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FORTNIGHTLY CASE LAW BULLETIN

(01-02-2024 to 15-02-2024)

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

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1. Supreme Court of Pakistan
Mubarik Ahmad Sani v. The State and another
Criminal Petitions No.1054-L and 1344-L of 2023
Mr. Justice Qazi Faez Isa, HCJ, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/cr.p_1054_1_2023.pdf

Facts: The petitioner sought the deletion of certain charges from the Charge framed against him in a Case FIR registered for offences under section 7 read with section 9 of the Punjab Holy Quran (Printing and Recording) Act, 2011, section 298-C and section 295-B of the Pakistan Penal Code, 1860.

Issues: i) Whether a person can be charged for something which was not an offence when it was done?
 ii) Where an under trial prisoner can be detained beyond the period with which he can be punished, on the ground of non-conclusion of trial?

Analysis: i) The Constitution of the Islamic Republic of Pakistan ('the Constitution') stipulates that a person cannot be charged for something which was not an offence when it was done.
 ii) Trials in respect of offences where the maximum sentence of imprisonment is relatively short must be conducted promptly or the accused should be granted bail....Article 9 of the Constitution stipulates that a person shall not be deprived of his liberty save in accordance with law; the law no longer permits his detention. And, Article 10A of the Constitution guarantees right to a fair trial and due process, which too the petitioner is now being denied. In addition to the violation of these two Fundamental Rights is the overarching right stipulated in Article 4 of the Constitution, 'To enjoy the protection of law, and, to be treated in accordance with law is the inalienable right of every citizen.' The petitioner is no longer being treated in accordance with law because while waiting for the conclusion of his trial he has remained imprisoned for a period much longer than what he could have been punished for if he is found guilty.

Conclusion: i) A person cannot be charged for something which was not an offence when it was done.
 ii) An under trial prisoner cannot be detained beyond the period with which he can be punished, on the ground of non-conclusion of trial.

2. Supreme Court of Pakistan
Nadir Khan v. Qadir Hussain & others
Civil Appeal No. 499 of 2017
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice
Mussarat Hilali.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._499_2017.pdf

Facts: Through this appeal, the Appellant has assailed the judgment of the High Court, whereby a preliminary decree passed by the Civil Judge in favour of the Appellant and against the Respondents was set aside by the high Court in the RFA filed by the Respondent.

- Issues:**
- i) What is Partnership at will?
 - ii) What is the pre-condition of retirement of a partner in case of Partnership at will?
 - iii) Whether fulfillment of requirements under Section 32 (1) (c) and Section 32 (2) of the Partnership Act, 1932 absolves the retiring partner from the liabilities against third party?
 - iv) What if the law requires a thing to be done in a particular manner?

- Analysis:**
- i) Since in the instant case no deed of contract has been brought on record determining the period of partnership and determination of partnership, therefore, the High Court observed that the provision of Section 7 of the Act would apply, which reads as under:"7. Partnership at will.—Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".(...) The High Court has rightly declared the nature of partnership as partnership at will under Section 7 of the Act.
 - ii) Section 32 of the Act lays down the procedure of retirement from a partnership at will (...) Section 32 (1) (c) of the Act explicitly mentions the pre-condition of issuing a notice by a retiring partner in writing to all other partners of his intention to retire.
 - iii) Further, even if the Respondent had fulfilled the requirements of Section 32 (1) (c) and Section 32 (2) of the Act, he would still not be discharged from the liabilities against third party until a public notice is given by him or by any partner of the reconstituted firm as required under Section 32 (3) of the Act.
 - iv) When the law requires that a particular thing should be done in a particular manner it must be done in that manner and not otherwise.

- Conclusions:**
- i) Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".
 - ii) The issuance of notice by a retiring partner in writing to all other partners of his intention to retire is pre-condition of retirement of a partner in case of Partnership at will.
 - iii) The retiring partner would still not be discharged from the liabilities against a third party until public notice is given by him or by any partner of the reconstituted firm as required under Section 32 (3) of the Act.
 - iv) When the law requires that a particular thing should be done in a particular manner it must be done in that manner and not otherwise.
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- 3. Supreme Court of Pakistan**
The Punjab Employees Social Security Institution, Lahore through its
Commissioner etc. v Javed Iqbal etc.
Civil Petition No.2007-L
The Director General, Punjab Employees Social Security Institution, Lahore
etc. v Javed Iqbal etc.
CP No.2008-L
Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2007_1_2023.pdf

Facts: Through the instant petitions, the petitioners have assailed the judgment passed in writ petitions by learned Judge of the learned High Court wherein the respondent was reinstated in service from the date of his dismissal with all back benefits and another writ petition was disposed of by the same bench with the direction to take up the matter regarding regularization of services of the respondent with relevant authority and upon fulfilment of codal formalities shall ensure decision within a period of six months positively.

Issues:

- i) How allegation of poor performance of a civil servant can be proved?
- ii) Whether it is the mala fide of competent authority to initiate all penal actions against a civil servant after filing of writ petitions and contempt petitions/applications?
- iii) How allegation of not following the duty timing properly by a civil servant can be proved?

Analysis:

- i) The fate of allegation of poor performance of a civil servant can only be decided after conducting a thorough probe/regular enquiry. The said allegation stands belied if remarks recorded by the Reporting Officer in the Personal Evaluation Reports shows his performance as satisfactory.
- ii) The conduct of the competent authority establishes mala fide to initiate all penal actions against a civil servant after filing of writ petitions and contempt petitions/applications.
- iii) It must be proved with specifying days when the civil servant did not attend the office in time lead/support. Moreover, the Reporting Officer has recorded such remarks in the column of “Punctuality” of Personal Evaluation Report.

Conclusion:

- i) The fate of allegation of poor performance of a civil servant can only be decided after conducting a thorough probe/regular enquiry.
- ii) The conduct of the competent authority establishes mala fide to initiate all penal actions against a civil servant after filing of writ petitions and contempt petitions/applications.
- iii) It must be proved with specifying days when the civil servant did not attend the office in time lead/support.

4. Supreme Court of Pakistan
Mujahid Hussain son of Ghulam Muhammad and another v. The State
through Prosecutor General, Punjab, Lahore and another
Criminal Petition No.1329 of 2023
Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.1329_2023.pdf

Facts: Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, the petitioners assailed the order of High Court, wherein their post arrest bail was declined.

Issues:

- i) Whether the liberty of a person is a precious right?
- ii) What is the established principle of criminal law where a case has two versions?
- iii) What is the perception and discernment of the expression further inquiry?
- iv) What is the purpose of setting the law into motion in the criminal cases?
- v) What is a well-settled principle of the administration of justice in criminal law regarding accused?
- vi) What is the basic philosophy of criminal jurisprudence regarding the duty of prosecution?

Analysis:

- i) It is a settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 and the same cannot be taken away merely on bald and vague allegation
- ii) It is the established principle of criminal law that where there is a case of two versions narrated before court, it squarely falls within the ambit of section 497(2) Cr.PC.
- iii) The perception and discernment of the expression further inquiry is a question which must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime.
- iv) The *raison d'être* of setting the law into motion in the criminal cases is to make an accused face the trial and not to punish an under trial prisoner or let him rot behind the bars.
- v) It is a well-settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at bail stage, if the facts of case so warrant.
- vi) The basic philosophy of criminal jurisprudence is that prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time.

Conclusion:

- i) It is a settled law that liberty of a person is a precious right.
- ii) It is the established principle of criminal law that a case having two versions, it

squarely falls within the ambit of section 497(2) Cr.PC.

iii) The perception and discernment of the expression further inquiry is a question which must have some nexus with the result of the case.

iv) The purpose of setting the law into motion in the criminal cases is to make an accused face the trial and not to punish an under trial prisoner.

v) It is the well-settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved.

vi) The basic philosophy of criminal jurisprudence is that prosecution has to prove its case beyond reasonable doubt.

- 5. Supreme Court of Pakistan**
Mehboob Hassan v. Akhtar Islam etc.
Crl. Petition No.235-L of 2015
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 235 1 2015.pdf

Facts: On conclusion of trial in criminal case registered under sections 365-A, 201, 34 PPC and section 7 of the Anti-Terrorism Act, 1997, the respondents were convicted and sentenced. However on their appeal, they were acquitted of the charge by the High Court through the impugned judgment, hence this petition for leave to appeal.

Issues:

- i) What is legal status of the identification parade, wherein neither the role attributed to accused stated by the witnesses identifying accused nor requisite precautions are taken by police to conceal identity of the accused prior to identification parade?
- ii) Whether complainant, instead of alleged abductee, of FIR pertaining offence of abduction has *locus standi* to challenge the judgment acquitting the accused?
- iii) What is significance and object of powers under sections 265-K and 249-A, of the Code of Criminal Procedure, 1898?
- iv) What is the constitutional requirement with regard to providing the justice in criminal cases?

Analysis:

- i) It is necessary for the witnesses to give some features of accused with their specific role during the investigation, before the identification parade, enabling the Magistrate to manage the person of identical features for the purpose of including them in identification parade as dummies. Moreover, in order to maintain secrecy, it is the responsibility of the concerned police to ensure that the witness should not have a sight of an accused while in police station lock-up or in police custody.
- ii) It is a fundamental legal principle that only an aggrieved person can challenge a judgment or order of acquittal.
- iii) It is obligatory upon the Trial Court to ensure constitutional guarantee of life, liberty, fair trial and due process enshrined in Articles 9 and 10-A of the

Constitution of Islamic Republic of Pakistan, 1973. Section 265-D of the Code of Criminal Procedure, 1898 provides that the Trial Court should consider all the available material, then it shall frame in writing a charge against the accused. If no charge could be framed or there is no probability of the accused being convicted of the charge on the basis of the material available on the record, the Trial Court has power under sections 265-K and 249-A, of the Code *ibid* to acquit an accused at any stage of the case, either on its own motion or upon an application in this behalf filed by an accused, after providing opportunity of hearing to all concerned.

iv) The famous legal maxim that justice delayed is justice denied, is often used when unjustified delay occurs in disposal of disputes. When the legal machinery fails to deliver justice within a reasonable time, it not only violates the constitutional mandate, but also leads to frustration.

- Conclusion:**
- i) Where the role attributed to accused is not stated by the witnesses identifying accused in identification parade and the police has not taken up requisite precautions to conceal identity of accused prior to conducting identification parade, then the identification parade in the circumstances would not be in line with Article 22 of the Qanoon-e- Shahadat Order, 1984, hence, is of no evidentiary value and cannot be relied upon.
 - ii) In the case pertaining offence of abduction, only the abductee being an aggrieved person may challenge the judgment acquitting accused and the complainant has no *locus standi* to do so.
 - iii) Powers under sections 265-K and 249-A of the Code of Criminal Procedure, 1898 are mandatory in nature, which must be exercised judiciously in order to prevent the abuse of process of law and frivolous and malicious litigation.
 - iv) An inexpensive and timely justice is a requirement of the Constitution under Article 37(d), which must be observed by all stakeholders in all circumstances without any excuse.

6. Supreme Court of Pakistan
Mir Muhammad s/o Mir Hassan v. The State through Prosecutor General Sindh
Criminal Petition No.705 of 2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.705.2023.pdf

Facts: The petitioner sought pre-arrest bail in a criminal case registered against him and others for offences under sections 324, 147, 148, 149, 504 PPC.

Issues:

- i) Whether the jurisdictional extent of intervention by the court in the course of the investigation is restricted and limited?
- ii) What are the elementary and indispensable constituents for enlarging the accused on pre-arrest bail?

- Analysis:**
- i) It is a well settled exposition of law that investigating crimes is the responsibility of the police, and the IO performs a vital and dominant role in this regard. It is not the duty of the Court to monitor the investigation unless the investigation conducted by IO appears to be mala fide, an abuse of power, or in violation of the relevant provisions of the Cr.P.C., therefore, the jurisdictional extent of intervention by the court in the course of the investigation is restricted and limited.
 - ii) The remedy of pre-arrest bail is meant to safeguard and shelter an innocent person who has been dragged into a case with mala fide intention or ulterior motives by the complainant or prosecution. While entreating the exercise of discretion of the Court for the grant of anticipatory bail, the accused is obligated to demonstrate that the case against him is based on mala fide and must divulge reasonable grounds to substantiate that he is not guilty of the offence and that sufficient grounds are available to lead further inquiry. The concepts of mala fide, ulterior motives or false implication are elementary and indispensable constituents for enlarging the accused on pre-arrest bail with the imminent apprehension of his arrest if the bail is declined.

- Conclusion:**
- i) The jurisdictional extent of intervention by the court in the course of the investigation is restricted and limited.
 - ii) The concepts of mala fide, ulterior motives or false implication and imminent apprehension of his arrest are elementary and indispensable constituents for enlarging the accused on pre-arrest bail.

7. Supreme Court of Pakistan
Muhammad Ishaque etc. v. M/s Zeal Pak Cement Factory Ltd.
Civil Petitions No.175-177-K of 2022
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. 175 k 2022.pdf

Facts: Civil Petitions for leave to appeal were filed by the petitioners, directed against an order passed by the High Court of Sindh whereby the High Court disposed of an application moved by the petitioners under Section 3 and 4 of the Contempt of Court Ordinance, 2003, for non-compliance of the judgment rendered by the divisional bench of the Sindh High Court in a Constitution Petition wherein directions were issued by the High Court for reinstatement of the petitioners in service with all benefits.

Issues:

- i) What are the types of the Contempt of Court?
- ii) Whether a court can relieve or emancipate the contemnors on the notion that substantial compliance of its judgment/order has been made?

Analysis:

- i) Under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 (“Constitution”), both the Supreme Court and a High Court have powers to punish

any person who (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court; (b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt; (c) does anything which tends to prejudice the determination of a matter pending before the Court; or (d) does any other thing which, by law, constitutes contempt of the Court. The powers conferred by this Article may be regulated by law and, subject to law, by rules made by the Court. According to the Contempt of Court Ordinance, 2003 (“Ordinance”), Section 2 of the Ordinance (Definitions Clause) delineates the nature and gravity of contempt of Court such as (a) “civil contempt”, which means the wilful flouting or disregard of (i) an order, whether interim or final, a judgment or decree of a Court; (ii) a writ or order issued by a Court in the exercise of its Constitutional Jurisdiction; (iii) an undertaking given to, and recorded by, a Court; (iv) the process of a Court; (b) “criminal contempt”, which means the doing of any act with intent to, or having the effect of, obstructing the administration of justice; (c) “judicial contempt”, which means the scandalization of a Court and includes personalized criticism of a judge while holding office. Whereas, Section 3 of the Ordinance provides that whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a wilful breach of a valid undertaking given to a Court; or does anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a Court or scandalize a Judge in relation to his office, or to disturb the order or decorum of a Court, is said to commit “contempt of Court”.

ii) A noteworthy and acclaimed characteristic of the canons of jurisdiction should not have been relegated, which is that neither should the Court embark on the jurisdiction not vested in it by law, nor should it abdicate or renounce a jurisdiction so vested in it by law. If the judgment of High Court is not implemented in its letter and spirit, it is evident that the High Court ought to have taken all necessary steps for compliance of its judgment or order to alleviate the suffering of the beneficiary, rather than divesting or repudiating its jurisdiction as vested under Article 204 of the Constitution read with the provisions of the Ordinance....The Court has to assess the contempt and its gravity and may also purge it if an unqualified apology is tendered by the contemnor. However, there is no concept or parameter to relieve or emancipate the contemnors on the notion that substantial compliance has been made ...the High Court must have ensured the due compliance of its own judgment rather than instructing the petitioners to seek an appropriate remedy for compliance or implementation of judgment. The Court has to evaluate the compliance of its judgment in its entirety and not the ratio or percentage of compliance. The denial of exercising jurisdiction proactively in the contempt proceedings for revitalising and assuring the compliance of judgment not only rendered the main judgment worthless and inconsequential, but for all practical purposes, also undermined the writ of the

Court and water down the efficacy of the orders passed by different benches ... for ensuring the compliance.

- Conclusion:** i) There are three types of Contempt of Court, namely, the “Civil Contempt”, “Criminal Contempt” and “Judicial Contempt”.
ii) A court cannot relieve or emancipate the contemnors on the notion that substantial compliance of its judgment/order has been made.

**8. Lahore High Court,
Mian Shabbir Asmail v. Election Commission of Pakistan through Secretary and others.
Writ Petition No.4592 of 2024
Mr. Justice Shahid Bilal Hassan
<https://sys.lhc.gov.pk/appjudgments/2024LHC236.pdf>**

Facts: This Writ Petition is filed with the prayers that: (i)Section 215 of the Election Act, 2017 be declared as *ultra-vires* Articles 17, 9, 14, 4, 5, 227, 2-A and Objective Resolution of the Constitution of Islamic Republic of Pakistan, 1973 as well as in violation of the judgments of the superior courts (ii)any power wrongly and arbitrarily assumed and illegally exercised or act of taking away fundamental rights without due process of law by the Election Commission of Pakistan be declared void *ab initio* in terms of the Article 8 of the Constitution of the Islamic Republic of Pakistan, 1973 (iii) it be declared that ‘election symbol’ of the petitioner’s party has been withdrawn in violation of fundamental rights of the petitioner available to the him under Articles 17 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) When subordinate legislation is declared as *ultra vires* the parent statute or in conflict with any other law?
ii) Whether unreasonableness may be one of the grounds to declare subordinate statute/rule as *ultra vires*?
iii) What laws govern the formation of association and unions?

Analysis: i) Constitution is the supreme law of a country. All other statutes derive power from the constitution and are deemed subordinate to it. If any legislation over-stretches itself beyond the powers conferred upon it by the Constitution, or contravenes any constitutional provision, then such laws are considered unconstitutional or *ultra vires* the Constitution. The term '*ultra vires*' literally means "beyond powers" or "lack of power".
ii) Bye-laws can be struck down as *ultra vires* on the five main grounds: (a) The statutory procedure, prescribed for making them, has not been followed; (b) They are repugnant to a provision of some other Statute; (c) They conflict with the Parent Act itself; (d) They are uncertain and (e) They are unreasonable.
iii) Every citizen of the country has a right to form association or unions but the said formation has been subjected to some restrictions, imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

- Conclusion:**
- i) It is a settled principle of interpretation that if subordinate legislation is directly repugnant to the general purpose of the parent Act, which authorizes it, or indeed is repugnant to any settled and well established principle of statute, it is *ultra vires*.
 - ii) The unreasonableness is one of the grounds on which subordinate statute/rule can be declared *ultra vires*.
 - iii) The formation of association and unions are governed by laws, enacted and promulgated, to regulate such associations and unions.

9. Lahore High Court
Mariam Sajjad v. Prof. Dr. Rasool Ahmed Chaudhary
RFA.No.70634/2023, First Appeal No.74489 of 2023
Mr. Justice Masud Abid Naqvi, Mr. Justice Ch. Muhammad Iqbal
<https://sys.lhc.gov.pk/appjudgments/2024LHC205.pdf>

Facts: Through these appeals under Section 96 CPC, the plaintiff and defendant have separately challenged the judgment and decree passed by the learned Civil Judge, whereby the suit for recovery of Rs.750 Million by way of damages filed by the appellant was partially decreed to the extent of Rs.50,00,000/-.

Issues:

- i) What duties a Doctor owes to his patient when he is consulted by a patient and what are the consequences of its breach?
- ii) Whether an aggrieved patient can sue against a doctor for recovery of damages in Civil Court particularly when remedy of complaint has already been availed before the Punjab Healthcare Commission?
- iii) What is litmus or standard or mode for assessment of compensatory damages in medical negligence?

Analysis:

- i) When a Doctor is consulted by a patient, the former, namely, the Doctor owes to his patient certain duties which are (a) a duty of care in deciding whether to undertake the case; (b) a duty of care in deciding what treatment to give; and (c) a duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his Doctor.
- ii) Punjab Healthcare Commission Act, 2010 has been promulgated to improve the quality of healthcare services. The functions and powers of the Punjab Healthcare Commission have been given in Section 4 of the Act *ibid* and sub-section (7) of Section 4 of the Act *ibid* deals with the complaint of an aggrieved person. (...) The Punjab Healthcare Commission can investigate into the allegations of malpractice or failure on the part of healthcare service provider and can announce order in this regard but it has no jurisdiction to grant damages to a person affected by such service whereas said relief can only be granted by the Civil Court if an aggrieved person proves his case. Furthermore, under the Act *ibid* even no bar has been imposed upon an aggrieved person to approach Civil

Court for claim of damages against any healthcare service provider. As such the argument of learned counsel for the respondent have no force and same is repelled.

iii) The cases related to medical malpractice are dealt with by courts under “Law of Torts”. Pakistan follows English Law for deciding the cases of medical malpractice. The claims of medical malpractice are mostly brought in respect of death, personal injuries and financial loss suffered due to the negligence. The principles applied for the calculation of damages in medical negligence cases are similar to one applied in general cases of negligence in tort. While granting claim for damages the court of law and equity normally adhere to the following principles: i) Reasonable and fair monetary compensation for the injury caused. ii) Small amount of damages can be granted under the head of pain and suffering. iii) Loss of Amenity includes the loss of activities of claimant, his job satisfaction, hobbies, and recreational activities. Court will consider all these losses during award of damages. This will include in the damage even if the patient is unconscious and does not realize the loss of all these activities. iv) Medical Expenses: A patient can recover medical and other expenses as damages. Likewise, damages can be granted for traveling costs and additional housing or adapting accommodation for the special needs of the patient. v) Loss of Earning must be estimated for two periods. First: the lost incomes due to the medical malpractice till the date of estimation. Secondly, future loss of earnings. Calculating the prospective loss of earning is a difficult question for the court. vi) Pecuniary Loss: A patient who is a victim of medical negligence usually suffers from pecuniary cases such as, medical expenses, traveling expenses, the cost of equipment bought because of the injury, loss of earning, future loss of earning and cost of hiring someone else for performing chores which the patient is no longer able to perform due to the injury caused to him because of medical negligence. vii) Pain and Suffering & non pecuniary loss:- A patient can be awarded damages for the pain and suffering as a result of injury because of medical malpractice. If patient faces humiliation, discomfort or any part of his body got disfigured or his life expectancy has been significantly reduced because of the negligent behavior of the medical practitioner, he is entitled to damages. Similarly, if a patient develops any psychiatric condition due to the injury, it will be reflected in the award of damages.

- Conclusions:** i) See above analysis portion.
 ii) Aggrieved patient can sue against a doctor for recovery of damages and Civil Court has the jurisdiction to try the suit and award compatible damages.
 iii) See above analysis portion.

10. Lahore High Court
Ijaz Ahmad Khan v. Muhammad Bootay Khan deceased through his legal heirs etc.
Civil Revision No.78446-2023
Mr. Justice Masud Abid Naqvi

<https://sys.lhc.gov.pk/appjudgments/2023LHC7663.pdf>

Facts: The petitioner/applicant filed an application under Section 12(2) CPC to challenge the order & decree with the averments that order & decree is result of fraud, misrepresentation having no effect upon the rights of the petitioner and further prayed that judgment & decree passed by learned trial court may also be set aside.

Issues:

- i) What is the object of law of limitation?
- ii) Whether the limitation is a mere technicality?
- iii) Whether the presumption of truth is attached to the record of the court?

Analysis:

- i) Law of limitation is considered to be preventive in nature which serves as a major deterrent against the factors and elements which can affect peace, tranquillity and due order of State and society and bar of limitation in litigation also brings forth valuable rights in favour of other party. The law of limitation requires that a person must approach a court of law and take legal remedies with due care, diligence and within the time provided by the law.
- ii) The Supreme Court of Pakistan has held that the question of limitation cannot be termed to be a mere technicality and cannot be ignored while deciding cases.
- iii) Presumption of truth is attached to the record of the court under Article 129 (e) of the Qanun-e-Shahadat Order, 1984 and Article 150 of the Constitution of Islamic Republic of Pakistan, 1973. Authenticity of the judicial record cannot be doubted without any solid proof and only on the oral arguments of the learned counsel.

Conclusion:

- i) The law of limitation requires that a person must approach a court of law and take legal remedies with due care, diligence and within the time provided by the law.
- ii) The question of limitation cannot be termed to be a mere technicality and cannot be ignored while deciding cases.
- iii) Presumption of truth is attached to the record of the court under Article 129 (e) of the Qanun-e-Shahadat Order, 1984 and Article 150 of the Constitution of Islamic Republic of Pakistan, 1973.

11. Lahore High Court
Kashif Law Book House v. Federation of Pakistan & others
W.P. No. 34660 of 2020
Mr. Justice Shahid karim
<https://sys.lhc.gov.pk/appjudgments/2024LHC254.pdf>

Facts: The instant petition along with connected challenged the paragraph (5) (2) (a) of the Imports Policy Order, 2020 dated 25.09.2020 and issue in both the petitions converge on the same challenges regarding import of goods of the Indian origin of imported from India.

Issues:

- i) What is significance of words ‘of goods of any description’ as used in section 3

of 1950 Act?

- ii) Whether it is discretion of Federal Government to conclude that import of books have adverse bearing on national security or interest of the country?
- iii) Whether a complete prohibition of import of goods would be an infringement of rights guaranteed by Article 18 of the Constitution?
- iv) Whether right guaranteed by Article 19 of Constitution is linked to and dependent upon the right to read and receive information and is there and restriction upon such right?
- v) Whether question relating to foreign affairs and national security can be adjudged through courts?
- vi) Whether power to issue orders under Section 3(1) of the 1950 Act is absolute?
- vii) Whether decision of ban on import of books can be reviewed in the narrow prism of rationality and impropriety?

Analysis:

- i) Indubitably, greater significance must attach to the words ‘of goods of any specified description’ as used in section 3 of 1950 Act. The true construction must be that this does not confer a sweeping power on the Federal Government to prohibit import or export of all goods from any country and the power lies merely to prohibit or restrict ‘goods of any specified description’. As a matter of policy of the law, the Federal Government should only prohibit specified goods and simultaneously retain power to review the prohibition on a case to case basis. Both these connotations can be culled out from a reading of section 3 of the 1950 Act.
- ii) In short, this is a matter which ought to be decided on a case to case basis and cannot be determined generally by use of the powers to impose a complete ban without regard to individual cases. For instance, the petitioners in these cases may, if the circumstances were right, apply to the Federal Government for import of specific books regarding which an analysis may be carried out by the Federal Government and upon such analysis may conclude that such books have no adverse bearing on the national security or interest of the country and may be allowed to be imported. Such discretion should continue to be retained by the Federal Government. A reading of section 3 of the 1950 Act holistically and in the entire context of the law would also lead to the inference that it is intended that the Federal Government retain its power to decide upon the prohibitions and restrictions or otherwise to control the import and export of goods in individual cases coming up before it and for which a procedure may be prescribed by rules.
- iii) The intention to be gathered from a reading of section 3 leads to the ineluctable conclusion that a complete prohibition of import of goods would be an infringement of rights guaranteed by Article 18 of the Constitution. The Federal Government is merely empowered to regulate the trade or profession by a specific system which is envisaged under sub-section (2) of section 3 of the 1950 Act. It could be a condition of the license that certain goods will not be imported or the license may provide for import of certain other goods which are not injurious to the national interest such as books and journals relating to legal profession and

which are not even of the Indian origin but are merely Indian reprints of foreign books and published by publishing houses based in India.

iv) The right guaranteed by Article 19 is inextricably linked to and dependent upon the right to read and receive information. Only then is it possible for the right to freedom of speech to be exercised in a wholesome manner. Thus there must be sovereignty of choice to vest in a reader to sift through different sources of material of literary value which will, in turn, equip him or her with knowledge so that the cherished right to freedom of speech and expression can be enjoyed. It will be noted that the right is subject to reasonable restrictions imposed by law, amongst others, in the interest of friendly relations with foreign states. This will include restrictions to be imposed if the relations with a foreign state do not remain so friendly.

v) It has long been settled that a question relating to foreign affairs and national security is par excellence a non-justiciable question. Courts have accorded a substantial degree of deference to the expertise of agencies in assessing the risk to national security and in weighing it against countervailing interests. This is being done for two reasons; The first is, institutional competence and the second is, democratic legitimacy of the executive

vi) It is true that power to issue orders under Section 3(1) of the 1950 Act is not absolute and it has to be exercised in a structured manner according to the rules of reason and justice, not according to private opinion. It cannot be arbitrary, vague and fanciful.

vii) The right question to ask is whether the discretion was exercised on purely trading and commercial considerations or had a predominantly national security and foreign affairs / diplomatic relations feature to it. The reply makes it evident that the decision-making was largely influenced by the latter and so the discretion so exercised cannot be reviewed in the narrow prism of rationality and impropriety. In the assessment of proportionality in this case, conventional rules will not apply and appropriate weight is due to the experience and opinion of agencies, based on sensitive intelligence information.

- Conclusion:**
- i) Indubitably, greater significance must attach to the words ‘of goods of any specified description’ as used in section 3 of 1950 Act. The true construction must be that this does not confer a sweeping power on the Federal Government to prohibit import or export of all goods from any country and the power lies merely to prohibit or restrict ‘goods of any specified description’.
 - ii) Yes, it is discretion of Federal Government to conclude that import of books have adverse bearing on national security or interest of the country.
 - iii) The intention to be gathered from a reading of section 3 leads to the ineluctable conclusion that a complete prohibition of import of goods would be an infringement of rights guaranteed by Article 18 of the Constitution.
 - iv) The right guaranteed by Article 19 is inextricably linked to and dependent upon the right to read and receive information and the right is subject to reasonable restrictions imposed by law.

- v) A question relating to foreign affairs and national security is par excellence a non-justiciable question.
- vi) Power to issue orders under Section 3(1) of the 1950 Act is not absolute. It cannot be arbitrary, vague and fanciful.
- vii) If the decision-making regarding ban on import of books is largely influenced by the national security and foreign affairs / diplomatic relations then the discretion so exercised cannot be reviewed in the narrow prism of rationality and impropriety.

12. Lahore High Court
Sonia Sharief v. Addl. District & Session Judge, etc.
W.P.No.97 of 2024
Mr. Justice Mirza Viqas Rauf
<https://sys.lhc.gov.pk/appjudgments/2024LHC381.pdf>

Facts: The petitioner is an overseas Pakistani and she was married to respondent No.3. It is alleged by the petitioner that the “respondent” contracted second marriage without seeking formal permission from her. This prompted the petitioner to file complaint under section 6 of the Muslim Family Laws Ordinance, 1961 through her special attorney before the Family Court. The complaint was dismissed preliminary, being not maintainable. The petitioner then filed a revision petition which too was dismissed hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues:

- i) Whether a complaint under section 6 of the Muslim Family Laws Ordinance, 1961 can be filed and prosecuted through attorney or not?
- ii) Whether a complaint can be proceeded through attorney or an accused can defend the charges through his/her attorney in criminal proceedings?

Analysis:

- i) Section 262 of “Cr.P.C” forming part of Chapter XXII envisages that in trials under this Chapter, the procedure prescribed in Chapter XX shall be followed except as hereinafter mentioned. Chapter XX of “Cr.P.C” provides the manner of trial of cases by Magistrate. While examining the provisions of Chapter XX of “Cr.P.C”, it becomes crystal clear that appearance of complainant before the Magistrate is necessary and non-appearance contemplates consequences in the shape of dismissal of complaint and acquittal of respondent accused.
- ii) It is an oft repeated principle of law that in criminal proceedings, neither a complaint can be proceeded through attorney nor an accused can defend the charges through his/her attorney... The conclusion is undoubtedly rested upon the fact that agitating or defending the criminal proceedings is always a personal act of the complainant or accused. The criminal proceedings in the Court, thus, cannot be initiated through attorney as the criminal administration of justice recognizes only those as a witness or complainant who either have seen, heard or least perceived any fact towards the offence. An attorney being not uttering of his/her own knowledge rather deposing the voice of his/her master would not fall

within the meaning of witness/complainant. An attorney, thus, is precluded to get register first information report or a criminal complaint. There is no concept or even legal provision allowing initiation of proceedings or recording of evidence through attorney in the criminal law. The concept of representation through attorney either by the complainant or the accused is alien to the criminal jurisprudence so far...

- Conclusion:**
- i) A complaint under section 6 of the Muslim Family Laws Ordinance, 1961 cannot be filed and prosecuted through attorney.
 - ii) It is an oft repeated principle of law that in criminal proceedings, neither a complaint can be proceeded through attorney nor an accused can defend the charges through his/her attorney.

13. Lahore High Court

The State v. Ghulam Abbas alias Agha.

Murder Reference No. 319 of 2019

Ghulam Abbas alias Agha v. The State, etc.

CrI. Appeal No.78701 of 2019

Ghulam Raza v. The State, etc.

Criminal Revision No.63816 of 2019

Mr. Justice Shehram Sarwar Ch., Mr. Justice Muhammad Waheed Khan

<https://sys.lhc.gov.pk/appjudgments/2024LHC369.pdf>

Facts: Additional Sessions Judge, for offences under sections 302/324/109, P.P.C, at the conclusion of trial convicted appellant/convict under Section 302(b) PPC and sentenced to death as Tazir on three count with a direction to pay a sum of Rs.300,000/- as compensation under Section 544-A Cr.P.C. to the legal heirs of each deceased, in default thereof to further undergo six months S.I. on three count. The appellant/convict filed criminal appeal against his conviction and sentence and the Trial court transmitted murder reference for confirmation or otherwise of death sentence. The complainant of the case also filed Criminal Revision for enhancement of sentence awarded by the learned trial Court to the appellant.

Issues:

- i) Whether conviction and sentence can be based upon the testimony of chance witnesses?
- ii) Whether conviction can be based upon the dying declaration alone?
- iii) What is the purpose of statement u/s 161 Cr.P.C?
- iv) Whether the medical evidence provides any corroboration to the ocular account?

Analysis:

- i) There is hardly any doubt in the legal proposition that the conviction and sentence can be based upon the testimony of chance witnesses if that is sufficiently corroborated by the other pieces of evidence coming forth from independent sources(...)
- ii) The statement in shape of dying declaration of a deceased is relevant and

admissible under Article 46(1) of Qanoon-e-Shahadat Order, 1984 and Rule 25.21 of Chapter XXV of Police Rules, 1934...There is no cavil with the legal proposition that conviction can be based on the dying declaration alone...However, for making reliance on this piece of evidence, the superior judiciary of the country had enumerated certain conditions to be fulfilled to make it trustworthy and reliable.The August Supreme Court of Pakistan in case of “Mst. ZAHIDA BIBI v. THE STATE” (PLD 2006 SC 255) had authoritatively held, if such statement was recorded in hospital, it should be written in presence of a Doctor or any other staff of hospital should be associate(...)

iii) The purpose of statement u/s 161 Cr.P.C. recorded by the Investigating Officer during the course of investigation is only one, in our Criminal Administration of Justice, which has been provided u/s 162 Cr.P.C...Meaning thereby that the purpose of statement u/s 161 Cr.P.C. is to contradict and confront the witnesses in the manner as provided u/s 140 of Qanoon-e-Shahadat Order, 1984(...)

iv) The medical evidence does not provide any corroboration to the ocular account, rather it just confirms the nature and seat of injuries, the weapon used therein and the time elapsed between injuries & death and death & postmortem (...)

- Conclusion:**
- i) Yes, conviction and sentence can be based upon the testimony of chance witnesses but subject to sufficient corroboration with other independent piece of evidence.
 - ii) Yes, conviction can be based upon the dying declaration alone, if certain conditions under Article 46(1) of Qanoon-e-Shahadat Order, 1984 and Rule 25.21 of Chapter XXV of Police Rules, 1934 are fulfilled to make it trustworthy and reliable.
 - iii) See above in analysis portion.
 - iv) The medical evidence does not provide any corroboration to the ocular account.

14. Lahore High Court
Shakeel Akhtar v. The State etc.
Criminal Revision No.71205/2021
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2023LHC7687.pdf>

Facts: The Petitioner has assailed the order by filing criminal revision through which the application for conducting of his DNA test was accepted by the trial court during the trial stage when eight witnesses from the prosecution side were recorded.

Issues:

- (i) Whether Article 13(b) of the Constitution of 1973 allows the collection and analysis of DNA from people arrested and charged with serious crimes?
- (ii) Whether the court can order an accused’s DNA test during the trial?

- Analysis:** (i) In Pakistan, DNA tests are considered valuable for delivering justice in criminal cases. Several provisions furnish the legal framework for their admissibility. The DNA test of an accused person does not offend Article 13(b) of the Constitution of 1973. DNA collection in criminal cases is analogous to the police practice of taking photographs or collecting fingerprints of the accused. It accomplishes the same function more effectively. It is not testimonial because the investigator – or the court – draws his own conclusions. One cannot claim that by providing a sample for the test, the accused imparted any information based on his own knowledge and became a witness against himself, violating Article 13(b). Parliament has enacted sections 53A, 164A and 164-B Cr.P.C. to specifically accord statutory recognition to the DNA test in respect of the offences under sections 376, 377 and 377-B PPC. The Supreme Court’s ruling in *Salman Akram Raja*, (2013 SCMR 203) is also a legal mandate for DNA testing of an accused to determine the authenticity of the allegations levelled against him. Parliament has enacted sections 53A, 164A and 164-B Cr.P.C. to specifically accord statutory recognition to the DNA test in respect of the offences under sections 376, 377 and 377-B PPC.
- (ii) A careful study of the relevant provisions of the Code of Criminal Procedure, 1898, and other applicable statutes discloses a scheme which aims at strengthening the investigator’s hands. Therefore, in a criminal case, a trial court can rectify an intentional or unintentional lapse on the part of the complainant, the Investigating Officer or the prosecuting counsel by calling in evidence on its own if it can have a bearing on the determination of guilt or innocence of the accused person. Such authority must be granted to a criminal court in the larger interest of the community. The stage of the trial is irrelevant for this purpose. The only factor important for exercising such power is that the evidence called is relevant. Section 10 of the Punjab Act of 2007 authorizes the court, tribunal or authority to send a forensic material related to the investigation or proceedings before it to the PFSA for analysis and expert opinion. Hence, the court may also invoke section 10, *ibid*, to order an accused’s DNA test. A fair trial necessitates striking a balance among the interests of the accused, the victim, and society, which the State and prosecuting agencies represent.

- Conclusion:** (i) The DNA test of an accused person does not offend Article 13(b) of the Constitution of 1973.
- (ii) Yes, DNA test could be conducted irrespective of the stage of the trial.

15. Lahore High Court
Zain Ali and another v. Additional Inspector General of Police and others
Writ Petition No.65602/2022
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2024LHC420.pdf>

- Facts:** One of the petitioners recorded his cross-version against one of the respondents/complaint of a case FIR. The said respondent applied to the District Police Officer

for a change of investigation which was allowed. The petitioners challenged this order of change of investigation. The said respondent also filed a private complaint and during pendency of the same sought a second change of investigation in terms of Article 18A (2) of the Police Order 2002 which was also allowed. One of the petitioners has also assailed the said order.

- Issues:**
- i) Whether the concept of *further investigation* is distinguishable from the concept of *re-investigation*, *fresh* or *de novo investigation*?
 - ii) Whether there is any prohibition on police authorities to conduct further investigations or re-investigations in a criminal case after the submission of the final report under section 173 Cr.P.C.?
 - iii) Whether the process of investigation can be suspended due to pendency of a private complaint in view of the dictum laid down in *Nur Elahi Case*?

- Analysis:**
- i) Investigations can take various forms: (i) initial investigation, (ii) further investigation, or (iii) fresh, *de novo*, or re-investigation. The investigation conducted by the authorized police officer following the registration of an FIR may be termed an “initial investigation”. It may lead to filing a final report under section 173(2) Cr.P.C...The necessity for “further investigation” arises when additional inquiries or examinations are required to gather more evidence or clarify certain aspects of the case. This need is often prompted by new information that surfaces during the initial investigation or in response to developments within it. Typically resulting in a “supplementary report”, it complements the initial investigation without nullifying it. Hence, “further investigation” should be distinguished from “re-investigation”, “fresh”, or “*de novo* investigation”...Fresh/re-investigation can be ordered when there is a complaint alleging that the initial investigation is flawed, unfair, tainted, *mala fide*, or otherwise fails to serve the interests of justice. At times, re-investigation may bring on record conflicting evidence and contradictory opinions of police officers. In such situations, the court must evaluate them following the established principles of criminal jurisprudence and rules of evidence to arrive at a correct decision.
 - ii) There is no prohibition on police authorities to conduct further investigations or re-investigations in a criminal case after the submission of the final report under section 173 Cr.P.C. However, there is a conflict in judicial decisions regarding whether they can do so after the accused has been indicted. In *Altaf Ahmad Makhdoom v. Inspector General of Police, Punjab, and others* (2023 PCr.LJ 1), after thoroughly analyzing the case law on the subject, the High Court held that the Supreme Court’s ruling in *Muhammad Akbar v. The State and another* (1972 SCMR 335) was the binding authority. A 4-member Bench handed down this decision, while others have come from Benches of lower numerical strength of the Supreme Court or the High Courts.
 - iii) In *Nur Elahi*, the central question revolved around the appropriate course of action when there is both a challan case and a private complaint regarding the

same occurrence. The Supreme Court focused on guiding how the courts should proceed with the trial in such situations. The police investigation was not an issue at all. In other words, the findings in *Nur Elahi* are confined to judicial proceedings and do not address the issue of further investigation or re-investigation. Thus, *Nur Elahi* cannot be interpreted to lay down a rule that the investigation process should be held in abeyance until the decision of the private complaint... The concept of suspending the investigation process and linking it with the decision of a private complaint militates against the policy and scheme of law. Section 173 Cr.P.C. contemplates expeditious completion of investigation and commencement of trial. It mandates that as soon as the investigation is completed, the officer in charge of the police station must promptly forward a report in the prescribed form through the public prosecutor to the magistrate authorized to take cognizance of the offence. If the investigation is not concluded within 14 days from the date of registration of the First Information Report (FIR), the officer in charge of the police station must, within three days after that, submit an interim report (through the public prosecutor) to the magistrate, in the prescribed form, detailing the results of the investigation made until then. The court should then immediately commence the trial unless there are valid reasons for a postponement... The law's intention for the expeditious conclusion of investigations is also evident in Article 18A of the Police Order, which outlines specific timelines for each tier to decide on applications for the transfer of investigations... The only circumstance allowing the suspension of the investigation is outlined in Rule 25.57(2)(i)... Section 56(e) of the Specific Relief Act 1877 explicitly prohibits the issuance of injunctions to stay criminal proceedings... halting an investigation could lead to severe complications: witnesses may pass away or become unavailable, memories may fade, crucial documents may disappear or be lost, or the relevant evidence may be tampered with or suborned.

- Conclusion:**
- i) The concept of *further investigation* is distinguishable from the concept of *re-investigation*, *fresh* or *de novo investigation*.
 - ii) There is no prohibition on police authorities to conduct further investigations or re-investigations in a criminal case after the submission of the final report under section 173 Cr.P.C.
 - iii) The process of investigation cannot be suspended due to pendency of a private complaint in view of the dictum laid down in *Nur Elahi Case*.

16. Lahore High Court
Muhammad Shoaib v. ADJ, Lodhran, etc.
Writ Petition No.826 of 2022
Mr. Justice Shakil Ahmad
<https://sys.lhc.gov.pk/appjudgments/2024LHC322.pdf>

Facts: This petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan to assail consolidated judgments & decrees passed by

learned Senior Civil Judge and District Judge, whereby suit for recovery of dower, etc. filed by respondent was partially decreed, whereas appeal filed by petitioner against decree of trial court was dismissed.

- Issues:**
- i) If there was no consummation of marriage or a valid retirement (khalwat-e-sahiha) before pronouncement of divorce by the husband, whether the wife would be entitled to get half of the dower so fixed?
 - ii) Where marriage was not dissolved by way of pronouncing talaq by the husband on a wife and marriage was not consummated or there was no valid retirement, whether wife would be entitled to any amount of dower so fixed if dissolution of marriage had taken place at her wish or instance?
 - iii) Whether jurisdiction under Article 199 of the Constitution can be invoked to correct wrong committed by both the courts?

- Analysis:**
- i) It is by now settled proposition of Islamic law that if marriage between the parties has either been consummated or there was a valid retirement (khalwat-e-sahiha) before pronouncement of divorce by the husband, the whole of the unpaid dower whether prompt or deferred, becomes immediately payable by the husband to the wife and is enforceable/recoverable like any other debt, however, if there was no consummation of marriage or a valid retirement (khalwat-e-sahiha) before pronouncement of divorce by the husband, the wife would be entitled to get half of the dower so fixed in view of the command of Allah as ordained in Ayat No.237 of Surah Al-Baqarah.
 - ii) Undeniably, in the instant case, petitioner did not pronounce divorce upon the respondent and respondent obtained the decree for the dissolution of marriage in terms of section 10(4)(5) of the Act, 1964 before consummation of marriage or valid retirement. In the instant case, it was the respondent who herself approached the court seeking dissolution of marriage on the basis of Khula by asserting that she would rather die than joining the petitioner as his wife. Since in the instant matter, petitioner did not dissolve the marriage by pronouncing divorce upon respondent prior to consummation of marriage or valid retirement, respondent would not become entitled to receive even half of her dower as decreed by the learned Judge Family Court and maintained by the learned Appellate Court. In view of para No.289-F of the Principles of Muhammadan Law by D.F. Mulla, dower becomes confirmed by consummation of marriage; or by valid retirement (khalwat-e-sahiha); or by death of either husband or wife and in case husband pronounces divorce upon his wife before consummation of marriage or valid retirement (khalwat-e-sahiha), wife would become entitled to receive half of the dower. In this case, however, it is not the case that the marriage between the parties was dissolved by pronouncing divorce by the petitioner and it was respondent who obtained decree for the dissolution of marriage in terms of section 10(4)(5) of the Act, 1964. Where marriage was not dissolved by way of pronouncing talaq by the husband on a wife and marriage was not consummated or there was no valid retirement, wife would not be entitled to any amount of

dower so fixed if dissolution of marriage had taken place at her wish or instance.

iii) While passing impugned judgments & decrees, both the courts below have committed jurisdictional error and exceeded their jurisdiction. Instant case is a fit case for interfering in impugned judgments & decrees in view of the guidelines given in Mst. Tayyeba Ambareen's case by invoking the provisions of Article 199 of the Constitution for the reason that objective of Article 199 of the Constitution is to foster justice, protect rights and to correct the wrong. In the instant case wrong committed by both the courts below needs to be corrected by invoking the jurisdiction under the provisions of Article 199 of the Constitution in order to foster justice and protect the rights of petitioner.

- Conclusion:**
- i) If there was no consummation of marriage or a valid retirement (khalwat-e-sahiha) before pronouncement of divorce by the husband, the wife would be entitled to get half of the dower so fixed.
 - ii) Where marriage was not dissolved by way of pronouncing talaq by the husband on a wife and marriage was not consummated or there was no valid retirement, wife would not be entitled to any amount of dower so fixed if dissolution of marriage had taken place at her wish or instance.
 - iii) The jurisdiction under Article 199 of the Constitution can be invoked to correct wrong committed by both the courts in order to foster justice.

17. Lahore High Court
Amir Shahzad v. The State, etc.
Criminal Appeal No.38881 of 2019
Muhammad Iqbal v. The State, etc.
Criminal Revision No.43848 of 2019
Mr. Justice Muhammad Amjad Rafiq
<https://sys.lhc.gov.pk/appjudgments/2024LHC390.pdf>

Facts: The appellant and his father along with co-accused were tried, by the Additional Sessions Judge on the charge of committing murder in case FIR for offences under sections 302/34 PPC and at the conclusion of trial while acquitting co-accused, the appellant was convicted under section 302(b) PPC and sentenced to imprisonment for life along with compensation. Through Criminal Appeal, he has assailed his conviction and sentence, whereas, Criminal Revision has been filed by the complainant seeking enhancement of his sentence.

Issues:

- i) Whether a bullet fired from a firearm can take any unpredictable course on impact with bones, tissues etc. and what are the possibilities when a body gets a firearm injury and the bullet cannot be located by the doctors?
- ii) Whether conflict in ocular and medical evidence causes damage to the prosecution case?
- iii) Whether the motive set up by the prosecution but could not be established creates doubt in the prosecution case?
- iv) Whether non-availability of cartridge shell makes recovery of gun

inconsequential?

v) Whether an accused can be convicted when, on the same set of evidence, a co-accused has been acquitted by the trial court?

Analysis:

i) No exit wound was observed by the doctor; when cross-examined on this point, he conceded that there was one entry wound on the dead body of the deceased without any exit and no any kind of foreign body was recovered from the dead body of the deceased despite exploring. He also observed blackening around the wound but non-availability of exit wound questions the manner of injury, though he explained that some time foreign body reaches in vertebra or spinal cord yet it cannot be dissected unless dead body is divided into two parts which act, they do not perform for the dignity/respect of the dead body. Said observation of the doctor was attended in the light of precedents and forensic literature and found some related explanation in a case reported as “Nirmal Singh And Anr vs State Of Bihar” (AIR 2005 SUPREME COURT 1265) which also deals with situation of lost bullet in the body... In another case reported as “MUHAMMAD AHMAD and another versus THE STATE and others” (1997 SCMR 89), it has been held that the authorities on Medical Jurisprudence and the Forensic Ballistics are, however, agreed that a bullet fired from a fire-arm may take any unpredictable course on impact with bones, tissues etc. Taylor in his Principles and Practice of Medical Jurisprudence, Volume I at page 446... Though spontaneous migration of a retained bullet is rare, yet during a study, a spontaneous migration of bullet from arm to forearm was observed in a case of a 24-year-old male. This study was published in ‘Journal of Ultrasound’ (a journal of the Italian Society of Ultrasonology of medicine and biology), Published online 2013 Oct 19. Similarly, in an article by Saptarshi Biswas, Catherine Price, and Sunil Abrol, published in ‘Case Reports in Critical Care’ (Published online 2014 Jan 28) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4009998/>) on following subject; “An Elusive Bullet in the Gastrointestinal Tract: A Rare Case of Bullet Embolism in the Gastrointestinal Tract and a Review of Relevant Literature” Which shows that bullet can be lost in the body cavity anywhere... All the above cited cases deal with deflection of bullet but present is the cartridge case fired from a gun; neither any wad nor any pellets were recovered though its dispersion was expected. Doctor too has conceded doctor during cross examination that he did not mention the fact of reaching the foreign body to vertebrae or spinal cord in the postmortem report. It has been observed that he did not suggest any x-ray or nor used any latest technique to track the cartridge inside the body. Thus, when there was no exit wound and no pellets were recovered from the body, the case of the prosecution becomes more doubtful with respect to injury caused by firearm weapon.

ii) In this way the circumstances create serious doubt about the medical evidence in this case. This conflict in ocular and medical suggests that witnesses have not seen the occurrence and such conflict is damaging for the prosecution.

iii) Motive set up but could not be established by the prosecution leaving the

entire episode of the tragedy in doubt.

iv) It was a single fire shot case and as a matter of fact, a cartridge shell is not ejected automatically after a fire by gun 12 bore rather it is ejected manually to reload a new cartridge. However, it is different in case of a repeater/pump action. Pump action shotguns are one of the most popular types of shotguns, and can hold multiple rounds. They have a great round capacity that will allow you to spend more time shooting and not reloading. These guns function by manually sliding or “pumping” the action in order to eject a spent shell and chamber a new round. As long as the shooter pumps it back completely, these shotguns are extremely reliable and do not jam very often. This makes them popular choices for hunting, home defence, and even law enforcement applications. The 12 Bore Pump Action Gun has been specially developed for use as a security weapon. It is a single barrel breach loading weapon superior to 12 Bore DBBL. It is provided with a tubular magazine, which holds 4 nos. of 12 Bore Cartridges and is placed parallel to and below the barrel. Extraction, loading and cocking of the cartridges take place in a single 'pump action' by operating handle, sliding along the magazine. Due to rapid reloading by pump action and spread of shots, it is an ideal weapon for counter ambush tactics. Thus, if a 2nd fire is intended, then spent shell is to be ejected by operating handle, sliding along the magazine. Some references were collected on topic “Shotgun Basics: Identifying parts and functions” from following site; <https://tacticalgear.com/experts/shotgun-basics-identifying-parts-and-functions...>The fire has not been repeated in the present case; therefore, no question of ejecting of cartridge or falling at the place of occurrence arises. However, in any case non-availability of cartridge shell makes recovery of gun inconsequential and PFSA report to the extent of functionality test is not helpful to the prosecution.

v) Another aspect of the matter is that during trial, on the same set of evidence, two co-accused stood acquitted by the learned trial court and Criminal Appeal filed against their acquittal also stood dismissed... as such, serious doubt spurred out in the prosecution case qua the participation of present accused/appellant; thus, he could not be convicted under the principle of “falsus in uno, falsus in omnibus” (false in one thing, false in all).

- Conclusion:**
- i) See above analysis No. (i).
 - ii) Conflict in ocular and medical evidence causes damage to the prosecution case.
 - iii) The motive set up by the prosecution but could not be established creates doubt in the prosecution case.
 - iv) In any case, non-availability of cartridge shell makes recovery of gun inconsequential and PFSA report to the extent of functionality test is not helpful to the prosecution.
 - v) See above analysis No. (v).
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18. Lahore High Court
Ihsan Ullah alias Munshi, etc. v. The State etc.
Sikandar Hayat v. Saleem alias Seemu etc.
Criminal Appeal No. 53656/2019
Criminal Revision No.58451/2019
Mr. Justice Muhammad Amjad Rafiq
<https://sys.lhc.gov.pk/appjudgments/2024LHC406.pdf>

Facts: Through this Criminal Appeal accused/appellants have challenged their conviction passed under inter alia section 302(b)/34 PPC whereas, through Criminal Revision a witness/brother of deceased has sought enhancement of sentence against the appellants.

Issues:

- (i) Whether hostility of a witness in a previous trial can be a ground to reject his testimony in the latter trial?
- (ii) Whether minor contradiction in ocular account, due to efflux of time, affects the case of prosecution?
- (iii) What is effect of abscondence of accused after the occurrence?
- (iv) Where recovery of weapon has been effected after a long period then whether availability of matching report is still expected?
- (v) Whether acquittal of co-accused under the principle of abundant caution reflects adversely upon the case of the other accused person?
- (vi) What is effect of joint role of firing?
- (vii) Whether a witness once disbelieved in a trial can be relied upon in subsequent trial?

Analysis:

- (i) Hostility of a witness in a previous trial is no ground to reject his testimony in the latter trial. However, it is trite that its intrinsic value is diminished if it is not corroborated with any other evidence whereas in the present case it is very much available in the form of statement of two more witnesses of ocular account.
- (ii) Witnesses of ocular account despite being recorded after 17 years of the occurrence had a touch of truth and minor contradiction due to efflux of time are natural; therefore, have not affected the prosecution case in any manner.
- (iii) It is trite that abscondence is always considered as corroborative evidence, though not a sole reason to convict the accused.
- (iv) In a recovery of weapon after a long period, availability of matching report is hardly expected. This inconsequential effect of recovery in no case affects the prosecution case.
- (v) It has been observed that injuries attributed to (acquitted accused of earlier trial) and (acquitted accused of present trial) were observed by the doctor as exit wounds and no recovery was effected thus, their case is distinguished and under the principle of abundant caution, present accused/appellants can be singled out.
- (vi) Joint role of firing is always considered as mitigation.
- (vii) A witness if missed or exaggerated a fact in an earlier trial cannot be termed as untruthful in subsequent trial if his testimony is straight forward and natural. If

this be permitted then once some witnesses are disbelieved in an earlier trial their testimony cannot be relied upon in subsequent trial, then the accused later tried would receive a clean chit on the basis of statement earlier made by the said witnesses. Competency of a witness is regulated under Article 3 of Qanun-e-Shahadat Order, 1984. The first proviso to above Article clearly speaks that only that person shall be prevented to be testified if he is convicted of perjury or giving false evidence. As per 2nd proviso to above Article, even such witness can also be permitted if court is satisfied on his repentance.

- Conclusion:**
- (i) Hostility of a witness in a previous trial is no ground to reject his testimony in the latter trial.
 - (ii) See analysis part.
 - (iii) See analysis part.
 - (iv) In a recovery of weapon after a long period, availability of matching report is hardly expected.
 - (v) See analysis part.
 - (vi) Joint role of firing is always considered as mitigation.
 - (vii) A witness if missed or exaggerated a fact in an earlier trial cannot be termed as untruthful in subsequent trial if his testimony is straight forward and natural.

19. Lahore High Court
M/s Jalal Construction Company v. The Secretary, C&W Department, Government of Punjab and 03 others
W.P. No. 23988 / 2022
Mr. Justice Abid Hussain Chattha
<https://sys.lhc.gov.pk/appjudgments/2024LHC329.pdf>

Facts: Constitutional Petitions were filed by the petitioners in the capacity of Government Contractors who participated in various tenders floated by multiple procurement agencies operating under the ambit of the Federal Government or the Provincial Government of Punjab. After having being declared as the lowest bidder or successful bidder, as the case may be, the petitioners were required by the respondents to deposit securities of specified amount in terms of performance security or additional performance security/quality assurance security in the form of bank guarantee by specifically excluding insurance bond/guarantee from an insurance company having at least AA rating from PACRA/JCR under the applicable procurement laws, rules and Standard Bidding Documents. Petitioners impugned letters issued by procuring agencies demanding performance or additional performance/quality assurance securities via bank guarantees by excluding insurance bond/guarantee from an insurance company. Moreover in some of the Petitions, Circular dated 29.07.2020 issued by the Punjab Procurement Regulatory Authority constituted under the Punjab Procurement Regulatory Authority Act, 2009 was also challenged which endorsed the decision of the procuring agencies in the Province of Punjab to exclude insurance bond / guarantee from an insurance company as a form of security in

the SBDs.

- Issues:**
- (i) Whether the act of procuring agencies falling under the ambit of the Federal Government and the Provincial Government of Punjab to exclude insurance bond/guarantee from insurance companies as a form of security with respect to performance or additional performance/quality assurance security is lawful under the applicable procurement laws and the SBDs (standard bidding documents) of PEC (Punjab Engineering Council) endorsed by ECNEC (National Economic Council) and notified by the Planning Commission, Government of Pakistan?
 - (ii) What is domain, scope and ambit of the Pakistan Engineering Council Act, 1975 “PEC Act”.
 - (iii) Whether National Economic Council or ECNEC under Article 156 of the Constitution has restricted general advisory mandate in terms of policy matters which does not extend to micro-manage the procurement process of a procuring agency existing under the Federal or Provincial Governments and in no way curtails the powers of a procuring agency to prescribe or exclude a particular form of guarantee as the same is permissible under the SBDs of PEC?

- Analysis:**
- (i) At the Federal level, the Authority constituted under the PPRA Ordinance, 2002 read with PPRA Rules, 2004 and the Regulations, 2008 is legally empowered to devise SBDs but it has adopted the SBDs prepared by PEC and as such, all procuring agencies falling under the Federal Government are obliged to use the SBDs of PEC in their respective procurement process. However, SBDs of PEC allow a procuring agency to exclude insurance bond / guarantee from an insurance company having AA rating from PACRA / JCR as a form of security with respect to performance or additional performance / quality assurance security by prescribing as such in its SBDs. In the Province of Punjab, the Authority set up under the PPRA Act, 2009 read with the Rules, 2014 is legally empowered to devise SBDs which have been duly made and notified, as such, all procuring agencies including Local Governments in the Province of Punjab are obliged to use SBDs prepared by the Authority under the PPRA Act, 2009. Hence, the conscious act of exclusion of insurance bond / guarantee from an insurance company as a form of security with respect to performance or additional performance / quality assurance security is valid and the bidders are obliged to take part in the procurement process in accordance with the terms and conditions of the SBDs. The act of exclusion of insurance bond / guarantee as a form of security with respect to performance or additional performance / quality assurance security by a procuring agency falling under the Federal or Provincial Government of Punjab is not in conflict with the decision of ECNEC reflected in the Notification dated 12.02.2008 of the Planning Commission, Government of Pakistan.
 - (ii) It is abundantly clear from an overview of PEC Act that its domain, scope and ambit is limited vis-à-vis regulation of various aspects of engineering profession and for matters ancillary thereto. The SBDs prepared by PEC in pursuit and in

furtherance of engineering profession may be adopted by any public or private entity as there is no bar in using or consulting the same and may validly be regarded as benchmark for engineering contracts. However, the SBDs prepared by PEC are not sacrosanct and as such, the parties to a contract cannot be forced or compelled to adopt the same, if they choose any other SBDs with respect to their respective contracts. Hence, the procuring agencies of Federal, Provincial and Local Governments are not legally bound to adopt and adhere to the SBDs prepared by PEC under the PEC Act.

(iii) It is evident from bare perusal of Article 156 of the Constitution that the scope and mandate of National Economic Council is to review the general and overall economic conditions of the country and formulate plans regarding financial, commercial, social and economic policies with the primary objective to ensure balanced and sustainable development keeping in view regional equity in accordance with the principle of policy set out in Chapter 2 of Part-II of the Constitution. In this respect, it renders advice to the Federal and Provincial Governments. ECNEC is the Executive Committee of the National Economic Council to swiftly transact the business of National Economic Council. Rule 22 of the Rules of Business, 1973 stipulates the procedure regarding the functioning of ECNEC. However, it is settled law that decisions taken on the administrative side cannot override or prevail over express provisions of law. Further, the essence of the decision of ECNEC is to substantially adopt the SBDs of PEC but it does not prohibit minor alterations thereto by a procuring agency within its lawful mandate to meet peculiar requirements of a procuring agency.

- Conclusion:** (i) The exclusion of insurance bond / guarantee as a form of security by the procuring agencies of the Federal Government and the Provincial Government of Punjab with respect to performance or additional performance / quality assurance guarantee is permissible in terms of lawful discretion of a procuring agency provided it is specifically stated in the SBDs.
- (ii) See corresponding analysis part.
- (iii) The general policy advice of ECNEC reflected in the Notification dated 12.02.2008 of the Planning Commission, Government of Pakistan requiring all procuring agencies of the Federal, Provincial and Local Governments throughout Pakistan to adopt and use SBDs prepared by PEC does not prevail over express statutory provisions.

20. Lahore High Court
Syed Wajahat Hussain Shah v. Election Commission of Pakistan and 6 others
Writ Petition No. 3113 of 2023
Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2024LHC288.pdf>

Facts: The present petition is filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 whereby petitioner challenged the withdrawal of his

candidature and exclusion of his name from the list of valid candidates.

Issues: i) What are the requirements of section 65(1) of the Election Act, 2017?
ii) When a notice of withdrawal is not open to be recalled?

Analysis: i) Sub-section (1) of section 65 of the *Act* has two requirements; (i) a validly nominated candidate to give notice in writing for withdrawal of candidature, and (ii) it is delivered to the Returning Officer either by candidate himself or by an advocate authorized in writing by the candidate.
ii) Once the said requirements of law are fulfilled, the Returning Officer if satisfied that signature on the notice is that of the candidate, can cause a copy of notice to be affixed at conspicuous place in his office. The notice of withdrawal, if in accordance with law, in no circumstances is opened to be recalled or cancelled.

Conclusion: i) See above corresponding analysis.
ii) The notice of withdrawal, if in accordance with law, in no circumstances is open to be recalled or cancelled.

21. Lahore High Court
Sheikh Muhammad Anwar and 04 Others v. Judge Banking Court and another.
Writ Petition No. 38033 of 2023 etc.
Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2024LHC297.pdf>

Facts: Through this Constitutional petition along with other petitions detailed in schedule “A” the petitioners being aggrieved from the complaints filed by the financial institutions under section 20 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 pending before various Banking Courts, sought stay of proceedings in the criminal complaints, inter alia, on the common ground that criminal proceedings under the Ordinance cannot proceed simultaneously with the civil proceedings.

Issues: i) Whether utilization of finance facility for a purpose other than for which it was obtained without permission of the financial institution can constitute willful default?
ii) Whether a person who commits an offence as envisaged in section 20(1)(a) to (c) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 can be punished under said provision without prejudice to any other action which may be taken against him under the Ordinance?
iii) Whether criminal and civil proceedings involving same set of transaction can proceed concurrently?
iv) Whether power to adjourn or postpone the proceedings is available to the Banking Courts?

Analysis: i) Section 2(g)(ii) of the Financial Institutions (Recovery of Finances) Ordinance,

2001 primarily relates to utilization of finance facility for a purpose other than for which this facility is obtained. Similarly, removal or transfer, misappropriation or sale of collaterals, as contemplated in section 2(g)(iii) of the Ordinance, can constitute willful default when the same takes place without permission of the financial institution(...)

ii) Whoever, commits offence as envisaged in section 20(1)(a) to (c) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 can be punished under said provision without prejudice to any other action which may be taken against him under the Ordinance. Punishment for section 20(1)(d) of the Ordinance is visibly dependent upon determination of civil liability / decree... where a customer defaults in obligation, he shall be liable to pay, for the period from his default....,apart from other civil and criminal liabilities that he may incur under the contract or rules or any other law for the time being in force(...)

iii) The Supreme Court in various cases has considered the issue of co-existence of criminal and civil proceedings, in cases involving same set of transaction based on provisions of Pakistan Penal Code, 1860 and contractual civil liabilities. Both are treated as distinct and different. It is concluded that both can proceed concurrently because conviction for criminal cases is different from the civil liability...The object of civil proceedings is to enforce civil rights, whereas, criminal proceeding is to punish the offender for committing criminal offence and both even if relating to same matter can proceed simultaneously, it has also been recognized that the criminal courts are empowered to postpone the proceedings when criminal liability is intimately connected with the result of civil proceedings...The principle that the criminal and civil proceedings can be maintained simultaneously is well settled(...)

iv) The Banking Courts in terms of section 7 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 have same powers as are vested in a Court of Sessions under Cr.P.C and where the procedure is not provided in the Ordinance the provisions of the Cr.P.C. are applicable. Therefore, such power to adjourn or postpone is available to the Banking Courts which can be used with caution and remaining within the confines given in “Salman Ashraf” case (2023 SCMR 1292). Such order to postpone or to adjourn the proceedings cannot be made for indefinite period(...)

- Conclusion:**
- i) Yes, utilization of finance facility for a purpose other than for which it was obtained without permission of the financial institution can constitute willful default.
 - ii) Yes, a person who commits an offence as envisaged in section 20(1)(a) to (c) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 can be punished under said provision without prejudice to any other action which may be taken against him under the said Ordinance.
 - iii) Yes, criminal and civil proceedings involving same set of transaction can be proceeded concurrently.
 - iv) Yes, power to adjourn or postpone the proceedings is available to the Banking

- 22. Lahore High Court**
Muhammad Aslam v. Govt. of the Punjab & 5 others.
Writ Petition No. 23394 of 2023.
Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2023LHC7670.pdf>

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner assailed the auction of certain blocks of sand by Mines and Mineral Department, Punjab on the ground that the auction is taking place without obtaining requisite approval from Environment Protection Agency.

Issues: i) Who is responsible for obtaining the reports from Environment Protection Agency before initiating the process for bidding mines and mineral projects?
 ii) Is it mandatory to disclose any other pending litigation having direct or indirect effect on the proceedings or its outcome for seeking relief under Article 199 of the Constitution?

Analysis: i) Recently, in case titled “Public Interest Law Association of Pakistan registered under the Societies Act, 1860 through authorized person Chaudhry Awais Ahmed versus Province of Punjab through Chief Secretary, Civil Secretariat, Lower Mall, Lahore and others” (C. P. No. 55 of 2020), the Honourable Supreme Court of Pakistan has resolved the matter of responsibility as to obtaining environmental approval and reports. It has been settled that impact on environment must be looked into, before bidding commences, by the MMD (...) hence the practice of requiring a successful bidder to obtain an IEE or EIA after bidding of the project totally negates the purpose and impact of these reports. The impact on the environment must be looked into before bidding commences by the MMD and at the time of bidding a bidder must know the terms set out in the IEE or EIA that they are bound by and are required to comply with especially the mitigation measures and the EMP. Hence, it is the MMD that is responsible for obtaining these reports before initiating the process for bidding of the said projects.
 ii) I am of firm view that litigants are duty bound not just to give disclosure before the Courts as to any other pending litigation, having direct or indirect effect on the proceedings or its outcome but at the same time the disclosure must be full and fair to enable the Courts to do complete justice, expeditiously. The conduct of the litigants causing obstruction in duty of the Courts towards bona fide litigants and such abuse of process is already curbed by the Courts in various judgments (...) Grant of relief under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is a discretionary power of the High Court. A person seeking relief has to satisfy the conscience of the Court that he has approached the Court with clean hands.

Conclusion: i) Mines and Mineral Department is responsible for obtaining the reports from

Environment Protection Agency before initiating the process for bidding mines and mineral projects.

ii) It is mandatory to disclose any other pending litigation having direct or indirect effect on the proceedings or its outcome for seeking relief under Article 199 of the Constitution.

23. Lahore High Court
Beaconhouse School System, Okara v. Commissioner Sahiwal Division, etc.
Writ Petition No. 755 of 2024
Mr. Justice Raheel Kamran
<https://sys.lhc.gov.pk/appjudgments/2024LHC280.pdf>

Facts: In this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the orders passed by the Chief Executive Officer/Secretary, District Registering Authority and the Commissioner respectively whereby its request for the issuance of School Registration Certificate/E-License for the petitioner was turned down and appeal preferred there-against was dismissed. A direction has also been sought for issuance of School Registration Certificate/E-License of the petitioner's school for affiliation with the Board of Intermediate & Secondary Education and allowing its students to participate in the Board's examination.

Issues:

- i) Whether Constitution of Pakistan casts an obligation upon the State to ensure the provision of free and compulsory education to all children?
- ii) Whether any authority can verify and certify the compliance under clauses (a) & (b) of section 24(2) of the Punjab Free and Compulsory Education Act, 2014 when criteria for the determination of disadvantaged children or payment of vouchers and manner of maintenance of records of children has not been prescribed?
- iii) Whether law has to be reasonably precise and unambiguous to attract penal consequences for its alleged violation?

Analysis: i) Access to free and compulsory education is a universally acknowledged right of all children. It is a sine qua non for the development of any State in addition to ensuring equality of opportunity for its citizens and their right to live with dignity. In the Islamic Republic of Pakistan, such right has been included amongst the fundamental rights contained in Chapter 1 of Part II of the Constitution through the Eighteenth Constitutional Amendment. Fundamental rights occupy a place of pride in the scheme of our Constitution and the same indeed are conscience of the Constitution. By insertion of Article 25-A of the Constitution, an obligation has been cast upon the State to ensure provision of the free and compulsory education to all children between the age of 5 to 16 years in such a manner as may be determined by law. The subject of education has been devolved to the provinces for legislation and decisions regarding curriculum, syllabus, planning, policy and standard of education. Accordingly, the Punjab Free and Compulsory Education

Act, 2014 was enacted.

ii) From perusal of the above provisions of law, it is manifest that without framing rules, inter alia, to outline criteria for the determination of disadvantaged children or payment of vouchers and the manner of maintenance of records of children under clauses (a) & (b) of section 24(2) of the Act, any claim of compliance of obligations under section 13 of the Act would remain subjective, open to objections and disputes. Certainty lies at the heart of rule of law...It is for this recognition on part of the provincial legislature that the requirement to specify criteria for the determination of disadvantaged children or payment of vouchers and the manner of maintenance of records of children was mandated for the Government under clauses (a) & (b) of section 24(2) of the Act. No redundancy could be attached to legislative expressions including the aforementioned provisions of section 24 *ibid*. It is noteworthy that legislation in this case was enacted by the Punjab Assembly in the year 2014 and this Court is at a complete loss in comprehending how the disadvantaged children could be denied their right to education, which is their fundamental right guaranteed under Article 25A of the Constitution, owing to procrastination at the hands of the Government which failed to frame and notify rules in discharge of its responsibilities under clauses (a) and (b) of section 24(2) of the Act. The private education sector, which was supposed to share the responsibility of right to education of disadvantaged children, has benefitted from inaction on part of the Government Departments even after the lapse of 10 years of passing of the Act. At best, it shows an obvious neglect of the Government whereas, at worst, it may well be a case of regulatory capture warranting inquiry. This Court would abstain from commenting on reliability of the information provided to the DRA by other schools in the District, however, it is observed that when criteria for the determination of disadvantaged children or payment of vouchers and manner of maintenance of records of children under clauses (a) & (b) of section 24(2) of the Act has not been prescribed, how could compliance of the same be verified and certified by any authority.

iii) Any vagueness or uncertainty in prescribing legal obligations opens the doors for whimsical, arbitrary and capricious exercise of authority. Law has to be reasonably precise and unambiguous to attract penal consequences for its alleged violation.

- Conclusion:**
- i) The Constitution, under article 25-A casts an obligation upon the State to ensure the provision of free and compulsory education to all children between the ages of 5 to 16 years in such a manner as may be determined by law.
 - ii) Any authority cannot verify and certify the compliance under clauses (a) & (b) of section 24(2) of the Punjab Free and Compulsory Education Act, 2014 when criteria for the determination of disadvantaged children or payment of vouchers and manner of maintenance of records of children has not been prescribed.
 - iii) Law has to be reasonably precise and unambiguous to attract penal consequences for its alleged violation.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in the Chief Minister's Secretariat Household Staff Service Rules, 2012 in the schedule at Sr.No.3 Column No.7 and Sr.No.8 Column No.7 shall be substituted vide Notification No. No.SOR-III(S&GAD)1-19/2004 published in the official Punjab Gazette through Notification No.8 of 2024 dated 24.01.2024.
 2. Vide Notification No.9 of 2024 dated 26.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has declared "Tehsil Model Town, District Lahore" as the place of sitting of Court of Sessions.
 3. Vide Notification No.10 of 2024 dated 26.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has declared "Tehsil Bhera, District Sargodha" as the place of sitting of Court of Sessions.
 4. Vide Notification No.11 of 2024 dated 26.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has declared "Tehsil Kallar Syedan District Rawalpindi" as the place of sitting of Court of Sessions.
 5. Issuance of Schedule in connection with the Election of 8th February, 2024, vide Order No. SO(IS.II)1-1/2004 promulgated by the Law and Parliamentary Affairs Department, Government of Punjab, published in the official Punjab Gazette through Notification No.12 of 2024 dated 31.01.2024..
 6. Vide Notification No.13 of 2024 dated 31.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has notified laboratories for the identification of scheduled diseases in the controlled area and buffer zone at two places of Lahore.
 7. Vide Notification No.14 of 2024 dated 31.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has authorized the officers at Division, District, Tehsil and Union council levels as competent officers in their respective jurisdiction to regulate the prevention, control, containment and eradication of scheduled diseases under the Punjab Animal Health Act 2019, and the Punjab Animal Health Rules 2021.
 8. Vide Notification No.16 of 2024 dated 01.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has constituted "Captive Wildlife Management Committee".
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SELECTED ARTICLES

1. JUSTICE QUARTERLY

<https://www.tandfonline.com/doi/epdf/10.1080/10854681.2017.1307562?needAccess=true>

Interim Relief in Judicial Review by Akhlaq Choudhury QC and Zac Sammour

Judicial review is not a speedy affair. On average, a claim for judicial review takes 30 weeks to run its full course. That can be a long time for a claimant to wait, particularly where the act impugned in the proceedings is said to have a direct, and deleterious, impact on the claimant's life or livelihood. By the same token, 30 weeks is a significant time for public bodies to wait before being able to give effect to a lawful decision. It is for that reason that interim relief plays an important role in the practice of judicial review, and applications for such relief are often hard fought. This short article sets out the principles which govern such applications, and draws on recent case law to demonstrate how those principles can play out in practice.

2. **MANUPATRA**

<https://articles.manupatra.com/article-details/Law-In-the-Midst-of-Murder>

Law in the Midst of Murder by Abhishek Bhardwaj, Vasu Agarwal

Because of the emphasis placed on human life and dignity, as well as the inherent rights that come with it, the murder clause of any criminal law is the most important provision. The Indian Penal Code, 1860, provides a detailed provision for the same, accounting for various degrees of intention. However, society has changed dramatically since the provision was initially drafted. Certain sections have been designed incorrectly, while others have served no function – as evidenced by the treatment of the section's clauses by various courts of justice throughout the last century. It is past time for critical reforms to be implemented, whether it is eliminating a duplicate clause, accounting for moral culpability, or ensuring that doctrines are more precisely articulated. These changes will make the provision and the Code more current and up to date, allowing them to achieve the goals for which they were created. To improve decision-making accuracy, this article advocates for fuller codification of the clauses, updated illustrations, and the complete elimination of Section 300(2) from the Indian Penal Code.

3. **MANUPATRA**

<https://articles.manupatra.com/article-details/Editorial-What-Makes-A-Judge-Understanding-Supreme-Court-s-Decision-In-Anna-Mathews-V-Supreme-Court-Of-India>

What Makes A Judge? Understanding Supreme Court's Decision in Anna Mathews V. Supreme Court of India by Atharva Chandra1

In democracies, we often find that the seeds of arbitrariness flourish in the soil of opacity. To secure the principles of a healthy democracy, it is crucial that such arbitrariness be dealt with at its root. The root of such arbitrariness in judicial appointments in India lies in the opaque nature of the process. In its effort to establish a procedure which prevents executive bias in the appointment of judges and ensures judicial independence, the judiciary has unfortunately developed a procedure which is characterised by its lack of transparency. This lack of transparency not only affects appointments, but also the transfer of judges, which is reflected in the dubious transfers of judges who have not toed the line of the establishment. Examples of the same may be found in the transfer of Justice Muralidhar, who was transferred a day after his direction to the Delhi Police to investigate allegations against persons linked to the government of the day and their

involvement in instigating the Delhi riots in 2020,³³ or the transfer of Justice Banerjee, who initiated a strict policy of zero tolerance for corruption in the Madras High Court.

4. **LUMS LAW JOURNAL**

<https://sahsol.lums.edu.pk/node/11448>

Comprehensive Sex Education should be a right under the Constitution of Pakistan 1973 by Mustafa Khalid

The aim of this paper is to assert and support the idea that under Articles 9 (security of person), 14 (right to dignity), 25A (right to education), and 35 (protection of the child) of the Constitution of Islamic Republic of Pakistan 1973 (“Constitution”), the state must be tasked with the positive obligation of providing children with free and safe Comprehensive Sex Education (“CSE”) from an early age. The paper highlights judicial precedents wherein the above-mentioned provisions have been interpreted broadly to ensure the safety and well-being of the public-at-large. It juxtaposes such broad interpretations by the courts of Pakistan with the idea that provision of and access to CSE by all members of society is necessary to enable them to live safe and healthy lives, free from sexual coercion, abuse, sexually transmitted diseases, and early pregnancies. Additionally, national measures and international commitments have also been cited to display that while the Government of Pakistan realises the importance of CSE, it has taken few measures to ensure the elevation of CSE as a part of the educational curriculum. The paper also highlights direct quotations from the Quran and Hadith to dispel the false notion that sex education or any reference to sex in public discourse is against the injunctions of Islam. In conjunction with these, this paper has endeavored to outline the risks and harms that adolescents in Pakistan are exposed to daily without the knowledge that CSE seeks to impart. Finally, the fundamental aim of the paper is to initiate a conversation in respect of the importance that CSE has in ensuring that young people lead safe, healthy, and fulfilling lives.

5. **COURTING THE LAW**

<https://courtingthelaw.com/2023/12/11/commentary/coercive-recovery-under-fiscal-legislation/>

Coercive Recovery under Fiscal Legislation by Shaheer Roshan Shaikh

The superior courts have recently shored up the jurisprudence with respect to the practice of initiating coercive recovery against taxpayers. They have solidified their position on established principles, such as: the requirement of an independent forum’s decision before any coercive action; and the necessity of notifying taxpayers before recovery. The need to fortify such settled principles stems from the widespread practice of attaching taxpayers’ bank accounts immediately after orders assessing their liabilities are passed, thus frustrating their remedies before the appellate authorities. While tax authorities are unquestionably empowered to initiate coercive recovery against non-

compliant taxpayers, it is the aspect of conducting recovery without prior notice which sparks controversy.
