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FORTNIGHTLY CASE LAW BULLETIN

(16-09-2024 to 30-09-2024)

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

JUDGMENTS OF INTEREST

	Supreme Court of Pakistan	recounting of votes; Effect of broken seal or tempering of the bags/packets.		
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1. **Supreme Court of Pakistan**
Sunni Ittehad Council and another v. Election Commission of Pakistan and others
Civil Appeals No. 333 and 334 of 2024 etc.
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.a.333_2024_23092024.pdf

Facts: On 22 December 2023, the Election Commission of Pakistan decided the then-pending matter of intraparty elections of the political party, Pakistan Tehreek-e-Insaf ("PTI"). The Commission determined that PTI had not conducted its intra-party elections in accordance with its constitution and election laws. As a result, the Commission declined to recognize PTI's intra-party elections and declared PTI ineligible to obtain its election symbol. In the course of the election programme, when the Returning Officers published the lists of contesting candidates (Form-33), they mentioned PTI candidates as independent candidates. The poll for the elections was then held on 8 February 2024, and PTI candidates were notified by the Commission as independent returned candidates in the notification published in the official Gazette under Section 98 of the Elections Act 2017. After the publication of Section-98 Notification, a substantial number of independent returned candidates joined a political party, Sunni Ittehad Council ("SIC"), to obtain the share of proportional representation in the seats reserved for women and non-Muslims in the National Assembly and the Provincial Assemblies of Khyber Pakhtunkhwa, Punjab and Sindh. SIC then informed the Commission of the joining of these returned candidates and requested the Commission, through four separate applications (letters) dated 21 February 2024, to allocate to it its due share in the seats reserved for women and non-Muslims in the National Assembly and the said three Provincial Assemblies. By its order dated 1 March 2024, the Commission rejected SIC's applications and decided that the reserved seats for women and non-Muslims, which had been requested by SIC but declined, would be allocated to other political parties as per the proportional representation system of political parties. SIC challenged the Commission's order before the Peshawar High Court in writ jurisdiction. By its judgment dated 25 March 2024, the Peshawar High Court dismissed the SIC's challenge and upheld the Commission's order. Hence, these appeals were filed by SIC with leave of the Court.

Issues: i) What is the consequence of declaring a political party ineligible to obtain an election symbol under Section 215(5) of the Elections Act 2017? Does such a declaration affect the political party's other constitutional and statutory rights?
ii) Can a candidate nominated by a political party ineligible to obtain an election symbol be mentioned as an independent candidate in the list of contesting

candidates (Form-33), and can such a returned candidate be notified as an independent returned candidate in the Section-98 Notification?

iii) Do Articles 51(6)(d) & (e) and 106(3)(c) of the Constitution refer to political parties that have contested for and won general seats or to all enlisted political parties?

iv) How is the proportional representation of a political party to be calculated for the allocation of reserved seats under Articles 51(6)(d) & (e) and 106(3)(c) of the Constitution?

Analysis: i) It is unequivocal that Section 215(5) prescribes a penal consequence for a political party's failure to comply with the provisions of Section 209 (regarding intra-party elections) or Section 210 (regarding the sources of the party's funds). The specified penalty of non-allocation of an election symbol curtails the political party's fundamental right to function and operate as a political party—a right implicit in the right to form a political party guaranteed by Article 17(2) of the Constitution. Therefore, Section 215(5) must be construed strictly. No further penalty or consequence beyond the specified non-allocation of an election symbol can be inferred or assumed from Section 215(5). Additionally, no other constitutional or statutory right of the political party can be denied on the basis of the non-allocation of an election symbol under this provision. Any interpretation of Section 215(5) that would impose further penalties beyond the expressly stipulated contravenes the principle of strict construction of laws that entail penal consequences or curtail fundamental rights. Thus, the scope of the penalty provided by Section 215(5) must remain confined to its express terms, ensuring that no other constitutional or statutory right of the political party is affected.

ii) Article 17(2) of the Constitution guarantees the right to form or be a member of a political party. Because the formation of a political party necessarily implies the carrying on of all its activities, the right to form a political party extends to its functioning and operation. The functioning is implicit in the formation of a political party. Without the right to its functioning, the right to form a political party would be meaningless and of no avail. To participate in an election to Parliament or a Provincial Assembly and to nominate or put up candidates at any such election are the principal activities (functions) of a political party. Depriving a political party of these activities destroys the political existence of the party and is tantamount to its political extermination and virtual dissolution, which cannot be done otherwise than by the procedure and on the grounds provided in Article 17(2) of the Constitution. The right to participate in and contest an election as a political party is included in the right to form or be a member of a political party. Any provision of election law that fails to recognize the rights of political parties to participate in the elections is, therefore, *ultra vires* Article 17(2) of the Constitution… the right to participate in and contest elections as a political party through its nominated candidates is a fundamental right guaranteed by Article 17(2) of the Constitution. The various sections of the Elections Act, including Sections 66 and 67, merely serve to give effect to this right as machinery provisions. This right is not, nor can it be, extinguished by any provision of the Elections Act, including Section 215(5)

thereof. Depriving a political party of participating in and contesting elections through its nominated candidates, it is reiterated, destroys the political existence of the party and is tantamount to its political extermination and virtual dissolution, which cannot be done except by the procedure and on the grounds provided in Article 17(2) of the Constitution. Similar would be the position if the candidates nominated by a political party are denied the status of being the candidates of that political party and are mentioned as independent candidates in the list of contesting candidates (Form-33), or such returned candidates are notified as independent returned candidates in the Section-98 Notification. Such actions of the Returning Officers and the Commission would also be *ultra vires* Article 17(2) of the Constitution, as they effectively nullify the party's right to participate in and contest elections.

iii) The provisions of Articles 51(6)(d) & (e) and 106(3)(c) of the Constitution are identical in their wording; the only difference is in their application. Article 51(6)(d) & (e) relates and applies to the seats reserved for women and non-Muslims in the National Assembly, while Article 106(3)(c) relates and applies to such seats in the Provincial Assemblies. Therefore, we shall discuss and determine the meaning of the provisions of Article 51(6)(d) & (e), which shall also apply mutatis mutandis to Article 106(3)(c) of the Constitution… The subject and focus of the proviso, as we understand it, is on the "general seats" i.e., "*general seats* won (secured) by a political party", and not on the *political party* winning (securing) such seats. Its object is to prescribe how the "total number of general seats won (secured) by a political party" is to be determined for the purpose of the paragraph, not to define or explain political parties for the purpose of the paragraph. Had the proviso stated that, for the purpose of this paragraph, the political party winning general seats shall include a political party securing general seats by the joining of independent returned candidates, the argument would have had some weight. But the language of the proviso is not to this effect. The proviso does not in any way extend or explain the meaning of the expression "political party" as used in the main provisions of the paragraph.

iv) The provisions of paragraph (d) of Article 51(6), when read in light of the above principles of interpreting a composite expression, remove the confusion that dwelled in the minds of some of us regarding the meaning and scope of the "proportional representation system" envisaged by that paragraph. The complete and composite expression used in the said paragraph is "proportional representation system of political parties". The expression "lists of candidates", annexed to it with an apostrophe, only provides the mechanism for electing members to the reserved seats from the lists of candidates of the political parties. So read, the provisions of paragraph (d) of Article 51(6) become consistent with the above-stated legal position that the members to all the reserved seats allocated to a Province under clause (3) are to be elected under clause (6)(d) of Article 51 as per the proportional representation system of political parties from the lists of their candidates on the basis of total number of general seats won by each political party, ensuring that no reserved seat ordinarily remains vacant… The principle of proportional

representation of political parties, according to which the members to the reserved seats are elected, aims to reflect the electoral support for political parties in the composition of the legislative bodies. By distributing the reserved seats among political parties based on the general seats won by them, the legislative bodies remain representative of the electorate's choice. Adopting an interpretation of paragraphs (d) and (e) of Article 51(6) that would result in holding certain reserved seats vacant would lead to a form of disenfranchisement, where the electorate's mandate is not fully realised in terms of gender and minority representation, and thus frustrate the constitutional objective of providing for such reserved seats. Rule 95(2) of the Elections Rules, which provides that the seats won by independent candidates, other than those who join a political party, shall be excluded for the purpose of determining the share of each political party, is thus found consistent with the constitutional provisions, as it ensures the constitutional objective that no reserved seat should ordinarily remain vacant.

Conclusion: i) The sole consequence of declaring a political party ineligible to obtain an election symbol under Section 215(5) of the Elections Act for failing to comply with the provisions of Section 209 regarding intra-party elections is the non-allocation of an election symbol to that party in subsequent elections—nothing more, nothing less. Furthermore, such a declaration does not affect the political party's other constitutional and statutory rights.

ii) Notwithstanding that a political party has been declared ineligible to obtain an election symbol, its nominated candidates cannot be mentioned as independent candidates in the list of contesting candidates (Form 33), despite allotment of different election symbols to them under Section 67(3) of the Elections Act, nor can they be notified as independent returned candidates in the Section-98 Notification.

iii) Article 51(6)(d) of the Constitution refers to political parties that have contested for and won one or more general seats in the National Assembly from the Province concerned, not to all enlisted political parties. Similarly, Article 51(6)(e) of the Constitution refers to political parties that have contested for and won one or more general seats in the National Assembly from the whole country, i.e., from any of the Provinces or the Federal Capital.

iv) For the purpose of allocating reserved seats under Articles 51(6)(d) & (e), the proportional representation of political parties is to be calculated on the basis of total number of general seats won by each political party, including the seats of independent returned candidates who join it, but excluding the seats of other independent returned candidates.

2. **Supreme Court of Pakistan**
Contempt proceedings against Senator Fesal Vawda on account of his press conference in the National Press Club, Islamabad on 15.05.2024.
Criminal Original Petition No.6 of 2024
Justice Qazi Faez Isa, CJ Justice Irfan Saadat Khan, Justice Naeem Akhtar Afghan, Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/crl.o.p._6_2024.pdf

Facts: The Supreme Court of Pakistan issued contempt notice to a number of television channels for broadcasting false and contemptuous matter about the court and its Honourable Judges. The television Channels tendered unqualified apologies to the court. The apex court accepted the same apology and show cause notices issued by the Court on 17 May 2024 to all the television channels were withdrawn.

Issues: i) What are the restrictions upon the fundamental right of freedom of press?
ii) What fundamental right is provided in Article 14 of the Constitution of Pakistan, 1973?
iii) What is the impact of media and how it influences democratic rule?

Analysis: i) The Article 19 of the Constitution of the Islamic Republic of Pakistan grant the freedom of the press, however, it also makes such freedom subject to certain restrictions, including not violating decency or morality.
ii**)** Another fundamental right is provided in Article 14 of the Constitution which requires that the dignity of man is to be ensured.
iii) The media is categorized as the fourth pillar of the State and an independent media broadcasting facts and the truth is essential for democratic rule as it highlights wrongdoing. However, its credibility and effectiveness is undermined when falsehoods are broadcast.

Conclusion: i**)** See above analysis No. (i)
ii**)** See above analysis Nob. (ii)
iii) The media the fourth pillar of the State and it highlights wrongdoing.

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3. **Supreme Court of Pakistan**
Government of Khyber Pakhtunkhwa through Secretary Agriculture, Peshawar and others v. Tahir Mushtaq and others
Civil Petition No. 288-P of 2015
Mr. Justice Qazi Faez Isa CJ, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._288_p_2015.pdf

Facts: Respondent filed a writ petition before Hon'ble Peshawar High Court claiming that after the retirement of his father, he was entitled to be appointed in his place on the basis of Employee Son's quota policy. The writ petition was accepted, hence instant appeal.

Issues: i) Whether the children of a retired Government servant are entitled to recruitment against the post of their parents otherwise than merits?

Analysis: i) The Constitution of the Islamic Republic of Pakistan prohibits discrimination as stated in Article 25 and further stipulates and entrenches the principle in respect of service of Pakistan in Article 27. In preferring the children of a government servant or reserving seats for them offends the Constitution. The same also detracts from a merit-based system of employment. The taxpayers hard earned monies pay for the salaries, benefits and pensions of government servants. The people's interest lies in having the best person for the job, and not to suffer those who secure employment on the basis of a filial relationship.

Conclusion: i) The Constitution of the Islamic Republic of Pakistan prohibits discrimination u/A 25, hence, the children of retired govt. servants are not entitled to recruitment against the post of parents otherwise than merit.

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4. **Supreme Court of Pakistan**
Fazli Akbar Khan and Others v. Government of Khyber Pakhtunkhwa through District Collector, Mardan and others
Civil Petitions No.14-P /2015
Mr. Justice Qazi Faez Isa, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._14_p_2015.pdf

Facts: Petitioners contested the compensation set by the Land Acquisition Collector, filing a reference petition under sections 18, 30, 31, and 34 of the Khyber Pakhtunkhwa Land Acquisition Act, 1894. The Collector rejected the petition, deeming the request under section 18 time-barred; for sections 30 and 31, the matter was referred to the referee court, which dismissed the petition being not maintainable. The petitioners then filed a writ petition in the High Court, challenging only the Collector's order, but that was also dismissed being time-barred. Consequently, the petitioners filed a Civil Petition, seeking further relief.

Issue: i) What remedy is available to a person under Khyber Pakhtunkhwa-Land Acquisition Act,1894 if he objects upon an award and what is the limitation period provided for the same purpose?
ii) What is the condition precedent to the exercise of the power of reference under section 18 of the Khyber Pakhtunkhwa-Land Acquisition Act,1894 Act?

Analysis: i) In this regard section 18 of the Act is clear:
"18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.
(2) The application shall state the grounds on which objection to the award is

taken:

Provided that every such application shall be made,---

(a) if the person making it was present or represented before the Collector at the time when he made his award. within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire.

(4) Notwithstanding anything to the contrary contained in section 21, ["the Federal Government, the Provincial Government,"] a local authority or a Company, as the case may be, for or on behalf of whom the land is being acquired, may, if it has not accepted the award, refer the matter to the Court within a period of six months from the date of announcement of the award:
Provided that the Court shall not entertain the reference unless in its opinion there is a Prima facie case for inquiry and determination of the objection against the award."

ii) This Court, recently, in *Gul Zaman*[9] held:
"When we peruse the various Sections in the Act, particularly sections 18, 19, 20 and 21 thereof, it becomes abundantly clear that there are certain conditions which have to be fulfilled before the Collector is empowered to make the reference, and then alone the Court has any jurisdiction to entertain the reference. These conditions are: a) A written application should be made before the Collector; b) The person applying should be one interested in the subject matter of the reference, but who does not accept the award; c) The grounds of objection as to the measurement, or the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested should be stated in the application; and d) The application should be within the period prescribed under the provisos (a) and (b) to section 18 of the Act. These are all matters of substance, which may be conveniently called jurisdictional facts, and their compliance is a condition precedent to the exercise of the power of reference under section 18 of the Act…

Conclusion: i) See above analysis No. i.
ii) See above analysis No. ii.

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5. **Supreme Court of Pakistan**
Ghulam Rasool v. Election Commission of Pakistan through Secretary, Islamabad and others
Civil Appeal No. 1046 of 2024.
Mr. Justice Qazi Faez Isa, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1046_2024.pdf

Facts: This civil appeal is filed against the judgment dated 02.08.2024, rendered by the Election Tribunal Balochistan by challenging the results of elections.

Issue: i) What is the duty of Presiding officer after close of election?
ii) What will returning officer do after receiving all the Form-45s?
iii) To whom returning officer submit consolidated election result?
iv) What is the determinative factor of election result and its effect?
v) What if re-counting is allowed, then what procedure will be followed for resolution?
vi) What is the effect, if seal of the bags/packets are broken or tampered?

Analysis: i) The Presiding Officer of each polling station after the close of elections counts the votes and is then required to prepare Form-45 in terms of section 90(10) of the Elections Act read with rule 81(1) of the Election Rules, 2017 ('the Rules').
ii) The Returning Officer after receipt of all the Form-45s from the Presiding Officers calculates the votes and issues Form-47 under section 92 of the Elections Act read with rule 84(1) of the Rules.
iii) The final consolidated result is then submitted by the Returning Officer to the ECP under section 98(1) of the Elections Act read with rule 88(1) of the Rules.
iv) The ballot papers that are cast are the determinative factor. What is recorded by a Presiding Officer or a Returning Officer in the requisite forms is not the final determination of the vote count if the votes are ordered to be recounted, which is done by opening the bags/packets containing the ballot papers. The ballot papers which are cast is the primary evidence of the election result. To the said forms attaches a presumption of correctness until the ballot papers are ordered to be recounted.
v) A candidate may request for recounting of the votes, and if such request is allowed, the votes are recounted, after issuance of notice to all the candidates, and recounting takes place in the presence of all those who elect to attend. If there is a dispute in this regard the actual votes which were cast determine the controversy.
vi) However, needless to state, if the seal of the bags/packets are found to be broken or tampered with the sanctity of votes therein stands compromised.

Conclusion: i) The counting of votes of each polling station and preparation of Form-45.
ii) The calculation of the votes of Form-45 and issuance of Form-47.
iii) Submission of final consolidated result to ECP.
iv) The cast ballot papers to which presumption of correctness is attached are the determinative factor and is the evidence of election result.
v) The votes are recounted in presence of all candidates after issuance of notices and actual votes cast resolve the controversy.
vi) The sanctity of bags/packets become effected.

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6. **Supreme Court of Pakistan**
Additional Collector of Customs, Model Customs Collectorate of Appraisement (West) v. M/s K. S. Sulemanji Esmailji
Civil Appeal Nos.799 to 824 of 2015
Mr.Justice Syed Mansoor Ali Shah, Mr.Justice Jamal Khan Mandokhail, Mr.Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._799_2015.pdf

Facts: The customs Tribunal and High Court set aside value of Customs duty imposed under the Customs Act, 1969 and classification of imported goods made by Classification Committee formed through customs General Order. The Supreme Court reviewed the rulings of the Tribunal and the High Court, ultimately siding with the Customs authorities, restoring the original classification and rejecting the refund claim.

Issues: i) Which law deals with the levy and collection of Customs duty?
ii) What is composition of the first Schedule of the Customs Act, 1969?
iii) Which is the final authority for classification of any imported items?
iv) Under what order the classification Committee is established and what is purpose of that committee?
v) Whether the tribunal or the High Court can substitute the findings of the Classification Committee?

Analysis: i) The Act of 1969 is a comprehensive statute dealing with matters relating to the levy and collection of customs duties etc. The charging section, i.e. section 18, expressly provides that customs duties shall be levied at such rates as are, inter alia, prescribed in the First Schedule.
ii) The First Schedule contains the general rules for interpretation of the Schedule. Moreover, it provides that for the purposes of interpretation 'Explanatory Notes' to the Harmonised Commodity Description and Coding System published by the World Customs Organisation, Brussels, as amended from time to time, shall be considered the authentic source of interpretation…The First Schedule is divided into ninety nine chapters and twenty one sections in accordance with the Harmonised Commodity Description and Coding System ('Harmonised System') developed by the World Customs Organisation.
iii) It further provides that for the purposes of classification the Board shall be the final authority to determine the classification of any item meant to be imported or exported…The Classification Committee includes experts who possess the skills, knowledge and experience in respect of classification of goods in conformity with the Harmonised System. The Classification Committee has been established by the Board pursuant to the guidelines of the World Customs Organisation and the commitments under the Convention.
iv) Through Customs General Order No. 10/2001, dated 04-09-2001, the Board has established the Classification Committee and has prescribed a procedure in order to streamline the issuance of classification rulings, implement the recommendations of the World Customs Organisation etc.

v) The Tribunal nor the High Court can substitute the findings of the Classification Committee unless they can be shown to be arbitrary, fanciful or in violation to the applicable rules and principles of interpretation…The Tribunal could not bypass the competent forum i.e., the Classification Committee nor give a different finding unless it could be clearly shown that the determination was arbitrary, fanciful and in violation of the rules and principles relating to classification of goods under the Harmonised System.

Conclusions: i) See Above Analysis No.i.
ii) The First Schedule of the Customs Act, 1969 describes the General rules of interpretation.
iii) For the purpose of classification, The Board shall be the final authority. The Classification committee will be established by the Committee.
iv) Through Customs General Order No. 10/2001, dated 04-09-2001, the Board has established the Classification Committee and has prescribed a procedure in order to streamline the issuance of classification rulings, implement the recommendations of the World Customs Organisation etc.
v) Neither the Tribunal nor the High Court can substitute the findings of the Classification Committee unless they can be shown to be arbitrary, fanciful or in violation to the applicable rules and principles of interpretation.

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7. **Supreme Court of Pakistan**
Muhammad Ramzan and others v. Member (Judicial-II) Board of Revenue, Punjab, Lahore and others
Muhammad Ashfaq and others v. Member (Judicial-II) Board of Revenue, Punjab, Lahore and others
Haji Ladhoo (Late) through LRs and others v. Member (Judicial-II) Board of Revenue, Punjab, Lahore and others
Civil Appeals No.936 to 938/ 2012
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._936_2012.pdf

Facts: Against the dismissal of Writ Petition, the appellants filed two petitions as well as CPLA, whereas another Writ Petition was also dismissed through the consolidated judgment and same was challenged through CPLA. After grant of leave, the petitions were converted into appeals respectively. The dispute between the parties is with respect to the rights of proprietorship in the Shamlat Deh.

Issues: i) Whether old entries continue, if once it is found that the entries have been unlawfully changed?
ii) Whether various terms of distribution of Shamlat land upon the proprietors on the basis of pro rota shares calculated on the basis of Hasab Rasad Khewat or Hissa Hasab Rasad Khewat Jama Bandobast Qanuni are interchangeable?

iii) Is Shamlaat Deh land to be distributed with full proprietary body of the village in accordance with their entitlement and none else is entitled for grant of land on the basis of possession only?

iv) Whether High Court or Supreme Court while dealing with the matter under Article 199 or 185 of the Constitution of Islamic Republic of Pakistan, 1973 respectively can create a new right in favour of any of the parties?

Analysis: i) Any entry available in the revenue record unless it is substituted through a valid entry by the decree of any court or valid attestation of mutation of correction of any rights in the land remains in the field, simultaneously if once it is found that the entries have been unlawfully changed, it shall be deemed that the old entries would continue.

ii) We are further of the view that various terms of distribution of Shamlat land upon the proprietors on the basis of pro rota shares calculated on the basis of Hasab Rasad Khewat or Hissa Hasab Rasad Khewat Jama Bandobast Qanuni are interchangeable as held by the revenue hierarchy reported as PLD 1980 Revenue 55.

iii) We agree that the learned High Court has rightly applied the formula that Shamlaat Deh land is to be distributed with full proprietary body of the village in accordance with their entitlement. The fact that Aala Maalik is no more in existence after promulgation of MLR-64. The only two categories remain that Aala Khud Adna Maalik as well as Adna Maalik and distribution of Shamlat land is between the said two categories in accordance with their entitlement in the village… In this regulation, the land "held", means any Ala Maalik who was having land in his possession in malkiyat khata, meaning thereby he was cultivating the same. This term is synonymous to ala-khud-adna malik. When An ala malik was holding nothing in the ownership khata, all his rights are abolished under Para 22 of the Martial Law Regulation, therefore, it is clear that for determination of rights in the Shamlat Deh the benchmark as well as formula for grant of rights is on the basis of entitlement of a person in the malkiyat khata whatever rights he was holding on the basis of said rights he is entitled to get land in the shamlat deh. A person who is having absolutely no rights in the malkiyat khata, he cannot be granted any right in the shamlat deh khata… Now we clearly state that how the revenue authorities will distribute the land in question. There are only two categories in accordance with Para 6 of the notification dated 3.3.1960. In accordance with Para (a), Adna Maliks have been made full proprietors of land held by them as such and according to sub-para (d) Ala Malik who himself is in possession of land and there is no Adna Malik under him, he was declared to be full proprietor, he is termed as Ala Khud Adna Malik. These two categories are with regard to proprietory khata and admittedly the distribution of Shamlat land is upon these two categories and none else will be entitled for grant of land on the basis of possession only. If anyone is in possession on the shamlat land without having any right in the proprietorship khata, he has absolutely no right for grant of Shamlat land. The first and second category

mentioned supra creates the proprietory body of the village, therefore, they are entitled for distribution of Shamlat land in proportionate with their proprietorship.
iv) Learned counsel for the appellants were asked many times that what created right they press for declaration in their favour through the writ petition, whether they are recorded Adna Maalik or Aala Khud Adna Maalik, the answer is in the negative. It is admitted by the learned counsel that they are not recorded Aala Khud Adna Maalik or Adna Maalik in the village proprietary land or impugned land but their reply was on the basis of previous judgment of the High Court as well as Supreme Court that their rights have been created through the said judgment. They have a right to retain the possession and cultivate the same and proprietary rights be transferred in their favour. We are afraid that without any existing right the High Court or even this Court cannot create a right when there is no basis for claim of that right. It is also misconception of appellants that in the previous round of litigation High Court or this Court has created any right in their favour. As we have already noted that some portions of paragraphs of the previous judgment have been referred by the learned counsel for the appellants to claim the right asserted by them when the full paragraph is read it says otherwise, therefore, the claim of the appellants that their rights were established through the previous judgment of the High Court and of this Court is absolutely misconceived. Thus we are clear in our mind that the High Court while dealing with the matter under Article 199 or this Court while dealing the matter under Article 185 of the Constitution of Islamic Republic of Pakistan, 1973 cannot create a new right in favour of any of the parties before the Court. It is a matter of policy, the Government can offer grant of proprietary rights on the basis of any policy issued under any legislation or through the legislation.

Conclusion: i) If once it is found that the entries have been unlawfully changed, it shall be deemed that the old entries would continue.
ii) Various terms of distribution of Shamlat land upon the proprietors on the basis of pro rota shares calculated on the basis of Hasab Rasad Khewat or Hissa Hasab Rasad Khewat Jama Bandobast Qanuni are interchangeable.
iii) Shamlaat Deh land is to be distributed with full proprietary body of the village in accordance with their entitlement and none else is entitled for grant of land on the basis of possession only.
iii) High Court or Supreme Court while dealing with the matter under Article 199 or 185 of the Constitution of Islamic Republic of Pakistan, 1973 respectively cannot create a new right in favour of any of the parties.

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8. **Supreme Court of Pakistan**
Waqar Ahmed & others (in CP 278-K/22)
Aaqib Ali and others (in CP 279-K/22) v.
The Federation of Pakistan through Secretary Cabinet Secretariat, Establishment Division, Islamabad & others
Mr. Justice Muhammad Ali Mazhar & Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._278_k_2022.pdf

Facts: Petitioners filed Civil Petitions before August Supreme Court against dismissal of writ petitions by the Hon'ble High Court for regularization of their contractual services.

Issues: i) Whether writ jurisdiction u/A 199 of Constitution could be invoked in cases involving disputed question of facts?
ii) Which procedure is to be adopted for settlement of disputes between master and servant?
iii) What is the scope of writ u/A 199 of Constitution against an organization having non-statutory rules of service?
iv) Whether contractual employees have any vested right to regularization?

Analysis: i) It is well settled that the claim of regularization of service must be recognized through some law and/or policy across the board with certain parameters and procedure in any organizational and administrative structure for its enforcement. The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), is destined to dispense with an expeditious remedy in cases where the illegality or impropriety of an impugned action can be established without any exhaustive inquisition or recording of evidence, but if some convoluted or disputed question of facts are involved, the adjudication of which can only be determined by the Courts of plenary jurisdiction after recording evidence of the parties, then incontrovertibly the High Court cannot embark on such factual controversy.
ii) We are also mindful that in the relationship of master and servant, unless it is regulated by some specific law in the future, an aggrieved person may seek recourse by filing a lawsuit in the civil courts, but if the relationship is regulated and governed under the labour laws meant for Industrial Relations including the application of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("Standing Orders"), or any analogous provincial legislation which promulgated after the 18th Amendment in the Constitution, the proper remedy for an aggrieved worker is to approach the Labour Court or the National Industrial Relations Commission ("NIRC")
iii) A writ does not lie under Article 199 of the Constitution against an organization having no statutory rules of service. Likewise, it was held numerously that for regularization of service of contractual employees, writ only lies if it is permissible under some law and policy decision across the board, provided that the said organization is amenable to the writ jurisdiction of the High Court under Article 199 of the Constitution.
iv) It was specifically held that contractual employees have no vested right to regularization, but their regularization may be considered subject to their fitness, suitability and the applicable laws, rules and regulations of the Department. They have no automatic right to be regularized unless the same has specifically been provided for in the law, and they must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted. However, in the present context,

it is reiterated that if any such person is covered under the definition of "worker" under the labour laws, they can seek remedy

Conclusion: i) Extra-ordinary jurisdiction u/A 199 of the constitution is an expeditious remedy in cases where the illegality or impropriety of impugned order without any exhaustive inquisition or recording of evidence.
ii). The relationship of master and servant if not governed by statutory rules, the aggrieved person may seek recourse by filing a lawsuit in the civil court.
iii. Writ u/A 199 of the Constitution does not lie against organization having no statutory rules of service.
iv. Contractual employees have no automatic vested right of regularization.

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9. **Supreme Court of Pakistan**
Mushtaque Ahmed v. Shahzad Khan
Criminal Original Petition No.1-K of 2023 in Civil Petition NO.47-K of 2022
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.o.p._1_k_2023.pdf

Facts: Ejectment petition of petitioner was allowed by the Rent Controller and the respondent filed Rent appeal, C.P. in the High Court Sindh and Civil Petition from the Supreme Court is dismissed with direction to vacate premises. Hence; this petition.

Issues: i) What does word 'merge' connotes?
ii) What is merger?
iii) What is 'non-obstante' clause and where provided in the Sindh Rented Premises Ordinance,1979?
iv) What does term 'landlord' mean?
v) What does term 'tenant' mean?
vi) How a tenant can be evicted?
vii) What is the forum of execution of ejectment order and questions relating to execution?
viii) How the execution proceedings of ejectment order carried out?
ix) What is the doctrine of finality of judgment and its aim?
x) What is the outcome of deviation from the doctrine of finality?
xi) What is the origin and concept of public policy?
xii) What is the effect of non-compliance of ejectment order?
xiii) What are the parameters for the executing court?
xv) What is the impact of pendency of civil litigation upon the ejectment proceedings?
xv) What is the responsibility of the Rent Controller with reference to execution proceedings?

Analysis: i) According to the Corpus Juris Secundum, Volume 57, at page 1067, the Crl.O.P. No. 01-K of 2023 -4- word 'Merge' is defined as meaning to sink or disappear in

something else, to be lost to view or absorbed into something else, to become absorbed or extinguished, to be combined or be swallowed up.

ii) The word 'Merger' is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (…) The ejectment order, on affirmation, was merged into the appellate order, which was further merged into the High Court Order, and in the end, all previous orders were merged into the final order passed by this Court.

iii) The expression 'non-obstante clause' is by and large engrossed in a provision to connote that the provision should predominate regardless of anything to the contrary or incongruous in any other provision. This turn of phrase, in fact, comes up with a statutory provision envisioned to impart an overriding effect over other provisions or enactments. With the same spirit, Section 3 of the Ordinance unambiguously provides that notwithstanding anything contained in any law for the time being in force, all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated within an urban area, shall be subject to the provisions of this Ordinance.

iv) In Section 2 (f) (Definitions Clause) the term "landlord" means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises.

v) in clause (j) "tenant" means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf and includes (i) any person who continues to be in possession or occupation of the premises after the termination of his tenancy; (ii) heirs of the tenant in possession or occupation of the premises after the death of the tenant.

vi) While Section 13 of the same Ordinance accentuates that no tenant shall be evicted from the premises in his possession except in accordance with the provisions of this Ordinance, which demonstrates, in well-defined terms, that for all intents and purposes, all tenancy issues where this Ordinance applies shall be regulated and decided under the provisions of this Ordinance and not otherwise.

vii) Section 22 of the Ordinance is also of great magnitude, as it expounds that the final order passed under this Ordinance shall be executed by the Controller and all questions arising between parties and relating to the execution, discharge or satisfaction of the order shall be determined by the Controller and not by a separate suit. (…) The final order passed under the provisions of the Ordinance are executable by the Rent Controller and all questions arising between parties and relating to the execution, discharge, or satisfaction of the order shall be determined by the Controller and not by a separate suit.

viii) The attached explanation to this provision further represents that in the execution proceedings relating to the order of ejectment, no payment, compromise or agreement shall be valid unless such payment, compromise or agreement is made before or with the permission of the authority passing the order.

ix) After the tenant has availed all possible rights and remedies, the doctrine of finality of judgments is also attracted for the conclusion and culmination of the judicial process. The controversy between the parties must come to an end and the judgments must be allowed to gain finality, which is not only indispensable and domineering but myriad sacrosanctity is also attached to the principles of finality of the judgment in the administration of justice. (…)The doctrine of finality/res judicata is progressed with the aim of averting overabundant litigation triggered with mala fide intention or to drag the proceedings by dishonest means. The legal maxim `interest Republicae ut sit finis litium' which means that it is for the public good that there be an end of litigation after a long hierarchy of appeals. The notion of finality of lawsuit or legal proceedings is structured and systematized on a principle of public policy across the board.

x) If this principle is not followed religiously, it will nurture never-ending or interminable litigation. It also offends the Public Policy doctrine which accentuates the framework of different laws in field, rules, regulations, and actions of government, to put into effect social and economic aspirations for catering to communal challenges.

xi) The origin and concept of public policy is time immemorial. Even in ancient civilizations like Greece and Rome, the rulers made various laws to regulate societal issues.

xii) Embellishing or aggravating and/or manoeuvring a new set of circumstances with the sole aim of prolonging and frustrating the eviction order and decaying the execution proceedings. (…) delaying the proceedings unreasonably.

xiii) It is a well-settled exposition of law that the executing court cannot go beyond the decree; neither can it rescind nor modify the decree/order sought to be executed.

xiv) One more important aspect that cannot be lost sight of is that even if there is any civil dispute pending in any civil court instituted by some other persons against the petitioner and they are claiming the right of inheritance or lineage in the estate of Mst. Sharifan, even then, how can the tenant take any benefit or advantage of any such dispute or litigation which has nothing to do with him? The decision in any such legal proceedings, if any, will remain restricted to resolving the rights between the alleged legal heirs but will not grant any independent or proprietary rights to the tenant, who is bound to vacate the premises in accordance with the ejectment order affirmed by the appellate court, High Court, and finally, this Court, in view of the statement of the counsel representing the tenant.

xv) So in all fairness, the Rent Controller is bound to execute the ejectment order expeditiously which has now attained finality after the tenant has exhausted all remedies by the tenant. (…) Hence, after a lapse of 6 months from the date of the order, and in the event of failure to vacate the demised premises, it was an onerous responsibility of the Rent Controller/Executing Court to execute the ejectment order fervently and diligently rather than beating around the bush and repressing its own order and delaying the proceedings unreasonably

Conclusions: i) To sink, disappear or absorb into something.

ii) The absorption of a thing of lesser importance by a greater.
iii) That a particular section or provision of law will prevail over any other conflicting provisions or laws.
iv) See analysis No.iv.
v) See analysis No.v.
vi) A tenant can be evicted as per the provisions of the ordinance not otherwise.
vii) An ejectment order and all the questions relating to execution are decided by the Rent Controller in execution proceedings and not by filing of separate suit.
ix) The end of controversy between the parties with culmination of the judicial process after a long hierarchy of appeals and purpose of the maxim is for public good based on public policy.
x) It will nurture never ending litigation offending the public policy.
xi) See analysis No.xiii.
xii) Frustrating the ejectment order and decay of execution proceedings.
xiii) The executing court cannot go beyond the decree and there is no space of modification.
xiv) The tenant cannot claim proprietary right to stay at premises.
xv) To execute the ejectment order fervently and diligently without delay.

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10. **Lahore High Court**
Zoya Islam v. Government of Pakistan etc.
I.C.A. No.77894/2022
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC3944.pdf

Facts: Applicant being widow of deceased employee was appointed in a department on contract after the death of her husband. However, after appointment she contracted second marriage and employer department terminated her from service. The applicant applied for reinstatement but her application was rejected by the department. The applicant filed a writ petition against the order of the department, which was also dismissed. Resultantly ICA filed.

Issues: i) Does remarriage disqualify a woman from a job obtained under the widow quota?
ii) Whether decision of Hon'ble Supreme Court of Pakistan is binding on all organs of the state?

Analysis: i) A Muslim widow cannot be prevented or discouraged to contract marriage rather her such action is appreciable which is duly safeguarded by Shariah. A widow, at the time of death of her husband, is given her due share from the estate left by her husband and there is no embargo on her to contract second marriage after the completion of stipulated period of Iddat.
ii**)** Under Article 189 of the Constitution of the Islamic Republic of Pakistan, compliance of the decisions rendered by the Hon'ble Apex Court is mandatory for all the organs of the state.

Conclusion: i) Second marriage of a widow does not disentitle her from the employment

procured under widow quota.
ii) See analysis number ii.

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11. **Lahore High Court**
Lahore College for Women University through its Vice Chancellor etc. v. Dr. Rehana Kausar etc.
I.C.A. No.39471 of 2024.
Mr. Justice Ahmad Nadeem Arshad, Mr. Justice Ch. Muhammmad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC4010.pdf

Facts: The case concerns the appointment of two Professor of Urdu (BS-21) posts advertised in 2017. Two candidates, including Respondent No.1, applied but were found unsuitable, leading to a re-advertisement in 2018. Respondent No.1 applied again, and the Sub-Committee recommended them using a previous evaluation report. The Syndicate twice remitted the case for review, ultimately recommending fresh evaluations instead of re-advertising. The Chancellor later recommended re-advertising the post, which Respondent No.1 challenged through a writ petition. The Single Judge ruled in favor of Respondent No.1, directing their appointment. Hence; this appeal.

Issues: i) What is the domain of Court about qualification and eligibility criteria in the recruitment process?
ii) Whether the Courts are substitute of selection Board and or Syndicate?
iii) What is judicial over-reach?

Analysis: i) it is settled law that it is not the domain of the Court to examine the qualification and the eligibility criteria in the recruitment process and such matters can be best resolved by the institution itself according to the suitability and requirements of a certain post.
ii) The Courts are not the substitute of a Selection Board or Syndicate and cannot direct an appointing authority to issue appointment letter in favour of any candidate rather can only direct the said authorities for reconsideration of a matter if any illegality or irregularity is found.
iii) the recommendation for appointment of a candidate against a certain post exclusively falls within the domain of the concerned authority and interfering in that domain would amount to committing judicial overreach which is unwarranted by law.

Conclusion: i) Courts should not interfere in recruitment decisions, as institutions are best equipped to assess qualifications and suitability for specific posts.
ii) Courts cannot replace a Selection Board or Syndicate in appointing candidates, but can only direct reconsideration if any illegality or irregularity is found in the process.
iii) The judicial interference in the recruitment process constitutes unwarranted overreach.

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12. **Lahore High court**
Multan Bench Multan
Commissioner Inland Revenue v. M/s Electric Company Limited
S.T.R No.25/2021
Mr. Justice Asim Hafeez, Mr. Justice Anwar hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC4006.pdf

Facts: Through this single judgment, present as well as connected reference application bearing S.T.R No.26/2021, filed under Section 47 of the Sales Tax Act, 1990 ('the Act') against common order dated 04.03.2021 passed by the learned Appellate Tribunal Inland Revenue, Lahore Bench, Lahore, Special Full Bench ("the Tribunal") in separate appeals preferred by M/s MEPCO and M/s FESCO ("the DISCOs") were collectively decided by Honourable Divisional Bench as common questions of law were involved therein.

Issue: i) Whether on the facts and the circumstances of the case the learned Appellate Tribunal was justified to ignore that the Tariff Differential Subsidy (TDS) received from Federal Government as part of the electricity price has not been exempted from levy of sales tax in terms of Section 13 read with Sixth Schedule of the Sales Tax Act, 1990?
ii) Whether on the facts and the circumstances of the case the learned Appellate Tribunal's interpretation of clause (46) of Section (2) of the Sales Tax Act, 1990 has assigned a narrow meaning which confines value of supply to the extent of consideration received directly from 2 S.T.R No.25/2021 recipient of supply by ignoring component of payments received on behalf of recipient of supply?

Analysis: i) we do not find that the Appellate Tribunal Inland Revenue has committed an error in the construction of the rule 13(2)(b) of the Sales Tax Special Procedure Rules, 2007 to hold that the term 'all charges and surcharges, loan and all duties and taxes chargeable to tax' should not be read in isolation and must have nexus with the supply of electric power. Further, the Appellate Tribunal was correct in holding that since the primary law prescribes charges exclusively in relation to supply of goods, therefore, the rules could not be construed otherwise."
ii) 3. **Amendments of the Sales Tax Act, 1990.** – In the Sales Tax Act, 1990, the following further amendments shall be made, namely:–
(1) in section 2, –
(a) …
(b) …
(c) …
(d) …
(e) at the end of sub-clause (i) of clause (46), for the expression "; and", the expression ":" shall be substituted and thereafter the following Explanation shall be inserted, namely:–
Explanation. — **It is clarified that the value of supply does not include the amount of subsidy provided by the federal**

> **government or provincial governments to the electricity consumers and has never been chargeable to tax under the Act**; and"
>
> (**Emphasis supplied**)

It is imperative to note that similar question came before this Court in S.T.R No.77467/2022 titled "Commissioner Inland Revenue v. M/s GEPCO Limited" and vide judgment dated 25.05.2023, a Division Bench of this Court, at the Principal Seat held as under:

> "The argument of learned counsel for the applicant/ department that the amendment effected in sub-clause (i) of Clause (46) of Section 2 of the Act has no retrospective effect has no force inasmuch as the legislature has clearly explained that subsidy provided by the Government(s) was never chargeable to tax under the Act, therefore, question whether or not said amendment has retrospective effect becomes irrelevant."

Conclusion: i) See above analysis No. i
ii) See above analysis No. ii.

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13. **Lahore High Court**
Faiza Basir Syed v. Customs Appellate Tribunal and others
Custom Reference No.29685 of 2022
Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2024LHC3986.pdf

Facts: Respondent No.5 (company) was issued a show cause notice alleging that it was not entitled to the benefit of SRO 671 (1)/94. Reply was filed wherein allegation was controverted. Accordingly, tax and penalty were imposed. Company filed appeal. Applicant's mother gifted the suit property in favor of applicant. Proclamation was issued to applicant in her capacity of a director. Applicant filed objections but the Deputy Collector Custom held her liable. Applicant filed application for impleading her party in appeal before Tribunal which was dismissed. Tribunal decided appeal and ordered recovery of tax from the applicant to the extent of property in dispute.

Issues: i). What is the operational effect of proviso to sub-section (1) of section 202 of the Customs Act, 1969 and Finance Act, 2007?
ii). What is the purpose of assessment proceedings?
iii). Who is a "defaulter" in light of the Customs Rules?
iv). What is the procedure for recovery of Government dues in light of Rule (8) of the Customs Recoveries Rules, 1992?
v) Whether the proceedings can be abated on the death of a defaulter?

Analysis: i) These provisions being substantive in nature must be construed to operate prospectively and cannot bring in their fold transactions concluded in the past.
ii)The only purpose of the assessment proceedings serve is to quantify the tax the assesse is liable to pay.
iii) The Customs Rules gave the definition of "defaulter" which read as "defaulter means a person mentioned in the demand note, who has failed to discharge his liabilities in payment of Government dues."
iv) In the Customs Rules Rule 8 simply stipulates that if the Government dues are not recoverable in the manner specified in Rule 7, the Recovery Officer shall serve upon the defaulter a notice in Annex-IV requiring him to pay the dues under sub-section (2) of section 202 of the Act and intimating that in case of default steps would be taken to realize the amount under these rules and that the immovable and movable properties of the defaulter shall stand attached in the name of the Federal Government on the expiry of time limit specified in the notice if the payment of government dues is not made within time.
v) No proceedings shall abate on the death of the defaulter.

Conclusion: i) These provisions being substantive in nature must be construed to operate prospectively
ii) The only purpose of the assessment proceedings serve is to quantify the tax
iii) See above analysis No.iii .
iv) See above analysis No.iv
v) Proceedings shall not abate on the death of the defaulter.

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14. **Lahore High Court**
Muhammad Arif v. Javid Khan
Case No: Civil Revision No.404-D of 2015
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC4023.pdf

Facts: Civil Revision was filed against the judgment/decree of first Appellate Court whereby the judgment/decree of trial Court passed in suit for declaration filed by the petitioner/plaintiff against dismissal of his suit by trial Court was dismissed; while his appeal against the judgment/decree of the trial Court passed against him in suit for specific performance filed by the respondent was accepted and suit for specific performance was also dismissed.

Issues: i) Can oral evidence outweigh the documentary evidence?
ii) Should the quality or quantity of evidence be prioritized in determining the rights of the parties?
iii) What is the rationale behind Article.103 of Qanun-e-Shahadat Order,1984?

Analysis: i) Needless to observe that oral evidence cannot outweigh the documentary evidence. The documentary evidence, which was not objected to at relevant time, would prevail against oral evidence, regardless of how abundant the latter may be.

Moreover, it is firmly established that oral evidence cannot substitute for documentary evidence.

ii) In determining the rights of the parties, it is the quality, nor the quantity, of the evidence that should be prioritized. When documentary evidence contradicts the oral testimony, the latter cannot be relied upon. It is a well-established rule of appreciation of evidence that a person may lie, documents do not.

iii) Article 103 of *Qanun-e-Shahadat* Order, 1984 excluded oral statement made between the parties to any instrument or their representatives. The rationale behind this provision is that inferior evidence should be excluded in the presence of superior evidence; that a written agreement reflects a deliberate and well considered settlement. Furthermore, a party acknowledging a fact in writing is immune from mischief, failure and lapse of memory. Once an agreement has been reduced in writing, oral evidence is to be excluded while proving the terms thereof as against the terms specifically reduced in writing.

Conclusion: i) The documentary evidence which is not rebutted at relevant stage would prevail against oral evidence.

ii) Quality of evidence is prioritized over quantity of evidence while determine the rights of parties.

iii) The Rational behind Article 103 of *Qanun-e-Shahadat* Order, 1984 is that inferior evidence should be excluded in the presence of superior evidence.

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15. **Lahore High Court**
Commissioner Inland Revenue, District Zone,
Regional Tax Office, Rawalpindi v Sh.Ikram Ellahi & others
Mr. Justice Muhammad Sajid Mahmood Sethi
Https://sys.lhc.gov.pk/appjudgments/2024LHC4017.pdf

Facts: This Reference Application under section133 of the Income Tax ordinance,2001 has been filed by the department, being dissatisfied with the decision of Appellate Tribunal Inland Revenue Division Bench-1, Islamabad.

Issues: i) Whether section 111(1)(d) of Income Tax Ordinance,2001 has retrospective effect?

ii) What would be the legal status of finding of Appellate Tribunal which has not been challenged through Reference Application?

Analysis: i) Section 111(1)(d) was inserted through the Finance Act, 2011 with prospective effect and came into force w.e.f. 01.07.2011. Whereas the matter pertains to tax year 2010, thus, no retrospectivity can be given to it. As a basic principle of interpretation of statutes, tax statutes operative prospectively unless clearly indicated by the legislature, therefore, retrospectivity cannot be presumed. Reliance

in this regard is placed upon *Commissioner Inland Revenue, Lahore v. Messrs Millat Tractors Limited, Lahore and others* **(2024 SCMR 700)**. It is well settled that a statute or any amendment thereto ordinarily operates prospectively unless, by express enactment or necessary intendment, retrospective operation has been given to it. Reliance is placed upon *Sardar Sher Bahadar Khan and others v. Election Commission of Pakistan through Secretary, Election Commission, Islamabad and others* **(PLD 2018 Supreme Court 97)**.

(ii) Court's query as to whether aforesaid findings of Appellate Tribunal were assailed through instant Reference Application by proposing any question on retrospective application of Section 111(1)(d) of the Ordinance of 2001, learned Legal Advisor could not show from available record that any such question was proposed. When certain observations on some issue / question are not challenged in a Reference Application before the High Court, it clearly signifies that these observations have attained finality. In this case, question regarding retrospective application of Section 111(1)(d) *ibid* is not available for adjudication. The finality of such decisions establishes vested rights, thereby reinforcing the need for diligence in addressing legal matters within the prescribed timelines. Reference is made to *Commissioner Inland Revenue v. Messrs Pak Arab Pipe Line Company Ltd.* **(2014 PTD 982)**, *Messrs Azad Kashmir Logging and SAW Mills Corporation (AKLASC), Muzaffarabad v. Commissioner Income Tax, Inland Revenue, Muzaffarabad* **(2017 PTD 1058)** and *The Commissioner of Income Tax v. Messrs Fauji Foundation* **(2021 PTD 1951)**.

Conclusion: i) Section 111(1)(d) has no retrospective effect.
ii) Findings of Appellate Tribunal which have not been challenged through Reference Application attain finality and establish vested rights.

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16. **Lahore High court**
Bahawalpur Bench, Bahawalpur
Muhammad Irfan @ Fani Vs. The State etc.
Criminal Appeal No. 685-J of 2017
(Qamar Hussain @ Qamri Vs. The State etc.)
Criminal Appeal No. 679-J of 2017
(Abdul Razzaq Vs. The State etc.)
& Criminal Revision No. 311 of 2017
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2024LHC4027.pdf

Facts: The judgment decided two Criminal Appeals filed by the convicts against their convictions and a Criminal Revision filed by the complainant for enhancement of sentence. Trial court while deciding case registered under sections 302, 324, 337-A(ii), 337- F(i), 427, 148 and 149 P.P.C. had convicted and sentenced one of the convicts to life imprisonment along with compensation of Rs.100000 and sentenced the other convict for imprisonment of five years and fine of Rs.50000.

Issue: i) What are the implications of timely reporting of crime to the local police on

prosecution case and what cautionary measures should be adopted by court in that regard?

ii) What interference should be drawn if the person who took application to police station for registration of case was not produced?

iii) What are the consequences on non-exhibition of FIR?

iv) What are the consequences of delay in conducting of autopsy?

v) What considerations can be drawn from the range of firearm particularly regarding the wounds established at a different distance?

vi) Whether unnatural/irrational conduct of the eye witness while narrating the ocular account is unworthy of reliance?

vii) What is the effect if the crime empties do not match with the pistol?

viii) What is the effect if motive is not corroborated with an independent source of evidence?

ix) Whether abscondence of an accused person can be considered as a proof of guilt?

Analysis: i) No doubt the prompt reporting of the crime to the police provides strength to the case of the prosecution as generally it excludes the possibility of fabrication of facts and false implication of innocent persons. However, since the menace of padding through the stoppage of station diary (Rozenamcha) etc. has penetrated deep into police working, hence, the Courts have to be vigilant while giving a finding regarding the time of the registration of crime report.

ii) An adverse inference under illustration (g) to Article 129 of the Qanun-e-Shahadat Order, 1984 could easily be drawn that in case he was produced he would not have supported the prosecution version to this extent.

iii) It is well settled law that document which has not been exhibited, cannot be taken into consideration. Reliance is placed on "Mazhar Iqbal vs. The State and another" (2022 MLD 752) [Islamabad], & "Muhammad Asif and others vs. The State and others" (2016 P.Cr.L.J. 1758). Hence, the FIR cannot be taken into consideration as a corroborative piece of evidence to the ocular account and the prosecution evidence has to be seen with care and caution.

iv) Such delay is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses and in cooking up a story for the prosecution before preparing police papers necessary for getting a post-mortem examination of the dead body conducted. The delay in conducting post-mortem examination also indicates about the non-availability of so-called eye-witnesses at the scene of occurrence at the relevant time as has been held by the Hon'ble Supreme Court of Pakistan in the cases of "Irshad Ahmed vs. The State" (2011 SCMR 1190) and "Nazeer Ahmed vs. The State" (2016 SCMRT 1628)

v) Thus, it can safely be inferred that the fire was not made from the long distance and the same was made from the close range. The inference so drawn is substantiated by the medical jurisprudence, according to which the Criminal Appeal No. 685-J of 2017, Criminal Appeal No. 679-J of 2017, & Criminal Revision No. 311 of 2017. 9 blackening occur when a shot is fired from a distance

of 6 to 12 inches and vanishes if the distance is more than three feet. In support of such opinion, reference can be made to "A Text Book of Forensic Medicine and Toxicology" authored by Dr. S. Siddiq Hussain, wherein he opined as under:- "(2) Discharge at 6-12". Effect of hot gases is lost. So there is no tearing of skin, wound is round and of the size of bullet, edges, inverted and surrounded by a zone of varying blackening and tattooing, there little burning only a grease ring due to oil and graphite is likely to be found. Clothing my show blast damage. (3) At 2-3 feet. No burning and tattooing become more discreet. (4) Beyond 3 feet. No blackening, burning or tattooing." Even "Jaising P. Modi in his book Medical Jurisprudence and Toxicology 24th Edition" is found to be in consensus with abovementioned view of Dr. S. Siddique Hussain. Last but not the least, the Hon'ble Supreme Court of Pakistan has also expressed almost similar view in the case of "Amin Ali and another v. The State" (2011 SCMR 323.).

vi) It is also noticeable that despite their claimed presence at the scene of the crime at the relevant time the conduct of the said eyewitnesses was found irrational as they had not tried to save the life of the deceased who was seriously injured and according to Dr. Muhammad Saeed, S.M.O. THQ Hospital Dunyapur (PW11), the probable time that elapsed between injury and death was within half an hour. Had the eyewitnesses been present there they would have taken the deceased injured condition to any near hospital for providing him medical treatment to save his life.

vii) Insofar as the alleged recovery of pistols 30 bore (P.14) & (P.15) at the instance of Qamar Hussain @ Qamri and Muhammad Irfan @ Fani, respectively is concerned, the same is inconsequential for the simple reason that as per reports of PFSA (Ex. PW) and (Ex. PY), the empties did not match with the pistols as such the recovery of pistols on the pointing out of the appellants has been rightly disbelieved by the learned trial court.

viii) Motive in this case is jointly attributed to all the accused persons and not specifically to the appellants to be considered against them as piece of evidence. Admittedly, on the same set of evidence the learned trial court has already acquitted the co-accused, so the same set of evidence cannot be believed to the extent of the appellants. Even otherwise, the matter of quarrel was not reported to the police. Neither any panchayat was convened to resolve the issue. In such circumstances, the motive part of the occurrence, being words of mouth, could not get corroboration from any other independent source of the evidence, which remains unproved and a shrouded mystery as well.

ix) Abscondence per se is not a proof of the guilt of an accused person. It may, however, create suspicions against him but suspicions after all are suspicions. The fact that the appellants absconded and were not traceable for considerably long period of time could also not be made sole basis for their conviction when the other evidence of the prosecution is doubtful as it is riddled with contradictions.

Conclusions: i) Prompt reporting of the crime to the police provides strength to the case of the prosecution However, since the menace of padding through the stoppage of station diary (Rozenamcha) etc. has penetrated deep into police working, hence, the Courts

have to be vigilant while giving a finding regarding the time of the registration of crime report.
ii) An adverse inference under illustration (g) to Article 129 of the Qanun-e-Shahadat Order, 1984 can be drawn from non-production of a witness.
iii) Document which has not been exhibited cannot be taken into consideration.
iv) Delay in conducting post-mortem examination also indicates about the non-availability of so-called eye-witnesses at the scene of occurrence at the relevant time
v) See above analysis No.(v)
vi) See above analysis No.(vi)
vii) Empties which did not match were not believable.
viii) See above analysis No.(viii)
ix) Abscondence per se is not a proof of the guilt of an accused person.

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17. **Lahore High Court**
Farzana Begum v. Muhammad Nawaz
Civil Revision No. 55854 of 2024.
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC3936.pdf

Facts: Petitioner's suit for specific performance of an agreement to sell was dismissed by the trial court and the Learned Appellate court. Feeling aggrieved from the dismissal, the petitioner filed Civil Revision but the Civil Revision was also dismissed.

Issues: i) What are the mandatory requirements to prove execution of a document as per Qanoon-e- Shahadat Order,1984?
ii) Can testimony of a scribe be equated with the testimony of an attesting witness?
iii) Can opinion of an expert be made basis to disregard direct evidence?
iv) What are the consequences of withholding best evidence?

Analysis: i) In terms of law the agreement could be proved by production of two marginal/attesting witnesses of the document. ….Reference can also be made to Qazi Abdul Ali and others v. Khawaja Aftab Ahmad (2015 SCMR 284) and Farid Bakhsh's case supra in which it was observed to the effect that calling two attesting witnesses for the purpose of proving execution of the document is the bare minimum and nothing short of two attesting witnesses, if alive and capable of giving evidence, can even be imagined for proving the execution and that construing the requirement of Article 79 of Qanun-e-Shahadat Order, 1984 as being procedural rather than substantive…
ii) It is a settled rule that testimony of the scribe could not be equated with that of an attesting witness as both of them had signed the document in different capacities and with a different state of mind and that scribe did not meet the requirement of Article 79 of Qanun-e-Shahadat Order, 1984.
iii) It is settled rule that the opinion of an expert or the report submitted by him on its own cannot be made basis to disregard the direct evidence and that there is no

need for the expert opinion which otherwise is nothing but confirmatory and explanatory to the direct evidence.
iv) Failure to call one witness, in the absence of any plausible explanation, may also give rise to an adverse presumption under Article 129(g) of Qanun-e-Shahadat, 1984 against the person intending to prove the document.

Conclusion: i) Agreement could be proved by production of two marginal/attesting witnesses of the document.
ii) Testimony of the scribe could not be equated with that of an attesting witness as both of them had signed the document in different capacities.
iii) Expert opinion is nothing but confirmatory and explanatory to the direct evidence.
iv) Failure to call one witness, may give rise to an adverse presumption under Article 129(g) of Qanun-e-Shahadat, 1984.

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18. **Lahore High Court**
Cooperative Petition No. 1993/2022.
Niagara Mills (Pvt) Limited and others v. Punjab Cooperative Board for Liquidation (PCBL) and others.
Cooperative Petition No. 1997/2022.
Niagara Mills (Pvt) Limited v. Punjab Cooperative Board for Liquidation (PCBL).
Cooperative Petition No. 69526/2021.
M/s BNP Pvt Limited v. Punjab Cooperative Board for Liquidation (PCBL) and others.
Cooperative Petition No. 62924/2021
Kohistan Corporation Pvt Limited. v. Punjab Cooperative Board for Liquidation (PCBL) and others.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC3953.pdf

Facts: Petitioners instituted petitions under section 11 of the Punjab Undesirable Cooperative Societies Act, 1993, wherein they impugned the consolidated judgment of 01.10.2021, by the Judicial Officer, Punjab Cooperative Board for Liquidation, which had annulled transaction of disposal / sale of land measuring 26-Kanals and 18-Marla situated at Chak No. 212/RB, Railway Road, Faisalabad and consequently ordered cancellation of three sale deeds executed in favour of the petitioners.

Issues: i) What is the scope of jurisdiction under section 11 of the Act, 1993?
ii) What is the status of the Judicial Officer? and the scope / nature of the authority extended / exercisable?
iii) Whether transaction for disposal of the property could be reconsidered once sale deed(s) were executed? [Petition was submitted 14 years after grant of approval by the Cooperatives Board] – Is the doctrine of past and closed transaction(s) attracted.?

iv) Whether the concept of finality / conclusiveness admits an exception in liquidation matters under the Act, 1993? In and under what circumstances defence of res-judicata is not available to the beneficiary(ies) of sale, not through public auction but private treaty?
v) Whether Judicial Officer is empowered to cancel registered instruments [the sale deeds] or Civil Court(s) have the requisite jurisdiction?
vi) What is the effect of order of acquittal of the accused persons – beneficiaries of the sale - in case FIR No.15/14?

Analysis: i) Jurisdiction conferred under section 11 of the Act, 1993 is restricted to confirm, reverse or modify the act or decision complained. Section 11 of the Act, 1993 refers to the action / decision of the Cooperatives Board, Chairman or delegatee thereof, which indicates acknowledgment of the authority of the delegatee –the judicial officer.
ii) In essence, Judicial Officer is an alter-ego of the Cooperatives Board, authorized to exercise the authority of Cooperatives Board, i.e., „power of determination of rights and obligations of the persons, in the context of scheme of law - there is a rational in the nomenclature „*the Judicial Officer"* (…) Summed up, status of the Judicial Officer is that of an agent, albeit an officer authorized by the Cooperatives Board to act as its delegate (…) In the same vein, Judicial Officer is the delegatee of the Cooperatives Board, which is *inter alia* exercising delegated powers, including power to see if the transaction of sale is carried out in accordance with the law, and jurisprudence settled through judicial pronouncements in the context of sale through public auction, instead of negotiated / private treaty sales.
iii) Firstly, sale approved on 22.03.2004 is still incomplete – land measuring 06-Kanals & 10-Marlas is not yet transferred. This provides continuing cause of action. Successful bidder had itself sought enforcement of part performance. Hence, plea of past and closed transaction is patently misconceived. Secondly, there is no barring provision in the Act, 1993 that restricts the Cooperatives Board from re-visiting transaction of sale upon evidence regarding collusive assistance of ex-management in supporting sale, otherwise replete with illegalities and irregularities, establishing conspicuous fraud, from start to the end (…) Fraud vitiates and nullifies sale, admitting no objection regarding limitation, finality of decision or plea of past and closed transaction.
iv) There is an exception to the doctrine of *res-judicata* – application thereof can legally be stretched to this case. Finality of decision attained cannot be re-opened unless some fraud, mistake or lack of jurisdiction is pleaded or established, as observed in the case of *"Muhammad Raqeeb Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others"* **(2023 SCMR 992)**.
v) Once it is found that sale is fraudulent and approval extended was without lawful basis, contrary to the settled jurisprudence and acknowledged prudence qua public auction(s), cancellation of sale deeds is a mere consequence of annulment of a fraudulent sale – a specie of consequential relief (…)The Judicial Officer, upon being called upon, had the authority to determine the legality or illegality of the

approval of disposal of land, and such determination cannot be assigned to the Civil Court, in view of the mandate of the Act,1993.

vi) Acquittal of the petitioners in criminal case have had no bearing on the reconsideration of the alleged negotiated sale, nor could it extend any immunity or protection to the transaction, otherwise found fraudulent, deceptive and prejudicial to the interests of the claimants.

Conclusion: i) The Co-operative judge exercises the jurisdiction under ibid Act as "persona designata". Hence, empowered to confirm, reverse or modify the decision complained against.

ii) The Powers conferred upon and exercised by the Judicial Officer are quasi-judicial powers.

iii) The non-conclusive nature of sale transactions is continuing cause of action.

iv) The fraud vitiates and nullifies sale and no objection as to limitation is sustainable.

v) The Judicial Officer in view of the provisions of ibid act has the authority to determine the legality or illegality of the approval of disposal of land.

vi) Acquittal in criminal case has no bearing on the reconsideration of the alleged negotiated sale.

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19. **Lahore High Court**
Ahmad Yar and others v. Chan Pir Shah and others
Civil Revision No.1415 of 2011.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC3919.pdf

Facts: Respondents filed a suit for possession through pre-emption, claiming their superior right of pre-emption but their suit was dismissed by the trial court, which judgment was assailed and appeal was allowed; resultantly suit of the respondents was decreed. The Petitioners filed the Civil Revision against the same Judgment and decree of the Learned Appellate court which was allowed and suit of the respondents was dismissed.

Issues: i) What are the consequences of undue advantage, if exercised by a Shafi?

ii) Whether guardian and agent can make demands on behalf of a person who is unable to make demands?

iii) Whether next friend can make demands in the special background of Pre-emption right?

iv) What are the conditions imposed by section 3 of the Punjab Pre-emption Act,1991?

v) Who is a guardian and what is the capacity of a Guardian?

vi) Who is guardian ad litem?

vii) What are the parameters to prove a fact through oral evidence?

viii) What are the consequences of withholding best evidence?

ix) What is the effect of non-appearance of a party as its own witness?

x) What is the value/significance of informer of sale in a pre-emption suit?

xi)What is the essential element to establish Talb-i-muwathibat?

Analysis: i) When an undue advantage is sought to be gained on the basis of a completely unsubstantiated statement, the same was not permissible as it could contravene the provisions of Shari'ah which have been made specifically applicable to pre-emption cases and it would disentitle a Shafi to claim pre-emption.

ii) The law permitted the guardian and agent to make demands on behalf of the person who is unable to make demands under Section 13 of the Act. In this regard Section 14 of the Act is relevant which is reproduced as under:- "**14. Demand by guardian or agent**:- Where a person is unable to make demands under section 13, his guardian or agent may make the required demands on his behalf."

iii) Legal guardian of the property of the minor can be the only person who can decide the exercise of this right and not the "next friend" as identified in Order XXXII of C.P.C.

iv) The language of Section 3 is unequivocal on the point that all provisions of the Act, 1991 shall be interpreted and for that matter all the words used in the Act shall be assigned meaning and applied, seeking guidance from the Holy Quran, Sunnah and Fiqah.

v) The word "guardian" has been defined in Black's Law Dictionary (Eleventh Edition) in the following words:"Someone who has the legal authority and duty to care for another's person or property, esp. because of the other's infancy, incapacity, or disability.". The capacity of guardian has been discussed in Chapter XVIII Section 359 of the "Principals of Mohammdan Law" by D.F. Mulla

vi) The definition of "guardian ad litem" in Black's Law Dictionary (Eleventh Edition) is as follows:- "A guardian, usu. A lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party.---"

vii) It is the settled law that where a "fact" is required to be proved through oral evidence, such evidence must be direct and of the primary source. Article 71 of the Qanun-e-Shahadat Order, 1984 provides the instances of the direct oral evidence regarding the proof of a fact. The foundation of such direct evidence about the proof of the "fact" of Talb-i-Muwathibat, is the "person", who has made the Talb.

viii) Article 129(g) of Qanun-e-Shahadat Order, 1984 enables the court to draw adverse inference in the eventuality of withholding the best evidence.

ix) The non-appearance of a party as his own witness, ordinarily discredit his case. Where the fact is in the personal knowledge of a person himself and he is the primary source to prove the "fact", if such person, without any sufficient cause, abstains from appearance in the court, the requisite inference shall be drawn.

x) Production of informer in pre-emption cases was imperative for the pre-emptor to prove the fulfilment of first demand of Talb-i-Muwathibat whose deposition being as a star witness was considered to be relevant having direct bearing qua the proof of said fact. He is the person who sets off the events leading to the institution of a suit for pre-emption. If he is not examined or he refused to enter in the witness box, the inescapable conclusion would be that he was not willing and ready to support the assertions made by the plaintiff……. The evidence of an informer in a suit for pre-emption is of particular significance…..In SUBHANUDDIN's case

referred supra the Honorable Supreme Court has held that non-production of informer in a pre-emption suit is a sufficient ground for dismissal of the pre-emptor's suit.

xi) Thus, the chain of the source of information, as to the fact of sale, from the very first person, who has the direct knowledge thereof and passes on the same to the person who lastly informs the pre-emptor, must be complete. Only the complete chain of the source of information of the sale can establish the essential elements of Talb-i-Muwathibat, which are: (i) the time, date and place when the pre-emptor obtained the first information of the sale, and; (ii) the immediate declaration of his intention by the pre-emptor to exercise his right of pre-emption, then and there, on obtaining such information.

Conclusion: i) When an undue advantage is sought it would disentitle a Shafi to claim pre-emption.

ii) Law permitted the guardian and agent to make demands on behalf of the person who is unable to make demands.

iii) Next friend cannot make demands in the special background of Pre-emption right.

iv) All provisions of the Punjab Pre-emption Act, 1991 shall be interpreted seeking guidance from the Holy Quran, Sunnah and Fiqah.

v) See above analysis No. v.

vi) See above analysis No. vi.

vii) Where a "fact" is required to be proved through oral evidence, such evidence must be direct and of the primary source.

viii) See above analysis No. viii.

ix) Non-appearance of a party as his own witness, ordinarily discredit his case.

x) Production of informer in pre-emption cases was imperative for the pre-emptor to prove the fulfilment of first demand of Talb-i-Muwathibat whose deposition being as a star witness was considered to be relevant having direct bearing qua the proof of said fact.

xi) The complete chain of the source of information of the sale can establish the essential elements of Talb-i-Muwathibat.

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20. **Lahore High Court, Lahore**
Professor Dr. Shazia Arshad v. Governor Punjab and 04 others
W. P. No. 27179 of 2023
Professor Dr. Muhammad Shahbaz v. The Chancellor UET, Lahore and 05 others
W. P. No. 11917 of 2023
Professor Dr. Kamran Abid v. Province of Punjab and 04 others
W. P. No. 2455 of 2022
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC4000.pdf

Facts: Through separate writ petitions the vires and appointments, thereunder, of Professors as Deans of Public Sector Universities by the Governor Punjab as

Chancellor prescribing a multi-factor criteria through a circular has been challenged.

Issues: i) Does a discretion vested in any Authority to be regulated and structured through circulars or office memos without being adopted in the relevant Statutes, Regulations or Rules?

Analysis: i) There is no cavil to the proposition that any discretion vested in any Authority by law can be further regulated and structured through delegated legislation within the ambit of applicable enactment as was proposed by the Governor Punjab through the Circular. However, no vested legal right can be asserted on its basis unless the said criteria is adopted in the relevant Statutes, Regulations or Rules of the PSU. No lawful mandate can be extended to any functionary to prescribe a criteria in his own wisdom in a manner not ordained by law.

Conclusion: i) Discretion vested in any Authority by law can be only be further regulated and structured through delegated legislation within the ambit of applicable enactment, and adopted in the relevant Statutes, Regulations or Rules.

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21. **Lahore High Court**
Hafiz Muhammad Atif Mumtaz v. Senior Member Board of Revenue Punjab, etc.
Writ Petition No. 10689 of 2024.
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC4048.pdf

Facts: Case involves litigation regarding the recruitment process on a post of Patwari which was Tehsil specific so the petitioner was disqualified on the ground of residency requirements being resident of another tehsil. Petitioner in the Writ Petition objected that the advertisement only required candidates to be residents of a specific District and claimed that the recruitment process had inconsistencies.

Issues: i) What is the residency requirement as per The Punjab Revenue department (Revenue Administration Posts), Rules 2009?
ii) What is the effect of inconsistency between the appointment rules and the advertisement of a specific department?
iii) Whether the Court can substitute the Rules already framed?

Analysis: i) The post of Patwari is Tehsil specific in terms of the applicable Rules… While the Rules require the appointment of a candidate who belongs to the Tehsil where appointment is to be made.
ii) This Court is of the view that the Rules stipulating the candidate to be resident of the Tehsil to which the post belongs is to be accorded the precedence over the requirement stipulated in the advertisement as the Rules are conferred with the statutory force, which cannot be trumped and nullified by intentional and/or unintentional mistake on part of the department while advertising the posts of

Patwari. The Rules provide for the criterion and the mechanism for the appointment and filling up the post whereas the advertisement is one of the steps and/or subsets of the overall scheme of appointment envisaged under the law. Therefore, it belies logic if a subset of the process is permitted to attain primacy over the entire scheme envisaged under the Rules itself…. it is settled law that there is no estoppel against the law. Thus, department is justified in exhibiting strict adherence to the Rules providing for the appointment criterion. The rules are to be strictly adhered to and even if there was an omission in the advertisement, the department has not violated the legal provision thereof to operate as an estoppel on the respondents.
iii) This is clearly the domain of the executive as this Court cannot substitute the Rules, which have been framed under and in exercise of the legislative domain and power of the State.

Conclusion: i) The post of Patwari is Tehsil specific in terms of the applicable Rules.
ii) The rules are to be strictly adhered to even if there was an omission in the advertisement.
iii) Court cannot substitute the Rules, which have been framed under and in exercise of the legislative domain and power of the State.

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22. **Lahore High Court**
Zulfiqar Ali v. Mirza Altaf Hussain and 3 Others
Case No: Civil Revision No. 25008 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4040.pdf

Facts: Revision-petitioner filed a suit for specific performance, permanent injunction and cancellation of sale-deed. After culmination of proceedings, it was decreed by the learned trial court in favor of revision-petitioner. Order of trial court was challenged before the learned appellate court and the learned appellate court was pleased to set aside the judgment of the trial court. Accordingly, revision petition was filed. In civil revision, concerned branch raised objections and granted three days for removal of objections. Revision-petitioner received the file and then re-filed the civil revision after 530 days of judgment and decree of learned appellate court.

Issues: i) What is the time to re-file the application or appeal after removing the office objections?

Analysis: i) The controversy, if the limitation stops running when application or appeal is filed within time and then returned for removing objections to re-file the same within given time frame and then the litigant fails to file the same within the given time period, was resolved by the Honourable Supreme Court of Pakistan in case titled "Asad Ali and 9 Others Versus The Bank of Punjab and Others" (PLD 2020 Supreme Court 736), wherein, it has been held that in the cases in which certain objections are raised by the office which rendered the institution of case in itself invalid or incompetent should be held to be time barred unless the objections or deficiencies indicated by the office are met within the time specified by the office.

Conclusion: i) See above analysis No.i.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No. S.R.O. 1288(I)/2024 of the Official Gazette Pakistan, the amendments were made in rules 2 to 7, 9,10, 13, 14, 16, form A, form B & form C in the Anti-Rape (Sex Offenders) Rules, 2023.
2. Vide Notification No. 133 of 2024 of the official Gazette Punjab, the amendment was made in the main heading "POSTS COMMON TO DIFFERENT DEPARTMENTS) after serial No.80 in the Punjab Civil Servant Pay Revision Rules, 1977.
3. Vide Notification No. 134 of 2024 of the Official Gazette the amendment was made in rules 5.1, 5.2, 5.3, 5.4, 5.5 & 5.6 in the Punjab Civil Servants Act, 1974.
4. Vide Notification No. 138 of 2024 of the Official Gazette of the Punjab, the amendment was made in the schedule at serial No.12 of the Chief Minister's Secretariat Household Staff Service Rules 2012.
5. Vide Notification No. 140 of 2024 of the official Gazette of Punjab, the amendment was made in rules 9 & 10 in Punjab Police Deputy Superintendents and Superintendents (Appointment by Promotion) Service Rules, 2020.
6. Vide Notification No. 142 of 2024 of the official Gazette of Punjab, the amendments were made at serial No.5, 6 & 8 of schedule I and serial No.1, 2, 7, 9, 10, 14, 15, 17 & 18 of schedule II in the Court Fees Act, 1870.
7. Vide Notification No. 143 of 2024 of the Official Gazette of Punjab, the amendment was made at serials No. 1 & 2 in the heading of 'LEGISLATION AND PARLIAMENTARY AFFAIRS WING' and serials No.1 & 2 in the heading of 'ADVISORY WING' OF THE Law & Parliamentary Affairs Department (Professional & Technical Posts) Service Rules, 2011.
8. Vide Notification No. 144 of 2024 of the Official Gazette of Punjab, the Punjab Irrigation Department (Water Resources Zone) Service Rules 2024 were promulgated.
9. Vide Notification No. 22/Legis.II.D-4(V) of the Lahore High Court, the amendments were made in Chapter-1, in Part-A(a), in Rule-1.(a) after sub-clause (ix) of High Court Rules & Orders Volume-V.

SELECTED ARTICLES

1. CAMBRIDGE LAW JOURNAL

https://www.cambridge.org/core/journals/cambridge-law-journal/article/parental-duties-of-nondiscrimination-and-the-scope-of-antidiscrimination-law/9B9BCCD5E9A85A5CF23FCDA9CE4D2C4B

Parental Duties of Non-Discrimination And The Scope of Anti-Discrimination Law: Colin Campbell, Patrick Emerton

Parents' discrimination against their children is lawful. But the family, as an institution in which social goods are allocated, is as significant as the sites in which anti-discrimination law operates. At least prima facie, therefore, parents should be governed by legal prohibitions on discrimination. While state incursion into family life poses a threat to children's autonomy, so does parental discrimination against children. Anti-discrimination law therefore needs new institutions to promote the values of non-discrimination in a part of society that currently sits outside anti-discrimination law's reach. We identify existing regimes that may provide a starting point for this work.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/BAIL-UNDER-PMLA-FOR-WOMAN-A-RIGHT-OR-AN-EXCEPTION

Bail Under PMLA For Woman: A Right Or An Exception by Soumyajoti Lodh

The dictionary meaning of bail2 can be defined as "A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time." With the leap of 'Bail is a right and Jail is an Exception,' the modern criminal justice system believes in fostering the rights of an accused person by releasing the person from detention before the trial concludes by taking the assurance of their participation in the court proceedings. The primary aim of pre-trial detention is to ensure the defendant's presence at the trial. Nonetheless, it is essential to refrain from routine infringement upon the liberties of citizens/persons at a certain stage. It is the principal reason why the law discourages police custody as outlined in the Code of Criminal Procedure 3 /Bharatiya Nagarik Suraksha Sanhita 4 ('CRPC'/'BNSS') and the Indian Constitution5.

However, the realm of bail is anomaly different under the Prevention of Money Laundering Act, 2002 ('PMLA'). The conditions of bail under PMLA make swift on the settled general principles of the leap and make the grounds more stringent compared to the general bail conditions under CRPC/BNSS. The issue of bail under PMLA has a specific exception to the stringent conditions for women on the grounds of social and legal challenges. In this article, we shall delve into the merits of gender-specific considerations, the current jurisprudential position of the right of bail for women under PMLA, and whether the right should be viewed as a fundamental right.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Understanding-Dynamism-of-Artificial-Intelligence-Transforming-the-Copyright-Law-in-India

Understanding Dynamism of Artificial Intelligence: Transforming the Copyright Law in India by Supriya

The paper addresses the characteristics and capabilities of a weak AI as compared to a futuristic strong AI. The paper has raised concerns on the protection of the intellectual property right of the creators. Artificial intelligence is perceived to be capable of mimicking

the intellectual thinking of a human being. The focus area of the paper is to understand the upcoming challenges towards copyright protection. In simple terms, copyright means the right of the original creator to protect his creativity from being copied by someone. Provisions of Copyright law has been provided in The Copyright Act, 1957 as an exclusive right vested with the original owner having the right of reproduction, adaptation or publication etc. The paper raises a question on the relationship between use of Artificial Intelligence and the protection of work. Artificial Intelligence has a great scope of being used to an advantage provided it is regulated within time. It is a weapon in the hands of many which is being misused. The paper suggests certain solutions to avoid such misuse by referring to the AI regulation provisions of different foreign nation-states.

4. HARVARD LAW REVIEW
https://harvardlawreview.org/print/vol-137/the-making-of-presidential-administration/

The Making of Presidential Administration by Ashraf Ahmed, Lev Menand, Noah A. Rosenblum

Today, the idea that the President possesses at least some constitutional authority to direct administrative action is accepted by the courts, Congress, and the legal academy. But it was not always so. For most of American history — indeed until relatively recently — Presidents derived their authority over the administrative state largely from statute. Any role for the White House in agency rulemaking or adjudication had to be legally specified. Scholars mostly agree about when this change occurred. But the dominant shared narrative — exemplified by then-Professor Elena Kagan's seminal article Presidential Administration — is Whig history. It offers a depoliticized interpretation that presents White House primacy as the product of steady progress toward greater administrative rationality.

This Article offers a historical corrective. It explains how "administration under law" was lost and replaced with a new constitutional baseline, "presidential administration." It is both an account of constitutional change — how one understanding of constitutional text and structure gave way to a different one — as well as a history of the regulatory state and how, beginning in the 1980s, federal officials reworked the relationship between the President, Congress, and administrative agencies in order to expand the role of market actors in governing economic activity. The Article draws attention to the intense political conflict that accompanied the advent of presidential administration. What is today bipartisan was originally nothing of the sort. It also reveals how a new interpretation of Article II took hold without any fundamental doctrinal or statutory change or shift in formal law. It highlights the emergence of a neoliberal consensus around aspects of economic regulation that incentivized and buttressed presidential administration as an approach to administrative governance. And it reveals the relative novelty of originalist arguments about the "Unitary Executive."

5. HARVARD LAW REVIEW
https://harvardlawreview.org/print/vol-137/the-new-negative-habeas-equity/

The New Negative Habeas Equity BY Lee Kovarsky

A federal statute restricts the habeas corpus remedy, but do federal judges also have equitable discretion to deny relief to unlawfully detained prisoners? Over the last several terms, the Supreme Court has begun to embrace this novel, ambitious view of habeas law. Although the Court has long cited what I call "negative" equity as a source of authority to devise its own limits on habeas relief, it had never — until recently — suggested that lower courts have free-floating discretion to deny relief to which prisoners are otherwise entitled.

This Article, which consists of three parts, considers and refutes the "new negative equity." In Part I, I set forth the older version of negative equity and then describe the recent departure therefrom. In Part II, I explain why the new negative equity doesn't follow from any text-centered approach to statutory interpretation — relying substantially on context and drawing heavily from a statutory history that decisional law and academic discourse have thus far neglected. In Part III, I focus on the most troubling register of the new negative habeas equity, which involves a rule against habeas relief for those who are not "factually innocent."

Equitable power to refuse relief might be consistent with "comity, finality, and federalism," as it were, but orphaned policy preferences are not law. Under the text-centered approach to law endorsed by most who favor habeas restrictions, such a practice is impossible to justify. Although no interpreter can be perfectly certain of statutory meaning, the new negative equity is both inconsistent with habeas history and a least-plausible reading of the modern statute.

6. MANUPATRA

https://articles.manupatra.com/article-details/From-Taboo-to-Trend-The-Emergence-of-Prenuptial-Agreements-in-India-s-Legal-Framework

From Taboo to Trend: The Emergence of Prenuptial Agreements in India's Legal Framework by Ashish Rawat and Kinjal Ahuja

In today's fast-paced, ever-evolving world, more and more young couples are recognizing the value of Prenuptial contracts that outline the rights and responsibilities of each partner before tying the knot. But are these agreements truly enforceable under Indian laws and how have the courts been interpreting their validity over time? As modern relationships navigate the complexities of shared finances, assets, and the possibility of divorce, a well-crafted prenup can provide invaluable protection and peace of mind. From disclosing assets and liabilities to determining alimony and child custody, these agreements cover a wide spectrum of crucial considerations. Yet, their legality has been the subject of much debate, with judges grappling to reconcile traditional personal laws with evolving social norms.

The landscape of marriage in India is evolving, with divorce rates steadily climbing over the past decade. In a country where lifelong commitment was once the norm, the growing

prevalence of marital dissolution underscores the need for couples to have open and honest conversations about protecting their interests, even before tying the knot. This is where prenuptial agreements come into play. By proactively addressing these sensitive matters, couples can safeguard their financial wellbeing and focus on building a strong foundation for their marriage, rather than worrying about the potential pitfalls.

Pre-nuptial agreements, also referred to as prenups, are contracts entered into by couples before marriage to determine and agree on issues related to the ownership, distribution and treatment of their assets, property, debts, etc. in the event of dissolution of the marriage through divorce or separation.1
