LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-04-2024 to 15-04-2024)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Pakistan Engineering Council through its Chairman & others v. Muhammad Sadiq & others and other Civil Appeals
Civil Appeal No.1471 of 2013, No.53 of 2014 and No.187 to 191 of 2018 & C.M.A.5008/2014 in C.A.1471/2013
Mr. Justice Qazi Faez Isa, HCJ, **Mr. Justice Muhammad Ali Mazhar,** **Ms. Justice Musarrat Hilali**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1471_2013.pdf

Facts: These Civil Appeals with leave of the Court are directed against the judgment passed by the Peshawar High Court whereby the Writ Petition filed by the respondent was allowed; the judgment passed by the Peshawar High Court whereby F.A.O. filed by the appellant was dismissed, and the judgment passed by the Lahore High Court whereby the Intra Court Appeals filed by the appellants were dismissed.

Issues: i) Whether educational institutions are competent to manage their own affairs without any outside intervention from executive or judicial organs?
ii) What is purpose of constituting the Pakistan Engineering Council (the PEC) under the Pakistan Engineering Council Act, 1976 (the PEC Act)?
iii) What is objective of the Higher Education Commission Ordinance, 2002?
iv) Whether B.Tech. (Hons.) can be deemed to be equivalent to an engineering bachelor's degree programme?
v) What is scope and power of the National Technology Council constituted by the Higher Education Commission?
vi) Whether court can set down the guidelines or conditions of eligibility or fitness for appointment or promotion to any particular post?

Analysis: i) In the affairs of admission and examination in the educational institutions, the concerned authorities are vested with the powers and jurisdiction to lay down the eligibility criteria in their own rules, regulations, or prospectus. They are independent to follow their own policy for admission, and in other affairs, therefore, the academic, administrative, and disciplinary autonomy of a university must be respected. The interference by the courts in the admission policy would give rise to glitches for the said institutions to administer the matters harmoniously and efficiently. The educational institutions are competent to manage their own affairs without any outside intervention from executive or judicial organs unless they contravene or disregard the compass of their authority or act in breach of applicable statutes or admission policies as laid down in the prospectus.
ii) The purpose of constituting the PEC under the PEC Act is to make provisions for the regulation of the engineering profession and to regulate the engineering profession with the vision that the engineering profession shall function as a key driving force for achieving rapid and sustainable growth in all national, economic, and social fields and maintain realistic and internationally relevant standards of professional competence and ethics for engineers, and license engineers, and

engineering institutions, to competently and professionally promote and uphold the standards and the Council, covering the entire spectrum of engineering disciplines, functions as an apex body to encourage and promote the pursuit of excellence in engineering profession, and to regulate the quality of engineering education and the practice of engineering.

iii) While the objective of the HEC Ordinance (which repealed "The University Grants Commission Act, 1974") is to provide the establishment of the HEC in the interest of improvement and promotion of higher education, research, and development. The powers and functions of the HEC are laid down under Section 10 of the HEC Ordinance for the evaluation, improvement, and promotion of higher education, research, and development. Clause (o) of the aforesaid functions germane to the grant of equivalence…

iv) If the B.Tech. (Hons.) is deemed to be equivalent to an engineering bachelor's degree programme then there was no justification to provide in the aforesaid regulation that the candidate possessing a four year degree/qualification of B.Tech (Hons.), B.S., B.Sc., Bachelor of Technology or equivalent qualification duly recognized by the HEC seeking admission against 02% reserved seats of B.Tech (Hons.)/B.S./B.Sc./Bachelor of Technology shall be considered for admission in 2021 and after, with two years of exemption. The criteria set down for admission is self-explanatory that both degrees are distinct, with the rider that if a person who qualified B.Tech. (Hons.) applies for admission to Engineering Bachelor's Degree programme offered by Engineering Institutions and Universities, he can avail certain exemptions subject to assessment of courses and satisfying the PEC Regulations. The rationale of the PEC Act is to devise the provisions for regulation of the engineering profession and for achieving this task, the PEC has been constituted comprising of specialists and experts in the field. The main function of the PEC is the recognition and accreditation of engineering qualifications for registration in accordance with the PEC Act. If the entire facts are seen in juxtaposition, it is clear beyond any shadow of doubt that the PEC persistently expressed to HEC that engineering and technology qualifications are two distinct streams of the engineering profession and cannot be considered equivalent. Both qualifications are regulated internationally through their separate accords i.e. "Engineering Qualification" by the Washington Accord while "Engineering Technology" by the Sydney Accord. The Washington Accord was signed in 1989 for providing mutual mechanism for recognition of graduates of accredited programme among its signatories which is a self-governing, autonomous agreement between national organizations (signatories) that provide external accreditation to tertiary educational programme that qualify their graduates for entry into professional engineering practice. Pakistan is also a signatory to this Accord and the status of the PEC has been duly acknowledged in the treaty. The signatories are responsible for undertaking a clearly defined process of periodic peer review to ensure that the accredited programmes are substantially equivalent and their outcomes are consistent with the published professional engineer graduate attribute exemplar. The PEC has also entered into

other international agreements such as the International Professional Engineers Agreement (IPEA), and the Federation of Engineering Institutions of Asia and the Pacific (FEIAP). Whereas the Sydney Accord was signed in June 2001 by seven founding signatories representing, Australia, Canada, Hong Kong, Ireland, New Zealand, United Kingdom, and South Africa, and is specifically focused on academic programmes dealing with engineering technology. In fact, the Sydney Accord acknowledges the accreditation as a key foundation for the practice of engineering technology in each of the countries or territories covered by the Accord and recognizes the important roles of engineering technologists as part of a broader engineering team. The gist of documents placed before us unequivocally demonstrate that that the degree of B.Tech. (Hons.) is not equivalent to B.E. degree but both are two distinct disciplines of knowledge in the field of Engineering and Technology with distinct syllabi and programme objectives but may be treated at par for recruitment, pay scales and grades. The covenants of the MOU between HEC and PEC also recognizes that substantial equivalence, authorization, and accreditation of engineering qualification can only be issued by the PEC which is responsible for granting engineering professional equivalence in consultation with the HEC. The word "equivalent" has been defined in the different law lexicons… According to PEC, B.Tech. courses are implementation oriented and B.Sc. engineering courses are design and research oriented. The NCRC in 2010 had also decided that B.Tech. (Hons.) is not equivalent to B.Sc. (Eng.). Both qualifications are also regulated internationally through two separate accords. The Bachelor of Science in Engineering emphasizes theories and advanced concepts, while an Engineering Technology degree emphasizes hands-on application and implementation with the major difference that B.E. is more knowledgebased while B.Tech. is skill-oriented. According to the Michigan Technological University, USA, "Engineering graduates" apply scientific, theoretic, and economic knowledge to research, invent, design, and build structures, devices, and systems, making for a broad discipline that encompasses specialized fields of engineering. While "Engineering technology graduates" develop, design, and implement engineering and technology solutions, typically pursuing engineering careers in manufacturing firms on design, construction, and product improvement [Ref: https://www.mtu.edu/admissions/academics/majors/differences].

v) One more important aspect that cannot be ignored is that under Section 10 (e) of the HEC Ordinance, the HEC has been vested with the powers to set up national or regional evaluation councils or authorize any existing council or similar body to carry out accreditation of Institutions including their departments, faculties, and disciplines by giving them appropriate ratings. Pursuant to aforesaid power and function, the HEC has constituted the National Technology Council ("NTC"), vide notification (HEC No.19-3 /HEC/HRM/2015/9721) dated 07.09.2015 which was published in the Gazette of Pakistan on 02.10.2015. The NTC has been given a mandate to carry out accreditation of all 04-year programs leading to technology degrees over a span of 16 years of learning. The technology

education curriculum has been aligned pursuant to the guidelines of the HEC with the spirit of outcome-based education system in conformity with the Sydney Accord. Now, the NTC is empowered to accredit Higher Education Institutions Programs for graduate technologists and define accreditation and certification standards. The NTC is comprised of a Chairman, 23 members including the representative of PEC, and 04 other representatives of different Ministries. The NTC has started accreditation to the Higher Education Institutions (HEI) with the current standards of technology education degree programs comparable with international standards. Besides the role or mandate of accreditation, the NTC has also started registration of BSc Engineering Technology, B.Tech. (Hons.), B.Tech, B.S. Technology/B.E. Technology/B.Sc. Technology Degrees and maintaining National Register of Technologists (NRT). The 'Professional Engineering Technologist' may also apply after acquiring 5 years of postqualification experience in the relevant technology discipline. The formation of NTC and conferring mandate of accreditation and registration by itself is sufficient to comprehend that in order to end this long standing dispute or controversy, the NTC has been constituted parallel to the PEC for accreditation and registration of Engineering Technologist, which is sufficient prove that B.Tech. (Hons.) is not equivalent B. Sc. (Engineering) and for this reason, the PEC does not allow accreditation and registration of Engineering Technologists. The underlying wisdom and objective of setting up the NTC is to engage in sustainable policy framework for separate career paths for engineers and technologists in sectors where both are employed in a parallel service track. According to the learned Additional Attorney General, the NTC has also taken some material steps for attaining the status of provisional signatory to the Sydney Accord for performing its task more proactively and dynamically [Ref: https://www.ntc-hec.org.pk].

vi) The essential qualifications for appointment to any post is the sole discretion and decision of the employer. The employer may prescribe required qualifications and the preference for appointment of candidate who is best suited to his requirements. The court cannot set down the guidelines or conditions of eligibility or fitness for appointment or promotion to any particular post. In no case can the Court, in the garb of judicial review, seize the chair of the appointing authority to decide what is best for the employer and impose conditions in internal recruitment matters, unless there is a grave violation of applicable law, rules and regulations. In the private sectors, the employer is free to decide the criteria of appointment and promotions and other terms and conditions of employment and for this purpose, may set down its business strategy, H.R. policies, and progression plans. Whereas for the appointment, transfer and promotion in the civil service, the Appointment, Promotion and Transfer Rules framed by the Federal Government and Provincial Governments separately under their Civil Servants Acts are prevailed and followed and in case of statutory bodies, appointments and promotions are made in accordance with their statutory requirements, rules and regulations; but in all such circumstances, it is within the domain of the competent

authority to prescribe required qualification and experience in the recruitment and promotion process. The courts cannot force to accept or interchange any other qualification equivalent to the specific post with specific qualification advertised for inviting applications for recruitment or setting benchmark for promotion of employees to any particular post or grade on attaining any particular length of service. According to the Fida Hussain case (supra) also, this Court held that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant employee is sufficient for promotion from one grade to another higher grade, whereas it is in the domain of the PEC to decide as to whether a particular academic qualification can be equated with another academic qualification, but it has no power to say that the civil servants/employees holding particular academic qualifications cannot be promoted from a particular grade to a higher grade. The same principle was reiterated in the case of Maula Bux Shaikh (supra).

Conclusion: i) The educational institutions are competent to manage their own affairs without any outside intervention from executive or judicial organs unless they contravene or disregard the compass of their authority or act in breach of applicable statutes or admission policies as laid down in the prospectus.
ii) See corresponding analysis No. ii.
iii) See corresponding analysis No. iii.
iv) B.Tech. (Hons.) is not equivalent to an engineering bachelor's degree programme and both degrees are distinct.
v) See corresponding analysis No. v.
vi) The court cannot set down the guidelines or conditions of eligibility or fitness for appointment or promotion to any particular post and the Court cannot, in the garb of judicial review, seize the chair of the appointing authority to decide what is best for the employer and impose conditions in internal recruitment matters, unless there is a grave violation of applicable law, rules and regulations.

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2. **Supreme Court of Pakistan**
Babar Anwar v. Muhammad Ashraf and another
Civil Petition No. 5972 OF 2021
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5972_2021.pdf

Facts: The respondent no. 01 filed a suit for declaration and cancellation of gift deed which was decreed. The petitioner filed appeal which was dismissed, thereafter, the petitioner filed a civil revision which was also dismissed, hence, this Civil Petition.

Issues: i) Whether two inconsistent pleas of gift of property and purchase of same property for valuable consideration can be raised in defense?
ii) Whether consideration like love and affection in matter of alienation can be supplanted on the principal if such element is springing out from a delegatee or

agent and whether attorney or agent may gift the property?
iii) What is scope of jurisdiction vested in High Court u/s 115 of CPC and can court interfere in concurrent conclusions arrived at by the courts below?

Analysis: i) The petitioner pleaded in his defense that he purchased the property in question against valuable consideration, but at the same time, he was also claiming the property as a lawful donee. Both pleas are mutually destructive if considered in juxtaposition. If it was a case of gift, then the plea of sale was misleading and erroneous, and if the property was purchased against valuable consideration, then there was no logical reason for the execution of a gift deed rather than a conveyance deed to unveil a straightforward sale transaction.
ii) A gift emanates from love and affection and sometime it is quid pro quo personal services rendered by the donee to the donor. Consideration like love or affection in the matter of alienation must proceed from the original and real owner of the property in relation to the donee; such an element if springing out from a delegatee or agent, could not be supplanted on the principal, not being the donor himself. Nothing is presented on record through cogent evidence that the attorney ever asked for the permission or consent of his principal to gift the property in question to the petitioner; therefore, such a gift was not validated by the courts below in three concurrent judgments. The attorney or agent may gift the property on express permission and instructions of his principal.
iii) The jurisdiction vested in the High Court under Section 115 of the Code of Civil Procedure, 1908 ("C.P.C.") is to satisfy and reassure that the order is within its jurisdiction and the Court below has not acted illegally or in breach of some provision of law, or with material irregularity, or by committing some error of procedure in the course of the trial which affected the ultimate decision. Furthermore, the High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under Section 115, C.P.C.

Conclusion: i) Two inconsistent pleas of gift of property and purchase of same property for valuable consideration are mutually destructive if considered in juxtaposition. If the property is purchased against valuable consideration, then there is no logical reason for the execution of a gift deed.
ii) See under analysis no. 02.
iii) See under analysis no. 03

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3. **Supreme Court of Pakistan**
Pervaiz Rasheed v. PTV
Civil Review Petition No. 835/2018 in HRC No. 3654/2018 AND Civil Review Petitions No. 866, 867 and 868/2018
Mr. Justice Qazi Faez Isa, Mr. Justice Irfan Saadat Khan , Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._835_2018.pdf

Facts: The Review Petitions assail the judgment of the august Supreme Court in respect of the appointment of Mr. Attaul Haq Qasmi as a Director of Pakistan Television Corporation ('PTV'**).**

Issues: (i) Scope of review jurisdiction.
(ii) Scope of Article 184(3) of the Constitution.

Analysis: (i) The scope of review jurisdiction is limited however; it can be invoked when a mistake of law or a factual error, having material consequences, has occurred.
(ii) Article 184(3) of the Constitution is an extraordinary power bestowed by the Constitution on the Supreme Court and it may be invoked when Fundamental Rights of the people are under attack or are being undermined. It is questionable whether the emoluments of a single individual would justify invoking the jurisdiction of this Court under Article 184(3). The applicability of the referred Articles 18 and 25 is also not self-evident, and it has not been explained in the judgment under review, how either of these two provisions were attracted. In these circumstances, to seek the recovery of an arbitrarily determined loss was neither legally permissible nor factually correct.

Conclusion: (i) See analysis part above.
(ii) See analysis part above.

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4. **Supreme Court of Pakistan**
National Bank of Pakistan through its President etc. v. Muhammad Adeel etc.
C.P.L.A.1800-L/2018 and C.P.L.A.1364/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1800_l_2018.pdf

Facts: CPLA has been filed against the order passed in intra-court appeal which was dismissed on the ground of maintainability, being hit by the proviso to Section 3(2) of the Law Reforms Ordinance, 1972 ("Ordinance").

Issue: Scope of Section 3(2) of the Law Reforms Ordinance 1972

Analysis: The main test to determine whether an ICA is available under the proviso to Section 3(2) of the Ordinance is to see whether the proceedings, in which the original order has been passed, provide for an appeal, revision or review (collectively referred to as "appeal," for convenience) to any Court, Tribunal or authority against the original order. Applying this test what needs to be seen and verified is whether the proceedings provided for an appeal against the original order and not whether parties to the proceedings enjoyed the right to appeal against the original order. The proviso under Section 3(2) of the Ordinance is proceedings specific and not parties specific. So it matters less if one of the parties to the proceedings is not entitled to right of appeal against the original

order passed in the said proceedings. In the instant case, the proceedings under the National Bank of Pakistan (Staff) Service Rules, 1973, provide for an appeal under Rule 40 against the original order. This is sufficient to disentitle the parties to maintain an intra-court appeal, irrespective of the fact that one or more of the parties to the proceedings did not have a right of appeal against original order.

Conclusion: The proviso under Section 3(2) of the Ordinance is proceedings specific and not parties specific. If the proceedings in which the original order has been passed provide for an appeal, revision or review to any Court, Tribunal or authority against the original order then this is sufficient to disentitle the parties to maintain an intra-court appeal, irrespective of the fact that one or more of the parties to the proceedings did not have a right of appeal against original order.

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5. **Supreme Court of Pakistan**
Mst. Sehat Bibi d/o late Daulat Khan v. Bahar Khan s/o late Daulat Khan & 2 others
Civil Appeal No.26-Q of 2017
Mr. Justice Shahid Waheed, **Ms. Justice Musarrat Hilali**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._26_q_2017.pdf

Facts: This Civil Appeal, under Article 185 (2) (e) of the Constitution has been filed against the judgment and decree passed by the High Court in Civil Revision. Through the impugned judgment, Civil Revision filed by the Appellant was accepted and the judgments and decrees passed by the Courts below were set-aside; resultantly the suit of the Appellant was decreed to the extent of her share out of the sale price.

Issues: i) When do legal heirs inherit property to the extent of their share?
ii) Whether adverse inferences can be drawn from withholding the best evidence by any party?
iii) Whether a deprived legal heir is entitled to get a share out of entire property of his or her predecessor or is only entitled to get a share of the sale price of his/her share if the property has already been sold?

Analysis: i) It is an established principle of law that legal heirs inherit property to the extent of his/her share the very moment his/her predecessor passes away.
ii) Record shows that Respondent No.l has failed to produce any witness to prove the alleged oral gift in his favour. Hence by withholding the best evidence adverse inference can be drawn under Article 129 (g) of Qanun-e-Shahadat Order, 1984.
iii) The High Court, while setting aside the judgments and decrees of the Trial Court and the Appellate Court, completely failed to apply the law and granted only 1 /3rd share out of the sale price to the Appellant. The grant of 1/3rd share out of the sale price and exclusion of the Appellant from the inheritance was against the law, therefore, while setting aside the impugned judgment, we hold that the Appellant is entitled to 1/3rd share out of the entire property of her late father. Resultantly, the Inheritance Mutation and all subsequent mutations attested on the basis of said inheritance mutation are hereby cancelled as any superstructure built

on weak foundation is not sustainable.

Conclusion: i) It is an established principle of law that legal heirs inherit property to the extent of his/her share the very moment his/her predecessor passes away.
ii) Adverse inferences can be drawn from withholding the best evidence by any party.
iii) A deprived legal heir is entitled to get a share out of entire property of his or her predecessor and grant of share out of the sale price and exclusion from the inheritance is against the law.

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6. **Supreme Court of Pakistan**
Munawar Alam Khan v. Qurban Ali Mallano and others
Criminal Petition No. 31-K of 2022
Mr. Justice Munib Akhtar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._31_k_2022.pdf

Facts: Through this petition, the petitioner has challenged the legality of order passed by the High Court of Sindh, whereby his Criminal Miscellaneous was dismissed while maintaining the order passed by Additional Sessions Judge/Justice of Peace in Criminal Miscellaneous filed under sections 22-A and 22-B Cr.P.C.

Issue: Whether the application under section 22-A and 22-B of Cr.P.C., should be lightly entertained and decided in mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute accused?

Analysis: We observe that there are many precedents regarding misuse of provisions of Sections 22-A and 22-B Cr.P.C. and it is the prime duty of the Court that such misuse be taken care of and application under section 22-A and 22-B of Cr.P.C., should not be lightly entertained and decided in mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecuted accused. It is settled principle of law that each and every case is to be decided on its own peculiar facts and circumstances.

Conclusion: The application under section 22-A and 22-B of Cr.P.C., should not be lightly entertained and decided in mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute accused.

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7. **Lahore High Court**
The State v. Zahid Mehmood Goraya, Advocate
Criminal Original (Suo Moto) No.20741-W of 2024
Mr. Justice Malik Shahzad Ahmad Khan, CJ
https://sys.lhc.gov.pk/appjudgments/2024LHC1450.pdf

Facts: Reference received from the one of the Court of Lahore High Court for further contempt proceedings against Advocate/respondent as envisaged under sections 3 & 11 of the Contempt of the Court Ordinance, 2003 read with Article 204 of the

Constitution of the Islamic Republic of Pakistan, 1973, punishable under section 5 of the ordinance ibid.

Issue: Under what provisions of law the Advocate/respondent is convicted for willful and deliberate civil, criminal and judicial contempt of the Court?

Analysis: After going through the abovementioned evidence (oral as well as documentary), produced against the respondent, I have come to this irresistible conclusion that Advocate/respondent has committed willful and deliberate civil, criminal and judicial contempt of the Court, as envisaged under sections 3 & 11 of the Contempt of Court Ordinance, 2003, read with article 204 of the Constitution of Islamic Republic of Pakistan, 1973, punishable under section 5 of the Contempt of Court Ordinance, 2003. The charge under section 5 of the Ordinance ibid against the respondent has fully been proved beyond the shadow of any doubt. In the light of above, Advocate (respondent/contemnor) is convicted for the offence under section 5 of the Contempt of Court Ordinance, 2003…

Conclusion: See under Analysis.

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8. **Lahore High Court**
Ch. Muhammad Arshad v. Parvez Elahi and two others
Writ petition No.20729 of 2024
Mr. Justice Shahid Bilal Hassan, Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC1337.pdf

Facts: Through this Writ Petition, the petitioner has challenged the validity of impugned order passed by the Election Tribunal whereby the Election Appeal filed by respondent No.1 was allowed by setting aside order passed by the Returning Officer and the nomination papers of respondent No.1 were accepted.

Issues: i) Whether the Returning Officers should reject the nomination paper even if the defect is not of substantial nature?
ii) Whether there is any column in the election form where a candidate can give the details of his weapons?
iii) Whether there is any bar for a candidate to participate in the election as an independent candidate or to participate with certificate of a party being a party's candidate?

Analysis: i) It was the duty of Returning Officer to scrutinize nomination paper, in the best interest of justice and to uphold the fundamental right of the individual to contest elections. Instead of rejecting the nomination paper, Returning Officer can direct to mention the same in his statement of assets because the second proviso to Section 62(9) of the Act specifically prescribes for the Retuning Officers that they should not reject any nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.

ii) There is no column in election form where a candidate can give the details of his weapons but the value of these weapons are duly disclosed/ mentioned in statement of assets.

iii) There is no bar for a candidate to participate in the election as an independent candidate or to participate with certificate of a party being a party's candidate.

Conclusion: i) The Retuning Officers should not reject the nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.

ii) There is no column in election form where a candidate can give the details of his weapons.

iii) There is no bar for a candidate to participate in the election as an independent candidate or to participate with certificate of a party being a party's candidate.

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9. **Lahore High Court**
The State v. Adil Zaib
Murder Reference No.57 of 2022
Adil Zaib v. The State, etc.
Criminal Appeal No.699 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC1300.pdf

Facts: Appellant has filed Criminal Appeal against his conviction and the trial Court has sent Murder Reference for confirmation of his death sentence or otherwise, which are being decided through this single judgment.

Issues: i) Whether the minor and general discrepancies occurring in statements of prosecution witnesses can be fatal to the prosecution case?

ii) What would be status of defence plea of accused assumed in his statement recorded under section 342 of the Criminal Procedure Code, 1898, if neither he opts to appear as witness under section 340 (2) of the Code ibid nor he produces defence evidence in support of such defence plea?

Analysis: i) The minor and general discrepancies in the statements of the prosecution witnesses do often occur in every case when witnesses are cross-examined after a long time of the occurrence. The minor and general discrepancies occurring in statements of prosecution witnesses cannot be deemed fatal to the prosecution case.

ii) If accused, in his statement recorded under section 342 of the Criminal Procedure Code, 1898, pleads himself innocent, denies his involvement in the case and agitates that he has falsely been involved in the case but neither he himself appears to depose as his witness under section 340 (2) of the Code ibid nor he produces any defence evidence in support of his defence plea, then his such defence plea cannot be believed.

Conclusion: i) The minor and general discrepancies occurring in statements of prosecution witnesses cannot be deemed fatal to the prosecution case.
ii) If accused neither opts to appear as his own witness under section 340 (2) of the Criminal Procedure Code, 1898 nor he produces any defence evidence in support of his defence plea assumed in his statement recorded under section 342 of the Code ibid, then his such defence plea would be neither plausible nor believable and would be discarded.

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10. **Lahore High Court**
Sirdar Mohy Ud Din Khan Khosa v. Election Commission of Pakistan, Islamabad & others
W. P. No.4005 of 2024
Mr. Justice Faisal Zaman Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1305.pdf

Facts: The Petitioner assailed orders passed by the Returning Officer, and Tribunal, respectively, whereby his nomination papers for provincial constituency were rejected concurrently.

Issue: Where admittedly there is no default in payment of income tax, then whether an error / defect while making certain entries in the columns of the affidavit, is not substantial innature, therefore, in view of proviso (ii) to sub-section (9) of section 62 of the Elections Act, 2017, the same could be remedied?

Analysis: It is evident from the impugned order of the Returning Officer that petitioner had deposited the afore-noted due tax. Petitioner has also tendered NOC dated 15.03.2024, which reflects that no tax demand was outstanding against petitioner on account of income tax till said date. Thus, it is clear that no liability was existing against petitioner and he was not defaulter in the payment of due tax. In these circumstances, wrong entries in the columns of *total income* and *income tax paid* of petitioner's affidavit are mere bona fide mistakes / clerical errors in preparing the affidavit, which are not so grave to invite rejection of his nomination papers. The said entries could have been fatal if the omission would have been with the purpose to avoid payment of income tax or intended to conceal some wrongdoing. Needless to observe that the Returning Officer has been given the power under proviso (ii) to sub-section (9) of section 62 of the ElectionsAct, 2017 to correct such defects in the nomination papers which are not of substantial nature, but no such exercise wasundertaken in the instant case. In these circumstances, the impugned orders are not legally sustainable.

Conclusion: Where admittedly there is no default in payment of income tax, then an error / defect while making certain entries in the columns of the affidavit, is not substantial in nature, therefore, in view of proviso (ii) to sub-section (9) of section 62 of the Elections Act, 2017, the same could be remedied.

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11. **Lahore High Court**
Sirdar Muhammad Umer Khan Khosa v. Election Commission of Pakistan, Islamabad & others
W. P. No. 4216 of 2024
Mr. Justice Faisal Zaman Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1310.pdf

Facts: Through instant petition, petitioner has assailed order passed by the Returning Officer and judgment passed by learned Election Tribunal, respectively, whereby his nomination papers, were rejected on the grounds of non-submission of requisite NOCs and attachment of transcript of petitioner's brother, concurrently.

Issues: i) Whether omission to tender the requisite NOCs while filing nomination papers is a lapse / defect of such a grave nature which may invite extreme measure of rejection of the nomination papers?
ii) Whether right to contest election is a fundamental right guaranteed by Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and the provisions in the Elections Act, 2017 that curtail or in any manner affect this right are to be construed strictly and applied restrictively, especially when the defect is not of substantial nature and can be remedied?

Analysis: i) In this scenario, the omission to tender the said requisite NOCs while filing nomination papers is not a lapse / defect of such a grave nature which may invite extreme measure of rejection of the nomination papers. This lapse could have been fatal if it was the omission was designed to avoid the liability or intended to conceal some unlawful activity.
ii) Needless to say that right to contest election is a fundamental right guaranteed by Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and the provisions in the Elections Act, 2017 that curtail or in any manner affect this right are to be construed strictly and applied restrictively, especially when the defect is not of substantial nature and can be remedied.

Conclusion: i) Omission to tender the requisite NOCs while filing nomination papers is not a lapse / defect of such a grave nature which may invite extreme measure of rejection of the nomination papers.
ii) Right to contest election is a fundamental right guaranteed by Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and the provisions in the Elections Act, 2017 that curtail or in any manner affect this right are to be construed strictly and applied restrictively, especially when the defect is not of substantial nature and can be remedied.

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12. **Lahore High Court**
Zubair Khan v. Commissioner Inland Revenue Jhelum Zone etc.
Income Tax Reference No.03 of 2023
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1441.pdf

Facts: This Reference Application under Section 133 of the Income Tax Ordinance, 2001 has been filed by the Applicant, being dissatisfied by the order passed by the Appellate Tribunal Inland Revenue, Division Bench-I, Islamabad.

Issues: i) Whether before invoking the provisions of Section 122 of Income Tax Ordinance, 2001, a separate notice to the taxpayer in terms of Section 111 of the Ordinance is pre-requisite to include unexplained income/assets in income chargeable to tax?
ii) What becomes 'definite information'?

Analysis: i) The question that looms large before us is whether before invoking the provisions of Section 122 of the "Ordinance", a separate notice to the taxpayer in terms of Section 111 of the "Ordinance" is pre-requisite to include unexplained income/assets in income chargeable to tax and without such notice substantial compliance of said provisions of law could be made or not and whether a notice under Section 122(9) of the "Ordinance" is enough to initiate proceedings for amendment of the assessment on the grounds mentioned in Section 111 of the "Ordinance"? The case of the applicant is that the Respondent-department was required to issue a separate notice under Section 111 of the "Ordinance" while the stance of the Respondents-department is that there is no need to issue a separate notice under the aforesaid section for proceeding under Section 122 of the "Ordinance". The issuance of a separate notice under Section 111 of the "Ordinance" has been held as mandatory for the purpose of addition on account of unexplained income or assets.
ii) So far as the question what becomes "definite information", has also been decided in above referred Civil Petition No.2447-L of 2022. Relevant part thereof reads as under: "Before an assessment can be amended under Section 122 on the basis of Section 111, the proceedings under Section 111(1) are to be initiated, the taxpayer is to be confronted with the information and the grounds applicable under Section 111(1) through a separate notice under the said provision, and then the proceedings are to be culminated through an appropriate order in the shape of an opinion of the Commissioner. This then becomes definite information for the purposes of Section 122(5), provided the grounds mentioned in Section 122(5) are applicable. The taxpayer is then to be confronted with these grounds through a notice under Section 122(9) and only then can an assessment be amended under Section 122.9 This view has also been recently taken by this Court in Bashir Ahmed wherein it has also been held that a notice under Section 111 can be simultaneously issued with a notice under Section 122(9), however, proceedings under Section 111 have to be finalized first in terms of an opinion of the

Commissioner so as to constitute definite information, as is required under Section 122(5) of the Ordinance".

Conclusion: i) Before invoking the provisions of Section 122 of Income Tax Ordinance, 2001, a separate notice to the taxpayer in terms of Section 111 of the Ordinance is pre-requisite to include unexplained income/assets in income chargeable to tax.
ii) See the above analysis clause no. ii.

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13. **Lahore High Court**
Mst. Rehmat Bibi through L.Rs. etc. v. Additional District Judge Gujranwala etc.
W.P. No. 31166 of 2017
Mr. Justice Shujaat Ali Khan.
https://sys.lhc.gov.pk/appjudgments/2024LHC1273.pdf

Facts: One of the respondents filed a suit for possession through pre-emption against predecessor-in-interest of petitioners, which was partially decreed in view of the compromise between the parties.The application under section 12(2) C.P.C., filed by the petitioners, challenging *vires* of said judgment & decree on the basis of fraud and misrepresentation, was dismissed against which they filed revision petition but the same was also dismissed; hence this petition.

Issues: i) What would be the consequences of reliance upon a death certificate without producing the *Nazim* or the Secretary Union Council concerned in witness box?
ii) What would be the effect of non-exercise of jurisdiction vested in the Civil Court?
iii) What general rule operates for weighing documentary evidence against oral evidence?
iv) Is it safe for the courts to rely upon the statement of a member of the Bar every time, while determining the fact in issue of the case?

Analysis: i) Mere the copy of death certificate on its face value is to be taken out of consideration for the reasons that neither the Secretary, Union Council concerned nor the *Nazim*, who put their signatures on the same, were brought into the witness-box to prove the contents of the said document. The production of document on record and its proof are two independent aspects and the latter aspect is vital, which makes a fact to be proved.
ii) The non-exercise of jurisdiction by a forum/Tribunal is relatable to the question of law. However, the forum/Tribunal seized with a proposition is free to form its opinion independently by exercising jurisdiction in a prescribed or settled manner.
iii) In general, documentary evidence takes precedence over oral evidence. Hence, it is not safe for the courts to hinge upon the testimony of a witness when the same is not corroborated by the relevant documentary evidence. However, in exceptional cases, documentary evidence cannot be relied upon without due

corroboration to believe, especially where entries in documents contradict each other.

iv) In ordinary circumstances, the statement of a member of the Bar vouching a fact is given due credence, but when such statement does not clinch the real controversy between the parties rather seems to be partial; same cannot be given precedence over the documentary evidence.

Conclusion: i) A death certificate, without producing the *Nazim* or the Secretary Union Council concerned in witness box, would not be considered authentic.

ii) Non-exercise of jurisdiction vested in the Civil Court results into grave miscarriage of justice.

iii) As a general rule, the documentary evidence outweighs the oral evidence but exceptions also exist.

iv) It is not safe every time for the courts to rely upon the statement of a member of the Bar, vouching a fact, when such statement does not clinch the real controversy between the parties rather seems to be partial, while determining the fact in issue of the case.

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14. **Lahore High Court**
Muhammad Ashraf and others v. Azhar Ahmad and others.
Civil Revision No.17685 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1252.pdf

Facts: Through this Civil Revision the petitioners have challenged the validity of the judgment & decree passed by the Civil Judge whereby the suit for declaration and cancellation of mutations of the petitioners was dismissed and its appeal was also dismissed.

Issues: i) Whether submission of disputed documents through statement of counsel without oath can be appreciated in evidence?

ii) Whether one plaintiff can institute suit on behalf of other plaintiffs without specific authority or power of attorney?

iii) Whether concurrent findings on facts can be disturbed, when the same do not suffer from misreading and non-reading of evidence?

Analysis: i) It is evident from Ex.P2 and Ex.P3, which have also not been exhibited in the deposition of any of the witness rather the same have been brought on record in the statement of the learned counsel for the petitioner. The said documents being disputed one ought to have been brought on record either by the petitioner(s) or any of their witnesses while appearing in the witness box on oath so as to have been subject to cross examination. Submission of such disputed documents through statement of counsel without oath cannot be appreciated and cannot be considered in evidence...

ii) The suit was instituted by plaintiff only without any authority or power of attorney on behalf of the other plaintiffs/petitioners, so the suit to the extent of

other plaintiff was not maintainable, as per mandate of Order III, Rules 1 and 2, Code of Civil Procedure, 1908…Though the said lacuna was curable by producing the other plaintiffs before the learned trial Court (…)
iii) Concurrent findings on facts cannot be disturbed when the same do not suffer from misreading and non-reading of evidence, howsoever erroneous in exercise of revisional jurisdiction…

Conclusion: i) Submission of disputed documents through statement of counsel without oath cannot be appreciated in evidence.
ii) One plaintiff cannot institute suit on behalf of other plaintiffs without specific authority or power of attorney, however it can be curable through producing such plaintiff before court.
iii) Concurrent findings on facts cannot be disturbed, when the same do not suffer from misreading and non-reading of evidence.

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15. **Lahore High Court**
Muhammad Adil and others v.
Mst. Shamim Akhtar (deceased) through L.Rs.
Civil Revision No.17593 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1258.pdf

Facts: The predecessor in interest of the respondents No.1 to 3 instituted a suit for possession through partition against the appellants and respondents No.4 & 5 wherein preliminary decree was passed and trial court appointed local commission. After report of local commissioner, the court appointed court auctioneer who after adopting auction procedure declared plaintiff no. 03 as successful bidder. The petitioners and one another filed objection petitions which were dismissed by trial court. The petitioner filed appeal but same was also dismissed; hence, instant Revision Petition.

Issues: i) Whether objection petition, filed regarding sale of immovable property in execution of a decree, is entertainable without deposit of fifty percent of successful bid amount?
ii) Whether decree holder can participate in auction proceedings?

Analysis: i) Under Order XXI Rule 90 of CPC, the objection petition filed regarding sale of immovable property in execution of decree can only be entertained if the petitioner deposits fifty percent of the sum realized at the sale, or furnishes such security as the Court may direct. In the instant case, the petitioner while filing objection petition did not deposit 50% of the successful bid amount; therefore, the objection petition on this score was not entertainable.
ii) In the light of Rule 72 Order XXI of CPC as substituted by Notification No.237/Legis/XI-Y-26 dated 22.08.2018, Lahore High Court Amendment, the holder of a decree (plaintiff) in execution of which the property is sold may participate in the auction of the property and make a bid…

Conclusion: i) Objection petition filed regarding sale of immovable property in execution of a decree is not entertainable without deposit of fifty percent of successful bid amount or furnishing of such security as the Court may direct.
ii) See under analysis no. 02.

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16. **Lahore High Court**
Mian Shabir Asmail v. Federation of Pakistan through Chief Secretary and others
Writ Petition No.2690 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1242.pdf

Facts: Through the instant Constitutional Petition, the petitioner, contended that Section 232(2) of the Act, 2017 is unconstitutional as it cannot override the provisions of Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973.

Issue: Whether newly added section 232(2) of the Election Act, 2017 has overriding effect upon Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973?

Analysis: The newly added section 232(2) of the Election Act, 2017 has no overriding effect upon Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973, because the said provision of law does not provide disqualification for lifetime/permanent, therefore, the Courts including High Court and the Supreme Court are not supposed to rewrite any law, much less the Constitution, nor can insert anything therein. Under Article 189 of the Constitution, any decision of the Supreme Court, to the extent it decides a question of law or is based upon or enunciates a principle of law is binding on all other Courts in Pakistan including High Court. Therefore, it is held that section 232(2) of the Election Act, 2017, to the extent of 'period not exceeding five years from the declaration by the court of law in that regard' is not inconsistent with or in derogation of fundamental rights.

Conclusion: The newly added section 232(2) of the Election Act, 2017 has no overriding effect upon Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973, because the said provision of law does not provide disqualification for lifetime/permanent.

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17. **Lahore High Court**
Azka Wahid v Province of Punjab & others
W.P No.32798 of 2023
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC1392.pdf

Facts: The petitioner through this Constitutional Petition has challenged the definition of child contained in the Child Marrige Restraint Act, 1929 (1929 Act) as amended and substituted by the Punjab Child Marriage Restraint (Amendment) Act, 2015.

In particular, section 2(a) and (b) of the 1929 Act, on the ground that they offend the equality clause in the Constitution of the Islamic Republic of Pakistan, 1973, and sought the above mentioned provisions be declared unconstitutional.

Issues: i) Whether medical science supports the notion of a female attaining puberty at an age which materially differs from a male?
ii) Whether notwithstanding the appearance of signs of puberty differently in males and females, the Government is empowered to prescribe a minimum age for marriage or not?
iii) Whether the Government is empowered to put a restraint on child marriage?
iv) Whether the purpose of law is anchored primarily in social economic and educational factors rather than religious?
v) Whether the Article 35 of the Constitution of the principle of policy obliges the State to protect marriage, the family, the mother and the child?
vi) Whether in view of Article 25 of the Constitution, the discrimination on the basis of sex is permissible?

Analysis: i) Doubtless, medical science, too, supports the notion of a female attaining puberty at an age which materially differs from a male. But that does not necessarily lead to granting a license in the hands of a parent or guardian to marry off a female child.
ii) For, that is what the 1929 Act seeks to achieve. If this were not the case, the definition of child would have had relation to age of puberty and not ages determined reflexively or randomly. Otherwise there are no manageable standards for assigning ages of sixteen and eighteen for female and male respectively. There is no prohibition in the constitution on prescribing a minimum threshold for marriage and therefore to criminalise child marriage. The theme of the 1929 Act is to restrain the solemnization of child marriage. That purpose has been muddled by providing different ages for males and females for which there is no intelligible criteria. There may be a myriad of factors considered by the legislature while enacting the law.
iii) There are formidable reasons to compel a Government to put a restraint on child marriage. It makes a compelling case based on physiological and sociological factors for the executive to step up and take effective measures to counter the debilitating effect of child marriage. It was a data-driven exercise based on pragmatic considerations to ensure a healthy society. It is an attempt to tap into the potential of more than half the population and pivots the mother to the centre of the debate. To the above, population control may also be added.
iv) The purpose of law is anchored primarily in social economic and educational factors rather than religious. We, as a nation, woefully lag behind in all major indicators and half of our population cannot be lost to child-bearing at an early age while its potential remains untapped. Equal opportunities for females means equal restraint on marriage as the males. It is thus a fallacy to assume that the discourse is coloured by some underlying notions unrelated to the real purpose

that permeates the law of child marriage.

v) The Article 35 of the Constitution of the principle of policy obliges the State to protect marriage, the family, the mother and the child. The 1929 Act (and its amendments) is a step towards fulfilment of duty by the State under Article 35. It specifically mentions the mother and not the father. It is of crucial importance to protect marriage, the family, the mother and the child to put a restraint on child marriage yet the centre of the family, the mother, has been grossly discriminated which undermines the cogency of the constitutional scheme. It is essential for the protection of family with the mother and the child as its more important elements to protect a female from being subjected to child marriage. The mandate of Article 35 was not lost on the legislature while enacting the 1929 Act. But, for some reason which cannot be discerned, unmistakable partisan slant has muddled the clear stream of policy objectives animating the 2015 amendments. The difference in ages in the definition of child was left unchanged in the 2015 amendments.

vi) In view of Article 25 of the constitution, there shall no discrimination on the basis of sex, and the state is only permitted to make special provision for the protection of women and children. The definition of child in the 1929 Act while making a distinction on the basis of age is not based on an intelligible criteria having nexus with the object of the law. The definition is indeed a special provision for the protection of women but in the process it tends to afford greater protection to males by keeping their age of marriage higher than females. Clause (3) of Article 25 is an instance of affirmative action, a concept of American constitutional law and introduced in our constitution through this provision. The definition of child, in its present form, in 1929 Act is discriminatory.

Conclusion:

i) Doubtless, medical science, too, supports the notion of a female attaining puberty at an age which materially differs from a male.

ii) There is no prohibition in the constitution on prescribing a minimum threshold for marriage and therefore to criminalise child marriage.

iii) There are formidable reasons to compel a Government to put a restraint on child marriage.

iv) The purpose of law is anchored primarily in social economic and educational factors rather than religious.

v) The Article 35 of the Constitution of the principle of policy obliges the State to protect marriage, the family, the mother and the child.

vi) In view of Article 25 of the constitution, there shall no discrimination on the basis of sex.

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18. **Lahore High Court**
Chaklala Cantonment Board v. M/s Umar Khan and others.
Civil Revision No.1004 of 2015
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC1359.pdf

Facts: Respondent was owner of the land within the limits of Cantonment Board. Out of the said land, some portion of land was utilized by the petitioner-Board for construction of Road through its resolution. The owner of the land/"respondent" was, however, assured that he shall be provided alternate land for the land utilized in the road. On failure by the petitioner-Board to fulfill the commitment, the "respondent" instituted a suit for specific performance, possession and recovery of compensation. The suit was decreed. The petitioner-Board challenged the judgment and decree of the trial court up to the Supreme Court of Pakistan but remained unsuccessful. This followed the execution proceedings wherein the petitioner-Board filed an objection petition but it was dismissed. Feeling aggrieved, the petitioner-Board preferred an appeal but the appeal was also dismissed, hence this petition.

Issues: i) When the revisional jurisdiction under Section 115 of "CPC can be invoked?
ii) What are the underlying principles and objectives behind imposing costs in frivolous and vexatious litigation and promote fair trial under Article 10A of the Constitution?

Analysis: i) Revisional jurisdiction under Section 115 of "CPC" can only be invoked in the eventualities mentioned in the said provision of law. It cannot be resorted to in an omnibus fashion.

ii) Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of genuine disputes. Such litigation is required to be rooted out of the system and one of the ways to curb such practice of instituting frivolous and vexatious cases is by imposing of costs under Order XXVIII, Rule 3 of the Supreme Court Rules, 1980 ("Rules"). The spectre of being made liable to pay actual costs should be such as to make every litigant think twice before putting forth a vexatious claim or defence before the Court. These costs in an appropriate case can be over and above the nominal costs which include costs of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost, besides the amount of the court fee, process fee and lawyer's fee paid in relation to the litigation. Imposition of costs in frivilous and vexatious cases meets the requirement of fair trial under Article 10A of the Constitution, as it not only discourages frivilous claims or defences brought to the court house but also absence of such cases allows more court time for the adjudication of genuine claims. It also incentivizes the litigants to adopt alternative dispute resolution (ADR) processes and arrive at a settlement rather than rushing to courts. Costs lay the foundation for expeditious justice and promote a smart legal system that enhances access to justice by entertaining genuine claims. The purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences. In a nutshell costs enourage

alternative dispute resolution; settlements between the parties; and reduces unnecessary burden off the courts, so that they can attend to genuine claims. Costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court.

Conclusions: i) Revisional jurisdiction can only be invoked in the eventualities mentioned in Section 115 of "CPC". It cannot be resorted to in an omnibus fashion.
ii) Costs lay the foundation for expeditious justice and promote a smart legal system that enhances access to justice by entertaining genuine claims. The imposition of costs aligns with the principles of fair trial under Article 10A of the Constitution as well.

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19. **Lahore High Court**
Khawaja Javed Mehmood v. Punjab Small Industries Corporation through Regional Director Rawalpindi and 2 Others
Civil Revision No.33-D of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC1349.pdf

Facts: The Punjab Small Industries Corporation allotted a commercial plot to the petitioner and handed him over possession of the same after payment of sale price whereof he established a garments factory at spot. Later, the respondent-Corporation issued a letter to the petitioner asking him to pay the sale price at the rate of Rs.1,00,000/- per *Kanal* instead of earlier agreed and settled rate Rs.52,000/- per *Kanal*, whereupon the petitioner instituted a suit for declaration, permanent and mandatory injunction which was dismissed. The petitioner preferred an appeal but it was also dismissed, hence this petition under Section 115 of the Code of Civil Procedure (V of 1908).

Issues: i) What is difference between the relevancy and admissibility of the documentary evidence?
ii) What is effect of not following the prescribed modes to prove a document?
iii) What is consequence of the omission to object as to inadmissibility of a document and as to the mode of proving contents of a document or its execution at the appropriate stage?
iv) At what stage(s) the objection of "mode of proof" and the objection of "absence of proof" may be raised?

Analysis: i) Unlike "relevance", which is factual and determined solely by reference to the logical relationship between the fact claimed to be relevant and the fact-in-issue, "admissibility" is a matter of law. As far as the admissibility relating to documents is concerned, admissibility is of two types: (i) admissible subject to proof, and (ii) admissible per se, that is, when the document is admitted in evidence without requiring proof.Thus, a "relevant" fact would be "admissible" unless it is excluded from being admitted, or is required to be proved in a

particular mode(s) before it can be admitted as evidence, by the provisions of the *Qanun-e-Shahadat* Order, 1984.

ii) Mode of proof is the procedure by which the "relevant" and "admissible" facts have to be proved, the manner whereof has been prescribed in Articles 70-89 of the *Qanun-e-Shahadat* Order, 1984. Article 78 of the Order ibid is akin to Section 67 of the Evidence Act, 1872 which lays down the mode of proof of execution of document. In this regard, the foundational principle governing proof of contents of documents is that the same are to be proved by producing "primary evidence" or "secondary evidence".

iii) As a general principle, an objection as to inadmissibility of a document can be raised at any stage of the case, even if it had not been taken when the document was tendered in evidence. However, the objection as to the mode of proving contents of a document or its execution is to be taken, when a particular mode is adopted by the party at the evidence-recording stage during trial. The latter kind of objection cannot be allowed to be raised, for the first time, at any subsequent stage. This principle is based on the rule of fair play.

iv) When the *Qanun-e-Shahadat* Order, 1984 provides several modes of proving a relevant fact and a party adopts a particular mode that is permissible only in certain circumstances, the failure to take objection when that mode is adopted estops the opposing party to raise, at a subsequent stage, the objection to the mode of proof adopted. However, when the Order ibid provides only one mode of proving a relevant fact and that mode is not adopted, or when it provides several modes of proving a relevant fact and none of them is adopted, such a case falls within the purview of "absence of proof", and not "mode of proof"; therefore, the objection thereto can be taken at any stage, even if it has not earlier been taken.

Conclusion: i) A fact is "relevant" if it is logically probative or dis-probative of the fact-in-issue, which requires proof. On the other hand, a fact is "admissible" if it is relevant and not excluded by any exclusionary provision, express or implied.

ii) A document would not be admissible if same is brought on the record without adhering mandatory provisions prescribed to prove a document.

iii) The omission to object at the appropriate stage becomes fatal.

iv) “Absence of proof” goes to the very root of admissibility of the document as a piece of evidence; therefore, this objection can be raised at any stage, However, the objection as to "mode of proof" can only be taken when that mode is adopted.

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20. **Lahore High Court**
Allah Bakhsh (deceased) through his legal heirs etc. v. Muhammad Hanif (deceased) through his legal heirs etc.
Civil Revision No.377-D/2003
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC1294.pdf

Facts: Through this Civil Revision, the petitioners have challenged the validity of judgment & decree passed by the learned Additional District Judge whereby the

appeal of the respondents was accepted, the judgment & decree passed by the learned Civil Judge was set aside and the suit for declaration filed by the respondents was decreed.

Issues: i) Whether Shamlat has been presumed to be alienated if it has not specifically been mentioned in the registered sale deed?
ii) Whether civil court has jurisdiction to decide a matter relating to change in entry in revenue record during consolidation proceedings?

Analysis: i) As per Section 3 of West Pakistan Dispositions (Saving of Shamilat) Ordinance, 1959, Shamlat cannot be presumed as transferred unless specifically mentioned in the instrument of disposition. Under Para 7.19 of the Land Records Manual it is necessary to show in the mutation whether such transfer of land includes the shares of the Shamlat. So, Shamlat will not be presumed to be alienated if it has not specifically been mentioned in the registered sale deed.
ii) When the Consolidation Authorities, in appeal and revision, has categorically advised the party to approach Civil Court for correction of entries in the revenue record and every new entry in revenue record creates fresh cause of action, then civil court has jurisdiction to decide a matter relating to change in entry in revenue record during consolidation proceedings.

Conclusion: i) Shamlat will not be presumed to be alienated if it has not specifically been mentioned in the registered sale deed.
ii) Civil court has jurisdiction to decide a matter relating to change in entry in revenue record during consolidation proceedings as every new entry in revenue record creates fresh cause of action.

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21. **Lahore High Court**
Imdad Ullah v. The State and another
Criminal Appeal No. 448/2022
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC1462.pdf

Facts: The appellant was convicted by the trial court in case FIR for an offence under section 377-B PPC and sentenced with rigorous imprisonment for fourteen years with a fine of Rs.1,000,000/- .

Issues: i) Whether the delay in making a report to the police regarding an incident of child sexual abuse can be considered as material?
ii) Whether the *voir dire test* is mandatory to assess the competency of a child witness and whether his testimony is inadmissible without it?
iii) Whether an individual can be convicted on the basis of solitary uncorroborated testimony of a child who is a victim of sexual abuse?
iv) Whether hearsay evidence from a child victim of sexual abuse is legally admissible?

Analysis: i) While the law generally encourages prompt reporting of crimes, courts recognize that child abuse is a sensitive issue. Several factors can contribute to delays in reporting child sexual abuse, including fear, shame, threats from the perpetrator, or a lack of awareness. Hence, the courts in our country do not consider the delay in making a report to the police material unless the circumstances are such that they warrant an adverse view. The legal system aims to balance the need to protect children from abuse with the principles of fairness and due process.

ii) In Pakistan, the competency of a witness is determined under Articles 3 and 17 of the Qanun-e-Shahadat, 1984 ("QSO"), while the credibility of a witness is a question of fact which the court decides following the principles settled for the appraisal of evidence. Article 3 of the QSO does not explicitly specify any particular age qualification for a witness….Under Article 3 of the QSO, a child is competent to be a witness if he possesses the capacity and intelligence to understand and respond rationally to questions – a criterion known as the "*voir dire test.*" In certain jurisdictions, specific guidelines and procedures exist for evaluating a child's competency to testify….Analysis of the [Pakistani and Indian] cases shows that the essential requirement for a child, or any individual, to appear and testify as a witness is that they should have the ability and intelligence to comprehend the posed questions and furnish coherent responses. There is a preponderance of opinion that the testimony of a child witness cannot be discarded merely because the trial judge did not carry out a *voir dire* test. Although it is advisable for the trial judge to meticulously document the questions and corresponding answers to ensure that the child understands the duty to speak the truth, the lack of such documentation or the trial judge's omission to opine on the child's competency does not render the testimony inadmissible.

iii) Child abuse is one of the most challenging crimes to detect and prosecute primarily because there often are no witnesses except the victim. It becomes more difficult when the perpetrator is a parent or a close family member. The child may feel afraid, burdened by guilt, and may be hesitant to disclose the abuse to others. Due to these complexities, the courts deal with these cases with extra care and special attention….the evaluation of a child's testimony as a victim of sexual abuse requires a thorough and balanced approach to ensure the protection of their rights and interests while upholding principles of justice. The absence of corroboration should not automatically discredit the child's testimony in such cases. The tender age of the child, combined with other case-specific circumstances, such as demeanour and the unlikelihood of tutoring, may make corroboration unnecessary. However, this is a factual consideration in each case. Courts must acknowledge that children may respond to the trauma of abuse in diverse ways, which may include confusion, fear, or emotional distress….It is crucial to emphasize that the sexual abuse of a child can take the form of penetrative or non-penetrative acts. Non- penetrative cases pose more significant challenges, especially in our societal context, because this category has a heightened risk of false accusations. Judges must determine the guilt or

innocence of an accused by thoroughly examining all available evidence, considering the surrounding circumstances, and adhering to applicable legal standards. Although a conviction based on the uncorroborated testimony of a child victim of sexual abuse is legally possible, its viability depends on the circumstances of the case and the strength of the child's testimony.

iv) *Wigmore on Evidence* enumerates 14 exceptions to the hearsay rule. Out of them, a few are more widely employed. These include: dying declarations, statements of facts against interest, and spontaneous exclamations…Courts sometimes apply time limitations to spontaneous exclamations, which is incorrect and causes confusion. Such limitationsshould only be applied to verbal acts. The real test in spontaneous exclamations is not when the exclamation was made but whether the speaker can be deemed to be expressing themselves under the stress of nervous excitement and shock produced by the act in question…in instances of sexual abuse involving a young child, the primary evidence very often consists of statements made by the child to a third party. Usually, these statements do not meet the criteria for admission under the conventional exceptions to the hearsay rule. Faced with this situation, courts have increasingly opted to relax the admissibility standards for statements made by children regarding sexual abuse to others. In some jurisdictions, courts have done this by making adjustments within the framework of the spontaneous declarations doctrine. However, some commentators have expressed disapproval of this approach…The shortcomings inherent in a rigid application of the spontaneous exclamation exception to hearsay statements from child victims in cases of sexual abuse have led to the emergence of the "tender years exception." It is designed explicitly for out-of-court statements made by child victims of sexual crimes. Although the tender years exception is sometimes considered a variation of the spontaneous exclamation exception, it differs significantly. The requirement of contemporaneity is eliminated. This exception allows for the admission of statements from young victims regardless of the time elapsed between the assault and the statement, provided that the delay is adequately explained. The underlying rationale seems to be the assumption that the child is under continuous duress throughout the entire period. Notably, the tender years exception permits the introduction of hearsay only to corroborate the child's in-court testimony.

Conclusion: i) The delay in making a report to the police regarding an incident of child sexual abuse cannot be considered as material unless the circumstances are such that they warrant an adverse view.

ii) The *voir dire test* is not mandatory to assess the competency of a child witness and the testimony of child witness cannot be held to be inadmissible on this sole ground.

iii) An individual can be convicted on the basis of solitary uncorroborated testimony of a child who is a victim of sexual abuse.

iv) Hearsay evidence from a child victim of sexual abuse is legally admissible.

22. **Lahore High Court**
Musawar Hussain v. The State and another.
Crl. Misc. No. 67328/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7735.pdf

Facts: Through this application, the Petitioner seeks pre-arrest bail in case in which FIR was initially registered for an offence under section 365-B PPC but during investigation sections 420, 468 & 471 PPC were added.

Issues: i) Is it permissible for an individual to marry two real sisters concurrently?
ii) What are the classes of women with whom marriage is prohibited?
iii) Define categories of marriage in islam?
iv) Can an individual marry the sister of his divorced wife while the latter is undergoing the Iddat period?
v) What are the several methods through which talaq can be affected in Islam?
vi) If during the investigation, it turns out that a non-cognizable offence, rather than a cognizable offence, had been committed, whether it invalidate the proceedings?
vii) Whether a person who marries the sister of his divorced wife while she is in the Iddat period can enter a new marriage contract with that woman after his ex-wife‟s Iddat period ends?

Analysis: i) There is a consensus amongst Muslim jurists that the conjunction of two sisters is Haram, one of the gravest sins. However, there is a difference of opinion on whether such marriage is batil or fasid. The majority of the Hanafi jurists lean towards categorizing it as fasid (…) In summary, the differentiation between batil and fasid marriages carries substantial legal consequences, both civil and criminal. Civil liabilities are not an issue in the present case, so they shall be discussed in some other proceedings. Regarding criminal liability arising out of a marriage involving the marriage of two sisters, most Hanafi jurists, including Imam Abu Hanifa (R.A), argue that such unions do not warrant the imposition of Hadd punishment. However, they are unanimous that considering its serious repercussions, it must be dealt with seriously, and Tazir must be inflicted.
ii) The Holy Quran delineates specific restrictions on marriage, particularly concerning certain categories of women. In Iftikhar Nazir Ahmad Khan and others v. Ghulam Kibria and others (PLD 1968 Lahore 587), Muhammad Akram J. identified nineteen classes of women with whom marriage is prohibited.1 These prohibitions, known as “Moharramat”, encompass various familial and social relationships, ranging from mothers and daughters to married women and idolaters. Such restrictions aim to preserve domestic harmony, prevent conflicts, and uphold moral integrity within the Muslim community. Importantly, these prohibitions are classified into two categories: perpetual and temporary. Perpetual prohibitions arising from consanguinity, fosterage, and affinity are absolute and eternal, leaving no room for exceptions. Conversely, temporary prohibitions arise

from impediments that are not permanent, allowing for the potential removal of obstacles to marriage.2 The temporary prohibitions are against (i) exceeding the number of wives allowed by law, (ii) conjunction of two sisters, (iii) conjunction of a free woman and a slave girl, (iv) marriage with an idolatress, (v) marriage with another‟s wife, (vi) marriage with another‟s Moattada (in the Iddat of another); (vii) conjunction of two such females as could not have intermarried, if one of them was a male..

iii) The Hanafi jurists delineate marriages into three distinct categories: Saheeh, fasid, and batil – depending upon their validity and effect. Saheeh is commonly translated as "valid", while fasid is interpreted as "invalid" or "irregular", and batil as "void". These terms carry nuanced meanings in Islamic jurisprudence that transcend simplistic English translations. Therefore, using the original Islamic terminology whenever possible is advisable, as relying solely on translations may lead to misunderstandings, especially regarding the term fasid. "Irregular" suggests some procedural flaw, "which does not fit within the scheme of Islamic law and jurisprudence. Fasid cannot be equated with mere irregularity as employed and used under the common law."The distinction between the above-mentioned classifications is crucial because it determines the legal status and consequences of matrimonial unions under Hanafi law. A Saheeh marriage is free from all defects. It impeccably conforms with all the requirements laid down by the Shariah, e.g., the existence of the proposal and acceptance, the presence of the witnesses, and the competency of the parties involved. Such marriages yield lawful and binding consequences for the parties involved. Conversely, batil marriages are those which are deemed void from their inception due to fundamental defects. These marriages lack essential elements required by Shariah, rendering the proposal and acceptance devoid of legal effect. Consequently, batil marriages are unlawful unions which fail to produce any legal consequences. Situated between these two extremes are fasid marriages, characterized by defects that compromise their validity to a certain extent.It is easy to classify marriages as Saheeh, batil, and fasid in terms of their definitions, but their practical application poses serious challenges. Muhammad Akram J. observes that some Hanafi jurists have conflated the concepts of fasid and batil marriages, using these terms interchangeably. However, recent authors have diligently recognized and preserved their precise technical meanings in legal discourse.Since there is a clear distinction between batil and fasid marriages in Islamic jurisprudence, it is necessary to delve into the rights and obligations of the parties involved. Before consummation, both batil and fasid marriages are considered nugatory and have no legal effect. In the case of a fasid marriage, the absence of consummation means that there is no requirement for Iddat for the woman, nor is she entitled to the dower. However, certain legal consequences ensue once consummation occurs. The woman is obligated to observe Iddat following the dissolution of the marriage. Furthermore, she is entitled to the customary or the specified dower, whichever is less, and Nasab (paternity) is established if a child is born to the couple. While there is no Hadd (the specific punishment for Zina) for engaging in

a fasid marriage, the parties involved may still face the consequences under Tazir, a discretionary sentence imposed by the Qazi. The severity of Tazir is contingent upon the circumstances of each case, serving as a corrective measure to deter future transgressions and uphold societal norms. The parties to a fasid marriage are under a liability to separate as soon as Fasad (illegality) appears or becomes known to them. If they do not, it is the Qazi‟s responsibility to separate them and dissolve their marriage immediately.

iv) It is a well-established principle of Islamic jurisprudence that Talaq is not effective until the expiration of Iddat (…) The prohibition against expelling the woman during the Iddat by the husband and the explicit restriction on the woman leaving her husband‟s house herself during this period indicate that after the pronouncement of Talaq, where the marriage has been consummated, the woman remains bound by the marital contract until the prescribed Iddat period specified by the Quran and Sunnah has lapsed. This is also why the woman is entitled to maintenance during this period. Additionally, if either spouse passes away before the completion of the Iddat period, the surviving spouse is entitled to inherit from the deceased‟s estate. As a result, jurists have a consensus that a person cannot marry his ex-wife‟s sister until her Iddat period has ended.

v) In Islam, a Talaq can be effected through several methods, each having its own conditions and procedures. According to D.F. Mulla's Principles of Mahomedan Law, the first method, Talaq Ahsan, involves a single pronouncement of divorce made during a Tuhr, which is the period between menstruations. After this pronouncement, there must be a period of abstinence from sexual intercourse for the duration of the Iddat, or waiting period. Talaq Ahsan can still be pronounced if the marriage has not been consummated, even if the wife is menstruating. However, if the wife has reached menopause, the requirement of pronouncement during a Tuhr does not apply. Additionally, this requirement only pertains to oral divorce, not written divorce. The second method, Talaq Hasan, requires three pronouncements made during successive Tuhrs, with no sexual intercourse occurring during any of the three Tuhrs. The first pronouncement must occur during one Tuhr, the second during the next Tuhr, and the third during the Tuhr following that. Finally, Talaq-ul- Bidaat or Talaq-i-Badai, the third method, involves either three pronouncements made during a single Tuhr, either in one sentence or separately, or a single pronouncement during a Tuhr that clearly indicates an irrevocable intention to dissolve the marriage. Examples include pronouncing "I divorce thee thrice" or "I divorce thee irrevocably."(…) Section 7(3) of the Muslim Family Laws Ordinance, 1961 is based on the same principle. It stipulates that unless revoked earlier, expressly or otherwise, Talaq shall not be effective until ninety days12 have elapsed from the day on which notice under section 7(1) is delivered to the Chairman of the Union Council.13 If the wife is pregnant when Talaq is pronounced, it shall not be effective until the period mentioned above expires or the pregnancy ends, whichever is later.

vi) It is well established that when a person approaches the officer in-charge of a

police station to register an FIR, the determining factor for him is whether the information laid before him pertains to the commission of a cognizable offence. If, during the investigation, it turns out that a non-cognizable offence, rather than a cognizable offence, had been committed, it does not invalidate the proceedings, as the provisions of section 155 Cr.P.C. do not apply.

vii) If, contrary to Shariah law, a person marries the sister of his divorced wife while she is in the Iddat period, there is no bar on him entering into a new marriage contract with that woman after his ex-wife‟s Iddat period ends.

Conclusions: i) According to Muslim jurists, the conjunction of two sisters is Haram, one of the gravest sins and it must be dealt with seriously, and tazir must be inflicted.

ii) There are nineteen classes of women with whom marriage is prohibited and these prohibitions, known as “Moharramat” and these prohibitions are further classified into two categories: perpetual and temporary. Perpetual prohibitions arising from consanguinity, fosterage, and affinity are absolute and eternal, leaving no room for exceptions. Conversely, temporary prohibitions arise from impediments that are not permanent, allowing for the potential removal of obstacles to marriage.

iii) The Hanafi jurists delineate marriages into three distinct categories: Saheeh, fasid, and batil – depending upon their validity and effect. Saheeh is commonly translated as “valid”, while fasid is interpreted as “invalid” or “irregular”, and batil as “void”.

iv) It is a well-established principle of Islamic jurisprudence that Talaq is not effective until the expiration of Iddat, therefore, a person cannot marry his ex-wife‟s sister until her Iddat period has ended.

v) See analysis no. v.

vi) If, during the investigation, it turns out that a non-cognizable offence, rather than a cognizable offence, had been committed, it does not invalidate the proceedings, as the provisions of section 155 Cr.P.C. do not apply.

vii) If, contrary to Shariah law, a person marries the sister of his divorced wife while she is in the Iddat period, there is no bar on him entering a new marriage contract with that woman after his ex-wife‟s Iddat period ends.

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23. **Lahore High Court**
Muhammad Waseem v. The State and another
Crl. Appeal No.20219/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC1346.pdf

Facts: The applicant/convict filed a miscellaneous application seeking suspension of execution of sentence awarded to him by trial court in complaint case in case arising out of F.I.R. registered under Sections: 302, 452, 148, 149 PPC etc.

Issue: Whether conviction and sentence of an accused can be maintained on the same evidence, on the basis of which the co-accused have been acquitted with the same and similar role?

Analysis: …conviction recorded and sentence awarded to the present applicant needs reappraisal of evidence; in this regard, guidance has been sought from the case of "SOBA KHAN Versus The STATE and another" (2016 SCMR 1325) and relevant portion from the same is reproduced: -*"17. It is by now well settled principle of law relating to reappraisal of evidence that once co-accused, similarly charged and attributed same and similar role in a particular crime, is acquitted on the basis of same set of evidence where the witnesses have maintained no regard for truth while deposing on oath to tell the truth and nothing else then, ordinarily they shall not be relied upon with regard to the other co-accused unless their testimony/evidence is strongly corroborated by independent cogent and convincing evidence."*

Conclusion: Conviction and sentence of an accused cannot be maintained on the same evidence, on the basis of which the co-accused have been acquitted with the same and similar role unless the evidence is strongly corroborated by independent cogent and convincing evidence.

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24. **Lahore High Court**
Province of Punjab, etc. v. Muhammad Yousaf
Civil Revision No.414-D of 2012
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1262.pdf

Facts: Through this Civil Revision filed u/s 115 of Code of Civil Procedure, 1908, petitioners assailed the validity and legality of judgment & decree whereby the learned Appellate Court while accepting the appeal of the respondent set-aside the judgment & decree passed by the learned Trial Court and decreed his suit.

Issues: i) Whether the Additional Commissioner and Member, Board of Revenue could resume the land on the ground that the suit land had come within the prohibited zone?
ii) Whether a second review is permissible under the West Pakistan Board of Revenue Act?
iii) What is the nature of remedy of review and whether the same can be exercised by the authority when the same is not provided under the law?

Analysis: i) There is no cavil with the proposition that land falling within the prohibited zone is immune from allotment under any scheme. Said allotment could not be cancelled, because once the land was made available for allotment, it was transferred and settled on the respondent, it would supersede all the notifications imposing such prohibitions. Under the law, the presumption is that acts done by the statutory functionaries were done in good faith and in a lawful manner, according to law applicable at that time. Under the principle of locus potentiae, the petitioners were not justified to act in the complained manner to cancel the land of the respondent. The question as to whether a piece of land falls within a

prohibited zone is to be determined from the date of allotment and not from the time of grant of proprietary rights. The petitioners failed to bring on record any evidence to establish that at the time of allotment or at the time of resumption the land was falling within a prohibited zone.

ii) Under Section 08 of the West Pakistan Board of Revenue Act (XI of 1957), the power of review was available which was exercised by Board of Revenue while passing the order in the first review. Further review of the order passed in review could not have been done by the Board of Revenue in the absence of any such power to vest in the Board by law. The Board of Revenue exceeded its jurisdiction by passing orders in question in an ostensible exercise of the power of review to vest in it. No power to review an order passed on a review petition by the Board of Revenue was available. As no power of second review was available under the law, the exercise of any such jurisdiction was without lawful authority and non-est.

iii) It is well-settled that the right of review is a substantive right and is always a creation of the relevant statute on the subject. The power of review being a statutory remedy cannot be assumed by an authority in the absence of a clear-cut provision in this regard. Similarly, a second review does not exist if not created or granted by a statute. After the final disposal of the first application for review, no subsequent review including the "curative review" shall lie.

Conclusions: i) No. Land falling within the prohibited zone is immune from allotment under any scheme but said allotment could not be cancelled, because once the land was made available for allotment, it was transferred and settled on the respondent, it would supersede all the notifications imposing such prohibitions.

ii) No power to review an order passed on a review petition by the Board of Revenue is available under West Pakistan Board of Revenue Act.

ii) The right of review is a substantive right and is always a creation of the relevant statute on the subject. The power of review being a statutory remedy cannot be assumed by an authority in the absence of a clear-cut provision in this regard.

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25. **Lahore High Court**
Rozina Ahmed v. Province of Punjab, etc.
Writ Petition No. 1287 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1233.pdf

Facts: Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the vires of orders passed by the respondent-authorities.

Issues: i) What is meaning of the term "provisional"?
ii) What is nature of a provisional document and for what time the same is issued?
iii) Whether an authority through an order once creating a right in favor of the beneficiary of that order can subsequently recall the same?

Analysis: i) In order to proceed further, firstly it is better to understand the meaning of 'Provisional'. In this respect, guidance has been sought from the renowned dictionaries. The gist of which is reproduced below:-The Black's Law Dictionary defines the word 'Provisional' as under: 'Provisional': Temporary <a provisional injunction>. 2. Conditional. The Cambridge Advanced Learner's Dictionary defines the word 'Provisional' as under: 'Provisional': For the present time but likely to change, temporary. The Longman Dictionary of Contemporary English defines the word 'Provisional' as under: 'Provisional': 1. Intended to exist for only a short time and likely to be changed in the future. The Concise Orford Thesaurus defines the word 'Provisional' as under: 'Provisional': Interim, temporary, pro tem; transitional, changeover, stopgap, short-term, fill-in, acting, caretaker, subject to confirmation, penciled in, working, tentative, contingent. The Oxford English Urdu Dictionary defines the word 'Provisional' as under: صرف فوری۔ ضرورت کے لیے؛ عارضی

ii) Provisional document is issued only for the time being which is always temporary in nature and likely to vary in future.

iii) It was held in the said order that "if any right is created by the act of the Appointing Authority and rule of locus poenitentiae in favour of the employees of either side, they be treated in the light of judgments of august Supreme Court of Pakistan reported as Executive District Officer (Edu), Rawalpindi and others Versus Mst. Rizwan Kausar and 4 others (2011 SCMR 1581), Collector of Customs and Central Excise Peshawar and 2 others Versus Abdul Waheed and 2 others (2004 SCMR 303) and Muhammad Shoaib and 2 others Versus Government of N.W.F.P. through The Collector, D.I. Khan and others (2005 SCMR 85).'The august Supreme Court of Pakistan in its judgment reported as Mst. Basharat Jehan v. Director General, Federal Government Education, FGEI (C/Q) Rawilpindi and others (2015 SCMR 1418) observed as under:-"Once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae, well recognized and entrenched in our jurisprudence.

Conclusions: i) See analysis portion No.i

ii) Provisional documents are issued only for the time being, which is always temporary in nature and likely to vary in future.

iii) Once a right has been created by a competent authority in favor of the beneficiary the same cannot be recalled under the principle of "locus poenitentiae".

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26. **Lahore High Court**
Muhammad Siddique. v Rabia Rafique, etc.
Civil Miscellaneous No.07-C of 2023/BWP.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1315.pdf

Facts: The trial court partially decreed the suit of applicant no.2, and decreed the suit in toto of respondent no.1. Applicant no.2, filed appeal before appellate court which was dismissed, his revision petition before the High Court was dismissed, his special leave to appeal as well as review petition was also dismissed by the Supreme Court of Pakistan. Now, the applicant no.1 and applicant no.2 have filed the separate petitions under section 12(2) of C.P.C, to assail the judgment of revision petition which was passed by the High Court.

Issues: i) Whether the certificate of effectiveness of divorce from union council is necessary in case of divorce obtained on the basis of khula through the decree of court?
ii) Whether the dissolution of marriage of khula is ineffective if the wife has not returned the benefits for the consideration of khula?
iii) Whether a person can be compelled to give a sample for DNA testing?
iv) What are the requirements for application of the provisions of section 12(2) of C.P.C.?
v) Whether the court may dispose of an application under section 12(2) of C.P.C, without framing of issues, recording of evidence and following the procedure for trial of the suit?
vi) Whether the court is under obligation to frame issues in case of application filed under section 12(2) of C.P.C.?
vii) Whether a litigant can be allowed to avail other remedy if he has availed the one remedy earlier?

Analysis: i) Dissolution of marriage under the Family Courts Act, 1964 once having attained finality does not make it ineffective merely on the ground that notice of decree for dissolution of marriage was not given and certificate of effectiveness of said divorce was not issued by the concerned Union Council. If it is presumed that a wife failed to give notice of the decree of dissolution of marriage, then it related to the question of contravention of the provision of Sub-section 01 of Section 07 of Muslim Family Laws Ordinance 1961. Sub- section 02 of Section 07 provides that whosoever contravenes the provisions shall be sentenced to imprisonment for a term which may extend to one year or with a fine which may extend to 5000 rupees or with both. It is crystal clear that non sending of a copy of decree after obtaining Khula from the Court under Sub-Section 01 of Section 07 or failure to obtain the certificate can at the maximum entail penal consequences but cannot invalidate the decree of dissolution of marriage on the basis of Khula.
ii) Where marriage was dissolved by way of Khula imposing a condition on wife first to return the benefits of husband to him, non-fulfillment of that condition by

wife, would not render decree for dissolution of marriage on the basis of Khula as ineffective because imposition of such condition merely would create civil liability and decree for dissolution of marriage passed by way of Khula, could not be considered as dependent on requiring wife to fulfill condition first. The decree of dissolution of marriage, on the basis of Khula, even though made conditional upon the return of the benefits, would operate to dissolve the marriage, when it is passed and the effect thereof would not be postponed till the benefits were returned.

iii) No one can be compelled to give a sample for DNA testing as it would violate his liberty, dignity and privacy of a free person guaranteed under Article 14 of the Constitution of Islamic Republic of Pakistan, 1973.

iv) The provisions of Section 12(2) C.P.C. can only be pressed into service when fraud has been practiced upon the court during the proceedings of case and judgment & decree was obtained on the basis of such fraud and misrepresentation. The scope of said provision is restricted and the applicant is obliged to prove that fraud or misrepresentation was committed by the adversary in connection with the proceedings of the court.

v) The remedy of civil suit available for setting aside the judgment and decree obtained through fraud and misrepresentation prior to the enactment of sub-section 2 of Section 12 C.P.C was taken away by this sub-Section but this remedy would not be available like a regular suit and the Court may dispose of an application under Section 12(2) C.P.C. without framing issues, recording evidence of the parties and following the procedure for trial of the suit.

vi) The determination of allegation of fraud and misrepresentation usually involves investigation into the question of fact but it is not in every case that the court would be under obligation to frame issues, record evidence of the parties and follow the procedure prescribed for the decision of the suit. If it were so, the purpose of providing the new remedy would be defeated. The framing of issues depends on the circumstances of each case, the nature of alleged fraud and a decree so obtained. Framing of issues in every case to examine the merits of the application would certainly frustrate the object of Section 12(2), C.P.C which is to avoid, protracted and the time- consuming litigation and to save the genuine decree-holder from grave hardships and ordeal of further litigation, extra burden on their exchequer and simultaneously to reduce unnecessary burden on the courts.

vii) Once the litigant opted to avail one out of the provided remedies, then it generally could not be permitted to initiate the other one.

Conclusion: i) Dissolution of marriage under the Family Courts Act, 1964 once having attained finality does not make it ineffective merely on the ground that notice of decree for dissolution of marriage was not given and certificate of effectiveness of said divorce was not issued by the concerned Union Council.

ii) Where marriage was dissolved by way of Khula imposing a condition on wife first to return the benefits of husband to him, non-fulfillment of that condition by

wife, would not render decree for dissolution of marriage on the basis of Khula as ineffective.
iii) No one can be compelled to give a sample for DNA testing.
iv) The provisions of Section 12(2) C.P.C. can only be pressed into service when fraud has been practiced upon the court during the proceedings of case and judgment & decree was obtained on the basis of such fraud and misrepresentation.
v) The Court may dispose of an application under Section 12(2) C.P.C. without framing issues, recording evidence of the parties and following the procedure for trial of the suit.
vi) The court is not in every case under obligation to frame issues, record evidence of the parties and follow the procedure prescribed for the decision of the suit.
vii) Once the litigant opted to avail one out of the provided remedies, then it generally could not be permitted to initiate the other one.

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27. **Lahore High Court**
Allah Ditta, etc. v. The State, etc.
Criminal Appeal No. 82543/2022
Shah Jahan v. The State, etc.
Criminal Revision No.7417/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1379.pdf

Facts: The accused/appellants after going through a trial in the private complaint arising out of FIR handed down by Additional Sessions Judge have been convicted under section 302(b)/34 PPC and sentenced to imprisonment for life each, with further order to pay compensation, in default to undergo simple imprisonment for one year each, benefit of section 382-B Cr.P.C. was extended. Criminal Appeal has been filed by the accused/appellants to challenge their conviction and sentence, whereas, through Criminal Revision, the complainant seeks enhancement of sentence, both these matters are subject matter of this judgment.

Issues: i) Whether a postmortem report can be viewed as a documented expert opinion and how it can be produced in court?
ii) Whether the mere production of a postmortem report is sufficient to be read in the evidence as support for the prosecution case?
iii) Whether secondary evidence for a doctor is required to be given by another doctor/expert in order to assist the Court to understand the nature of injuries?
iv) What is best course to preserve the evidence of a doctor who conducted a postmortem to avoid secondary evidence?
v) Whether it is essential to prove the non-availability of the doctor before producing secondary evidence of medical reports?
vi) Whether motive is required to be proved through an independent source of evidence other than the words of mouth if it has been set up by the prosecution?
vii) Whether the mere abscondence of the accused is conclusive proof of his guilt?

Analysis: i) Legally, Postmortem report is viewed as a documented expert opinion, therefore, its production in the evidence through primary evidence though is admissible yet contents of it cannot be read unless doctor appears as a witness to authenticate and verify that it was the report he had prepared. If doctor is not available then such report available in the Court record can be produced as secondary evidence through any person who had seen preparation of such document, knows handwriting or signature of the doctor on the report while showing a comparison with any proved document in the handwriting of such doctor, and this can also be done by production of another doctor or record keeper of the concerned hospital. This being so in the context of Article 78 of Qanun-a-Shahadat Order, 1984 which requires that execution of a document must be proved through the mode and manner as suggested in law.

ii) Thus, despite proof of execution of a document by above means, truth of contents of document is to be proved. Neither the medicolegal or postmortem reports are the categories of documents as mentioned in Article 102 so as to dispense with a formal proof of its execution nor in this case it was claimed to have been admitted by the parties so as to rule out necessity of formal proof… Thus, mere production of postmortem report is not sufficient to be read in the evidence as a support to the prosecution case…

iii) A like situation was attended in a case reported as "MUHAMMAD NAZIM and others Versus The STATE and others" (2022 P Cr. L J Note 82) [Lahore] when medical evidence was not furnished by the concerned doctor who had conducted the postmortem examination rather one Imran Shahid, record keeper appeared as CW-5, who stated that Dr. Afzal has died and produced the original record of postmortem report, it was observed that oral statement with respect to contents of document was not given by any expert witness, therefore, question of description of injury, its angle or trajectory and presence of burning around the wounds remained an unanswered story. Opinion of doctor could only be deposed by the said doctor as per Article 71 of Qanun-e-Shahadat Order, 1984 which says that oral evidence must, in all cases whatever be direct, that is to say, if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds…

iv) Corresponding to section 293 of Indian Code of Criminal Procedure, 1973, in ours section 510 exists but with slight difference, which is not applicable for medical reports. Mode of recording evidence of a doctor is mentioned in Section 509 of Cr.P.C. This Section falls in Chapter XLI which contains heading as "Special Rules of Evidence", of course an overriding effect on all other provisions, consists of four Sections 509, 510, 511 and 512 of Cr.P.C. which with some connotation to cut short the process provides an expeditious mode of recording of evidence as well as securing the evidence for trial. Section 509 of Cr.P.C… According to Section 509 of Cr.P.C., deposition of a medical witness taken and attested by a Magistrate in the presence of accused or taken on Commission may be given in evidence in an inquiry, trial or other proceedings

under this Code without calling the medical witness, however, Court does have a power to summon the medical witness as and when thinks fit. This section has like connotation as that of Section 164 of Cr.P.C., which also ensures securing of evidence of a witness but unfortunately Section 509 Cr.P.C., has lost sight of legal practitioners and by the learned Courts, therefore, on the eve of death of a medical witness or his migration to other country, medical evidence falls short of probative value which cannot be brought on record properly or if it is brought on record its probative value decreases due to non-availability of medical witness to depose about the nature, locale, size of injuries and other observation made at the time of examination and test/protocols performed to arrive at an opinion with respect to cause of death or other matters which are also relevant as per Article 65 of Qanun-e-Shahadat Order, 1984. Thus, this Section is must to be adhered by all the concerned in future and Criminal Prosecution Service (CPS) should attend to the provision for securing statement of medical witness at the earliest opportunity while producing him before the concerned Magistrate so that on the eve of non-availability of doctor such statement could be used during the trial before the Court concerned. Necessity and utility of Section 509 Cr.P.C., has also been highlighted in Rule 6, Chapter-18, High Court Rules & Orders, Volume III.

v) Before producing secondary evidence of medical reports, it is essential to prove the non-availability of doctor. In a case reported as "SOOBA and 3 others Versus THE STATE" (1994 P Cr. L J 1323), this Court while referring cases reported as Allah Ditta v. The State (P L D 1958 SC (Pak.) 290), Fazal Muhammad and another v. The state (1970 SCMR 405), Hussain Bakhsh v. The State (1971 P Cr. L J 1331) (Lahore) and Muhammad Siddique and another v. The State (1974 P Cr. L J 180) (Lahore), held that absence of doctor must be proved before bringing on record the postmortem report as secondary evidence… In a case reported as "MUHAMMAD SHAM AND 3 OTHERS versus THE STATE" (P L D 1972 Lahore 661), while referring the cases Allah Ditta v. The State (P L D 1958 S C 290) & Nityananda Roy v. Rash Behari Ray (A I R 1953 Cal. 456), matter was remanded to the trial court to examine the foot constable for proof of absence of doctor and, then by calling original postmortem report, record the statement of dispenser who reportedly worked with the doctor well conversant with his writing and signature, and thereafter by comparing the carbon copy of postmortem report with the original allow its tendering through secondary evidence to prove the postmortem report.

vi) Thus, it can safely be held that though motive was set up yet the same could not be established by the prosecution and it is trite that though the prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence other than the words of mouth and in case of failure to do so, the prosecution should have faced the consequences and not the defence.

vii) There is also plethora of authorities of superior Courts on this point that mere abscondence of accused is not a conclusive proof of the guilt of the accused. The value of abscondence depends upon the fact of each case and abscondence alone

cannot take the place of guilt unless and until the case is otherwise proved on the basis of cogent and reliable evidence.

Conclusion: i) See corresponding analysis No.i.
ii) The mere production of a postmortem report is not sufficient to be read in the evidence as support for the prosecution case.
iii) Secondary evidence for a doctor is required to be given by another doctor/expert in order to assist the Court to understand the nature of injuries.
iv) Section 509 Cr.P.C. provides best course to preserve the evidence of a doctor who conducted a postmortem to avoid secondary evidence.
v) It is essential to prove the non-availability of the doctor before producing secondary evidence of medical reports.
vi) Motive is required to be proved through an independent source of evidence other than the words of mouth if it has been set up by the prosecution.
vii) The mere abscondence of the accused is not conclusive proof of his guilt.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification No.36 of 2024 twenty Community based Conservancy Zones are declared in pursuance of Section 3 of Punjab Community Based Conservancy Rules 2023 and recommendation of DG, Wildlife & Parks Punjab bearing No. 1279/DG(W&P) Mgt-CBC/2023 dated 20.09.2023.
2. Vide Notification No.37 of 2024 amendments after serial no. 2, in column nos. 01 to 10 in schedule of the Directorate General Protocol, Punjab, Service Rules, 2005 are inserted.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/Audi-Alteram-Partem-and-Nemo-Judex-In-Causa-Sua-The-Two-Pillars-of-Natural-Justice

Audi Alteram Partem and Nemo Judex in Causa Sua: The Two Pillars of Natural Justice by Surbhi Jindal and Anunay Pandey

Natural Justice, also known as procedural fairness, is a legal philosophy that dictates how legal proceedings should be conducted to ensure fairness and justice. In other words, natural justice is the principle of law that protects the rights of individuals to fair treatment in legal proceedings. The principles of natural justice assert that justice should be based on the law of nature rather than on the law of man. It revolves around the idea that decision-making should be fair and impartial and that all parties involved in a dispute should have an opportunity to be heard. Natural justice is especially necessary for those decisions that are based on personal biases or interests, or where parties could

be denied their right to fair hearing. By ensuring that decisions are made under the principles of natural justice, the legal system upholds the rule of law and ensures that justice is served. However, in some situations the principles of natural justice must be intentionally disregarded in a decision-making process. This can happen for various reasons, such as in emergencies or where national security is at stake. In cases where the principles of natural justice are excluded, post-decisional hearings may be used to provide affected individuals with an opportunity to present their case and challenge the decision. It is a process in which an individual who has already been adversely affected by a decision can present their case after the tentative decision has been made. But it is always preferable to follow the principles of natural justice in the first place to ensure that decisions are fair. This article deals with the principles of natural justice, including post-decisional hearing and exclusion of the principles of natural justice. The main objective of the article is to delve deeper into the topic's nuances in greater detail by understanding how these principles are applied practically in a legal context.

2. MANUPATRA

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

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

The court must maintain impartiality when dealing with parties involved in a dispute. Therefore, when a plaintiff initiates a lawsuit in their preferred location, as outlined in the "Code of Civil Procedure 1908", the defendant is required to appear before the court and submit a written statement, presenting objections to the plaintiff's suit. If the defendant raises concerns related to the court's jurisdiction based on provisions within the Code of Civil Procedure, the court must initially address the jurisdictional issue. If the court determines that it lacks jurisdiction, it is obligated to transfer the lawsuit, following the guidelines. Nevertheless, if either party encounters difficulties at any point during the legal proceedings and wishes to relocate the case to a different place or court of their choice, they have the remedy to file a transfer petition in the relevant court in accordance with such applicable law. If the defendant has not consented to the chosen location for the suit, the court cannot commence the proceedings. However, it is within the court's authority to reject the defendant's application to transfer the suit, compelling the defendant to proceed with the suit in the original location. In addition to the involved parties, the court, at its discretion, possesses the authority to transfer the suit. This authority is granted to them by the Code of Civil Procedure of 1908, enabling them to address such matters and transfer the suit to another court with the appropriate jurisdiction if the interests of justice necessitate such a move. Through this research, the author has tried to critically analyze the provisions under the Code of Civil procedure relating to the Transfer of Cases with case laws.

3. LUMS LAW JOURNAL

https://sahsol.lums.edu.pk/node/16906

Criminal Defamation Laws in Pakistan and Their Use to Silence Victims of Sexual Harassment, Abuse, or Rape by Muhammad Anas Khan

In Pakistan, the discourse around defamation laws in the context of sexual harassment and abuse cases is underdeveloped. With the #MeToo movement on a rise, several victims of sexual harassment and abuse have used social media to disclose their horrific stories. These claims are generally met with counterclaims of defamation by the alleged perpetrator or their supporters, which creates further hindrance for these victims trying to speak up. The victim, while fighting their case of harassment, has to simultaneously defend themself against the defamation charges. This problem seems to be exacerbated through criminal defamation laws where a First Information Report can also be registered against the victim under Sections 499 and 500 of the Penal Code of Pakistan 1860 ("Penal Code") and under Section 20 and 21 of the Prevention of Electronic Crimes Act 2016 ("PECA") for speaking up. Therefore, it is imperative to revisit criminal defamation laws in Pakistan to analyse their misuse in such claims. This paper aims to distinguish between civil and criminal defamation laws in Pakistan: the Defamation Ordinance 2002 ("2002 Ordinance"), the Penal Code, and PECA. It analyses cases of harassment and defamation, both inside and outside of the courtrooms. However, since the jurisprudence is underdeveloped, case law alone might not be an adequate source to formulate a definitive argument. For this purpose, the paper includes interviews with lawyers, social activists, and law enforcement personnel to gauge their understanding and views on the topic. Based on these interviews, this paper attempts to analyse the jurisprudential and practical lapses in the system that cause impediments in dispensation of justice. Thus, it will also look at criminal and civil defamation laws to determine whether they hinder sexual harassment claims and violate constitutional rights to freedom of speech and expression.

4. LUMS LAW JOURNAL
https://sahsol.lums.edu.pk/node/11444

Living in the Present, Anticipating the Future: Ascribing Liability for Artificial Intelligence by Aman Rehan and Hammad Ali Kalhoro

For any legal system, determining how liability will be ascribed to a particular person is a difficult task. However, a recently popularised conundrum in legal literature considers the question of legal liability for artificially intelligent computer systems. With the advent of COVID-19, the adoption of new technologies is accelerating, and the role of AI in our lives is only going to increase. What is often overlooked is that such technologies are usually premised on the "deep learning" system, creating uncertainty in decision making, experience-based learning, and reactions to events. Considering the issue of ascribing liability for harms caused by AI, this paper scrutinises these shortcomings. It highlights how legal systems have the propensity to do more in the promulgation of industry-wide standards relating to AI products. With rapid development of AI technology and the increasing reliance on it by humans, a failure to promulgate and adopt such standards may have catastrophic consequences.

5. LUMS LAW JOURNAL
https://sahsol.lums.edu.pk/node/12844

The Hindu Marriage Act 2017: A Review by Sara Raza

Ever since Pakistan gained independence in 1947, the Hindu community has been subject to severe discrimination and marginalization. Hindu women, especially, have had to face the brunt of this unjust treatment and are regularly subjected to forced conversions, rape, and oppression within the domestic sphere. According to a report released by the Movement of Solidarity and Peace in Pakistan, up to 300 Hindu women are forced to convert and marry Muslim men every year in Pakistan. In this context, Hindu Personal Law and, specifically, law regulating marriages had been largely ignored as a legislative matter by the Parliament until two years ago, reflecting the Pakistani state's extended failure to provide legal protection to the basic social institution of family for its Hindu citizens. The Hindu Marriage Act 2017 marked a breakthrough as the first legislation dealing with personal law of Pakistani Hindus. This review will discuss ancient Hindu beliefs about marriage, problems that were caused by the lack of legislation in this respect, the Sindh Hindu Marriage Registration Act 2016, the Hindu Marriage Act 2017, its purpose, and analyze its provisions.