall be imprisonment for life. Submission made by learned counsel for petitioner that legal heirs of deceased who happened to be the parents of deceased, have forgiven theaccused/petitioner and recorded their statements qua compounding the offence, therefore, accused/petitioner is entitled to be released on bail on the basis of compromise, is of little avail as in view of the amendments as made in sections 299(ee), section 302(c) and section 311 PPC read with proviso to section 345(2-A) and 345 (7) of Cr.PC, a convict in an honour killing case, still can face sentence of imprisonment for life even if legal heirs of a victim have settled the matter by way of compromise and pardoned the convict…

iii) The next submission of learned counsel for the petitioner is that there exists a glaring conflict between the ocular account and medical evidence; therefore, the case of the petitioner necessitates further inquiry entitling him to the grant of post arrest bail. According to him, as per witnesses of ocular account, the fire shot made by the accused/petitioner landed on the back of the deceased whereas as per postmortem report, the injury present on the back of the deceased has been shown as an everted wound, suggesting that it was an exit wound. This argument hardly holds any water for the simple reason that the sole argument qua conflict between medial evidence and ocular account can hardly be appreciated without deeper appreciation of evidence which exercise is not warranted at bail stage…

iv) There is no cavil with the proposition that a case of further inquiry presupposes a tentative assessment of the material brought on record starting from the time of lodging of the FIR and the material collected during the course of investigation till the conclusion of the investigation, which in turn creates some doubt with respect to the involvement of an accused in the commission of crime, whereas the expression 'reasonable grounds' refers to grounds that may be legally tenable, admissible in evidence and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptive. In case "Ata-ullah v. The State" (2014 SCMR 1210), the Supreme Court of Pakistan observed that for all intents and purposes the doctrine of further inquiry demonstrates notional and exploratory assessment that may create doubt regarding involvement of an accused in the commission of crime. Even in case "Mst. Parveen Akhtar v. The State and others" (2002 SCMR 1886), it was observed that mere possibility of further inquiry which existed almost in every criminal case was not a ground for

treating the matter as one of further inquiry falling within the purview of section 497(2) of Cr.PC.

Conclusion: i) A murder committed in the name or on the pretext of honour has to be calculated as a murder committed with premeditation in the background of honour.
ii) An offender who committed an offence in the name or on the pretext of honour can be punished even the right of qisas has been waived or compounded.
iii) Conflict between medial evidence and ocular account can hardly be appreciated without deeper appreciation of evidence which exercise is not warranted at bail stage.
iv) A case of further inquiry presupposes a tentative assessment of the material brought on record starting from the time of lodging of the FIR and the material collected during the course of investigation till the conclusion of the investigation.

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22. **Lahore High Court**
Mst. Afia Ambrine v. Addl. District Judge, Sialkot and 14 Others
Writ Petition No. 10608 of 2024
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC3672.pdf

Facts: The petitioner instituted an application under section 12(2) of the Code of Civil Procedure, 1908, seeking setting aside of ex-parte decree passed in the suit of some of the respondents seeking declaratory decree. In the course of trial of aforementioned application, another application to de-exhibit documents marked in statement without oath of the petitioner's learned counsel was allowed by the learned Trial Court and the Civil Revision preferred against said order was also dismissed. So, the petitioner has instituted this petition as well as the connected petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

Issues: i) What is the proper time for raising objection as to formal validity or the mode of proof of a document?
ii) Why cause of justice requires raising objection against mode for proof of a document at appropriate time?
iii) What would be possible outcome if the documents are marked as exhibits during statement without oath of the learned counsel of a party and are kept on record in violation of the Qanun-e-Shahadat Order, 1984?
iv) If no objection is raised by the other side at the time the document was exhibited through statement without oath of a learned counsel of a party, whether the Court is prevented from adjudicating its nature?

Analysis: i) The objections with respect to formal validity or the mode of proof of the documents can be of two kinds: (a) document is inadmissible in evidence being irrelevant or not capable for being considered in evidence, and (b) objections

directed towards the mode of proof due to irregularity or insufficiency.
ii) The objections against mode of proof of a document should be taken at earliest. Where a document otherwise is not liable to be rejected and irrelevant to the issue, then miscarriage of justice may be caused if it is discarded just for not complying with the procedure for proof of a document, that too, after passing the stage to cure this mistake.
iii) If the documents are received in statements without oath of the learned of a party and then they are marked as exhibits, it would deprive the opponent party from right to cross-examine in respect of the documents in question.
iv) If the documents are permitted to be brought on record / marked as exhibits through statement without oath of a learned counsel of a party, it can cause damage to the interest of litigants. So, the Court is duty bound to look into the document produced on record.

Conclusion: i) The proper time for raising objection as to formal validity or the mode of proof of a document is prior to marking such document as exhibit or at the time when it is sought to be marked as an exhibit.
ii) The cause of justice requires raising objection against mode of proof of a document at appropriate time as it would enable the party tendering the document to cure defect and resort to such mode of proof as would be required.
iii) If the documents are marked as exhibits during statement without oath of the learned counsel of a party and are kept on record in violation of the Qanun-e-Shahadat Order, 1984, after the suitable or permissible stage of trial / case till the litigants can take step to cure the defect, it can result into possibility to prejudice the interest of the parties to the suit.
iv) Even if no objection is raised by the other side at the time the document is exhibited through statement without oath of a learned counsel of a party, the Court is not prevented from adjudicating its nature as to whether it is valid or not, or it is fake or not.

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23. **Lahore High Court**
Tranzum Courier Service (TCS) Private Limited & another v. Samreen Boota
F.A.O. No.39719 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC3692.pdf

Facts: Through this appeal under Section 33 of the Punjab Consumer Protection Act, 2005, the appellants have assailed vires of the judgment passed by the District Consumer Court, whereby they were directed to return the booking price of the parcel and were also burdened to pay damages within a period of one month.

Issues: i) What is the legal significance of issuing a notice under Section 28(1) of the Punjab Consumer Protection Act, 2005?
ii) When does the 30-day limitation period under Section 28(4) of the Punjab

Consumer Protection Act, 2005 begin?
iii) Whether a consumer can file a claim beyond the 30-day of limitation period before the District Consumer Court?

Analysis: i) Section 28 ibid has been subject matter of interpretation before the Supreme Court of Pakistan in the case of Messr Pak Suzuki Motors Company Limited v. Faisal Jameel Butt (PLD 2023 SC 482) wherein it has been, inter alia, held that legal notice under Section 28(1) of the Act is a mandatory requirement of law to grant both the consumer and the manufacturer or service provider to address the defects or faults in the product or service before the matter proceeds to litigation. It has been further held therein that even though no limitation period is provided for issuance of a legal notice under Section 28(1) of the Act, it is apparent that Section 28(4) of the Act in unequivocal terms stipulates and clarifies that a claim with regard to a defective or faulty product or service, or contravention of the provisions of the Act by the manufacturer or service provider has to be filed within 30 days of arising of the cause of action which, in such circumstances where a product or service is faulty, therefore, arises the moment the consumer obtains knowledge that the product or service is defective or faulty.
ii) In effect, it provides for a mechanism to settle the dispute before initiation of litigation and the same cannot be construed as giving a fresh cause of action wherefrom the 30-day limitation provided under Section 28(4) would commence. Therefore, when the consumer obtains knowledge of the defect or fault in the product or the service, the 30-day limitation period stipulated under Section 28(4) of the Act commences. It is during this period that the consumer has to first put his grievance before the manufacturer or service provider, seeking rectification of the defect or fault in the product or service, or damages, and provide 15 days to the manufacturer or service provider to remedy the same, as required under Section 28(2). It is only after the manufacturer or the service provider responds to the written notice, or where he fails to respond within the stipulated 15-days period, that the consumer can file a claim before the Consumer Court if the cause of action still subsists. (…) It is manifest from plain reading of sub-section (4) of Section 28 of the Act that for it to be adjudicated, a claim should be filed within 30 days of arising of the cause of action. That means, for the purpose of limitation under Section 28(4) of the Act, the knowledge attributed to a claimant alleging defective service must be sufficient and complete enough to constitute accrual of cause of action, which has been defined to mean every fact which will be necessary for a claimant to prove, if traversed, in order to support his or her right to judgment.
iii) The consumer can still file a claim before the District Consumer Court by giving sufficient cause for filing the claim beyond 30 days which is to be examined by the District Consumer Court, as per the provisos to Section 28(4) of the Act.

Conclusions: i) Legal notice under Section 28(1) of the Punjab Consumer Protection Act, 2005

is a mandatory requirement of law to grant both the consumer and the manufacturer or service provider to address the defects or faults in the product or service before the matter proceeds to litigation.

ii) When the consumer obtains knowledge of the defect or fault in the product or the service, the 30-day limitation period stipulated under Section 28(4) of the Act commences. Issuance of notice under Section 28(1) of the Act does not give a fresh cause of action.

iii) The consumer can file a claim before the District Consumer Court by giving sufficient cause for filing the claim beyond 30 days which is to be examined by the District Consumer Court, as per the provisos to Section 28(4) of the Act.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 108 of 2024 dated 08.07.2024, The Punjab Highway Petrol Rules, 2024 are made.
2. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 112 of 2024 dated 25.07.2024, amendment is made in second schedule of the Punjab Rules of Business, 2011.
3. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 124 of 2024 dated 12.08.2024, Auqaf & Religious Affairs Department has declared the edition of Holy Quran published by Anjuman Humayat-e-Islam, Lahore in April 2016 as standard copy, duly authenticated by Punjab Quran Board.
4. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.123 of 2024 dated 08.08.2024, Regulation no. 28(a) is added in PPSC Regulation 2022.
5. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.125 of 2024 dated 15.08.2024, stamp duty on the lease for extension of Sector-F, Askari-X Lahore Cantt. in favor of GHQ is remitted.
6. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.126 of 2024 dated 16.08.2024, amendment is made in the Punjab Livestock Breeding Act 2014 (XIII of 2014).
7. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 127 of 2024 dated 16.08.2024, Punjab Animal Health (Identification and traceability of Animals) Regulations, 2024 are made.
8. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 128 of 2024 dated 20.08.2024, Amendments are made in the Punjab Healthcare and Medical Education Department (Medical and Dental Teaching Posts) Services Rules, 1979.
9. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 129 of 2024 dated 23.08.2024, Transfer Policy, 2024 of teaching staff of Higher Education Department is published after approval.

10. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. FD-SR-III-4-104/2024 dated 27.08.2024, Amendment are made in the Punjab Civil Services Pension Rules.

SELECTED ARTICLES

1. MEDICAL LAW REVIEW
https://academic.oup.com/medlaw/article-abstract/23/4/505/2413116?redirectedFrom=fulltext

Who's In Charge? The Relationship Between Medical Law, Medical Ethics, And Medical Morality? By Charles Foster, José Miola

Medical law inevitably involves decision-making, but the types of decisions that need to be made vary in nature, from those that are purely technical to others that contain an inherent ethical content. In this paper we identify the different types of decisions that need to be made, and explore whether the law, the medical profession, or the individual doctor is best placed to make them. We also argue that the law has failed in its duty to create a coherent foundation from which such decision-making might properly be regulated, and this has resulted in a haphazard legal framework that contains no consistency. We continue by examining various medico-legal topics in relation to these issues before ending by considering the risk of demoralization.

2. JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE
https://academic.oup.com/jicj/article/22/1/169/7667859

Is International Criminal Law Ready to Accommodate Online Harm? Challenges and Opportunities By Sarah Zarmsky

New technologies have the potential to both advance accountability for international crimes and to aid in their perpetration. Most of the existing literature to date focuses on the former, such as how digital evidence can be used in international criminal law (ICL) proceedings, or in the case of the latter, has taken a mainly rights-based approach (such as how technology can infringe upon rights to privacy or freedom of expression). This article answers the understudied question of how technology can serve as the vehicle by which certain international crimes are committed or lead to new offences, and how current ICL frameworks may be able to accommodate these 'online harms' to ensure that the law recognizes the full scope of harms caused to victims, who currently may not be able to access redress through the international criminal justice system. It identifies three examples of online harm that have a foreseeable nexus to the perpetration of international crimes, including hate speech and disinformation, sharing footage of crimes to the internet, and online sexual violence. The article evaluates the online harms alongside similar harms that have been encompassed by core ICL crimes, including genocide, crimes against humanity, and war crimes, to assess how online harms might fit into ICL frameworks (e.g. as an aggravating factor at sentencing, a new mode of commission of an existing crime, or a new crime). It concludes that some types of online harm may be more feasible to account for than others, and identifies where the existing

ICL architecture falls short, which is important for providing a basis for future research as to how to best include novel online harms under ICL. Finally, the article emphasizes that as technology will only continue to develop and serve as a vehicle for an increasing array of harms, finding ways to account for online harm and bring redress to victims should be an issue at the forefront of ICL.

3. **INTERNATIONAL JOURNAL OF LAW AND INFORMATION TECHNOLOGY**
https://academic.oup.com/ijlit/article/30/1/47/6563857?searchresult=1

Defining legal technology and its implications By Ryan Whalen

Legal technological developments have been both lauded as the promising future of the law and derided as a danger to the fundamentals of justice. This article helps reconcile these divergent perspectives by providing a definition of legal technology and a framework through which to understand its different types and their potential implications for the legal system and society more generally. Mapping technologies according to how specifically they afford legal uses, and the directness with which they engage in unmediated legal activities reveals different technological categories and their differing propensities to have legal, functional or general implications. This framework can help inform discussions both about which types of legal technologies to be excited about, and which to be concerned about, while also helping guide research, policymaking, design and adoption considerations.

4. **INTERNATIONAL JOURNAL OF LAW AND INFORMATION TECHNOLOGY**
https://academic.oup.com/ijlit/article-abstract/27/2/171/5485669?redirectedFrom=fulltext

Artificial intelligence in healthcare: a critical analysis of the legal and ethical implications By Daniel Schönberger

Artificial intelligence (AI) is perceived as the most transformative technology of the 21st century. Healthcare has been identified as an early candidate to be revolutionized by AI technologies. Various clinical and patient-facing applications have already reached healthcare practice with the potential to ease the pressure on healthcare staff, bring down costs and ultimately improve the lives of patients. However, various concerns have been raised as regards the unique properties and risks inherent to AI technologies. This article aims at providing an early stage contribution with a holistic view on the 'decision-making' capacities of AI technologies. The possible ethical and legal ramifications will be discussed against the backdrop of the existing frameworks. I will conclude that the present structures are largely fit to deal with the challenges AI technologies are posing. In some areas, sector-specific revisions of the law may be advisable, particularly concerning non-discrimination and product liability.

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Untangling Complexities: Understanding The Arbitrability Of Corporate Law Disputes By Anupamaa. S

The economic reforms adopted in 1991 favouring liberalisation, and the end of the licence raj marked the start of a new era in the Indian corporate sector, and in the economic landscape as a whole. With favourable policies, the influx of foreign investments, and the corporate identity principle which provided that a company was a separate legal entity distinct from its members, corporations invariably rose in number. This growth consequently gave rise to several legal disputes in corporate law, including breach of contract, breach of provisions enumerated in the Articles of Association ("AoA"), oppression and mismanagement of the company by directors among others. With the rise in the number and volume of corporations in India, these disputes grew constantly, and separate tribunals were set up to deal with corporate law matters. However, in today's globalised world, alternate dispute mechanisms have taken the forefront with respect to dispute resolution. Hence, it is no surprise that various parties in a corporate law dispute, like the company, shareholders, and other investors prefer alternate dispute resolution over adjudicatory proceedings in tribunals and in civil courts.