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FORTNIGHTLY CASE LAW BULLETIN

(01-01-2024 to 15-01-2024)

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

		Article 8(5) of the Constitution if proclamation of emergency is in field; Existence of proclamation of emergency without order under Article 233(2) of the Constitution; Suspension of all fundamental rights when proclamation of emergency is in field; Clauses (i) & (ii) of section 2(1)(d) and subsection 4 of section 59 of Army Act would be ultra vires even during proclamation of emergency; Arrest of a civilian or seeking his custody by an authority acting under the Army Act; Validating clauses; Regarding section 59(4) as validating clause; Trial of a civilian by a court martial		
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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Jawwad S.Khawaja etc. v. Federation of Pakistan etc.
Constitution Petition Nos.24, 25, 26, 27 & 28 and 30 of 2023
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_f.pdf

Facts: The Petitioners challenge the vires of Section 2(1)(d) and Section 59(4) of the Pakistan Army Act, 1952 (Army Act) being ultra vires the Constitution and also seek a declaration that the decision of the Federal Government to try civilians with respect to the events of 9th and 10th May, 2023 by military courts under the Army Act read with Official Secrets Act, 1923 (Official Secrets Act) as being unconstitutional.

Issues: i) What are different modes in which Constitution may operate?
ii) When any person can be made subject to Army Act in view of 2(1) (d) (i) of Army Act?
iii) What is requirement under section 2(1) (d) (ii) of Army Act for making civilian subject to Army Act?
iv) What is effect of any civilian becoming subject to the Army Act?
v) Whether in necessary implication of F.B. Ali case court martial and military justice system are within scope of legislative competence of entry No. 01 of Federal List?
vi) Whether courts martial as presently conceived and understood for historical reasons stand outside the framework of Article 175 and cannot be constitutionally attacked or challenged with reference thereto?
vii) What is genesis of Article 8(3)(a) of Constitution?
viii) What conditions must be met for application of provisions of Article 8(3)(a) of Constitution?
ix) Whether constitutions of 1956, 1962 & interim Constitution of 1972 had provisions similar to Article 8(3) (a) & 8 (5) of present Constitution?
x) If clauses (1) and (2) were already, and always, there, what purpose does clause (5) serve in Article 8 of present Constitution? And What, if one may put it so, "value" does it add?
xi) Whether the protection afforded by Article 8(5) is just when a breach has actually occurs or it is also anticipatory?
xii) What is a two-step consideration for claim of denial of or derogation from fundamental rights?
xiii) Whether clause (3)(a) on the one hand and clause (5) on the other (of Article 8 of Constitution) stand not just in contrast but in direct opposition?
xiv) Whether clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act are ultra vires the present Constitution with particular reference and regard to clause 5 of Article 8?
xv) Whether additional rights granted under any statue i.e. Army Act can alter

their essence from statutory to fundamental rights?
xvi) Whether existence of a legislative competence and the (constitutional) ability to exercise it are necessarily coterminous?
xvii) Whether any law such as clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act can be now made without passing through the sieve of Article 8(5) of Constitution?
xviii) Whether Article 8 (3) (a) of constitution ought to be interpreted to effectively splits into standalone portions?
xix) What is correct approach to apply provisions of Article 8(3) (a) of Constitution?
xx) Whether civilians can directly be dragged into ambit of Article 8 (3) (a) by reason of Article 8(5)?
xxi) What is nature of section 59(4) of Army Act and does it have independent or standalone purpose/existence?
xxii) Whether Article 8(5) of Constitution ceases to apply if proclamation of emergency is in field and Article 233(1) of Constitution becomes applicable?
xxiii) Whether proclamation of emergency exists without Order under Article 233(2) of Constitution?
xxiv) Whether all fundamental rights are considered to be suspended when proclamation of emergency is in field?
xxv) Whether even during proclamation of emergency clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act would be ultra vires of Constitution?
xxvi) Whether arrest of a civilian or seeking his custody etc. by any authority acting under the Army Act prior to charging a person for an offence that falls within either of two sub-clauses of section 2(1) (d) of Army Act would be lawful?
xxvii) What are validating clauses?
xviii) Can section 59(4) of Army Act be regarded as a validating clause thereby covering the prior (illegal) acts done in relation to the civilian who is charged for an offence before a court martial?
xxix) How could a civilian ever be brought before and tried by a court martial for an offence under the clause (d) provision?

Analysis: i) For present purposes the Constitution may be regarded as existing and operating in either one of two primary "modes" or states. The first is its operation in the ordinary course, which may be regarded as the "default" mode. The other is when it operates in a time when there is in force a Proclamation in terms of Part X, the Emergency Provisions. There is also a third, though secondary, state or "mode" in which the Constitution may operate. That is when the Federal Government, in lawful exercise of its powers under Article 245, has called upon the Armed Forces to act in aid of civil power, or the Armed Forces are, under the directions of said Government, defending Pakistan against external aggression or threat of war. This secondary state may exist and operate in either of the two principal "modes".
ii) Subsection (1) of s. 2 lists the persons who shall be subject to the Army Act…

As the word "accused" indicates, a person not otherwise subject to the Army Act becomes so subject only if he (or, to say it once and for all, she) commits a criminal offence that falls in either of the sub-clauses. Offences in this country are statutory in nature. Therefore, for clause (d) to at all become applicable, anyone seeking to subject a person (hereinafter for convenience referred to as a "civilian") to the Army Act in terms thereof, has to show some statute and some provision of such statute creating a criminal offence, as complies with either of the sub-clauses. However, the path to subjection in terms of each sub-clause is different. Sub-clause (i) does not identify any statute as such. It only gives a description of the offence. Therefore in principle any statute which creates an offence the ingredients or elements of which match the description could result in the civilian becoming subject to the Army Act. The importance of this lies in the fact that the same offence (i.e., having the same ingredients or elements) can be created by more than one statute. This is in fact true of the description contained in sub-clause (i). There are at least two such statutes (which were both referred to and considered in F.B. Ali case). One of these is the Army Act itself, which has an offence fitting the description in its s. 31(d). The other is s. 131 of the Pakistan Penal Code. In material respects each of these offences matches the other, and the description given in sub-clause (i).

iii) Sub-clause (ii) takes a different approach. It identifies the statute where the offence must be created and located. This is the Official Secrets Act, 1923 ("1923 Act"). But the sub-clause has two requirements, which result in two consequences. Firstly, not only must the offence be under the 1923 Act, its ingredients or elements must also fit the description given in the sub-clause. In other words, it is not every offence under the 1923 Act that can make a civilian subject to the Army Act. It is only that offence which fits the stated description. Any other offence, if committed by a civilian, would not make him subject to the Army Act. Secondly, if there is any other statute (including, though that is not in fact the case, the Army Act itself) that creates an offence the ingredients or elements of which match the description, such offence, if committed by a civilian, would not make him subject to the Army Act.

iv) The effect of any civilian becoming subject to the Army Act by reason of either sub-clause of clause (d) is of course that he becomes subject to the whole of the statute. In practice, the principal consequence ensuing from such subjection is that he becomes liable to be tried for the relevant offence by court martial under the Army Act.

v) Even F.B. Ali itself points in the same direction, and corroborates the historical nature of the legislative competence. The competence for the insertion of clause (d) in s. 2(1), whereby civilians could be tried by courts martial, was found to exist in entry No. 1 of the Third Schedule to the 1962 Constitution. This corresponded to entry No. 1 of the present Federal List. Now, the trial of civilians by court martial is very much an ancillary or subsidiary function of such forums. Existing as they do within the military justice system, and confined as they are to the four corners of the Army Act, the principal function (indeed, their raison

d'être) is to deal with the members of the Armed Forces. Even if there were no legislative competence in relation to civilians that would leave the functioning and operation of the military justice system, and of the courts martial, wholly unaffected. The subsidiary nature of the legislative competence with regard to civilians is further indicated by the fact that in F.B. Ali the Court also pressed entry Nos. 48 and 49 into service (which related respectively, to matters within the legislative competence of the Federation or relating thereto, and matters incidental and ancillary to others provided in the Schedule). These entries corresponded to the present entry Nos. 58 and 59 of the Federal List. Thus, a necessary implication of F.B. Ali is that courts martial, and the military justice system, are within the scope of the legislative competence of entry No. 1; and that conclusion is in line with Muhammad Yusuf, as revealed by the historical analysis.

vi) In the present context, the challenge in terms of Article 175 to courts martial is of no avail. However, a word of caution may be sounded. This does not at all mean that there cannot be rights of appeal or other remedies to courts within the meaning of Article 175, from decisions of courts martial or other authorities and forums within the military justice system, or that such system cannot at some stage itself be directly connected with such courts. Far from it. All that is meant is that courts martial as presently conceived and understood, with which alone we are here concerned, for historical reasons stand outside the framework of Article 175 and cannot be constitutionally attacked or challenged with reference thereto. But, it is wholly within the legislative competence of Parliament to restructure or even recreate the military justice system, including courts martial, in such manner—howsoever fundamentally or even radically different it may be from the present one—as it deems appropriate. History certainly informs the legislative competence but, constitutionally speaking, neither shackles nor controls it.

vii) The genesis of Article 8(3)(a) lies in the well-recognized fact that given the peculiar nature of the tasks that must be performed, in particular and especially, by members of the Armed Forces but also by certain other agencies (which are usually referred to as the "disciplined forces"), it is infeasible to allow them, in the context of the performance of their duties, to enjoy the benefit of fundamental rights. Members of the Armed Forces and the disciplined forces are of course citizens and, in the ordinary and normal course, as much entitled to fundamental rights as any other citizen. That is the general rule. However, in relation to certain set and limited circumstances a differentiation ought to be made between them and the general citizenry Undoubtedly, the members of the Armed Forces and the disciplined forces come from and return to the citizenry. But, while they are in service (and also, exceptionally, when they may by law be recalled to such service) the peculiarities of that service require derogation from what is otherwise their birthright, as a fundamental and constituent aspect of the Constitution.

viii) It will be seen that for this provision to apply two conditions must be met. Firstly, it applies to a law made in respect of three categories of State employees: (i) members of the Armed Forces; (ii) the police; and (iii) any other force that is

charged with the maintenance of public order. Secondly, even in relation to such categories, the purpose of the law must be to either (x) ensure the proper discharge of their duties, or (y) maintain discipline among them.

ix) It will be seen that the provision has essentially remained unaltered throughout. Apart from the specific reference to the police in the Interim Constitution and the present Constitution, the words used are virtually identical. This is certainly true for the purpose of the law, i.e., the proper discharge of duties and the maintenance of discipline. Furthermore, in both the 1962 and Interim Constitutions, the provision is rounded off in exactly the same terms as is clause (3) of Article 8. But none of them had the equivalent to clause (5).

x) Clauses (1) and (2) approach fundamental rights from the aspect of a law said to be in collision with such rights. Clause (5) on the other hand looks at fundamental rights themselves. Now, it is trite law that fundamental rights inhere in persons Clauses (1) and (2) protect that someone by voiding a specific law that breaches fundamental rights. Clause (5) protects that someone by protecting fundamental rights themselves. The first two clauses are engaged when the assault on fundamental rights is indirect; the fifth when the rights are directly under attack. The denial of or derogation from fundamental rights is indirect in the former case inasmuch as the impugned law seeks to encroach upon an "area" denied the State. It is direct in the latter case because the impugned action would displace or deny the very "area" itself. This leads to the second point. In an important sense clause (5) underpins clauses (1) and (2). If fundamental rights are in a state of suspension (or worse) then clearly the protection afforded by clauses (1) and (2) is, at the very least, put in jeopardy or may even disappear altogether. Clause (5) makes the constitutional position absolutely clear. Unless the Constitution itself expressly so provides (and then only to that extent) there cannot be any temporal or spatial displacement of fundamental rights. Clause (5) requires that at every instant and over every inch of the territory fundamental rights must be, and remain, in existence and in force. This then ensures that at all times and in all places (unless expressly otherwise so provided by the Constitution) clauses (1) and (2) are effectively in force and operation. If these clauses are the guardians and guarantors of fundamental rights, then clause (5) is the guardian and guarantor of the clauses themselves. Quis custodiet ipsos custodes—who will guard the guards themselves, asked the Romans though in quite another sense and context. If we may appropriate the words of the maxim for present purposes and put them to a rather different use, it is clause (5) that guards the guards themselves (clauses (1) and (2)). This brings us to the third point. The role of clause (5) is both situational and positional. It protects fundamental rights, and thus those in whom the rights inhere, by standing sentinel over the whole of the legal landscape. No citizen in whom fundamental rights inhere can be placed in a situation, either actually or potentially, that results in a suspension (or worse) of fundamental rights. This leads to the final point. Clause (5) approaches, and protects, fundamental rights in a collective sense. While it would certainly be engaged even if a single fundamental right is, in effect, placed

in a state of suspension (or worse) contrary to what is permissible, its real substance and power is revealed when one takes a step back and looks at fundamental rights as a whole. The reason is that when the clause is so engaged, it is not necessary to identify a specific fundamental right that is being affected. If it can be shown that the whole panoply of rights is being, or would be, placed, either actually or potentially, in a state of suspension (or worse) that suffices.

xi) The protection afforded by clause (5) is not just when a breach has actually occurred. It is also anticipatory, i.e., it acts to prevent a breach occurring at all in the first place. In an appropriate context, even before the situation has reached the point where the claimant has to show a denial of or derogation from this or that fundamental right, clause (5) is there. That context includes the situation where it can be shown that either the purpose or effect of the impugned action (whether a law or otherwise) would be to displace fundamental rights. In this sense it can even be regarded as preceding clauses (1) and (2).

xii) If a claim is brought that there is a denial of or derogation from fundamental rights that may warrant, on occasion, a two-step consideration. In the first instance the Court may have to consider whether there is a breach of clause (5). If the answer is in the affirmative that may well be decisive and conclusive in and of itself. If the answer is in the negative, then the matter would move to the second step, i.e., to consider whether there is a breach of one or more particular and identified fundamental rights, an answer to which question would then be determinative. Two further points may also be made in this context. Firstly, in the overwhelming number of cases the challenge is brought, considered and decided only in terms of the second step, the first not being engaged or even invoked at all. But, in some cases, the challenge has to be considered in light of both, and the matter could stand determined simply at the first stage. Secondly, and obviously, for there to be at all even the possibility of a two-step analysis in the sense here contemplated, a constitutional provision in the nature of clause (5) must exist. If there is no such provision in the constitutional dispensation, then it would be in the nature of things that the challenge is confined only to one stage, i.e., whether is a breach of this or that specific fundamental right.

xiii) Clause (3)(a) results in the immediate and absolute denial of fundamental rights in their totality. Clause (5) on the other hand, stands absolutely and robustly in denial of such denial (other than as is expressly provided). The former tugs one way, the latter in exactly the opposite direction. How is this tension to be resolved? In relation to the three categories of State employees identified in clause (3)(a), it is clearly this clause that will have to take precedence over clause (5). The reason is obvious. The raison d'être of the clause is to enfold a law enacted for the stated purposes in relation to such State employees.

xiv) No law, whether existing or one minted under the present Constitution, can defeat the protections provided by clause (5). For persons other than the three categories of State employees specified in Article 8(3)(a), and especially in relation to civilians, any and every law claiming to be within the contemplation of the said provision must pass through the sieve of clause (5) and also, if so

required, be tested on the anvil of any violation of a particular and specified fundamental right. In other words, the law must be examined in terms of the two-step analysis set out above. It is only in this way that the provisions that can permissibly be incorporated within the law can be identified, and those impermissibly planted there excised. Any other approach would result in Article 8(3)(a) ceasing to be an "ouster clause" subject to strict interpretation. Thus, the Army Act as an existing law would be subject to the same analysis as already carried out above. For the reasons given, it matters not whether the para (i) provisions were "insertions" or "provisions". Either way, they are ultra vires the present Constitution, with particular reference and regard to clause (5) of Article 8.

xv) Even if in respect of a law within the contemplation of Article 8(3)(a) rights are given which correspond to fundamental rights, that does not and cannot change their nature. They are and remain statutory rights, and because the denial of fundamental rights is total and immediate, subject to the will of the legislature, to grant or withhold as it may please. Indeed, the very "offer" made by the learned Attorney General, that for the specific purpose of trials of persons accused of offences on May 9th and 10th, certain additional rights would be granted underscores their essentially transitory nature. Fundamental rights are, on the other hand, precisely that: fundamental and existing as of constitutional right, engirdled and protected by not just the first two clauses of Article 8 but, in the present constitutional dispensation, also clause (5). To focus only on the operative effect of a right while ignoring its nature and substance is to seriously misread the Constitution and disapply clause (5). This cannot be. No matter how many rights are granted by the Army Act and the 1954 Rules and howsoever many more rights are piled on top of those, their essence cannot be altered. It cannot be that the people of Pakistan are reduced to a point where, in respect of rights which ought to be fundamental, they are instead required to go (as it were) cap in hand to the State, pleading plaintively: "Please Sir, can we have some more?" That is not what fundamental rights mean. That is not what fundamental rights are. That is not what the Constitution means. That is not what the Constitution is.

xvi) It must be clearly understood that the existence of a legislative competence and the (constitutional) ability to exercise it are not necessarily coterminus. Briefly stated, Pakistan is a federal Republic in which legislative competences are divided between the Federation and the Provinces. Some are exclusive to Parliament, others to the Provincial Assemblies and a few are concurrent. Whether a law made by a particular legislature is within its legislative competence is determined by rules of constitutional interpretation that are well settled and established. Their genesis goes back centuries, and is traceable in a direct line to Privy Council judgments in relation to the constitution of Canada, the British North America Act, 1867 (now known as the Constitution Act). If a law is not within the legislative competence of a particular legislature then it is straightaway ultra vires and liable to be declared as such simply for this reason. However, even if a law is found to be within legislative competence, it may yet be

constitutionally impermissible for the legislature to enact it. (Contrariwise, in certain situations the Constitution makes it permissible for a legislature to enact a law that would ordinarily be beyond its competence.) Two examples will suffice. In the case of a concurrent competence, if Parliament has made a law in respect thereof, then the Provincial Assemblies cannot, to the extent that the legislative field is so "occupied", make a law in exercise of their own competence (see Article 143). The existence of the federal law does not denude the Provincial Assemblies of their competence over the concurrent field. Thus, e.g., to the extent that the field remains "unoccupied", they can make their own laws. But, to the extent of the federal law, and as long as it exists, they cannot exercise the competence. The other example is of course in relation to fundamental rights. If a law made by either the Federation or a Province is challenged as being in violation of a fundamental right and as also beyond its legislative competence, then the law, if the second ground succeeds, would be liable to be so declared ultra, without the first having to be considered at all. If it is within competence but in violation of a fundamental right, it would be impermissible for the legislature concerned to make the law. This would not be because the competence does not exist. It does. But it cannot be exercised, the existence of the fundamental right acting as an interdict. If the interdict were, e.g., to be suspended, then the competence can be exercised. Thus (as we will see shortly), when there is a Proclamation of Emergency in the field, certain (but not all) fundamental rights are automatically suspended and the concerned legislature can then make a law in exercise of its legislative competence (see Article 233(1)).

xvii) F.B. Ali was decided within the frame of a constitutional dispensation that did not have any equivalent to Article 8(5). The existence of a legislative competence in terms of the "nexus" theory does not therefore mean that such competence can be exercised in the same manner under the present Constitution as was possible under the 1962 Constitution. Now, the gateway is not just guarded but kept firmly shut, for reasons already set out, by Article 8(5). A law, such as clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act provisions, cannot now be made without passing through the sieve of Article 8(5), and that would be equally true for an existing law or one sought to be made under this Constitution. As noted, when tested on this most demanding of anvils, it would be found wanting. The legislative competence may exist; the security provided to fundamental rights by this provision means that it cannot be exercised. This is certainly the case when the Constitution is operating in its ordinary course, i.e., the "default" mode, when Article 8(5) is in full force and effect.

xviii) The submission that one of the purposes given in Article 8(3)(a), i.e., the ensuring of proper discharge of duties by the Armed Forces, has an "external" aspect that brings third parties and outsiders (i.e., civilians) within its fold cannot, with respect, be accepted. The reason is that this effectively splits Article 8(3)(a) into standalone portions. That is an incorrect approach to this provision. It is one whole, which has to be interpreted and applied holistically. Any other approach

would mean that the provision ceases to be an ouster clause that has to be interpreted and applied strictly.

xix) the correct approach is that the provision applies (as presently relevant) to a law relating to members of the Armed Forces for achieving either (or both) of the stated purposes, to the extent and in the manner that such purpose(s) cannot be achieved without such a law. It is only in this way that the rationale for Article 8(3)(a)—the complete and immediate denial of fundamental rights—is understandable and acceptable. For if, and to the extent that, either of the stated purposes can be achieved even without a law relating to the Armed Forces, that would mean that the law in question would apply also to persons who are not members of such Forces. And in respect of a law such as last mentioned, Article 8(5) would intervene and deny the denial of fundamental rights.

xx) Civilians cannot directly be dragged into the ambit of Article 8(3)(a) by reason of Article 8(5). That result certainly cannot be achieved indirectly by postulating internal and external "aspects" to the stated purposes of the former provision, and thereby expand its scope to include classes of persons other than the three listed categories of State employees. That would be in utter disregard of Article 8(5).

xxi) The fate of the s. 59(4) provision is tied to the former [2(1) (d) of Army Act], since it is in the nature of a subsidiary provision. It has effect and meaning only if the clause (d) [2(1) (d) of Army Act] provision has meaning, and has no independent or standalone purpose or existence. The two stand and fall together. Since the clause (d) provision fails, so must the s. 59(4) provision.

xxii) It will be noted that Article 233(1) of constitution becomes applicable of its own force once a Proclamation is in the field. Of course, as the clause makes clear this is true only for the duration of the Proclamation. As soon as it is revoked, the prohibition at once revives and to that extent the action taken stands repealed. Clause (1) is therefore one instance where it is expressly provided in the Constitution that certain fundamental rights, as specified, may be suspended. To the extent and for the duration that the clause is operative, and within its scope, Article 8(5) therefore ceases to apply.

xxiii) It is to be noted that a Proclamation of Emergency does not, in and of itself, invoke clause (2); a specific Order is required. It can be that a Proclamation is made without an Order under clause (2); the former can exist without the latter but the reverse is not possible. The Order, if made, may be revoked before the Proclamation.

xxiv) Article 8(5) explicitly states that fundamental rights cannot be suspended except as expressly provided in the Constitution. In other words, in respect of the application of this provision, there can be no implication, no matter how "necessary" it may be claimed to be. All that counts, and all that can be taken into consideration, is what the Constitution expressly stipulates. Nothing else can be accepted. It follows from this that while the fundamental rights set out in clause (1) of Article 233 are suspended because the clause expressly so provides, the distinction drawn in terms as above continues to exist, and has always existed, in

relation to clause (2). Even though the right to move a court for the enforcement of fundamental rights may be suspended, the rights themselves are not, and cannot be so regarded. Even if a Proclamation of Emergency is in the field and an Order is made under Article 233(2). Other than the six fundamental rights enumerated in clause (1), the others are not suspended even if such Order is made, because the Constitution does not so provide expressly. There can, in the present context, be no suspension by implication. Furthermore, the fact that some fundamental rights would stand expressly suspended by reason of Article 233(1) is of no moment. Most of the fundamental rights would not be suspended. Clause (5) therefore, would continue to stand athwart the gateway even if an Order is in the field in terms of Article 233(2), and continue to deny the denial of fundamental rights that would result from an application of clause (3)(a).

xxv) Even when the Constitution is operating in the second "mode", i.e., under a Proclamation of Emergency, and even if that Proclamation is "bolstered" by an Order under Article 233(2), clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act would be, and remain, ultra vires the Constitution, on account of the continued protection provided by Article 8(5).

xxvi) At all times prior to the charging of a person (i.e., the civilian) for an offence that falls within either of two sub-clauses of clause (d) of s. 2(1), he is obviously not subject to the Army Act. And so the question: if this is so, then any and all acts done by any authority acting under the Army Act in respect of such person (such as, e.g., seeking to arrest him or obtaining his custody from any other authority, the preparation of a charge sheet, the convening of a court martial, his production before that forum, etc.) would prima facie be unlawful. This is so because then the person would not be subject to the said Act. The Army authorities and any court martial (if one could at all be then convened) would not yet have any jurisdiction. All those acts and proceedings would (and could only) happen within the four corners of the Army Act, which would at that time not be applicable at all.

xxvii) Validating clauses are well known to the law. These clauses are in a sense a special type of deeming clauses. They are enacted when, usually, a Court has given judgment that an act (e.g., the levy of a tax or fee) is unconstitutional or illegal. If at all the defect can be cured, then appropriate legislation is passed, which also has a validating clause making it retrospectively applicable.

xviii) In our view, the answer has to be in the negative. The reason is that it would be contrary to the interpretation of the provision, and the reason for its insertion, as given by the learned Chief Justice. It is only to obviate the objection that could otherwise be taken by an accused that he was not subject to the Army Act when the offence was committed. The narrowness of the applicability is highlighted by the fact that when it was sought to be pressed by the State in respect of the s. 121-A PPC offence, in F.B. Ali the learned Chief Justice was dismissive of the submission. But there is another reason why s. 59(4) cannot be regarded as a validating clause. The rationale on which such a clause is premised is that the law as subsequently enacted could have been in the field at the time the impugned

action was found to be unlawful or unconstitutional, and therefore it could be given retrospective effect to validate what was done. But that can never be true of an offence under the clause (d) provision. A civilian would always not be subject to the Army Act when the offence under either of the two sub-clauses was committed. That, of a necessity, had to come later, when he stood charged. The only way for the two to be combined would be to, in effect, provide that a civilian is always subject to the Army Act, a conclusion that cannot be accepted, and one which was firmly rejected by the Court in F.B. Ali itself. Section 59(4) allowed the Army Act to pull itself up by its own bootstraps but only to a limited extent. In any case, it would be highly inappropriate to so construe it as covering, and thereby legitimizing, acts, things and proceedings done prior to the charging for the offence, which would of a necessity be unlawful when done.

xxix) Civilians could be charged for an offence under either of the two sub-clauses by and before a forum (being a Court of competent jurisdiction) outside of, and externally to, the Army Act. Once so charged, they would then become subject to the Army Act, and all actions and proceedings against them could then be taken within the said statute. To explain the point, we look at each sub-clause of the clause (d) provision separately. Beginning with sub-clause (i) it will be recalled that there are two offences that answer to the description, one under s. 31(d) of the Army Act, and the other s. 131 of the Penal Code. Now, if it is alleged that a civilian has committed an offence under the latter section, then he would be subject to the jurisdiction of a Court of criminal jurisdiction in terms of the ordinary law of the land. He would be investigated, and if a case is made out challaned and be brought before that Court. All of this would of course happen outside of, and without reference to, the Army Act. When so brought before the Court, and on it being satisfied that there was a case to answer, the civilian would then be charged. On such charge the civilian would stand accused of the necessary offence as would, per F.B. Ali, make him subject to the Army Act. Then, action and proceedings could be taken against him in relation thereto, such as his being handed over to the Army authorities, the convening of a court martial and trial before it. As sub-clause (i), so sub-clause (ii). It will be recalled that here the offence has to be one under the Official Secrets Act, 1923 ("1923 Act"). Again, as before, the civilian alleged to have committed an offence that fits the description given in sub-clause (ii) would be dealt with in the manner provided for under the ordinary law of the land. Ultimately, he would be brought before the competent Court having jurisdiction in respect of the 1923 Act, which could then charge him for the offence. All acts done and proceedings taken against the civilian prior to the charge would be lawful. Once so charged the civilian would become subject to the Army Act by reason of the clause (d) provision and then the ensuing acts and proceedings required under that Act could be taken.

Conclusion: i) There are two primary modes in which Constitution operates. First is default mode (peace time) and second is when there is in force proclamation of Emergency. Whereas third mode is when the Federal Government, in lawful

exercise of its powers under Article 245, has called upon the Armed Forces to act in aid of civil power, or the Armed Forces are, under the directions of said Government, defending Pakistan against external aggression or threat of war.

ii) Sub-clause (i) does not identify any statute as such. It only gives a description of the offence. Therefore in principle any statute which creates an offence the ingredients or elements of which match the description could result in the civilian becoming subject to the Army Act.

iii) Firstly, not only must the offence be under the 1923 Act, its ingredients or elements must also fit the description given in the sub-clause. Any other offence, if committed by a civilian, would not make him subject to the Army Act. Secondly, if there is any other statute that creates an offence the ingredients or elements of which match the description, such offence, if committed by a civilian, would not make him subject to the Army Act.

iv) In practice, the principal consequence ensuing from such subjection is that he becomes liable to be tried for the relevant offence by court martial under the Army Act.

v) A necessary implication of F.B. Ali is that courts martial, and the military justice system, are within the scope of the legislative competence of entry No. 1; and that conclusion is in line with Muhammad Yusuf, as revealed by the historical analysis.

vi) Yes, courts martial as presently conceived and understood for historical reasons stand outside the framework of Article 175 and cannot be constitutionally attacked or challenged with reference thereto.

vii) The genesis of Article 8(3)(a) lies in the well-recognized fact that given the peculiar nature of the tasks that must be performed, in particular and especially, by members of the Armed Forces but also by certain other agencies, it is infeasible to allow them, in the context of the performance of their duties, to enjoy the benefit of fundamental rights. But the peculiarities of that service require derogation from what is otherwise their birthright, as a fundamental and constituent aspect of the Constitution.

viii) See under analysis no. viii.

ix) Each of the Constitutions enacted and adopted post-Independence had a provision similar to Article 8(3)(a). But none of them had the equivalent to clause (5).

x) The first two clauses are engaged when the assault on fundamental rights is indirect; the fifth when the rights are directly under attack. If these clauses are the guardians and guarantors of fundamental rights, then clause (5) is the guardian and guarantor of the clauses themselves. The role of clause (5) is both situational and positional. It protects fundamental rights, and thus those in whom the rights inhere, by standing sentinel over the whole of the legal landscape. Clause (5) approaches, and protects, fundamental rights in a collective sense.

xi) The protection afforded by clause (5) is not just when a breach has actually occurred. It is also anticipatory, i.e., it acts to prevent a breach occurring at all in the first place.

xii) See above under analysis no. xii.
xiii) It is clear that clause (3)(a) on the one hand and clause (5) on the other stand not just in contrast but in direct opposition.
xiv) No law, whether existing or one minted under the present Constitution, can defeat the protections provided by clause (5). No matter whether these provisions were "insertions" or "provisions". Either way, they are ultra vires the present Constitution, with particular reference and regard to clause (5) of Article 8.
xv) No matter how many rights are granted by the Army Act and the 1954 Rules and howsoever many more rights are piled on top of those, their essence cannot be altered.
xvi) It must be clearly understood that the existence of a legislative competence and the (constitutional) ability to exercise it are not necessarily coterminus.
xvii) A law, such as clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act provisions, cannot now be made without passing through the sieve of Article 8(5), and that would be equally true for an existing law or one sought to be made under this Constitution.
xviii) The interpretation which effectively splits Article 8(3)(a) into standalone portions is incorrect approach. It is one whole, which has to be interpreted and applied holistically. Any other approach would mean that the provision ceases to be an ouster clause that has to be interpreted and applied strictly.
xix) the correct approach is that the provision applies (as presently relevant) to a law relating to members of the Armed Forces for achieving either (or both) of the stated purposes, to the extent and in the manner that such purpose(s) cannot be achieved without such a law. It is only in this way that the rationale for Article 8(3)(a)—the complete and immediate denial of fundamental rights—is understandable and acceptable.
xx) Civilians cannot directly be dragged into the ambit of Article 8(3)(a) by reason of Article 8(5).
xxi) Section 59(4) of Army Act is in the nature of subsidiary provision and it has no independent or standalone purpose/existence.
xxii) Article 233(1) of constitution becomes applicable of its own force once a Proclamation of emergency is in the field. To the extent and for the duration that the clause is operative, and within its scope, Article 8(5) therefore ceases to apply.
xxiii) It can be that a Proclamation of emergency is made without an Order under clause (2); the former can exist without the latter but the reverse is not possible.
xxiv) Even if a Proclamation of Emergency is in the field and an Order is made under Article 233(2) other than the six fundamental rights enumerated in clause (1), the others are not suspended even if such Order is made, because the Constitution does not so provide expressly.
xxv) On account of the continued protection provided by Article 8(5), even during proclamation of emergency clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act would be ultra vires of Constitution.
xxvi) Arrest of a civilian or seeking his custody etc. by any authority acting under the Army Act prior to charging a person for an offence that falls within either of

two sub-clauses of section 2(1) of Army Act would prima facie be unlawful.

xxvii) These clauses are in a sense a special type of deeming clauses. They are enacted when, usually, a Court has given judgment that an act (e.g., the levy of a tax or fee) is unconstitutional or illegal. If at all the defect can be cured, then appropriate legislation is passed, which also has a validating clause making it retrospectively applicable.

xxviii) Section 59(4) of Army Act cannot be regarded as a validating clause thereby covering the prior (illegal) acts done in relation to the civilian who is charged for an offence before a court martial.

xxix) Civilians could be charged for an offence under either of the two sub-clauses by and before a forum (being a Court of competent jurisdiction) outside of, and externally to, the Army Act. Once so charged, they would then become subject to the Army Act, and all actions and proceedings against them could then be taken within the relevant statute.

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2. **Additional Note**

Supreme Court of Pakistan
Jawwad S.Khawaja etc. v. Federation of Pakistan etc.
Constitution Petition Nos.24, 25, 26, 27 & 28 and 30 of 2023
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_f.pdf

Issues:

i) What is meant by matter of public importance affecting fundamental rights for exercise of power by Supreme Court under Article 184(3) of Constitution?

ii) Whether provisions of Article 184(3) of Constitution are affected by provisions of Article 199 of Constitution and in case of availability of remedy under Article 199, a party cannot directly approach Supreme Court?

iii) What sections 2 and 59(4) of Army Act prescribe?

iv) Whether right to fair trial is available in administrative proceedings?

v) What is the basic ingredient for fair trial in the light of Article 10A of Constitution and whether right to fair trial is imperative for determination of civil rights or a criminal charge?

vi) Whether right to fair trial and due process were recognized before the insertion of Article 10-A of Constitution?

vii) What is ultimate objective of right to fair trial?

viii) Whether right to fair trial is embodied in Pakistan International commitments and requires adherence?

ix) Whether military trial lacks impartiality & independence and concept of fairness?

x) Whether military trial of civilians defies the Constitutional command?

xi) Whether Article 8(3) (a) of Constitution can be applied to persons other than those in service of Army?

xii) Whether military trial of civilians is permissible as DBA case did allow trial of civilians by military courts?
xiii) Whether legislative competence is not enough to make valid law or the law must pass the test of constitutionality for it to be enforceable?
xiv) Whether the establishment of military courts can be upheld on the basis of reasonable classification as provided in the F.B Ali case?
xv) What is procedure for referral of an accused person to a trial before a military court in terms of Section 549 of the Cr.P.C. read with Sections 59(4), 94 and 95 of the Army Act?
xvi) Why concept of past and closed transactions was evolved?
xvii) Whether Federation can rely on military courts on the ground that ordinary courts are neither effective nor efficient?
xviii) Whether fundamental rights can be sacrificed simply because it is deemed expedient?

Analysis: i) This Court has interpreted Article 184(3) of the Constitution in the context of public importance and fundamental rights to mean that both are preconditions to the exercise of power under Article 184(3) of the Constitution which should not be interpreted in a limited sense but in the gamut of Constitutional rights and liberties, such that their protection and breach would raise serious questions of public importance related to the enforcement of fundamental rights and it would not be relevant that the issue arises in an individual's case or in a case pertaining to a class or group of persons. It has also been held that matters of public importance raise questions that are of interest to or affect a large body of people or the entire community and must be such to give rise to questions affecting the legal rights and liabilities of the community, particularly where the infringement of such freedom and liberty is concerned which would become a matter of public importance.
ii) The provisions of Article 184(3) of the Constitution are self-contained and they regulate the jurisdiction of this Court on its own terminology such that it is not controlled by the provisions of Article 199 of the Constitution… there is no bar on the Petitioners to first avail the remedy before the High Court given that the only requirement to determine the maintainability of the Petitions before this Court is to consider whether the questions raised are of public importance and with reference to the enforcement of fundamental rights… if the arguments of the AGP were to be accepted it would be mean that this Court would have to construe Article 184(3) of the Constitution in a narrow sense recognizing that in the first instance a petitioner should avail the remedy before the High Court. It will also negate the established jurisdiction of this Court under Article 184(3) of the Constitution which has wide and vast powers when it comes to questions of public importance with reference to the enforcement of fundamental rights as conferred by the Constitution.
iii) Section 2 thereof prescribes mainly for persons who are subject to the Act. The Act relates to army personnel however Sub-section (d) was added to Section

2 of the Army Act, and added persons who are otherwise not subject to the Army Act, making them subject to the Act. At the same time, Section 59(4) of the Army Act was also added25 to also include persons not otherwise subject to the Army Act making them liable to face military trial for the offences set out in Section 2(d) of the Army Act.

iv) With the incorporation of Article 10A in the Constitution by the Eighteenth Amendment in 2010, the right to fair trial and due process has become a fundamental right for every person not only in judicial proceedings but also in administrative proceedings.

v) The basic ingredients for a fair trial in the light of Article 10A of the Constitution as enumerated by this Court are that there should be an independent, impartial court, a fair and public hearing, right of counsel, right to information of the offence charged for with an opportunity to cross-examine witnesses and an opportunity to produce evidence. It also includes the right to a reasoned judgment and finally the remedy of appeal. For the determination of either civil rights or a criminal charge, the right to a fair trial and due process is imperative and absolutely necessary. By incorporating Article 10A in Part II Chapter I of the Constitution fair trial and due process are indispensable for every person and it cannot be violated, interfered with or breached by any person including the government.

vi) In fact, even before the insertion of Article 10A of the Constitution the right to fair trial and due process were recognized such that the right to one appeal before an independent forum was declared as a necessary right that must be available to a person. Further under Article 4 of the Constitution being the right to be treated in accordance with law, the right of access to justice, the right of fair trial and the right to due process from an independent forum have been recognized as fundamental rights even prior to the insertion of Article 10A of the Constitution.

vii) The ultimate objective is to ensure fairness in the process and proceedings and fairness itself being an evolving concept cannot be confined to any definition or frozen at any moment, with certain fundamentals which operate as constants. The independence of the decision maker and their impartiality is one such constant. A reasoned judgment before a judicial forum is another constant without which the right to fair trial would become meaningless. The right of an independent forum of appeal is another relevant constant which ensures fair trial.

viii) Fair trial standards have global recognition and acceptability as being the minimum requirement for a person facing a trial. These have now become global truths accepted as being fundamental to human dignity and life. The Universal Declaration of Human Rights prescribes in Article 10 that everyone is entitled to fair and public hearing by an independent and impartial tribunal for the determination of rights and obligations and against any criminal charge. The various elements of fair trial under the ICCPR also found in the UDHR include rights such as access to justice, public hearing, right to representation, to be able communicate privately, freely and confidentially with counsel. The right to call witnesses, cross-examine them and to get a reasoned judgment against which the

right of appeal is available are also considered mandatory without which this fundamental guarantee of fair trial, rule of law and due process becomes illusionary. The European Convention on Human Rights (ECHR) also provides that a fair and public hearing in civil and criminal cases by an independent and impartial tribunal is fundamental to the right of fair trial which includes the right to be informed of the charge against him, the right to defence, to legal assistance and to the presumption of innocence in a criminal case. The right to receive a fair trial is also recognized in the First Protocol of the Geneva Convention. So the right to fair trial not only enjoys constitutional safeguards being a fundamental right but it is also embodied in Pakistan's international commitments which must be adhered to.

ix) On examining the Rules, it appears that the presiding officers in a military court are serving members of the military who in terms of Rule 51 of the Rules are not required to give a reasoned judgment rather merely record a finding of "guilty or not guilty" against every charge. There is no independent right of appeal against such a verdict as Section 133 of the Army Act provides that no remedy of appeal shall lie against any decision of a court martial save as provided under the Army Act. Section 133B prescribes for an appeal to the court of appeals consisting of the Chief of Army Staff or one or more officers designated by him or a Judge Advocate who is also a member of the armed forces. Rule 26 permits the suspension of the rules on the grounds of military exigencies or the necessities of discipline which means that where in the opinion of the presiding officer convening a court martial or a senior officer on the spot, that military exigencies or discipline renders it impossible or inexpedient to observe some of the Rules then the operation of the Rules can be suspended which in turn means that any limited rights under the Rules such as Rule 13(5), being the right to cross-examine any witness, or Rule 23(1) being the right of preparation of a defence by the accused which includes the right to free communication with witness or friend or legal advisor can be suspended. These are but some of the more glaring issues that arise within a military trial, from which it is clear that there is a lack of impartiality and independence within a military trial and the concept of fairness and due process is missing from the procedure. The basic principle of the independence of the judiciary is that everyone is entitled to be tried by the ordinary courts or tribunals established under the law and the trial of a citizen by a military court for an offence which can be tried before the courts established under Article 175 of the Constitution offends the principles of independence of the judiciary and of fair trial.

x) The military justice system is a distinct system that applies to members of armed forces to preserve discipline and good order. Hence, they are subjected to a different set of laws, rules and procedures which ensures internal discipline and operational effectiveness. The purpose of a separate military justice system is to allow the armed forces to deal with matters pertaining directly to the discipline, efficiency and morale of the military effectively, swiftly and severely so as to ensure control over military personnel. Military jurisdiction covers members of

the armed forces and includes matters related to their service which ensures the proper discharge of their duties and the maintenance of discipline amongst them. This is precisely why the Constitution brings such matters under the exception to Article 8(1)(2) in the form of Article 8(3)(a) of the Constitution which excludes the operation of fundamental rights when it relates to the members of the armed forces who are charged with the maintenance of public order in the discharge of their duties and the maintenance of discipline amongst them. Military trials of civilians on the other hand totally negates the requirement of an independent and impartial judicial forum, hence, it compromises the right to fair trial. Citizens enjoy the protection of fundamental rights under the Constitution and are assured that they will be treated as per law, such that their life and dignity is protected. At the same time, the Constitution commands the legislature to not make law which takes away any fundamental right protected under the Constitution. In this context, the requirement of the Federal Government to try civilians before military courts totally defies the constitutional command and is in derogation to the rights contained in Articles 4, 9, 10A, 14 read with Article 175 of the Constitution.

xi) Article 8(3)(a) of the Constitution provides that Article 8 shall not apply to any law relating to members of the armed forces or the police or such other forces, which in essence means disciplinary forces, charged with the duty of maintaining public order. The law here is one that relates to ensuring the proper discharge of their duties or maintenance of discipline amongst them. What this means is that laws which relate to members of the armed forces with respect to their discipline and the discharge of their duties shall be exempted from the protection of Article 8(1)(2) of the Constitution, meaning that members of the armed forces when faced with issues related to the discharge of their duties or the maintenance of their discipline cannot seek the protection of fundamental right as given in Chapter II of the Constitution. Importantly, Article 8(3)(a) of the Constitution is applicable when two conditions are met, first it must apply to members of the armed forces and second it must relate to the discharge of their duty and maintenance of their discipline. The AGP argued that the Army Act falls within the purview of Article 8(3)(a) of the Constitution which means that persons who are made subject to the Army Act also fall within the purview of Article 8(3)(a) of the Constitution especially if hey disrupt the discipline or discharge of their duty. A similar argument was first made in the F.B Ali case where a similar provision was interpreted being Article 6(3) of the Constitution of 1962 wherein this Court held that the said Article only applies to laws related to members of the armed forces charged with the maintenance of public order, proper discharge of their duties and the maintenance of discipline amongst them. Then again in the Liaquat Hussain case, this Court held that Article 8(3)(a) of the Constitution applied to laws that related to the discipline and discharge of duty of members of the armed forces and did not have nothing to do with the question as to whether civilians could be tried by military courts. Yet again, in the DBA case the majority view interpreted Article 8(3)(a) of the Constitution to hold that the applicable laws

under Article 8(3)(a) of the Constitution are those limited to matters that deal with the discipline amongst the members of armed forces for the proper discharge of their duties and since the DBA case dealt with a Constitutional Amendment being a matter other than those pertaining to discipline or discharge of duties by members of the armed forces it was necessary to protect the law and its amendments by placing the Army Act as amended in 2015 in the First Schedule to the Constitution. Hence, in terms of the judgments of this Court, this argument has failed to persuade the court that Article 8(3)(a) of the Constitution can apply to persons other than those who are in the service of the armed forces.

xii) Important to note is that this Court allowed and upheld the Constitutional Amendment because its operation was for two years and because there was a clear defined classification of persons and offences triable for the two years by military courts. In the words of Azmat Saeed, J. speaking for the majority, this was a temporary measure and does not contemplate a permanent solution because the sunset clauses were effective for a period of two years. Further that the trial of civilians by a court martial is the exception and not the rule. Hence, in response to the AGP's argument that the DBA case did allow trial of civilians by military courts, it is important to understand that it was a Constitutional Amendment which made such trials possible that to as a temporary measure, to try terrorists accused of offences of waging war against Pakistan. The ability to try civilians in military courts required a constitutional amendment and was not possible through ordinary legislation. Hence, even though at the time Section 2(1)(d) of the Army Act existed, Constitutional Amendment was necessary to ensure that those subjected to military trials pursuant to the Constitutional Amendment cannot invoke any fundamental right especially Article 10A of the Constitution.

xiii) Legislative competence is not enough to make valid law, the law must pass the test of constitutionality for it to be enforceable. Fundamental rights as prescribed in Part II Chapter I of the Constitution are sacred rights which can neither be treated lightly nor in a casual or cursory manner rather while interpreting fundamental rights the court must always keep in mind that no infringement or curtailment of any right can be made unless it is in accordance with the Constitution. These rights can be reasonably restricted, however, they are to be protected by the courts so as to ensure that citizens are protected from arbitrary exercise of power. The Constitution treats fundamental rights as superior to ordinary legislation which is clearly reflected in Article 8(1)(2) and (5) of the Constitution being that fundamental rights exist at a higher pedestal to save their enjoyment from legislation infractions.

xiv) Although, the vires of the impugned sections were previously challenged in the F.B Ali case, the grounds for challenge today are totally different and specifically with reference to the fundamental right to fair trial under Article 10A of the Constitution and the right to an independent judiciary. Where a law has been challenged with reference to it being in derogation to fundamental rights or any constitutional command such a law has to be declared unconstitutional and ultra vires the Constitution. The trial of civilians before military courts was

challenged in the Liaquat Hussain case wherein the vires of the 1998 Ordinance was under challenge on the ground that it is violative of a constitutional provision. The 1998 Ordinance was struck down as this Court concluded that trial of civilians by military courts would be violative of the Constitution because citizens have the right to access to justice through forums envisioned under Article 175 of the Constitution which ensures and guarantees the enforcement of all fundamental rights especially the right to fair trial and due process. In the opinion of one of the Judges to the Liaquat Hussain case, military courts do not fall under any provisions of the Constitution, therefore, trial by military courts of civilians, for civil offences which have no direct nexus with the armed forces or the defence of Pakistan would be ultra vires the Constitution. Thus, the establishment of military courts cannot be upheld on the basis of reasonable classification as provided in the F.B Ali case... The establishment of military courts for such offences amounts to a parallel justice system which is contrary to the judicial system established under the Constitution and the law. The Liaquat Hussain decision focused on the forum established in terms of Article 175 of the Constitution and concluded that any other forum which seeks to try civilians for offences triable in the ordinary courts of the country will be contrary to Article 175 and is unconstitutional because every citizen enjoys the right to access to justice by an independent judiciary as contemplated under Article 175 of the Constitution.

xv) The referral of an accused person to a trial before a military court is in terms of Section 549 of the Cr.P.C. read with Sections 59(4), 94 and 95 of the Army Act. The criminal court having jurisdiction over the matter is obligated to form a reasoned opinion as to whether an accused person is to be tried by a military court because the transfer from the ordinary court to the military court for trial amounts to the loss of the right to fair trial and due process as well as the right to independent forum. This places a heavy burden on the Magistrate under Section 549 Cr.P.C. to protect the rights of the accused before it as the Magistrate must satisfy itself that the accused is subject to the Army Act and can only be tried before a military court. From the documents placed before this Court the denial of a reasoned order by the Magistrate is in fact the start of the process which is in contravention to the law as well as denial of the fundamental right of fair trial and due process for the detained citizens.

xvi) The concept of past and closed transactions was evolved to safeguard accrued and vested rights of parties under a statute which subsequently were found and declared to be ultra vires the Constitution.

xvii) If the ordinary or special courts are unable to meet the challenges of trying the civilians detained in these cases then the solution is to make an effort to strengthen the system. Relying on military courts on the ground that the ordinary courts are neither effective nor efficient reflects poorly on the State and the government whose primary responsibility is to maintain the rule of law and to ensure a strong and effective justice sector for the people. The Federation cannot blame a system it is responsible for and thereafter subject citizens to a system that violates their fundamental rights.

xviii) Fundamental rights cannot be sacrificed simply because it is deemed expedient.

Conclusion: i) Matters of public importance raise questions that are of interest to or affect a large body of people or the entire community and must be such to give rise to questions affecting the legal rights and liabilities of the community, particularly where the infringement of such freedom and liberty is concerned which would become a matter of public importance.

ii) The provisions of Article 184(3) of the Constitution are self-contained and they regulate the jurisdiction of this Court on its own terminology such that it is not controlled by the provisions of Article 199 of the Constitution. There is no bar on the Petitioners to first avail the remedy before the High Court given that the only requirement to determine the maintainability of the Petitions before this Court is to consider whether the questions raised are of public importance and with reference to the enforcement of fundamental rights.

iii) See under analysis no. iii.

iv) The right to fair trial and due process is a fundamental right for every person not only in judicial proceedings but also in administrative proceedings.

v) The basic ingredients for a fair trial in the light of Article 10A of the Constitution as enumerated by this Court are that there should be an independent, impartial court, a fair and public hearing, right of counsel, right to information of the offence charged for with an opportunity to cross-examine witnesses and an opportunity to produce evidence. It also includes the right to a reasoned judgment and finally the remedy of appeal. The right to fair trial is imperative and very necessary for determination of civil rights or a criminal charge.

vi) Right to fair trial and due process were recognized even before the insertion of Article 10-A of Constitution.

vii) The ultimate objective is to ensure fairness in the process and proceedings.

viii) The right to fair trial not only enjoys constitutional safeguards being a fundamental right but it is also embodied in Pakistan's international commitments, which must be adhered to.

ix) There is a lack of impartiality and independence within a military trial and the concept of fairness and due process is missing from the procedure.

x) Trial of civilians before military courts totally defies the constitutional command and is in derogation to the rights contained in Articles 4, 9, 10A, 14 read with Article 175 of the Constitution.

xi) Article 8(3) (a) of Constitution cannot be applied to persons other than those in service of Army.

xii) Military trial of civilians is not permissible because DBA case did allow trial of civilians by military courts.

xiii) Legislative competence is not enough to make valid law, the law must pass the test of constitutionality for it to be enforceable.

xiv) The establishment of military courts cannot be upheld on the basis of reasonable classification as provided in the F.B Ali case.

xv) See above under analysis no. xv.
xvi) The concept of past and closed transactions was evolved to safeguard accrued and vested rights of parties under a statute, which subsequently were found and declared to be ultra vires the Constitution.
xvii) Federation cannot rely on military courts on the ground that ordinary courts are neither effective or efficient.
xviii) Fundamental rights cannot be sacrificed simply because it is deemed expedient.

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3. **Dissenting Note**

Supreme Court of Pakistan
Jawwad S.Khawaja etc. v. Federation of Pakistan etc.
Constitution Petition Nos.24, 25, 26, 27 & 28 and 30 of 2023
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_f.pdf

Issues: i) Whether Supreme Court ought to exercise restraint in positive exercise of its jurisdiction in case High Court has concurrent jurisdiction?
ii) Whether bench of Supreme Court can deviate from earlier view of bench of co-equal strength?
iii) If in a bench consisting of seventeen members, decision is given by majority of eight judges, whether any view contrary to such view ought to be taken by nine judges?

Analysis: i) In *Manzoor Elahi* Case, it was settled that where the High Court u/A 199 of Constitution and Supreme Court u/A 184(3) of Constitution have concurrent jurisdiction, the Supreme Court is to exercise restraint in positive exercise of its jurisdiction, in case any of High Courts has already taken cognizance of the matter under Article 199 of Constitution. *In Benazir Bhutto* Case titled as PLD 1988 SC 416, an exception was made to strict adherence to the practice of Supreme Court on the prolonged delay of over one year and eight months before High court. When no similar subject matter is pending before any of the High Court under Article 199 of Constitution, both the principles set out in Ch. *Manzoor Elahi* case and the exceptions to the general principle provided in Benazir Bhutto case are not attracted and Supreme Court can entertain the lis and proceed with the matter.
ii) It is well settled principle that an earlier judgment of a bench of Supreme Court is binding not only on the Benches of smaller numerical strength but also on the benches of co-equal strength. A bench of Supreme Court cannot deviate from earlier view held be a co-equal bench of Supreme Court. If a contrary view has to be taken, the proper course is to request for the constitution of a larger bench to reconsider the earlier view.

iii) I am of the considered opinion that, though the view expressed by eight Judges, as voiced by Sh. Azmat Saeed J. in his opinion, being not the view of the majority, cannot be treated as the decision of the seventeen-member Bench that heard and decided *District Bar case*, the judicial discipline and propriety demand that, any view contrary to the view of eight Judges should only be taken by a Bench of more than eight Judges. That is why, I have stated above that it would have been more appropriate if this case had been heard and decided by a Bench of nine Judges, as originally constituted.

Conclusion: i) When no similar subject matter is pending before any of the High Court under Article 199 of Constitution, both the principles set out in *Ch. Manzoor Elahi* case and the exceptions to the general principle provided in Benazir Bhutto case are not attracted and Supreme Court can entertain the lis and proceed with the matter.
ii) A bench of Supreme Court cannot deviate from earlier view held be a co-equal bench of Supreme Court. If a contrary view has to be taken, the proper course is to request for the constitution of a larger bench to reconsider the earlier view.
iii) If in a bench consisting of seventeen members, decision is given by majority of eight judges, then any view contrary to such view ought to be taken by nine judges.

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4. **Supreme Court of Pakistan**
Sohail Ahmed v. Mst. Samreena Rasheed Memon and another
Civil Petition No. 488-K of 2023 and 489-K of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._488_k_2023.pdf

Facts: Through these petitions, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has challenged the order dated passed by learned Single Judge of High Court whereby two Constitutional petitions filed by him were dismissed.

Issues: i) Whether family courts in Pakistan have jurisdiction to entertain the case when plaintiff/wife is dual citizen of Pakistan and USA at the time of institution of suit and her husband is permanent resident of Pakistan?
ii) Where did the wisdom come from while introducing the amendment in Family Court Act, 1964 by the legislature and how it empower the Family Court?
iii) What is legal obligation of Family Court under sections 10(3) and 10(4)?

Analysis: i) In the present case, although the Respondent is living in the USA at the time of the institution of the suit through her duly constituted attorney. However, the respondent usually comes to Pakistan; have acquired her education in Karachi and visits her family in Karachi from time to time. By this proviso, the rigour of normal rule providing for territorial jurisdiction for trial of cases in Family Court have been relaxed in favour of female filing a suit for dissolution of marriage or recovery of dower. The words "Ordinarily resides" and "shall also have

jurisdiction" used in proviso demonstrate the intention of parliament is to facilitate things for the wife and off-set her handicap. Therefore, the option of instituting such suits vests with the wife and the Court is bound to take her convenience subject to law. Hence, Family Courts in Pakistan have jurisdiction to entertain the matter and the trial court has rightly exercised so.

ii) The Legislature while introducing amendment in the Family Court Act, 1964 has derived wisdom from Quran and Sunnah. Islam confers the right of Khula to woman by virtue of which a Muslim woman can get herself released from the bond of marriage if she feels, due to any reason, that she could not live with her husband within the limits prescribed by Allah Almighty. The right and mode of "Khula" has been described by Almighty Allah in verse No. 229 of Surah Baqra… The proviso to section 10 empowers the Family Courts to pass a preliminary decree for the dissolution of Marriage forthwith upon the failure of reconciliation and further provides that wife shall be ordered to return the Haq Mehr received by her.

iii) Section 10(3) imposes a legal obligation on the Family Courts to make a genuine attempt for reconciliation between the parties. Trial Court shall remain instrumental and make genuine efforts in resolving the dispute between the parties. In case if despite of genuine efforts, reconciliation fails, the Trial Court under proviso of section 10(4), without recording evidence is empowered to pass a decree of dissolution of marriage forthwith. At this juncture if the court observes that the wife without any reason is not willing to live with her husband, then under proviso (ibid) the Court is left with no option, but to dissolve the marriage. Islam does not force on the spouses a life devoid of harmony and happiness and if the parties cannot live together as they should, it permits a separation.

Conclusion: i) When plaintiff/wife is dual citizen of Pakistan and USA at the time of institution of suit the option of instituting such suits vests with the wife and the Family Court is bound to take her convenience subject to law as per words "Ordinarily resides" and "shall also have jurisdiction" used in proviso.

ii) The Legislature while introducing amendment in the Family Court Act, 1964 has derived wisdom from Quran and Sunnah. The proviso to section 10 empowers the Family Courts to pass a preliminary decree for the dissolution of Marriage forthwith upon the failure of reconciliation and to order wife to return the Haq Mehr received by her.

iii) Section 10(3) imposes a legal obligation on the Family Courts to make a genuine attempt for reconciliation between the parties. In case, if despite of genuine efforts, reconciliation fails, the Trial Court under proviso of section 10(4), without recording evidence is empowered to pass a decree of dissolution of marriage forthwith.

5. **Lahore High Court**
Muhammad Sarwar v. The State & another
Criminal Appeal No. 56707 of 2019,
Asad Aslam v. The State & 02 others
Criminal Appeal No. 50403 of 2019,
The State v. Muhammad Sarwar
Murder Reference No. 275 of 2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6917.pdf

Facts: By single judgment, Criminal Appeal filed by appellant against his conviction & sentence, Criminal Appeal filed by complainant against the acquittal of respondent Nos. 2 & 3 and Murder Reference sent by the learned trial Court for confirmation or otherwise of the sentence of Death awarded to appellant were decided.

Issues: i) Whether withholding any witness by prosecution is always fatal to prosecution case?
ii) Whether eye witness is required to give photo picture of the occurrence?

Analysis: i) Prosecution has withheld their evidence and as such, an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, may be drawn against the prosecution but it is noteworthy that it is the quality and not the quantity of evidence which weighs with the Courts regarding the decision of a criminal case therefore, non-production of the aforementioned gardeners of the ground in the witness box is not fatal to the prosecution case. (…) it is by now well settled that the people/witnesses not related to the deceased/complainant party do not appear in the witness box to avoid enmity with the accused party and their non-appearance in the witness box is not fatal to the prosecution case.
ii) Under the circumstances, there was every possibility that one out of the two additional fire shots made by the appellant, had hit the deceased but the same could not be noticed by the prosecution eye witnesses due to the falling of the deceased on the ground, as well as, on account of sensation & panic created due to the firing of the appellant. It is by now well settled that an eye witness cannot give the photo picture of each and every injury sustained by the deceased due to the panic & sensation developed at the time of occurrence due to the firing of the accused.

Conclusions: i) An adverse inference within the meaning of Article 129(g) of Qanun-e-Shahadat Order, 1984 can be drawn for non-production of witness, however, it is the quality and not the quantity of evidence which weighs and non-production of witness is not always fatal to the prosecution case
ii) Eye witness cannot give the photo picture of each and every injury sustained by the deceased due to the panic & sensation developed at the time of occurrence due to the firing of the accused.

6. **Lahore High Court**
Haq Nawaz v. The State & another
Criminal Appeal No.64474 of 2022
The State v. Haq Nawaz
Murder Reference No.248 of 2022
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6967.pdf

Facts: This criminal appeal filed by appellant against his conviction and sentence and murder reference sent by the trial Court for confirmation or otherwise of the death sentence of appellant.

Issues: i) What is the effect of delay in lodging the FIR and conducting the post-mortem examination of the dead body?
ii) What if the best evidence has been withheld by the prosecution?
iii) Whether mere recovery of dead-body from the house of an accused is sufficient to convict and sentence him under the capital charge?
iv) Whether a single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused?

Analysis: i) The delay in lodging the FIR and conducting the post-mortem examination on the dead body of the deceased is suggestive of the fact that the occurrence was unseen and the said delays were consumed in procuring the attendance of fake eye witnesses.
ii) The best evidence has been withheld by the prosecution therefore, an adverse inference within the meaning of Article 129(g) of Qanun-e-Shahadat Order, 1984 can validly be drawn against the prosecution that the witnesses produced in the witness box their evidence would have been unfavourable to the prosecution.
iii) It is by now well settled that mere recovery of dead-body from the house of an accused by itself is not sufficient to convict and sentence him under the capital charge in absence of other convincing and reliable corroborative evidence.
iv) It is by now well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubts about the truthfulness of the prosecution story.

Conclusion: i) See above in analysis clause.
ii) An adverse inference within the meaning of Article 129(g) of Qanun-e-Shahadat Order, 1984 can validly be drawn against the prosecution.
iii) Mere recovery of dead-body from the house of an accused is not sufficient to convict and sentence him under the capital charge.
iv) A single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

7. **Lahore High Court**
Muhammad Rafique & another v. The State & another.
Criminal Appeal No. 5537 of 2022
The State v. Arshad Ali & another
Murder Reference No. 14 of 2022
Mr. Justice Malik Shahzad Ahmad Khan, Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6928.pdf

Facts: Criminal Appeal filed by appellants as well as Murder Reference sent by the learned trial Court for confirmation or otherwise of the sentence of death awarded to appellants in private complaint in respect of offences under Sections 302/364/147 and 149 of the Pakistan Penal Code, 1860 are disposed of by this single judgment as both these have arisen out of the same judgment.

Issues: i) What will be the status of the statement of an accused under Section 342 of the Criminal Procedure Code, 1898, depicting a different stance regarding occurrence, when the prosecution evidence is disbelieved by the court?
ii) Whether the amendment brought in Section 311 of the Pakistan Penal Code, 1860, has retrospective effect?

Analysis: i) When the court has disbelieved the prosecution evidence qua ocular account and recovery of murder weapon however the appellant, while making his statement under Section 342 of the Criminal Procedure Code, 1898, has candidly admitted the occurrence with a different stance, then his statement is to be accepted or rejected in toto.
ii) When the occurrence took place prior to the amendment brought in Section 311 of the Pakistan Penal Code, 1860 providing punishment of imprisonment for life for commission of murder in the name or on pretext of honor then said amendment cannot be applied retrospectively.

Conclusion: i) If the prosecution evidence is disbelieved by the court then the statement of an accused recorded under Section 342 of the Criminal Procedure Code, 1898 is to be accepted or rejected in toto.
ii) The amendment brought in Section 311 of the Pakistan Penal Code, 1860, has no retrospective effect.

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8. **Lahore High Court**
Imran Ali v. The State etc.
Criminal Appeal No.68692-J of 2020
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6950.pdf

Facts: Through this criminal appeal the appellant has assailed his conviction and sentence in case F.I.R. registered, in respect of offences under sections 302/311 PPC.

Issues: i) Whether delay in lodging the FIR and conducting the postmortem examinations

of deceased is suggestive that the time consumed in procuring the attendance of fake eye witnesses in unseen occurrence?
ii) Whether unnatural conduct of the witnesses at the spot of occurrence amounts that their evidence is unworthy of reliance?
iii) Whether delayed recovery of blood stained dagger on the pointation of accused is believable, when he had sufficient time to clean the blood on it?
iv) Whether delay in transmission of blood stained dagger to the forensic science lab is fatal for prosecution?
v) Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused?

Analysis: i) Delay in lodging the FIR and conducting the postmortem examinations on the dead body of the deceased is suggestive of the fact that the occurrence was unseen and the said delay were consumed in procuring the attendance of fake eye witnesses(…)
ii) When the complainant party was comprising of at least 3/4 male adult members. They were also accompanied by other female members and people of the area at the time of occurrence but they did not try to save deceased at the time of occurrence or to apprehend the accused after the occurrence. They allowed the accused to commit the murder of deceased, by inflicting, as many as, 11-injuries on her body. Deceased was real daughter of the complainant and sister-in-law of PW. The accused was not armed with any formidable firearm weapon and he was only armed with a Churri. Then it is evident from the perusal of the evidence of the prosecution eye-witnesses that they stood like silent spectators at the time of occurrence. Had the abovementioned eyewitnesses been present at the spot at the time of occurrence as claimed by them then they could have saved deceased or at least apprehended the accused after the occurrence. Their conduct is unnatural thus their evidence is not worthy of reliance… Under the circumstances, it cannot be safely held that the abovementioned eye witnesses were present at the spot at the relevant time and they had witnessed the occurrence because their conduct is highly unnatural(…)
iii) When the occurrence took place twenty four days before recovery of‘Churri’ on the pointation of the accused from his house and during such period,accused had ample opportunity to wash way the blood on ‘Churri’. In the light of above, recovery of blood stained ‘Churri’ on the pointation of accused is not free from doubt(…)
iv) The blood stained ‘Churri’was sent to the office of Punjab Forensic Science Agency, after one month and thirteen days from the occurrence, therefore, it was unlikely that the blood on ‘Churri’ would not disintegrate during the above mentioned period…The evidence of alleged recovery of ‘Churri’ from accused and positive report of Punjab Forensic Science Agency are of no avail to the prosecution(…)
v) It is by now well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of

doubt to the accused.

Conclusion: i) Yes, delay in lodging the FIR and conducting the postmortem examinations of deceased is suggestive that the time consumed in procuring the attendance of fake eye witnesses in unseen occurrence.
ii) Yes, unnatural conduct of the witnesses at the spot of occurrence amounts that their evidence is unworthy of reliance.
iii) Delayed recovery of blood stained dagger on the pointation of accused is not believable, when he had sufficient time to clean the blood on it.
iv) Yes, delay in transmission of blood stained dagger to the forensic science lab is fatal for prosecution.
v) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused.

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9. **Lahore High Court**
Qasim Ali v. The State
Crl. Appeal No.80274-J of 2022
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6940.pdf

Facts: Appellant was tried in case F.I.R in respect of offence under section 302 PPC and vide impugned judgment, passed by learned Additional Sessions Judge, he has been convicted and sentenced. Through this Criminal Appeal, appellate assailed his conviction and sentence.

Issues: i) Where the chance witness cannot prove any valid reason of his presence at the place of occurrence at the relevant date and time, whether his very presence at the spot at the relevant time becomes doubtful?
ii) Whether the delay in conducting the postmortem examination on the dead body of the deceased without plausible explanation is suggestive of the fact that the occurrence was unseen and the delay was consumed in procuring the attendance of fake eye witnesses?
iii) Whether the prosecution evidence can be disbelieved on account of its conflict with the medical evidence regarding the number/nature of injuries sustained by the deceased?

Analysis: i) As the abovementioned eye-witnesses are not residents of the village where the occurrence took place hence they are chance witnesses, therefore, their presence at the spot at the relevant time without establishing any convincing reason for their presence at the spot at the relevant time, is not free from doubt. As the above mentioned prosecution eye-witnesses are chance witnesses and they could not prove any valid reason of their presence in the village of occurrence at the relevant date and time, therefore, their very presence at the spot at the relevant time becomes doubtful.
ii) No plausible explanation has been given by the prosecution that as to why the

dead body was brought to the hospital and post mortem examination was conducted with such a delay of about nine hours from the occurrence. The abovementioned delay in conducting the postmortem examination on the dead body of the deceased is suggestive of the fact that the occurrence was unseen and the delay was consumed in procuring the attendance of fake eye witnesses.

iii) It is further noteworthy that there is conflict between the ocular account and medical evidence of the prosecution. In the contents of the FIR, complainant alleged that the appellant gave two brick bat blows which landed on the head and chest of deceased whereas in the post mortem report and pictorial diagrams there is only one injury on the head of the deceased. No injury on the chest of the deceased was noted by the concerned Medical Officer. It is further noteworthy that both the eye witnesses, stated before the learned trial Court that the appellant inflicted one brick bat blow on the head and three/four brick bat blows on the chest and shoulder of deceased. They were duly confronted with their previous statements and improvements made by them in this respect were duly brought on the record. It is therefore, evident that there was conflict between ocular account and medical evidence of the prosecution regarding the number of injuries sustained by deceased, as mentioned in the contents of the FIR and as mentioned by the prosecution eye witnesses before the learned trial Court and as noted in the post mortem report. Moreover, the prosecution witnesses made improvements in their statements while appearing before the learned trial Court regarding the number of injuries sustained by the deceased on his chest and shoulder and their improved statements was also in conflict with the medical evidence, therefore, their evidence is not worthy of reliance.

Conclusion: i) Where the chance witness cannot prove any valid reason of his presence at the place of occurrence at the relevant date and time, his very presence at the spot at the relevant time becomes doubtful.

ii) The delay in conducting the postmortem examination on the dead body of the deceased without plausible explanation is suggestive of the fact that the occurrence was unseen and the delay was consumed in procuring the attendance of fake eye witnesses.

iii) The prosecution evidence can be disbelieved on account of its conflict with the medical evidence regarding the number/nature of injuries sustained by the deceased.

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10. **Lahore High Court**
Rafaqat Ali v The State
Criminal Appeal No. 36587 of 2019
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6893.pdf

Facts: Criminal Appeal was filed against conviction and sentence passed by learned trial court under sections 302/147/149 of PPC.

Issues: (i) Effect of delay in lodging of FIR?
(ii) Effect of delay in conducting the post mortem?
(iii) Significance of the conduct of the witnesses of ocular account?
(iv) Effect of conflict between ocular account and the medical evidence?
(v) Effect where motive not proved?
(vi) Effect where recovery made on joint disclosure and pointation?
(vii) Whether the determination of guilt or innocence of accused is the exclusive domain of only the courts of law and this sovereign power of courts can never be permitted to be exercised by police?
(viii) Whether same set of evidence which was disbelieved qua involvement of co-accused persons could not be relied upon to convict the accused on a capital charge?
(ix) Statement of an accused recorded under section 342 of Cr.P.C. is to be read in its entirety.

Analysis: (i) Delay in reporting the matter to the police creates doubt regarding the truthfulness of the prosecution story. Hence possibility of deliberations and concoctions in the prosecution story could not be ruled out.
(ii) Delay in conducting the postmortem examination was suggestive of the fact that the prosecution eye witnesses were not present at the spot at the relevant time and the abovementioned delay was consumed in procuring the attendance of fake eye witnesses.
(iii) Where the conduct of the prosecution eye witnesses was highly unnatural it in turn would make their presence at the spot doubtful.
(iv) Material discrepancy between ocular account and medical evidence creates dent in the prosecution story.
(v) Once a motive is set up by the prosecution side but if it is not established then it would adversely affect the case of prosecution by making it doubtful.
(vi) Recovery made on joint disclosure and pointation becomes doubtful in the eye of law.
(vii) Police opinion becomes irrelevant after recording of prosecution evidence by the learned trial Court.
(viii) The prosecution evidence which has been disbelieved against the co-accused cannot be believed against the appellant without independent corroboration.
(ix) It is by now well settled that it is first and foremost duty of the prosecution to prove its case and if the prosecution fails to prove its case then statement of an accused is to be accepted or rejected in toto. It is legally not permissible to accept inculpatory part of the statement of an accused and to reject exculpatory part of the said statement.

Conclusion: (i) Delay in lodging of FIR casts a suspicion on the prosecution story.
(ii) Delay in conducting of postmortem is one of the factors casting doubt on the stance of the prosecution.
(iii) See analysis part (above).

(iv) Contradiction in ocular and medical account creates dent in the prosecution story.
(v) See analysis part (above).
(vi) See analysis part (above).
(vii) See analysis part (above).
(viii) Same set of evidence which was disbelieved qua the involvement of co-accused could not be relied upon to convict the accused on a capital charge.
(ix) It is settled law by now that a statement of an accused recorded under section 342, of Cr.P.C. is to be read in its entirety and is to be accepted or rejected as a whole and reliance should not be placed on that portion of the statement which goes against the accused person.

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11. **Lahore High Court**
Liaqat Ali @ Bao v. The State
Criminal Appeal No. 78954-J of 2019
Arshad Mahmood v. The State & another.
Criminal Revision No. 15587 of 2020
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6906.pdf

Facts: Criminal Appeal was filed by accused against his conviction and sentence passed under sections 302/427/34 of PPC as well as, Criminal Revision filed by complainant for enhancement of the sentence of the appellant.

Issues: i) What is evidentiary value of a chance witness?
ii) What inference can be drawn from a delayed postmortem?
iii) Whether a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused?

Analysis: i) As mentioned earlier, both the abovementioned eye witnesses were not residents of the village (Nawan Pind), where the occurrence took place rather they were residents of Chak No. 34/Deputywala therefore, they were chance witnesses and as such, they were bound to prove the reasons of their presence at the spot at the relevant time but as observed earlier, they did not mention the reason of their presence at the spot at the time of occurrence in the FIR (Exh.PC/1) or in their statements before the police & even the reason given by them during their cross-examination was not proved through the recovery of any burnt item or through the production of any purchase receipt of the said items. In the light of above, both the abovementioned witnesses are chance witnesses and they could not prove the reason of their presence at the spot at the relevant time therefore, it is not safe to rely upon their evidence for upholding the conviction & sentence of the appellant.
ii) The abovementioned delay in conducting the postmortem examination on the dead body of the deceased is suggestive of the fact that the occurrence was unseen and the said delay was consumed in procuring the attendance of fake eye witnesses.
iii) It is by now well settled that if there is a single circumstance which creates

doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubt regarding the truthfulness of the prosecution story.

Conclusions: i) The evidence of chance witness can only be relied upon if he can prove the reason of his presence at the spot at the relevant time otherwise it is not safe to rely upon such evidence.

ii) The inference from delayed postmortem is that time has been consumed in procuring the attendance of fake witnesses.

iii) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused.

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12. **Lahore High Court**
Shaffat Ibrahim Khan v. Chairman National Accountability Bureau and others
Writ Petition No.58871 of 2022
Mr. Justice Ali Baqar Najafi, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6990.pdf

Facts: Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner while alleging to be the bona fide purchaser in possession of the property and relying upon the judgment passed by the High Court, has prayed that the restriction placed by the Military Estate Officer/respondent No. 3 over the said property may be declared to be without lawful authority and he be directed to remove the said restriction and provide him with the copy of the GLR after entering name of the petitioner in his record as lawful owner of the said property.

Issue: Whether section 23 of the National Accountability Ordinance, 1999 creates any bar on transfer of the property in dispute during the pendency of the appeal before High Court?

Analysis: It is noteworthy that the proviso to section 23 ibid was inserted in Ordinance pursuant to the direction issued by the Supreme Court of Pakistan in the case of Khan Asfandyar Wali and others Vs. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607) wherein, inter alia, vires of the Ordinance were assailed for violation of fundamental rights embodied in Chapter 1 of Part II of the Constitution to reflect that transfer of property by an accused person or any relative or associate of such person or any other person on his behalf or creation of charge on any movable or immoveable property owned by him or in his possession, while inquiry, investigation or proceedings before the Accountability Court was pending, not to be void if made with approval of the Court subject to such terms and conditions as the Court deems fit. The purpose and object behind promulgation of section 23 of the Ordinance has been expounded by the Supreme Court in the case of Khan Asfandyar Wali…

Punishment for the offence of corruption and corrupt practices has been prescribed under Section 10 of the Ordinance not only in custodial terms but includes, amongst others, forfeiture to the appropriate government or the concerned financial institution such assets and pecuniary resources as are found to be disproportionate to the known sources of income or which are acquired by money obtained through corruption and corrupt practices, whether in the name of the holder of the convict or any of his dependents or benamidars. Section 23 ibid, as held by the Supreme Court in the case of Khan Asfandar Yar Wali (Supra), provides for an interlocutory measure to prevent persons accused of corruption and corrupt practices to frustrate the objects of law… Since section 23 of the Ordinance not only restricted the exercise of fundamental rights enshrined in Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973 but also prescribed an offence under section 23(b) ibid, therefore, it could only be construed strictly. The word "Court" used in section 23 of the Ordinance has been defined in section 5(g) the Ordinance to mean the Accountability Court. It does not include the High Court. An amendment was made in section 9(b) by insertion of phrase "including High Court" through Ordinance No. IV of 2000 to eclipse authority of the High Court to grant bail in cases under the Ordinance, however, such statutory prohibition could not abridge or takeaway jurisdiction of the High Courts to grant bail under Article 199 of the Constitution to any person accused of an offence under the Ordinance, as held by the Supreme Court of Pakistan in the cases of Khan Asfandyar Wali and others Vs. Federation of Pakistan and others (PLD 2001 SC 607) and Muhammad Iqbal Khan Noori and others v. National Accountability Bureau and others (PLD 2021 SC 916). The distinction between the Court and the High Court, as maintained by the Ordinance, is equally manifest from section 32 which provides the remedy of appeal against final judgment of the Court before the High Court to be heard by a Bench of not less than two judges. It is one of the cardinal principles of interpretation of criminal statutes that such enactments are not to be extended by construction… The proviso inserted in section 23 of the Ordinance which provided a remedy to any person to seek approval of transfer from the Court, entailed inquiry into facts that could not be held in appeal before the High Court. This lent an additional justification for not extending application of Section 23 ibid to the High Court. For the above reasons, we are of the view that after conclusion of the trial resulting in acquittal of an accused, the restriction imposed by law under section 23 comes to an end and provisions of the said section do not extend in their application to the High Court. Be that as it may, upon admission of an appeal against acquittal, High Court is possessed of all powers of the trial Court to pass any incidental order qua freezing of assets under section 12 of the Ordinance read with section 423 of the Code of Criminal Procedure, 1898 which mutatis mutandis applies to the proceedings under the Ordinance as mandated by Section 17(a) of the Ordinance.

Conclusion: There is no bar on transfer of the property in dispute during the pendency of the appeal before High Court under Section 23 of the National Accountability

Ordinance, 1999, however High Court has all powers of the trial Court to pass any incidental order qua freezing of assets under section 12 of the Ordinance read with section 423 of the Code of Criminal Procedure, 1898.

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13. **Lahore High Court**
Nouman Arshad v. The Director General, etc.
Writ Petition No.2977 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6820.pdf

Facts: In the earlier writ petition, direction was given to the respondents to look into the matter and if any such application as claimed is pending, will attend to the same and dispose it of through a speaking order passed on its own merit. The respondent had given undertaking for work of improvement of Sewerage System and the work expected to be completed till 30th December 2020 depending on funds release from Government of the Punjab. Hence, this is second petition on the subject.

Issue: Whether information regarding spending and allocation of Budget is a fundamental right of every citizen?

Analysis: Under Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973, it is fundamental right of every citizen that information regarding spending and allocation of Budget be made public.

Conclusion: It is fundamental right of every citizen that information regarding spending and allocation of Budget be made public.

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14. **Lahore High Court**
Sheikh Akhtar Aziz v. Province of Punjab, etc.
W. P. No.17428 of 2023
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC7029.pdf

Facts: The petitioner filed a suit for specific performance, which was decreed initially but he failed before Apex courts and the Apex Court upheld the direction for returning the earnest amount to the petitioner with profit at Bank rate. In compliance of the direction a cheque of Rs.10,50,000/- was issued, but was fraudulently encashed/withdrawn by the then Civil Nazar, who was dismissed from service and died subsequently. Petitioner is aggrieved of not refunding an amount, which was deposited in compliance of Court's order as remaining consideration.

Issue: What should be the order of the court in an eventuality of embezzlement of an amount deposited by the claimant on court's direction?

Analysis: If embezzled amount was deposited in treasury on court's direction, the same court, on an application by the claimant shall determine, whether the amount is embezzled, not paid to the party so entitled, and that the claimant has no role, direct or indirect in the fraud. In presence of these findings, the court shall itself direct the Provincial Government for payment of the amount to the entitled person, within given time. The embezzled amount, if recovered thereafter, shall obviously go to the State Treasury.

Conclusion: The court in an eventuality of embezzlement of an amount deposited by the claimant on court' direction shall itself direct the Provincial Government for payment of the amount to the entitled person, within given time. The embezzled amount, if recovered thereafter, shall obviously go to the State Treasury.

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15. **Lahore High Court**
National Transmission & Despatch Company Ltd. v. The Commissioner Inland Revenue & another
ITR No.72345 of 2023
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6773.pdf

Facts: The Commissioner Inland Revenue (Appeals) decided the appeal against the applicant which was affirmed by the Appellate Tribunal Inland Revenue. The Appellate Tribunal by its two separate orders which are under challenge in these reference applications dismissed the appeal filed by applicant while allowing the appeal of the Department (in the other case) and based its decision on similar premises.

Issues: i) Whether the aggregate of a person's turnover can be treated as the income of the person for the year chargeable to tax?
ii) Whether Court can take notice of the documents filed during the hearing of any case?
iii) Whether grant of transmission license is distinct and separate from the issuance of a distribution license?

Analysis: i) The crucial aspect is regarding applicability of minimum tax under Section 113 of the Ordinance. For the purpose, the aggregate of a person's turnover as defined in section 113 has to be treated as the income of the person for the year chargeable to tax. The definition of turnover peculiar to section 113 has been set out above. In order to attract minimum tax on the basis of turnover the gross receipts derived from the sale of goods has to be taken into consideration. NTDC contends that it does not derive any gross receipts from sale of goods (electricity in this case) and merely acts as the agent for procurement of electricity on behalf of DISCOs. To resolve the issue engaged in these reference applications, the entire structure of regulation of electricity has to be kept in view which is the centrepiece of the system of procurement and sale of electricity put in place. Hunch or personal apprehension of an officer of income tax department is not

enough. In our opinion, NTDC is a special purpose vehicle incorporated for a specific purpose and regarding which a license has been granted to it by NEPRA. It must be borne in mind that NTDC is in possession of a transmission license and its powers are hedged in by the terms of that license… Thus, the transmission business has been defined as the business of transmission of electric power and for the purpose to plan, develop, construct and maintain NTDC's transmission system and operation of such system for the transmission and dispatch of electric power. That is the whole purpose of NTDC and NTDC is not expected to travel beyond that purpose and to engage in the sale and purchase of electricity… The license is granted to NTDC to engage in the transmission business within the territory as set in the Schedule 1 to the license. Article 2 further provides that licensee /NTDC shall comply with and adhere to the rules, regulations and directions of NEPRA from time to time. The periphery of the powers of NTDC has been laid down in Article 2 which does not mention any activity relating to sale or purchase of electricity and is merely confined to the transmission business within the territory delineated in Schedule 1. Article 5 further provides the exclusivity regarding the activities in the territory specified in Schedule 1 in respect of the licensee… Article 7 mentions a competitive market operation date (CMOD) which is June 5, 2015 as stated above. Prior to that the Central Power Purchasing Agency (CPPA) of the licensee was to be established under Article 8 of the License to purchase or procure electric power to meet the demand of eight-ex-WAPDA distribution companies on behalf of those distribution companies and the terms were also given in Article 7. The entire structure under which (CPPA) was to procure electric power on behalf of DISCOs to meet their demands through contracts with generation licensees was spelt out in Article 7. It also states in clause (2) that competitive market operation date was initially set as July 1, 2009 which was revised to a later date since the infrastructure or market was not adequately developed to support a competitive arrangement by July 1, 2009. Articles 7 and 8 read cumulatively obliged NTDC to establish a central power purchasing agency (CPPA) for the procurement of power on behalf of DISCOs and other related matters primarily relating to reorganization for the maintenance of transmission system and reliable operation, control, switching and dispatch of transmission system and generation facilities and provision of balancing services. NTDC submits that the functions of procurement of electric power on behalf of DISCOs as well as maintenance of transmission system were being undertaken jointly by NTDC and later on as explicated the business of procurement of electric power was carved out of NTDC and CPPA-G was established which now carries on the business of procurement of electric power exclusively. As adumbrated, the initial onus lay on the department to establish that NTDC was actually engaged in the business of selling of electric power and thereby gross receipts were accumulated which were derived from the sale of goods (electric power in this case). In our opinion the department has failed to establish any such activity to have been undertaken by NTDC. Seeking footing in the terms of the license which have been brought forth above and which leave it in no manner of

doubt that the cardinal feature of the business of NTDC is circumscribed by the terms of the license which by Article 2 clearly states that it can only engage in the transmission business. If the allegations made in the show cause notices are taken as true then it must be established as a fact in the first instance that NTDC is in breach of its license granted by NEPRA. It is nobody's case that NEPRA has taken any action against NTDC for falling in breach of the terms of the license and, therefore, it can be presumed that NTDC is only engaged in undertaking the transmission business in accordance with the terms of the license.

ii) These documents can be looked at by this Court while deciding these reference applications, firstly because they are undisputed and secondly they are public documents and this Court can take notice of these documents in any case.

iii) Therefore, it is clear that the grant of transmission license is distinct and separate from the issuance of a distribution license and distribution company in whose favour the license has been issued has the exclusive right to provide distribution services and to make sales of electric power to the consumers.

Conclusion: i) The aggregate of a person's turnover as defined in section 113 can be treated as the income of the person for the year chargeable to tax.

ii) The Court can take notice of the documents filed during the hearing of any case when documents are public documents and undisputed.

iii) The grant of transmission license is distinct and separate from the issuance of a distribution license.

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16. **Lahore High Court**
Syeda Farzana Batool etc. v. Iltaf Hussain Shah etc.
W.P. No. 2154 of 2022
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6836.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assails the *vires* of order of the Member (Judicial) Board of Revenue, passed to the effect of dismissing the revision petition of petitioners.

Issue: Whether a constitutional petition, without availing alternate remedy of review under Section 8 of the Punjab Board of Revenue Act, 1957, is maintainable against order passed by Member (Judicial) Board of Revenue, Punjab dismissing a revision petition filed under the Punjab Land Revenue Act, 1967?

Analysis: Section 8 of the Punjab Board of Revenue Act, 1957 specifically bestows power of review upon the Board of Revenue. In case of availability of alternate remedy, if the circumstances so demand and the exercise of constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is inevitable, then High Court can invoke such jurisdiction. However, it is also a principle of law that where any party opts to choose a statutory remedy against an order, then such party cannot abandon or bypass said remedy without any valid or

reasonable cause for filing a constitution petition challenging such order.

Conclusion: A constitutional petition, without availing alternate remedy of review under Section 8 of the Punjab Board of Revenue Act, 1957, is not maintainable against order passed by Member (Judicial) Board of Revenue, Punjab dismissing a revision petition filed under the Punjab Land Revenue Act, 1967.

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17. **Lahore High Court**
Waheed Mehmood v. Election Commission of Pakistan etc.
W.P.No.4099 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6842.pdf

Facts: The common questions of fact and law involved in all the petitions governed by this single judgment are that on publication of draft proposal, prepared by committee constituted by the Election Commission for the delimitation of the territorial constituencies in question for upcoming elections to the National Assembly and the Provincial Assembly of the Province, the petitioners, being the residents and voter members of the constituencies, filed their objections to the Election Commission which were discarded by way of order hence these petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issue: Whether mere inconvenience of a segment of people can be made basis for the delimitation of the constituencies?

Analysis: Section 17 in Chapter-III of the Elections Act, 2017 mandates the Election Commission to delimit territorial constituencies for elections to the National Assembly, each Provincial Assembly and to the local governments in accordance with the provisions of the Constitution, the Act ibid, the Rules and the applicable local government law. Section 19 of the Act ibid specifies the manner of delimitation of constituencies, whereas section 20 of the Act ibid lays down the principles of delimitation. Further, rule 10 in Chapter-III of the Election Rules, 2017 prescribes a detailed mechanism for preparation of draft proposals for delimitation of constituencies. However, before finalizing the delimitation process, the Election Commission has to ensure that every genuine objection be attended and dealt with properly. The suitability and proximity of an area, being part of a constituency is to be determined on the basis of various factors.

Conclusion: Mere inconvenience of a segment of people cannot be made basis for delimitation of the constituencies.

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18. **Lahore High Court**
Muhammad Amin v. Muhammad Asif Askari, etc.
F.A.O.No.21 of 2020
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6862.pdf

Facts: This appeal under section 24 of the Cantonments Rent Restriction Act, 1963 arised out of order, whereby the Rent Controller, Wah Cantonment proceeded to allow the ejectment petition filed by the respondents seeking eviction of the appellant from shop.

Issues: i) What are the requirements to prove the ground of personal need under Section 17 of the Cantonments Rent Restriction Act, 1963?
ii) Is it necessary to establish and prove all these grounds of eviction where a landlord takes multiple grounds for the tenant's eviction?

Analysis: i) Section 17 of the "Act, 1963" lays down the grounds for eviction of a tenant from the rented premises. Personal bonafide need is one of the recognized grounds for eviction. (…) It is an oft repeated principle of law that whenever a landlord pleads that the "rented premises" are required to him for his personal need bonafidely, assertion on oath by the landlord that he requires the property in good faith for his personal use shall be sufficient to accept his bonafides if such assertions are consistent and in conformity with the averments of the ejectment petition. Such statement cannot be discarded in vacuum. Even otherwise, it is always the landlord, who is vested with the prerogative to exercise his choice for the "rented premises" and if he needs it bonafidely for his personal use, his claim cannot be rejected outrightly.
ii) It is also well entrenched principle that if landlord canvasses multiple grounds for the eviction of the tenant it is not necessary for him to establish and prove all these grounds. If the landlord is able to prove one of the grounds asserted in the ejectment petition, the tenant can be evicted by the Rent Tribunal.

Conclusions: i) Under Cantonments Rent Restriction Act, 1963, mere assertion on oath by the landlord that he requires the property in good faith for his personal use shall be sufficient to accept his bonafides if such assertions are consistent and in conformity with the averments of the ejectment petition.
ii) If landlord canvasses multiple grounds for the eviction of the tenant it is not necessary for him to establish and prove all these grounds. If the landlord is able to prove one of the grounds asserted in the ejectment petition, the tenant can be evicted by the Rent Tribunal.

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19. **Lahore High Court**
Sabira Bibi, etc. v. Mst. Safurajan, etc.
Writ Petition No. 1475 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6830.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assails the vires of order whereby the learned Additional District Judge, while dismissing the revision petition filed by the petitioners, affirmed the order passed by the learned Civil Judge Class-I for dismissal of the application for

summoning of the Superintendent, Abandoned Babies & Destitute Children Home, as court witness and application under section 12 (2) of the Code of Civil Procedure (V of 1908).

Issue: Whether it is mandatory for the court to decide miscellaneous application before finalizing the lis and passing the final order/judgment?

Analysis: It is an oft-repeated principle of law that whenever some miscellaneous application is pending before the Court, it shall decide the same in the first stance before finalizing the lis and passing the final order/judgment. Failure to decide the miscellaneous application before passing the final verdict would render the same nullity in the eye of law.

Conclusion: It is mandatory for the court to decide miscellaneous application before finalizing the lis and passing the final order/judgment.

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20. **Lahore High Court**
Pakistan Railways and others v. Misri Khan & Company
Civil Revision No.661-D of 2017
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6823.pdf

Facts: This petition under Section 115 of the Code of Civil Procedure (V of 1908) arises out of judgment and decree, whereby the learned Additional District Judge, while dismissing the appeal preferred by the petitioners affirmed the judgment and decree passed by the learned Civil Judge.

Issues: i) Which provision of the Limitation Act, 1908 would apply to the suit for the claim relating to the price of work done and suit for compensation for the breach of any contract?
ii) Whether time consumed before the Federal Ombudsman can be excluded from being counted towards the limitation for instituting the suit under Section 14 of the limitation Act, 1908?
iii) When the High Court exercises its revisional jurisdiction to interfere in the concurrent findings of the Courts below?

Analysis: i) From the bare reading of the above referred provisions of law it is manifestly clear that for the claim relating to the price of work done, suit is to be governed by Article 56 of the "Act, 1908" whereas Article 115 of the Act ibid caters the suit for compensation for the breech of any contract, express or implied, not in writing registered and not therein specially provided for in the Act (…) while dealing with the issue relating to the recovery of balance amount and the security it was held by this Court that in the circumstances Article 115 of the "Act, 1908" would come into play being the residuary article.
ii) It clearly manifests from the bare reading of the above referred provision of law that a plaintiff can only claim exclusion of the time from being counted qua limitation if he has been prosecuting with due diligence another civil proceedings

either in a court of first instance or in a court of appeal against the defendant. The proceedings before the Federal Ombudsman cannot be termed as civil proceedings at all, so Section 14 of the "Act, 1908" would not come to the rescue of the respondent.

iii) There are though concurrent findings of facts recorded by both the courts blow but such findings are clearly the outcome of gross misreading and non-reading of evidence. The scope of revisional jurisdiction is hedged in Section 115 of "C.P.C." and though ordinarily concurrent findings of facts are not disturbed but such findings are neither sacrosanct nor it is an inflexible rule that despite observing material flaws, the revisional court will abdicate to exercise its jurisdiction. The judgments passed by the courts below are not based on proper appraisal of evidence and the learned Civil Judge, while decreeing the suit of the respondent has grossly misread the evidence as already noted hereinabove. The appellate court in the circumstances, while upholding the judgment and decree of trial court thus committed a material irregularity. This Court under Section 115 of "C.P.C." is thus obliged and fully competent to correct such error in exercise of its revisional jurisdiction. Needless to observe that when once it is established on the record that concurrent findings are fraught with legal infirmities, it becomes the bounden duty of court exercising revisional powers to curb and stifle such illegalities and material irregularities.

Conclusions: i) The claim relating to the price of work done, a suit is to be governed by Article 56 of the Limitation Act, 1908, whereas Article 115 of the Limitation Act caters the suit for compensation for the breach of any contract.

ii) The proceedings before the Federal Ombudsman cannot be termed as civil proceedings at all therefore time consumed before such forum cannot be excluded from being counted towards the limitation for instituting the suit under Section 14 of the limitation Act, 1908.

iii) When once it is established on the record that concurrent findings are fraught with legal infirmities, it becomes the bounden duty of court exercising revisional powers to curb and stifle such illegalities and material irregularities.

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21. **Lahore High Court**
Bilqees Begum v. District Police Officer and others
Writ Petition No. 9075/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC 7034.pdf

Facts: The Petitioner sought recovery of her mentally disordered brother, from the alleged illegal custody of Respondents No.3 to 8.

Issues: (i) Whether High Court can impose special/exemplary costs over and above the amount stipulated in section 35A CPC?
(ii) Whether High Court can impose costs in a *habeas corpus* petition?

Analysis: (i) Sections 35 and 35A of the Code of Civil Procedure, 1908 ("CPC"),

respectively, provide for the imposition of costs and compensatory costs in respect of false or vexatious claims or defences. Part E, Chapter 11-E of Volume I of the Lahore High Court Rules and Orders supplement these provisions. The courts dealing with civil suits are bound by the provisions of the Code of Civil Procedure and must award costs in accordance with them. These provisions circumscribe their discretion. However, while exercising Constitutional jurisdiction, the High Court may invoke its inherent powers to impose special/exemplary costs over and above the amount stipulated in section 35A CPC.

(ii) There is a misconception that the courts cannot impose costs in criminal matters. Section 491(2) Cr.P.C. empowers the High Court to frame rules to regulate the procedure in *habeas corpus* petitions. Volume V, Chapter 4, Part F of the Lahore High Court Rules & Orders contains the rules framed in the exercise of that power. Rule 16 stipulates that to check the tendency to file vexatious *habeas corpus* petitions, the court may, at its discretion, require the party concerned to deposit in advance an amount as fixed by the court directing the issuance of rule *nisi* to be paid to the detenus as compensation if the petition is found to be frivolous or vexatious. Rule 17 provides that in disposing of such rule *nisi* the court may, at its discretion, make an order for the payment by one side or the other of the costs of the rule. The courts use these provisions quite frequently.

Conclusion: (i) High Court can impose special/exemplary costs over and above the amount stipulated in section 35A CPC.

(ii) High Court can impose costs in a *habeas corpus* petition.

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22. **Lahore High Court**
Ch. Umer Aftab Dhillu and another v. Election Commission of Pakistan and others
Writ Petition No.287 of 2024
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1.pdf

Facts: The Petitioners called in question an order passed by the Election Commission of Pakistan (ECP), whereby it declared Pakistan Tehreek-e-Insaaf(PTI) ineligible to obtain the Election Symbol by invoking section 215 of the Elections Act, 2017 (the Act).

Issues: (i) Whether a High Court can assume jurisdiction in a matter already pending before the Supreme Court of Pakistan?

(ii) Whether an order of the ECP under section 215(5) of the Elections Act 2017, can be assailed without seeking declaration of the same being ultra vires the Constitution?

Analysis: (i) The main claim of the Petitioners in the instant writ petition is that a level playing field has been denied to the political party of the Petitioners by depriving it for its symbol "BAT" under the cover of intra party election thereby

discriminating against all other political parties who were not so denied their respective symbols despite the fact that the other parties followed less onerous processes of holding intra party election in accordance with their respective Constitutions. Importantly, the senior party members already went to the Supreme Court of Pakistan in Constitutional Petition No.47/2023 titled *"Gohar Ali Khan versus Federation of Pakistan etc."* and the Supreme Court vide its order dated 22.12.2023 directed the *"ECP"* to ensure equal opportunity for candidates of all political parties to participate in the election process. The Supreme Court further observed that the importance of free and fair elections, and maintaining a level playing field during elections, cannot be overstated. However, despite clear direction of the Supreme Court of Pakistan the said level playing field has been denied to the Petitioners' political party by way of subsequent denial of the allocation of symbol of "BAT". This particular claim of the Petitioners regarding denial of level playing field in different forms has already been agitated before the Supreme Court of Pakistan in the shape of a contempt petition in reference to the above referred Constitutional Petition No.47/2023 titled "Gohar Ali Khan versus Federation of Pakistan etc." regarding which the Supreme Court has already taken cognizance and matter is pending adjudication there….Therefore, any adjudication on this matter in the given circumstances would tantamount to interference in an issue which is pending adjudication before the Supreme Court of Pakistan besides the possibility of conflicting judgments on the same subject.

(ii) It is well settled that the fundamental rights of freedom of association under Article 17 of the *"Constitution"* is subject to reasonable restrictions imposed by law… the relief claimed by the Petitioners cannot be granted without declaring the said provision of the *"Act"*[i.e. Section 215(5)] ultra vires Article 17 of the *"Constitution"*. Even otherwise, it is a well settled principle of law that when vires of law is challenged, interim relief cannot be granted.

Conclusion: (i) A High Court cannot assume jurisdiction in a matter already pending before the Supreme Court of Pakistan.

(ii) An order of the ECP under section 215(5) of the Elections Act 2017, cannot be assailed without seeking declaration of the same being ultra vires the Constitution.

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23. **Lahore High Court**
Bakhtiar Mahmud Kasuri v. Election Commission of Pakistan, etc.
Writ Petition No. 68931 of 2022 etc.
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC6998.pdf

Facts: In this writ petition along with other writ petitions as common questions of facts and law are involved and same are decided through consolidated order. In all the afore-referred petitions, question of delimitation of two constituencies of National Assembly and Provincial assemblies of a District is involved.

Issues: i) When some apparent discrepancies are found in delimitation of constituencies,

whether same can be summarily resolved in constitutional jurisdiction?
ii) Whether before passing order for modification of constituencies notice in terms of section 22(2) of Election Act, 2017 is necessary?
iii) What is the criterion of delimitation of constituencies in terms of Section 20 of the Election Act, 2017.

Analysis: i) The question whether the said constituencies have been actually modified or corrigendum was issued only by correcting the errors that had earlier crept in the said order is not clear by bare perusal of the areas mentioned in the constituencies, earlier finalized by Form-7 and modified by the corrigendum issued thereafter, however, discrepancies are apparent from the details of areas mentioned in both lists and corresponding maps, which maps and list issued on 05.08.2022 according to representative of E.C.P. were not proper depiction of what has actually been decided by E.C.P. in its order dated 19.07.2022. The said discrepancies cannot be summarily resolved without deeper appreciation of disputed facts and resolution of actual controversies pointed out by the parties which even otherwise cannot be done in constitutional jurisdiction of this Court.
ii) Moreover, it is observed that before passing order for modification of constituencies notice in terms of Section 22(2) of the Act has not been issued to the parties which had contested the matter before E.C.P. which resulted in passing of order dated 19.07.2022, hence, the parties in whose favour the said order was passed have apparently been condemned unheard.
iii) …however, it is observed that in view of Section 20 of the Act delimitation of constituencies has to be made with regard to the distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facility of communication and public convenience and other cognate factors to ensure homogeneity in creation of constituencies.

Conclusion: i) The said discrepancies cannot be summarily resolved without deeper appreciation of disputed facts and resolution of actual controversies, even otherwise cannot be done in constitutional jurisdiction of this Court.
ii) Notice in terms of Section 22(2) of the Act should be issued to the parties which had contested the matter before E.C.P., before passing order for modification of constituencies.
iii) In view of Section 20 of the Act delimitation of constituencies has to be made with regard to the distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facility of communication and public convenience and other cognate factors to ensure homogeneity in creation of constituencies.

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24. **Lahore High Court**
Mst. Zumarad Siddique etc. v. Province of Punjab through its Chief Secretary, Govt. of Punjab & others.
W.P. No.229002/2018
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC7040.pdf

Facts: The Constitutional petitions were filed to challenge the validity and imposition of Capital Value Tax ('CVT'), enforced through section 6 of the Punjab Finance Act 2012 (Act, 2012) and demanded at the time of registration of instruments of lease of immovable properties falling within the limits of Cantonment. Moreover the petitions questioned the demand raised for payment of deficient stamp duty(ies) on the instruments of lease of immovable property.

Issues: (i) Validity and imposition of Capital Value Tax ('CVT'), enforced through section 6 of the Punjab Finance Act 2012 (Act, 2012) and demanded at the time of registration of instruments of lease of immovable properties viz a viz the question whether transactions, contained in the instruments of lease and rights created thereunder, are taxable under section 6 of the Act, 2012?
(ii) Ascertainment of the character of the instrument for the purposes of determining the quantum of stamp duty viz a viz the question whether lease in perpetuity is liable to be charged for stamp duty under Article 35 of Stamp Act 1899?

Analysis: (i) Section 6(3) of the Act 2012 imposes tax on the capital value of the immovable property transacted by means of any of the modes specified therein i.e covering instruments of lease. Those who claimed right to use of immovable property, for the period covered under the provision of law, by virtue of instruments of lease, squarely fall within the net of the levy. It is an absurdity to absolve / exempt lessee(s), who had acquired a right to use the property, from payment of levy merely because no recorded value of the property was declared in the instruments or in absence of alleged declaration of recorded value.
(ii) The Court observed that instrument of lease could not be construed as document by which property was transferred. Further opined that instruments of lease, including lease(s) in perpetuity, are identified in Schedule 1 and acknowledged as distinctive class of instrument(s), covered under Article 35 and when an instrument fell within a specific class of instruments, which are though separately identified in the Schedule I, then unless there was anything contrary thereto, resort to the section 6 of Act, 1899 could not be made. The Court went on to observe that instrument of lease was covered under Article 35 of Schedule-I to the Act, 1899. However for conclusive determination as to the examination of the terms of instruments of lease, including the question that whether any of the instruments of lease manifest an attribute of transfer of conveyance or not, and determination of the quantum of stamp duty payable on each of said Instrument, the matter was referred to Chief Revenue Authority i.e. Senior Member Board of

Revenue, who possess the jurisdiction and power to examine and express opinion qua the Instrument, in terms of Section 56 of Act, 1899.

Conclusion: (i) Instruments of lease, coming within the ambit of clause 3 of section 6 of Act, 2012, are subject to CVT levy and there is no instance of invalidity of such levy. (ii) The instrument of lease could not be construed as document by which property was transferred and instrument of lease was covered under Article 35 of Schedule-I to the Act, 1899.

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25. **Lahore High Court**
The State v. Irshad Saeed
Murder Reference No. 35 of 2022
Irshad Saeed v. The State and another
Criminal Appeal No. 597 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC7059.pdf

Facts: Through this criminal appeal the appellate has assailed his conviction and sentence. The learned trial court submitted Murder Reference seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Whether a chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence, at the time of occurrence and is also under a duty to prove his presence by producing some physical proof of the same?
ii) Whether the non-production of vehicle used by the prosecution witnesses to arrive at the place of occurrence and the failure of prosecution witnesses as well as the Investigating Officer of the case to produce the same before the learned trial court leads to the conclusion that no such vehicle was available at place of occurrence?
iii) Whether the failure of the prosecution witnesses to make consistent statements has repercussions, proving that the prosecution witnesses were not present at the place of occurrence, at the time of the occurrence and had not witnessed the same?
iv) Whether corroboration of the prosecution evidence can be had from contrived, manufactured and a compromised oral complaint of complainant?
v) Whether a recovery can be used as incriminating evidence, being evidence that was obtained through illegal means?
vi) Where the ocular account has been disbelieved, whether the evidence of recovery would have any consequence?
vii) Whether the fact of abscondence of an accused can be read in isolation?
viii) Whether medical evidence by its nature and character, can recognize a culprit in case of an unobserved occurrence?

Analysis: i) In this manner, both the prosecution witnesses) can be validly termed as "chance witnesses" and therefore were under a bounden duty to provide a

convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same. We have noted with grave concern that the prosecution witnesses failed miserably to provide any consistent evidence as to the reason for their arrival at the place of occurrence and their presence at the place of occurrence when the same was taking place.

ii) The non-production of the motorcycles used by the prosecution witnesses to arrive at the place of occurrence and the failure of prosecution witnesses as well as the Investigating Officer of the case to produce the same before the learned trial court leads to only one conclusion and that being that no such motorcycles were available. Had motorcycles been used by the prosecution witnesses to arrive at the place of occurrence, then the same must have been available at the place of occurrence, at the time of arrival of the Investigating Officer of the case and the same would necessarily have been taken into possession by the Investigating Officer of the case but they were admittedly not and it proves that a false claim was made by the prosecution witnesses that they had arrived at the place of occurrence on their motorcycles. In this manner, the prosecution witnesses failed miserably to prove that they had indeed arrived at the place of occurrence, at the time when the same was happening.

iii) In this manner, the dead body had been brought to the hospital and the post mortem examination of the dead body had already been conducted even prior to the recording of the oral statement of complainant. It establishes the fact that the deceased was brought to the hospital by someone else and not by the prosecution witnesses as claimed by them, albeit unsuccessfully. In this manner we have arrived at an irresistible conclusion that both prosecution witnesses were not present at the place of occurrence and did not even know how the dead body had arrived at the hospital much before the recording of the oral statement of complainant. The contradictions in the statements of the prosecution witnesses with regard to various facets of the prosecution case are obvious. The failure of the prosecution witnesses to make consistent statements has repercussions, proving that the prosecution witnesses were not present at the place of occurrence, at the time of the occurrence and had not witnessed the same.

iv) The prosecution witnesses themselves admitted that the oral statement of complainant and the formal F.I.R were prepared after probe, consultation, planning, investigation and discussion. The scrutiny of the statements of the prosecution witnesses reveals that the oral statement of complainant was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. No corroboration of the prosecution evidence can be had from the said oral statement of complainant.

v) The learned Deputy Prosecutor General and the learned counsels for the complainant, have submitted that the recoveries of the Motorcycle and the pistol offered sufficient corroboration of the statements of the eye-witnesses. Regarding the recoveries of the Motorcycle and the pistol from the appellant, the same cannot be relied upon as the Investigating Officer of the case, did not join any

witness of the locality during the recoveries of the said Motorcycle and the pistol from the appellant which was in clear violation of section 103 Code of Criminal Procedure, 1898….. Therefore, the evidence of the recoveries of the Motorcycle and the pistol from the appellant cannot be used as incriminating evidence against the appellant, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence.

vi) Even otherwise, as we have disbelieved the ocular account in this case, hence, the evidence of recoveries of the Motorcycle and the pistol would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

vii) The learned Deputy Prosecutor General and the learned counsels for the complainant have also laid much premium on the abscondence of the appellant namely Irshad Saeed as proof of his guilt. The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with the substantive piece of evidence.

viii) The only other piece of evidence left to be considered by us is the medical evidence with regard to the injuries observed on the dead body of the deceased by doctor but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved occurrence.

Conclusion: i) A chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence, at the time of occurrence and is also under a duty to prove his presence by producing some physical proof of the same.

ii) The non-production of vehicle used by the prosecution witnesses to arrive at the place of occurrence and the failure of prosecution witnesses as well as the Investigating Officer of the case to produce the same before the learned trial court leads to the conclusion that no such vehicle was available at place of occurrence.

iii) The failure of the prosecution witnesses to make consistent statements has repercussions, proving that the prosecution witnesses were not present at the place of occurrence, at the time of the occurrence and had not witnessed the same.

iv) Corroboration of the prosecution evidence cannot be had from contrived, manufactured and a compromised oral complaint of complainant.

v) A recovery cannot be used as incriminating evidence, being evidence that was obtained through illegal means.

vi) Where the ocular account has been disbelieved, the evidence of recovery would have no consequence.

vii) The fact of abscondence of an accused cannot be read in isolation but it has to be read along with the substantive piece of evidence.

viii) Medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved occurrence.

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26. **Lahore High Court**
The State Vs. Kashif Nouman alias Kashi
Murder Reference No.33 of 2021
Kashif Nouman alias Kashi v. The State
Criminal Appeal No. 526-J of 2021
Mst. Nuzhat Rasheed v. The State
Criminal Appeal No. 527-J of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7390.pdf

Facts: Two Criminal Appeals were filed by accused persons against their conviction and sentence passed under sections 302/34 of PPC as well as Murder Reference submitted by the learned trial court under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to one of the appellants.

Issues: i) What are the parameters to prove the case in case of circumstantial evidence?
ii) Whether joint extrajudicial confession is relevant and an admissible piece of evidence?
iii) Whether any value can be attached to delayed recorded statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898?
iv) What is the effect of withholding the best evidence?
v) What needs to be established by the prosecution for the application of Article 40 of the Qanun-e-Shahadat Order, 1984?
vi) What is evidentiary value of the recovery made in violation of section 103 CrPC?
vii) Whether the production of the Call Data Record without the disclosure of the details of the conversation is relevant?
viii) Whether independent evidence is required by the prosecution to prove the alleged motive?
ix) Whether in criminal justice system, onus to prove shifts upon the accused?
x) Whether an accused person can be convicted merely because of not explaining the circumstances in which the deceased had lost his life?
xi) Where all the other pieces of evidence relied upon by the prosecution have been disbelieved and discarded, whether the conviction can be upheld based on medical evidence alone?
xii) What is the standard of proof required in a case completely based upon circumstantial evidence and involves capital sentence?
xiii) Whether a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused?
xiv) What inference can be drawn from the unexplained delay in reporting the matter to police?

Analysis: i) In dealing with circumstantial evidence, the rules specially applicable to such evidence must be borne in mind. In such cases, there is always the danger that

conjecture or suspicion may take the place of legal proof (…) Thus, in a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof.

ii) No reliance whatsoever can be placed upon the alleged joint extra judicial confession of the appellants , allegedly made before the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4), as the same was a joint extrajudicial confession which is neither a relevant nor an admissible piece of evidence.

iii) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is a plausible explanation for such delay. No explanation, much less plausible, has been given by the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) for not getting their statements under section 161 of the Code of Criminal Procedure, 1898 recorded immediately and therefore no value can be attached to his statement.

iv) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced, then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same. Illustration (g) of the said Article 129 of the Qanun-e-Shahadat Order, 1984 reads as under:-"(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."The failure of the prosecution to produce, the children of the deceased , who were admittedly the residents of the place of occurrence and the most natural witnesses, before the learned trial court, has convinced us that had they been produced before the learned trial court they would not have supported the prosecution case.

v) A perusal of above article 40 of the Qanun-e-Shahadat Order, 1984 reveals firstly that it serves as a proviso to Articles 38 and 39 of the Qanun-e- Shahadat Order, 1984. It comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody. Thus, in order to apply Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source.

vi) Regarding the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi which was in clear violation of section 103 Code of Criminal Procedure, 1898. The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more

in disuse than compliance. To appreciate it better, this section is being reproduced:-"103.--(1) Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do."Therefore, the evidence of the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi cannot be used as incriminating evidence against the appellant, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence.

vii) Admittedly no voice record or its transcript has been brought on record. It is stressed that in the absence of any voice call data or record, simply the production of the Call Data Record without the disclosure of the details of the conversations is not relevant to prove any fact supporting the prosecution case against the appellants.

viii) The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged, and the fact that the said motive was so compelling that it could have led the appellant to have committed the Qatl-i-Amd of the deceased. There is a poignant hush with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

ix) The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged. The said provision provides:"117. Burden of proof:- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. Article 122 of Qanun-e- Shahadat,1984 reads as under:"122. Burden of proving fact especially within knowledge:- When any fact is especially within the knowledge of any person, the burden to proving that fact is upon him."It has to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the accused by

producing sufficient evidence, except the facts referred in Article 122 Qanun-e-Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.

x) An accused person cannot be convicted merely because she did not explain the circumstances in which the deceased had lost his life.

xi) As all the other pieces of evidence relied upon by the prosecution, in this case, have been disbelieved and discarded by us, therefore, the appellants' conviction cannot be upheld on the basis of medical evidence alone.

xii) To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon and a very minute and narrow examination of the same is necessary to secure the ends of justice. It is imperative for the prosecution to provide all links in the chain, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature that many links are missing in the chain. It would not be wrong to observe that in this particular case, it can be said that there is no link, what to talk about a chain.

xiii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

xiv) It has not been explained at all that why the matter of confession of the appellants was not reported immediately. The delay with which the application (Exh.PC) was submitted by Nasir Iqbal to Zafar Hussain, SI (PW-10) on 07.12.2019 is proof of the fact that the delay was used to fashion out and concoct a false narrative against the appellants.

Conclusions: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, based on which no conclusion other than one of guilt of the accused can be reached.

ii) Joint extrajudicial confession is neither relevant nor an admissible piece of evidence.

iii) The delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is a plausible explanation for such delay.

iv) Under Article 129 (g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can be drawn against the prosecution that the withheld evidence would not have favoured the prosecution case had it been produced in evidence.

v) Article 40 of the Qanun-e-Shahadat Order, 1984 comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody.

vi) The recovery made in violation of section 103 CrPC cannot be used as incriminating evidence, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence.
vii) The production of the Call Data Record without the disclosure of the details of the conversations is not relevant to proving any fact.
viii) The prosecution is required to prove the alleged motive through independent evidence.
ix) In criminal justice system, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise.
x) An accused person cannot be convicted merely because of not explaining the circumstances in which the deceased had lost his life.
xi) Where all the other pieces of evidence relied upon by the prosecution have been disbelieved and discarded, the conviction cannot be upheld based on medical evidence alone.
xii) To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence. It is imperative for the prosecution to provide all links in chain, where one end of the same touches the dead body and the other, the neck of the accused.
xiii) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused.
xiv) See above in analysis portion.

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27. **Lahore High Court**
The State v. Muhammad Nadeem
Murder Reference No.28 of 2019
Muhammad Zahid alias Billa and another v. The State and another
Criminal Appeal No.151of 2019
Zia Ahmed v. The State and another
Criminal Revision No. 148 of 019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7307.pdf

Facts: Feeling aggrieved of the judgment of the learned trial court, the convicts have lodged the Criminal Appeal assailing convictions and sentences awarded to them, while the learned trial court has submitted Murder Reference under section 374 Cr.P.C., seeking confirmation or otherwise of the death sentence awarded to one of the convicts and the complainant has filed Criminal Revision seeking the enhancement of the sentences awarded to the other convict, which Criminal Appeal, Murder Reference and Criminal Revision are intended to be decided through this single judgment.

Issues: i) What is legal status of evidence in shape of a test identification parade?
ii) What would be value of the evidence of prosecution witnesses if they introduce improvements to their previous statements?

iii) What would be status of recovery of crime weapons having been affected without associating any witness of locality?
iv) If all the other pieces of evidence relied upon by the prosecution are disbelieved and discarded, whether the conviction can be based on medical evidence alone?

Analysis: i) The term 'identification' means proving that a person before the Court is the very same that he is alleged, charged or reputed to be. Facts which establish the identity of any person, whose identity is relevant, are always relevant by virtue of Article 22 of the Qanun-e-Shahadat Order, 1984. In order to have some assurance of truth, a test identification is held in the manner that the witness at investigation stage is confronted with the alleged offender, not standing alone but mixed with a number of innocent persons of the same age-group, build and features. Before the Court can accept other evidence to establish the identity of the accused, there must be corroborative evidence acceptable by court in shape of test identification parade.
ii) By way of introducing dishonest, blatant and substantial improvements to their previous statements, the prosecution witnesses impeach their own credit as per Article 151of the Qanun-e-Shahadat Order, 1984.
iii) Recovery of the crime weapons without associating any witness of locality would be in clear violation of Section 103 Code of Criminal Procedure, 1898 and same cannot be relied.
iv) Medical evidence, by its nature and character, cannot recognize a culprit in case of an un-witnessed incidence.

Conclusion: i) A test identification parade is designed to furnish evidence to corroborate the evidence, which the witness concerned tenders before the court.
ii) If the prosecution witnesses introduce improvements to their previous statements and are duly confronted with their former statements, their credit stands impeached and they cannot be relied upon.
iii) Recovery of crime weapon without associating any witness of locality cannot be used as incriminating evidence against the accused as it is the evidence having been obtained through illegal means being hit by the exclusionary rule of evidence.
iv) If all the other pieces of evidence relied upon by the prosecution are disbelieved and discarded, the conviction cannot be based on medical evidence alone.

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28. **Lahore High Court**
The State v. Moula Bakhsh,
Murder Reference No.31 of 2020
Moula Bakhsh v. The State and another.
Criminal Appeal No. 438 of 2020
Muhammad Ramzan v. The State and four others
Petition for Special Leave to Appeal No.54 of 2020.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7348.pdf

Facts: Convict was tried alongwith acquitted co-accused of the convict by the learned Additional Sessions Judge, in the case instituted upon the private complaint relating to F.I.R. in respect of offences under sections 302 ,324, 337 F(i),337 F(v), 337 A(i), 337 L(2), 148 and 149 P.P.C. for committing the Qatl-i- Amd. The learned trial court vide judgment convicted and sentenced him. Feeling aggrieved, convict lodged the Criminal appeal, assailing his conviction and sentence. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant. The complainant of the case filed Petition for Special Leave to Appeal seeking permission to file an appeal against the acquittal of the co-accused of the convict.

Issues: i) Whether injuries of P.W are indication of his presence at the spot and are affirmative proof of his credibility and truth?
ii) What is the effect of dishonest improvements of witnesses of ocular account?
iii) What is the effect of delay in sending the blood stained weapon of offence for analysis?
iv) What is the evidentiary value of recovery if the ocular account is found unreliable?
v) Whether motive could alone be made basis for conviction, when ocular account is found to be unreliable?
vi) Whether onus to prove the facts in issue never shifts and always lies on the prosecution?
vii) Whether, the statement of accused under section 342, Cr.P.C. must be read in its entirety?
viii) Whether benefit of doubt arising out of a single circumstance can be extended to accused?
ix) What is the principle of the criminal administration of justice of double presumption of innocence of accused?

Analysis: i) The stamp of injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition. Injuries received by a witness during an incident do not warrant acceptance of his evidence without scrutiny. At the most, such traumas can be taken as an indication of his presence on the spot, but still, his evidence is to be scrutinized on the benchmark of principles laid down for the

appraisal of evidence. It is not to be assumed that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not the simple presence of a witness at the crime scene but his credibility, which makes him a reliable witness. It has been held by the august Supreme Court of Pakistan repeatedly that the facts that an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not.

ii) Once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. (…) It is well established by now that when a witness improves his statement and the moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration.

iii) It was scientifically impossible to detect the origin of the blood after about two years of the occurrence because human blood disintegrates in a period of about three weeks.

iv) It is an admitted rule of appreciation of evidence that recovery is only a supporttive piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

v) Moreover, it is an admitted rule of appreciation of evidence that motive is only supportive piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

vi) Suffice is to observe that the onus to prove the facts in issue never shifts and always lies on the prosecution. That the law is quite settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. (…)

vii) The law is equally settled that the statement of an accused person recorded under section 342, Cr.P.C. is to be accepted or rejected in its entirety and where the prosecution's evidence is found to be reliable and the exculpatory part of the accused person's statement is established to be false and is to be excluded from consideration then the inculpatory part of the accused person's statement may be read in support of the evidence of the prosecution.

viii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

ix) It is important to note that according to the established principle of the

criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non- reading of the record or perverse.

Conclusions: i) Presence of injuries does not stamp a witness to be a truthful one.
ii) When a witness improves his statement and the moment it is observed that the said improvement was made dishonestly to strengthen the prosecution case, such portion of his statement is to be discarded.
iii) Sending weapon of offence (Hatchet) to the office of Punjab Forensic Science Agency with delay is not helpful to prosecution because it was scientifically impossible to detect the origin of the blood after such a long period as human blood disintegrates in a period of about three weeks.
iv) Recovery is only a supportive piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.
v) Motive is only supportive piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction.
vi) If the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had admitted the occurrence.
vii) Statement of an accused person recorded under section 342, Cr.P.C. is to be accepted or rejected in its entirety.
viii) For giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.
ix) According to the established principle of double presumption of innocence the courts should be slow in converting the acquittal into conviction.

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29. **Lahore High Court**
Murder Reference No.22 of 2019
The State v Ejaz Ahmed
Criminal Appeal No. 788-J of 2019
Ejaz Ahmed v The State
Criminal Appeal No.588 of 2019
Abdul Razzaq v Muhammad Khan and seven others
Mr.Justice Sadiq Mahmud Khurram, Mr.Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7446.pdf

Facts: The appellant through this appeal has assailed the decision of trial court wherein, he was awarded the sentence of death on two counts under section 302(b) P.P.C, and his other co accused were acquitted.

Issues: i) What are the duties of chance witnesses?
ii) How the courts can presume the existence of any fact?

iii) What is the evidentiary presumption of Article 129 of The Qanun-e-Shahadat Order 1984?
iv) What is the purpose of trial?
v) What is the purpose of causing delay in post mortem examination?
vi) What is the admitted rule of appreciation of evidence of recovery?
vii) Whether the motive is a corroborative piece of evidence?
viii) Whether motive is a double edge weapon?
ix) Whether the abscondence of accused can be used as a corroborative piece of evidence?
x) Whether corroborative and ocular evidence are to be read in isolation?
xi) What is the value of conviction based on the abscondence of accused?
xii) What is the legal value of medical evidence?
xiii) What is the settled principle of criminal law regarding benefit of doubt to the accused?
xiv) What is the established principle of criminal law regarding acquittal of accused?

Analysis: i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same.

ii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iii) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

iv) The purpose of the trial is the discovery of truth. As long as men keep lying the only causality would be the reality.

v) A delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

vi) It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

vii) It is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

viii) It is settled law that motive is a double-edge weapon, which can cut either way; if it was the reason for the accused to murder the deceased; it equally was a ground for the complainant to falsely implicate accused in the case.

ix) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with the substantive piece of evidence. Abscondance is only a suspicious circumstance. Abscondance itself has no value in the absence of any other evidence. The abscondence of the accused can never remedy the defects in the prosecution case. Abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence.

x) Both corroborative and ocular evidence are to be read together and not in isolation.

xi) Conviction on abscondence alone cannot be sustained and no conviction can be based on abscondence alone.

xii) The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit.

xiii) It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then the such benefit is to be extended to an accused not as a matter of concession but as of right.

xiv) It is an established principle of the criminal administration of justice, once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

Conclusion:

i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence and at the time of occurrence.

ii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact.

iii) When Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced, the same would have been gone against the party producing the same.

iv) The purpose of the trial is the discovery of truth.

v) The sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

vi) It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence.

vii) It is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence.

viii) It is settled law that motive is a double-edge weapon.

ix) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation.

x) Both corroborative and ocular evidence are to be read together and not in isolation.

xi) Conviction on abscondence alone cannot be sustained.
xii) The medical evidence is only confirmatory or of supporting nature.
xiii) It is settled criminal law that that for giving benefit of the doubt to the accused, it is not necessary that there should be so many circumstances, if single circumstance creates reasonable doubt then its benefit be extended to accused.
xiv) It is an established principle of the criminal administration of justice, once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence.

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30. **Lahore High Court**
The State v. Ghulam Shabbir etc.
Murder Reference No .51 of 2019 etc.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC7122.pdf

Facts: The appellants have assailed their conviction for offences u/s 302 etc. of PPC through jail whereas complainant of the case filed criminal appeal against acquittal of other accused by trial court. The trial court submitted murder reference u/s 374 Cr.P.C seeking confirmation or otherwise of the sentences of death awarded to appellants.

Issue: i) How the prosecution ought to establish the case in case of circumstantial evidence?
ii) Whether suspicion can be treated as a substitute of proof?
iii) What is effect of non-production of available evidence by a party?
iv) What is effect of improvement of previous statement of prosecution witness?
v) What is effect of delayed recording of statement u/s 161 Cr.PC?
vi) What is effect of non-mentioning the make or the colour or the registration number or the model number of the motorcycle allegedly used for taking dead body of deceased to burial place?
vii) What is evidentiary value of recovery of weapons of offence if same are not sent for forensic analysis?
viii) Whether only production of Call Data Record without any voice call data record prove any fact supporting prosecution case?
ix) Whether a tainted piece of evidence can corroborate any other piece of evidence which is also tainted?
x) Whether it is necessary that there should be so many circumstances creating doubt to extend benefit of same to accused?

Analysis: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached.
ii) Undoubtedly, suspicion, however grave it may be, can never be treated as a

substitute for proof.

iii) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

iv) By improving their previous statements, the prosecution witnesses impeach their own credit as per Article 151 (3) of QSO...

v) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay.

vi) The prosecution witnesses, in their statements before the learned trial court, did not state either the make or the colour or the registration number or the model number of the motorcycle upon which they had allegedly seen taking of deaed body of deceased by accused to its burial place, therefore, the recovered motorcycle does not prove such fact.

vii) It has been observed that the said Gandasa was never sent to the Punjab Forensic Science Agency, Lahore for analysis and therefore, its recovery is inconsequential.

viii) In the absence of any voice call data or record, simply the production of the Call Data Record without the disclosure of the details of the conversation is not relevant to prove any fact supporting the prosecution case against the accused.

ix) A tainted piece of evidence cannot corroborate another tainted piece of evidence.

x) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) See above under analysis no. 01.

ii) Suspicion, however grave it may be, can never be treated as a substitute for proof.

iii) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

iv) By improving their previous statements, the prosecution witnesses impeach their own credit.

v) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay.

vi) See above under analysis no. vi.

vii) If the weapon is not sent to the Punjab Forensic Science Agency, Lahore for analysis, its recovery is inconsequential.

viii) In the absence of any voice call data or record, simply the production of the Call Data Record without the disclosure of the details of the conversation is not relevant to prove any fact supporting the prosecution case against the accused.
ix) A tainted piece of evidence cannot corroborate another tainted piece of evidence.
x) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances.

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31. **Lahore High Court**
The State v. Muhammad Arif
Murder Reference No.135 of 2019
Muhammad Arif v. The State
Criminal Appeal No. 1150-J of 2019
Ghulam Yaseen v. The State and two others
Petition for Special Leave to Appeal No.130 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC7265.pdf

Facts: The appellant was convicted in the case instituted upon the private complaint in respect of offences under sections 302 and 34 P.P.C.,feeling aggrieved wherefrom, he lodged criminal appeal assailing his conviction and sentence. The learned trial court submitted murder reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant. The complainant of the case filed petition for special leave to appeal seeking permission to file an appeal against the acquittal of the co-accused of the appellant. Now, disposal of the criminal appeal, the petition for special leave to appeal and the murder reference is intended through this single judgment.

Issues: i) What is the effect of failure of the prosecution to prove the reason for presence of chance witnesses at the place of occurrence?
ii) What would be the status of the prosecution evidence when the prosecution witnesses made blatant improvements to their previous statements?
iii) What does *Rigor mortis* mean*?*

Analysis: i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence, to prove their presence by producing some consistent evidence, to adduce physical proof of reason for their arrival at the place of occurrence as well as their presence at the place and time of occurrence.
ii)The fact that the prosecution witnesses made blatant improvements to their previous statements in order to bring the ocular account, in line with the report of post mortem examination of the dead body indicates that they made a deliberate and dishonest departure from their earlier narrations of the occurrence.
iii) The *rigor mortis* is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12 hours in temperate climate. Similarly, the

reverse process with which *rigor mortis* disappears is called *algor mortis*.In temperate climate the rigor mortis completes in 8 to 12 hours.

Conclusion: i) The failure of the prosecution to prove the reason for presence of chance witnesses at the place of occurrence vitiates the trust of the court in chance witnesses as being truthful witnesses.
ii) By improving their previous statements, the prosecution witnesses impeach their own credit for being not relied upon.
iii) *Rigor mortis*, being the process of the stiffness of voluntary and involuntary muscles in human body after death, generally occurs while the dead body is cooling.

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32. **Lahore High Court**
The State v. Irfan alias Punna
Murder Reference No.64 of 2018
Irfan alias Punna and another v. The State and another.
Crl. Appeal No. 518 of 2019
Khalid Hussain v. The State and four others.
Criminal Appeal No.674 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC7173.pdf

Facts: Additional Sessions Judge, for offences under sections 302,334,324, 148 and 149 P.P.C, at the conclusion of trial convicted one of the appellants/convicts under Section 302(b) PPC and sentenced to death as Tazir with a direction to pay a sum of Rs.200,000/- as compensation under Section 544-A Cr.P.C. to the legal heirs of deceased, in default thereof to further undergo six months S.I and other one under section 302(b) PPC and sentenced Imprisonment for life as Tazir for committing Qatl-i-Amd of same victim with a direction to pay fine of Rs.200,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased, in case of default of payment of compensation amount, the convict was directed to undergo further six months of simple imprisonment. The appellants/convicts filed criminal appeal against their convictions and sentences and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the first one appellant being originated from the same judgment. The complainant of the case also filed Criminal Appeal against the acquittal of the co-accused from the same charges.

Issues: i) Whether the chance witnesses are under bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence?
ii) Whether non production or non-availability of the vehicle used by the prosecution witnesses to arrive at the place of occurrence is fatal to the prosecution case?
iii) Whether it is duty of prosecution to establish the reason for which prosecution witnesses had proceeded at the place of occurrence as well as the mode through which they arrived over there?

iv) Whether the courts can presume the existence of any facts which runs counter to natural human conduct and behaviour?
v) Whether dishonest improvements to the previous statements by the prosecution witnesses impeach their credit?
vi) Whether such witnesses can be believed, who are unable to depose the facts regarding place of post mortem examination in connection with other facts?
vii) Whether recovery of case property in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 can be used as incriminating evidence?
viii) Whether delayed transmission of empty cartridges towards the Forensic Science Agency raised chances of fabrication?
ix) Whether recovery has lost its evidentiary value when the ocular account is found to be unreliable?
x) Whether motive is a double-edge weapon, which can cut either way?
xi) Whether in the absence of any report of Forensic Science Agency about the genuineness of video footage as stored in the USB flash drive, taken into possession through recovery memo can be relied as evidence?
xii) Whether conviction can be upheld on the basis of medical evidence alone?
xiii) Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right?
xiv) Whether double presumption of innocence has been attached with the accused after acquittal recorded in his favor through facing trial?

Analysis: i) When the prosecution witnesses once termed as "chance witnesses" then they are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same(…)
ii) The non-production and the non-availability of the motorcycles used by the prosecution witnesses to arrive at the place of occurrence and the failure of the prosecution witnesses to produce the same before the Investigating Officers of the case, despite their repeated demands, leads to only one conclusion and that being that no such motorcycles were available. Had such motorcycles been used by the prosecution witnesses to arrive at the place of occurrence, then the same must have been available at the place of occurrence, at the time of arrival of SI (PW), the Investigating Officer of the case and (CW) and the same would necessarily have been taken into possession by the Investigating Officers of the case but they were not and it proves that a false claim was made by the prosecution witnesses that they had arrived at the place of occurrence on two motorcycles. In this manner, the prosecution witnesses failed miserably to prove that they had indeed arrived at the place of occurrence, at the time when the same was happening(…)
iii)The prosecution was under a bounden duty to establish not only that the prosecution witnesses had a reason to proceed to the place of occurrence but also to prove the mode through which the prosecution witnesses arrived at the place of occurrence. The failure of the prosecution to prove the said fact has vitiated the trust in (PW-1),(PW-2) and (PW-3) as being truthful witnesses.(…)

iv) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case. We thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat Order, 1984, that the conduct of the assailants, as deposed to by the prosecution witnesses was opposed to the common course of natural events and human conduct(…)

v) By improving their previous statements, the prosecution witnesses impeached their own credit. As the prosecution witnesses introduced dishonest, blatant and substantial improvements to their previous statements and were duly confronted with their former statements, hence their credit stands impeached and the prosecution witnesses cannot be relied upon on, being proved to have deposed with a slight, intended to mislead the court. The august Supreme Court of Pakistan in the case of "Muhammad Ashraf Vs. State" (2012 SCMR 419) took serious notice of the improvements introduced by witnesses and rejected their evidence (…)

vi) The witnesses who did not even know where the post mortem examination of the dead body was conducted cannot be believed with regard to other facts deposed by them.

vii) Regarding the recovery of the *Repeater* gun and the Toka from the accused, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recovery of the *same*, which was in clear violation of section 103 Code of Criminal Procedure, 1898…Therefore, the evidence of the recovery of the *Repeater* gun and the *Toka* from the accused persons cannot be used as incriminating evidence against them, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence(…)

viii) The empty cartridges taken into possession from the place of occurrence were sent to Punjab Forensic Science Agency, Lahore with delay, though there was no reason for keeping the empty cartridges which were taken into possession of on the day of occurrence at the Police Station and not sending them to the office of Punjab Forensic Science Agency. In this manner the report of Punjab Forensic Science Agency, regarding the comparison of the empty cartridges taken from the place of occurrence with the *Repeater* guns recovered from the appellants, has no evidentiary value as the possibility of fabrication is apparent(…)

ix) It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

x) It is settled law that motive is a double-edge weapon, which can cut either way; if it was the reason for the appellants to murder the deceased, it equally was a ground for the complainant to falsely implicate them in this case.

xi) Investigating Officer of the case, admittedly did not record the statement of the person who had recorded the video footage as stored in the USB flash drive ,taken

into possession through recovery memo. Admittedly no person who had recorded the video footage as stored in the USB flash drive, taken into possession through recovery memo, appeared before the learned trial court as a witness. Moreover the video footage as stored in the USB flash drive, taken into possession through recovery memo was not analyzed by the Punjab Forensic Science Agency, Lahore regarding its genuineness or otherwise. In the absence of any report of the Punjab Forensic Science Agency, Lahore about the genuineness or otherwise of the said video footage as stored in the USB flash drive ,taken into possession through recovery memo, no reliance can be placed on such piece of evidence(…)

xii) Medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by this Court, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone (…)

xiii) It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then the such benefit is to be extended to an accused not as a matter of concession but as of right.

xiv) According to established principle of the criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse…

Conclusion: i) Yes, chance witnesses are under bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence.

ii) Yes, non-production or non-availability of the vehicle used by the prosecution witnesses to arrive at the place of occurrence is fatal to the prosecution case.

iii) Yes, it is duty of prosecution to establish the reason for which prosecution witnesses had proceeded at the place of occurrence as well as the mode through which they arrived over there.

iv) Yes, under Article 129 of the Qanun-e-Shahadat Order, 1984 the courts can presume the existence of any facts which runs counter to natural human conduct and behaviour.

v) Yes, dishonest improvements to the previous statements by the prosecution witnesses impeached their credit.

vi) Such witnesses cannot be believed, who are unable to depose the facts regarding place of post mortem examination in connection with other facts.

vii) Recovery of case property in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 cannot be used as incriminating evidence.

viii) Yes, delayed transmission of empty cartridges towards the Forensic Science Agency raised chances of fabrication.

ix) Yes, recovery loses its evidentiary value when the ocular account is found to be unreliable.
x) Yes, motive is a double-edge weapon, which can cut either way.
xi) In the absence of any report of Forensic Science Agency about the genuineness of video footage as stored in the USB flash drive, taken into possession through recovery memo cannot be relied as evidence.
xii) Conviction cannot be upheld on the basis of medical evidence alone.
xiii) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right.
xiv) Yes, double presumption of innocence has attached with the accused after acquittal recorded in his favor through facing trial.

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33. **Lahore High Court**
The State v. Shahid alias Shahra
Murder Reference No.11 of 2019
Shahid alias Shahra v. The State
Criminal Appeal No. 953-J of 2018
Barkhurdar v. Khizar Hayat and three others
Criminal Appeal No.1154 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC7232.pdf

Facts: The appellant of Criminal Appeal against conviction was tried alongwith other three co-accused by the Additional Sessions Judge in case F.I.R registered in respect of offences under sections 302 and 34 P.P.C. The appellant was convicted with death under section 302(b) PPC as Tazir and directed to pay compensation. However other co-accused persons were acquitted. Feeling aggrieved, the convict lodged Criminal Appeal through Jail assailing his conviction and sentence. The learned trial court submitted Murder Reference seeking confirmation. The complainant of the case filed Criminal Appeal against the acquittal of the co-accused persons.

Issues: i) Whether chance witness is under a duty to explain and prove his presence at the place of occurrence, at the time of occurrence?
ii) Whether a court can presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case?
iii) Whether failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence of dark night, has repercussions, entailing the failure of the prosecution case?
iv) Whether omission of sending alleged blood stained clothes of the prosecution witness to the Forensic Science Agency for examination and grouping with that of the blood-stained clothes of the deceased creates doubt in prosecution case?
v) Whether delay in post mortem examination is reflective of the absence of witnesses?
vi) Whether recovery of weapon of offence effected from the accused in violation

of the provisions of the section 103 Code of Criminal Procedure, 1898 hit by the exclusionary rule of evidence?

vii) Whether recovery has any evidentiary value when ocular account is found to be unreliable?

viii) Whether motive alone can be made basis of conviction when ocular account is found to be unreliable?

ix) Whether medical evidence alone can be made basis of conviction when ocular account is found to be unreliable?

x) Whether benefit of doubt of any single circumstance creating reasonable doubt in the mind of a prudent person can be extended to an accused as a matter of right?

xi) Whether acquittal of an accused facing criminal charge creates double presumption of innocence?

Analysis: i) In view of the above mentioned facts, it can be validly held that the prosecution witnesses were "chance witnesses" and therefore were under a duty to explain and prove their presence at the place of occurrence, at the time of occurrence. A perusal of the statements of prosecution witnesses reveals that both the prosecution witnesses failed to provide any reason, consistent with the attending circumstances, due to which reason they left their houses at night and proceeded to the place of occurrence.

ii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iii) The non-production of any light source, available and lit at the place of occurrence, at the time of occurrence and the failure of the complainant of the case as well as the Investigating Officer of the case to produce the same before the learned trial court leads to only one conclusion and that being that no such source of light was available with the witnesses or available at the place of occurrence which could have enabled the eye witnesses to have identified the assailant and also spectate the role of the assailant as acted by him during the occurrence. The prosecution witnesses failed to establish the fact of availability of any light source at the place of occurrence, at the time of occurrence and in the absence of their ability to do so, we cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in the murk. It was admitted by the witnesses themselves that it was a dark night and as the prosecution witnesses failed to prove the availability of any light source, their statements with regard to them identifying the assailant cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence, has repercussions, entailing the failure of the prosecution case.

iv) We have also noted that the prosecution witnesses claimed that their clothes were smeared with the blood of the deceased, however at the same time also

admitted that they did not hand over the said clothes to the Investigating Officer of the case… The Investigating Officer of the case, did not take any such blood-stained clothes of the prosecution witness in possession during the investigation of the case, however, if the Investigating Officer of the case had taken the clothes of prosecution witness which clothes according to the prosecution witnesses were stained with blood, into possession and if these were sent to the Punjab Forensic Science Agency, Lahore for examination and grouping with that of the blood-stained clothes of the deceased, the same would have provided the strongest corroboration to the testimony of the prosecution witnesses but now the omission creates doubt of equal magnitude.

v) We have also noted with disquiet that the postmortem examination of the dead body of the deceased was conducted with much delay… The perusal of the Post Mortem Examination Report (Exh.PH) as well as the statement of Dr. clearly establishes the fact the post mortem examination of the dead body of the deceased was delayed and the delay was due to the late submission of police papers. No explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that the witnesses claiming to have seen the occurrence were not present at the time of occurrence and the delay in the post mortem examination was used to procure their attendance and formulate a false narrative after consultation and concert. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

vi) The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the Pistol from the appellant and have submitted that the said recovery from the appellant offered sufficient corroboration of the ocular account of the occurrence as furnished by the prosecution witnesses. The recovery of the Pistol from the appellant cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of the Pistol from the appellant which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898… Therefore the evidence of the recovery of the Pistol from the appellant cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

vii) In this manner, the prosecution witnesses failed to prove the exclusive possession of the appellant regarding the recovered Pistol. In this manner, the recovery of the Pistol from the appellant could not be proved and cannot be considered as a relevant fact for proving any fact in issue. Even otherwise, as we have disbelieved the ocular account in this case, hence, the evidence of recovery of the Pistol would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

viii) The prosecution witnesses failed to prove the fact that the said motive was so compelling that it could have led the appellant to have committed the Qatl-i-Amd of the deceased. There is a haunting silence with regard to the minutiae of motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Moreover, it is an admitted rule of appreciation of evidence that motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

ix) The only other piece of evidence left to be considered is the medical evidence with regard to the injuries observed on the dead body of the deceased by Dr. but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by us, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone.

x) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

xi) It is important to note that according to the established principle of the criminal administration of justice once an acquittal is recorded in favour of the accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

Conclusion: i) A chance witness is under a duty to explain and prove his presence at the place of occurrence, at the time of occurrence.

ii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iii) Failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence of dark night, has repercussions entailing the failure of the prosecution case.

iv) Omission of sending alleged blood stained clothes of the prosecution witness to the Forensic Science Agency for examination and grouping with that of the blood-stained clothes of the deceased creates doubt in prosecution case.

v) Delay in post mortem examination is reflective of the absence of witnesses.

vi) Recovery of weapon of offence effected from the accused in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 hit by the exclusionary rule of evidence.

vii) Recovery has no evidentiary value when ocular account is found to be unreliable.
viii) Motive alone cannot be made basis of conviction when ocular account is found to be unreliable.
ix) Medical evidence alone cannot be made basis of conviction when ocular account is found to be unreliable.
x) Benefit of doubt of any single circumstance creating reasonable doubt in the mind of a prudent person can be extended to an accused as a matter of right.
xi) Acquittal of an accused facing criminal charge creates double presumption of innocence.

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34. **Lahore High Court**
Abbas Ali v. The State and six others
Writ Petition No.16927 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7300.pdf

Facts: Through this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 561-A Cr.P.C., the order passed by the learned Magistrate and the order passed by the learned Additional Sessions Judge, whereby, the application of the petitioner for allowing the learned counsel for the petitioner to cross examine (respondent No.7), the victim of the case F.I.R registered at Police Station was rejected are sought to be be set-aside.

Issues: i) Whether an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused in rape cases under the mandatory provision of section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021?
ii) What is the ultimate test to determine whether a provision is mandatory or directory?
iii) What is the consequence of non-compliance of a mandatory provision?

Analysis: i) As per section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, it has been made mandatory that an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused… The provisions of section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, are unambiguous in their meaning and are mandatory in nature, as the word "shall" has been used in the same and it has been made mandatory that an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused.
ii) It is settled law that when the word 'shall' is used in a provision of law, it is to be construed in its ordinary grammatical meaning and normally the use of word 'shall' by the legislature brands a provision as mandatory. The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. While the use of the word 'shall' is not the sole factor which determines the mandatory or directory nature of a provision, it is certainly one of

the indicators of legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the Court to garner the real intent of the legislature as expressed in the law itself.
iii) Another aspect of the matter is that when a statute requires that a thing should be done in a particular manner or form, it has to be done in such manner. The non-compliance of a mandatory provision would invalidate such an act.

Conclusion: i) As per section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, it has been made mandatory that an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused.
ii) The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question.
iii) The non-compliance of a mandatory provision would invalidate such an act.

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35. **Lahore High Court**
Adnan Sami Khan v. Government of Punjab through Additional Chief Secretary (Home), Government of Punjab, Home Department, Lahore and six others
Writ Petition No. 6977 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7103.pdf

Facts: The petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has assailed the order passed by the Deputy Commissioner, respondent No.4, whereby a citizen was ordered to be arrested and detained for a period of thirty days with immediate effect. It was further ordered that the custody of the person shall be placed under the superintendence of the Superintendent, District Jail.

Issues: i) Whether liberty of any citizen is an “inalienable right” of the citizen?
ii) Whether it is necessary to assail the order passed under section 3 of the Punjab Maintenance Public Order Ordinance, 1960 before the Additional Chief Secretary (Home) prior to filing the writ petition against the order of detention?
iii) Whether right to protest is implied in "the right to assemble peacefully", in the "right to form associations or unions", in the "right to form or be a member of a political party" and in the "in the right to freedom of speech and expression"?
iv) Whether association with a political party is a valid ground to deprive a citizen from benefit which law provides in his favour?

Analysis: i) The Constitution of Islamic Republic of Pakistan, 1973 guarantees that no person shall be deprived of life or liberty saved in accordance with law. Liberty of any citizen is an “inalienable right” of the citizen enshrined in article 4 and embodied in article 9 of the Constitution of the Islamic Republic of Pakistan,

1973 and the detention of any citizen would tantamount the violation of fundamental rights guaranteed under articles 2-A, 3,4,9,14 & 18 of the Constitution of Islamic Republic of Pakistan, 1973. Even otherwise, the preamble of Punjab Maintenance Public Order Ordinance, 1960 law is made to ease public and ensure public safety, public interest and maintenance of public order and the applicability of the provisions of a public maintenance order is subject to guarantee provided by the Constitution of the Islamic Republic of Pakistan, 1973.

ii) I also do not agree with the learned Law Officer that prior to filing the writ petition against the order of detention, it is necessary to assail the order passed under section 3 of the Punjab Maintenance Public Order Ordinance, 1960 before the Additional Chief Secretary (Home), Government of Punjab, Home Department, Lahore.

iii) The right to protest is also implied in "the right to assemble peacefully", in the "right to form associations or unions", in the "right to form or be a member of a political party" and in the "in the right to freedom of speech and expression"… Political parties are institutions of very great importance under our form of government. They are, in fact, the effective instrumentalities by which the will of the people may be made vocal, and the enactment of laws in accordance therewith made possible. So potent have they become in determining the measures and in administering the affairs of government that they are now regarded as inseparable from, if not essential to, a republican form of government. The people have an inherent right to form, organize, and operate political parties and to reorganize an old political party. This is included in the right of suffrage. It has been characterised as "an inalienable right guaranteed by the Constitution."

iv) Moreover, even the Apex Court of the country does not consider being associated with a political party as a valid ground to deprive a citizen from benefit which law provides in his favour and the liberty of any person cannot be curtailed on this ground.

Conclusion: i) Liberty of any citizen is an “inalienable right” of the citizen enshrined in article 4 and embodied in article 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

ii) It is not necessary to assail the order passed under section 3 of the Punjab Maintenance Public Order Ordinance, 1960 before the Additional Chief Secretary (Home) prior to filing the writ petition against the order of detention.

iii) The right to protest is implied in "the right to assemble peacefully", in the "right to form associations or unions", in the "right to form or be a member of a political party" and in the "in the right to freedom of speech and expression"

iv) Association with a political party is not a valid ground to deprive a citizen from benefit which law provides in his favour.

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36. **Lahore High Court**
Mst. Haseena Mai. v The State and 04 others
Criminal Revision No.336 of 2023.
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7438.pdf

Facts: Through this petition filed under sections 435 and 439 Cr.P.C., the petitioner has assailed the order passed by the learned Additional Sessions Judge whereby the application submitted by the petitioner under section 540 Cr.P.C. seeking the summoning and examination of a witness was dismissed by the learned trial court.

Issues: i) Under what circumstances, summoning of a witness cannot be justified under the provisions of section 540 of Cr.P.C?
ii) What is the procedure for the production of the witnesses mentioned in the provision of section 265-F Cr.P.C?

Analysis: i) When in the estimation of the court the evidence of a witness is not essential for the just decision of the case and when even otherwise the statement intended to be made has no bearing upon the prosecution case and the facts in issue and the relevant facts, then his summoning cannot be justified under the provisions of section 540 of Cr.P.C. Further, if the trial of the case has been instituted upon the private complaint and it has not been explained at all as to why the said witness was not cited as a witness in the calendar of witnesses appended with the private complaint itself.
ii) The provision of section 265-F Cr.P.C. provide the procedure for the production of the witnesses and under the provisions of section 265-F Cr.P.C., it has been provided that if the accused does not plead guilty, the court shall proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution and it shall ascertain from the complainant the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the complainant and shall summon such persons to give evidence before it

Conclusion: i) Summoning of a witness cannot be justified when the evidence of a witness is not essential for the just decision of the case and the statement intended to be made has no bearing upon the prosecution case.
ii) Under the provision of section 265-F Cr.P.C., it has been provided that if the accused does not plead guilty, the court shall proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution.

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37. **Lahore High Court**
Muhammad Ajmal v. Ex-Officio Justice of Peace/Additional Sessions Judge, Burewala, and ten others.
Writ Petition. No.15477 of 2021
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7096.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner prayed that impugned order on the application of respondent No. 4 passed by learned respondent No. 1 may kindly be declared illegal, and against law and facts of the case, the same be set aside and the application U/S 22-A Cr.P.C of the Respondent No 4 may kindly be dismissed.

Issues: i) Whether an order can be passed upon the application U/S 22-A/22-B Cr.P.C which itself reveals commission of a non-cognizable offence?
ii) Whether a person would be punished for an act which was not punishable by law at the time of the act or omission?

Analysis: i) According to the Schedule-II of the Code of Criminal Procedure, 1898, police shall not arrest without warrant any person alleged to had committed the offence made punishable under section 498-A P.P.C. making the offence made punishable under section 498-A P.P.C. a non-cognizable offence. Obviously, an F.I.R cannot be ordered for the registration of a non-cognizable offence which section 498-A P.P.C is and which offence the respondent No.4 namely Ghafooran Bibi had complained that the petitioner and the other accused had committed. The available material *prima facie* does not reveal commission of any cognizable offence. As is obvious, an F.I.R. cannot be registered with regard to a non-cognizable offence.
ii) …according to the application the respondent No.4 namely Ghafooran Bibi, she was deprived of the inherited property of her deceased husband at the time of opening of succession and Inheritance mutation No. 641 of 17.05.2010 was got entered in the revenue record. The act of depriving a woman of inheriting property was made an offence as defined under section 498-A P.P.C. by way of the Criminal Law (Third Amendment) Act of 2011 which received the ascent of President of Pakistan on 26th December, 2011. According to the application of the respondent No.4 herself she was deprived of her inheritance on 17.05.2010. Such an act had not been made punishable under section 498-A P.P.C. by then. Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 provides that no person would be punished for an act which was not punishable by law at the time of the act or omission.

Conclusion: i) An order cannot be passed upon the application U/S 22- A/22-B Cr.P.C which itself reveals commission of a non-cognizable offence.
ii) A person would not be punished for an act which was not punishable by law at the time of the act or omission.

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38. **Lahore High Court**
Mst. Arzoo v. District Police Officer and three others.
W.P. No. 12826 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7114.pdf

Facts: Through this petition filed under the Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 491 of the Code of Criminal Procedure, 1898, the petitioner sought the custody of her minor son.

Issues: i) Whether the adoptive parents should be declared or presumed to be the real parents of the adopted child and how adopted children are further classified?
ii) What law in Pakistan deals with the issue of adoption and is it recognized under the Succession Act, of 1925?
iii) What is the paramount consideration for exercising the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 in case of the minor child?
iv) Whether a distinction exists between guardianship and custody?

Analysis: i) As far as an adopted child of known parentage is concerned, according to Islamic concept, he/she must be recognized through his /her natural biological parents, the evidence emerges from the following verses of the Quran (…) verses clearly distinguish between the adopted children of known as well as of unknown lineage. It clearly orders for relating the identity of the adopted children with their biological parents if known but for those with the unknown parentage, it permits, rather prescribes that they may be treated and identified as your brothers and associates. This issue of lineage was again emphasized in the last Sermon of the Holy Prophet (PBUH) in which he categorically warned that no one should change his lineage. The adoption of child has no legal effect in Shariah rather it is for emotional and psychological satisfaction. The adoptive parents may treat an adopted child as their natural child in the matters of love, affection and general behaviour. The adoption of a child with the purpose of providing shelter to him is virtuous and carries much reward for welfare of the Child but adoption in Islam has no legal consequence. The child should be attributed to the natural parents, and not to the father or mother who has adopted him and marriage of adopted children with natural children of adoptive parents is not prohibited unless they relate to each other in a prohibited degree. In short, adoption does not create a new legal relationship which did not exist before adoption.
ii) Until now no law in Pakistan addresses the issue of adoption. However, the process of adoption is carried out in the name of custody of the person of the child under the Guardians and Wards Act, 1890. The adoptive parents apply to the court under the provisions of the Guardians and Wards Act, 1890 and in the case of a child with known parentage, make the biological parents of the child as respondent who usually give consenting statement in favour of the applicant, adoptive parent. Adoption has not been defined nor is recognized under the Succession Act, of 1925. Succession to the movable and immovable property of any intestate Pakistani is governed under the laws of Pakistan in terms of section 5 of the Succession Act, 1925. Degree of kindred is computed in the manner set out in the Schedule 1 to the Succession Act, 1925. The adopted child does not find any mention in the category of kindred upon whom the property of intestate upon his death may devolve. According to the succession laid down under the

Succession Act, 1925, an adopted child is not an heir or kindred entitled upon intestacy to inherit the estate of his adoptive parent. Adoption under 'Muslim Law' does not create any kindred relationship between the adopted child and adoptive parent whosoever.

iii) This Court, in the exercise of its jurisdiction under article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has to exercise parental jurisdiction and is not precluded in any circumstance, from giving due consideration to the welfare of a minor and to ensure that no harm or damage comes to him physically or emotionally. There is no cavil that this Court is competent to entertain a habeas corpus petition under article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and direct that a person in custody within its territorial jurisdiction be brought before it and satisfy itself that the said detenue is not being held in improper or illegal custody. However, the proceedings in the habeas corpus jurisdiction are summary in nature and this Court cannot conduct a detailed inquiry. The only and the paramount consideration for exercising the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 must be the welfare of the child. The basic consideration always is to provide the child with the most natural, most considerate and most compassionate atmosphere to grow up as a better member of the society.

iv) Many people conflate custody with guardianship while the two terms describe very different things. There exists a distinction between guardianship and custody. Under sections 4(2), (S), 9(i) and 25 of the Guardians and Wards Act 1890, “guardianship” and “custody” are not held to be synonymous terms. It is observed that “guardian” as defined in S. 4(2) means a person providing de facto or de jure care of the person or property of a minor. Such a person may or may not have the custody of a minor. Custody describes a parent’s care of a child, whereas legal guardianship is granted to someone who is not necessarily the child’s biological parent. Muslim Law, which gives the right of hizanat to the mother, has to be presumed to have considered it to be in the interest of the welfare of such a minor child to remain in the custody of his mother.

Conclusion: i) The adoptive parents should not be declared or presumed to be the real parents of the adopted child and adopted children further classified the adopted children with known parentage and unknown parentage/abandoned children.

ii) No law in Pakistan deals with the issue of adoption and it is not recognized under the Succession Act, of 1925.

iii) The only and the paramount consideration for exercising the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 must be the welfare of the minor child.

iv) See analysis no. iv above.

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39. **Lahore High Court**
Malik Faisal Mahmood & another v. Shahid Ali & others
Regular First Appeal No.93 of 2021.
Mr. Justice Ahmad Nadeem Arshad, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC7015.pdf

Facts: This Regular First Appeal is directed against the Order and Decree passed by learned Civil Judge 1st Class, pursuant whereto suit for specific performance of an agreement to sell was dismissed on account of failure of the plaintiffs to deposit the balance sale consideration in compliance of directions issued by the Court.

Issues: i) What is bilateral agreement?
ii) How can a vendee seek enforcement of reciprocal obligation of the vendor?
iii) What is difference between readiness and willingness to perform the contract and whether both are condition precedent for grant of relief of specific performance?
iv) Whether court is always bound to issue a decree of specific performance?

Analysis: i) Under the law, bilateral agreement is a document, by which parties create legal and enforceable obligations to be performed with mutual understanding involving each of them promise to implement an action in exchange for other party's action and parties promise each other that they will perform or refrain from performing an act and if one of the parties perform its part of agreement, it is the other party who has to perform its part as agreed between them.
ii) The onus at very initial stage from the institution of suit is on the vendee to satisfy the test of equity, firstly, that vendor actually refused to accept the sale consideration, secondly, the vendee who is seeking performance of agreement to sell having an ability was ready and willing at all material times to perform his/her part of agreement. In such circumstances, it is essential and imperative that vendee is bound to deposit the balance sale consideration in the Court. The test of law is even on higher pedestrian i.e. the vendee cannot even seek enforcement of reciprocal obligation of the vendor unless he is able to demonstrate not only his/her willingness but also his/her capability to fulfill his/her obligation under the contract. (…) In a suit for specific performance of agreement to sell, it is always of paramount consideration that the plaintiff seeking equitable remedy of specific performance must be always willing and ready to perform his part of contract and conduct must satisfy the court that he is entitled to seek relief. These tests are to be satisfied through his ability and readiness and willingness. The wisdom behind directing the vendee to deposit the balance sale consideration is not aimed to verify the vendee's seriousness but it also safeguards the rights of the vendor as such a direction is cautioned to strike a balance between two contracting parties.
iii) Readiness means the capacity of the Plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the Plaintiff as a purchaser to perform his part of the contract.

Willingness is inferred by scrutinizing the conduct of the Plaintiff/purchaser, including attending circumstances. Continuous readiness and willingness on the part of the Plaintiff/purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance.

iv) It must be borne in mind that under Section 22 of the Specific Relief Act, 1877 the jurisdiction to issue a decree of specific performance is absolutely discretionary in its nature. Therefore, the Court in any event is not always bound to grant such relief merely because it is lawful to do so.

Conclusions: i) See above analysis portion.

ii) Vendee can seek enforcement of reciprocal obligation of the vendor if he is able to demonstrate not only his willingness but also his capability to fulfill his obligation under the contract.

iii) Readiness means the capacity of the Plaintiff to perform the contract, whereas, willingness refers to the intention of the Plaintiff as a purchaser to perform his part of the contract. Continuous readiness and willingness on the part of the plaintiff is a condition precedent for grant of relief of specific performance.

iv) Decree of specific performance is absolutely discretionary in its nature, therefore, the Court is not always bound to grant such relief merely because it is lawful to do so.

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40. **Lahore High Court**
Hajra Javaid Makhdoom v. Muhammad Tehmas Nasir, etc.
Writ Petition No. 59534 of 2022
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC6869.pdf

Facts: Through this writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has voiced his grievance against acquittal order passed by the magistrate and there after order in criminal revision before ASJ with the prayer that the case may be referred back to the Judicial Magistrate for re-trial and criminal revision may also be remanded back to Additional Sessions Judge.

Issues: i) Whether matter can be referred back by the High Court if prayer made in writ petition qua remanding the same to the both fora below at the same time?

ii) Whether the order of acquittal under section 249-A, Cr.P.C. is amenable to criminal revision or the same can be assailed before High Court through a petition for special leave to appeal as provided under section 417(2) Cr.P.C?

iii) Whether a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is competent against the order of acquittal under section 249-A, Cr.P.C?

iv) Whether criminal appeal and revision have different features?

Analysis: i) When the petitioner has prayed for the remand of case to the trial court as well as criminal revision to the court of Additional Sessions Judge. I am afraid that the prayer of the petitioner is misconceived, because, matter cannot be referred back to both the fora below at the same time. Even otherwise, supplication of the petitioner is without the backing of law…
ii) The criminal revision before the court of learned Additional Sessions Judge was not competent, because, an order of acquittal can only be assailed by way of remedy provided under section 417(2), Cr.P.C. and not otherwise…
iii) When the statute has provided a specific alternate remedy of appeal against acquittal, constitutional petition is not competent against such an order, therefore, the writ petition is not maintainable in the eyes of the law…
iv) It is noteworthy that criminal appeal and revision have different features. Appeal is filed on question of law and facts in the light of section 418, Cr.P.C. whereas in criminal revision only correctness, legality and propriety of any finding, sentence or order is to be seen. A criminal revision is not competent against the order of acquittal, because, it is prohibited according to section 439(4)(a) Cr.P.C.

Conclusion: i) Matter cannot be referred back by the High Court if prayer made in writ petition qua remanding the same to the both fora below at the same time.
ii) The order of acquittal under section 249-A, Cr.P.C. is not amenable to criminal revision rather the same can be assailed before High Court through a petition for special leave to appeal as provided under section 417(2) Cr.P.C.
iii) A petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is not competent against the order of acquittal under section 249-A, Cr.P.C.
iv) Yes, criminal appeal and revision have different features.

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41. **Lahore High Court**
Rashid v. The State & another
Crl.Misc.No.3229-B of 2023
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC6876.pdf

Facts: The petitioner sought pre-arrest bail in a criminal case registered against him and others for offences under sections 337-D, 337-A(i),337-F(i),337-L(2),354 & 34 PPC.

Issues: i) What is meant by the term ‘body cavity’ in reference to human anatomy, to attract an offence under section 337-D PPC?
ii) Whether a medical officer is considered a witness of truth in system of criminal administration of justice and what consequence may cause his/her erroneous opinion?

Analysis: i) The ‘body cavity’ is not defined in PPC and due to foregoing reason, the dictionary meaning of this expression is to be seen in accordance with principles

of interpretation of statute reiterated in various judgments by the Supreme Court of Pakistan (…) in different dictionaries, various meanings are assigned to the term 'body cavity'. In the Blakiston's Gould Medical Dictionary Fourth Edition, the term 'body cavity' is defined in the following manner:-"The peritoneal, pleural, and pericardial cavities, and that of the tunica vaginal testis". In Chambers English Dictionary 7th Edition, following meanings are assigned to 'body cavity':- "The coelom, or cavity in which the viscera of the higher animals lie". In consonance with the definitions so mentioned above, it can inexorably be concluded that the term 'body cavity' in reference to human anatomy can only be used for inner part of thorax and abdomen (…) it can also be gathered from the views of Islamic scholars and the case law mentioned above that injury in the body cavity for attracting the offence under Section 337-D PPC must be direct consequence of the trauma inflicted by the perpetrator and should not be its fall out and by product.

ii) I cannot resist to mention here that a medical officer is generally considered as a witness of truth in the scheme of things upon which the system of criminal administration of justice is structured. An erroneous opinion given by the doctor based either upon his incompetency or some sinister design can bring disastrous consequences for the litigant in a criminal case. The medical officers must realize that by tendering opinion in criminal cases, they contribute in safe administration of justice which gets polluted by incorrect reports.

Conclusion: i) The term 'body cavity' in reference to human anatomy can only be used for inner part of thorax and abdomen and an injury in the body cavity for attracting the offence under Section 337-D PPC must be direct consequence of the trauma inflicted by the perpetrator and should not be its fall out and by product.

ii) A medical officer is generally considered as a witness of truth in the scheme of things upon which the system of criminal administration of justice is structured and an erroneous opinion given by the doctor based either upon his incompetency or some sinister design can bring disastrous consequences for the litigant in a criminal case.

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42. **Lahore High Court**
Jamila Bibi v. SHO, etc.
Writ Petition No.79470-H/2023
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC7008.pdf

Facts: Through this Constitutional Petition under Article 199 of the Constitution of The Islamic Republic of Pakistan, 1973 read with Section 491 of the Code of Criminal Procedure, 1898 the petitioner sought recovery of the detenues from the illegal, improper and unauthorized custody of the police.

Issues: i) Weather Station Dairy is the main record of the affairs of the Police Stations and has paramount significance to determine the transparency and fairness in the process of arrest and detention?

ii) How a Station Diary is required to be maintained by the Police authorities?

Analysis: i) A Station Diary is a register required to be maintained to record day-to-day events that take place in a Police Station. Rule 22.49 of the Rules elaborates the matters to be entered in Station Diary. For effective monitoring of daily work schedules in a Police Station, to monitor such works in a regulated manner and to ensure that duties are discharged by the police officer as it would involve balancing the rights of people, be that of the accused or that of the victim of crimes or the society in general, said "Diary" is to be maintained at all Police Stations. The Station Diary is used to record every major and minor incident occurring within the jurisdiction of the Police Station in chronological order. Station Diary is the main record of the affairs of the Police Station and should contain everything of importance relating to the working of the Police Station (…) in cases where the question of illegal detention of a person in police custody is involved, Station Diary is of utmost importance to determine the transparency and fairness in the process of arrest and detention.

ii) A self-explanatory procedure has been provided in Rules 22.48 and 22.49 of the Rules regarding the maintenance of Station Diary, which further needs no elaboration. However, I am persuaded to issue clear directions to the concerned police authorities regarding the maintenance of Station Diary, as infra: -

I. In every Police Station, a Station Diary shall be maintained in accordance with Article 167 of the Order and Rules 22.48 & 22.49 of the Rules. A strict adherence to the aforesaid provisions of law shall be ensured without further fail.

II. Maintaining a computerized record of Station Diary is the need of the hour but the same cannot be permitted to be used to open a new venue to cover or legitimize the illegalities committed by the delinquent police officials, therefore, the computerized record of Station Diary shall be prepared in addition to the manual record. In case of any conflict between the two, the preference shall be given to the manual Station Diary.

III. Any wrong entry in the Station Diary by a police officer shall ordinarily entail his dismissal from the service as per Rule 22.50 of the Rules. Zero tolerance in this regard should be shown by the supervisory officers and in case of failure on the part of the supervisory officer to do the needful, he shall be accountable for the same.

IV. Properly printed books, to maintain the Station Diary, containing the proper number of pages, should be issued to every Police Station by the concerned Superintendent of Police. Only duly issued books shall be used for maintaining the Station Diary to rule out the possibility of any fabrication and alteration in the same. A Station Diary without page numbers creates room for modification and alteration.

V. Wrong entries in the Station Diary should be scored out by means of a single line and initialed by a Senior Police Officer and in no case any such wrong entry be mutilated or rendered illegal nor should paper be pasted over it.

VI. A District and Sessions Judge of every District may call for and inspect the Station Diaries of Police Stations in his district occasionally to ensure that those are maintained following the law in its letter and spirit. This power under Article 167(2) of the Order should be exercised regularly to keep a check on the proper maintenance of Station Diary.

Conclusion: i) Station Dairy is the main record of the affairs of the Police Stations and has paramount significance to determine the transparency and fairness in the process of arrest and detention.
ii) See above in analysis portion.

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43. **Lahore High Court**
M/s Samsara Couture House (Pvt.) Ltd. and another v. Syeda Khadija Batool and 2 others
F.A.O No. 7892 of 2020
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC6883.pdf

Facts: This appeal, under section 114 of Trade Marks Ordinance, 2001 (the 'Ordinance'), is directed against order passed under Order XXXIX, Rule 1 & 2 of the Code of Civil Procedure, 1908 (the 'Code') by Presiding Officer, Intellectual Property Tribunal.

Issues: i) What is to be taken into consideration by the courts at the interim stage in the cases of unregistered trademarks?
ii) Whether preventive relief in the cases of unregistered trademarks, should be granted as a matter of course?

Analysis: i) In the cases of unregistered trademarks, which are filed on the basis of prior use or goodwill acquired through such usage, at the interim stage, it is commonly important for the Courts to tentatively assess sales invoices, advertisements in print and electronic media as well as promotion through other tangible means, receipts, returns showing trade with the given name as well as other relevant documentary evidence filed by the two sides.
ii) It is settled that interim injunction, by its nature is a preventive relief preserving the status quo of the subject matter till the final conclusion of the suit. After ascertaining prima facie case, by assessing documents if available, the Courts must see the existence of the remaining two factors of balance of convenience and irreparable loss or injury. The preventive relief, in such circumstances and in the cases of unregistered marks, should not be granted as a

matter of course and it is suitable when existence of right by prior use or its creation as well as its infringement are demonstrated with some clarity.

Conclusion: i) See above in analysis clause.
ii) The preventive relief in the cases of unregistered marks, should not be granted as a matter of course.

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44. **Lahore High Court**
Nazir Ahmad & another v. Muhammad Siddique
Civil Revision No. 849 of 2011
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC6984.pdf

Facts: Through this civil revision, the petitioners have assailed judgment and decree passed by the learned District Judge, whereby, the appeal of the respondent was accepted and his suit was decreed.

Issue: Whether non-adherence of Order XLI, Rule 31 of CPC can only be ignored if there has been a substantial compliance of the said provision?

Analysis: Learned counsel for the revision-petitioners stated that the learned Appellate Court fell to an error, while failing to give issue-wise findings. Order XLI, Rule 31 of the Code requires that the written judgment of the Appellate Court to state (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. Undeniably, non-adherence of the said provision can be fatal and the same can only be ignored if there has been a substantial compliance of the provision. Reverting to the judgment assailed before me. The learned Appellate Court recorded the points raised by the two sides and gave findings of facts on the basis of correct appreciation of evidence and law applicable thereupon. The reasonings rendered by the learned Appellate Court are though brief but they are pertinent. I have gone through the entire record very carefully and reached to a firm opinion that the learned Appellate Court has correctly allowed the suit. The contention that the points for determination have not been formulated in a sequential manner or issue-wise finding is not recorded, has lost force since the material questions have already been answered in substantial compliance.

Conclusion: Non-adherence of Order XLI, Rule 31 of CPC can only be ignored if there has been a substantial compliance of the said provision.

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45. **Lahore High Court**
Muhammad Tariq Sahi v Govt. of Punjab and others
Writ Petition No.55800 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6816.pdf

Facts: The petitioner through this writ petition has assailed the increase in the reserve price of auction of sandstone wherein the Special Experts Committee of Mines and Minerals Department determined the reserve price of sandstone for the bid purposes.

Issues: i) Which of the Government Department has prerogative to fix the reserve price?
ii) How the public authority should exercise jurisdiction while fixing reserve price?
iii) What are parameters to succeed in writ jurisdiction in matters of fixation of reserve price?

Analysis: i) Fixation of reserve price is prerogative of the concerned government department and in this regard, neither any existing lessee nor any prospective bidder can seek fixation of the reserve price of his own choice.
ii) While fixing reserve price, the exercise of discretion by the public authority must be just, fair and reasonable and any arbitrary, whimsical and capricious exercise of such authority is amenable to judicial scrutiny, however, the scope of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in that regard is very limited.
iii) To succeed in writ jurisdiction, it is imperative to establish that the reserve price fixed by the public functionaries is so unreasonable that no authority with prudent mind could have fixed the same.

Conclusion: i) Fixation of reserve price is prerogative of the concerned government department.
ii) While fixing reserve price, the exercise of discretion by the public authority must be just, fair and reasonable.
iii) To succeed in writ jurisdiction, it is imperative to establish that the reserve price fixed by the public functionaries is so unreasonable.

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46. **Lahore High Court**
Mst. Sidra-Tul-Muntaha v. Additional Sessions Judge, Lahore etc.
Writ Petition No.84511 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6888.pdf

Facts: The petitioner has invoked constitutional jurisdiction to challenge the orders passed by the Judge Family Court and the Additional Sessions Judge, respectively whereby her private complaint under section 6(5) of Muslim Family Laws Ordinance, 1961 was entertained to the extent of respondent (her husband) and dismissed to the extent of remaining respondents and the criminal revision preferred there-against was also dismissed.

Issues: i) Whether Court is required to accept the written complaint without evaluating facts and ingredients of the alleged offence?

ii) Whether any attempt, solicitation or conspiracy in relation to polygamy under section 6 of the Muslim Family Laws Ordinance, 1961 is an offence?
iii) Whether section 109 of the PPC for the offence of abetment can be read into and made applicable to broaden scope of the offence prescribed under section 6(5) of the Ordinance, 1961?

Analysis: i) The complaint filed against any accused must state the facts disclosing existence of both the unlawful act and the criminal intent so that the Court may be satisfied regarding existence of every ingredient of the alleged offence. The Court is not required to casually accept the written complaint until it has satisfied itself that prima facie the case has been made out against the persons who have been accused of the criminal offence. In order to arrive at just evaluation, the Court ordinarily examines the complainant and the witnesses as cursory evidence. The purpose behind that practice is to protect the public from false and frivolous complaints filed against them in criminal Courts.
ii) It is pertinent to note that section 6 neither makes the registration of another marriage contracted without permission of the Arbitration Council an offence nor the Ordinance prescribes any inchoate offence in relation to polygamy such as attempt, solicitation or conspiracy. Section 6 of the Ordinance does not prescribe any punishment or penalty against anyone other than the husband who contracts another marriage without permission of the Arbitration Council concerned. It is a cardinal principle of interpretation of criminal statutes that enactments prescribing an offence are to be construed strictly and the words used therein cannot be extended by construction.
iii) For being a special statute, in the absence of any specific provision in the Ordinance permitting applicability of the Pakistan Penal Code, provisions such as section 109 of the PPC for the offence of abetment cannot be read into and made applicable to broaden scope of the offence prescribed under section 6(5) of the Ordinance.

Conclusion: i) The Court is not required to accept the written complaint without evaluating facts and ingredients of the alleged offence.
ii) Any attempt, solicitation or conspiracy in relation to polygamy under section 6 of the Muslim Family Laws Ordinance, 1961 is not an offence.
iii) Section 109 of the PPC for the offence of abetment cannot be read into and made applicable to broaden scope of the offence prescribed under section 6(5) of the Ordinance, 1961.

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47. **Lahore High Court**
Azeem Bakhash Chaudhary v. Returning Officer, Constituency Pp-19 Murree and Kotli Sattian and another
Election Appeal No.147 of 2024
Mr. Justice Mirza Viqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2024LHC87.pdf

Facts: This appeal is filed under Section 63 of the Elections Act, 2017 arising out of an order whereby the Returning Officer proceeded to reject the nomination paper of the appellant on the ground that he is having dual nationality.

Issue: Whether a Pakistani citizen can be declared as disqualified from being elected or chosen as, and from being, a member of the *Majlis-e-Shoora* (Parliament) due to having dual nationality ?

Analysis: In terms of sub-clause (1)(c) of Article 63 of the Constitution of the Islamic Republic of Pakistan, 1973 a person shall be disqualified from being elected or chosen as, and from being, a member of the *Majlis-e-Shoora* (Parliament), if he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State. Section 14 of the Pakistan Citizenship Act, 1951 places an embargo on dual citizenship.

Conclusion: A Pakistani citizen can be declared as disqualified from being elected or chosen as, and from being, a member of the *Majlis-e-Shoora* (Parliament) for having dual nationality.

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48. **Lahore High Court/ Appellate Tribunal**
Emaan Waseem v. Returning Officer
Election Appeal No.16 of 2024
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC36.pdf

Facts: The election appeal originated from rejection of nomination papers for contesting election of National Assembly Seat in accordance with the schedule given by the Election Commission of Pakistan.

Issues: (i) Mere abscondence or being a proclaimed offender would result in rejection of nomination papers/disqualification of a candidate to contest the election.
(ii) Whether the presence of the proposer and seconder before the "R.O." is mandatory as per the mandate of section 62(2) of the Election Act 2017?
(iii) Import of section 62(9) of the Election Act 2017.
(iv) Whether default in payment of Agricultural Income Tax (AIT) would result in rejection of nomination papers/disqualification of a candidate to contest election?

Analysis: (i) It is manifestly clear that mere registration of a criminal case against a candidate or his purported abscondence would not impede as disqualification in his way to contest the election. Reliance was placed with aplomb on 2016 SCMR 733.
(ii) From the whole reading of Section 62, one thing becomes crystal clear that the presence of the proposer and seconder before the "R.O." is not mandatory rather it is optional for them to be present at the time of scrutiny of the nomination papers.
(iii) If there arises a question about the genuineness of the signature of the proposer or the seconder before the "R.O.", he has to conduct a summary enquiry

for his satisfaction. Without holding enquiry the nomination papers ought not to be rejected merely on the ground of absence of proposer and seconder. The "R.O." in the circumstances should employee necessary measures for the production of the proposer and seconder if he was desirous to satisfy himself about the genuineness of their signatures. Moreover in case of a question about genuineness of signatures of a proposer or seconder they are the most relevant persons who can blow the whistle. The question with regard to the genuineness or otherwise of the signatures/handwriting of a person ordinarily cannot be agitated by a third person having no acquaintance with the signature/handwriting of such person.

(iv) Mere default in payment of Agricultural Income Tax (AIT) where neither any assessment was made nor the person was served with any notice to pay the amount in question, which even otherwise was undetermined would not result in rejection of the nomination papers. Reference was made to a larger bench case reported as 2013 CLC 1481.

Conclusion: (i) Mere registration of a criminal case against a candidate or his purported abscondence would not impede as disqualification in his way to contest the election.

(ii) At the time of scrutiny of the nomination papers, presence of the proposer and seconder before the "R.O." is not mandatory.

(iii) See above (analysis part).

(iv) See above (analysis part).

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49. **Lahore High Court**
Imran Ahmed Khan Niazi v. Returning Officer etc.
Election Appeal No.151 of 2024
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC76.pdf

Facts: Through the instant election appeal, appellant called in question the legality of order passed by the Returning Officer, whereby his nomination papers were rejected.

Issue: i) Whether power of the Appellate Tribunal is limited only to examine the legality of orders passed by the Returning Officers under Section 62 of the Elections Act, 2017?

ii) Whether Article 63(1)(h) of the Constitution implies that conviction in an offence of moral turpitude with sentence of not less than two years disqualifies a person from being elected as a member of parliament and even to remain as such?

iii) Whether the use of words "dishonesty" and "deceitful" in the judgment which became root cause of disqualification of the appellant has inexorably brought his conviction within the ambit of moral turpitude, attracting the mischief of Article 63(1)(h) of the Constitution?

iv) Whether the Returning Officer is competent to examine the candidature of a

candidate while subjecting his nomination papers to scrutiny on the touchstone of Section 62 of the Elections Act, 2017?

v) Whether after the suspension of sentence, the conviction can be treated to be in the field?

Analysis: i) Though the learned counsel for the appellant during arguments enrouted through the judgment of conviction passed against the appellant and canvassed that it is legally and factually incorrect but being cognizant of jurisdictional limitation, it will be a fallacious approach for this Tribunal to comment upon the merits of that case while exercising altogether a different legal and territorial jurisdiction. This Tribunal is created under Section 63(1) of the Elections Act, 2017 having powers limited only to examine the legality of orders passed by the Returning Officers under Section 62. The term "jurisdiction", stands for the legal authority vested in a court or forum to decide the controversy placed before it and is to be exercised within the legal sphere, in accordance with some express provision of law. Section 63 of the Elections Act, 2017 places a clog upon this Tribunal to decide only the legality of the finding given by the Returning Officer regarding the rejection or acceptance of nomination papers.

ii) It explicitly implies from Article 63(1)(h) of the Constitution that conviction in an offence of moral turpitude with sentence of not less than two years disqualifies a person from being elected as a member of parliament and even to remain as such. A person, even if elected as a member of Parliament can subsequently be de-seated on account of the disqualification mentioned in Article 63(1)(h) of the Constitution.

iii) In the above backdrop, it can well be concluded that in reference to the particular facts of the case, the definition of a moral turpitude is to be assessed in reference to the moral fibers appellant had to demonstrate according to the office of Prime Minister which he held. Likewise, the delinquency attributed to the appellant culminating in the judgment of conviction is to be adjudged in reference to the prospect of lowering his status and the office of Prime Minister. The applicability of moral turpitude is to be gauged in accordance with morals an ordinary citizen is required to demonstrate, besides in consonance with legal requirement pertaining to a parliamentarian and in particular to a Prime Minister for declaration of his assets. For the afore-mentioned purpose, the finding of conviction given against the appellant is to be seen which admittedly is in field even at present…… The use of words "dishonesty" and "deceitful" in the judgment has inexorably brought the conviction of appellant within the ambit of moral turpitude, attracting the mischief of Article 63(1)(h) of the Constitution.

iv) The purpose of filing a declaration under Section 60(2)(a) of the Elections Act, 2017 is aimed at enabling the Returning Officer for giving a finding about the legal competency of a candidate to contest election. I have no scintilla of reluctance to hold that the Returning Officer was legally competent to examine the candidature of appellant while subjecting his nomination papers to scrutiny on the touchstone of Section 62 of the Elections Act, 2017.

v) I have also dilated upon the argument of learned counsel for the appellant that after the suspension of sentence, the conviction of appellant cannot be treated to be in the field. Against the conviction, the appellant filed Criminal Appeal which was accompanied by a petition for suspension of sentence…. From the prayer clause of the petition moved under Section 426 Cr.P.C. and the concluding para of order, it unambiguously emerges that neither any request for suspension of conviction was made nor an order in this regard was passed. Even otherwise, the conviction and sentence are two different terms; the former pertains to the guilty verdict and the latter stands for the rigors which follow from conviction. The conviction means a guilty verdict pronounced by the Court in reference to the delinquency attributed to accused, whereas sentence denotes the quantum of punishment. Section 426 Cr.P.C. is an enabling provision which brings a convict out of the rigors of undergoing the sentence awarded to him but keeps the conviction intact.

Conclusion: i) Power of the Appellate Tribunal is limited only to examine the legality of orders passed by the Returning Officers under Section 62 of the Elections Act, 2017.

ii) Article 63(1)(h) of the Constitution explicitly implies that conviction in an offence of moral turpitude with sentence of not less than two years disqualifies a person from being elected as a member of parliament and even to remain as such.

iii) The use of words "dishonesty" and "deceitful" in the judgment which became root cause of disqualification of the appellant has inexorably brought his conviction within the ambit of moral turpitude, attracting the mischief of Article 63(1)(h) of the Constitution.

iv) The Returning Officer is competent to examine the candidature of a candidate while subjecting his nomination papers to scrutiny on the touchstone of Section 62 of the Elections Act, 2017.

v) After the suspension of sentence, the conviction can be treated to be in the field as Section 426 Cr.P.C., is an enabling provision which brings a convict out of the rigors of undergoing the sentence awarded to him but keeps the conviction intact.

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50. **Lahore High Court**
Yaar Gul Khan v. Returning Officer, PP-138, Sheikhupura and others
E.A. No.697 of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC52.pdf

Facts: Through the instant appeal order of the Returning Officer has been assailed whereby nomination papers of the appellant were rejected on the basis of some outstanding dues reflected in the record of the FBR.

Issue: Whether the appellant can be granted the opportunity to deposit the outstanding amount stated to be reflected in the record of the FBR against him under protest?

Analysis: In the interest of justice and fairness, since inalienable fundamental rights of the appellant under Article 17(2) of the Islamic Republic of Pakistan, 1973 are involved; an opportunity to pay off the outstanding liability till the resumption of the Court qua hearing of the appeal on the next date was observed.

Conclusion: The appellant can be granted the opportunity to deposit the outstanding amount stated to be reflected in the record of the FBR against him under protest.

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51. **Lahore High Court**
Malik Zaheer Abbas v. Returning Officer and others
E.A. No.217 of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC47.pdf

Facts: This election appeal assails order of the Returning Officer rejecting the nomination papers of the appellant/candidate.

Issue: Whether production of documents of sale of movable assets and explanation of the candidate that vendee of movable assets failed to get the assets transferred in his name, are sufficient to dispel the presumption of deliberate concealment of assets?

Analysis: The learned counsel for appellant referred to documents brought on record through C.M which include copies of transfer letters & sale/payment receipts qua movable assets and submits that as per section 32(1) of the West Pakistan Motor vehicles Ordinance, 1965 the transferee is obligated to report to the transfer to the registering authority within statutory period which in the instant case is the Excise and Taxation Department, Government Of the Punjab, which if was not done by the respective vendees of the two machines, could not be saddled with harsh consequences upon the bona fide seller of such goods and further that appellant hardly stood to gain anything by any non-disclosure and holding the bona fide belief that they were no longer tagging in his name having duly sold the same for value could not be attributed any malice to attract adverse inference for purposes of consideration of his nomination form over alienated automations of marginal value… The explanation proffered by the appellant to dispel any presumption of deliberate concealment shall suffice for purposes of summary proceedings obligated to ensure that any omissions being detected shall be subjected to proper analysis to reject or accept the same keeping in line principles settled by the superior courts qua hallmarks of structured discretion.

Conclusion: Production of documents of sale of movable assets and explanation of the candidate that vendee of movable assets failed to get the assets transferred in his name, are sufficient to dispel the presumption of deliberate concealment of assets for purposes of summary proceedings.

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52. **Lahore High Court**
Naseer Ahmad Qadri v. Meer Muhammad Nawaz, Returning Officer and another.
Election Appeal No.378 of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC21.pdf

Facts: This appeal under section 63 of the Elections Act, 2017 is directed against order of the Returning Officer whereby the nomination papers of the appellant were rejected upon finding of fact that in Voter Certificate of the proposer his name was found not to exist on the electoral roll as a registered voter for the said constituency.

Issues: i) Whether delimitation process is a prerogative of Election Commission of Pakistan?
ii) Whether Returning Officer is bound by the entries under section 62(6) of Election Act,2017 and the provisions qua proposer are mandatory in nature?
iii) Whether discretion of curing defects in the nomination papers is limited?

Analysis: i) The delimitation process undoubtedly under the Constitution of the Islamic Republic of Pakistan, 1973 is a prerogative of Election Commission of Pakistan.
ii) The Returning Officer being bound by the entries under section 62(6) of the Election Act,2017 in the electoral roll on scrutiny finding the name of the proposer not to occur on the electoral list for the constituency in exercise of powers under section 62(9)(b) of the Act proceeded to reject the nomination papers. The precedent cited by the learned Legal Advisor in Jamshed Iqbal Cheema v. The Election Appellate Tribunal and 19 others (2022 CLC 463) as well as the Larger Bench Judgment Ijaz v. Returning Officer PP-115, Faisalabad (W.P. No.223502 of 2018) hold to the effect that the provisions qua proposer in the Act are mandatory in nature and any defect in respect thereof in the nomination was a defect of substantial nature and the same could not be cured at a subsequent stage and nomination papers invalid on such account could not be allowed to be validated afterwards in exercise of powers either by the Returning Officer or even by Appellate Tribunal (…)
iii) Discretion of curing defects in the nomination papers is limited to correction of error in name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder and that the same may be remedied forthwith but specifically holds against substitution of proposer or seconder which is declared to be impermissible (…)

Conclusion: i) Yes, delimitation process is a prerogative of Election Commission of Pakistan as enshrined in the Constitution of the Islamic Republic of Pakistan, 1973.
ii) Yes, Returning Officer is bound by the entries under section 62(6) of Election Act, 2017 and the provisions qua proposer are mandatory in nature.
iii) Yes, discretion of curing defects in the nomination papers is limited.

53. **Lahore High Court**
Jan Muhammad Ramzan v. Returning Officer and another
Election Appeal No.1105 of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC28.pdf

Facts: This appeal under section 63 of the Elections Act, 2017 assails order of the Returning Officer whereby the nomination papers of the appellant as a candidate were rejected, that in the declaration of appellant's nomination papers no particulars of bank account have been provided for purposes of documenting election expenses.

Issue: Whether the deficiency related to the non-mentioning of an account in the declaration of appellant's nomination papers for purposes of documenting election expenses can be rectified?

Analysis: The primary basis of opening such an account as given at section 134 of the Elections Act, 2017 is to account for election expenses as certain ceiling of expenses has to be maintained by the candidates in conducting their campaign and making expenses related to the elections. Mere non-mentioning of the account in the form appears to be a deficiency which could have been rectified by entering the detail of the account in the relevant column by the Returning Officer on appellant being given an opportunity.

Conclusion: Non-mentioning of the account in the form appears to be a deficiency which could have been rectified by entering the detail of the account in the relevant column by the Returning Officer on appellant being given an opportunity.

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54. **Lahore High Court**
Wajid ur Rehman v. Election Commission of Pakistan etc.
Election Appeal No.150 of 2024
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC12.pdf

Facts: The appeal in hand is aimed at calling in question the legality of order passed by the Returning Officer, whereby the nomination papers of appellant were rejected.

Issues: i) What would be fate of nomination papers of an election candidate holding dual nationality, if his request for relinquishment of foreign nationality is still pending decision?
ii) What is the primary duty of Returning Officer at the time of scrutiny, under Section 62 of the Election Act, 2017, with regard to a person who by law is not eligible to contest elections?

Analysis: i) For contesting election, a candidate has to submit his nomination papers in accordance with the requirement of Section 60 of the Election Act, 2017 while the detail of documents forming part of the nomination papers is mentioned in

Section 60 (2) of the Act ibid, which includes a Declaration by the candidate that he fulfills the qualification specified in Article 62 of the Constitution of Islamic Republic of Pakistan, 1973 and does not come within the disqualification enumerated in Article 63 of the Constitution of Islamic Republic of Pakistan, 1973. According to Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973, a person is held disqualified from being elected or chosen as member of parliament if he ceases to be a citizen of Pakistan or acquires the citizenship of a foreign State.

ii) This is the primary duty of Returning Officer to ensure that no person who by law is not eligible to contest elections be ousted from the electoral process at the very initial stage of scrutiny under Section 62 of the Election Act, 2017. While scrutinizing the nomination papers the Returning Officer must make a just, fair and unbiased assessment about the credentials of the candidate for making decision that he is qualified or not to contest the elections.

Conclusion: i) In case the request for relinquishment of foreign nationality of an election candidate holding dual nationality is still pending decision, his nomination papers would be hit by the impediment contained in Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973.

ii) The primary duty of Returning Officer is to ensure that a person who by law is ineligible to contest elections should be ousted from the electoral process at the stage of scrutiny under Section 62 of the Election Act, 2017.

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55. **Lahore High Court**
Imran Ahmed Khan Niazi v. The Returning Officer and another.
Election Appeal No. 831 of 2024
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC100.pdf

Facts: Through this election appeal filed in terms of section 63 of the Elections Act, 2017, the appellant has called in question the vires of order, penned down by the Returning Officer of constituency, whereby nomination papers filed by the appellant were rejected.

Issues: i) What is meant by the words judgement in rem and personam?

ii) What is the meaning of the term "Moral Turpitude"?

iii)What is the difference between two phrases i.e. Conviction and Sentence?

iv) Whether the suspension of sentence under section 426 Cr.P.C and suspension of conviction are poles apart and mere pendency of an appeal does automatically nullify the conviction?

Analysis: i) The word judgement in rem and personam has not been specifically defined in the Qanun-e-Shahadat Order, 1984. The word rem or personam has not been used in Article 55 of the Order, however, the term is defined in Black's Law Dictionary…The word judgement in rem and judgement in personam has remained subject of discussion of the courts from time to time. The first

authoritative judgement in this regard was delivered by the Supreme Court of Pakistan in case-law titled as “Pir Bakhsh represented by his legal heirs and others v. The Chairman, Allotment Committee and others” (PLD 1987 SC 145). Subsequently, this judgement has been followed by the august court in another reported case “Muhammad Sohail and 2 others v. Government of N.W.F.P. and others” (1996 SCMR 218). The Supreme Court of Pakistan while discussing the present two concepts in detail has observed…After perusing Article 55 of the Qanun-e-Shahadat Order, 1984, and considering the preceding discussion, it becomes evident that the said article comprises of two parts. The first part renders the final judgment, order, or decree of a competent court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction relevant. The second part establishes the judgment as conclusive proof only in these specific matters. The judgement of the competent court can be considered conclusive only when it declares a legal character which it confers or takes away, accrued or ceased at the time of declaration in the judgement for that purpose. The judgement must be delivered by the competent court having jurisdiction on subject matter. The said judgment is susceptible to challenge only on grounds specified in Article 58 of the Order ibid and not otherwise. The judgement in rem is conclusive against the word as to the status of the rest whereas judgement in personam is conclusive only between parties or privies(…)

ii) An action can be considered "moral turpitude" if it violates a person's moral fiber, diminishes his moral standards, or involves an act of inherent baseness in fulfilling one's private, social, or public obligations to one's fellow citizens, society, country, institutions, and government…

iii)A Conviction refers to the outcome of a criminal trial. It is the act of proving or declaring a person guilty of a crime whereas a Sentence, on the other hand, is the formal declaration by a court imposing a punishment on the person convicted of a crime. A Conviction is a result of the verdict of a judge and/or jury. In contrast, a Sentence is typically ordered by a judge. The court cannot order a Sentence unless the person has been found guilty or convicted. Therefore, a Conviction must precede a Sentence. The term Conviction is traditionally defined as the outcome of a criminal prosecution that culminates in a judgment that the defendant is guilty of the crime charged but traditionally, the term Sentence is defined as the judicial determination and pronouncement of a punishment to be imposed on a person convicted of a crime. When we hear the term Sentence, particularly in a legal context, we automatically think of a prison or jail sentence. Dictionaries define the term Conviction as the state of being found or proven guilty or the act of proving or declaring a person guilty of a crime. Convictions are associated with criminal proceedings, as opposed to civil proceedings. The ultimate goal of the prosecution is to secure a Conviction by proving beyond reasonable doubt that the defendant committed the crime and this is not incorrect as a Sentence may include punishment in the form of incarceration (…)

iv) The spirit of criminal jurisprudence clearly sounds that the suspension of sentence under section 426 Cr.P.C and suspension of conviction are poles apart.

In this behalf, it would be worth to mention here that conviction attains finality upon the determination of guilt by a Court of competent jurisdiction. During the pendency of an appeal, the appellate court, pursuant to section 426 Cr.P.C. may suspend the execution of the appellant's sentence. It is imperious to note that the suspension pertains solely to the sentence and not the conviction, which remains operative until set aside by higher appellate courts. The mere pendency of an appeal does not automatically nullify the conviction. Section 426 Cr.P.C does not empower the appellate court to suspend the conviction; rather, it is a discretionary measure extended to the accused. Therefore, the suspension of sentence does not imply the expungement of the underlying conviction. Thus suspension of the sentence imposed on the appellant would not affect the completed conviction, which arises upon the determination of guilt by a court of competent jurisdiction and that conviction still hold the field

Conclusion: i) The judgement in rem is conclusive against the word as to the status of the rest whereas judgement in personam is conclusive only between parties or privies.
ii) Act of violations of a person's moral fiber, diminishes his moral standards, or involves an act of inherent baseness in fulfilling one's private, social, or public obligations to one's fellow citizens, society, country, institutions, and government is called moral turpitude.
iii) See above in analysis portion.
iv) According to criminal jurisprudence the suspension of sentence under section 426 Cr.P.C and suspension of conviction are poles apart and mere pendency of an appeal does not automatically nullify the conviction.

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56. **Lahore High Court/ Appellate Tribunal**
Raja Safeer Akbar v Returning Officer
Election Appeals No.29 & 30 of 2024
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC17.pdf

Facts: The election appeal originated from rejection of nomination papers from two different constituencies for contesting election of National Assembly and Provincial Assembly in accordance with the schedule given by the Election Commission of Pakistan.

Issues: (i) Whether section 62 of the Election Act 2017 requires signing of nomination papers, submission of sworn affidavit and appearance before the Returning Officer for affixing sign or verification by a lawful attorney or by the candidate in person?
(ii) Scope of power of Returning Officer.
(iii) Import of Section 60(3) of the Election Act 2017.

Analysis: (i) The language of section 60(2) ibid is explicit in sense and leaves no room for discussion that the nomination papers (Form-A) and declarations are required to

be submitted in terms of clause (a) and (b) of the foregoing provision ought to be signed by none other than the candidate himself. From the use of word shall in section 60(2) it can be gathered that requirement of signing the nomination papers and declarations by the contestant is mandatory in nature and cannot be relaxed.

(ii) The power of Returning Officer to reject the nomination papers are embedded in Section 62 (9) of the Election Act, 2017. According to Section 62(9)(c) of the Election Act, 2017, the nomination papers can be rejected if filed without adhering to the provisions of section 60 and 61.

(iii) The authorization in favour of an advocate is restricted only to the extent of submission of nomination papers and cannot be stretched to an extent of permitting a person other than the candidate to sign the document required to be submitted in terms of sub-section 2 of section 60.

Conclusion: (i) Signing of the nomination papers and declarations by the contestant in person is mandatory in nature.
(ii) See above (analysis part).
(iii) See above (analysis part).

LATEST LEGISLATION / AMENDMENTS

1. Amendments in the Punjab Government Rules of Business, 2011 in the First Schedule at Sr. No 20 in column 4 under the heading Autonomous Bodies & Companies and in the second schedule under the heading INDUSTRIES, COMMERCE, INVESTMENT AND SKILL DEVELOPMENT DEPARTMENT at Sr. No. 23.
2. Amendments in the Pakistan Prison Rules, 1978 in Rules 797,807,809,975,994 and insertion of chapter 44-A under the heading District Prison Health Council with Rules 1109-A, 1109-B, 1109-C, 1109-D and 1109-E.
3. Amendment in the Punjab Government Rules of Business, 2011 in the First Schedule at Sr. No. 9 in column 2 and in second schedule for the heading ENVIRONMENT PROTECTION & CLIMATE CHANGE DEPARTMENT.
4. Amendment in the Punjab Katchi Abadis (Service) Rules, 2016 in the Schedule at Sr.No.7, in column Nos. 1 to 10 for the post of Superintendent (BS-17) at Sr. No. 9, in column no.3 for the post of Stenographer (BS-14) & at Sr. No. 11 in column No. 3 for the post of Accountant (BS-12).
5. Amendment in the Punjab Secretariat (Ministerial Posts) Service Rules, 1982 in the Schedule at Sr. No .11, column no. 10 for the Post of Junior Clerk (BS-11).
6. Amendment in the Punjab Forest Department (Executive, Sericulture, Research and Extension, Technical and Ministerial Posts) Recruitment Rules, 2019 in the Schedule at Sr.No.1 for the post of Chief Conservator of Forests (BS-20).

7. Amendments in the Punjab Energy Department (Power Wing) Service Rules, 2013 in the Schedule at Sr.No.2 in column no. 7 for the post of Director Technical (BS-19), at Sr. No. 24, 25,25a,26,27,28,29,30 & 31 in column no. 4 & at Sr. No. 31 in column no.1 to 10.
8. Amendment in the Punjab Forest Department (Executive, Sericulture, Research and Extension, Technical and Ministerial Posts) Recruitment Rules, 2019 in the Schedule under the heading 1. Forestry Executive.
9. Insertion of sections 3A, 22A; Substitution of sections 4, 8 and amendment of section 7 in the Pakistan Broadcasting Corporation Act, 1973.
10. Amendment of sections 2,3,17, 22; Substitution of sections 14,18,19,20,23,40 and addition of THIRD SHEDULE in the Pakistan National Shipping Corporation Ordinance,1979.
11. Amendment of sections 2, 3; Insertion of section 3A and substitution of section 28 in the Pakistan Postal Services Management Board Ordinance, 2002.
12. Amendments of sections 2, 3, 4, 5, 6, 7, 9, 10, 11, 15, 16 and substitution of sections 8, 33 in the National Highway Authority Act, 1991.
13. Amendment in section 462O of the Pakistan Penal Code, 1860.
14. Substitution of sections 28, 29; Omission of sections 30, 33 and amendments of sections 31, 32 in the Privatization Commission Ordinance, 2000.

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Predatory-Lending-practices-examining-Excessive-Interest-Rates-Extended-Loan-periods-and-tracing-relief-for-the-Borrowers

Predatory Lending practices: examining Excessive Interest Rates, Extended Loan periods, and tracing relief for the Borrowers by Harman Bir Singh Juneja AND Amrit Kaur

The cardinal function of banking institutions includes the administration of credit facility to their customers. Nonetheless, there exists an aversion among the general public in relation to this primary function of the banking institutions. This is because of the unlawful practices of abovesaid institutions that they regularly comes across in their daily lives. More often than not the most prevalent illegal practice is the arbitrary increment of the interest rates of the loans and the extension of the loan periods, thus charging exorbitant amounts from the borrowers in the name of changing repo-rate, internal policies of the institution and what not. The people however are either ignorant of such malpractices or are uninformed about the possible reliefs available to them. The authors of this article nowhere disagree with the possibility of the increase in interest rate or the extension of loan period and the like by the banking institutions because of sufficient and reasonable causes at their end. The article only tries to bring forward the predatory practices of some of the institutions being actually at fault, trying to bring forward to the public fora, the existence of the stern provisions and safeguards in place to prevent such practices as prescribed by the Reserve Bank of India and the judicatories.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/TRANSFER-OF-CASES-UNDER-THE-CODE-OF-CIVIL-PROCEDURE-1908

Transfer of Cases Under the Code of Civil Procedure 1908 by Aadrika Goel

The court must maintain impartiality when dealing with parties involved in a dispute. Therefore, when a plaintiff initiates a lawsuit in their preferred location, as outlined in the "Code of Civil Procedure 1908"[1], the defendant is required to appear before the court and submit a written statement, presenting objections to the plaintiff's suit. If the defendant raises concerns related to the court's jurisdiction based on provisions within the Code of Civil Procedure, the court must initially address the jurisdictional issue. If the court determines that it lacks jurisdiction, it is obligated to transfer the lawsuit, following the guidelines. Nevertheless, if either party encounters difficulties at any point during the legal proceedings and wishes to relocate the case to a different place or court of their choice, they have the remedy to file a transfer petition in the relevant court in accordance with such applicable law.

3. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/meeting-new-challenges-environmental-energy-and-esg-issues-watch-2024

Meeting New Challenges: Environmental, Energy, and ESG Issues to Watch in 2024 by J. Michael Showalter , Francis X. Lyons , Amy Antoniolli , David M. Loring , Bina Joshi and Malerie Ma Roddy of ArentFox Schiff LLP

The regulated community faces a complex and evolving landscape. As we head into 2024, our team of energy, environmental, and environmental, social, and governance (ESG) attorneys provide insights and guidance on how to navigate the changing environment. While these challenges may not be new, their significance continues to grow. We recently released our 2023 "Top 10" lists for Environmental & Energy and ESG, outlining the biggest challenges we encountered last year. Below, we summarize nine issues likely to surface as we head into 2024.

4. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/ftc-sends-stern-reminder-ai-companies

FTC Sends Stern Reminder to AI Companies by Julia K. Kadish of Sheppard, Mullin, Richter & Hampton LLP

While the US does not have some specific AI-focused law a host of regulators have been providing their thoughts about AI. Noticeable traction on the topic began in 2020. With the explosion of Chat GPT in 2023, commentary (and scrutiny) has been picking up steam. Unsurprisingly, the FTC is in the mix sharing its thoughts through various blogs and investigations. Its blogs have focused on specific aspects of AI – use of AI, claims about AI, voice cloning, and now, companies that develop AI. In its latest guidance, the FTC reminds companies that develop AI models of their obligations around privacy commitments made to their users and customers. The take-aways and underlying points in this post are not new. The FTC has long reminded (and enforced) companies that the statements made about how information will be collected, used, shared, protected, etc.

must be upheld. That said, this guidance puts those concepts into the context of a growing area of companies – model-as-a-service companies.

5. THE OXFORD ACADEMIC
https://academic.oup.com/ejil/advance-article-abstract/doi/10.1093/ejil/chad059/7473376?redirectedFrom=fulltext

After TWAIL's Success, What Next? Afterword to the Foreword by Antony Anghie

In the span of two decades, Third World approaches to international law (TWAIL) experienced a meteoric rise, becoming not only one of the most interesting but also one of the dominant approaches to international law. This Afterword to the Foreword by Antony Anghie reflects upon the rise of TWAIL and its significance to the discipline of international law. I argue that having become part of the disciplinary mainstream, TWAIL 'civilizes' international law, making it more difficult for international lawyers to ignore or dismiss the colonial origins and legacies of their field. As TWAIL leaves a mark on international law, new spaces for international legal action by the peoples of the global South might have been opened. Does greater action weaken TWAIL's central insights about colonial origins and legacies? Maybe, and if so, a mainstream TWAIL opens also disciplinary space for other critical approaches that shine light on Third World experiences of international law that point not just to oppression but also to North/South engagement and, potentially, Southern resistance.

6. THE OXFORD ACADEMIC
https://academic.oup.com/ejil/advance-article-abstract/doi/10.1093/ejil/chad058/7463990?redirectedFrom=fulltext

The Third World and the Quest for Reparations: Afterword to the Foreword by Antony Anghie

In his Foreword, Antony Anghie contrasts two systems of reparations: the Third World system, which is about reparations for colonial expropriation and disenfranchisement, and the Western system, according to which, in the context of decolonization, newly independent states were allowed to expropriate foreign corporations only in return for full compensation. While the Western system has been firmly anchored in international law through the law of aliens and – later – investment law, the Third World system still meets with resistance in international legal discourse. Convinced that international law should be instrumental in overcoming its own colonial origins, I attempt in the following article to explore possible legal foundations by countering the main arguments raised against demands for reparations from the global South: their disruptive effects on today's societies, conceptual and technical legal obstacles, as well as the doctrine of non-retroactivity of the law. Not being a TWAIL scholar myself, I hope that this might serve as a constructive contribution to a common cause.
