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FORTNIGHTLY CASE LAW BULLETIN

(16-09-2023 to 30-09-2023)

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

JUDGMENTS OF INTEREST

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1. **Supreme Court of Pakistan**
Muhammad Hanif v. The State
Criminal Appeal No.528 of 2019 in Jail Petition No. 327of 2018
Mr. Justice Umar Ata Bandial H CJ, Mr. Justice Munib Akhtar. Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,
https://www.supremecourt.gov.pk/downloads_judgements/crl.a. 528 2019.pdf

Facts: Criminal appeal, by leave of the Court, is directed against the impugned judgment of learned Division Bench of Lahore High Court, passed in Capital Sentence Reference and Criminal Appeal whereby the conviction of the appellant under section 302(b), 324, 186, 353, PPC read with section 7 Anti-Terrorism Act, 1997 awarded by the Special Judge, Anti-Terrorism Court, was upheld but his sentence of death under section 302(b) PPC and under section 7 Anti-Terrorism Act, 1997 was converted into imprisonment for life.

Issues:

- i) What nature of cases can be entertained under The Anti-Terrorism Act?
- ii) Whether accused can be charged for an offence, if the same is committed in one series of acts forming one and the same transaction?
- iii) Whether conviction could be recorded on the basis of ocular account only?
- iv) In case of contradiction between ocular account and distance mentioned in site plan, which one would have precedence over the other?
- v) What is the purpose of making site plan and what is the evidentiary value of the site plan?
- vi) What is the litmus test to evaluate the veracity of the prosecution witnesses of ocular account?
- vii) What is the rule of thumb when there is contradiction in between the ocular account and medical evidence qua the number of injuries?

Analysis:

- i) The preamble of The Anti-Terrorism Act has broadly classified jurisdiction to entertain cases relating to (a) terrorism, (b) sectarian violence and for speedy trial of (c) heinous offences and for matters connected therewith and incidental thereto. Section 6 of the Anti-Terrorism Act, 1997 has defined and categorized cases falling within the definition of terrorism.
- ii) Although the petitioner has committed the crime at two different places commencing from the court premises and finally when he reached in front of Rana Abdul Sittar Tea-stall which is at distance of 1 ½ kilometers it would be presumed one and the same transaction as per the spirit of law. As the act of the petitioner was in continuation till its conclusion and this aspect is fully covered by provision of section 235 Cr.P.C.
- iii) The evidence of prosecution witnesses of the ocular account if found reliable, the same is sufficient to record conviction without any other corroborative piece of evidence.
- iv) It is established that the statement of prosecution witnesses of the ocular account if contradictory to site plan it would have precedent over the distance mentioned in the site plan.

- v) Even otherwise, site plan is not a substantive piece of evidence having no legal sanctity. The purpose behind the preparation of site plan is to explain or give a glimpse of the occurrence in black and white enabling the concerned to appreciate the facts of the case in a more rational way.
- vi) The litmus test to evaluate the veracity of the prosecution witnesses of ocular account depends being independent, reliable, trustworthy and confidence inspiring.
- vii) The evidence of the expert is only confirmative in nature. If there is contradiction in between the ocular account and medical evidence qua the number of injuries, the rule of thumb is that the preference would be given to the ocular account as the statement of prosecution witnesses of ocular account is always placed at a higher pedestal as compare to the medical evidence. The rationale behind such strict construction of the rule of thumb is that firstly, expert evidence is confirmatory in nature based upon opinion of an expert which can be influenced by so many factors (a) lack of expertise (b) lack of knowledge (c) defective technique (d) variation in observation (e) lack of coordination with subordinate staff and possibility of obliging concession extended in favour of either of the party due to extraneous consideration.

- Conclusions:**
- i) The cases relating to (a) terrorism, (b) sectarian violence and for speedy trial of (c) heinous offences and for matters connected therewith and incidental thereto can be entertained under The Anti-Terrorism Act.
 - ii) Yes, if the series of incident qua the occurrence relates to one and the same transaction then the same is fully covered by provision of section 235 Cr.P.C.
 - iii) The evidence of prosecution witnesses of the ocular account if found reliable, the same is sufficient to record conviction without any other corroborative piece of evidence.
 - iv) The statement of prosecution witnesses of the ocular account if contradictory to site plan then ocular account would have precedent over the distance mentioned in the site plan.
 - v) The purpose behind the preparation of site plan is to explain or give a glimpse of the occurrence enabling the concerned to appreciate the facts of the case in a more rational way and the same is not a substantive piece of evidence.
 - vi) The litmus test to evaluate the veracity of the prosecution witnesses of ocular account depends on being independent, reliable, trustworthy and confidence inspiring.
 - vii) The rule of thumb in case of contradiction between the ocular account and medical evidence qua the number of injuries is that the preference would be given to the ocular account.
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2. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary, Ministry of Law and Justice
Islamabad v. Mr. Fazal-e-Subhan & other and other respondents
Civil Petitions No. 2314, 2317, 2318 of 2022 and C.M.A.863-P, 866-P & 869-P/2022 in C.Ps. NIL of 2022
Mr. Justice Munib Akhtar, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 2314 2022.pdf

Facts: These Civil Petitions for leave to appeal are directed against the judgment passed by the Peshawar High Court whereby the writ petitions were allowed and the decision of the Parliamentary Committee was set aside with the directions to the Federal Government to implement the recommendations of the Judicial Commission of Pakistan and issue the notification for the appointment of Additional Judges of the Peshawar High Court.

Issues:

- i) Whether decision of the Supreme Court is binding on all other courts in Pakistan?
- ii) What procedure for appointment of Judges is provided under Article 175A of the Constitution by means of the Commission?
- iii) What is procedure of Judicial Commission for appointment of judges of Superior Courts under JCP Rules, 2010?
- iv) What is the procedure of Parliamentary Committee for appointment of judges of superior courts under PC Rules, 2010?
- v) Whether Chief Justice of respective court has authority to initiate and send nominations for appointment against vacancy of a Judge to the Chairman of the Commission?
- vi) Whether Parliamentary Committee has power to act as an appellate forum for the Commission, or has any authority to remand the nomination for reconsideration to the Commission?
- vii) What is principle of interpretation of the Constitution?
- viii) Whether seniority or length of service solely is to be considered for promotion or elevation to the particular post?
- ix) Whether Parliamentary Committee can review the majority decision or recommendation rendered by the Judicial Commission?
- x) Whether Parliamentary Committee can be considered an ineffectual or superfluous corpus?
- xi) Whether Judicial Commission and Parliamentary Committee can be considered adversarial constitutional bodies?
- xii) How doctrine of Stare Decisis can be defined?
- xiii) What is value of doctrine of precedents vis-à-vis stare decisis in judicial system of Pakistan?

Analysis: i) The exactitudes of Article 189 of the Constitution command that any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in

Pakistan. Reference to the case of Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483) is somewhat pertinent in which it was concluded by this Court that where the Supreme Court deliberately, and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere obiter dictum. It was further held that even obiter dictum enjoys a highly respected position as if “it contains a definite expression of the court’s view on a legal principle or the meaning of law”.

ii) The procedure for appointment of Judges is provided under Article 175A of the Constitution by means of the Commission. In pith and substance, the aforesaid Article articulates a collegium for the appointment of Judges of the Supreme Court, appointment of the Chief Justice and Judges of a High Court, and the Chief Justice and judges of Federal Shariat Court. According to the niceties of sub-article (8), the Commission by majority of its total membership nominates to the Committee the person for each vacancy of a judge. Whereas subarticle (9) establishes the collegium referred to as the Committee and, in view of sub-article (12), the Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed. It is further enumerated that the Committee, for reasons to be recorded, may not confirm the nomination by a three-fourth majority of its total membership, and, if a nomination is not confirmed by the Committee, it shall forward its decision with reasons so recorded to the Commission through the Prime Minister and, thereafter, the Commission shall send another nomination.

iii) In exercise of the powers conferred by sub-article (4) of Article 175A of the Constitution, the Commission vide S.R.O.122(KE)/2010, framed the Judicial Commission of Pakistan Rules, 2010 (“JCP Rules”). According to Rule 3, for each anticipated or actual vacancy of a Judge in the Supreme Court, or the Chief Justice of the Federal Shariat Court, or the Chief Justice of a High Court, the Chief Justice of Pakistan shall initiate nominations in the Commission for appointment against such vacancy and, according to sub-rule (2), for each anticipated or actual vacancy of a Judge in the Federal Shariat Court or Judge in the High Court, the Chief Justice of the respective Court shall initiate and send the nomination for appointment against such vacancy to the Chairman for convening a meeting of the Commission. Compliant with Rule 4, the proceedings of the Commission are to be regulated by the Chairman and the proceedings of the Commission shall be conducted under Rule 5 and whenever a nomination is received under Rule 3, the Chairman shall call a meeting of the Commission on the date, time and place determined by him and notified by the Secretary to each member. While in sub-rule 2 of Rule 5, the Commission may call for any information or record required by it from any person or authority for the purposes of carrying out its functions and, under Sub-rule 3, the nominations made by the Commission are forwarded to the Committee. Under Rule 6, the Chairman may

constitute one or more committees of members for such purpose as may be deemed necessary.

iv) Pursuant to the powers conferred by sub-article (17) of Article 175A of the Constitution, the Committee vide S.R.O.11(1)/2011, dated 06.01.2011, also framed the Parliamentary Committee on Judges Appointment in the Superior Courts Rules 2010 (“PC Rules”). Consistent with Rule 3, the Committee has the powers to summon or invite any person or call for any information or record required by it from any person or authority for the purpose of carrying out its functions and may also call the person nominated for a judicial vacancy for an interview. According to the functions of the Committee enumerated under Rule 4, the nomination received by the Secretary from the Commission shall be placed before the Chairman for calling a meeting of the Committee and, as per sub-rule (2) of Rule 4, the Committee, after considering the nomination, may confirm the nominee by a majority of its total membership within fourteen days of the receipt of the nomination, failing which the nomination shall be deemed to have been confirmed. However, under sub-rule (3) of Rule 4, it is further explicated that the Committee, for reasons to be recorded, may not confirm the nomination by a three-fourth majority of its total membership within the said period and, according to sub-rule (4), the Committee in case of non-confirmation shall forward its decision with reasons to the Commission through the Prime Minister for sending another nomination.

v) The learned Addl. AGP raised an argument that the hon’ble Chief Justice of Pakistan (“HCJP”), acting as the Chairman of the Commission, cannot initiate the nomination, rather it is the power of the Commission as a whole; and initiating the process of appointment at the sole discretion of the HCJP is violative of the principles of natural justice. The Rules framed by the Commission and the Committee pursuant to Article 175A of the Constitution (the “Rules”) are both very much in field and have never been challenged before any forum. In exercise of the powers delegated under the aforesaid Rules, the HCJP has the authority to initiate nominations in the Commission for the appointment for each anticipated or actual vacancy of a Judge in the Supreme Court, or the Chief Justice of the Federal Shariat Court, or the Chief Justice of a High Court; and for each anticipated or actual vacancy of a Judge in the Federal Shariat Court or Judge in the High Court, the Chief Justice of the respective Court shall initiate and send nominations for appointment against such vacancy to the Chairman of the Commission, the HCJP, for convening a meeting of the Commission. The argument is misconceived in view of the existing Rules framed under Article 175A of the Constitution.

vi) A reading of Article 175A of the Constitution makes it abundantly clear that two different limbs have been created to examine and scrutinize the nominations of judges for appointment in the superior Courts, but it is apparent that the Committee is neither vested with any role to act as an appellate forum for the Commission, nor does the Committee have any right or authority to remand the nomination for reconsideration to the Commission. The role of the Committee is

confined to the confirmation, or non-confirmation, of the name nominated and, in case the nomination is not confirmed, the reasons thereof shall be sent to the Commission for sending another nomination. Here the Committee remanded the matter to the Commission for fresh consideration due to the alleged seniority issue, which exercise of powers by the Committee is alien to Article 175A of the Constitution. The independence of the Judiciary is a basic principle of constitutional governance in Pakistan... The role and powers assigned to the Commission and Committee in the Constitution as two of the most important limbs of the judicial appointment process is also to be vetted under the doctrine of harmonious interpretation which is akin to the notion of an extensive approach within the basic structure and constitutional scheme.

vii) It is a well settled exposition of law that a written constitution is, in essence, a form of statute which needs to be interpreted liberally. It is also a well settled principle of interpretation that the Constitution has to be read holistically as an organic document which contemplates the trichotomy of powers between the three organs of the State, namely, the Legislature, the Executive, and the Judiciary. The doctrine of pith and substance lays much emphasis on comprehending and figuring out the exact characteristics of constitutional provisions. The concept of purposive interpretation places an obligation upon the Courts to interpret the statute or the Constitution keeping in mind the purposefulness for which the provision in question was legislated with a dynamic and result oriented approach rather than construing it in a restrictive or stringent sense. According to Salmond's Jurisprudence, interpretation or construction is the process by which the courts seek to ascertain the meaning or intention of the legislature through the medium of the authoritative forms in which it is expressed. The interpretation of the Constitution becomes more important when there is a need to harmonize it with the democratic principles of the State.

viii) In view of the fact that the elevation of District Judges corresponds with and reckons from the service cadre, therefore for all practical purposes, the guiding principle as accentuated and envisioned in the civil servant structure may be contemplated to appreciate the phraseology of seniority-cum-fitness and/or seniority-cum-merit. In fact, the seniority system is fundamentally an arrangement which acknowledges and corroborates the length of service for consideration of the dossier by the Departmental Promotion Committee or Selection Board under Civil Service for promotion or any other progression. However, while considering the eligibility for promotion or progression, the predominant factor is not solely seniority, instead it is always coupled with fitness and/or merit. Seniority or length of service is not considered a solitary benchmark or standard, in fact competence, antecedents and credentials are also predominant components for progression to the particular post. In the normal course of things, fitness comes first and seniority is given weightage when merit and ability are more or less equivalent among the contenders. One view is that meritocracy is a system in which talented and hardworking personnel are chosen for promotions based on achievements and not because of their seniority or length of service. In the case of

Muhammad Amjad versus Director General, Quetta Development Authority and another (2022 SCMR 797 = 2022 PLC(CS) 594), it was held that the promotion is not a vested right, but it depends on the eligibility as well as fitness of the candidate. The concept of eligibility implies a qualification to be appointed or promoted, whereas determination of fitness encompasses a person's competence to be chosen or selected for appointment or promotion subject to the availability of post on which the credentials and antecedents of person could be examined for examining his merits and worthiness for promotion. In the case of State of Mysore versus Syed Mahamood and others (AIR 1968 SC 1113), it was held that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. But these are not the only modes for deciding whether promotion is to be granted or not.

ix) The majority decision or recommendation rendered by this Commission cannot be made subject to review by the Committee whose dominion and province of expertise is entirely different. The Commission and Committee are both obligated and duty-bound to act within the spheres of their dominions and command. The realm of powers and jurisdiction of the Commission within the framework of the collegium is to evaluate the professional caliber, judicial skill, legal acumen, personal conduct and suitability of the nominees, which terminus cannot be trespassed or encroached on by the Committee under the region of its powers... The Committee cannot make their decision on the basis of minority views expressed during discussion but in totality; the majority discussion must be considered and in case of a variance of opinion, the Committee should provide independent reasoning and the decision should not be based on guesswork or picking and choosing the points from the gist of discussion recorded in the minutes of meeting of the Commission. Under the mandate of Article 175A of the Constitution, the Committee may confirm or may not confirm the candidate with reasons, but there is no power vested in the Committee to call upon the Commission to reconsider the nominations... The threshold of professional skills, calibre, competence, legal acumen, antecedents and over-all suitability of the nominees were considered by the Commission through a collegium of experts in the discipline of law which could not be overturned by the Committee in a perfunctory and unreasonable manner which would frustrate the very purpose of the Commission and render it redundant.

x) At the same time, we are sanguine and mindful that the Committee cannot be considered an ineffectual or superfluous corpus, rather it has the capability and competence to complement value added role in bringing forth judicial appointments by taking into consideration material which is different from and may not have been available to the Commission. The Committee may examine and gauge the antecedents, such as character, moral and or financial integrity and can reach an independent decision on the basis of factual data, if any, collected by them and which was not before the Commission, and communicate its

independent reasoning in order to avoid any controversial appointment.

xi) A rational demarcation of roles of two constitutional bodies cannot be considered adversarial or on the warpath. Quite the opposite, the object of both bodies is to ensure the appointment of the most suitable and deserving persons as Judges of superior Courts. In the Munir Hussain Bhatti case (supra), this Court laid out the basic elements and fundamentals required to be considered for the appointment of judges, namely acumen, antecedents, caliber, competence, conduct, integrity and suitability.

xii) The doctrine of Stare Decisis is a Latin term that connotes “let the decision stand” or “to stand by things decided”. Similarly, the Latin maxim Stare decisis et non quieta movere means ‘to stand by things decided and not to disturb settled points’. This represents an elementary canon of law that Courts and judges should honor the decisions of prior cases on the subject matter which maintains harmony, uniformity and renders the task of interpretation more practicable and reasonable while adhering to it for resolving a lis based on analogous facts. The terminology “vertical stare decisis” explicates that the decisions of higher courts should take precedence over the decisions of lower courts which is intensely embedded in the American legal system. Whereas the concept of “horizontal stare decisis” provides that prior decisions made by courts at a particular appellate level should provide some precedent for cases heard by courts of the same appellate level, however horizontal stare decisis is generally seen to be less forceful as compared to vertical stare decisis.

xiii) The doctrine of binding precedent has the excellence of fostering and disseminating firmness and uniformity and also supports the development of law. The doctrine of stare decisis is to be adhered to as long as an authoritative pronouncement holds the field, until and unless the dictates of compelling circumstances fortified by rationale justify the exigency of a fresh look for judicial review which has not been done so far for revisiting the dicta laid down in the case of Munir Hussain Bhatti case (supra) which has binding effect under the doctrine of binding precedent. No doubt according to the hierarchical façade and veneration of our judicial system, the dominant consideration is that the law declared by this Court should be certain, translucent and rational, as most of the decisions not only constitute a determination of rights of the parties, but also set down a declaration of law in service being a binding principle in future cases as a valuable tool of development in the jurisprudence of law... At this juncture, we cannot ignore the doctrine of precedents vis-à-vis stare decisis, since both have fundamental values engrained in our judicial system to ensure an objective of certitude and firmness. Judicial consistency advocates and encourages the confidence in the judicial system and to achieve this consistency, the Courts have evolved the aforesaid rules and principles which are grounded in public policy.

Conclusion: i) Decision of the Supreme Court to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding on all other courts in Pakistan.

- ii) Procedure for appointment of Judges is provided under Article 175A of the Constitution by means of the Commission as mentioned above in analysis No. ii.
- iii) Procedure of Judicial Commission for appointment of judges of superior courts under JCP Rules, 2010 is mentioned above in analysis No. iii.
- iv) Procedure of Parliamentary Committee for appointment of judges of Superior Courts under PC Rules, 2010 is mentioned above in analysis No. iv.
- v) The Chief Justice of respective court has authority to initiate and send nominations for appointment against vacancy of a Judge to the Chairman of the Judicial Commission.
- vi) Parliamentary Committee has no power to act as an appellate forum for the Commission, or has any authority to remand the nomination for reconsideration to the Commission.
- vii) Constitution needs to be interpreted liberally and be read holistically as an organic document.
- viii) Seniority or length of service solely is not to be considered for promotion or elevation to the particular post but competence, antecedents and credentials are also predominant components.
- ix) Parliamentary Committee cannot review the majority decision or recommendation rendered by the Judicial Commission.
- x) Parliamentary Committee cannot be considered an ineffectual or superfluous corpus.
- xi) Judicial Commission and Parliamentary Committee cannot be considered adversarial constitutional bodies and the object of both bodies is to ensure the appointment of the most suitable and deserving persons as Judges of superior Courts.
- xii) The doctrine of Stare Decisis is a Latin term that connotes “let the decision stand” or “to stand by things decided”. It may be vertical stare decisis or horizontal stare decisis.
- xiii) The doctrine of precedents vis-à-vis stare decisis have fundamental values engrained in judicial system of Pakistan to ensure an objective of certitude and firmness and it cannot be ignored.

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- 3. Supreme Court of Pakistan**
Pakistan Railways through its Chief Executive Officer/Senior General Manager, Lahore & another v. Muhammad Aslam
Civil Petition No.3501 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3501_2021.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the Federal Service Tribunal, whereby, the appeal filed by the instant respondent was accepted and the impugned order was set aside with the direction to the petitioner-department to permit the respondent to continue his service as Guard Grade-I on the analogy of the similarly placed official absorbed as Guard Grade-I.

Issues: i) Whether the power of rescission remains with the relevant authorities to undo the action till a decisive step is taken or as long as certain rights are not created or the action was found to be patently illegal?
 ii) Whether the right to sue survives except the right to sue which is closely associated with the individual or is a personal right of action?

Analysis: i) It is a well settled exposition of law that the power of rescission remains with the relevant authorities to undo the action till a decisive step is taken or as long as certain rights are not created or the action was found to be patently illegal.
 ii) According to the Latin legal maxim “actio personalis moritur cum persona” the personal right to an action dies with the person. There are certain categories of legal proceedings or lawsuits in which the right to sue is personal and does not survive or pass on to the legal representatives and, as a consequence thereof, the proceedings are abated. In case of survival of cause of action, according to the genres of the lis, the legal representatives may be impleaded to continue the suit or other legal proceedings for which the relevant provisions are mentioned under Order XXII, Rule 1, C.P.C, i.e. that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives, and further modalities are mentioned in succeeding rules such as how to implead the legal heirs in case of death of one of several plaintiffs or the sole plaintiff and in case of death of one of several defendants or of the sole defendant. By and large, the right to sue survives except the right to sue which is closely associated with the individual or is a personal right of action.

Conclusion: i) The power of rescission remains with the relevant authorities to undo the action till a decisive step is taken or as long as certain rights are not created or the action was found to be patently illegal.
 ii) The right to sue survives except the right to sue which is closely associated with the individual or is a personal right of action.

4. Supreme Court of Pakistan
Chief Secretary, Govt. of Balochistan and others v. Masood Ahmed and another
Civil Appeals No.40-Q of 2018
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._40_q_2018.pdf

Facts: Through this civil appeal the Provincial Government through its Chief Secretary sought leave against the impugned judgement of Service Tribunal, being aggrieved with the specific observations/directions issued to them.

Issues: i) Whether re-joining the department is a condition precedent for a deputationist for his consideration for promotion by the Board?
 ii) Whether creation of a new post for the purpose of proforma promotion is a policy decision and the Service Tribunal(s) can exercise such executive authority?

- Analysis:**
- i) The Government of Balochistan has framed the Balochistan Province Civil Servants Deputation Policy (“Deputation Policy”), Para 4(iii) whereof stipulates that “a deputationist shall not be promoted in absentia in his parent department, if he becomes due during the period of his deputation unless he rejoins.” As per the Deputation Policy, re-joining the department is a condition precedent for a deputationist for his consideration for promotion by the Board.
 - ii) Under section 5(1) of the Service Tribunals Act, 1973, the Tribunal on an appeal of an aggrieved person, is empowered to confirm, set-aside, vary, or modify the order appealed against. The power of the Tribunal has been enshrined in the Act; thus, it cannot go beyond what the law states. Creation of a post is a policy decision, based upon the requirements of a department and involves economic factors, which is the sole discretion and executive authority to be exercised by the Government alone. The Tribunal cannot assign to itself such executive function, nor can it grant relief not provided under the law. It is supposed to apply the law in its true letter and spirit.

- Conclusion:**
- i) Yes, re-joining the department is a condition precedent for a deputationist for his consideration for promotion by the Board.
 - ii) Yes, creation of a new post for the purpose of proforma promotion is a policy decision and the Service Tribunal(s) cannot exercise such executive authority.

5. Supreme Court of Pakistan
Parina Haresh and 19 others v. The Govt. of Balochistan and 16 others
Civil Petition No. 178-Q of 2023
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 178_q_2023.pdf

Facts: The procedure for filling posts in BPS 1 to 14 in the Agriculture and Cooperatives Department, Government of Balochistan (GoB) is challenged before the court.

Issue: What would be the procedure for the initial recruitment of candidates in BPS 1 to 15 when no mechanism for tests and interviews is provided in Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 (the AP&T Rules)?

Analysis: The AP&T Rules do not specify any objective selection procedure, criteria, mechanism, or guidelines for a particular post, nor do they provide the procedure and/or method to be adopted for the purpose of assessing the competence, ability, technical skills, behaviour, and strength of the candidates through the tests and interviews, if so conducted, in order to put the right person in the right job which is of utmost importance. However, if any vacant post(s) is/are urgently required to be filled, the GoB may requisition the posts to the Commission as provided by Rule 3(1)(b) of the BPSC Functions of 2023 Rules or may engage the services of a reputable institution having a faculty and expertise in human resources, preferably a statutory institution such as the Institution of Business Administration, Karachi (“IBA”) for the purpose of conducting tests and

interviews. While doing so, the GoB must evolve a yardstick approach for selection of such an institution. As there is no set procedure for the purpose of making papers, checking of answer papers by person(s) competent to do so, and conducting tests and interviews, therefore, the Committee may continue to perform its functions only with regard to inviting applications through publication, the scrutiny process, and shortlisting of the eligible candidates for their appearance in the tests and interviews by following the applicable rules. Besides, the process of requisitioning the posts, if any, to the Commission or any other reputable institution, be routed through the already notified Committee. The Committee must strictly observe the quota reserved under the law, rules, and policy for regions/districts/union councils, wards, minorities, women, persons with disabilities, etc., notwithstanding anything contained in Rules 15 and 16 of the AP&T Rules. After completion of the entire selection process and compiling of the result received from the testing authority/institution, it is the responsibility of the Committee(s) to recommend candidates for their appointments to the competent authorities. Rule 4 of the AP&T Rules prescribes the authorities competent to make such appointments. However, the GoB is required to address all the stated issues by suitably amending the AP&T Rules so as to promote and guarantee selection of candidates on merits, in order to appoint persons who are best qualified.

Conclusion: See above.

6. Supreme Court of Pakistan
Sanaullah Sani v. Secretary Education Schools etc.
Civil Petition No.1276 of 2020
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1276_2020.pdf

Facts: This petition is by a retired government teacher seeking leave to appeal against the judgment of the Service Tribunal upholding the punishment imposed on him on the culmination of the disciplinary proceedings.

Issues:

- i) What is show cause notice?
- ii) What are the essential elements of show cause notice as per law?
- iii) What will be the effect if essential elements of show cause notice are not complied with?

Analysis:

- i) Various provisions of the PEEDA suggests that a show cause notice is not an accusation made or information given in abstract but an accusation made against an employee in respect of an act committed or omitted, cognizable thereunder.
- ii) The law intends that a show cause notice must conform to at least seven essential elements, and these include: (a) it should be in writing and should be worded appropriately; (b) it should clearly state the nature of the charge(s), date, and place of the commission or omission of acts, along with apportionment of responsibility; (c) it should clearly quote the clause of the PEEDA under which

the delinquent is liable to be punished; (d) it should also indicate the proposed penalty in case the charge is proved; (e) it should specify the time and date within which the employee should submit his explanation in writing. It is also preferable to add in the show cause notice that if no written explanation is received from the accused within the prescribed date, the enquiry will be conducted ex-parte; (f) it should be issued under the signature of the competent authority and (g) it should contain the time, date and place of the inquiry and the name of the inquiry officer.

iii) Strict compliance of the essential elements of show cause notice is vital so that the principle of natural justice is not violated. It is thus emphasised that the charges made in the show cause notice should not be vague. All the acts of commission or omission constituting the charge, and also forming the ground for proceeding against the employee, should be clearly specified because otherwise, it will be difficult for an employee, even by projecting his imagination, to discover all the facts and circumstances that may be in the contemplation of the competent authority to be established against him, and thus, it will not only frustrate the requirement of giving him a reasonable opportunity to put up a defence but also amount to a violation of his fundamental right to a fair trial.

- Conclusion:**
- i) Show cause notice is an accusation made against an employee in respect of an act committed or omitted, cognizable thereunder.
 - ii) See the clause ii in analysis portion.
 - iii) If essential elements of show cause notice are not complied with, it will not only frustrate the requirement of giving a reasonable opportunity to put up a defence but also amount to a violation of the fundamental right to a fair trial.

7. Supreme Court of Pakistan
Muhammad Yaseen and another v. Province of Sindh through its Secretary Education and Literacy Department Govt. of Sindh at Karachi and others
Civil Petitions No.903, 904, 905, 906 & 907 of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi,
Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 903 2023.pdf

Facts: These civil petitions are brought to challenge the consolidated judgment passed by the High Court whereby the constitution petitions were dismissed mainly on the ground that the petitioners have failed to prove that their appointments were made through the competitive process and their documents were also not found to be genuine.

Issues:

- i) Whether it is the obligation of the concerned authority to provide right of audience before any prejudicial action is taken against the delinquent?
- ii) What is vested right?
- iii) Whether it is a principle of law that an order once passed becomes irrevocable and a past and closed transaction?

- Analysis:**
- i) Right of audience is a fundamental right enshrined under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. The doctrine of natural justice is grounded on the astuteness and clear-sightedness of affording a right of audience before any prejudicial action is taken, therefore it is an inescapable obligation of all judicial, quasi-judicial and administrative authorities to ensure justice according to the sagacity of the law.
 - ii) By and large, a vested right is a right that is unqualifiedly secured and is not conditional on any particular event or set of circumstances. In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law.
 - iii) The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order, however, in this case, nothing was articulated to the effect that the petitioners managed their appointments letters due to any fraud or misrepresentation.

- Conclusion:**
- i) It is the obligation of the concerned authority to provide right of audience before any prejudicial action is taken against the delinquent.
 - ii) A vested right is a right that is unqualifiedly secured and is not conditional on any particular event or set of circumstances.
 - iii) It is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction.

- 8. Supreme Court of Pakistan**
Noor Din deceased through LRs v Pervaiz Akhtar & others
Civil Appeal No.130 of 2016
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi,
Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._130_2016.pdf

Facts: The respondents/plaintiffs filed a suit for declaration wherein they claimed the inheritance from the legacy of their predecessor in interest. Their suit was dismissed, but, appeal was allowed by the district court. The appellants/defendants filed civil revision that was dismissed by the High Court. Now, appellants filed the leave to appeal under Article 185(3) of The Constitution of Islamic Republic of Pakistan, 1973 against the decision of High Court.

- Issues:**
- i) When does succession open in Islamic Law of inheritance?
 - ii) Whether wrong mutation confers any right in property?
 - iii) What are legal implications if possession of inheritance property is held by an heir?
 - iv) Under what circumstances law of limitation shall be relevant in case of claim of inheritance property?

Analysis:

- i) Under the Islamic Law of inheritance, as soon as an owner dies, succession to his property opens.
- ii) The law is well settled that wrong mutation confers no right in property as revenue record is maintained only for fiscal purpose and such mutation would not create title in accordance with Sharia Law of Inheritance.
- iii) The heir in possession has to be considered to be in constructive possession of the property on behalf of all the heirs in spite of his exclusive possession, e.g., the possession of the brothers would be taken to be the possession of their sisters, unless there was an express repudiation of the claims of the sisters in favour of brothers and in order to relinquish or transfer her interest in the property, there has to be a positive and affirmative act
- iv) The law of limitation would be relevant when the conduct of the claimant demonstrates acquiescence and particularly when third party interest is created in the inherited property.

Conclusion:

- i) As soon as an owner dies, succession to his property opens.
- ii) Wrong mutation confers no right in property.
- iii) The heir in possession has to be considered to be in constructive possession of the property on behalf of all the heirs in spite of his exclusive possession.
- iv) The law of limitation would be relevant when the conduct of the claimant demonstrates acquiescence.

9. Lahore High Court
The State v. Muswar Hussain Shah etc.
Criminal Revision No.57693/2023
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
<https://sys.lhc.gov.pk/appjudgments/2023LHC4674.pdf>

Facts: Through this criminal revision, Prosecutor General, Punjab called in question validity of an order passed by learned Judge, Anti Terrorism Court, whereby, only two days physical remand of accused persons was granted.

Issue: Whether grant of remand for less than fifteen days at one time by the Anti Terrorism Court is violative of the provisions of Section 21-E of the Anti Terrorism Act, 1997?

Analysis: The word “may” used in the aforementioned section is of pivotal importance. Ordinarily, the use of expression “may” is considered to be a permissive or enabling sense... The provision of said section directly relates to curtailing liberty of an accused. It is well settled by now that where two interpretations of law are possible, the interpretation beneficial to the accused should be preferred... Power to grant physical remand of an accused for not less than fifteen days at one time to the Court is discretionary and not mandatory in nature. It is in exclusive domain of the Court dealing with such request to grant remand for a period which it feels necessary keeping in view facts and circumstances of each case...

Conclusion: Physical remand of an accused cannot be granted in routine. A duty is bestowed upon a Court dealing with such request of remand to protect fundamental rights of life and liberty of a person enshrined in the Constitution of Islamic Republic of Pakistan, 1973. Thus, the impugned order of granting remand is not violative of section 21-E of the Act *ibid*.

10. Lahore High Court
Muhammad Farrukh etc. v. The State etc.
Criminal Appeal No.68886 of 2019
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz
<https://sys.lhc.gov.pk/appjudgments/2023LHC4624.pdf>

Facts: Through this criminal appeal the appellants assailed the vires of judgment passed by learned Judge Anti-Terrorism Court-I, Lahore whereby in a trial held in case/F.I.R registered under Section 365-A PPC, the appellants were convicted and sentenced.

Issues:

- i) Whether discovery of fact regarding place of abduction which is not known to anyone, has any legal significance and admissible under Article 40 of QSO, 1984?
- ii) Whether the data emanated from automated information system and collected through modern devices and techniques, can legitimately be brought on record in terms of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984?
- iii) Whether holding of identification parade is essential in an abduction incident?
- iv) Whether non-corroboration from identification test parade gets significance only if there is a doubt qua the involvement of the accused?
- v) When an accused is tried by a Judge Anti-Terrorism Court for a scheduled offence, whether the conviction under the Anti-Terrorism Act becomes uncalled for?

Analysis:

- i) The same set of witnesses coupled with the Investigating Officer deposed about the disclosure of appellants made immediately after their arrest about the place of abduction. Indeed in pursuance of the afore-mentioned disclosure of appellants, the police was successful in getting recovered the abductee. We feel a pressing need to lay emphasis that the afore-mentioned discovery of fact which was not known to anyone, thus had legal significance and admissible under Article 40 of QSO, 1984.
- ii) Furthermore, the data so tendered above since emanated from automated information system and collected through modern devices and techniques, thus was legitimately brought on record in terms of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984. Living in a technological era and well conversant with the prevailing menace of false depositions, the Courts can legitimately use data generated through modern devices for ascertaining the truth of a fact through the enabling provisions of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984.
- iii) Holding of identification parade is not essential in an abduction incident.
- iv) Non-corroboration from identification test parade gets significance only if

there is a doubt qua the involvement of the accused.

v) As far as the conviction and sentence of the appellants under Section 7 (e) of the Anti-Terrorism Act, 1997 is concerned, it is now settled that when an accused is tried by a Judge Anti-Terrorism Court for a scheduled offence, then the conviction under the Anti-Terrorism Act becomes uncalled for.

- Conclusion:**
- i) Discovery of fact regarding place of abduction which is not known to anyone, has legal significance and admissible under Article 40 of QSO, 1984.
 - ii) The data emanated from automated information system and collected through modern devices and techniques, can legitimately be brought on record in terms of Articles 46-A and 164 of Qanun-e-Shahadat Order, 1984.
 - iii) Holding of identification parade is not essential in an abduction incident.
 - iv) Non-corroboration from identification test parade gets significance only if there is a doubt qua the involvement of the accused.
 - v) When an accused is tried by a Judge Anti-Terrorism Court for a scheduled offence, then the conviction under the Anti-Terrorism Act becomes uncalled for.

11. Lahore High Court
Faysal Bank Ltd. v. M/s Usman Enterprises & another
FAO No.75308 of 2019
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
<https://sys.lhc.gov.pk/appjudgments/2023LHC4596.pdf>

Facts: The appellant called into question vires of an order passed by Banking Court, Lahore whereby plaint of appellant's suit for recovery along with cost of funds and mark-up etc., was returned by invoking the provisions of Order VII Rule 10 CPC for its presentation before the proper forum.

Issues:

- (i) What is the difference between an exclusive jurisdiction clause and a non-exclusive jurisdiction clause in a contract?
- (ii) Whether parties to a contract can invest or divest a court of its jurisdiction through their mutual agreement or consent?

Analysis: (i) A contract may contain an *exclusive jurisdiction clause* or a *non-exclusive jurisdiction clause*. Traditionally, a clear cut distinction could be traced out in common law jurisdictions between an *exclusive jurisdiction clause* and a *non-exclusive jurisdiction clause*. Under a traditional *exclusive jurisdiction clause* the parties to a contract agree that disputes arising out of the contract will be decided exclusively by the court chosen by the parties while under a traditional *non-exclusive jurisdiction clause* parties to a contract agree that a particular court or courts will be having the jurisdiction to decide a matter pertaining to the contract however such a clause meant a preferable jurisdiction meaning thereby that jurisdiction of other courts was not ousted altogether. In the modern contracts this clear cut traditional distinction between an *exclusive jurisdiction clause* and a *non-exclusive jurisdiction clause* has faded away with the passage of time due to multiple factors including increasing use and growing litigation

in relation to such clauses, more sophistication in drafting contracts and a variation in interpretation of these clauses specially a *non-exclusive jurisdiction clauses* by courts of different jurisdictions. This scenario has led to situations where sometimes a *non-exclusive jurisdiction clause* gives rise to same effects as that of an *exclusive jurisdiction clause*. In such a scenario the traditional distinction between these clauses seems to be an illusory one. Nevertheless, a distinction can be drawn and ascertained on the basis of the content and scope of the contractual bargain of the parties to a contract. This brings the matter of a *non-exclusive jurisdiction clause* in the domain of inference from other clauses of such an agreement as well as construction of a specific agreement on case to case basis by ascertaining the real intent of the parties regarding choice of forum.

(ii) ...the parties by their agreement or consent can neither invest Court with a jurisdiction where it does not exist in law nor can the parties divest a Court of its jurisdiction by such methodology. Where more than one Court has jurisdiction in the matter, the parties can make choice by their agreement or consent for conferment of jurisdiction upon one Court to the exclusion of other and agreement in such behalf in normal circumstances is binding upon parties thereto. Such choice of forum by agreement is not contrary to the mandate of Section 28 of the Contract Act, 1872. However, the condition precedent to make a choice by the parties through an agreement is thus that the Court or the Tribunal so chosen has the jurisdiction under the law. When question arises as to the nature of jurisdiction agreed to between the parties, the Court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.

- Conclusion:** (i) In the modern contracts, the traditional clear cut distinction between an *exclusive jurisdiction clause* and a *non-exclusive jurisdiction clause* has faded away and the distinction is to be inferred from other clauses of an agreement as well as construction of a specific agreement on case to case basis by ascertaining the real intent of the parties regarding choice of forum.
- (ii) Parties to a contract cannot invest or divest a court of its jurisdiction through their mutual agreement or consent.

12. Lahore High Court
Shaista Jamil v. Daraz and another
Criminal Appeal No. 559/2023
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2023LHC4659.pdf>

Facts: Through this criminal appeal the appellant assailed the order of the District Consumer Court, whereby, the presiding officer rejected the claimed of the appellant under Order VII Rule 11 of CPC filed under section 25 of the Punjab Consumer Protection Act 2005.

- Issues:**
- i) Whether sections 23 (1) and 32 (2) of the Punjab Consumer Protection Act 2005 establish civil penalties?
 - ii) Whether a District Consumer Court established under the Punjab Consumer Protection Act 2005 is a special court with both civil and criminal jurisdictions?
 - iii) Whether the Code of Civil Procedure applies to the proceedings before the District Consumer Court?

- Analysis:**
- i) Section 23(1) empowers the Authority to impose fines for certain infractions of the Act. Section 32(1) states that when a manufacturer violates sections 4 to 8, 11, 13, 14, 16, 18 to 22, he shall be punished with imprisonment up to two years or with a fine up to a hundred thousand rupees or with both, in addition to damages or compensation as may be determined by the Consumer Court. Thus, it creates statutory offences. Section 30(2) states that where a defendant or a claimant fails or omits to comply with the Consumer Court's order, he would be punished with imprisonment and a fine. Applying the principles laid down in Kennedy's case, in my opinion, sections 23(1) and 32(2) of the Punjab Act establish civil penalties. Section 32(2) of the Punjab Act is analogous to section 27 of India's repealed Consumer Protection Act of 1986 and section 72 of the Consumer Protection Act of 2019 presently in force. In view of the above, it is reasonable to conclude that section 32(2) of the Punjab Act does not *stricto sensu* constitute a statutory offence but serves as a tool for the execution of the Consumer Court's orders.
 - ii) A Consumer Court established under the Punjab Act is a special court with both civil and criminal jurisdictions. However, it is not a civil court in the sense of the Code of Civil Procedure 1908 because a petition, claim or complaint brought before it is not treated as a suit or plaint, and it does not pass a decree. Similarly, it cannot be termed a pure criminal court because of its limited criminal provisions. This indicates the uniqueness of the Consumer Court and its proceedings. For this reason, the Legislature thought it necessary to enact section 30(4) to clarify that every proceeding before the Consumer Court shall be deemed a judicial proceeding. The draftsman has interchangeably used the terms "claim" and "complaint" throughout the Punjab Act without considering that they have different legal meanings. It is, however, important to point out that he has not used them in the sense contemplated by the Code of Criminal Procedure 1898. This view finds support by the fact that Part VIII of the Punjab Act, which deals with proceedings before the Consumer Court, is titled "Disposal of Claims and Establishment of Consumer Courts." This Part begins with section 25 and is also captioned as "filing of claims." Furthermore, sections 25 to 31 deal with the civil rather than a criminal remedy.
 - iii) Since section 30(3) of the Punjab Act grants the Consumer Court some specific powers that civil courts have under the CPC, the remainder are excluded by necessary implication. The following Latin legal maxims lend support to this interpretation: (i) *Expressio unius est exclusio alterius* (the express mention of one thing is the exclusion of the other) and (ii) *Expressum facit cessare tacitum* (what is expressed makes what is implied silent). The law in our country is well recognized that unless there is a specific provision to the contrary in any special

or local law, the ordinary rules of procedure apply. The Code of Civil Procedure applies to the proceedings before the Consumer Court to the extent specified in section 30(3) of the Punjab Act. Nevertheless, it may also adopt its general principles insofar as they advance the interests of justice.

- Conclusion:**
- i) Sections 23 (1) and 32 (2) of the Punjab Consumer Protection Act 2005 establish civil penalties.
 - ii) A District Consumer Court established under the Punjab Consumer Protection Act 2005 is a special court with both civil and criminal jurisdictions.
 - iii) The Code of Civil Procedure applies to the proceedings before the District Consumer Court to the extent specified in section 30(3) of the Punjab Consumer Protection Act 2005.

13. Lahore High Court
Ummaira Saleem v. Federation of Pakistan and others
Writ Petition No. 2901 of 2023
Mr. Justice Jawad Hassan.
<https://sys.lhc.gov.pk/appjudgments/2023LHC4642.pdf>

Facts: Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner supplicated for production of her husband from alleged illegal detention of respondents and also seeking direction to the respondents for disclosure of the charge, if pending against the detenué, in terms of Rule 23 and 24 of the Pakistan Army Act Rules, 1957.

Issues:

- i) Whether a High Court may pass any order in respect of any person who is subject to any law pertaining to the Armed Forces with regard to any action taken under such law?
- ii) Whether a writ of Habeas corpus for production of an army official is maintainable if he is in lawful custody of Military Authorities?

Analysis:

- i) The scope of constitutional jurisdiction under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973 is very limited. Article 8(3) of the Constitution extends protection to any law relating to members of the armed forces including the Pakistan Army Act, 1952.
- ii) A writ of Habeas corpus is only maintainable if a person is detained without lawful authority in an unlawful manner. Army official would be considered to be in lawful custody of military in a lawful manner if he is being investigated under Section 2(1)(d) of the Army Act, 1952.

Conclusion:

- i) Under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973, a High Court cannot pass any order in respect of any person who is subject to any law pertaining to the Armed Forces with regard to any action taken under such law.
- ii) A writ of Habeas corpus for production of an army official is not maintainable if he is in lawful custody of Military Authorities.

14. Lahore High Court
Mst. Nasreen Bibi v. District Police Officer etc.
W.P No. 6566 of 2023
Mr. Justice Muhammad Tariq Nadeem.
<https://sys.lhc.gov.pk/appjudgments/2023LHC4601.pdf>

Facts: Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 491, Cr.P.C., the petitioner has supplicated for the recovery of her real sons from the illegal and unlawful custody of respondents No.2 and 3.

Issues:

- i) What steps must be taken to curb down the illegal practice of police officials qua the arrest and production of accused before Area Magistrate?
- ii) What is the relevant law with respect to maintaining a case diary?
- iii) How a proper mechanism can be framed in light of guidelines provided by law regarding record of case diary?

Analysis:

- i) The Hon'ble Court issued following directions:- i) The arrest of a person be incorporated forthwith in computerized as well as manual *roznamcha* with date and time; ii) A *Rapat* should be written regarding the exit and return of an accused from the police station for any purpose; iii) The entries in manual *roznamcha* be made through ball-point; iv) The application for the physical or judicial remand before the learned Area Magistrate should only be entertained when the date and time of arrest has been mentioned in that; v) Police file/ case diaries should be retained at police station and the fact of taking these out from police station for the purpose of investigation or any other purpose and their return should be incorporated in the *roznamcha* (register No. 2).
- ii) The Rules 25.53, 25.54 and 25.55 of Police Rules, 1934 and section 172 of Criminal Procedure Code made it clear that case diary should be written in the light of Form 25.54 (1) of Police Rules, 1934, each sheet shall be numbered and stamped with the stamp of police station, two carbon copies shall be made by the Investigating Officer, number and date of each case diary shall be recorded on the reverse of F.I.R and original case diary shall be dispatched without any unnecessary delay to the Inspector or other Superior Officer at headquarter.
- iii) To frame proper mechanism, the F.I.R number and serial number of case diary should be mentioned at the bottom of each page of case diary (*Zimini*). There should be case diary register published by police department with serial number, allocated to police stations in District, which should be duly signed by the SHO at the time of issuance of case diaries papers. Serial numbers of case diaries should be mentioned on the reverse of FIR alongwith entry of the same in *Roznamcha*. The remand paper should be in format as mentioned in police rules and same should reflect the serial number of case diary about the arrest of accused by the Investigating Officer. The interim as well as final report under section 173

Cr.P.C., submitted by police should also indicate the serial numbers of papers used for the purpose of case diary by the Investigating Officer. Copy of record of case diary should be sent to the *Mohafiz* Office concerned within 24 hours.

- Conclusion:**
- i) Detailed directions have been discussed in clause i of analysis to curb down the illegal arrest of accused persons.
 - ii) The Rules 25.53, 25.54 and 25.55 of Police Rules, 1934, as well as section 172 of Criminal Procedure Code are relevant provisions of law with respect to maintaining a case diary.
 - iii) See the clause iii in analysis.

15. Lahore High Court
Nazeer Ahmad v. Muhammad Sadiq (deceased) through L.Rs. and 2 others
C. R. No. 174 / 2017
Mr. Justice Abid Hussain Chattha
<https://sys.lhc.gov.pk/appjudgments/2023LHC4648.pdf>

Facts: This Civil Revision is directed against the impugned Judgment & Decree passed by Additional District Judge, whereby, the Judgment & Decree passed by Civil Judge, Toba Tek Singh was reversed.

- Issues:**
- i) What is the nature of act performed by Patwari while recording entry in Roznamcha?
 - ii) Whether recording of a transaction regarding change of rights by the Patwari at the behest of an acquirer in Roznamcha does constitute an admission on behalf of seller?
 - iii) Whether the recorded entry in Roznamcha is a public document and is admissible per se?
 - iv) Whether the transaction recorded in Roznamcha and mutation are required to be independently proved?

Analysis:

- i) Thus, an entry recorded in Roznamcha is merely a ministerial act performed by the Patwari which is incorporated in the register of mutations culminating into an order of passing of mutation under Section 42(6) of the Act by the Revenue Officer.
- ii) Therefore, an act of recording of a transaction regarding change of rights by the Patwari at the behest of an acquirer in Roznamcha does not constitute an admission of the transaction on the part of seller as argued by learned counsel of the Petitioner.
- iii) In Haq Nawaz case (supra), it was held that a recorded entry in Roznamcha is a public document and is admissible per se. However, in the said case, the vendor had confessed of selling the same property to both the contesting parties and while discovering the truth, the Court held that in terms of Rule 3.79 and 3.80 of the Land Record Manual, Roznamcha was maintained by Patwari in the discharge of his official duties and as such, by virtue of Article 85 of the Qanun-e-Shahadat

Order, 1984 (the “QSO”), it was a public document which was per se admissible. However, importantly, the recorded report in Roznamcha therein was not alleged to have been fraudulently entered. If the transaction incorporated in Roznamcha is under challenge, the presumption attached thereto stands rebutted and it is required to be proved as any other private document.

iv) It is now well settled that in case of a challenge to the transaction and the mutation, both the transaction and the mutation would be required to be independently proved. As the mutation itself is not an instrument of title, therefore, a mutation in the light of specific denial by the owner does not have probative value as the presumption stands rebutted. Similarly, entries recorded in Roznamcha if not proved to have been made at the instance of the vendor or to have been signed by him carry no evidentiary value. (...) Although Roznamcha maintained by Patwari during the course of performance of his official duty is admissible yet if report contains particulars of a private transaction, it is required to be independently proved and reference to recorded transaction of Roznamcha on the mutation sheet did not constitute any evidence of the same. Even the report of Roznamcha is required to be proved by producing Roznamcha itself and examination of the maker of the report. After analyzing a number of precedents, the Court with reference to Haq Nawaz case (supra) observed that no presumption of truth was attached to a note contained in Roznamcha unless the maker was examined and that to hold that an entry in Roznamcha amounts to a sale will be laying down a hazardous proposition of law inasmuch as that fate of land holdings will be at the mercy of a Patwari.

- Conclusion:**
- i) An entry recorded in Roznamcha is merely a ministerial act performed by the Patwari.
 - ii) Recording of a transaction regarding change of rights by the Patwari at the behest of an acquirer in Roznamcha does not constitute an admission of the transaction on the part of seller.
 - iii) A recorded entry in Roznamcha is a public document and is admissible per se. However, if the transaction incorporated in Roznamcha is challenged, the presumption attached thereto stands rebutted and it is required to be proved as any other private document.
 - iv) In case of a challenge to the transaction and the mutation, both the transaction and the mutation would be required to be independently proved.

16. Lahore High Court
Qari Muhammad Qasim v. Mirza Rehmat Ullah and 02 others
W. P. No. 20915 / 2023
Mr. Justice Abid Hussain Chattha
<https://sys.lhc.gov.pk/appjudgments/2023LHC4579.pdf>

Facts: This constitutional Petition seeks modification in the impugned Order & Memo of Cost passed by Special Judge Rent, and Judgment & Memo of Cost passed by

Additional District Judge, to the extent of conditions imposed upon the Petitioner while allowing his Ejectment Petition.

- Issues:**
- i) What will be the fate of leave to contest where oral tenancy is denied?
 - ii) What is the main object of the Punjab Rented Premises Act, 2009?
 - iii) What is the purpose and scope of the establishment of Rent Tribunals under the Punjab Rented Premises Act, 2009?
 - iv) Whether an agreement after the execution of a tenancy agreement, in respect of premises and for a matter not provided under the tenancy agreement, affect the relationship of landlord and tenant?

- Analysis:**
- i) As a normal rule, where oral tenancy is denied, leave to contest is allowed to determine the relationship of landlord and tenant along with ancillary disputed questions of law and fact through recording of evidence.
 - ii) The Punjab Rented Premises Act, 2009 has been promulgated to regulate the relationship of landlord and tenant with respect to rented premises and for providing an expeditious and cost-effective mechanism for settlement of their disputes.
 - iii) The Rent Tribunal established under Section 16 of the Punjab Rented Premises Act, 2009 exercises exclusive jurisdiction within the ambit and scope of the Punjab Rented Premises Act, 2009 which is limited regarding determination of disputes between the landlord and the tenant emanating from lease agreements with respect to the rented premises. Therefore, unless the relationship of landlord and tenant is not established vis-à-vis the rented premises, the Rent Tribunal cannot assume jurisdiction to determine any other disputed question between the parties qua the rented premises such as the determination of rights and title.
 - iv) The limited jurisdiction extended to the Rent Tribunal under the Punjab Rented Premises Act, 2009 is fortified by Section 10 of the Act which specifically stipulates that an agreement to sell or any other agreement entered into between the landlord and the tenant, after the execution of a tenancy agreement, in respect of premises and for a matter other than a matter provided under the tenancy agreement, shall not affect the relationship of landlord and tenant unless the tenancy is revoked through a written agreement entered before the Rent Registrar in accordance with the provisions of Section 5 of the Punjab Rented Premises Act, 2009.

- Conclusion:**
- i) As a normal rule, where oral tenancy is denied, leave to contest is allowed to determine the relationship of landlord and tenant.
 - ii) The Punjab Rented Premises Act, 2009 has been promulgated to regulate the relationship of landlord and tenant with respect to rented premises and for providing an expeditious and cost-effective mechanism for settlement of their disputes.
 - iii) The Rent Tribunal exercises exclusive jurisdiction within the ambit and scope of the Act which is limited regarding determination of disputes between the

landlord and the tenant emanating from lease agreements with respect to the rented premises.

iv) An agreement after the execution of a tenancy agreement in respect of premises and for a matter not provided under the tenancy agreement, shall not affect the relationship of landlord and tenant unless the tenancy is revoked through a written agreement entered before the Rent Registrar in accordance with the provisions of Section 5 of the Punjab Rented Premises Act, 2009.

17. Lahore High Court
Parvez Elahi v. Additional Sessions Judge and 3 others
Criminal Misc. No.40242-M of 2023
Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2023LHC4588.pdf>

Facts: The petitioner has challenged order passed by Additional Sessions Judge under section 561-A of the Code of Criminal Procedure, 1898, whereby, the revision petition filed by the State has been allowed and order passed by the Judicial Magistrate Section 30 refusing the physical remand of the petitioner in case/FIR registered under section 420, 468, 471, 161, 162/34 PPC read with section 5(2) of Prevention of Corruption Act, 1947, with Anti-Corruption Establishment has been set aside.

Issues: i) Whether order of Magistrate for refusing physical remand is a judicial order and amenable to revisional jurisdiction?
 ii) Whether Special Judge Anti-Corruption only has power to pass an order in revision against order of Magistrate for refusing physical remand in case FIR registered under section 5(2) of Prevention of Corruption Act, 1947?

Analysis: i) As far as the contention of learned counsel for the petitioner that the order of learned Magistrate, whereby, he refused to allow physical remand, being executive order, is not amenable to revisional jurisdiction is concerned. This aspect of the matter has already been considered by this Court in several cases, including cases titled “Abdul Waheed Versus Additional Sessions Judge And Others” (2017 MLD 1319), “Zawar Hussain Versus The State And 3 Others” (2009 P.Cr. L.J 705), “Misbah-UI-Hassan Versus The State And 3 Others” (2005 P Cr. L J 1709) and “Riaz Ul Haq And Another Versus Muhammad Naveed And Another” (2005 YLR 805). This Court has already settled that an order passed by the learned Magistrate refusing remand is a judicial function and under section 435 of the Code, the Court superior to the one refusing remand can exercise jurisdiction of revision... This aspect was also examined in Writ Petition No. 3780 of 2010 titled “Muhammad Aslam, etc. Vs. The State, etc.” in which this Court has observed that the order for refusal of remand is outcome of judicial function and when the Court of Sessions comes to the conclusion that any illegality or irregularity is committed, revisional jurisdiction u/s 435 read with Section 439-A of the Code can be exercised.
 ii) The main question raised before this Court, also a reason of admission of this

petition, is that only “Special Judge” appointed in terms of section 3 of the Act of 1958 has power to pass an order in revision... The section 6(1) of the Act of 1958 provides that in course of trial the provisions of the Code shall apply to the “proceedings” in the Court of “Special Judge”. The question remained before me if the word ‘proceedings’ in the above section is used in wider sense to cover the cases of remand and its revision or if it is used in narrower sense just to cover the cases when the matter is brought before the “Special Judge” in the shape of complaint or through report by the police or concerned agency. Word “proceedings” is not defined in the Act of 1958, however, Code has defined the word “judicial proceeding” under section 4 (m) of the Code... As per above definition “judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath. Section 4 of the Act of 1958 further provides that a “Special Judge” shall have jurisdiction, in the given territorial limits, upon receiving a complaint of facts which constitutes such offence or upon a report in writing of such facts made by any police officer. The word ‘proceedings’ sometime is given wider meanings to cover the remaining steps towards progress of a case but when section 6 of the Act of 1958 is read with the heading of the section, in its context and in the light of surrounding provisions, it appears that legislature intended to give restricted meaning to the word “proceedings”... I am of the firm opinion that the learned Court of Sessions can decide a revision petition arising out of the order of refusal of physical remand.

- Conclusion:**
- i) Order of Magistrate for refusing physical remand is a judicial order and amenable to revisional jurisdiction.
 - ii) Special Judge Anti-Corruption has no power to pass an order in revision against order of Magistrate for refusing physical remand in case FIR registered under section 5(2) of Prevention of Corruption Act, 1947.

LATEST LEGISLATION / AMENDMENTS

1. Amendments in the Punjab Communication & Works Department (Engineering Posts Qualifications & Conditions for Recruitment) Rules, 1985 in the schedule in column no 4,6 and 7 via notification No. SOR-III (S&GAD) 1-11/2020(A).
2. The Punjab Central Business District Development Authority under the Punjab Central Business District Development Authority Act 2021, approve the detailed master plan under “Urban Regeneration plan of Walton Airport Project” consisting of Walton Strip and Bab-e-Pakistan vide notification no. PCBDDA/TECH/7-4/ 2023.
3. Notification No. SOTAX(E&T)3-3/2022 is issued by the excise, taxation and Narcotics Control Department regarding the extension of the valuation lists prepared on the basis of valuation tables.
4. Amendment made in the Punjab Fiscal Order, 2017 in Sr. No. 2(1)(c)(d) through notification No.SO (E&M)2-3/2018(E-R).

5. Exemption of tax at the rate of 95% in respect of all motor vehicles propelled on a road entirely by electric power except the motor vehicles paying lump sum tax, w.e.f. 01.07.2023 to 30.06.2025 vide notification No. SO(E&M)1-101/2018.
6. Amendments have been made in the schedule at serial no.1 in column no. 7 in the Punjab Public Health Engineering Department Service Rules, 1975.
7. Amendments have been made in the Punjab Sales Tax on Services Act 2012 in the second schedule at serial no.s 13, 22,24,37 and 69.
8. Governor of the Punjab in exercise of powers conferred under clause (h) of section 2 of the Punjab Animal Health Act, 2019 designate the Director General (Extension), Livestock and Dairy Development, Punjab as Chief Veterinary Officer vide Notification No. SO(I&C)/L&DD/1,147/23(FMD)146 of 2023.
9. Governor of the Punjab in exercise of powers conferred under the Punjab Animal Health Act, 2019 declare composition of the Royal JW Buffalo Farm as disease free area subject to health certificate in case of movement of an animal and regular checking at exit points.
10. Amendments have been made in rule 12 vide notification welfare No.23730/W-III in the Police (Award of Compensation) Rules, 1989.
11. Amendments have been made in the second schedule for para 9 in Punjab Motor Vehicle Rules, 1969 vide notification no. SO(E&M) 2-213/2020(LHC).
12. Amendments in the schedule at serial no. 11 in column no.3, column no. 4, serial no. 18 in column no. 3, 5, 6, 7 and 10 of the Directorate General Protocol Punjab, Service Rules, 2005 have been made vide notification no. SOR-III(S&GAD)1-12/2004(P).
13. The Punjab Primary & Secondary Healthcare Department (Strategic Management Unit) Employees Service Rules, 2023 have been made vide notification no. SOR-III(S&GAD)1-26/2021.
14. In exercise of the powers conferred by the Anti-Rape (Investigation & Trial) Act, 2021, the federal Government, in consultation with the Chief Justice of the Lahore High Court Lahore designate special courts to exercise jurisdiction under the said Act.

SELECTED ARTICLES

1. MANUPATRA

<https://articles.manupatra.com/article-details/Challenges-and-Remedies-to-WTO-Dispute-Settlement>

Challenges and Remedies to WTO Dispute Settlement by Ipsita Aparajita Padhi

World Trade Organisation is a non-governmental body functioning at an international level. It basically furnishes the instructions and protocols for international commerce. Based on some already accorded rules as well as principles, binding governments run and manage their trade and trade policies.

General Agreement on Tariffs and Trade popularly known as *GATT* was replaced by the *World Trade Organisation* in order to assist in revamping and reconstructing the *World economy* after the fallout of *World War Two*. At the beginning, it comprised of mediation by working parties of the trade diplomats, which however over a period paved way to rule based adjudication of independent authority at an increasing rate. Positive consensus was the ideology on which it functioned which conveyed that any party can turn down any part of the action. The major lacunae were it being quite steady and hence was easily prone to getting deadlocked that ultimately boosted the participants to divert it completely in order to find bilateral or unilateral agreements that generally didn't pay attention to the interests of the third party which resulted in creating more complications.

2. MANUPATRA

<https://articles.manupatra.com/article-details/ADMISSIBILITY-OF-ELECTRONIC-EVIDENCE-UNDER-THE-INDIAN-EVIDENCE-ACT-1872>

Admissibility of Electronic Evidence Under the Indian Evidence Act, 1872 by Astha Jain

With the advent of internet revolution, the Indian legal system incorporated technology into its proceedings through the Amendment Act of 2000 to the Indian Evidence Act, 1872.¹ The amendment was introduced to add Section 65A & 65B to the act, keeping the concerns regarding the authenticity of electronic records intact and to ensure their adaptability in courtrooms. The admissibility of electronic evidence in Indian courts, since then have been a topic of extensive discussion, one of the reasons for which is the prevailing ambiguity in provisions incorporated thereunder.

The classification of electronic evidence as a secondary category of acceptable evidence in court has sparked several important questions surrounding its admissibility. One significant query is whether Section 65B is mandatory for the admissibility of electronic evidence, and at what stage the production of the certificate should ideally take place. Should the certificate be presented after the evidence is submitted in court or when it is referred to during legal proceedings? Moreover, the validity of the evidence and the applicability of different methods in civil and criminal cases have remained uncertain.

3. HUMAN RIGHTS LAW REVIEW

<https://academic.oup.com/hrlr/article/23/4/ngad023/7280083?searchresult=1>

A New Theoretical Model of the Right to Environment and its Practical Advantages by Azadeh Chalabi

Despite significant developments at the national, regional and international levels, to recognise the right to environment as a human right, this right is still under-theorised and contested. The challenge of giving a clear substance to such a standalone right is one that must urgently be taken up. Drawing on the NIC theory, this article develops a new model of the right to environment to serve three purposes: first, to shed light on the nature, scope and content of this right; second, to illustrate that this right can be considered as existing on three levels: individual, collective and global; and third, to explore the logical relationships between this right and already recognised human rights. This new model brings about various advantages at different levels. In particular, it

allows for guiding practice for a range of actors from NGOs, human rights commissions and judges to governments and the UN human rights bodies.

4. ASIAN JOURNAL OF LAW AND SOCIETY

<https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/automating-intervention-in-chinese-justice-smart-courts-and-supervision-reform/8658661A69458B43E1FD4933FAB4F039>

Automating Intervention in Chinese Justice: Smart Courts and Supervision Reform by Straton Papagiannas

This article examines how smart courts enhance the reform of judicial responsibility and the “trial supervision and management” mechanism. It holds that smart courts, while meant to provide better judicial services and improve access to justice, have the additional goal of enhancing the restructuring of accountability and power structures. It argues that automation and digitization help institutionalize and codify political supervision. Smart courts help resolve tension between the two opposing requirements of Chinese courts to maintain legal rationality and independent adjudication on the one hand, and the need for flexibility to allow intervention on the other. This article provides an account of the automation of “trial supervision and management” and explores the role of technology in enhancing political intervention in China’s legal system. This investigation draws on internal court reports and central and local judicial documents, supplemented with a review of Chinese empirical scholarship.

5. MANUPATRA

<https://articles.manupatra.com/article-details/Rehabilitation-of-victims-of-Domestic-Violence>

Rehabilitation of victims of Domestic Violence by Astha Jain

In the depths of societal norms, violence against women persists as a haunting reality. While the United Nations bravely defines ‘violence against women,’ a universally accepted definition of ‘violence’ itself remains elusive. Yet, one truth stands firm - it inflicts physical, sexual, or psychological harm, leaving deep scars etched in the soul. The United Nations’ unwavering stance identifies any gender-based violence causing suffering or harm to women, whether in public or private life, as an abhorrent act. A startling study by the World Health Organization reveals that approximately 736 million women worldwide have experienced ‘intimate partner violence,’ ‘non-partner sexual violence,’ or both, at least once in their lifetime. In India, specifically, 30% of women report experiencing domestic violence since the age of 15. The consistent rise in spousal violence incidents in India from 2006 to 2019 reflects the urgency for change. Together, let us shed light on the plight of domestic violence victims and embrace the path of rehabilitation. By advocating for compassion, support, and a brighter future, we can heal wounds and empower those affected to rise above the shadows of violence.

