LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(01-05-2024 to 15-05-2024)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

		the evidence		
4.		declaration as proclaimed offender as ground for rejection of nomination papers of a candidate; Effect on order of Appellate Tribunal rejecting nomination papers on ground other than actually taken for rejection of nomination papers by returning officer; Defect of mismatch of signatures on nomination paper and CNIC	Election Laws	9
5.		Holding of general election to all assemblies, national and all provincial assemblies together & holding of a general election within 60 or 90 days; Effect of invalidation one nomination paper on other filed multiple nomination papers; Requirement of personal appearance of candidate to attend scrutiny process; Absconder to contest election; Application of Habib akram case for filing of affidavit regarding criminal case		10
6.		Imposing costs in vexatious litigation	Family Law	13
7.	Supreme Court of Pakistan	Inference on withholding best available evidence; Proper and legal way of dealing with a criminal case, Dealing with counter versions	Criminal Law	14
8.		Act of terrorism under Section 6 of Anti-Terrorism Act, 1997; Extent the presumption of innocence is associated with the accused; Interlinking of concepts of "proof beyond a reasonable doubt" and "presumption of innocence"		15
9.		Meaning of philosophy of natural justice; Right to fair trial as fundamental right; Meaning of doctrine of locus poenitentiae	Service Law	17
10.		Pre-supposing in a case of further inquiry; doctrine of further inquiry denote; Object of trial; Principle to regulate the discretion of grant of bail; CSD as an authority of or under the control of the Federal Government	Criminal Law	17
11.		Scope of appellate jurisdiction	Service Law	19
12.		Interference of Supreme Court into concurrent findings of the courts below	Civil Law	20
13.		Rights of party against whom adverse remarks passed in its absence		20
14.		Effect of material contradictions and discrepancies in testimony of witnesses on prosecution case; Effect of dishonest improvements made by a witness in his	Criminal Law	21

		statement		
15.	Supreme Court of Pakistan	Blackening in case of firearm discharged from a distance of not more than three feet and revolver within about two feet; Effect of unnatural conduct of eye witnesses qua not immediately taking the injured to the hospital; Adverse inference in case of not production of eye witness	Criminal Law	22
16.		Challenging sale of property through auction u/O XXI Rule 89 or 90 or by filing objections pursuant to Order XXI, Rule 84 of CPC	Civil Law	23
17.	Lahore High Court	Factor to be taken into consideration regarding transaction being benami when dispute between third party & real owner and benamidar; Pre-requisites to freeze property u/s 12(e) of NAB Ordinance 1999; test to determine the reasonable ground as enumerated in Sec.12 (e) of the Ordinance		24
18.		Limitation period for filing a suit for possession through specific performance of agreement to sell; Finding of which court to give preference in case of inconsistency between the findings of the trial Court and the Appellate Court		25
19.		Significance of Limitation Act		26
20.		Ruling of the August Supreme Court of Pakistan regarding the proper forum of filing of application under section 12(2) of Code of Civil Procedure, 1908		27
21.		Necessary and proper party to the proceedings; Object of Order I, Rule 10, Code of Civil Procedure, 1908; Object of Order I, Rule 10, Code of Civil Procedure, 1908; Necessity of filing of application under order I rule 10 of CPC		28
22.		Purpose of providing inquest report to the medical officer before the autopsy of deceased victim; Convicting accused on deposition of an injured eye witness, without adjudging his credibility; Effect of delay of 2/3 days in recording statement of a witness u/s 161 CrPC in connection with a homicide incident; Effect of contradiction arose between statement of an eyewitness and the medical evidence	Criminal Law	29
23.		Shifting of responsibility of maintaining the minor child upon his close relatives, including the paternal uncle in case of death of father	Family Law	31
24.		Jurisdiction to modify, amend award or grant interest on award	Civil Law	32
25.		Statutory criteria for maintainability of petition filed under section 290 of the		32

	Lahore High Court	Companies Ordinance 1984; Criteria for allowing an application u/s 265 of the Companies Ordinance 1984, for seeking investigation in a company; Mentioning the wrong provision of law preventing court from exercising authority?		
26.		Object of section 34 of PPC in holding a person responsible for a criminal act or wrong committed by another; pre-requisites for attracting the provisions of section 34 of PPC; Holding guilty of vicarious liability on mere presence with principal accused; Recording of testimony of person whose statement not recorded u/s 161; discarding evidence of eye-witness merely on basis of relationship with deceased; Production of all witnesses by prosecution; Utmost caution for question of quantum of sentence; Requirement of special circumstances to consider mitigation for converting the sentence of death into imprisonment for life; Proper course for the courts, when a case qualifies the awarding of both sentences of imprisonment for life and that of the death	Criminal Law	34
27.		Purpose of juvenile justice system; Recognizing the importance of protecting the rights of juveniles in international law; Article 37 of The United Nations Convention on the Rights of the Child & fundamental principles regarding child detention; Article 40 of the UNCRC regarding treating every child promoting dignity & worth; Juvenile Justice System Act 2018 as remedial and beneficial legislation;		36
28.		"Stepping into proceeding" by request of adjournment and filing of power of attorney application u/s Arbitration Act; Conditions precedent for applying under Section 34 of the Arbitration Act, Granting stay under Section 34; Test of "STEP IN PROCEEDINGS"; Legal status of a pronouncement made by the Supreme Court of Pakistan regarding a question of law; Intent of the legislature behind Section 34 of the Arbitration Act, 1940	Civil Law	39
29.		Effect of non-production of eyewitness of the arrest and recovery in the evidence; conditions for production of secondary evidence to prove a document; Permission of the Court for data retrieval from any mobile phone recovered from a suspect without his consent; Single circumstance which creates doubt regarding the prosecution case	Criminal Law	42

30.	Lahore High Court	Evidentiary value of written statement; Admissibility and proof of execution of documents; Necessity of producing the scriber of document to prove its execution; Effect of withholding the best piece of evidence; Decreeing subsequent suit based on previous agreement to sell when novation of claim pleaded without dealing with the question of limitation and bar contained in Order II Rule (2) of CPC;	Civil Law	44
31.		Procedure to be followed for the allotment by the tenants; Failure of tenant to provide the required information or wilfully furnishes incomplete or false declaration; directions are to be followed to ensure that mistakes have not been incorporated in the statements LR-XIV and LR-XV; allotment of the land jointly or individually in case of joint tenancies; Responsibility of the concerned Patwari or Revenue Officer and Assistant Commissioner regarding the verification of record provided by the tenants; Maintaining Girdawari and "Register Taghayyurat-e-Kasht" as per Rule 39 of the Land Revenue Rules, 1968; Procedure of alteration of an entry once made in the Register Girdawari by Patwari		45
32.		Validity of act, proceedings or decision of the Commission due to vacancy or defect in Constitution of Commission; Scheme of exercising appellate Jurisdiction by the Appellate Tribunal constituted u/s 64 of the Act; Provision of right of appeal to ensure safe administration of justice		48
33.		Effect of apparent delay in reporting the matter to the police; Drawing of inference if investigating officer does not collect anything incriminating from place of occurrence; evidentiary value of contention about abrasions on body during scuffle without medical opinion; Duration for healing of hymen after commission of rape	Criminal Law	50
34.		Apprehension in the mind of a party about injustice at the hands of presiding officer is a ground for transfer of a case; Ascertaining bias of a judge; Hearing of case by judge having interest in case; Hearing of case by Magistrate who had practiced as pleader in such district; Responsibility for all enquiries etc. For fair trial		51
35.		Claiming of right of custody(hizanat) which was once waived by her; Difference between 'Walayat' and 'Hizanat' with reference to Custody of minor child; Determining corret view in case of conflicting views expressed in		53

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Mst. Samrana Nawaz, etc. v. MCB Bank Ltd., etc.
C.P.2646-L/2018, C.A.17-L/2019 and C.A.364-L/2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2646_l_2018.pdf

Facts: While hearing these cases, a three-member Bench of this Court disagreed with the view earlier taken by another three-member Bench in Habib and Company v. MCB (PLD 2020 SC 227) regarding the meaning and scope of the second proviso to Rule 90 of Order XXI of the Code of Civil Procedure, 1908. Consequently, the matter of interpretation of the said proviso was referred for reconsideration by a larger Bench. These cases have, therefore, been posted before larger Bench for an authoritative pronouncement of the law on the meaning and scope of the second proviso to Rule 90 of Order XXI, CPC.

Issues: i) What are the basic principles of legal interpretation that guide the analysis, focusing specifically on the process of ascertaining legislative intent, the balance between the ordinary linguistic and grammatical meanings of words, and ambiguity within statutes?
ii) What are the meanings and scope of the second proviso to Rule 90 of Order XXI, CPC, as to whether the deposit of the amount is mandated concurrently with the application or if it is contingent upon the court's directive?
iii) What is the purpose of the second proviso to Rule 90 of Order XXI, CPC?
iv) How does the executing court determine the amount required to be deposited under Order XXI, Rule 90 CPC, and what factors are considered in that determination?
v) How does Section 7(2) of Financial Institutions (Recovery of Finances) Ordinance 2001 dictate the application of procedures from the CPC in Banking Court proceedings?
vi) What is the effect of clauses (a) and (b) of Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance 2001 ("Ordinance") on the provisions of Rule 90 of Order XXI, CPC?

Analysis: i) Before we delve into interpreting the second proviso, it would be advantageous to outline some fundamental principles of statutory interpretation that will guide our analysis. We all know that the ultimate objective of interpretation is to ascertain and give effect to the legislative intent, which constitutes the major step in the process of interpreting statutes and lies at the heart of the interpretative process. The first source from which the legislative intent is to be sought is the words of the statute; then an examination is to be made of the context and purpose of the enactment. Therefore, in the process of interpreting a provision of law, the staring point is to read and understand the words used therein in their ordinary linguistic and grammatical meaning. Generally, such meaning is to be ascribed to them, more so when it is consistent with the context and purpose of the provision

in which they are used. However, where there is a potential conflict between the ordinary meaning of words and the purpose of the provision, courts may depart from the literal meaning to advance the purpose and give effect to the legislative intent. Similarly, if the words are ambiguous and can reasonably bear more than one meaning, courts are to ascribe such meaning to them which will be consistent with the purpose of the provision. Or, if the words in their ordinary meaning lead to absurdity, courts may give them such meaning that will make the provision reasonable and consistent with the context and purpose thereof. The interpretative process, thus, combines both literal and purposive approaches to ensure that the legislative intent is ascertained and given effect.

ii) With this understanding of the keywords used therein, we find that the second proviso stipulates that upon filing the application to set aside the sale, the court will direct the applicant to deposit an amount not exceeding twenty per cent of the sum realised at the sale or furnish security for that amount, and provide the applicant with an opportunity to fulfill this requirement. Until the applicant deposits the amount or furnishes the security, the court cannot proceed to consider and adjudicate upon the merits of the application. Only when the applicant complies with this requirement within the allowed time, can the court proceed to consider the application on its merits. If the applicant fails to do so, the court is to dismiss the application without proceeding to consider and adjudicate upon its merits. (…) The bar on entertaining the application thus arises from the failure of the applicant to "deposit such amount not exceeding twenty per cent of the sum realized at the sale, or furnish such security, as the Court may direct". It becomes operative and effective only when the court first determines the amount to be deposited or the nature of security to be furnished against that amount by the applicant. No applicant can anticipate what amount or security the court would direct him to deposit or furnish, as the case may be; nor can he be allowed to deposit the amount or furnish the security as per his own choice at the time of filing the application. The prior direction of the court to deposit a certain amount or furnish a specified security is a condition precedent (sine qua non) for declining to entertain and dismissing the application under the second proviso.

iii) Evidently, the purpose of the second proviso is to discourage frivolous objections. The condition stipulated in the second proviso for entertaining the application ensures that the rule is not misused to delay the completion of the sale and expeditious conclusion of the execution proceedings, and that the objections are made only by bona fide persons on valid grounds. If upon adjudication the application is found frivolous, the amount deposited or the security furnished, as the case may be, by the applicant is to be appropriated for awarding costs to the person(s) who suffer from the delay in completing the sale due to the filing of the application.

iv) Therefore, in determining the amount required to be deposited, the executing court should consider various factors such as the decretal amount, the time elapsed since filing the execution petition, the sale amount and the applicant's previous conduct, etc., and fix an amount reflective of the costs likely to be

awarded to the affected party in case of dismissal of the application. The literal meaning of the second proviso as ascertained above, which signifies the discretion of the court to determine an appropriate amount not exceeding twenty per cent of the sum realised at the sale, thus aligns with its purpose as well.

v) It is evident from reading the above provisions that they have been given an overriding effect over the provisions contained in the CPC. Similarly as per Section 7(2) of the Ordinance, in the exercise of its civil jurisdiction under the Ordinance, a Banking Court is to follow the procedure provided in the CPC in all matters but only with respect to which the procedure has not been provided for in the Ordinance. Thus, there remains no doubt that where a particular procedure has been provided in the Ordinance to deal with a certain matter, a Banking Court cannot apply the procedure provided in the CPC. In other words, a Banking Court is to follow the procedure provided in the CPC in so far as it is not inconsistent with the procedure provided in the Ordinance. In case of conflict between the two, the procedure provided in the Ordinance is to be preferred and followed.

vi) Rule 90 of Order XXI, CPC, specifies the persons eligible to make the application to set aside the sale, namely, (i) any person entitled to share in a rateable distribution of assets, and (ii) any person whose interests are affected by the sale. It also outlines the grounds for challenging the sale, which are (i) material irregularity in publishing or conducting the sale, and (ii) fraud in publishing or conducting the sale. The first proviso of the Rule restricts the vitiating effect of these grounds only to situations where the applicant has sustained substantial injury due to such irregularity or fraud. And its second proviso mandates that the entertainability of the application is conditional upon the deposit of an amount not exceeding twenty per cent of the sum realised at the sale, or the furnishing of such security, as directed by the court. On the other hand, clauses (a) and (b) of Section 19(7) of the Ordinance address two aspects: (i) the requirement for Banking Courts to follow a summary procedure for investigating objections regarding the sale of any property and completing such investigation within 30 days of filing of the objections; and (ii) the provision for imposing a penalty of upto twenty percent of the sale price of the property if objections are found malafide or aimed at delaying the sale. (…) As evident from the above analysis, clauses (a) and (b) of Section 19(7) of the Ordinance are not comprehensive provisions regarding objections to the sale of property in the execution of a decree. They do not specify who can make objections or the grounds on which objections can be made. Therefore, these clauses cannot function independently of Rule 90 of Order XXI, CPC, regarding objections to the sale of property in the execution of a decree. It is worth noting that since Section 141, CPC, does not apply to applications under Rule 90 of Order XXI, CPC,11 the procedure for investigating objections made under this rule is also summary, as provided in clause (a) of Section 19(7) of the Ordinance. The latter provision merely further prescribes a period of 30 days to complete the investigation of objections through a summary procedure. Clause (b) of Section 19(7) of the Ordinance provides for imposing a penalty of up to twenty percent of the sale

price of the property if objections are found by the Banking Court to be malafide or aimed at delaying the sale of the property. This penalty amount, as discussed earlier, is to be deposited by the applicant, or its security furnished, as per the second proviso to Rule 90 of Order XXI, CPC, before the court entertains the application to set aside the sale. Thus, there is no conflict between the two provisions; clauses (a) and (b) of Section 19(7) of the Ordinance are only complementary to the provisions of Rule 90 of Order XXI, CPC, for the execution of decrees under the Ordinance. A Banking Court is therefore bound to follow both the provisions in the matter of objections made to the sale of property in the execution of a decree.

Conclusions: i) See above analysis No. i.

ii) Under second proviso to Rule 90 of Order XXI, CPC the bar on entertaining the application arises from the failure of the applicant to "deposit such amount not exceeding twenty per cent of the sum realized at the sale, or furnish such security, as the Court may direct". The deposit of the amount, which is required under the proviso, is not to be made by the applicant along with the application but rather it is to be made on the direction of the court.

iii) The purpose of the second proviso is to discourage frivolous objections. It also ensures that the rule is not misused to delay the completion of the sale and expeditious conclusion of the execution proceedings.

iv) The executing court determines the amount required to be deposited under the second proviso to Rule 90 of Order XXI, CPC by considering various factors such as the decretal amount, the time elapsed since filing the execution petition, the sale amount, and the applicant's previous conduct.

v) Provisions of Financial Institutions (Recovery of Finances) Ordinance 2001 have been given an overriding effect over the provisions contained in the CPC. Where a particular procedure has been provided in the Ordinance to deal with a certain matter, a Banking Court cannot apply the procedure provided in the CPC. In case of conflict between the two, the procedure provided in the Ordinance is to be preferred and followed.

vi) Clauses (a) and (b) of Section 19(7) of the Ordinance are not comprehensive provisions regarding objections to the sale of property in the execution of a decree. These clauses cannot function independently of Rule 90 of Order XXI, CPC, regarding objections to the sale of property in the execution of a decree. There is no conflict between the two provisions; clauses (a) and (b) of Section 19(7) of the Ordinance are only complementary to the provisions of Rule 90 of Order XXI, CPC, for the execution of decrees under the Ordinance.

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2. **Supreme Court of Pakistan**
Raja Tanveer Safdar v. Mrs. Tehmina Yasmeen and others
Civil Petition No.3644 OF 2020
Mr. Justice Munib Akhtar, Mrs. Justice Ayesha A. Malik, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3644_2020.pdf

Facts: This Civil Petition impugns Order of the Lahore High Court, which dismissed the writ petition filed by the Petitioner by upholding Order passed by the Governor Punjab as well as Order passed by the Ombudsperson (Mohtasib), Punjab (Ombudsperson) appointed under Section 7 of the Protection against Harassment of Women at the Workplace Act, 2010.

Issues: i) Whether for the application of principle of double jeopardy the case has to be the same as the one that has already resulted in a conviction?
ii) Whether decree under Defamation Ordinance 2002 or major penalty under the PEEDA 2006 or major penalty under the Protection against Harassment of Women at the Workplace Act 2010 will prevent or bar a conviction under the other two laws?
iii) Whether the defamation suit and its decree will oust the jurisdiction of the Protection against Harassment of Women at the Workplace Act 2010?
iv) Whether the High Court can interfere in its constitutional jurisdiction on findings of facts recorded by competent court, tribunal or authority?

Analysis: i) The protection given under Article 13(a) of the Constitution is against prosecution and punishment, which means the trial and its proceedings followed by a conviction. The Muhammad Ashraf case clarified that if the first prosecution results in an acquittal, so far as Article 13(a) of the Constitution is concerned, the second prosecution is not prohibited. The concept of double jeopardy essentially means that a person cannot be tried multiple times for the same offence on which there is a conviction based on the same set of facts as they should not be put in peril twice. It is based on the rule of conclusiveness and finality which requires that once a court has taken cognizance of an offence, tried a person and convicted them, then for the same offence that person cannot be tried again. So, the basic question is that in the case of double jeopardy, the second trial should be on the same set of facts of the first trial which resulted in a conviction for the same offence, which would require the same evidence before the court. Basically, this means that the case has to be the same as the one that has already resulted in a conviction but if the proceedings are different in substance and law then it will not be a case of double jeopardy.
ii) As per the aforementioned orders, there are three different decisions under three separate laws against the Petitioner. Each of these laws are special laws which operate within their given jurisdiction and can result in penal consequences if the requirements of the law are fulfilled. The cause of action accrues to the party only when the ingredients of defamation under Section 3 of the 2002 Ordinance are established. Once these essential components of defamation are proved, through the evidence, then the aggrieved party is entitled to a remedy. In terms of the 2010 Act, harassment means gender-based harassment and discrimination, which can be sexual in nature. Any action that causes interference with work performance or creating an intimidating, hostile or offensive work environment falls within the definition of harassment under Section 2(h) of the

2010 Act. The said Act operates for a very specific purpose which is to determine whether there has been any harassment at the workplace by an employer against an employee. Lastly, as far as PEEDA is concerned, it is for misconduct by levelling false and fabricated allegations against Respondent No.1, which is a separate and distinct cause of action against the Petitioner. Hence, a conviction under any of these laws will not prevent or bar a conviction under the other two laws which operate within their own domain for a specific purpose.

iii) We also find that the comparison of the decree of defamation and orders under the 2010 Act, causing harassment to Respondent No.1, is totally misconstrued. Harassment under the 2010 Act goes to the basic and most fundamental of rights, that being the right to dignity, where a citizen must be able to live and work with respect and value.13 The preamble of the 2010 Act begins by recognizing the constitutional command of the inviolability of human dignity as envisioned in Article 14 of the Constitution. Dignity is, thus, an inherent right well-accepted in the international legal order,14 which ensures that everyone who works has the right to just and favourable remuneration ensuring an existence worthy of human dignity, which is supplemented by social protection. Respectability, acceptability, inclusivity, safety and equitability are the prerequisites for a safe and dignified workspace. This is a crucial objective of the 2010 Act being to uphold and protect the right of dignity of employees at the workplace by ensuring fair treatment, nondiscrimination, mutuality of respect, and socio-economic justice. These statutory objectives are also in conformity with the Principles of Policy set out under Articles 37 and 38 of the Constitution, which promotes social justice and the social and economic well-being of the people. Hence, the argument that the defamation suit and its decree will oust the jurisdiction of the 2010 Act is misconceived and without basis.

iv) There is another important issue in the instant case. We note with reference to this case that Respondent No.1 filed her complaint before the Ombudsperson which was then challenged by the Petitioner before the Governor Punjab. Both these forums are forums of fact where parties can lead their evidence for a factual determination. Therefore, the Order of the Governor will be the final order on the factual side, which cannot be then challenged before the High Court in constitutional jurisdiction in the form and substance of a second appeal on the facts of the case. The High Court cannot interfere in its constitutional jurisdiction on findings of fact recorded by the competent court, tribunal or authority unless the findings of fact are so perverse and not based on the evidence which would result in an error of law and thus, justified interference.15 Therefore, for all intents and purposes, the factual controversy comes to an end after the Order of the Governor, and if, there is any jurisdictional defect or error and procedural improprieties of the fact-finding forum only then the High Court can interfere. In various matters such as service, family, tax, and customs, this Court has consistently restricted the High Court’s powers exercised in the constitutional jurisdiction in terms of determining the factual controversy while simultaneously enhancing the domain of the fact-finding forums.

Conclusion: i) For the application of principle of double jeopardy the case has to be the same as the one that has already resulted in a conviction but if the proceedings are different in substance and law then it will not be a case of double jeopardy.
ii) Decree under Defamation Ordinance 2002 or major penalty under the PEEDA 2006 or major penalty under the Protection against Harassment of Women at the Workplace Act 2010 will not prevent or bar a conviction under the other two laws.
iii) The defamation suit and its decree will not oust the jurisdiction of the Protection against Harassment of Women at the Workplace Act 2010.
iv) The High Court cannot interfere in its constitutional jurisdiction on findings of facts recorded by competent court, tribunal or authority unless the findings of fact are so perverse and not based on the evidence which would result in an error of law and thus, justified interference.

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3. **Supreme Court of Pakistan**
Mst. Iqbal Bibi and others v. Kareem Husain Shah and others
Civil Appeal No. 1229 of 2018
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1229_2018.pdf

Facts: The respondents filed suit for declaration of their title regarding suit-land agitating that power of attorney, basis for rival claim of title of suit land, was a forged and fabricated document; that mutations attested on the basis of that power of attorney were also illegal, which called for correction of the revenue record and cancellation of the aforementioned mutations. The said suit was decreed. The Appellants filed an Appeal which was dismissed. Subsequently, the Appellants filed Civil Revision before the High Court concerned which was also dismissed, hence this Appeal.

Issues: i) How a Power of Attorney, executed in a foreign country, qualifies for the presumption of execution and authentication available as per Article 95 of the *Qanoon-e-Shahadat* Order, 1984?
ii) If the purported seller or donor does not challenge that action of "actual denial of his right" within the prescribed limitation period despite having knowledge of his right to do so, then whether the alleged wrong entry in the subsequent revenue record (*Jamabandi*) does give rise to a fresh cause of action to him?
iii) Whether the suit for cancellation of a registered document is governed by Article 92 or Article 91 of the Limitation Act?
iv)Whether a mere possibility of forming a different view on the reappraisal of the evidence is a sufficient ground to interfere with the concurrent findings of the forums below?

Analysis: i) The presumption as to the authenticity and genuineness of power of attorney has been attached under the provisions of Article 95 of *Qanun-e-Shahadat* Order, 1984. The Court shall presume that every document purporting to be a power of attorney has to have been executed before and authenticated by a notary public, or any Court, Judge, Magistrate, Pakistan Consul or Vice Consul or representative of the Federal Government, was so executed and authenticated. It is for this reason that a power of attorney bearing the authentication of a notary public or an authority is taken as sufficient evidence of the execution of the instrument by the person, who appears to be the executant on face of it.

ii) There are two actions that cause the accrual of right to sue to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right. Every new adverse entry in the revenue record, being a mere "apprehended or threatened denial", relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives a fresh cause of action to such person to institute the suit for declaration. However, the situation is different in a case, where the beneficiary of an entry in the revenue record actually takes over physical possession of the land on the basis of sale or gift mutation and in such a case the time period to challenge the said disputed transaction of sale or gift by the aggrieved seller or donor would commence from the date of such “actual” denial.

iii) The limitation would be governed by the premier relief claimed in the plaint and not by the incidental and secondary relief.

iv) In the exercise of its appellate jurisdiction in civil cases, the Supreme Court as a third or fourth forum, as the case may be, does not interfere with the concurrent findings of the courts below on the issues of facts unless it is shown that such findings are against the evidence available on the record of the case and are so patently improbable or perverse that no prudent person could have reasonably arrived at it on the basis of that evidence.

Conclusion: i) When a Power of Attorney, executed in a foreign country, is duly testified by the Consulate General of Pakistan in that country abroad and registered in Pakistan, only then it qualifies for the presumption of execution and authentication available as per Article 95 of the *Qanoon-e-Shahadat* Order, 1984.

ii) If the seller or donor does not challenge the action of "actual denial of his right" within the prescribed limitation period, despite having knowledge of his right to do so, then repetition of the alleged wrong entry in the subsequent revenue record (*Jamabandi*) does not give rise to afresh cause of action to him.

iii) The suit for cancellation of a registered document is governed by Article 92 of the Limitation Act.

iv) A mere possibility of forming a different view on the reappraisal of the evidence is not a sufficient ground to interfere with concurrent findings of the forums below.

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4. **Supreme Court of Pakistan**
Malik Ahmad Usman Nawaz v. The Appellate Tribunal (Elections Act, 2017) for PP-254 (Bahawalpur-X) Bahawalpur and others
C.P.L.A.244/2024
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._244_2024_07052024.pdf

Facts: The returning officer rejected the nomination papers of the petitioner for reason of difference of signatures on paper and CNIC. The petitioner filed an appeal which was dismissed for different reason of being declared as proclaimed offender. The petitioner assailed the order in writ petition which was also dismissed, hence, this leave petition.

Issues: i) Whether matter of being declared as proclaimed offender can be valid ground for rejection of nomination papers of a candidate?
ii) What is effect on order of Appellate Tribunal rejecting nomination papers on ground other than actually taken for rejection of nomination papers by returning officer?
iii) Whether mismatch of signatures on nomination paper and CNIC is material defect that leads to rejection of nomination paper of candidate?

Analysis: i) It suffices to note that the ground taken against the petitioner could not operate against him as he had admittedly obtained bail from the Peshawar High Court. More generally, the matter of being an absconder or proclaimed offender, and its effect qua the right to contest a general election, has been considered by a learned three member Bench of this Court in judgment in CP Nos. 150 & 152/2024 dated 29.01.2024, titled Tahir Sadiq v Faisal Ali and others (2024 SCP 48). It was, inter alia, observed as follows: "It is also important to note that the disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a person has been so proclaimed, and not to the other cases or matters which have no nexus to that case. For instance, a proclaimed offender is not disentitled to institute or defend a civil suit, or an appeal arising therefrom, regarding his civil rights and obligations. The same is the position with the civil right of a person to contest an election; in the absence of any contrary provision in the Constitution or the Elections Act 2017 ("Act"), his status of being a proclaimed offender in a criminal case does not affect his said right." We respectfully agree. Thus, the ground taken by the learned Appellate Tribunal and upheld by means of the impugned judgment was not sustainable in law.
ii) The failure of the learned Appellate Tribunal to attend to the ground actually taken for rejection of the nomination paper was a material and, in our view, fatal defect in its order which, regrettably, was repeated by the learned High Court in the impugned judgment.
iii) The returning officer has the jurisdiction to reject a nomination paper in terms of s. 62(9) of the Act after a summary enquiry. Clause (d) of subsection (9) allows

for rejection if the returning officer is satisfied that the signatures of either the proposer or the seconder are "not genuine". It will be seen that clause (d) (which deals specifically with the issue of signatures) does not at all speak of the candidate. The rejection of the petitioner's nomination paper for an alleged mismatch between his signatures as on the nomination paper and on his CNIC was therefore not possible in terms of this clause… The nomination paper was signed by the petitioner who, as noted, has never repudiated or disowned the same. The latter part, namely that any declaration or statement had been made with was false or incorrect in any material particular, was also not applicable. Firstly, the candidate's signature is neither a "declaration" nor a "statement" within the meaning of either this provision or s. 60. Secondly, and more importantly, the falsity or incorrectness has to be "material". It is a mandatory legal obligation for the returning officer to apply his mind to the test of materiality and record appropriate reasons in this regard. The order in the present case shows no such thing. Furthermore, the alleged mismatch in signatures was in any case not material. This conclusion is bolstered by a reference to para (ii) of the proviso to s. 62(9).

Conclusion: i) The matter of being declared as proclaimed offender cannot be valid ground for rejection of nomination papers of a candidate

ii) The fact that Appellate Tribunal rejecting nomination papers on ground other than actually taken for rejection of nomination papers by returning officer, is fatal defect in order of Appellate Tribunal.

iii) Clearly, any mismatch in signatures could be "remedied forthwith" within the meaning thereof, and anything capable of being so dealt with (regardless of whether or not it is actually so rectified) cannot be "material" within the meaning of section 62 (9) (c) of Elections Act which can lead to rejection of nomination paper of candidate.

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5. **Supreme Court of Pakistan**
Umar Farooq v. Sajjad Ahmad Qamar and others
C.P.L.As. 210, 212, 213 and 214 of 2024
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._210_2024_15052024.pdf

Facts: The returning officer rejected the nomination papers of petitioner. The petitioner filed appeals against rejection before appellate tribunal which were allowed. The objections to the nomination papers had been taken in the case of the National and Provincial Assembly seats by two persons, who were respectively the contesting private respondents in the leave petitions. Both of these persons filed writ petitions in the High Court against the orders of the Appellate Tribunal. These writ petitions were allowed, hence, these CPLAs.

Issues: i) Whether holding of general election to all assemblies, national and all

provincial assemblies, is mandatory?

ii) Whether allowing holding of general election to all assemblies by virtue of Section 69(1) of the Elections Act, 2017 can override requirement of holding of a general election within 60 or 90 days mandated by the Constitution?

iii) Whether multiple nominations papers can be filed for same constituency and whether rejection of one invalidates the nomination of a candidate?

iv) Whether it is mandatory for the candidate to attend the scrutiny of his nomination papers?

v) Whether a candidate who is alleged to be an absconder can contest elections?

vi) Whether the measure taken through *Habib Akram case* of making of declaration by candidate in relation to criminal cases through filing of affidavit can be applied in General Elections of 2024?

Analysis: i) It is important to keep in mind that in law a general election to each Assembly is distinct and separate. Thus, constitutionally speaking on 08.02.2024 it was not one, but five, general elections that took place. Section 69(1) of the Elections Act, 2017 accommodates simultaneity, though it is again important to understand that this is only permissive and not mandatory.

ii) More particularly, section 69(1) of the Elections Act, 2017, cannot and does not override any requirement mandated by the Constitution itself such as, for example, the holding of a general election within 60 or 90 days (as the case may be) of the dissolution of the concerned Assembly.

iii) As set out in para (i) to the proviso to subsection (9) of s. 62 of the 2017 Act, the rejection of one nomination paper for a constituency does not invalidate the nomination of a candidate "by any other valid nomination paper". Thus, multiple nomination papers can be filed for a candidate for the same constituency and, if so, each has to be scrutinized on its own.

iv) As is well known, Article 225 provides that an election shall not be called in question "except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament)". This relates to a time much after that point in the electoral process with which the learned High Court was concerned and has therefore nothing whatsoever to do with the requirement (if any) for the candidate to be in attendance before the returning officer at the time of scrutiny. Secondly, and in any case, there appears to be no such requirement in law. Subsection (2) of s. 62 is an enabling provision, which makes it permissible (but not mandatory) for, inter alia, a candidate to attend the scrutiny of his nomination paper.

v) What is the position, in the context of contesting an election, of a person who is alleged to be an absconder, i.e., a fugitive from law, or even one who is a proclaimed offender? This question has been considered by a learned three member Bench of this Court in judgment in CP Nos. 150 & 152/2024 dated 29.01.2024, titled Tahir Sadiq v Faisal Ali and others (2024 SCP 48). It was, inter alia, observed as follows: "It is also important to note that the disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a

person has been so proclaimed, and not to the other cases or matters which have no nexus to that case. For instance, a proclaimed offender is not disentitled to institute or defend a civil suit, or an appeal arising therefrom, regarding his civil rights and obligations. The same is the position with the civil right of a person to contest an election; in the absence of any contrary provision in the Constitution or the Elections Act 2017 ("Act"), his status of being a proclaimed offender in a criminal case does not affect his said right." We respectfully agree. Clearly, if a proclaimed offender can contest elections someone who is only alleged to be an absconder can equally do so.

vi) Section 12(2) of the 1976 Act provided that a nomination paper was to be in the prescribed form. "Prescribed" had its usual meaning, and the rule-making power was conferred upon the Commission under s. 107. In exercise of such powers the Representation of the People (Conduct of Election) Rules, 1977 ("1977 Rules") were framed. Rule 3 provided that the nomination paper "by which the proposal is made under section 12" was to be in the various forms as appended to the 1977 Rules. The forms so appended contained a requirement that a candidate make a declaration in relation to criminal cases, in terms substantially the same as those set out in para F of the affidavit in Habib Akram, already referred to above. Thus the said affidavit simply tracked a requirement that had been part of the earlier electoral framework. In contrast, the 2017 Act, while conferring as before rule-making power on the Commission (s. 239) takes the form and contents of the nomination paper entirely out of its jurisdiction and power. A nomination paper has to be in the form set out in Forms A and B to the statute… Therefore, it is our view that Habib Akram, being an interim measure, has ceased to be operative, since the 2018 election cycle has come to an end. It had, and has, no application for the General Elections of 2024 or for any elections held or to be held in the present election cycle. Inasmuch as candidates have been required to file affidavits in terms thereof or with reference thereto for the said General Elections or any elections thereafter, that cannot entail any legal consequences or penalties at any stage of the relevant electoral process, including any election dispute taken, or to be taken, to an Election Tribunal set up under Article 225. This will continue to be so until either the electoral framework relating to nomination papers is altered by primary legislation, or the matters in which the order in Habib Akram came to be made are decided finally and conclusively in the same or similar terms, or the said order is expressly extended by the Court. Certainly, absent any such contingencies, the Commission cannot require candidates for any election in the present election cycle to file such affidavits.

Conclusion: i) Holding of general election to all assemblies, national and all provincial assemblies, is only permissive and not mandatory.

ii) See above analysis No. ii.

iii) See above analysis No. iii.

iv) Subsection (2) of s. 62 is an enabling provision, which makes it permissible

(but not mandatory) for, inter alia, a candidate to attend the scrutiny of his nomination paper.

v) If a proclaimed offender can contest elections someone who is only alleged to be an absconder can equally do so.

vi) Habib Akram case, being an interim measure, has ceased to be operative, since the 2018 election cycle has come to an end. It had, and has, no application for the General Elections of 2024. The Commission cannot require candidates for any election in the present election cycle to file such affidavits.

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6. **Supreme Court of Pakistan**
Shahzad Amir Farid v. Mst. Sobia Amir Farid and others
Civil Petition No.3155-L/2023
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3155_l_2023.pdf

Facts: The petitioner seeks leave to appeal against the impugned order passed by the Lahore High Court whereby his writ petition was dismissed. The conspectus of facts are that due to default in payment of interim maintenance petitioner's defence was struck off and suit for maintenance to the extent of minors was decreed. Subsequently the appeal filed before District Court was also dismissed due to failure to pay interim maintenance.

Issue: Imposing costs in vexatious litigation?

Analysis: The conduct of the petitioner leaves a lot to be desired. It falls significantly short of the expected standards of fairness and amounts to gross abuse of the process of the Court. The persistent dragging of the matter from one court to another constitutes vexatious litigation, and adds to undue delay and overburdening of the Courts. Such frivolous petitions need to be strongly discouraged. Therefore, in view of the callous disregard of the petitioner for the court order to pay interim maintenance and his attempts to delay the payment of decreed maintenance allowance for his minor children, we feel inclined to impose costs on the petitioner in the sum of Rs. 1,00,000/- (Rupees one hundred thousand only) to deter such conduct in the future. The costs shall be recovered by the executing court as part of the decree for maintenance.

Conclusion: Costs of Rs 100,000 imposed as persistent dragging of the matter from one court to another constitutes vexatious litigation and adds to undue delay and overburdening of the Courts.

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7. **Supreme Court of Pakistan**
Muhammad Imtiaz Baig and another, Inayat Ullah. v. The State through Prosecutor General, Punjab, Lahore and another
Muhammad Akram Butt. V. Muhammad Imtiaz Baig and others.
Criminal Petition NO. 1288-L
Criminal Petition NO. 1354-L
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1288_l_2017.pdf

Facts: The petitioners were convicted in case F.I.R for the offences under sections 302/34/109 of the Pakistan Penal Code, 1860 by trial court. Feeling aggrieved, they jointly filed the Criminal Appeal before the learned High Court while the trial court transmitted the Murder Reference for confirmation or otherwise of the sentence of death awarded to the petitioners. A Division Bench dismissed their appeal and maintained the conviction of the petitioners; however, altered their sentence from death to imprisonment for life while extending the benefit of section 382-B Cr.P.C. Resultantly, the Murder Reference was answered in negative. Feeling dissatisfied with the impugned judgment, the complainant has filed the Criminal Petition for Leave to Appeal seeking to set aside the impugned judgment and uphold the judgment of the trial court imposing the death sentence on both the petitioners and the petitioners have filed the Criminal Petition for Leave to Appeal seeking their acquittal against the impugned judgment, whereby their death sentences have been converted into life imprisonment.

Issues: i) What inference can be drawn when a party withholds best available evidence?
ii) What is the proper and legal way of dealing with a criminal case?
iii) How case of counter versions is to be dealt with by the criminal court?

Analysis: i) It has now been well settled that whenever a party withholds the best evidence available, it is presumed in view of Article 129(g) of the Qanun-e-Shahadat Order, 1984 that if such evidence had been produced, it would not have supported the stance of that party.
ii) The proper and legal way of dealing with a criminal case is that the Court should first discuss the prosecution case/evidence to come to an independent finding about the reliability of the prosecution witnesses, particularly the eye-witnesses and the probability of the story told by them, and then examine the statement of the accused under section 342, Cr.P.C; the statement under section 340(2), Cr.P.C. and the defence evidence. If the Court disbelieves the prosecution evidence, then the Court must accept the statement of the accused as a whole without scrutiny. If the statement under section 342, Cr.P.C. is exculpatory, then the accused must be acquitted. If the statement under section 342, Cr.P.C. believed as a whole, constitutes some offence punishable under the law, then the accused should be convicted for that offence only.

iii) In the case of counter versions, if the Court believes the prosecution evidence and is not prepared to exclude the same from consideration, it will not straightaway convict the accused but will review the entire evidence including the circumstances appearing the case at the close before reaching a conclusion regarding the truth or falsity of the defence plea/version. All the factors favouring belief in the accusation must be placed in juxtaposition to the corresponding factors favouring the plea in defence and the total effect should be estimated in relation to the questions viz. is the plea/version raised by the accused satisfactorily established by the evidence and circumstances appearing in the case? If the answer is in the affirmative, then the Court must accept the plea of the accused and act accordingly. If the answer to the question is negative, then the Court will not reject the defence plea as being false but will go a step further to find out whether or not there is yet a reasonable possibility of the defence plea/version being true. If the Court finds that although the accused has failed to establish his plea/version to the satisfaction of the Court but the plea might reasonably be true, even then the Court must accept his plea and acquit or convict him accordingly.

Conclusion: i) Whenever a party withholds the best evidence available, it is presumed that if such evidence had been produced, it would not have supported the stance of that party.

ii) The proper and legal way of dealing with a criminal case is that the Court should first discuss the prosecution case/evidence and then examine the statement of the accused under section 342, Cr.P.C; the statement under section 340(2), Cr.P.C. and the defence evidence.

iii) In the case of counter versions, all the factors favouring belief in the accusation must be placed in juxtaposition to the corresponding factors favouring the plea in defence and the total effect should be estimated in relation to the questions viz. is the plea/version raised by the accused satisfactorily established by the evidence and circumstances appearing in the case.

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8. **Supreme Court of Pakistan**
Imtiaz Latif and others (in Crl.P.No.1690-L), Muhammad Afzal (in Crl.P.No.1691-L) v. The State through Prosecutor General, Punjab, Lahore and another
Criminal Petitions No.1690-L & 1691-L of 2016
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed HasanAzhar Rizvi, Ms. Justice MusarratHilali.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1690_l_2016.pdf

Facts: Tried by the learned Judge, Anti-Terrorism Court in a case vide FIR for offences under Sections 365-A, 392 PPC read with Section 7 of the Anti-Terrorism Act, 1997, the petitioners were convicted and sentenced. The petitioners approached the High Court concerned by filing criminal appeals which were dismissed

through impugned consolidated judgment; hence these petitions for leave to appeal.

Issues: i) What amounts to be an act of terrorism under Section 6 of Anti-Terrorism Act, 1997?
ii) To what extent the presumption of innocence is associated with the accused?
iii) How the two concepts i.e., "proof beyond a reasonable doubt" and "presumption of innocence" are interlinked?

Analysis: i) The act of terrorism under Section 6 of Anti-Terrorism Act, 1997 clarifies that the actions specified in Section 6(2) of Act ibid constitute the offence of terrorism only if such actions are accompanied by the 'design' or 'purpose' specified in clauses (b) or (c) of Section 6(1) of Act ibid. It implies a conscious decision or strategy aimed at achieving a particular outcome. Courts must consider factors such as premeditation, coordination and the existence of a systematic scheme when determining whether an act meets the threshold of having a terrorist "design." The expression "purpose," on the other hand, refers to the underlying reason or objective motivating an action. In fact, *mensrea* is requirement that needs to be established for an act of terrorism. In addition, it is essential to ascertain whether the act in question has instilled a sense of fear and insecurity in the public, a specific community, or any sect.
ii) It is an established principle of criminal jurisprudence that the prosecution must establish its case beyond a reasonable doubt for an accused to be convicted, until then he is presumed innocent. Mere presumption of innocence associated with the accused is adequate to warrant acquittal, unless the Court is fully convinced beyond reasonable doubt regarding the guilt of the accused, following a thorough and impartial examination of evidence available on the record.
iii) The two concepts i.e., "proof beyond a reasonable doubt" and "presumption of innocence" are so closely linked together, that they must be presented as a unit. It is one of the principles which seek to ensure that no innocent person is convicted. A reasonable doubt is a hesitation which a prudent person might have before making a decision. It is the primary responsibility of the prosecution to substantiate its case against the accused and the burden of proof never shifts, except in cases falling under Article 121 of the *Qanun-e-Shahadat* Order, 1984.

Conclusion: i) For an act to be classified as terrorism under Section 6 of Anti-Terrorism Act, 1997, it must have a political, religious, or ideological motivation aimed at destabilizing society as a whole.
ii) The presumption of innocence remains with the accused till such time the prosecution, through the evidence, satisfies the Court beyond a reasonable doubt that the accused is guilty.
iii) The proof beyond a reasonable doubt requires the prosecution to adduce evidence that convincingly demonstrates the guilt of the accused to a prudent person, otherwise he is presumed to be innocent.

9. **Supreme Court of Pakistan**
Govt. of Balochistan thr. its secy. Forest and Wildlife Dept., Quetta & Another v. Ghulam Rasool etc.
Civil Petitions No.183-Q to 195-Q of 2023
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._183_q_2023.pdf

Facts: The Service Tribunal accepted the service appeals of the appellants, wherein their version was accepted. Now, respondents through these civil petitions for leave to appeal have challenged the order of Service Tribunal.

Issues: i) What is meant by the philosophy of natural justice?
ii) Whether the right to a fair trial is a fundamental right?
iii) What is meant by the doctrine of locus poenitentiae?

Analysis: i) The philosophy of natural justice is meant for affording a right of audience before any detrimental action is taken by any quasi-judicial authority, statutory body, or any departmental authority regulated under some law.
ii) The right to a fair trial is a fundamental right, while the vested right, by and large, is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances.
iii) The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. Indubitably, if the order is found illegal, no perpetual right can be claimed on the basis of such an illegal order.

Conclusion: i) The philosophy of natural justice is meant for affording a right of audience before any detrimental action is taken by any quasi-judicial authority, statutory body, or any departmental authority regulated under some law.
ii) Yes, the right to a fair trial is a fundamental right.
iii) The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction.

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10. **Supreme Court of Pakistan**
Attaullah v. The State
Criminal Petition No.35-K/2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._35_k_2024.pdf

Facts: This criminal petition for leave to appeal is directed against the order passed by the High Court of Sindh, Karachi, in Special Criminal Bail Application.

Issues: i) What is pre-supposed in a case of further inquiry?
ii) What does doctrine of further inquiry denote?

iii) What is the object of trial?
iv) What is the principle to regulate the discretion of grant of bail?
v) Whether CSD can be construed as an authority of or under the control of the Federal Government?

Analysis: i) The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime whereas the expression "reasonable grounds" refers to grounds which may be legally tenable, admissible in evidence, and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptuous.
ii) For all intents and purposes, the doctrine of 'further inquiry' denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime.
iii) It is a well-settled exposition of law that the object of a trial is to make an accused face the trial, and not to punish an under trial prisoner. The basic idea is to enable the accused to answer the criminal prosecution against him, rather than let him rot behind bars.
iv) There is no hard and fast rule or inflexible principle to regulate the exercise of the discretion for grant of bail except that the discretion should be exercised judiciously and there is no inexorable principle in the matter of extending bail but it depends on the facts and circumstances of each case while exercising judicial discretion in granting, refusing, or cancelling the facility of bail, which is neither punitive nor preventative, but is based on an important feature of the criminal justice system that cannot be ignored; that just as liberty is precious for an individual, simultaneously, the interest of the society in maintaining law and order is also dominant. In our view, both are immensely indispensable for the survival and perpetuation of a civilized society.
v) The rule of consistency, or in other words, the doctrine of parity in criminal cases, including bail matters, encapsulates that where the incriminated and ascribed role to the accused is one and the same as that of the co-accused then the benefit extended to one accused should be extended to the co-accused also on the principle that like cases should be treated alike but after accurate evaluation and assessment of the co-offenders' role in the commission of the alleged offence. While applying the doctrine of parity in bail matters, the Court is obligated to concentrate on the constituents of the role assigned to the accused and then decide whether a case for the grant of bail on the standard of parity or rule of consistency is made out or not.

Conclusion: i) The case of further inquiry pre-supposes the tentative assessment, which may create doubt with respect to the involvement of the accused in the crime.
ii) For all intents and purposes, the doctrine of 'further inquiry' denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime.

iii) The object of a trial is to make an accused face the trial, and not to punish an under trial prisoner. The basic idea is to enable the accused to answer the criminal prosecution against him, rather than let him rot behind bars.
iv) See above analysis No. iv.
v) See analysis No. v.

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11. **Supreme Court of Pakistan**
Siraj Nizam. v. Federation of Pakistan and others
Civil Appeal No.56-K/2021
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._56_k_2021.pdf

Facts: This Appeal with leave of the Court is directed against the judgment passed by the Federal Service Tribunal in appeal whereby the appeal filed by the appellant was dismissed and his assertion for fulfilling requirement of 05 years' service experience in BPS-17 for promotion was rejected.

Issues: i) What is the scope of appellate jurisdiction?
ii) To what extent the leaned Tribunal can do while having exclusive jurisdiction in the matter relating to the terms and conditions of service of the Civil Servants?

Analysis: i) A right of appeal is most valuable right of every aggrieved person. It is also well-known edict that an appeal is a continuation of the original proceedings and the appellate jurisdiction is always obligated to delve not only on the question of law but on question of facts also. The whole case reopens in the appellate jurisdiction to explore and consider all questions of fact and law whether rightly adjudicated by the lower fora or not. Therefore, the verdict of the appellate court either allowing or dismissing the appeal or modifying the order of lower fora, ought to bring to light conscious and proper application of mind.
ii) The learned Tribunal is an ultimate fact-finding forum constituted to redress the lawful grievances of civil servants and ventilate their sufferings. So for all intent and purposes, the leaned Tribunal has exclusive jurisdiction in the matter relating to the terms and conditions of service of the Civil Servants and can go into all the facts of the case and the relevant law for just and proper decision with this clear distinction and sanguinity that under Article 212 (3) of the Constitution of Islamic Republic of Pakistan, an appeal lies to this Court against a judgment, decree, order or sentence of an Administrative Court or Tribunal only if this Court, being satisfied that the case involves a substantial question of law of public importance and grants leave to appeal.

Conclusion: i) The appellate jurisdiction is always obligated to delve not only on the question of law but on question of facts also.
ii) The leaned Tribunal has exclusive jurisdiction in the matter relating to the terms and conditions of service of the Civil Servants and can go into all the facts of the case and the relevant law for just and proper decision.

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12. **Supreme Court of Pakistan**
Khizar Hayat v. Malik Akhtar Mehmood
Civil Petition No. 760 of 2024
Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._760_2024.pdf

Facts: The respondent instituted a suit for recovery against the petitioner under Order XXXVII Rule 2 CPC on the basis of a pro-note and a cheque. In this regard a decision of Arbitrators was also rendered which confirmed the due amount payable by the petitioner. Being aggrieved, the petitioner filed Regular First Appeal before the High Court, which was dismissed. Consequently, this Petition was filed.

Issue: In what circumstances the concurrent findings of the courts below can be interfered with by the Supreme Court?

Analysis: The impugned judgment passed by the High Court is well reasoned and based on proper appreciation of all factors, factual as well as legal. Neither any misreading or non-reading nor any infirmity or illegality has been noticed from the record which could make a basis to take a view other than taken by the High Court.

Conclusion: The concurrent findings of the courts below can be interfered with by the Supreme Court where any misreading, non-reading, any infirmity or illegality has been noticed from the record.

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13. **Supreme Court of Pakistan**
Province of Sindh and others v. Muhammad Tahir Khan Chandio and others.
Civil Appeal No. 928 of 2020 and CMA No.500-K of 2023 in CA No.928 of 2020
Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._928_2020.pdf

Facts: Through this appeal, by leave of the Court, the appellants have called in question the judgment, passed by the High Court of Sindh, Karachi whereby constitution petition filed by the respondents was allowed.

Issue: Whether the adverse remarks passed in the absence of any party will affect the rights of the said party?

Analysis: Mr. Abid S. Zuberi, learned ASC has argued that the newly added respondents (who are referred to above) were not impleaded as a party to the proceedings before the High Court and they were condemned unheard and adverse observations were passed against them in the impugned judgment, particularly, in paragraph Nos. 17, l B, 19 thereof. (…) Being a valid ground that the adverse

observations so made as referred to above will affect the rights of the newly impleaded respondents, therefore, the same are hereby set aside/expunged.

Conclusion: Adverse observations affect the rights of the party who were not impleaded as a party to the proceedings as they would be condemned unheard.

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14. **Supreme Court of Pakistan**
Mst. Saima Noreen v. The State
Muhammad Shafiq v. The State
Jail Petition No. 181 of 2016 with Criminal Petition No. 154-L of 2016
Mr. Justice Syed Hasan Azhar Rizvi, Mrs. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/j.p._181_2016.pdf

Facts: Both the petitioners challenged their conviction and sentence by filing Criminal Appeal before Lahore High Court, Lahore. Murder Reference was also forwarded to the Appellate Court under section 374 of the Criminal Procedure Code, 1898. While dismissing the appeal of both the petitioners and maintaining their conviction under section 302 (b)/34 PPC, their sentence of death was converted to imprisonment for life as Ta'zir with benefit of section 382-B Cr.P.C, the amount of compensation to be paid to the legal heirs of deceased was ordered to remain intact and murder reference was answered in negative by the Appellate Court vide impugned judgment. Both the petitioners have filed the instant petitions to challenge their conviction and sentence.

Issues: i) What is the effect of material contradictions and discrepancies in testimony of witnesses on prosecution case?
ii) What is the effect of dishonest improvements made by a witness in his statement?

Analysis: i) The statements of PW-3, PW-4, PW-7 and PW-8 reveal of material contradictions and discrepancies which have shaken veracity of their testimony. According to the settled principles, material contradictions in evidence in a criminal case create doubt in the case of the prosecution and lead to reasonable possibility of the witnesses being not truthful.
ii) According to the settled principles of law dishonest improvements made by a witness in his statement to strengthen the prosecution case casts serious doubt about veracity of his statement and makes the same untrustworthy and unreliable.

Conclusion: i) Material contradictions in evidence in a criminal case create doubt in the case of the prosecution and lead to reasonable possibility of the witnesses being not truthful.
ii) Dishonest improvements made by a witness in his statement to strengthen the prosecution case casts serious doubt about veracity of his statement and makes the same untrustworthy and unreliable.

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15. **Supreme Court of Pakistan**
Riasat Ali and Fakhar Zaman v. The State and another
Criminal Petition No.708-L OF 2018
Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._708_l_2018.pdf

Facts: Criminal Appeal filed by the convicts and Murder Reference forwarded by the Trial Court have been decided by the Appellate Court vide common judgment whereby appeal of the petitioners was dismissed and while maintaining conviction under section 302(b) of PPC, their sentence was altered from death to imprisonment for life. The amount of compensation and the punishment in default thereof with benefit of Section 382-B Cr.P.C., was maintained. The Murder Reference was answered in negative by the Appellate Court. Feeling aggrieved of the conviction and sentence awarded by the Appellate Court, the petitioners have filed the instant petition.

Issues: i) Whether blackening is found, if a firearm like shotgun is discharged from a distance of not more than three feet and a revolver or pistol is discharged within about two feet?
ii) Whether the unnatural conduct of eye witnesses qua not immediately taking the injured to the hospital to save their lives creates serious doubt about their presence at the place of occurrence with the deceased?
iii) If an eye witness has not been produced, whether under Article 129(g) of the Qanoon Shahadat Order, 1984 adverse inference is drawn to the effect that had he been produced by the prosecution at the trial, he would not have supported the case of the prosecution?

Analysis: i) The postmortem report of deceased Asadullah Khan mentions about blackened and burnt area of his entrance wound near lower end of his scapula. The distance from which the deceased Asadullah Khan was fired upon was 5.5 feet. According to Modi's Medical Jurisprudence and Toxicology1 blackening is found, if a firearm like shotgun is discharged from a distance of not more than three feet and a revolver or pistol is discharged within about two feet….. The prosecution witnesses have failed to furnish any explanation as to if the deceased Asadullah Khan was fired upon by a rifle of 222 bore from a distance of 5.5 feet, how his entrance wound was surrounded by blackened and burnt area.
ii) According to PWs, the occurrence had taken place on 01.01.2012 at 4:45 pm. As per contents of the postmortem report of deceased Pervez Iqbal, the time between his injury and death was about half an hour while the time between the injury and death of deceased Asadullah Khan was about one hour…… From the above it reveals that deceased Pervez Iqbal remained lying injured at the place of occurrence for half an hour and deceased Asadullah Khan remained lying injured at the place of occurrence for one hour but PWs, claiming to be the eye witnesses, made no efforts to immediately shift both the injured to hospital to save their life. Had PWs been present at the place of occurrence with the deceased, being close

relatives of deceased Pervez Iqbal, they would have immediately taken both the injured to the hospital to save their life…… The unnatural conduct of PWs creates serious doubt about their presence at the place of occurrence with the deceased.
iii) The prosecution has not produced witness Muhammad Nawaz at the trial who was allegedly accompanying PWs and deceased Pervez Iqbal at the time of occurrence. Under Article 129(g) of the QanoonShahadat Order, 1984 adverse inference is drawn to the effect that had he been produced by the prosecution at the trial, he would not have supported the case of the prosecution.

Conclusion: i) Blackening is found, if a firearm like shotgun is discharged from a distance of not more than three feet and a revolver or pistol is discharged within about two feet.
ii) The unnatural conduct of eye witnesses qua not immediately taking the injured to the hospital to save their lives creates serious doubt about their presence at the place of occurrence with the deceased.
iii) If an eye witness has not been produced, under Article 129(g) of the Qanoon Shahadat Order, 1984 adverse inference is drawn to the effect that had he been produced by the prosecution at the trial, he would not have supported the case of the prosecution.

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16. **Supreme Court of Pakistan**
Tariq Zubair Khan v. Mst. Tabassum Khan and others
Civil Petition No. 4194 of 2023
Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4194_2023.pdf

Facts: This Petition under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 directed against order passed by the Islamabad High Court, Islamabad whereby First Appeal against Order filed by the petitioner was dismissed.

Issues: i) Whether sale of property through auction can be challenged under Order XXI, rule 89 or 90 of CPC or by filing objections pursuant to Order XXI, Rule 84 of CPC?
ii) Whether the court is to deem the objections filed in respect of sale through auction within the purview of Order XXI, rule 90 CPC rather than under Order XXI rule 84 CPC?

Analysis: i) Order XXI CPC itself is an exhaustive order and provides a comprehensive mechanism regarding the execution of the decree. For the satisfaction of the decree by the sale of suit property, Court issues a proclamation of sales through public auction in accordance with provisions of Order XXI, rule 66 of CPC. Eventually, the court decides the mode of making the proclamation to comply with provisions of Order XXI, rule 67 of CPC. The next stage in sale through public auction is the deposit of twenty-five percent of the amount of purchase

money followed by the full amount of purchase money on the fifteenth day from the sale of the property to satisfy the requirements of Order XXI, rules 84 and 85 respectively. Any person aggrieved of auction proceedings may make an application under rules 90 or 91 for setting aside the sale on the grounds of irregularity or fraud….. The contention raised by the learned counsel for petitioner, that application was made under Order XXI, rule 84 but it was decided within the limits of Rule 90 of Order XXI, is not tenable in eyes of law….. It is clear from a bare reading of supra rule that the purchaser is required by law to immediately pay twenty-five percent of purchase money and there is no word that suggests objections to auction proceedings may be filed by the owner/legal heirs of the owner of the subject property under this rule. Moreover, petitioner in this case, was not a purchaser but his predecessors in interest are the owner of the subject property, hence, he could not have invoked this rule….. It is evident from the portion reproduced above that Order XXI rule 84 CPC is subject to Order XXI rule 90 of CPC. Hence, the objections were not maintainable under rule 84 CPC.

ii) In the case at hand, the trial court deemed the objections filed by Petitioner as an application under Order XXI, Rule 90 CPC…. Above rule demonstrates that sale may be set aside on the grounds of material irregularity or fraud under Order XXI, Rule 90 CPC wherein the applicant has to establish substantial injury sustained by him owing to such material irregularity or fraud in the sale by public auction. Additionally, applicant has to comply with the second proviso to this rule by depositing twenty percent of the sum realized at the sale. The rationale behind the second proviso is to discourage the frivolous objections frustrating the execution of the decree. In view of above, Trial Court rightly observed that objections are within the purview of Order XXI, rule 90 CPC rather than under rule 84 CPC.

Conclusion: i) Sale of property through auction can only be challenged under Order XXI, rule 89 or 90 of CPC.

ii) Court is to deem the objections filed in respect of sale through auction within the purview of Order XXI, rule 90 CPC rather than under Order XXI rule 84 CPC.

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17. **Lahore High Court Lahore**
Muhammad Ilyas V. The Chairman National Accountability Bureau and 3 Others
W.P No. 5915 of 2020
Mr. Justice Ali Baqar Najafi, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2015.pdf

Facts: Through this Constitutional Petition, the petitioner has challenged order of restriction passed National Accountability Ordinance, 1999, with respect to property as well as the act of placing the *property* under caution and order to include the *property* in the list of confiscated assets for the recovery of fine, in

terms of section 33-E of the *Ordinance*, as arrears of land revenue in connection with another case.

Issues: (i) When the dispute arises between third party on the one side and the real owner and the *benamidar* on the other, what should be taken into consideration to determine as to whether the questioned transaction was a *benami* or not?
(ii) What is the pre requisite to freeze the property or part thereof in possession of the accused or in possession of any relative or associated person, under section 12 (e) of the NAB Ordinance 1999?
(iii) What is the test to determine the reasonable ground as enumerated in Sec.12 (e) of *the Ordinance?*

Analysis: (i) …in the situation when the dispute arises between third party on the one side and the real owner and the *benamidar* on the other, conduct of the parties and surrounding circumstances are to be taken into consideration to determine as to whether the questioned transaction was a *benami* or not.
(ii) Section 12(a) of the Ordinance, which permits NAB authorities or the learned National Accountability Court to pass an order of freezing of any property or part thereof in possession of the accused or in possession of any relative or associated person, itself is dependent upon availability of reasonable grounds.
(iii) while examining section 12, 13 and 23 of the *Ordinance*, reached to the conclusion that *reasonable grounds* as contemplated in the section 12 of the *Ordinance*, requires existence of certain essential facts. The test settled is that the facts and circumstances should be so that it lead a reasonable prudent person to form belief that a property, directly or indirectly, is owned and controlled by an accused under the *Ordinance*. The requisite standard, to pass an order under section 12 of the *Ordinance*, is fixed as more than mere suspicion but less than on the balance of probabilities. It has also been concluded that the power to freeze one's property is subject to judicial scrutiny.

Conclusion: (i) Conduct of the parties and surrounding circumstances are to be taken into consideration to determine as to whether the questioned transaction was a *benami* or not.
(ii) In order to freeze the property under section 12 (e) of the NAB Ordinance 1999, NAB Authorities or National Accountability Courts are required to see whether reasonable grounds are available.
(iii) See above analysis No. iii.

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18. **Lahore High Court**
Muhammad Nawaz v. Muhammad Ilyas & others
R.S.A.No.63469 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2198.pdf

Facts: The present appellant instituted a suit for possession through specific performance of agreement to sell dated 17.10.1993 regarding land in dispute against the respondents.

Issues: i) What is the limitation period for filing a suit for possession through specific performance of agreement to sell?
ii) In case of inconsistency between the findings of the trial Court and the Appellate Court, the findings of which court will be given preference?

Analysis: i) Article 113 of the Limitation Act, 1908 provides three years for filing a suit for possession through specific performance of agreement to sell from the accrual of cause of action when the date of performance is mentioned or if not mentioned from the date of refusal of party against whom the suit for specific performance is filed.
ii) It is a settled principle, by now, that in case of inconsistency between the findings of the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

Conclusion: i) Article 113 of the Limitation Act, 1908 provides three years for filing a suit for possession through specific performance of agreement to sell from the accrual of cause of action.
ii) In case of inconsistency between the findings of the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

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19. **Lahore High Court**
Mst. Nishat Mummunka v. Safdar Raza
R.F.A.No.65083 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1942.pdf

Facts: Through this application under section 5 of the Limitation Act, 1908, the applicant/appellant seeks condonation of delay in filing the captioned appeal on the ground that due to unavoidable circumstances, the appeal could not be filed within time; that the delay is not deliberate and intentional; therefore, by allowing the application in hand, the delay in filing the appeal may be condoned.

Issue: Significance of Limitation Act?

Analysis: Limitation Act is not mere a technicality rather the same operates as substantive law and if no time constraints and limits are prescribed for pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person is allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which is sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of

law. Limitation Act is a substantive law and after lapse of prescribed period provided under law for challenging any order passed against a person and in favour of other valuable right accrues in favour of the opposite party in whose favour an order or judgment is passed and the party aggrieved has to explain delay of each and every day showing sufficient cause.

Conclusion: Limitation Act is a substantive law and after lapse of prescribed period provided under law, the party aggrieved has to explain delay of each and every day showing sufficient cause for seeking condonation.

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20. **Lahore High Court**
Mst. Zubaida Bibi v. Addl. District Judge, etc.
Writ Petition No.77295 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2104.pdf

Facts: The petitioner instituted a suit for Specific Performance of agreement against the respondent No.2 who filed suit for declaration. Trial Court vide consolidated judgment decreed the suit in favour of petitioner and dismissed suit of respondent no. 02, appeals filed against the said consolidated judgment and decree were dismissed and revision petitions were also dismissed. The respondent No.2 filed two separate CPLAs in the Supreme Court of Pakistan which were dismissed. Thereafter, the decree was executed vide execution petition. The respondent no. 03 filed suit for specific performance on the basis of purported agreement to sell against respondent no. 02 which was still pending. Respondent No. 3 filed objection petition against the decree in execution petition which was dismissed as withdrawn. Respondent no. 03 filed applications u/s 12(2) CPC which was dismissed as withdrawn. The respondent No.3 filed second application under section 12(2) CPC before this Court by suppressing the facts that CPLAs from Supreme Court of Pakistan, his objection petition and earlier petition under section 12(2) CPC were dismissed and his aforesaid suit is still pending and under wrong facts obtained order with the observation that the respondent No.3 may file application under section 12(2) CPC before the learned trial Court. The respondent no. 03 filed another application u/s 12 which was dismissed on merits. The respondent No.3 being aggrieved preferred an appeal, which was converted into revision petition and the same was accepted, hence, the instant constitutional petition.

Issue: What is the ruling of the August Supreme Court of Pakistan regarding the proper forum of filing of application under section 12(2) of Code of Civil Procedure, 1908?

Analysis: Ratio of judgment reported as Sahibzadi Mehar-un-Nisa and another v. Mst. Ghulam Sugran and another (PLD 2016 SC 358), considering the principle of merger, the proper forum for filing application under section 12(2), Code of Civil

Procedure, 1908, is Supreme Court of Pakistan. The relevant part of the said judgment is reproduced as under:- '…… It is thus clear that where a matter has been heard and decided by this Court in appeal and the verdict of the lower forum has been affirmed on merits the rule of merger shall duly apply, and thus the application under section 12(2) of the C.P.C. subject to the exceptions mentioned in the concluding part of this judgment can be competently filed before this Court.'

Conclusion: Where a matter has been heard and decided, the application under section 12(2) of the C.P.C. subject to the exceptions can be competently filed before the same Court.

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21. **Lahore High Court**
Defence Housing Authority, Lahore v. Pervaiz Riaz
Civil Revision No.45297 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2189.pdf

Facts: The respondent instituted a suit for possession with permanent and mandatory injunction in respect of land. The petitioner filed an application under Order I, Rule 10, Code of Civil Procedure, 1908 which was still pending when the trial Court passed an order directing the plaintiff/respondent to file amended plaint. The petitioner filed a review application against the said order. The trial Court took up both application under Order I, Rule 10, Code of Civil Procedure, 1908 and review application and dismissed the same vide impugned order; hence, the instant revision petition

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Issues: i) Who is necessary and proper party to the proceedings?
ii) What is the object of Order I, Rule 10, Code of Civil Procedure, 1908?
iii) Whether the Court is empowered under the Order I, Rule 10 to add any person as plaintiff or defendant in the suit at any stage?
iv) Whether application under Order I, Rule 10 is necessary to order that the name of any party improperly joined be struck out?
v) If for deciding the real controversy a person necessary or proper party, then whether the Court can order to implead such person and vice versa?

Analysis: i) It is avowed that only those persons are necessary and proper party to the proceedings, whose interest are under challenge in the suit and without their presence matter could not be decided on merits. The necessary party is one who ought to have been joined and in whose absence no effective decision can take place.
ii) The object of Order I, Rule 10, Code of Civil Procedure, 1908 is to avoid multiplicity of proceedings, litigation and to ensure that all proper parties are before Court for proper adjudication on merits. Once the Court comes to the conclusion that a person applies for becoming a party is a necessary party then the

Court ought to pass an order directing such person to be impleaded as party in the proceedings.

iii) It is well settled proposition of law that Court is empowered under this provision to add any person as plaintiff or defendant in the suit at any stage and even in appeals or to delete any person. Joining of party at any stage is binding in all subsequent proceedings until set-aside in legal manner. Order I, Rule 10 read with section 107 Code of Civil Procedure, 1908 is applicable to appeals and the appellate Court has discretion to substitute or add any person as appellant or respondent provided they are proper and necessary party to the proceedings.

iv) Under Order I, Rule 10, Code of Civil Procedure, 1908, the Court at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, may order that the name of any party improperly joined be struck out. When no relief was sought against a person otherwise his presence was not necessary to enable the Court to settle the controversy, such person may not be added as defendant.

v) The theory of dominus litis cannot be expanded in the matter of impleading the parties because it is the duty of the Court to ensure that if for deciding the real controversy a person is necessary or proper party the Court can order to implead such person and vice versa can also order deletion of any such person from the plaint who is not found to be proper and necessary party.

Conclusion: i) The necessary party is one who ought to have been joined and in whose absence no effective decision can take place.

ii) The object of Order I, Rule 10, Code of Civil Procedure, 1908 is to avoid multiplicity of proceedings, litigation and to ensure that all proper parties are before Court for proper adjudication on merits.

iii) Court is empowered under Order I, Rule 10 to add any person as plaintiff or defendant in the suit at any stage and even in appeals or to delete any person.

iv) Under Order I, Rule 10, Code of Civil Procedure, 1908, the Court at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, may order that the name of any party improperly joined be struck out.

v) If for deciding the real controversy a person is necessary or proper party the Court can order to implead such person and vice versa.

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22. **Lahore High Court**
Muhammad Atif Naveed v. The State
Criminal Appeal No.827 of 2022
Muhammad Ishfaq v. The State
Criminal Appeal No.698 of 2022
The State v. Muhammad Atif Naveed
Murder Reference No.41 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC1999.pdf

Facts: Challenging their conviction and sentences respectively awarded to them in case

registered under section 302/324 & 334 PPC, the appellants have filed respective appeals, whereas trial court sent reference under Section 374 Cr.P.C. As all these matters are *inter se* connected, therefore these are being disposed of through this single judgment.

Issues: i) What is the purpose of providing inquest report to the medical officer before the autopsy of deceased victim?
ii) Whether it would be just to convict an accused on the basis of the deposition of an injured eye witness, without adjudging his credibility?
iii) What is effect of delay of 2/3 days in recording statement of a witness under section 161 of the Criminal Procedure Code, 1898 in connection with a homicide incident?
iv) What would be effect of doubt which arises on the basis of contradiction between-the statement of an eyewitness and the medical evidence?

Analysis: i) The inquest report is a document prepared under Rule 35 of Chapter 25 of Police Rules, 1934 and its circumspective perusal gives traces about the manner in which investigation of a homicide case is conducted on the first day and besides that it also gives clue about the veracity of prosecution's claim regarding the prompt registration of F.I.R. The most important aspect is the brief facts of the case required to be mentioned on its last page. The inquest report is a document which is essentially required to be provided to the medical officer for holding of postmortem examination.
ii) For handing down guilty verdict to an accused in a murder incident, the testimony of an injured eye-witness is still required to be tested on the touchstone of the principles laid down for the appraisal of evidence. To say that an injured witness of murder incident seldom tells lie might be true in a case of single accused but is an overstatement when the number of assailants is more than one.
iii) Delay in recording statement of a witness under section 161 of the Criminal Procedure Code, 1898 gives vent to many hypotheses about the truth behind his statement leaving it unworthy of any credence. In addition, it gives clue that the actual assailants were previously not known to such or the accused were falsely grilled in the case through the tool of substitution with actual unknown assailants.
iv) The medical evidence gives clue about the truth behind the depositions of eyewitnesses regarding their stance of having seen the incident, which enables the Court to adjudge the veracity of an eyewitness for administering justice in an impeccable manner.

Conclusion: i) The purpose of providing inquest report to the medical officer before the autopsy apparently is aimed at safeguarding the record from becoming vulnerable to the impurity of tampering through which the delayed F.I.Rs are shown to have been promptly registered.
ii) It would be wholly unjust to raise the superstructure of conviction of an accused on the basis of deposition of an injured eye witness without subjecting it to strict test of scrutiny for adjudging his credibility.

iii) The delay of even of 2/3 days in recording statement of a witness under section 161 of the Criminal Procedure Code, 1898 in connection with a homicide incident is always considered fatal and may be ousted from consideration if no legally admissible explanation about it is offered.
iv) The contradiction between the statement of an eyewitness and the medical evidence gives rise to a doubt, legitimate benefit whereof would be extended to the accused facing charge of murder.

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23. **Lahore High Court**
Writ Petition No.50 of 2024
Muhammad Maroof and others v. Mst. Mariam Farooq and others
Mr. Justice Mirza Viqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2024LHC2111.pdf

Facts: One of the respondents alongwith his mother/respondent instituted a suit for recovery of maintenance allowance, dowry articles, gold ornaments, currency in the form of Euro, documents as well as alternate price impleading the petitioners, who are his paternal uncles, and his grandfather, who passed away during the proceedings before the Family Court, in the array of defendants. The suit was decreed. The petitioners preferred an appeal, whereas the respondents also challenged the judgment and decree of the Family Court through a separate appeal, however, both the appeals were dismissed by way of impugned consolidated judgment, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issue: Whether, in case of death of father, responsibility of maintaining the minor child shifts upon his close relatives, including the paternal uncle?

Analysis: In order to transform the provisions relating to the maintenance, Section 9 of the Muslim Family Laws Ordnance 1961 was amended through Muslim Family Laws (Amendment) Act, 2015 and Sub-Section 1-A was added. Section 17-A of the West Pakistan Family Courts Act, 1964 was also substituted through Family Courts (Amendment) Act, 2015 so as to safeguard the rights of wife and children during pendency of the suit. If the properties left by deceased grandfather have devolved upon minor orphan grandchild and his paternal uncle and these are under possession of the paternal uncle who is deriving benefits therefrom, then such uncle has responsibility towards minor. There is a command by the Almighty *Allah* in Surah 6; Al-An'am, Ayat: 152 prohibiting the use of property of the orphans. As the paternal uncle is deriving benefits from the properties inherited from his father/grandfather of minor orphan, so he is liable to pay the maintenance till handing over the share of the minor orphan grandchild in the estate left by the deceased grandfather. If the minor had no property or the income from his/her properties is insufficient to meet his/her needs after its possession has been handed over to him/her, the paternal uncle would be liable to pay 2/3rd of the

maintenance fixed by the court on account of the kinship and rest of 1/3rd would be contributed by the mother of such minor.

Conclusion: In case of death of father, responsibility of maintaining the minor child shifts upon his close relatives, including the paternal uncle.

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24. **Lahore High Court**
Saif Power Limited v. Sui Northern Gas Pipelines Limited etc.
R.F.A. No.1630/2024
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2024LHC2172.pdf

Facts: Through these regular first Appeals under Section 39 of The Arbitration Act, 1940, the appellants have challenged the validity of orders passed by the learned Civil Judge who dismissed the objection petition of the appellants, made Award rule of the Court and modified the Award by awarding interest from the date of decree.

Issues: i) Whether the Court has jurisdiction to modify, amend award or grant interest on award?
ii) Whether arbitrator can award interest on compensation amount?

Analysis: i) Under Section 15 of the Arbitration Act, 1940, the Court has jurisdiction to modify, amend or correct the Award and u/s 29 the court is empowered/competent to allow interest of award from the date of decree till payment.
ii) Under Section 29 of the Arbitration Act, 1940, the Court has a power to grant interest on the compensation. In the Act ibid no such provision is available which empowers the arbitrator to award interest on compensation amount.

Conclusion: i) Under Section 15 of the Arbitration Act, 1940, the Court has jurisdiction to modify, amend award or grant interest on award.
ii) The arbitrator cannot award interest on compensation amount.

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25. **Lahore High Court**
Sheikh Kamran Shafi & others v Sadaqat Shafi & others
C.O. No.06 of 2014 & C.M. No.314-C of 2015
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1974.pdf

Facts: The petitioners filed the application under Order VII Rule 11 CPC read with Section 151 CPC seeking rejection of the main civil original petition filed by the respondents under Sections 290, 291 & 292 of the Companies Ordinance, 1984.

Issues: i) What is the statutory criteria for maintainability of petition filed under section 290 of the Companies Ordinance 1984?

ii) What is the judicial consensus on when to allow an application under section 265 of the Companies Ordinance 1984, for seeking investigation in a company?
iii) Whether mentioning the wrong provision of law would prevent the court from exercising its authority?

Analysis: i) Section 290 of the Companies Ordinance, 1984, authorizes any member or members holding not less than twenty per cent of the issued share capital of a company, to make an application to the Court. The pre-requisite qualification for making petition under said provision of law against mismanagement and malpractice in company is that petitioners must hold 20% of issued share capital of such company. In absence of any proof of such prescribed share capital, a petition cannot be held maintainable under Section 290 of the Companies Ordinance, 1984.

ii) In proceedings under section 265 of the Ordinance, full-fledged inquiry in the form of a trial is not required to be held nor any formal evidence is to be recorded. Needless to observe that before passing the order under section 265 of the Ordinance, the Court has to only satisfy itself prima facie, of course, on the basis of the material placed before it, that a case for investigation through an Inspector is called for and it is for the Inspector to ascertain and determine the truth or otherwise of the allegations during the investigation to be conducted by him whereafter he will submit the report to the concerned authority. The matter in fact rests in the discretion of the Court, to be decided after following the summary procedure as laid down in section 9 of the Ordinance.

iii) The mentioning a wrong provision of law in a petition would not prevent the court from exercising its proper authority and appropriate jurisdiction vested under the law, keeping in view the circumstances of a case.

Conclusion: i) Section 290 of the Companies Ordinance, 1984, authorizes any member or members holding not less than twenty per cent of the issued share capital of a company, to make an application to the Court.

ii) In proceedings under section 265 of the Ordinance, full-fledged inquiry in the form of a trial is not required to be held nor any formal evidence is to be recorded rather the Court has to only satisfy itself prima facie, of course, on the basis of the material placed before it, that a case for investigation through an Inspector is called for.

iii) The mentioning a wrong provision of law in a petition would not prevent the court from exercising its proper authority.

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26. **Lahore High Court**
M. Ihsan @ Malkoo etc. v. The State etc.
Criminal Appeal No.78896/2019
The State v. Ihsan @ Malkoo
Murder Reference No.361/2019
Hasnat Ahmad v. The State etc.
Criminal Revision No.2212/2020
Mr. Justice Asjad Javaid Ghural, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2091.pdf

Facts: The appellants have challenged the vires of judgment passed by ASJ in respect of offences u/s 302, 324, 337-F(i) & 34 PPC whereby they were convicted and sentenced. Murder Reference is sent up by trial court for confirmation or otherwise of death sentence of one of appellant and the complainant filed criminal revision seeking enhancement of sentence of respondent no. 02.

Issues: i) What is object of section 34 of PPC in holding a person responsible for a criminal act or wrong committed by another?
ii) What are pre-requisites for attracting the provisions of section 34 of PPC?
iii) Whether mere presence of a person with principal accused is sufficient to hold such person guilty of vicarious liability?
iv) Whether Court is bound only to record testimony of a person whose statement u/s 161 CrPC was recorded by police?
v) Whether mere relationship of the eye-witnesses with the deceased is sufficient to discard their evidence?
vi) Whether prosecution is bound to produce all witnesses?
vii) Whether question of quantum of sentence, requires utmost caution and thoughtfulness on the part of the Court?
viii) Whether any special circumstance is required to consider mitigation for converting the sentence of death into imprisonment for life?
ix) What is proper course for the courts, when a case qualifies the awarding of both sentences of imprisonment for life and that of the death?

Analysis: i) Ordinarily, every accused is individually responsible for a criminal act done by him. No one can be held responsible for an independent act or wrong committed by another. However, Section 34 PPC makes an exception to this principle. The main object for enactment of the aforesaid provision is to meet a case in which it is difficult to distinguish between act of each individual being members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them. If A,B and C make a plan to kill D and in the execution of the crime, A buys a poison, B mixes it in food and C gives it to D, as a result of which D dies, it would be unjust to hold only C liable for murder.
ii) After survey of almost entire law qua the enactment of provisions of Section 34 PPC, the Apex Court lastly laid down following pre-requisites for attracting the provisions of aforesaid Section:- "(a) It must be proved that criminal act was done by various persons (b) The completion of criminal act must be in furtherance of

common intention as they all intended to do so. (c) There must be a pre-arranged plan and criminal act should have been done in concert pursuant whereof. (d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention. (e) The real and substantial distinction in between `common intention' and `similar intention' be kept in view."

iii) Mere presence of the appellant with the principal accused in the absence of any pre-arranged plan or sharing of common intention between them is not sufficient to hold him guilty of vicarious liability.

iv) A proper procedure for recording of prosecution evidence, after framing of charge has been laid down in Section 265-F of Cr.P.C. Nowhere in the said section a prohibition has been contained that the Court is bound only to record the testimony of a person, whose statement U/S 161 Cr.P.C. was recorded by the police. Sub-Section (2) of said section reads as under:- "(2) The Court shall ascertain from the public prosecutor or, as the case may be, from the complainant, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon such persons to give evidence before it." Here in the instant case, said witness sustained injury during the occurrence and even his name was reflecting in the calendar of witnesses. The Medical Officer (PW-3), who conducted his medico legal examination ruled out any possibility of fabrication qua the injury sustained by him, therefore, none else is more aware of the facts than the said witness and his testimony cannot be excluded merely for the reasons that the Investigating Officer due to negligence or with malafide intention did not record his statement U/S 161 Cr.P.C.

v) It is well established principle in criminal administration of justice that mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence, if the same was otherwise found confidence inspiring and trustworthy.

vi) Next objection of the defence was that one of the witnesses namely Azhar Hayat mentioned in the crime report was given up by the prosecution, so the inference could be drawn that he was not ready to support the prosecution version. This submission is repelled. It is well settled by now that the prosecution is not bound to produce all the witnesses. If the appellant was sure that this witness was not ready to support the prosecution witnesses, he had ample opportunity rather at liberty to examine him in his defence or even submit application before the trial Court to summon him as Court Witness but merely on that basis other overwhelming and confidence inspiring prosecution evidence cannot be discarded.

vii) It is well settled by now that question of quantum of sentence, requires utmost caution and thoughtfulness on the part of the Court.

viii) It is well settled that no special circumstance is required to consider mitigation for converting the sentence of death into imprisonment for life rather an iota of single instance is sufficient to justify lesser sentence.

ix) It is settled principle of law that when a case qualifies the awarding of both sentences of imprisonment for life and that of the death, the proper course for the Courts, as a matter of caution, is to give preference to the lesser sentence.

Conclusion: i) The main object for enactment of the aforesaid provision is to meet a case in which it is difficult to distinguish between act of each individual being members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them.
ii) See above analysis No. ii.
iii) Mere presence of a person with principal accused in the absence of any pre-arranged plan between them is not sufficient to hold such person guilty of vicarious liability.
iv) There is no prohibition that the Court is bound only to record testimony of a person whose statement u/s 161 CrPC was recorded by police.
v) See above analysis No. v.
vi) The prosecution is not bound to produce all the witnesses.
vii) See above analysis No. vii.
viii) See above analysis No. viii.
ix) See above analysis No. ix.

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27. **Lahore High Court**
Manzoor Ahmad v. Muhammad Umar Farooq etc.
Crl. Misc. No. 78015/CB/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2159.pdf

Facts: The petitioner, through this Application before the High Court, under section 497(5) of the Code of Criminal Procedure 1898, seeks cancellation of the pre-arrest bail of juvenile respondent, wherein he was granted pre arrest bail by the Court of Session.

Issues: i) Whether the juvenile justice system was designed to address the unique needs and circumstances of young individuals?
ii) Whether International law recognizes the importance of protecting the rights of juveniles?
iii) Whether Article 37 of The United Nations Convention on the Rights of the Child contains fundamental principles regarding child detention?
iv) Whether Article 40 of the UNCRC emphasizes the right of every child to be treated in a manner consistent with the promotion of their sense of dignity and worth?
v) Whether the best interests of the child is a dynamic and continually evolving concept?
vi) Whether Juvenile Justice System Act 2018, can be classified as both remedial and beneficial legislation?

vii) Whether courts should adopt a holistic and purposive approach while interpreting the JJSA?
viii) What the JJSA marks a paradigm shift in the treatment of juvenile offenders within the criminal justice system?

Analysis: i) The juvenile justice system is a specialized legal framework designed to address the unique needs and circumstances of young individuals who come into conflict with the law. It prioritizes rehabilitation, reintegration, and the best interests of the child. It contrasts with the adult criminal justice system, which primarily focuses on punishment and deterrence.

ii) The International law recognizes the importance of protecting the rights of juveniles in conflict with law. It aims to strike a balance between holding children accountable for their actions and providing them with the support and guidance they need to become productive members of society. The United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, is the most comprehensive international treaty addressing children's rights, including those in the aforementioned category.
iii) Article 37 of the UNCRC contains fundamental principles regarding child detention. It mandates that States Parties take measures to ensure the following: (a) No child should endure torture or any form of cruel, inhuman, or degrading treatment or punishment. Furthermore, individuals who are under eighteen years of age should not be subjected to capital punishment or life imprisonment without the possibility of release for their offences. (b) No child should be deprived of their freedom unlawfully or arbitrarily. A child's apprehension, confinement, or incarceration must comply with legal provisions and should only occur as a last resort and for the shortest appropriate duration. (c) Every child deprived of liberty should be treated with dignity and humanity. They should be separated from adults unless it is deemed in their best interest not to do so. They should have the right to maintain contact with their family through correspondence and visits, unless extraordinary circumstances warrant otherwise. (d) Every child deprived of liberty should have prompt access to legal and other necessary assistance. They should also have the right to contest the legality of their detention before a court or another competent, impartial authority, with a guarantee of swift resolution.
iv) Article 40 of the UNCRC emphasizes the right of every child to be treated in a manner consistent with the promotion of their sense of dignity and worth, which reinforces their respect for human rights and the fundamental freedoms of others. The Article stipulates that children accused of breaking the law should only be charged for acts that were illegal when committed, and they must be presumed innocent until proven guilty. It mandates prompt notification of charges, access to legal assistance, and a fair trial conducted by an impartial authority. The Article also prohibits coercion to confess guilt and ensures the right to challenge evidence and have decisions reviewed. It emphasizes the need to respect children's privacy throughout legal proceedings. Furthermore, the Article promotes the establishment of specialized laws and procedures for juvenile offenders and

suggests non-judicial approaches when appropriate, provided human rights and legal safeguards are upheld. Lastly, it advocates for various interventions, including counselling and education programs, to address the well-being of children involved in legal matters proportionately to their circumstances and the severity of the offence.

v) The best interests of the child is a dynamic and continually evolving concept. General Comment No.14 (2013)10 provides a framework for assessing it in any given situation. The CRC Committee has stated that it has three dimensions: (a) a substantive right, (b) a fundamental interpretative legal principle, and (c) a rule of procedure. The substantive right ensures that children have their best interests evaluated and given paramount consideration in decision-making processes, applicable to individual children, specific groups, or children in general, as Article 3, paragraph 1 of UNCRC mandates. As a fundamental interpretative legal principle, it dictates that if a legal provision is open to more than one interpretation, the construction which most effectively serves the child's best interests should be chosen, guided by the rights enshrined in the Convention and its Optional Protocols. As a rule of procedure, it mandates that whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child requires procedural guarantees. The Committee emphasizes that in criminal proceedings, the best interests principle applies to children in conflict (i.e. alleged, accused or recognized as having infringed) or in contact (as victims or witnesses) with the law, as well as children affected by the situation of their parents in conflict with the law. The CRC Committee underlines that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives when dealing with child offenders.

vi) The JJSA can be classified as both remedial and beneficial legislation. On the one hand, the Act aims to remedy deficiencies within the juvenile justice system by establishing procedures and standards for the treatment of juvenile offenders. It seeks to ensure that juveniles are treated fairly, provided with necessary support and services, and given opportunities for rehabilitation and reintegration into society. In this sense, it is a remedial legislation. On the other hand, by prioritizing the rights and rehabilitation of juvenile offenders, the Act contributes to their overall well-being and aims to prevent further harm or injustice. Therefore, it can also be considered a form of beneficial legislation. The JJSA also aligns with the concept of social welfare legislation because of its broader implications for promoting the well-being of juveniles and society as a whole.

vii) The courts should adopt a holistic and purposive approach while interpreting the JJSA, considering its remedial objectives in reforming the juvenile justice system and its beneficial aims in promoting the well-being of juvenile offenders and society. In doing so, they should be guided by the above international standards and principles. When construing section 6 of the JJSA, courts would

also consider the principle of lenity, which suggests that they should lean towards the interpretation favouring the accused.

viii) The JJSA marks a paradigm shift in the treatment of juvenile offenders within the criminal justice system. It modifies and amends the law relating to them by focusing on the disposal of their cases through diversion and facilitating their rehabilitation. Recognizing their unique vulnerabilities and the necessity for support, it provides that all offences except heinous ones are to be treated as bailable. However, the practical application of section 6(3) of the JJSA has raised a critical issue. It would be absurd to say that an offence would be considered bailable when a juvenile applies for post-arrest bail and otherwise if he approaches the court for anticipatory bail. In other words, the bail process should not be contingent upon whether a juvenile is seeking post-arrest bail or anticipatory bail because it would introduce an arbitrary distinction that runs counter to the overarching objectives of the JJSA. A juvenile's eligibility for bail should be determined based on the nature of the offence and the specific circumstances of the case rather than the procedural mechanism through which bail is sought.

Conclusion

i) The juvenile justice system is a specialized legal framework designed to address the unique needs and circumstances of young individuals.

ii) The International law recognizes the importance of protecting the rights of juveniles in conflict with law.

iii) Article 37 of the UNCRC contains fundamental principles regarding child detention.

iv) Article 40 of the UNCRC emphasizes the right of every child to be treated in a manner consistent with the promotion of their sense of dignity and worth.

v) The best interests of the child is a dynamic and continually evolving concept.

vi) The JJSA can be classified as both remedial and beneficial legislation.

vii) The courts should adopt a holistic and purposive approach while interpreting the JJSA.

viii) The JJSA marks a paradigm shift in the treatment of juvenile offenders within the criminal justice system.

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28. **Lahore High Court**
Waqas Yaqub v. Adeel Yaqub and another
F.A.O.No.88 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2144.pdf

Facts: The Appellant filed this First Appeal under Section 39 of the Arbitration Act, 1940 against order whereby Civil Judge, proceeded to dismiss his application under Section 34 of the Arbitration Act, 1940.

Issues: i) Whether request for adjournment and filing of power of attorney or Application under Section 34 of the Act, without filing anything else amounts to "stepping into proceeding".

ii) What is the conditions precedent for applying under Section 34 of the Arbitration Act, 1940?
iii) How does the court determine whether to grant a stay under Section 34, considering the requirement to ensure the party applying for stay has not abandoned their right to invoke arbitration after initiating the suit?
iv) What is the test of "STEP IN PROCEEDINGS"?
v) What is the legal status of a pronouncement made by the Supreme Court of Pakistan regarding a question of law, particularly when it is made with the intention of settling the law?
vi) What is the intent of the legislature behind Section 34 of the Arbitration Act, 1940?

Analysis: i) Plain reading of above provision of law makes clear the concept of "step in proceedings" which requires to display unequivocal intention to proceed with the suit and to abdicate right to have matter disposed of through arbitration. (…) The law required that the conduct of the Appellant, in order to be termed as "a step in the proceedings" should have been such as would manifestly display an unequivocal intention to proceed with the suit and give up the right to have the matter disposed of by arbitration. In this connection, the proceedings of the suit reproduced above depict that Appellant had joined Court proceedings on 08.06.2023, when the Presiding Officer was not available on account of some departmental training and on very next date on 24.06.2023 again the Presiding Officer concerned was on casual leave, whereas next order dated 06.07.2023 reflects the only adjournment granted by the Trial Court itself on request of the Appellant for filing of written statement. In such like situation, it has been held in the judgment cited as "Messrs SGEC-AMC JV through Authorized Officer Vs. National Highway Authority through Chairman" (2024 CLD 301) that "a single adjournment granted by the Court in routine, requiring the defendant to file a power of attorney and/or the written statement cannot be termed as 'a step in the proceedings'." Moreover, it is observed in case "BNP (Pvt.) Limited Vs. Collier International Pakistan (Pvt.) Limited" (2016 CLC 1772) that "a single adjournment granted by the Court in routine, requiring the defendant to file a power of attorney and a written statement cannot be termed as 'a step in the proceedings'."
ii) Conditions precedent for application under Section 34 of the Act are that the party applying for stay has not filed written statement or taken "any other steps in the proceedings" indicating that right to invoke arbitration clause is intentionally abandoned in favour of Court proceedings.
iii) Whether to grant stay or not is dependent upon satisfaction of the Court and such order is to be passed by the Court only when it is satisfied that all the requirements and preconditions enumerated have been fulfilled. However, the Court has to necessarily satisfy itself that the party applying for stay has not relinquished or abandoned his right of invoking arbitration clause after filing of suit. In coming to such conclusion the facts and circumstances of each particular

case are to be examined in the light of pleas and other steps taken by the parties. The primary duty of a Court is to look into the facts of the case fairly and squarely and then to decide whether the conduct of the applicant is such as would amount to a participation in the suit itself or an indication of acquiescence in its proceedings. If so, an application under Section 34 of the "Act" would be barred for the simple reason that a party is not allowed to ask for staying the proceeding when he has clearly and willingly participated in them in a manner which can be construed acquiescence therein. If his conduct is such as would indicate that he has acquiesced in the suit, he is shut out from claiming the benefit of the Section 34 of the said Act.

vi) the test for stepping in proceedings for the purpose of said provision of law are: i. whether the party sought an adjournment for filing the written statement; ii. whether the moved application, the contents whereof as well as all the surrounding circumstances that led the party to make the application, display an unequivocal intention to proceed with the suit, and to give up the right to' have the matter disposed of by arbitration. iii. An application of such nature, therefore, should prima facie be construed as a step in the proceedings within the meaning of section 34.

v) It is settled principle that where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 of the Constitution and is binding on all Courts in Pakistan.

vi) The narration of Section 34 ibid makes intent of legislature quite clear that purpose thereof is to drive parties to approach the medium of arbitration first prior to setting in litigation through any other suit, as per their own agreement. The course and mode of arbitration is globally recognized for the purpose of fair and efficient settlement of dispute arising in domestic and international commercial relations. The Courts are always required to support the arbitration proceedings and process to meet with object of the "Act" destined at for cost free, efficacious, effective and amicable resolution of disputes amongst parties.

Conclusions: i) No, a single adjournment granted by the Court in routine, requiring the defendant to file a power of attorney and/or the written statement cannot be termed as 'a step in the proceedings' because the concept of "step in proceedings" requires displaying unequivocal intention to proceed with the suit and to abdicate right to have matter disposed of through arbitration

ii) Conditions precedent for application under Section 34 of the Act are that the party applying for stay has not filed written statement or taken "any other steps in the proceedings" indicating that right to invoke arbitration clause is intentionally abandoned in favour of Court proceedings.

iii) The Court must necessarily satisfy itself that the party applying for stay has not relinquished or abandoned his right to invoke an arbitration clause after filing of suit. In coming to such a conclusion, the facts and circumstances of each case are to be examined in the light of pleas and other steps taken by the parties.

iv) See the analysis portion No.iv.

v) Where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 of the Constitution and is binding on all Courts in Pakistan.

vi) The narration of Section 34 of the Arbitration Act, 1940 makes intent of legislature quite clear that purpose thereof is to drive parties to approach the medium of arbitration first prior to setting in litigation through any other suit, as per their own agreement.

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29. **Lahore High Court**
Khalid Mahmood v. The State and another
Criminal Appeal No. 454-ATA of 2023.
Mr. Justice Muhammad Waheed Khan, Mr. Justice Sadiq Mahmud Khurram.
https://sys.lhc.gov.pk/appjudgments/2024LHC2029.pdf

Facts: Criminal Appeal is filed by accused person against his conviction and sentence passed in respect of offences under sections 11-F(2),11-F(6),11-G,11-N,11-I, 11-J and 11-EE(4) of the Anti-Terrorism Act, 1997.

Issues: i) Whether non-production of eyewitness of the arrest and recovery in the evidence who also took the complaint to the police station for the registration of FIR is fatal to prosecution case?

ii) What are the conditions in which the production of secondary evidence is allowed to prove a document?

iii) Whether any permission of the Court is required for data retrieval from any mobile phone recovered from a suspect without his consent?

iv) Whether a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused?

Analysis: i) Additionally, the said Imdad Hussain 30/CPL, who took the complaint (Exh.PC) to the police station for the registration of FIR, was neither cited as a witness nor his statement under section 161 Cr.PC was recorded nor he was examined as a witness during the trial of the case though he was also an eye witness of the arrest of the appellant and the recovery from the appellant. This aspect of the case has convinced our minds that the whole prosecution case is a figment of the imagination of Muhammad Ashraf 595/UO (PW-3), the complainant of the case.

ii) The provisions of Article 76 of the Qanun-e-Shahadat Order, 1984, declare the conditions in which the production of secondary evidence is allowed to prove a document and it is provided that the same can be done if it is proved that the original document is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person legally bound to produce it, and when, after the notice mentioned in Article 77 of the Qanun-e-Shahadat Order, 1984, such person does not produce it or when the

original has been destroyed or lost or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.

iii) We are also seriously concerned about the extraction of data from a personal mobile phone, may be of an accused, without his consent; which is not a good practice as it opposes to constitutional guarantee of the right to privacy and we feel that if the accused was not ready to accord consent, then at least permission from magistrate should have been taken. Though in this case, the Anti-Terrorism Court supervised the processes of investigation whenever needed but we have not found any such permission in the record nor the learned Deputy Prosecutor General has shown the same to us, therefore, retrieval of data from the mobile phone device (P-6) of the appellant without the consent of accused amounts to self-incrimination prohibited under Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, such evidence is ruled out from consideration.(…) Above expression in Article 13(b) of the Constitution of the Islamic Republic of Pakistan, 1973 clearly indicates that no one can be compelled to be a witness against himself. All above references of law clearly speak that the acquisition of data stored in an information system or seizure of any articles containing such data requires the intervention of the Court either by obtaining a warrant in this respect or otherwise an intimation to the Court after such seizure within 24 hours. Therefore, when any mobile phone is recovered from a suspect, and any data retrieval whereof from the said phone is essential for criminal investigation, it could only be obtained with the permission of the concerned Court with strict regard to privacy rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973.

iv) In criminal cases the burden of proving its case lies on the prosecution and the prosecution is duty bound to prove the case against the accused through reliable evidence, direct or circumstantial and that too beyond reasonable doubt. Besides this, it is a settled principle of law, that if there is an element of doubt as to the guilt of an accused, the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of the doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with the law. Considering all the above circumstances, we entertain serious doubt regarding the involvement of the appellant in the present case. It is a settled principle of law that for giving the benefit of doubt, it is not necessary that there should be so many circumstances rather, if only a single circumstance, creating reasonable doubt in the mind of a prudent person, is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusions: i) Yes, non-production of eyewitness of the arrest and the recovery in the evidence who also took the complaint to the police station for the registration of FIR is fatal to prosecution case.

ii) See above analysis No. ii.

iii) When any mobile phone is recovered from a suspect, and any data retrieval whereof from the said phone is essential for criminal investigation, it could only be obtained with the permission of the concerned Court with strict regard to privacy rights.
iv) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused.

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30. **Lahore High Court**
Abdul Rasheed v. Mehboob-ul-Hassan & another.
Civil Revision No.257/2020
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC1946.pdf

Facts: Instant Civil Revision is directed against concurrent decisions, in terms whereof, suit for specific performance instituted by respondent, was decreed by the trial court and affirmed by first appellate court.

Issues: i) Whether written statement per se has any evidentiary value?
ii) Whether admissibility and proof of execution of documents are different concepts?
iii) Whether it is necessary to produce the scriber of document to prove its execution?
iv) What is the effect of withholding the best piece of evidence?
v) Whether subsequent suit could be decreed based on previous agreement to sell when claim of novation of contract was pleaded, though not proved, without dealing with the question of limitation and bar contained in Order II Rule (2) CPC?

Analysis: i) Even otherwise, written statement per se has no evidentiary value, and anything stated therein cannot per se be treated as piece of evidence, unless proved upon meeting requirements of confrontation – principles enshrined in Article 140 of the Order 1984.
ii) Mere production of certified copy of the application/statements, signed by the lawyers on behalf of their respective clients, cannot be treated as alternate for the requirement to prove factum of compromise reached, and mediated agreement. And respondent failed on this count. Admissibility and proof of execution of documents are different concepts.
iii) Scribe of Exh.P-3 was not produced without any plausible explanation for such inability. This constitutes non- compliance of Article 78 of Order 1984, which requires that handwriting of the author of the document had to be proved.
iv) Failure of respondent No.1 to produce material witnesses fortifies presumption that if those witnesses are produced, they are likely to prejudice the case of respondent–this attracts principle of adverse inference in terms of Article 129 of Qanun-e-Shahadat, 1984.
v) When factum of alleged compromise and execution of Exh.P-3 remained

disproved, plea of novation of contract fails. If there is no novation, no question of protection from rigours of Order II Rule (2) of CPC could be claimed. Since respondent No.1 had pleaded novation, who cannot, upon failing to prove novation, seek decree of specific performance on previous contract–which otherwise became unenforceable by virtue of limitation, by the time subsequent suit was instituted.

Conclusions: i) The written statement per se has no evidentiary value, and anything stated therein cannot per se be treated as piece of evidence, unless proved upon meeting requirements of confrontation–principles enshrined in Article 140 of the Order 1984.

ii) Production of documents and their admissibility as well as the proof and probative value carried by such documents are entirely two different things and should never be used or construed interchangeably.

iii) Yes, it is necessary to produce the scriber of document to prove its execution because Article 78 of Order 1984 requires that handwriting of the author of the document had to be proved.

iv) If the best piece of evidence is withheld by a party, then adverse presumption against such party could be drawn by the court in terms of Article 129 of Qanun-e-Shahadat, 1984.

v) No subsequent suit could be decreed based on the previous agreement to sell when claim of novation of contract was pleaded, but not proved, and without dealing with the question of limitation and bar contained in Order II Rule (2) CPC.

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31. **Lahore High Court**
Ashiq Ali & others v. Ghulam Ali (deceased) through legal heirs, etc.
Civil Revision No.68828 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC2058.pdf

Facts: This Civil Revision, filed under Section 115 of the Code of Civil Procedure, 1908, is directed against the judgment and decree of appellant Court, whereby, the appeal preferred by respondents was allowed and resultantly dismissed the petitioners' suit for declaration with permanent injunction.

Issues: i) Which procedure is to be followed for the allotment by the tenants?

ii) What if the tenant fails to provide the required information or wilfully furnishes incomplete or false declaration?

iii) Which directions are to be followed to ensure that mistakes have not been incorporated in the statements LR-XIV and LR-XV?

iv) Whether in case of joint tenancies the tenants should be allotted the land jointly or individually?

v) Whether there is any responsibility of the concerned Patwari or Revenue Officer and Assistant Commissioner regarding the verification of record provided by the tenants?

vi) Who will maintain Girdawari and "Register Taghayyurat-e-Kasht" as per Rule 39 of the Land Revenue Rules, 1968?

vii) What is the procedure of alteration of an entry once made in the Register Girdawari by Patwari?

Analysis: i) Through Notification No.DSH-473/72/6514- LC(II), dated 11th May, 1972 as modified by Notification No.DSL-946-72/3320-LC(II), dated 18th August, 1972 declared that tenants claiming allotment of surrender and resumed land under sub-paragraphs (1) & (2) of paragraph 18 of MLR 115 of 1972 shall submit declaration in the From LR-XI at any time before the allotment and the allotment shall depend upon the information supplied by the tenant in the said form and said form should be accompanied a certificate that the information is accurate and complete in all respect ….From LR-XI should be submitted personally or through authorized agent to the Deputy Land Commissioner of the district, where the surrendered and resumed land in the cultivating possession of the applicant is situate. … In case the applicant is illiterate, should affix his thumb impression while furnishing the certificate at the end of the Form, which should be attested by a literate person.

ii) If the tenant fails to provide the required information or wilfully furnishes incomplete or false declaration shall liable to action under paragraph 30 of MLR-115 of 1972 which provides rigorous imprisonment for a term which may extend to 07 years in addition to forfeiture of all or part of his immovable property to Government. … If tenant fails to provide the required information or willfully furnishes incomplete or false declaration then he was liable to action under paragraph 30 of MLR-115 of 1972.

iii) It was also directed that statement LR-XIV showing the name and full particulars of the tenants in cultivating possession during the harvests and statement LR-XV showing the particulars of land that was not in cultivating possession of a tenant are to be prepared. These statements are to be verified and certified personally by the Revenue Officer of the Haqla, and the Assistant Commissioner. Not less than 25% of the entries in the statements are to be checked personally by the Deputy Land Commissioner to ensure that mistakes have not been incorporated in the statements. In order to safeguard against any possibility of names of genuine cultivating tenants being excluded and names of undeserving tenants not qualified for allotment being included, it has, further been directed that the statement LR-XIV and LR-XV should be verified and certified personally by the Revenue Officer of the Halqa and the Assistant Commissioner concerned in the revenue estate itself in a 'Jalsa-e-Aam'. Before this verification seven days advance notice should be given to the villagers that an inquiry is to who were in cultivating possession of the resumed land during Kharif 1971` and Rabi 1971-72 would be made by the Revenue Officer/Assistant Commissioner on

the date to be indicated in the notice and that objections would be invited from person disputing the entitlement of the tenants claiming allotment.

iv) To answer a question with regard to "joint tenancies", through Letter No.DSL-1186072/6227-LC(II) dated 27.11.1972 observed that a question has also arisen whether in case of joint tenancies the tenants should be allotted the land jointly or individually. According to the provisions of paragraph 18(1) and (2), the land resumed is to be granted free of charges to the tenants who are shown in the revenue records to be in cultivating possession of it in Kharif 1971 and Rabi 1971-72 and declared that the names of all the tenants should be shown together in the allotment order along with their respective shares. … In case of joint tenancies, the resumed land was to be allotted in the names of all the tenants according to their shares. It was not necessary that the tenant was actually cultivating the land. If he was shown cultivating possession in the revenue record then he was entitled for allotment. Right of appeal, revision and review was also available to the aggrieved party.

v) It was also Standing Instructions to the concerned Patwari to provide information through preparing Statement LRXIV showing the names and full particulars of the tenants in cultivating possession during the harvest and through statement LR-XV showing particulars of land which was not in cultivating possession of a tenant. Said statements were required to be verified by the concerned Revenue Officer and the Assistant Commissioner. Through an inquiry in a Jalsa-e-Aam held in the concerned estates by giving notices to the villagers that an inquiry as to who were in cultivating possession of the resumed land during Kharif 1971 and Rabi 1971-72 and inviting the objections from persons disputing the entitlement of the tenant claiming allotment scrutinized the claim of a tenant. In case of any dispute to ascertain the actual cultivating possession, then Canal Girdwari and Khatoni can also be checked and compared for verification. The Revenue Officer was also bound to ensure that the entries in LR-XVI and LR-XVII were fully corroborated with the entries in the Khasra Girdwari for the relevant period.

vi) Rule 39 of the Land Revenue Rules, 1968 describes that for each estate a crop inspection register (Girdawari) shall be maintained, in Form XXIV and similarly for each estate a register of changes in cultivation, possession and rent to be known as the shall also be maintained by the Patwari in Form XXIV-A in which he will enter such harvest-wise changes as are not disputed and will incorporate the same in the "Register Girdawari" after due checking and attestation thereof by the Field Kannugo and the Circle Revenue Officer. …The crops will be entered in the Register Girdawari as the inspection proceeds. The changes in rights, rents and possession will be noted in the appropriate column. To prevent any error, the Patwari enter his diary a list of all field numbers in which any change of cultivating occupying or rent has occurred and place this list before the field Kannugo at his next visit for verification. Similarly in the Register Taghayyurat-e-Kasht he will enter harvest-wise all changes of cultivating possession, rent, etc. which are undisputed.

vii) Whenever a Patwari has to alter an entry once made in the Register Girdawari, he must enter it in his diary but no such alteration should be made after the 'Dhal Bachh' of the harvest have been drawn up or corrected except with the sanction of the Collector which may be given for the correction of clerical or patent mistakes only. … The field Kannugo is bound to inspect the Patwari's diary and he should check the alterations which have been made in the Register very carefully. Said entries of Register Girdawari would be enter in the Register Haqdarana Zamin. If at the time of preparation of the Register Haqdaran Zamin an entry in the Register Girdawari is found to be incorrect, it will nevertheless be retained unaltered, but the correct entry will be noted in red ink and will be attested by the Kannugo. …A proper procedure is provided for maintaining and preparing the Register Girdawari. The concerned Patwari is bound to enter the Girdawari after inspection. Any change in the existing Girdawari is also entered in a separate Register and duly verified. Said entries of Register Girdawari are entered in the Register Haqdaran Zamin and after preparation of the Register Haqdarana Zamin, the Register Girdawari will be destroyed after twelve years.

Conclusion: i) See above analysis No. i.
ii) If the tenant fails to provide the required information or wilfully furnishes incomplete or false declaration shall liable rigorous imprisonment for a term which may extend to 07 years in addition to forfeiture of all or part of his immovable property to Government.
iii) See above analysis No. iii.
iv) In case of joint tenancies, the resumed land was to be allotted in the names of all the tenants according to their shares.
v) See above analysis No. v.
vi) As per Rule 39 of the Land Revenue Rules, 1968 patwari will maintain Girdawari and "Register Taghayyurat-e-Kasht".
vii) A proper procedure is provided for maintaining and preparing the Register Girdawari. The concerned Patwari is bound to enter the Girdawari after inspection. Any change in the existing Girdawari is also entered in a separate Register and duly verified. Said entries of Register Girdawari are entered in the Register Haqdaran Zamin and after preparation of the Register Haqdarana Zamin, the Register Girdawari will be destroyed after twelve years.

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32. **Lahore High Court**
M/s A & A Pipe Industries, etc. v Federation of Pakistan, etc.
Writ Petition No.26907 of 2024
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC2046.pdf

Facts: Through this Constitutional Petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioners have called into question the vires, validity and legality of conclusion of sunset review whereby the National

Tariff Commission while deciding the review decided to continue definitive Anti-Dumping Duties for another period.

Issues: i) Whether any act, proceedings or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the constitution of commission?

ii) Whether section 70 of the National Tariff Commission Act 2015, stipulates a comprehensive scheme of exercising appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act?

iii) Whether the right to appeal is provided to ensure safe administration of justice?

iv) Whether the writ jurisdiction of the High Court can be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law?

Analysis: i) No act, proceedings or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the Constitution of Commission.

ii) The Section 70 of the Act is an exhaustive provision, which does not only provide the substantive right of appeal and time limitation for preferring and decision of the same but it also lays down the procedural requirements for carrying out the whole appellate procedure. It stipulates a comprehensive scheme of exercising Appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act against appeal preferred by an interested party either against initiation of investigation, preliminary determination or final determination and also provides limitation to as well as it also provides the procedure for hearing the same including chalking out the requirements for a decision of the Tribunal. Moreover, subsection (13) lays down the substantive right of appeal against the decision of the Appellate Tribunal to the High Court. This whole scheme of remedial procedure is clearly suggestive of the fact that a Determination even though a Final Determination under Section 39 is not absolute and is open for scrutiny before the Appellate Tribunal if any interested party, dissatisfied with the same, prefers an appeal before it. It is further evident that the decision of the Appellate Tribunal pronounced under subsection (9) of Section 70 is further open to judicial examination by the High Court under subsection (13) if an interested party still feels dissatisfied prefers so. These two-fold remedies are itself provided by the Act to an interested party whose rights have been determined and adjudged by the Commission and the Appellate Tribunal contrary to his interests and contradictory to the law in his understanding.

iii) The right of appeal is always provided by the law to ensure safe administration of justice and to enable an independent higher forum to dissect the decisions of the lower forum on the scale of true spirit and interpretation of law involved in the matter and to ascertain that no miscarriage of justice was caused by the lower forum. The purpose of providing an Appellate authority is always to further the

cause of justice and to rule out the probability of wrong decision rendered by the first judicial forum or the First Appellate Authority either due to mistake of fact or wrong application of law. Whenever an appeal is preferred by a discontented party before the Appellate Forum/Appellate Tribunal in a case, the said Appellate body is competent to set aside, affirm or modify the decision under appeal and if right of further appeal is available to a party against such decision, the second Appellate body, as in case before the High Court, can similarly affirm, vary or alter the decision of the lower Appellate forum/the Appellate Tribunal.

iv) The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The profound rationale accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute paving the way for availing remedies with precise procedure to challenge the impugned action.

Conclusion: i) No act, proceedings or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the Constitution of Commission.
ii) Section 70 stipulates a comprehensive scheme of exercising Appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act against appeal preferred by an interested party either against initiation of investigation, preliminary determination or final determination.
iii) The right of appeal is always provided by the law to ensure safe administration of justice and to enable an independent higher forum to dissect the decisions of the lower forum on the scale of true spirit and interpretation of law involved in the matter and to ascertain that no miscarriage of justice was caused by the lower forum.
iv) The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. .

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33. **Lahore High Court**
Amjad Ali v The State etc.
Criminal Appeal No.195087 of 2018.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1934.pdf

Facts: The appellant was prosecuted in case FIR registered under Section 376(i) PPC. Learned trial court through its judgment has convicted and sentenced him. The appellant has assailed the said judgment through this Criminal Appeal.

Issues: i) What is the effect of apparent delay in reporting the matter to the police?
ii) Whether any inference can be drawn if investigating officer does not collect anything incriminating from place of occurrence?
iii) What is evidentiary value of contention about abrasions on body during scuffle without medical opinion?
iv) Whether hymen can be healed up in five days after commission of rape?

Analysis: i) When there is apparent delay in reporting the matter to the police and lodgment of the FIR and no explanation whatsoever is available on the record for such delay then, the possibility of due deliberation and consultation by the complainant before reporting the occurrence to the police cannot be ruled out of consideration.
ii) If the investigating officer does not collect anything incriminating from place of occurrence then it can make place of occurrence disputed.
iii)If contention about abrasions on body during scuffle is not materialized through the medical opinion then the witness is not truthful however, claim of resistance/scuffle with accused/appellant could have been taken as a corroborative effect if complete medical examination throws some other form of aggression.
iv) Study shows that only mild submucosal hemorrhages disappear within 3 to 4 days, whereas "marked" hemorrhages persist for 11 to 15 days; therefore, if the rape is committed with any victim forcibly, then in five days hymen cannot be healed up.

Conclusion: i) When there is apparent delay in reporting the matter to the police then, there is possibility of due deliberation and consultation.
ii) If the investigating officer does not collect anything incriminating from place of occurrence then it can make place of occurrence disputed.
iii) If contention about abrasions on body during scuffle is not materialized through the medical opinion then the witness is not truthful.
iv) Hymen cannot be healed up in five days after commission of rape.

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34. **Lahore High Court**
Mehmood v. The State, etc.
Crl. Misc. No. 10-T 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1980.pdf

Facts: Through this petition filed u/s 526 of CrPC, petitioner seeks transfer of trial of a criminal case registered under Sections 324/336/109-PPC to any other Court of competent jurisdiction, at District Headquarter.

Issues: i) Whether apprehension in the mind of a party about injustice at the hands of presiding officer is a ground for transfer of a case?
ii) How bias of a judge can be ascertained and whether mere suspicion of bias renders the decision of a judge void?
iii) Whether a judge who is interested in subject matter of case should hear such

case?

iv) Whether a Magistrate can sit to hear the case if he had practiced as a pleader in the court of Magistrate in such district?

v) Who has duty to ensure that all necessary and reasonable enquiries are made and the responses taken in accordance with the law or the requirements of fair trial?

Analysis: i) It is trite that mere apprehension in the mind of a party about injustice at the hands of presiding officer is no ground for transfer of a case unless it is supported by any material or the circumstances.

ii) Bias of a judge can be projected or highlighted through petition for seeking transfer of case, if it is ascertained from his action or from any other material on the record. Supreme Court of Pakistan while dealing with application for transfer of case highlighted different situations as examples of bias for disqualification of judge to hear the case and held that if bias is based on pecuniary or proprietary interest, small the interest may be, it operates as a disqualification but mere suspicion of bias, even it is not unreasonable, is not sufficient to render decision void. Bias of a magistrate or judge can also be gauged from the fact that he has not allowed the prosecutor to conduct trial and himself took the position as prosecutor, then whole trial stands vitiated.

iii) Halsbury says that the principle, "nemo debt esse judex in causa propria sua" precludes a justice who is interested in the subject-matter of a dispute, from acting as a justice therein". It is the principle of Natural Justice. According to this maxim, the authority giving decision must be composed of impartial persons and should act fairly, without prejudice and bias… Similar principle is in vogue in our jurisdiction as embodied in section 556 of Cr.P.C… Magistrate or Judge however, shall not be considered as party or personally interested if the situation is like one mentioned in the explanation attached to above section…

iv) A Magistrate cannot sit to hear the case if he had practiced as a pleader in the court of Magistrate in such district as mentioned in section 557 of Cr.P.C. As a result, thereof he can recuse from the case.

v) Adversaries in a criminal prosecution, no doubt, are the private parties but State as an important and impartial pillar in between two through the institution of Public Prosecution, is expected to ensure fair trial, due process and equal opportunities to both parties so as to fade out the impression of bias in the mind of a judge against any party. As per para 4.17 of Code of Conduct for Prosecutors issued under section 17 of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 it is the duty of a prosecutor that in accordance with the law or the requirements of fair trial, he shall seek to ensure that all necessary and reasonable enquiries are made and the responses taken into account while taking prosecutorial decisions.

Conclusion: i) It is trite that mere apprehension in the mind of a party about injustice at the hands of presiding officer is no ground for transfer of a case unless it is supported

by any material or the circumstances.
ii) See analysis no. 02.
iii) A judge who is interested in subject matter of case shall not hear such case.
iv) A Magistrate cannot sit to hear the case if he had practiced as a pleader in the court of Magistrate in such district as mentioned in section 557 of CrPC.
v) See analysis no. v.

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35. **Lahore High Court**
Sadia Aziz v. DPO etc.
Writ Petition No. 3109-H of 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC2076.pdf

Facts: Petitioner being mother through this petition seeks custody of her minor son reportedly in the illegal and improper custody of respondent/father of the minor.

Issues: i) Whether a mother, having once waived her right to custody (hizanat) of a minor, cannot reclaim this right at a later time?
ii) What is difference between 'Walayat' and 'Hizanat' with reference to Custody of minor child?
iii) In case of conflicting views expressed in text books on Muslim Law, how are the Courts to determine which view is correct?
iv) What is Shia law regarding Hizanat (custody) of minors concerning the duration of the mother's entitlement to custody?
v) What are the custody rights accorded to mother under Shafi'i Islamic law concerning her daughter?
vi) Whether right to retain custody of child continues with mother after she is divorced by the father of the child?
vii) What are the conditions which disqualify females from the custody of children?
viii) How does Section 491 of the Cr.P.C. empower the High Court to address cases of unlawful detention, and what are the two primary functions of the High Court under this section?
ix) How do the provisions of Section 491 of the Criminal Procedure Code (Cr.P.C.) and Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 intersect in providing relief for individuals in unlawful custody, and how do the High Court Rules and Orders regulate the procedures for both types of petitions?
x) Whether order for recovery of minor can be issued under Article 199 of the Constitution?

Analysis: i) The main stay of the respondent was that once the mother waived her right to take custody, she is precluded to make a re-attempt. Right of hizanat of a mother is recognized in Islam as well as in law; claim of the respondent being guardian of the minor would obviously give way to the right of hizanat till prescribed age of

the minor under the law. The waiving of her right of hizanat has no binding force in the eyes of law and mother cannot be held accountable if at one occasion she had given up her right to hizanat on any condition. She will retain her right of hizanat when there is no disqualification in law of her waiver, therefore, is not disentitled for claiming right of hizanat again.

ii) It is essential to highlight that there is difference between Walayat (Guardianship) and Hizanat (Custody); in Muslim Law, as in almost every other system of law, the father is the natural guardian of the person and property of his minor child but Islam recognizes the mother as having prior right of custody, obvious reason is the nourishment, sustenance, patronage and up bringing of a human child so as to make him/her a useful human being. Mother keeps a caring instinct, therefore, is the suitable person for such task. That was the reason, for custody, the term 'Hizanat' has been used. The word "Hizanat" is derived from the Arabic word "Hizan" which means 'lap of the mother', it denotes giving a child to the mother's lap for caring and rearing. (…) It signifies love, care and affection directly and constantly needed by a male child up to the age of seven years and female child till she attains puberty. Care, love and affection play a vibrant and vital role in developing the nature and character of a person and as such Hizanat can safely be termed as a tribute and privilege of a minor assigned and vested in the mother. The woman who holds the custody is called "Hizana" and she loses the right of hizanat in certain circumstances suggested in the law.

iii) In case of conflicting views expressed in text books on Muslim Law, such as Hedaya, Fatawai-i-Alamgiri, Radd-ul-Mukhtar, Muhammadan Law by Sayyed Amir Ali, etc., how are the Courts to determine which view is correct? " The answer given by the Bench is that where there is no Quranic or Traditional Text or an Ijma' on a point of law, and if there be a difference of views between A'imma and Faqihs, a Court may form its own opinion on a point of law.

iv) Hizanat is regulated through Muslim Personal Law of the parties; under the Shia Law mother is entitled to the custody of male child until he attains the age of two years and if female child until she attains the age of seven years. After the child has attained the above- mentioned age, the custody belongs to the father.

v) It has been observed under Shafei Law that the mother is entitled to the custody of her daughter even after she has attained puberty and until she is married.

vi) As per Para 352 of Muhammadan Law, a guiding book, mother is entitled to custody of male child until he has completed the age of seven years and her female child until she has attained puberty. The right continues though she is divorced by the father of the child. (…) However, if she marries a second husband, stranger to child, in which case custody belongs to the father but subject to determination by learned Guardian Court. (…) From the above discussion, it is clear that under the law mother has a preferential right for custody of a minor till the prescribed age. Even if divorce has become effective between the spouses, mother does not lose her right of hizanat except in the situations mentioned in Para 354 of Muhammadan Law subject to determination by Gurdian Court.

vii) There are certain conditions which disqualify females for custody. Para 354

of Muhammadan Law says that a female, including the mother, who is otherwise entitled to the custody of a child, loses the right of custody in the following situations; (1) if she marries a person not related to the child within the prohibited degrees (Ss. 260-261), e.g., a stranger but the right revives on the dissolution of marriage by death or divorce, or, (2) if she goes and resides, during the subsistence of the marriage, at a distance from the father's place of residence; or,(3) if she is leading an immoral life, as where she is prostitute, or (4) if she neglects to take proper care of the child.

viii) There is another way of looking at things; under section 491 of the Cr.P.C. the High Court exercises two-fold jurisdiction; firstly, to direct the production of a person who is illegally detained to be brought before the Court so as to set him at liberty and secondly, to direct the production of a person so that he be dealt in accordance with law. In the latter case, it is not essential that the detention must be by use of force; if a person has been confined in a manner not warranted by law, in that situation also the Court can issue appropriate direction under Section 491, Cr.P.C.

ix) Proceedings under Section 491 of Cr.P.C can be initiated before the Sessions Judge or Additional Sessions Judges and before this Court if any person is in illegal and improper custody; similar relief can also be sought by a party under Article 199 (1)(b)(i) of the Constitution of the Islamic Republic of Pakistan, 1973 through writ of Habeas Corpus when any person is in custody without lawful authority or in unlawful manner. This Article is usually applicable on malfeasance, misfeasance and nonfeasance of any party with respect to custody of a detenu. However, High Court Rules and Orders do not create any difference in the format of petition and style of orders in both types of petitions. Chapter 4-F, Volume-V of High Court Rules & Orders consists of rules framed by the High Court under Section 491(2) of Code of Criminal Procedure, 1898 which regulate the proceedings on petitions under Section 491 Cr.P.C. (…) Such rules further clarify that Chapter-4, Part-J of above Volume deals with rules for the issue of orders/directions under Articles 199 and 202 of the Constitution of the Islamic Republic of Pakistan, 1973 and clause 27 of the letter patent. According to Part-1 of Part-J referred above, such application shall be governed by rules 1 to 18 of Chapter 4-F, Volume-V of High Court Rules and Orders, which means rules 1-18 cited above shall also be applicable on habeas petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

x) Keeping in view the above explanation, in appropriate cases order for recovery of minor can be issued under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, which is being issued in this case accordingly.

Conclusions: i) The waiving of her right of hizanat by the mother has no binding force in the eyes of law and mother cannot be held accountable if at one occasion she had given up her right to hizanat on any condition. She will retain her right of hizanat when there is no disqualification in law of her waiver.

ii) See above analysis No. ii.

iii) Where there is no Quranic or Traditional Text or an Ijma' on a point of law, and if there be a difference of views between A'imma and Faqihs, a Court may form its own opinion on a point of law.
iv) Under the Shia Law mother is entitled to the custody of male child until he attains the age of two years and if female child until she attains the age of seven years.
v) Under Shafei Law the mother is entitled to the custody of her daughter even after she has attained puberty and until she is married.
vi) The right to retain custody of minor continues, though mother of child is divorced by the father of the child. However, if she marries a second husband, stranger to child, in which case custody belongs to the father but subject to determination by Guardian Court.
vii) See above analysis No. vii.
viii) Section 491 of the Criminal Procedure Code (Cr.P.C.) grants the High Court dual authority: first, to order the presentation of an individual unlawfully detained for release; and second, to compel the presentation of a person for lawful treatment. This provision applies not only to cases of detention by force but also to instances of confinement not justified by law, allowing the Court to issue suitable directives in such circumstances.
ix) See above analysis No. ix.
x) In appropriate cases order for recovery of minor can be issued under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

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36. **Lahore High Court**
China Harbour Engineering Company Limited, etc. v. Z Z Enterprises, etc.
Civil Revision No.54865 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC7746.pdf

Facts: This application under section 115 CPC seeks revision of order passed by the Civil Judge 1st Class whereby suit for recovery along with specific performance of contract filed by respondents No.1 & 2 was considered as commercial case.

Issues: i) Whether functioning of Commercial Courts is without any backing of law and in particular after repeal of the Punjab Commercial Courts Ordinance, 2021 the same is legally invalid?
ii) Whether there is any law relating to the speedy disposal of commercial cases?
iii) Whether rules and orders framed by the Lahore High Court are in accordance with the Constitution?
iv) What is the object of the supervision and control over the subordinate judiciary by the High Court?
v) What is the object of the designated courts for the commercial cases?

Analysis: i) The courts designated to hear cases of commercial nature are functioning in accordance with the CPC and the Rules and Orders of the Lahore High Court

under its superintendence and control within the scope of Articles 202 & 203 of the Constitution… …In order to secure expeditious disposal of cases of commercial nature, the Lahore High Court vide its notification No.6032 DDJ/DR(PD&IT) dated 28.04.2020 designated one court of Additional District & Sessions Judge, Lahore and two courts of Civil Judges to hear and dispose of the said cases with further direction to the District & Sessions Judges, Multan, Faisalabad, Gujranwala and Rawalpindi to entrust the work of commercial cases pertaining to their districts to the Judicial Officers already dealing with the Overseas Pakistanis' cases.

ii) Rule 10, Part-K, Chapter-1, Volume-I of Rules and Orders of the Lahore High Court, Lahore provides that commercial cases should be disposed of as speedily as practicable, which are to include cases arising out of ordinary transactions of merchants, bankers and traders.

iii) Rules and Orders have been framed by the Lahore High Court in accordance with Article 202 of the Constitution that empowers it to do so subject to the Constitution.

iv) Article 203 of the Constitution envisages that each High Court shall supervise and control all courts subordinate to it with the object to establish orderly, honorable, upright, impartial and legally correct administration of justice. The supervision and control over the subordinate judiciary vested in the High Courts under Article 203 of the Constitution is exclusive in nature, comprehensive in extent and effective in operation.

v) The courts of ordinary civil jurisdiction have been designated to hear and dispose of the commercial cases that are dealing with the same in accordance with the procedure provided under the Code of Civil Procedure, 1908 with the sole object to ensure expeditious disposal of the same on priority basis. Thus, for all practicable purposes all courts designated as Commercial Courts under the notification dated 28.04.2020 are essentially Civil Courts exercising jurisdiction under the Code of Civil Procedure, 1908 for expeditious disposal of civil disputes. By considering a case as commercial one, the right of fair trial available to the opposite party is not being compromised since no special procedure has been laid down to dispose of the same.

Conclusion: i) The courts designated to hear cases of commercial nature are functioning in accordance with the CPC and the Rules and Orders of the Lahore High Court under its superintendence and control within the scope of Articles 202 & 203 of the Constitution.

ii) Rule 10, Part-K, Chapter-1, Volume-I of Rules and Orders of the Lahore High Court, Lahore provides that commercial cases should be disposed of as speedily as practicable.

iii) Rules and Orders have been framed by the Lahore High Court in accordance with Article 202 of the Constitution that empowers it to do so subject to the Constitution.

iv) The object of the supervision and control over the subordinate judiciary by the High Court is to establish orderly, honorable, upright, impartial and legally correct administration of justice.

v) The courts of ordinary civil jurisdiction have been designated to hear and dispose of the commercial cases that are dealing with the same in accordance with the procedure provided under the Code of Civil Procedure, 1908 with the sole object to ensure expeditious disposal of the same on priority basis.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification No.44 of 2024, dated 25.04.2024, Statement of conditions for transfer of state/Nazul land earlier allotted to Lahore knowledge Park Company, in favour of Punjab Central Business District Development Authority have been issued.
2. Vide Notification No.45 of 2024, dated 25.04.2024, amendments have been made in Para 1.18 of Punjab Law Department Manual.
3. Vide Notification No.46 of 2024 dated 29.04.2024, amendment has been made in Schedule at Serial No. 33a of Punjab Population Welfare Department Service Rules, 2009.
4. Vide Notification No. PAP/Legis-3(02)/2024/41, dated 30.04.2024, amendments have been made in sections 2, 10, and 12 of the Provincial Assembly of the Punjab Privileges Act, 1972 and in sections 2, 3, and 4 of the Provincial Assembly of the Punjab Secretariat Services Act, 2019.

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Dissolution-of-Marriage-in-Islam-Balancing-Sacred-and-Secular-Perspectives

Dissolution of Marriage in Islam: Balancing Sacred and Secular Perspectives by Kanishka Rathore

Marriage in India is governed by various personal laws. One of these laws is the Hindu Marriage Act of 1955 which considers marriage a religious sacrament. On the other hand, under Muslim law, marriage is considered a contractual relationship that contains all the essential elements of a contract. The primary purpose of marriage in Islamic law is to legalize sexual intercourse and procreation. If a marital dispute arises, divorce ends the relationship. Under Muslim law, there are two modes of dissolution: divorce and talaq. However, the Supreme Court has declared triple talaq, which allowed husbands to divorce their wives by simply uttering the word "talaq" three times, an illegal practice.

2. MANUPATRA

https://articles.manupatra.com/article-details/Intellectual-Property-Rights-in-Sports-Broadcasting

Intellectual Property Rights in Sports Broadcasting by Rohit Bansal

Sports Broadcasting has emerged as a new trend among the businessmen worldwide. This industry has emerged as a multi-billion-dollar industry. At present Broadcasting is one of the best income generating sources for the Broadcasters as well as Sports Organizations. Doing Broadcasting is not a very simple task, it comes with multifaceted challenges for the broadcasters. Broadcasting is concerned with Intellectual Property Rights issues which includes patents, copyright, trademark, Design etc. This research work shows a comprehensive analysis of Intellectual Property rights in Sports Broadcasting. It deals with legal complexity, economic significance, historical development etc. This study explores the complexities of balancing the interests of broadcasters, sports organizations, athletes and consumers while addressing technological advances in this domain.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/ADVOCATING-FOR-ALTERNATIVE-DISPUTE-RESOLUTION-IN-INTELLECTUAL-PROPERTY-RIGHTS-NEED-OF-THE-HOUR

Advocating for Alternative Dispute Resolution in Intellectual Property Rights: Need of The Hour by Vanshika Dabriwal

This paper discusses the importance of Alternative Dispute Resolution (ADR) in Intellectual Property Rights (IPR) disputes in India. It highlights the evolving nature of IPR issues and the need for efficient conflict resolution methods. The paper explores how ADR, including mediation, arbitration, and injunctions, can be utilised to resolve IP disputes effectively and quickly. It emphasises the benefits of ADR in protecting sensitive information, saving time and money, and providing targeted solutions. The paper also examines the remedies available in ADR for IP disputes and advocates for the integration of ADR in the realm of intellectual property for efficient conflict resolution.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Liquidated-Damages-Limitation-Arbitration-Examining-Their-Interplay-In-Contractual-Disputes

Liquidated Damages, Limitation & Arbitration: Examining Their Interplay in Contractual Disputes by Sanjay Dewan

Liquidated Damages are a contractual provision that specifies a pre-determined amount to be paid by one party to another in the event of a breach of contract in the nature of compensation, for the harm or loss incurred due to the breach. The fundamental principle behind the concept of liquidated damages is that parties to a contract agree to payment of a certain sum on the breach of contract in the nature of genuine pre-estimated/determined damages. Thus, when such stipulations are made in a contract, they are known as liquidated damages.

5. **MANUPATRA**
https://articles.manupatra.com/article-details/Cyber-Bullying-A-Surge

Cyber Bullying - A Surge by Zapan Chawla

Cyber bullying is a technology that leads to variants of digital and online abuse. The source of technology can be cell phones, computer, consoles that contains access to internet causing harassment, stalking, doxing, defamation, or attacking someone's reputation.

Though this online abuse is not only restricted to the aforementioned acts but is also troublesome within prevailing online gaming community.

Victims or sufferers of cyberbullying are seldom aware about the identity behind these bullying acts. Perhaps, suspicion formed by victim rarely makes them create a staunch belief over who actually the bully is because acts like trolling and using personal information has become way too mundane in the contemporary scenario.
