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FORTNIGHTLY CASE LAW BULLETIN

(01-07-2024 to 15-07-2024)

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

12.		Impact of a single mitigating circumstance in determining the quantum of sentence i.e. death penalty	Criminal Law	17
13.		Guidelines to be followed in effecting recovery of ransom amount; Adjudging the evidentiary value of call data record (CDR); Techniques to be adopted by IO in cases of abduction/ kidnaping; Effect of appellants death in criminal appeal on the sentence of fine	Criminal Law	18
14.		Driving a vehicle at high speed on the highway is not an offence; Statement of an accused is to be rejected or accepted in toto when prosecution evidence is disbelieved	Criminal Law	20
15.	Lahore High Court	Reading defence of the accused under section of 342 Cr.PC as part of evidence; Drawing of inference where accused has failed to examine himself in his defence	Criminal Law	21
16.		Exercising jurisdiction u/s 439 Cr.PC against order of physical remand after the period of physical remand has lapsed; Purpose and principles governing grant of physical remand; Status of affidavit without attestation by Oath Commissioner; Admissibility of statement of accomplice in derogation of proviso to sec. 337 (1) Cr.PC; Reference to sec. 179 Cr.PC qua involvement of accused in different cases falling in different jurisdictions	Criminal Law	22
17.		Criteria for quashment of FIR; Subsequent investigation by Anti Corruption Establishment where matter has already been adjudicated by NAB	Criminal Law	25
18.		Distinction between inquiry and investigation; Procedure of arrest/ search/ seizure by FIA; Freezing of bank account by FIA; Mandate of sec. 550 Cr.PC	Criminal Law	26
19.		Principles for grant of post-arrest bail on statutory grounds; Impact of abscondance in grant of bail; Withholding of bail on statutory grounds due to registration of other cases apart from act of terrorism	Criminal Law	29
20.		Limitation for the enforcement of a decree; Extension of time for payment of balance consideration of amount after lapse of time mentioned in decree; Implementation of decree of specific performance in revenue record; Starting period of mutation	Civil Law	30
21.		Liability of surety	Civil Law	32
22.		Exceptions to claiming of bail as a matter of right; Construing offence from facts of the case even at bail stage	Criminal Law	32

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Reference by the President of Islamic Republic of Pakistan under Article 186 of the Constitution of Islamic Republic of Pakistan, 1973.
Reference No. 1 of 2011
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Sardar Tariq Masood, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/reference_1_2011_08072024.pdf

Facts: In this reference, the question of law, in essence, is whether the requirements of due process and fair trial were complied with in the murder trial of Mr. Zulfiqar Ali Bhutto (Mr. Bhutto), the former Prime Minister of Pakistan, by the trial court (the Lahore High Court) and the appellate court (the Supreme Court).

Issues: i) Whether a retired judge can sign/give the detailed reasons post retirement, if he has already before his retirement signed a written opinion/short order?
ii) What is the Constitutional scope of the advisory jurisdiction of Supreme Court under Article 186 of the Constitution of Islamic Republic of Pakistan, 1973?
iii) What is the procedure of murder trial under the Cr.PC, 1898?
iv) What is the legal requirement of section 374 of Cr.PC, 1898?
v) Whether the right of access to justice is internationally well recognised human right?
vi) Whether confessions must be voluntary and must not have been obtained from an accused person by fear of prejudice or hope or advantage?
vii) Whether in criminal cases the prosecution needs to set up a motive?
viii) What is the important object of FIR registered section 154 of the Cr.PC, 1898?
ix) Whether the mere allegation or apprehension of prejudice or bias is sufficient to sustain it?

Analysis: i) If a Judge has already signed a written opinion/short order, but then retires, he can sign/give the detailed reasons post-retirement. This also prevents the unnecessary wastage of public resources and court time, which would happen if the bench was to be reconstituted (after the retirement of a Judge) and the entire matter heard again.
ii) Neither the Constitution nor the law provides a mechanism whereby the conviction to convicted person could be set aside. The conviction to the convicted person attained finality after the dismissal of the review petition by the Supreme Court. In advisory jurisdiction of the Supreme Court of Pakistan, under Article 186 of the Constitution, the decision cannot be undone.
iii) A murder trial is conducted by a Court of Session. Appeal against conviction lies before the High Court. Article 185(2) (b) of the Constitution and sections 411-A and 526 of the Code permit trials to be conducted by the High Court, but

these provisions do not provide for a High Court to conduct a murder trial. There was not a single precedent of a High Court conducting a murder trial.

iv) The Section 374 requires that every sentence of death is required to be confirmed by the High Court; a vitally important safeguard against faulty convictions and hasty hangings. The sentence of death which is confirmed by the High Court must also be signed by two judges. When a sentence of death is passed, the High Court to which the matter is sent for confirmation of the conviction and sentence is also empowered to pass any other sentence warranted by law or acquit the accused person.

v) The right of access to justice is internationally well recognised human right and is now being implemented and executed by granting relief under the Constitutional provisions. Article 10 of Universal Declaration of Human Rights and Article 14 of the United Nations Convention on Criminal Political Rights recognize the right of fair trial by an independent and impartial Tribunal established by law. The right of access to justice does not only mean that the law may provide remedies for the violation of rights, but it also means that every citizen should have equal opportunity and right to approach the courts without any discrimination. It also envisages that normally the courts established by law shall be open for all citizens alike. Where the jurisdiction of the ordinary courts established under the ordinary law is excluded or barred and certain class of cases or class of persons or inhabitants of an area are not allowed to approach such courts and are to be tried or rights adjudicated by special courts, then a fair, rational and reasonable classification must be made which have nexus with the object of the legislation. The jurisprudence of fair trial and due process stood established as a fundamental right well before the insertion of Article 10A in the Constitution in 2010. The safeguards to ensure that an accused is fairly and justly treated and that essential requirements of a fair trial and due process are met to the accused.

vi) Confessions must be voluntary and must not have been obtained from accused by fear of prejudice or hope or advantage. And, if the confession directly or indirectly is the result of inducement, threat or promise from a person in authority, it would be treated as not voluntary. It must be ensured that the confessional statement should be absolutely free from the slightest tinge or taint of extraneous influence such as threat, promise or inducement and the courts are placed under an obligation to affirmatively satisfy themselves that it is free and voluntary

vii) It is well established that in criminal cases the prosecution need not set up a motive but if it elects to do so and then fails to establish it the prosecution suffers its consequences. The motives absence or failure to establish it is also consequential in a murder case in which the guilt of the offender is established but the asserted motive is not. In such cases the accused invariably is not given capital punishment, but instead imprisonment for life.

viii) Section 154 of the Code requires that when information of a cognizable offence is given to the police it is required to be recorded by the officer in charge

of the concerned police station. The categorization of reporting of a crime and reducing it into writing as the first information report (FIR), as its name suggests, is the very first information of a cognizable crime received by the police. An important object of the FIR, which courts consider, is that the crime was promptly reported to the police without retrospection and embellishment.

ix) The mere allegation or apprehension of prejudice or bias is not sufficient to sustain it. There must be something tangible and credible which exhibits bias. However, where there is bias it corrodes impartiality, and impartiality is necessary for correct decision making and also to engender the acceptance of decisions. It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

Conclusion: i) Yes, if a Judge has already signed a written opinion/short order, but then retires, he can sign/give the detailed reasons post retirement.

ii) In advisory jurisdiction of the Supreme Court of Pakistan, under Article 186 of the Constitution, the decision cannot be undone.

iii) A murder trial is conducted by a Court of Session. Appeal against conviction lies before the High Court. Article 185(2) (b) of the Constitution and sections 411-A and 526 of the Code permit trials to be conducted by the High Court.

iv) Section 374 requires that every sentence of death is required to be confirmed by the High Court; a vitally important safeguard against faulty convictions and hasty hangings.

v) Yes, the right of access to justice is internationally well recognised human right and is now being implemented and executed by granting relief under the Constitutional provisions.

vi) Yes, confessions must be voluntary and must not have been obtained from accused by fear of prejudice or hope or advantage.

vii) It is well established that in criminal cases the prosecution need not set up a motive but if it elects to do so and then fails to establish it the prosecution suffers its consequences.

viii) An important object of the FIR, which courts consider, is that the crime was promptly reported to the police without retrospection and embellishment.

ix) The mere allegation or apprehension of prejudice or bias is not sufficient to sustain it. There must be something tangible and credible which exhibits bias.

2. **Supreme Court of Pakistan**
Sunni Ittehad Council through its Chairman, Faisalabad and another.v. Election Commission of Pakistan through its Secretary, Islamabad and others
Civil Appeals No. 333 and 334 of 2024 AND Civil Misc. Application No.2920 of 2024/ Civil Petitions No. 1612 to 1617 of 2024 AND C.M.A. No.3554 of 2024 in CP NIL/2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed , Mr. Justice Irfan Saadat Khan,
https://www.supremecourt.gov.pk/downloads_judgements/c.a._333_2024_12072024.pdf

Facts: The matter involved a controversy regarding the allocation of seats reserved for women and non-Muslims. The Sunni Itehad Council ("SIC") did not contest the General Elections of the year 2024. SIC, which demanded allocation of reserved seats on account of inclusion of independent parliamentarians in it, did not secure a single seat in the National Assembly or any of the Provincial Assemblies nor submitted a list of its candidates for seats reserved for women and non-Muslims. The judgment of the learned Full Bench of the KPK High Court and the order of the Election Commission of Pakistan were challenged denying reserved seats to SIC.

Issue: Apportioning seats reserved for women and minorities among political parties.

Analysis: It is declared that the lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in an election (whether general or bye) and to field candidates and the Commission is under a constitutional duty to act, and construe and apply all statutory provisions, accordingly. It is declared that for the purposes, and within the meaning, of paragraphs (d) and (e) of clause (6) of Article 51 ("Article 51 Provisions") and paragraph (c) of clause (3) of Article 106 ("Article 106 Provisions") of the Constitution, the Pakistan Tehreek e Insaf ("PTI") was and is a political party, which secured or won (the two terms being interchangeable) general seats in the National and Provincial Assemblies in the General Elections of 2024 as herein after provided.
The PTI shall be entitled to reserved seats for women and minorities in the National Assembly accordingly. PTI shall, within 15 working days of this Order file its lists of candidates for the said reserved seats and the provisions of the Elections Act, 2017 ("Act") (including in particular s. 104) and the Elections Rules, 2017 ("Rules") shall be applied to such lists in such manner as gives effect to this Order in full measure. The Commission shall, out of the reserved seats for women and minorities in the National Assembly to which para 3 of this Order applies, notify as elected in terms of the Article 51 Provisions, that number of candidates from the lists filed (or, as the case may be, to be filed) by the PTI as is

proportionate to the general seats secured by it in terms of paras 7 and 8 of this Order.

The foregoing paras shall apply mutatis mutandis for purposes of the Article 106 Provisions in relation to PTI (as set out in para 5 herein above) for the reserved seats for women and minorities in the Khyber Pakhtunkwa, Punjab and Sindh Provincial Assemblies to which para 3 of this Order applies. In case the Commission or PTI need any clarification or order so as to give effect to this para in full measure, it shall forthwith apply to the Court by making an appropriate application, which shall be put up before the Judges constituting the majority in chambers for such orders and directions as may be deemed appropriate.

Conclusion: PTI shall be entitled to reserved seats for women and minorities both in National and Provincial Assemblies.

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3. **Supreme Court of Pakistan**
Lutfullah Virk v. Muhammad Aslam Sheikh
Civil Petition No. 2849-L of 2015
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Sadaat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2849_l_2015.pdf

Facts: The petitioner was defendant in a suit for recovery of damages filed by respondent wherein time was fixed for cross-examination of the respondent's witnesses but the petitioner despite marking his presence did not turn up at the fixed time and the trial court closed his right of cross-examination. The petitioner filed civil revision against said order before the Lahore High Court which was also dismissed.

Issue: Whether adjournments can be demanded as a matter of right in civil suit or proceedings?

Analysis: Adjournments cannot be demanded as a matter of right and Rule 1 of Order XVII of CPC…is perspicuous in this regard, as a court "may" grant time and adjourn, and that too if "sufficient cause is shown." It is only logical that this sufficient cause may only be shown by way of an application in writing, meaning that any party to a suit or any other proceeding before a court, can request an adjournment only if it satisfies the court by way of submitting an application for adjournment in writing, along with evidence attached of the predicament or ailment that they are facing, for which an adjournment is the only solution. It is then up to the court, whether to accept the adjournment application or to proceed with the matter at hand. If the court is to accept the adjournment application then it must immediately decide on whether or not to impose costs to the party requesting an adjournment….it is pertinent to mention here that once a decision on whether or not to impose costs for seeking an adjournment has been taken, the court has to

record the reasons for granting an adjournment and why or why not costs have imposed on a party which sought adjournment.

Conclusion: Adjournments cannot be demanded as a matter of right in civil suit or proceedings.

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4. **Supreme Court of Pakistan**
Adnan Shafai v The State and another
Criminal Petition No.239 of 2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik,
Mr. Justice Syed Hasan Azhar Rizvi.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._239_2024.pdf

Facts: The petitioner through this leave to appeal assailed the judgments of the High Court and trial court wherein his post arrest bail under sections 161, 162, 109, 409 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947, on the statutory ground of delay in the conclusion of trial was dismissed.

Issues: i) Whether the third proviso to section 497(1) of the Cr.P.C, grants the right of post arrest bail to an accused due to delay in conclusion of trial?
ii) Whether the act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused?

Analysis: i) Under the third proviso to Section 497(1) of the Cr.P.C, a statutory ground exists for granting post-arrest bail to an accused due to delay in conclusion of the trial. A person accused of an offence not punishable by death has the right to be released on bail, if he has been detained for over a year, provided the delay in the trial's conclusion was not caused by their actions or the actions of someone on their behalf, and situation does not fall under the fourth proviso to Section 497(1) of the Cr.P.C.
ii) The act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused. Merely some adjournments sought by the counsel of the accused cannot be counted as an act or omission on behalf of the accused to delay the conclusion of the trial, unless the adjournments are sought without any sufficient cause on crucial hearings, i.e., the hearings fixed for examination or cross-examination of the prosecution witnesses, or the adjournments are repetitive, reflecting a design or pattern to consciously delay the conclusion of the trial. Thus, mere mathematical counting of all the dates of adjournments sought for on behalf of the accused is not sufficient to deprive the accused of his right to bail under the third proviso. The statutory right to be released on bail flows from the constitutional right to liberty and fair trial under Articles 9 and 10A of the Constitution. Hence, the provisions of the third and fourth provisos to section 497(1), Cr.P.C must be examined through the constitutional lens and fashioned in

a manner that is progressive and expansive of the rights of an accused, who is still under trial and has the presumption of innocence in his favour. To convince the court for denying bail to the accused, the prosecution must show, on the basis of the record, that there is a concerted effort on the part of the accused or his counsel to delay the conclusion of the trial by seeking adjournments without sufficient cause on crucial hearings and/or by making frivolous miscellaneous applications.

Conclusion: i) Yes, under the third proviso to Section 497(1) of the Cr.P.C, a statutory ground exists for granting post-arrest bail to an accused due to delay in conclusion of the trial.
ii) Yes, the act or omission on the part of the accused to delay the timely conclusion of the trial must be the result of a visible concerted effort orchestrated by the accused.

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5. **Supreme Court of Pakistan**
Itbar Muhammad v. The State & Others
Criminal Petition for Leave to Appeal No.220/2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._220_2024.pdf

Facts: Through the present petition, the petitioner seeks leave to appeal against the order of Peshawar High Court, Mingora Bench, whereby the post-arrest bail has been declined to him in FIR registered under Section 302/324/34 PPC.

Issues: i) Whether the version of complainant when corroborated by the recoveries, establish reasonable grounds to believe that the accused has committed alleged offence?
ii) Whether at the bail stage deeper scrutiny of the material available on record is warranted?

Analysis: i) Record further reflects that the version of complainant is corroborated by the recovery of empties from the place of incident and recovery of pistol at the pointation of the petitioner, therefore, there appear reasonable grounds to believe that petitioner/accused has committed the offence which is punishable with death or imprisonment for life, hence the case of petitioner falls within the prohibitory clause of section 497, Cr.P.C. (…) We have given due consideration to the submissions made and have gone through the material available on record. From the record, we find that the name of the petitioner was mentioned in the F.I.R.; that the motive had been alleged against him; that a specific role of raising lalkara was assigned to him and that it was specifically mentioned that he and his co-accused fired at the deceased, which hit him. The P.Ws. have supported the case in their 161, Cr.P.C. statements which is further corroborated by the medical evidence, as according to the Medical Officer the deceased had six firearm entry injuries out of them two were exit wounds. Thus, prima facie incident has been

committed by more than one person. From the material available on record, we are of the view that there are reasonable grounds for believing that the petitioner is involved in the case.
ii) At the bail stage, deeper scrutiny of material available on record is unwarranted, as that would affect the merits of the case at the trial.

Conclusions: i) Yes, when the version of complainant is corroborated by the recovery of empties from the place of incident and the recovery of the pistol at the pointation of the petitioner provide reasonable grounds to believe that the accused has committed an offense.
ii) At the bail stage, deeper scrutiny of material available on record is unwarranted, as that would affect the merits of the case at the trial.

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6. **Supreme Court of Pakistan**
Khizar Hayat v. The State & another
Crl.P.L.A No. 1345-L/2O23
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik,
Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1345 l_2023.pdf

Facts: The petitioner sought leave to appeal against the order of Lahore High Court whereby the pre-arrest bail was declined to him under sections under Section 448, 440, 511, 427, 148, 149, PPC.

Issue: Principles for grant of bail in cross version cases.

Analysis: In cases of counter versions arising from the same incident, one given by the complainant in the FIR and the other given by the opposite party bail is granted as a rule on the ground of further inquiry for the reason that the question as to which version is correct to be decided after recording of pro and contra evidence during the trial and also to ascertain which party was the aggressor or was aggressed upon and refusal of bail in such cases is an exception.

Conclusion: See analysis part above.

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7. **Supreme Court of Pakistan**
Muhammad Imran v. The State and another
Criminal Miscellaneous Application No. 374/2024
In/and Criminal Petition No. 725/2023
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik,
Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._725_2023.pdf

Facts: The trial court convicted the Petitioner under Sections 376 PPC & 449 PPC. The Lahore High Court, Bahawalpur Bench, vide the Impugned Judgment dismissed

the appeal filed by the Petitioner while maintaining his conviction and sentence. Hence, the instant Criminal Petition for Leave to Appeal before this Court.

Issues: i) Whether accused can be acquitted on the basis of statement of victim during appeal when victim did not exonerate him during trial in rape case?
ii) When the facts suggesting that alleged victim, was a consenting party whether the same indicate that the offence of rape under Section 376 PPC is not applicable, and that the case should be considered as fornication under Section 496-B PPC instead?
iii) Whether delay in reporting a crime of sexual offense is always fatal to prosecution case?

Analysis: i) It is noteworthy that the complainant/victim did not exonerate the petitioner at the time of recording of her statement by the learned trial Court and at that time she supported the prosecution case. Furthermore, the offence under Section 376 PPC is a non-compoundable offence, therefore, the petitioner cannot be acquitted on the basis of the above- mentioned ground.
ii) All the above-mentioned facts show that Mst. Mumtaz Bibi, complainant was a consenting party. Under the circumstances, we are of the view that ingredients of offence of rape punishable under Section 376 PPC are not attracted in this case rather it is a case of fornication (zina with consent) punishable under Section 496-B PPC.
iii) FIR was not promptly lodged and the complainant party kept on consulting with each other for about two days. No plausible explanation has been given by the prosecution for the above-mentioned delay in reporting the matter to the Police. Under the circumstances, the sanctity of truth cannot be attached to the FIR, as there was every possibility that the FIR was lodged after deliberations while narrating an exaggerated story to make the offence graver. Although mere delay in such like cases is not always fatal to the prosecution's case but while keeping in view the other particular facts of a case, the same may be relevant.

Conclusions: i) When complainant/victim did not exonerate the convict/petitioner at the time of recording of her statement by the learned trial Court and at that time she supported the prosecution case, therefore, the petitioner cannot be acquitted on the basis of the above-mentioned ground, as the offence under Section 376 PPC is a non-compoundable offence.
ii) When alleged victim was a consenting party, the same suggested that ingredients of offence of rape punishable under Section 376 PPC are not attracted rather it is a case of fornication punishable under Section 496-B PPC.
iii) Mere delay in cases of crime of sexual offense is not always fatal to the prosecution's case.

Dissenting Note by Mrs. Justice Ayesha A. Malik

Issues: i) What is the impact of DNA evidence on the likelihood of conviction in rape cases?

ii) Whether solitary statement of the victim is sufficient to award a conviction in a rape case without any corroborative evidence?

iii) Whether visible marks of violence are essential to establish rape, especially when medical evidence confirms sexual intercourse?

iv) Is the victim's character or reputation material as evidence in the offence of rape?

v) Whether physical resistance necessary to establish offence of rape?

vi) Whether delay in reporting a crime of sexual offence indicates the victim has lied or registered a fake case?

vii) How does the act of rape impact a woman's fundamental rights, such as her right to life, dignity, privacy, and mental and physical integrity?

viii) How does the concept of consent, as defined in relation to fornication, uphold a woman's right to dignity and privacy under Article 9 of the Constitution?

Analysis: i) As per the law settled by this Court, the most definitive and conclusive evidence in a case of rape is the DNA test. In the Ali Haider case, this Court has held that DNA evidence is considered to be the gold standard to establish the identity of an accused due to its accuracy and conclusiveness and is one of the strongest and most corroborative pieces of evidence in rape cases. This Court has explained that DNA test with scientific and clarity points towards the perpetrator and leaves very little room for doubt. In the Salman Akram Raja case, this Court has held that the DNA test provides a high degree of confidence for identifying perpetrators and is extremely useful for ascertaining the real culprits and excluding potential suspects. DNA tests are considered to be as accurate as fingerprints especially in a rape case as it clearly establishes the fact that a perpetrator has had sexual intercourse with the victim. A recent study rendered the impact of DNA tests on the prosecution case is such that when the DNA evidence matches the suspect in a rape case, the odds of conviction are substantially greater than in cases with ordinary evidence. As per the study, DNA evidence establishes that the suspect had sexual contact with the victim and highlights the importance of quality forensic medical examinations. Accordingly, the veracity and significance of the DNA test cannot be ruled out or ignored when the test becomes corroborative evidence in support of the allegation of rape.

ii) With reference to the value of the statement of a complainant, this Court has also held that the solitary statement of the victim is sufficient to award a conviction in a rape case if that statement is trustworthy, consistent and reliable. The Supreme Court of India (SCI) in the Gurmit Singh case has ruled that the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. The SCI further held that corroborative evidence is not an imperative component of judicial credence in every case of rape. (…) In the same way her sexual history has become irrelevant and most importantly, in cases of

rape, this Court has repeatedly recognized that the statement of the victim is sufficient if it is confidence inspiring.

iii) This Court has also repeatedly ruled that marks of violence in a case of sexual offence are not essential to establish rape and that in the absence of visible marks of violence, it cannot be inferred that the plea of rape is devoid of any merit, especially where the medical evidence confirms sexual intercourse.

iv) In this context, it is important to note that the victim's character or reputation is also immaterial by way of evidence, there being no nexus between her reputation, character and the offense of rape. Similarly, questions targeting her character have no relevance to the matter on trial, that is, the commission of rape. (…) This is so notwithstanding the fact that the law on the subject of rape has evolved over the years where this Court has held that the best evidence in a rape case is a DNA test and that her previous character or reputation is irrelevant.

v) Similarly, physical resistance need not be established in a rape case as different people react differently when confronted with trauma and to subject all women to a stereotypical presumption that she must resist in a particular form in order to establish rape is totally without basis. These cases show the shift in the jurisprudence which relies on the statement of the victim and corroborative scientific evidence to establish rape and essentially denounce myths, presumptions and stereotypical arguments.

vi) Notwithstanding the clear set of facts in this case, with reference to delay, this Court has held that delay is of no consequence as such cases involve the victim and her family's reputation and honor, hence, some delay in reporting a crime of sexual offense is immaterial. In the Hamid Khan case, a three-day delay in reporting the crime to the police was deemed as insignificant. Hence, there is no rule of thumb that a delay in reporting the crime suggests that victim has lied or registered a fake case.

vii) It is crucial to observe that the Constitution specifically deals with preserving, protecting and promoting the rights of women, which are clearly violated in gender-based violence cases. Article 9 of the Constitution protects the right to life. Article 14 grants the inviolable right to dignity as well as the right to privacy. In cases of rape, there is a gross violation of the right to life, dignity and privacy. In this context, the State is responsible for ensuring that essential and required steps are taken to protect women from such crimes, and also to protect them from gender stereotyping which undermines a woman's ability to enjoy her basic fundamental rights. It goes without saying that gender stereotyping should not undermine the rule of law. The act of rape has serious consequences as it deprives a woman of her right to life and her right to dignity and privacy which includes the right to mental and physical integrity. Every woman is entitled to respect for her life, her integrity and the security of her person. No woman should be stigmatized simply because she has availed her right to access to justice and reported a heinous crime against her person and body.

viii) It is essential that for the purposes of fornication consent be established. Consent means an unequivocal voluntary agreement with the woman by words,

gestures or any form of verbal or non-verbal communication, which communicates her willingness to participate in the sexual act. Consent goes to the very root of the right to dignity under Article 9 of the Constitution because in a case of rape where she states that there is no consent then to impute consent, that too without evidence of the same, undermines the dignity and the right to privacy of a woman. Consequently, without any evidence on the fact of consent or willingness the offence of fornication cannot be made out because consent has to be established and it cannot be assumed.

Conclusions: i) The most definitive and conclusive evidence in a case of rape is the DNA test. The veracity and significance of the DNA test cannot be ruled out or ignored when the test becomes corroborative evidence in support of the allegation of rape.

ii) Yes, solitary statement of the victim is sufficient to award a conviction in a rape case if that statement is trustworthy, consistent and reliable. Corroborative evidence is not an imperative component of judicial credence in every case of rape.

iii) Marks of violence in a case of sexual offence are not essential to establish rape and that in the absence of visible marks of violence, it cannot be inferred that the plea of rape is devoid of any merit, especially where the medical evidence confirms sexual intercourse.

iv) Victim's character or reputation is immaterial by way of evidence, there being no nexus between her reputation, character and the offence of rape.

v) Physical resistance need not be established in a rape case as different people react differently when confronted with trauma and to subject all women to a stereotypical presumption that she must resist in a particular form in order to establish rape is totally without basis.

vi) Crime of sexual offence involve the victim and her family's reputation and honor, hence, some delay in reporting a crime of sexual offence is immaterial.

vii) The act of rape has serious consequences as it deprives a woman of her right to life and her right to dignity and privacy which includes the right to mental and physical integrity.

viii) It is essential that for the purposes of fornication consent be established. Consent goes to the very root of the right to dignity under Article 9 of the Constitution because in a case of rape where she states that there is no consent then to impute consent, that too without evidence of the same, undermines the dignity and the right to privacy of a woman.

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8. **Supreme Court of Pakistan**
Muhammad Ali Mahar and another v. The State
Criminal Petition No.201-K of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._201_k_2023.pdf

Facts: This Criminal Petition for leave to appeal is directed against the order passed by the High Court of Sindh, in Crl. Bail Application, by means of which the petitioners applied for pre-arrest bail in FIR, lodged under Sections 302, 34, 201 and 109 of the Pakistan Penal Code, 1860 at Police Station, but the bail application was dismissed and the interim bail granted to them was recalled.

Issues: i) What is the meaning of Latin phrase "Sui Juris"?
ii) What are the rights of a major Muslim woman?
iii) What must a petitioner demonstrate to be granted pre-arrest bail?
iv) What are the parameters of pre-arrest bail under section 498 Cr.P.C?
v) What is the nature of offence of honour killing?
vi) How is gender-based violence characterized in terms of its impact on society and its violation of rights and religious teachings?

Analysis: i) The Latin phrase *"sui juris"* literally means "of one's own laws" which indicates legal competence, and the capacity to manage one's own affairs. It also indicates an entity that is capable of suing and or being sued in a legal proceeding in their own name without the need of an *ad litem*. According to Black's Law Dictionary (Sixth Edition), "*Sui Juris"* means a person of his own right, possessing full social and civil rights, not under any legal disability, or the power of another, or guardianship. It denotes having the capacity to manage one's own affairs and not being under legal disability to act for oneself.

ii) A major Muslim woman, like a major Muslim man, is *sui juris* and entitled to the same rights and liberties. This concept is further supported by Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, which guarantees that no person can be deprived of life or liberty except in accordance with law.

iii) … the grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law; it is a protection to the innocent being hounded on trumped up charges through the abuse of the process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of *mala fide*; and it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation.

iv) … this Court has discussed the guidelines for granting bail before arrest under Section 498, Cr.PC and lays down the following parameters for pre-arrest bail: (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives; (b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail; (c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of the Cr.PC i.e., unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt; (d) not just this but in addition thereto, he must also

show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him; (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g., he had no past criminal record or that he had not been a fugitive at law, and finally that (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest must in the first instance approach the Court of first instance.

v) The notorious act of honour killing is branded as *karo-kari* which menace is cancerous and tumorous to our society, humanity, and the populace. In fact, this is an act of murder in which a person is killed for his or her actual or perceived immoral deeds and comportments. Without doubt, the father and other family members might be annoyed or exasperated on knowing about a marriage of choice, but it no way allows them to take the law in their hands for evil designs. Such alleged depraved manners and postures can include marital betrayal, refusal to acquiesce to an arranged marriage, wanting marriage or divorce, perceived flirtatious demeanor, or even rape. Predominantly, honour killing is often an emblem for adultery, but it is exploited in multifarious means of seeming unscrupulous conduct. It is really a sorry state of affairs, rather deeply appalling and deplorable, in a typical segment of society where a conviction persists that when a woman is regarded as"*kari"*, the family members must consider it their vested right to kill her and the co-accused "*karo"* in order to refurbish and recondition the family honour.

vi) This genre of gender-based violence is not only self-destructive to the humanity and social order but it is regarded as *"fasad-fil-arz"* which is not only against the norms of civilized culture in the society, but is also a violation of fundamental rights enshrined under the Constitution, and most importantly, it is also a serious defilement and disrespect to the teachings and injunctions of Islam.

Conclusion: i) See above analysis No.i.

ii) A major Muslim woman is sui juris and entitled to the same rights and liberties as a major Muslim man, supported by Article 9 of the Constitution, which guarantees no deprivation of life or liberty except in accordance with law.

iii) A petitioner seeking pre-arrest bail must reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of mala fide.

iv) See above analysis No. iv.

v) See above analysis No. v.

vi) Gender-based violence is characterized as self-destructive to humanity and social order, regarded as "fasad-fil-arz," violating fundamental rights enshrined in the Constitution, and seriously defiling the teachings and injunctions of Islam.

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9. **Supreme Court of Pakistan**
Abid Hussain v. The State
Crl. Appeal No. 46-L of 2020
Mushtaq Ahmad v. Abid Hussain etc.
Crl. Petition No. 906-L of 2014
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali.
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._46_l_2020.pdf

Facts: The appellants and another were convicted and awarded death sentence under sections 302 (b)/34 of the Pakistan Penal Code, 1860. The murder reference was sent to the High Court for confirmation or otherwise of the said death sentence, whereas the appellants and the other convict filed a criminal appeal before High Court, during pendency whereof, the convict other than the appellants was acquitted on account of a compromise, whereas the appeal to the extent of the appellants was dismissed whilst maintaining their conviction. However sentence of death awarded to the appellants was converted into imprisonment for life. Then, the appellants filed the jail petition, whereas the complainant filed a petition against the impugned judgment with a request for enhancement of sentence.

Issues: i) What would be consequent impact if the FIR of murder incident is reported belatedly to the police?
ii) If the motive is assigned to co-accused, then what would be its effect to the extent of the accused?

Analysis: i) If the initial stance of the complainant party is not brought on record and the FIR is subsequently registered upon a written complaint of the complainant, drafted by a petition writer, it would render that such registration of FIR is result of deliberation and consultation.
ii) If the attribution of motive to the co-accused is believed to be true, then there seems no occasion for the accused to take such an extreme step for no whim and reason.

Conclusion: i) If the FIR is not registered promptly then false involvement of the accused would not be ruled out.
ii) In case where the motive is assigned to co-accused having no nexus with the accused then involvement of accused would be deemed as an afterthought.

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10. **Supreme Court of Pakistan**
Sarfraz Ahmed v. The State
Criminal Petition No.130-Q of 2021
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._130_q_2021.pdf

Facts: An FIR was registered against the petitioner u/s 9 (c) of Control of Narcotic Substances Act, 1997. On conclusion of trial the petitioner was convicted u/s 9 (c) of CNSA 1997 by the Trial Court and he was awarded sentence of rigorous imprisonment (RI) for twenty five years with fine of Rs.100,000/- and in default of payment of fine to further undergo six months S.I. with benefit of section 382-B Cr.P.C. The petitioner challenged his conviction and sentence by filing appeal before the High Court and his appeal was dismissed against which the petitioner filed instant Criminal Petition for leave to appeal.

Issues: i) Whether separately sealing the pieces of the separated samples in separate parcels of recovered contraband is the mandate of the law?
ii) Is it must to establish the safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory?

Analysis: i) After hearing learned counsel for the petitioner and the learned State counsel we have perused the available record. It reveals that instead of separately sealing the 150 pieces of the separated samples (total weighing 1.350 Kgs) in 150 separate parcels, the same were sealed in one parcel i.e. parcel No. 1 in flagrant violation of the dictum laid down by this Court in the case of "Muhammad Hashim v. The State".
ii) In order to prove the safe custody of the parcels of the contraband, Moharrar (Abdul Qayyum) of PS Kalat has not been produced at the trial by the prosecution. In the cases of "Said Wazir v. The State", "Muhammad Shoaib v. The State" and "Ishaq v. The State" it has been held that due to nonappearance of the Moharrar at the trial, the safe custody of the parcel of the contraband as well as the sample parcel has not been established by the prosecution. In the case of "Zahir Shah v. The State" it has been laid as follows by this Court: "This court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analysis, thus, rendering it incapable of sustaining conviction."

Conclusions: i) Separately sealing the pieces of the separated samples in separate parcels of recovered contraband is the mandate of the law.
ii) It is essential to establish the safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory.

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11. **Supreme Court of Pakistan**
Rafaqat Ali @ Foji v. The State and others
Jail Petition No.234 of 2017
Muhammad Anwar v. The State and others
Criminal Petition No.596-L of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/j.p._234_2017.pdf

Facts: On the charge of committing murder by firing, the learned Additional Sessions Judge convicted the petitioner u/s 302 (b) PPC as Tazir and awarded him sentence of death with compensation of Rs.200,000/- to be paid u/s 544-A Cr.P.C to the legal heirs of the deceased. High Court/Appellate Court maintained the conviction of the convict u/s 302 (b) PPC however sentence has been reduced to imprisonment for life, the amount of compensation and punishment in default thereof has been maintained with benefit of section 382-B Cr.P.C., against which the convict filed Jail Petition and the complainant filed Criminal Petition for leave to Appeal for enhancement of the sentence of the convict.

Issue: Whether in absence of any other incriminating piece of evidence mere absconsion does entail penal consequences against accused?

Analysis: While awarding conviction and sentence to the convicts, both the Courts below have also considered the absconsion of about three years and eight months of the convict. In this regard both the Courts below have failed to appreciate that mere absconsion of an accused cannot be made a basis of conviction and that absconsion of an accused, being a relevant fact, can be used as a corroborative piece of evidence which cannot be read in isolation but it has to be read alongwith the substantive piece of evidence (...) According to the settled principles of law abscondence can never remedy the defects in the prosecution case as it is not necessarily indicative of guilt. Moreover, abscondence is never sufficient by itself to prove the guilt (…) In the case of 'Shafqat Abbas v. the State' (2007 SCMR 162) it has been held that in absence of any other incriminating piece of evidence mere absconsion does not entail penal consequences against accused or to expose him to the criminal liability.

Conclusion: In absence of any other incriminating piece of evidence mere absconsion does not entail penal consequences against accused.

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12. **Supreme Court of Pakistan**
Liaqat Hussain v. The state
Jail Petition No. 269 of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/j.p._269_2017.pdf

Facts: On the charge of committing murder of two persons and causing fire arm injuries to the wife of one deceased, the petitioner/convict was awarded conviction and sentenced to death on two counts under section 302 (b) PPC. The petitioner/convict was also awarded conviction and sentenced under section 324/337Fiii/337D PPC. The Convict challenged his conviction and sentence before High Court/Appellate Court by filing criminal appeal while murder reference was forwarded by the Trial Court to the Appellate Court. Both the matters were decided by the Appellate Court whereby while answering murder reference in affirmative, the criminal appeal was dismissed with the order that the sentences of the Convict u/s 324, 337-F(iii)/337-D PPC shall run concurrently with benefit of Section 382-B Cr.P.C.

Issue: Is a single mitigating circumstance available in the case sufficient to avoid the death penalty in favour of life imprisonment?

Analysis: In order to determine the quantum of sentence each case has to be judged upon its own facts and circumstances. According to settled principles of law, a single mitigating circumstance, available in the particular case, would be sufficient to put a Judge on guard for not awarding the penalty of death but imprisonment for life. In the instant case though the complainant and legal heirs of the deceased have not filed compromise documents but the complainant has made statement before this Court on 27 February 2023 that the legal heirs of both the deceased have pardoned the convict and they are not interested to further pursue the matter. The above circumstance coupled with motive of the occurrence and altercation of the convict with the deceased prior to the occurrence are considered as mitigating circumstances to reduce the sentence of death of the convict u/s 302(b) PPC as Ta'zir to imprisonment for life.

Conclusion: A single mitigating circumstance, available in the case, is sufficient to avoid the death penalty in favour of life imprisonment.

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13. **Supreme Court of Pakistan**
Asmat Ullah Khan v. The State and others, Lal Khan v. The State and other *and* Mehmood ur Rehman v. the State and others
Jail Petition No. 431 of 2016, Criminal Petition No.845 of 2016 and Criminal Petition No.830 of 2016
Mr. Justice Jamal Khan Mandokhail ,Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/j.p._431_2016.pdf

Facts: A Division Bench of the learned Appellate Court took up the above matters of conviction and sentence; acquittal and of enhancement of compensation together and through the impugned judgment, dismissed all the appeals as well as the criminal revision and maintained the conviction of the petitioners and altered the sentence from death to life and murder reference was answered in negative. Being dissatisfied with the impugned judgment:

The complainant, Mehmood Ur Rehman, has filed the Criminal Petition for Leave to Appeal No.830 of 2016 seeking to set aside the impugned judgment and uphold the judgment of the Trial Court imposing the death sentence on the petitioners and the petitioners have filed Jail Petition for Leave to Appeal and Criminal Petition for Leave to Appeal respectively, seeking acquittal against the impugned judgment whereby their death sentences were converted into life imprisonment.

Issues:

i) What is the value of recovery of ransom amount if currency notes are not marked?

ii) What is required for call data records (C.D.R.) to be considered reliable evidence in court?

iii) What techniques should the investigating officer employ in cases of kidnapping or abduction for ransom?

iv) What are the consequences of a flawed or negligent investigation in criminal cases?

v) What happens when a single loophole is observed in a prosecution case?

vi) What is the effect of an appellant's death in a criminal appeal regarding a sentence of fine?

Analysis:

i) If, for the sake of argument, it is believed that both witnesses were stating true facts, then the law required that the said currency notes be marked or signed by an authorized Magistrate to eliminate the possibility of false implication. Reference in this regard may be made to the case of *Muhammad Abid versus the State and another* (**PLD 2018 SC 813**). However, the police did not do so; hence, the alleged recovery of the ransom amount becomes doubtful and, as such, cannot be believed or relied upon for the purpose of convicting the petitioners.

ii) No doubt, the mere production of C.D.R., without transcripts of the calls or complete audio recordings, cannot be deemed reliable evidence. In addition to call transcripts, it must also be established on record that the individuals at both ends of the call are the same as those whose call data is produced as evidence. The Courts must exercise heightened caution when evaluating such evidence, as advancements in science and technology have greatly facilitated the editing and alteration of recordings to suit one's preferences.

iii) So far as the investigation of this case is concerned, we believe that the investigation of heinous offences, such as kidnapping or abduction for ransom, is of paramount importance due to the severe implications these crimes have on victims and society… The I.O., in such cases, must employ various modern techniques, including geo fencing for tracing communications, identifying patterns in the kidnappers' behavior, and leveraging technological tools to track movements.

iv) … A flawed or negligent investigation can lead to wrongful accusations, undermining public trust and allowing the true culprits to evade justice. Therefore, the I.O. must adhere to the highest standards of professionalism and diligence, ensuring that their findings are accurate and unbiased.

v) It is a settled principle of law that once a single loophole/lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused.
vi) Under the law, a criminal appeal abates on the death of an appellant, but section 431, Cr.P.C. provides an exception to this general rule. It provides that an appeal against a sentence of the fine shall not abate by reason of death of an appellant, because it is not a matter, which affects his person, it would certainly affect his estate. Thus, upon the death of an appellant, his appeal to the extent of a portion of the sentence of imprisonment, abates whereas, the appeal to the extent of sentence of fine, affecting the property of an appellant, shall not abate and is to be heard on merits and in accordance with the settled principle of the criminal justice.

Conclusion: i) The recovery of the ransom amount is doubtful and cannot be believed or relied upon for convicting the petitioners if the currency notes are not marked or signed by an authorized Magistrate.
ii) For call data records (C.D.R.) to be considered reliable evidence, there must be call transcripts, and it must be established that the individuals at both ends of the call are the same as those whose call data is produced as evidence.
iii) The investigating officer should employ various modern techniques, including geo-fencing for tracing communications, identifying patterns in the kidnappers' behavior, and leveraging technological tools to track movements.
iv) A flawed or negligent investigation can lead to wrongful accusations, undermine public trust, and allow the true culprits to evade justice.
v) When a single loophole is observed in a prosecution case, the benefit of that loophole automatically goes in favor of the accused.
vi) An appeal against a sentence of fine shall not abate upon the death of an appellant, as it affects estate of deceased/accused, and will be heard on merits.

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14. **Supreme Court of Pakistan**
Syed Fida Hussain Shah v. The State and another
Criminal Petition No.134/2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.134_2024_dn.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgment in Criminal Revision passed by the High Court with a prayer to set aside the said judgment and acquit him, in case registered under Sections 279, 427 and 320 PPC.

Issues: i) Whether mere driving a vehicle at a high speed at the Highway is an offence?
ii) Whether the statement of an accused is to be accepted or rejected in toto when the prosecution evidence is disbelieved?

Analysis: i) It is by now well settled that merely driving a vehicle at a high speed at the Highway is not an offence, unless it is proved that the driving of the accused was above the prescribed speed limit and the same was also rash and negligent. Furthermore, if the injured or the deceased were themselves responsible of any rash or negligent act then the ingredients of above mentioned offences are not attracted against the driver of the other vehicle.
ii) It is by now well settled that when the prosecution evidence is disbelieved then the statement of an accused is to be accepted or rejected in toto. In such situation, it is legally not permissible to accept the in-culpatory part of the statement of an accused and reject the ex-culpatory part of the same statement.

Conclusion: i) Mere driving a vehicle at a high speed at the Highway is not an offence, unless it is proved that the driving of the accused was above the prescribed speed limit and the same was also rash and negligent.
ii) It is by now well settled that when the prosecution evidence is disbelieved then the statement of an accused is to be accepted or rejected in toto.

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15. **Lahore High Court**
The State v. Gulraiz Shehzad
Murder Reference No.03 of 2021
Gulraiz Shahzad v.The State
Crl. Appeal No.69125-J of 2020
Miss Justice Aalia Neelum, Mr. Justice Farooq Haider.
https://sys.lhc.gov.pk/appjudgments/2024LHC3330.pdf

Facts: The appellant was convicted by the trial court under Section 302(b) P.P.C., and sentenced to death for committing *Qatl-e-Amd* as well as payment of compensation as envisaged under section 544-A of Cr.P.C., while in case of default thereof, to further undergo six months simple imprisonment. The appellant has assailed his conviction and sentence by filing the instant jail appeal, whereas the trial court also forwarded murder reference to confirm the death sentence awarded to the appellant. Both the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

Issues: i) Whether the defence taken by the accused under section 342 Cr.P.C., can be read as part of the evidence?
ii) What inference is drawn when the accused has failed to examine himself in his defence?

Analysis: i) The defence taken by the accused under section 342 Cr.P.C. has to be looked into only as an explanation of incriminating circumstances.
ii) The accused has the option to examine himself as a witness but when he takes a specific defense then he has to prove it. When the accused fails to examine himself in his defence then bald assertions made by him in his statement under Section 342 Cr.P.C., without any supporting evidence, cannot help him in disproving the prosecution evidence.

Conclusion: i) The defence taken by the accused under section 342 Cr.P.C., cannot be read as part of the evidence.
ii) When the accused fails to examine himself in his defence in support of specific plea taken by him in his statement under Section 342 Cr.P.C., then an adverse inference would be drawn against him which would lead to the conclusion that the version of the eyewitness/complainant regarding the manner of the incident is correct.

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16. **Lahore High Court**
Sanam Javed v. Special Judge Anti-Terrorism Court Gujranwala, etc.
Criminal Revision No.39439 of 2024
Mr. Justice Asjad Javaid Ghural, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC3408.pdf

Facts: Through this criminal revision petition under Sections 435 & 439 Cr.P.C. the petitioner being accused in case FIR in respect of offence under Sections 302, 324, 353, 427, 431, 186,148,149,505,188 & 109 PPC read with Section 16 of the Punjab Maintenance of Public Order Ordinance, 1960 and Section 7 of Anti-Terrorism Act, 1997, has prayed for discharge etc. from case.

Issues: i) Whether High Court can exercise jurisdiction u/s 439 of CrPC against the order of physical remand if the period of such physical remand has elapsed and report u/s 173 CrPC has been submitted in trial court?
ii) Whether the statement of accomplice, recorded after keeping accomplice for 22 days on physical remand, can be said recorded voluntarily and without any coercion?
iii) What is status of affidavit of purported legal heirs of deceased without attestation by Oath Commissioner to certify its contents?
iv) Whether statement of the accomplice was recorded in derogation of the proviso to Section 337(1) of Cr.P.C. is admissible in evidence?
v) What is purpose of physical remand and what is duty of court while granting physical remand?
vi) Whether an accused can be involved in different cases in different jurisdictions for same act by referring to section 179 of CrPC specifically to words "or any such consequence has ensued"?
vii) Whether police authorities can curtail the liberty of a person for indefinite period and whether such action is immune to judicial scrutiny?
viii) Whether Executive has to implement/ comply with the orders of courts even it does not like them?

Analysis: i) First of all, we would like to dilate upon the objection of the learned Law Officer that since the period of physical remand granted by way of impugned order has already been elapsed, the petitioner was ordered to be sent on judicial remand and report U/S 173 Cr.P.C. has been submitted in the Trial Court, as such

instant petition has become infructuous. We are not in agreement with this submission for more than one reasons. Firstly, in the prayer clause the petitioner sought her discharge from the said case while her learned counsel also addressed arguments on the plea of discharge. Secondly, Section 439 Cr.P.C. conferred a very [wide] jurisdiction upon this Court to examine the vires of any order/proceedings for which the record of the lower court was requisitioned or which otherwise comes to its knowledge. While exercising such jurisdiction, it is the duty of the Court to correct manifest illegality or to prevent gross miscarriage of justice. The powers conferred upon this Court under Section 439 Cr.P.C. are not merely a "toothless paper tiger" rather a duty to satisfy itself regarding the correctness, legality or propriety of any order passed by the lower court.

ii) It is a matter of record that accomplice remained on physical remand for twenty two days before recording of such statement, therefore, it cannot be said that he got recorded the statement voluntarily and without any coercion.

iii) Bare perusal of the affidavits of the legal heirs it came on surface that the same were not attested by the Oath Commissioner to certify that contents of said documents were stated on oath or solemn affirmation was made before him. In the absence of such certificate, value of so called affidavits of the purported legal heirs of the deceased is nothing more than a piece of paper.

iv) The statement of the accomplice recorded in derogation of the proviso to Section 337(1) of Cr.P.C. is not admissible piece of evidence.

v) The purpose of granting physical remand is to dig out the truth and collect further evidence which is not possible without the presence of an accused. A duty is bestowed upon a Court dealing with such request of remand to maintain balance between the personal liberty of the accused and the investigational right of the police. Article 9 of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution) guarantees that no person would be deprived of life or liberty save in accordance with law, whereas, Article 10 of the Constitution provides safeguards as to the arrest and detention. It is, therefore, in the above context that in Part B, Chapter11-B, Volume-3 of Rules and Orders of Lahore High Court, Lahore following principles are laid down for the guidance of all the concerned for granting physical remand.

vi) The word "or" used in the section 179 CrPC and the illustration is of much significance which means that either the accused can be tried at a place where the act was committed or the place where its consequences ensued. In nowhere it can be defined in the manner as argued by the learned Law Officer. This section would come into play where an accused committed an act in one jurisdiction and consequence of such offence ensued in another jurisdiction but on that basis due to one and the same allegation, an accused cannot be involved in multiple cases falling into different jurisdictions. If the petitioner had committed any act at Lahore for which she had already been involved in a criminal case at the said place, she cannot be involved regarding the same act/offence in some other case on the basis of term "any consequence which has ensued" used in Section 179 Cr.P.C. as it would offend Article 13 of the Constitution which provides that "no

person shall be prosecuted or punished for the same offence more than once." Similarly, the word 'liberty' in Article 9 is of widest amplitude covering variety of rights including personal liberty of a citizen. Likewise, Article 4 of the Constitution enshrines inalienable right of every citizen to enjoy the protection of law and be treated in accordance with law. Therefore, involving the petitioner in series of criminal cases regarding a single act amounts to usurp her fundamental rights guaranteed in the Constitution. More so, if this practice of involving an accused in multiple cases regarding one act is allowed then there can be no end of litigation, which is a basis of every judicial system.

vii) Neither the police authorities enjoy unfettered powers to curtail the liberty of a person for an indefinite period nor their actions are immune to judicial scrutiny.

viii) The principle of trichotomy of power is widely recognized in our Constitution. It means the Legislature, the Judiciary and the Executive form the fundamental pillars of the State and that each of these are responsible for exercising legitimate authority in their respective sphere. Legislature is tasked with making new laws and amending existing one to meet the needs of the people. The Judiciary is, inter-alia, responsible for interpreting the law and to protect fundamental rights which include the life and liberty, whereas, Executive is responsible for enforcing laws and court orders to establish the writ of the State and uphold rule of law. It is the duty of the Executive to implement/ comply with the orders whether it likes it or not. Neither any country can flourish without giving due regard to the orders of the Courts nor the writ of the State can be established. If the orders of the Courts are flouted in the way and manner as has been done in the instant case then anarchy would prevail.

Conclusion: i) High Court can exercise jurisdiction u/s 439 of CrPC against the order of physical remand even if the period of such physical remand has elapsed and report u/s 173 CrPC has been submitted in trial court.

ii) The statement of accomplice, recorded after keeping accomplice for 22 days on physical remand, cannot be said recorded voluntarily and without any coercion.

iii) In the absence of attestation by Oath Commissioner certifying contents of affidavit, value of so called affidavits of the purported legal heirs of the deceased is nothing more than a piece of paper.

iv) The statement of the accomplice recorded in derogation of the proviso to Section 337(1) of Cr.P.C. is not admissible piece of evidence.

v) The purpose of granting physical remand is to dig out the truth and collect further evidence which is not possible without the presence of an accused. A duty is bestowed upon a Court dealing with such request of remand to maintain balance between the personal liberty of the accused and the investigational right of the police.

vi) An accused cannot be involved in different cases in different jurisdictions for same act by referring to section 179 of CrPC specifically to words "or any such consequence has ensued".

vii) Neither the police authorities enjoy unfettered powers to curtail the liberty of

a person for an indefinite period nor their actions are immune to judicial scrutiny.
viii) It is the duty of the Executive to implement/ comply with the orders of court whether it likes it or not.

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17. **Lahore High Court Lahore**
Dr. Iqrar Ahmad Khan etc. v. Director general, Anti Corruption Establishment, etc.
W.P No. 9024 of 2021
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC3386.pdf

Facts: Instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 was filed seeking quashment of impugned FIR in respect of offences under sections 409,468,471 & 420 PPC read with Sections 5(2) of Prevention of Corruption Act, 1947 registered at P.S. ACE.

Issues: i) In what cases High Court can quash FIR?
ii) Can the Anti Corruption Establishment investigate a matter already adjudicated and closed by the NAB under Section 18(d) of the NAB Ordinance?
iii) Can a Court quash an FIR lodged with ulterior motives if continuing the proceedings before a trial forum would be futile and unlikely to result in a conviction?

Analysis: i) …this Court has shown reluctance in interfering in the ongoing investigating process on the well cherished principle that the functions of Investigating Agency and judiciary are complementary and not overlapping and the combination of individual liberty with due observance of law and order can only be achieved if both the organs are allowed to function independently. However, this principle in any way cannot be construed an absolute bar on the power of this Court in quashing of FIR in cases where the Court is satisfied that investigation is launched with malafide intention and without jurisdiction.
ii) In the above circumstances, I am of the considered view that launching of investigation by the ACE regarding the same subject matter, which has already been adjudicated upon and closed by the NAB, is in clear contravention of Section 18(d) of the Ordinance ibid and cannot be approved by this Court.
iii) …suffice it to say that it is well settled by now that once the Court arrived at a conclusion that the impugned FIR was lodged against an accused for some ulterior motive and continuance of proceedings before the trial forum would be a futile exercise, wastage of precious public time and there is no likelihood of conviction of the petitioner in any eventuality, it can quash the same notwithstanding the fact that even the challan has been submitted in the Court.

Conclusion: i) FIR may be quashed by High Court where Court is satisfied that investigation is launched with malafide intention and without jurisdiction.

ii) No, the Anti Corruption Establishment cannot investigate a matter already adjudicated and closed by the NAB, as it is in clear contravention of Section 18(d) of the Ordinance.
iii) Yes, an FIR lodged with ulterior motives can be quashed if continuing the proceedings before trial forum would be futile, a waste of public time, and unlikely to result in a conviction, even if the challan has been submitted in court.

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18. **Lahore High Court Lahore**
Muhammad Bilal Nawaz v. Director General, Federal Investigation Agency, and others
W.P No. 75231 of 2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC3288.pdf

Facts: Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, the Petitioner challenges the FIA's jurisdiction to restrict his bank account.

Issues: i) What is inquiry and investigation?
ii) What is the procedures of arrest, search, and property seizure when the FIA is assigned to investigate offences under specific statutes?
iii) What are the two conditions that must be met for Section 550 Cr.P.C. to be applicable?
iv) Can police officers seize immovable property under Section 550 Cr.P.C.?
v) What powers does Section 550 Cr.P.C. grant to law enforcement regarding property suspected of being stolen or connected to criminal activities, and what limitations does it impose?
vi) What competency does the FIA has regarding the exercise of powers under Section 550 Cr.P.C.?
vii) Whether the bank account of an accused or his relation can be considered property within the meaning of section 550 Cr.P.C. and whether an investigating officer has the authority to seize it or issue a prohibitory order restraining its operation?
viii) What must be balanced while freezing bank accounts, and why can't the FIA freeze them arbitrarily?
ix) What must the FIA do when it restricts an individual's bank account, and what recourse does an aggrieved person have if the FIA fails to comply?

Analysis: i) In summary, inquiry and investigation are distinct processes within legal proceedings, each serving specific purposes. An inquiry refers to a preliminary examination or fact-finding process conducted by a designated authority or agency to gather information regarding a particular matter. It aims to assess the situation and determine whether further legal action is warranted. Inquiries vary in scope and formality, ranging from informal discussions to formal hearings. On the other hand, an investigation involves a detailed examination of a specific matter

or allegation to gather evidence and determine its truth or validity. Investigations are conducted by law enforcement agencies or authorized entities to collect evidence, identify suspects, and gather information for legal proceedings. Although both procedures entail scrutinizing facts and evidence, inquiries are preliminary, primarily focusing on information gathering. In contrast, investigations are more thorough and structured, geared explicitly towards accumulating evidence to support legal action.

ii) Although the FIA Act serves as the primary legislation governing the FIA, various statutes assign it the responsibility of investigating offences committed under them. In such instances, the specific provisions of those laws regarding arrest, search, and property seizure would take precedence and must be complied with.

iii) Section 550 Cr.P.C. is an integral part of the legal framework to combat crime. It aims to facilitate the immediate and lawful seizure of suspicious property by police officers, ensuring that potential evidence is secured for further inquiry/investigation and legal proceedings…Section 550 Cr.P.C. employs expansive language, yet its applicability hinges on two conditions: firstly, the subject must qualify as property, and secondly, there must be suspicion of the commission of an offence.

iv) It underscored that immovable property cannot, in its strict sense, be seized though documents of title, etc., relating to it can be seized, taken into custody, and produced. Immovable property can be attached, locked, or sealed, but seizure, in the legal sense, entails dispossessing the occupant, which seldom occurs. The language of the relevant section does not confer upon police officers the power to dispossess occupants and seize immovable property. Therefore, such powers cannot be inferred or deemed implicit in the power to effect seizure without explicit legislative authorization.

v) In a nub, section 550 Cr.P.C. empowers law enforcement to seize property suspected of being stolen or connected to criminal activities. Notably, there is no requirement to prove the commission of any offence before invoking this provision. They can act based on suspicion alone. This highlights the proactive role of law enforcement in preventing crime and preserving evidence. However, it is essential to emphasize that while section 550 Cr.P.C. enables police officers to seize property, it does not grant them the authority to administer justice or return the same to rightful owners. Such power is reserved solely for the courts.

vi) As adumbrated, sub-sections (2) and (4) of section 5 of the FIA Act empower a member of the FIA, not below the rank of a Sub-Inspector, to exercise the powers of an officer-in-charge of a police station to conduct inquiries or investigations under the FIA Act, subject to any applicable rules. This authority extends to any area where the member is currently stationed, effectively conferring upon them the status of an officer-in-charge of a police station within that jurisdiction. Here, the term police station encompasses any place designated by the Federal Government, whether generally or specifically, as a police station

within the meaning of the Code. Consequently, the FIA is competent to exercise powers under section 550 Cr.P.C.

vii) In view of the above, the phrase any property in section 550 Cr.P.C. encompasses bank accounts. Since the FIA is competent to exercise powers under section 550 Cr.P.C., as discussed above, it holds the authority to freeze bank accounts or restrict their operation under section 5(1) of the FIA Act, regardless of whether the matter is in the inquiry or investigation stage. However, this would be subject to the condition that there should be some nexus with the alleged offence or that circumstances create suspicion of the commission of any offence.

viii) The freezing of accounts affects the right to privacy and the reputation of the account holder. The FIA cannot arbitrarily freeze bank accounts or keep them frozen indefinitely. Such actions would violate the account holder‘s constitutional and legal rights. However, these individual rights must be balanced with the duty of the State to combat crime and punish offenders.

ix) Therefore, whenever the FIA issues a directive restricting an individual‘s bank account, whether during an inquiry or investigation, it must promptly notify the relevant Magistrate or court, which would then issue an order in accordance with the law appropriate to the situation and circumstances. Should the FIA fail in this duty, the aggrieved person may approach the Magistrate or the court concerned for redress. This recourse ensures that individuals are not left unprotected in the face of potential abuses of power by the FIA.

Conclusion: i) See above analysis No. i.

ii) When the FIA is assigned to investigate offences under specific statutes, the specific provisions of those laws regarding arrest, search, and property seizure take precedence and must be complied with.

iii) The two conditions that must be met for Section 550 Cr.P.C. to be applicable are: firstly, the subject must qualify as "property," and secondly, there must be suspicion of the commission of an offence.

iv) No, police officers cannot seize immovable property under Section 550 Cr.P.C. The section does not confer upon them the power to dispossess occupants and seize immovable property. Instead, they can seize documents of title related to the property, or attach, lock, or seal the immovable property.

v) Section 550 Cr.P.C. allows law enforcement to seize property based on suspicion alone but does not grant them the authority to administer justice or return the property to the rightful owners; this power is reserved for the courts.

vi) The FIA is competent to exercise powers under Section 550 Cr.P.C.

vii) Yes, a bank account can be considered property under Section 550 Cr.P.C., and an FIA can seize or restrict its operation if there is a nexus with the alleged offence or suspicion of an offence.

viii) Individual rights and the State's duty to combat crime must be balanced. The FIA cannot freeze accounts arbitrarily as it would violate constitutional rights.

ix) The FIA must promptly notify the relevant Magistrate or court when restricting a bank account. If the FIA fails to do so, the aggrieved person can approach the Magistrate or court for redress.

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19. **Lahore High Court**
Muhammad Rauf v. The State, etc.
Crl. Misc. No.16105-B of 2024
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC3281.pdf

Facts: The petitioner sought his post arrest bail under Section 489-F PPC on the ground of delay in conclusion of trial of the case.

Issues: i) Principles for grant of post arrest bail on statutory ground.
ii) Whether the accused, who is entitled for grant of bail as a matter of right, can be declined such relief due to his abscondance?
iii) Whether bail on statutory ground can be withheld merely due to registration of other cases apart from act of terrorism?

Analysis: i) It is also relevant to mention here that after completion of statutory period, if any adjournment has been obtained by the accused, it does not disentitle him for grant of bail on ground of delay in conclusion of trial rather he is entitled to be released on bail as a matter of right. A right to be released on post-arrest bail has accrued to the petitioner due to delay in conclusion of trial of the case under 3rd proviso to Section: 497 (1) Cr.P.C. Referred to 2023 SCMR 1450, PLD 2022 SC 112 and 2022 SCMR 1.
ii) It is by now well settled that when accused becomes entitled for grant of bail as a matter of right, then he cannot be declined such relief due to abscondance which is matter of propriety.
iii) Since bail on statutory ground of delay in conclusion of trial is to be granted as a “right” hence if petitioner is not accused of act of terrorism as mentioned in the 4th proviso of Section: 497(1) Cr.P.C. then merely due to registration of some other cases against him which are not regarding act of terrorism, bail on statutory ground of delay in conclusion of trial cannot be withheld.

Conclusion: i) See analysis above.
ii) Accused who is entitled for grant of bail as a matter of right cannot be declined such relief due to abscondance.
iii) Since bail on statutory ground of delay in conclusion of trial is granted as a "right", therefore, merely due to registration of some other cases also, which are not regarding act of terrorism, same cannot be withheld.

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20. **Lahore High Court**
Razia Begum & 05 others v. Member (Judicial-III) B.O.R., & 12 others
Writ Petition No.13531 of 2018
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC3377.pdf

Facts: The petitioner's predecessor got incorporated mutation on the basis of decree of specific performance of agreement to sell which mutation was reviewed and set aside by respondent No.4 whereas appeal preferred by the predecessor of the petitioners was dismissed in-limine by respondent No.3. The predecessor of the petitioners assailed said orders through filing a revision petition which was allowed by respondent No. 2. Respondents No.5 to 12 challenged order passed by respondent no. 02 through revision of revision which was accepted by respondent No. 1. Being dissatisfied, the petitioners have assailed said order of respondent No.1 through instant petition.

Issues: i) Whether a decree which is not got executed faces barrier of limitation?
ii) Whether trial court can extend the time for payment of balance consideration amount after the lapse of period for such payment mentioned in decree is expired?
iii) Whether decrees of specific performance can be implemented in the revenue record directly through mutation or it can be enforced only through filing execution petition?
iv) When process of mutation starts?
v) Whether decree for specific performance itself transfers the title?
vi) How the decree for specific performance of agreement to sell is executed?

Analysis: i) No doubt, the decree granted by the Civil Court is binding on the Revenue Authorities and they are bound by the law to give effect the decree and change entries in the revenue record in accordance with the rights of the parties as determined by the Civil Court and a decree does not lose its utility for not having been effected within the period of limitation… It is settled principle of law that decree never dies but the restriction of limitation always became a barrier for the enforcement of the decree through execution after prescribed period of limitation, however, it does not extinguish the right or title based on the decree.
ii) If the decree passed in favour of decree holder is conditional subject to payment of remaining consideration amount within a stipulated period then on failure of the deposit of the remaining consideration amount, the suit would be deemed to have been dismissed. Trial Court cannot enlarge the period for deposit of remaining consideration amount under Section 148 of the Code of Civil Procedure, 1908 after the lapse of stipulated period of one month. Jurisdiction with the trial Court is available only within the stipulated period of one month. The moment such period of one month is over, it ceased to have jurisdiction and became functus officio, in view of the condition incorporated in the decree. In such eventuality the decree passed by the learned trial Court can only be challenged by the plaintiff in appeal and the appellate Court is competent to allow

an application seeking extension of time for deposit of balance sale consideration, if justifiable grounds found.

iii) A decree for specific performance cannot be directly implemented in the revenue record without indulgence of the executing Court, who in execution of the decree shall get execute sale deed in favour of the decree-holder and deliver the possession in accordance with the agreement/decree. Of course, after execution of sale deed, the revenue authorities would be bound to give its effect in the revenue record.

iv) Section 42(I) of the West Pakistan Land Revenue Act, 1967 provides that process of mutation would start from a time when a transaction of transfer of right in the property has been effected. Such acquisition of right in the estate should be as land owner either through inheritance, purchase, mortgage, gift or otherwise such as decree of Civil Court or as a tenant for a fixed term exceeding one year. But such acquisition of right must be with regard to either ownership right or tenancy right.

v) The decree for specific performance by itself does not transfer the title. A decree for specific performance of an agreement with regard to sale of the property only declares the right of decree holder to have the property transferred in his favour covered by the decree and so long as the sale deed is not executed in his favour by the judgment-debtor or by the Court, the title of the property remains vested in the judgment-debtor. Unless the title in the immovable property is transferred by means of a registered sale deed, it cannot be deemed to have been transferred irrespective of the fact that an agreement to sell has been executed and a decree for its specific performance has also been passed. The purpose of the decree of specific performance is to get the sale deed executed and procure possession in accordance with the conditions mentioned therein, in so long as the sale deed is not executed in favour of the decree holder either by the judgment-debtor or by the Court, the title in the property vested in the judgment-debtor.

vi) In order to get title of the property on the basis of a decree for specific performance, the decree holder has to file an execution petition through invoking provision of Order XXI Rule 32 of the Code of Civil Procedure, 1908, which deals with decrees for specific performance, restitution of conjugal rights and injunction. It provides various modes and steps for execution of said types of decree. By executing the decree for specific performance not only a sale deed is executed in favour of decree-holder but the possession is delivered as well subject to conditions as mentioned in the agreement/decree. The decree for specific performance enjoins the parties to perform their part of agreement and on their failure to do so, Court itself performs those obligations by carrying out the act required to be done. Said power is conferred under sub-rule 5 of Rule 32 of Order XXI, C.P.C.

Conclusion: i) The restriction of limitation always became a barrier for the enforcement of the decree through execution after prescribed period of limitation.

ii) Trial court cannot extend the time for payment of balance consideration amount after the lapse of period for such payment mentioned in decree is expired.
iii) A decree for specific performance cannot be directly implemented in the revenue record without indulgence of the executing Court.
iv) Process of mutation would start from a time when a transaction of transfer of right in the property has been effected.
v) The decree for specific performance by itself does not transfer the title and so long as the sale deed is not executed in his favour by the judgment-debtor or by the Court, the title of the property remains vested in the judgment-debtor.
vi) See analysis no vi.

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21. **Lahore High Court**
Masood-ul-Hassan v. Additional District Judge, etc.
Writ Petition No.5215 of 2022
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC3367.pdf

Facts: Through this Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner assailed the vires of order whereby the learned Appellate Court while accepting the appeal of respondents, set-aside the order of Executing Court and directed the learned Executing Court to proceed further in accordance with law to satisfy the decree. Being dissatisfied, petitioner has filed this petition.

Issue: What is the extent of a surety's liability under a surety bond and how should the terms and recitals of the bond be interpreted to determine the intention and extent of the surety's obligation?

Analysis: A surety's liability is co-extensive with that of the judgment debtor and he was as much bound by his undertaking as was the judgment debtor, and both were collectively and severely liable to make payment to the decree holder. While construing the tenure and extent of surety bond, the words and recitals of the surety bond must be taken into consideration to gather the intention of the executant of said bond and the bond must be strictly construed. A surety is liable only upto the extent to which he is clearly bound.

Conclusion: See above in analysis portion.

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22. **Lahore High Court**
Naveed Tariq and Another v. The State etc.
Crl. Misc. No. 38478-B/2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC3326.pdf

Facts: The petitioners sought bail after arrest in case FIR registered for non bailable offences under sections 22-A & 24 of the Punjab Food Authority Act, 2011.

Issues: i) Whether a Court can consider as to what offence is made out from facts and circumstance of the case while dealing with bail petition?
ii) Whether an accused can claim bail as a matter of right where the offence does not fall within the prohibitory clause of section 497 Cr.PC but is an offence against society?

Analysis: i) It is trite that while dealing with bail petition Court can consider as to what offence is made out from facts and circumstance of the case.
ii) Though the offences do not fall within the prohibitory clause of section 497, Cr.P.C. but it is not the rule of thumb to grant bail to accused in offences not falling within such category as a matter of right if the case falls in exceptions like offence against society.

Conclusion: i) A Court can consider as to what offence is made out from facts and circumstance of the case while dealing with bail petition.
ii) An accused cannot claim bail as a matter of right where the offence does not fall within the prohibitory clause of section 497 Cr.PC but is an offence against society.

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23. **Lahore High Court**
Zahid Maqsood Butt v. The State, etc.
Criminal Miscellaneous No. 3568-M of 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC3316.pdf

Facts: Through this Criminal Miscellaneous u/s 561-A of CrPC, petitioner being complainant of criminal case has challenged the vires of order passed by learned ASJ whereby a criminal revision filed by respondent No.02, accused of case against the order passed by learned Magistrate was accepted and proceedings in criminal trial were ordered to be stopped u/s 249 of CrPC.

Issues: i) Whether civil and criminal proceedings can go side by side and what is meant by connotation "same subject matter"?
ii) Whether law permits any person to acquire disputed amount through misappropriation?
iii) Whether decision of a criminal Court affects any question pending in civil Court between same parties?
iv) Whether section 249 of CrPC authorizes the magistrate to stop criminal proceedings and release accused without surety?
v) What is impact of release of accused without surety u/s 249 CrPC?
vi) Why section 249 of CrPC, cannot be think of a remedy available to order for stay of criminal proceedings?
vii) What are instances of stay of Criminal proceedings?

viii) Whether criminal proceedings can be stayed on the ground that subject matter is pending determination before civil Court?
ix) What is "stay of prosecution"?
x) What are the most suitable situations to stop the proceedings under section 249 CrPC and whether stoppage of proceedings has any contingency?
xi) Is there any settled criterion available to stay criminal proceedings?

Analysis: i) it is trite that civil and criminal proceedings can go side by side provided subject matter before civil Court and criminal Court is the same and is required to be determined by civil court first being Court of ultimate jurisdiction. Connotation "same subject matter" does not mean only a fact in issue relating to such subject but the subject matter as a whole.

ii) Law does not permit any person to acquire disputed amount through misappropriation. If it is permitted, this would open an absurd practice of taking the law into one's own hands, giving an air to a mechanism of private vengeance parallel to constitutional arrangement for judicial system of the country. Even in civil jurisdiction when possession is unlawfully taken from an illegal occupant of land, Court is bound to restore it to man in possession as per section 9 of the specific Relief Act, 1877; same is the mandate of section 145 of CrPC. Thus, law is very clear on the subject.

iii) It is settled principle of law that decision of a criminal Court does not affect any question pending in civil Court between same parties because the outcomes and standard of proof in both proceedings are different, i.e., 'preponderance of evidence' in civil cases and 'proof beyond reasonable doubt' in criminal cases. Thus, neither the principle of Res-judicata nor principle of Double jeopardy is applied in any manner.

iv) Section 249 CrPC authorizes the Magistrate to stop the criminal proceeding, at any stage, initiated through any mode except through private complaint, without pronouncing the judgment either of acquittal or conviction and then release the accused. Order passed by Magistrate under this section is required to be backed by reasons which makes it a judicial order, amenable to revisional jurisdiction; however, it does not seek execution of bond by the accused conditional to his release.

v) Section 249 CrPC does not seek execution of bond by the accused conditional to his release. This connotation is very strong because wherever in CrPC the word 'release' appears it is made conditional to executing a bond or sufficient security. Sections 57(2), 124(6) 173, 426, 435, 466, 496 and 497 of CrPC, are referred in this respect. Whereas like section 249 of CPC, sections 59(3) and 124(1) CrPC, also talk about a simple release without executing a bond or providing sufficient security. Bond is executed by the accused as an assurance to appear before the Court but when he does not remain in the process any more, execution of bond is not required.

vi) Section 249 of CrPC., cannot be think of a remedy available to order for stay of criminal proceedings because firstly, if the proceedings are pending through a

private complaint, rescue under this section is not available; secondly, not requiring a bond for release of accused is an indicator that a novel situation has arisen in the proceedings which require a sine die adjournment of case without a time-bound schedule. Thus, 'to stop the proceeding' stands distinguished to 'stay of proceedings' and 'stay of prosecution'. Stay of proceedings is done to meet the situation when further proceeding is conditional to an order to be made by other Court, the higher Court or by the government.

vii) Instances are like as under;

1.Where any person denies the existence of public right pursuant to an order made by magistrate for removal of nuisance and magistrate considers that there is reliable evidence of such denial, he shall stay the proceeding until the matter of the existence of such right has been decided by a competent Civil Court. (Section 139-A CrPC). 2. On information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries, Magistrate after inquiry can pass an order in favour of the party but if later finds that no such dispute exist, he shall stay the proceedings. (Section 145(5) of CrPC). 3. Stay of proceedings if prosecution of offence in altered charge requires previous sanction (Section 230 of CrPC). 4. When during the course of an inquiry or trial, it appears to a magistrate that case is one which should be tried or sent for trial to the Court of Session or the High Court or by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to the Sessions Judge or to such other Magistrate, having jurisdiction, as the Sessions Judge, directs. (Section 346 CrPC) 5. If any party intends and intimates the Court for filing of a transfer application of case, though it shall not require the Court to adjourn the case, but the Court shall not pronounce its final judgment or order until the application has been finally disposed of by the High Court. (Section 526 (8) CrPC). 6. Any matter pending before higher Court with an injunctive order as not to pronounce final judgment. 7. Matter for witness protection is pending with government under Witness Protection Act, 2018.

viii) Though there is no express provision in CrPC, for stay of criminal proceedings on the ground that subject matter is pending determination before civil Court yet there is no specific prohibition in this respect. Therefore, trial Court is competent to stay criminal proceedings.

ix) Stay of prosecution' is discontinuation of criminal prosecution on all or any of charges in order to give a go to government decision based on public policy which is regulated through section 10(3)(f) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006… The above section is verbatim of section 265-L of CrPC, which empowers the Advocate-General to seek stay of prosecution before the High Court.

x) From the practice and procedure, it can be summarized that the most suitable situations to stop the proceedings under section 249 CrPC could be like as under but are not exhaustive; 1) During the trial witnesses of case are reported to have gone abroad, or 2) Whereabouts of witnesses are not known, or 3) Witnesses have become absconders in another case. 4) Sanction for prosecution has not

been received to the Court for taking cognizance. 5) Prosecution has recommended the case as not fit for trial in the case review report under section 9(7) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, (the CPS Act 2006) and Court considers that the evidence is forthcoming. 6) On receipt of an interim police report under section 173 of CrPC when prosecutor examines the reasons assigned for the delay in the completion of investigation and considers the reasons compelling, can request the Court for the postponement of trial as authorized under section 9(6) of the CPS Act, 2006. Of course, before resorting to stop the proceedings in situations mentioned at serial No.1 to 3, the Court in order to procure the attendance of witnesses shall adopt coercive measures. Stoppage of proceedings is always contingent to return of witnesses for revival of situation from the stage it was discontinued.

xi) No settled criterion is available to stay criminal proceedings and it varies from case to case confining to pure discretion of the Court and guidance in this regard can be sought from precedents of Supreme Court.

Conclusion: i) Civil and criminal proceedings can go side by side and connotation "same subject matter" means the subject matter as a whole.

ii) Law does not permit any person to acquire disputed amount through misappropriation.

iii) Decision of a criminal Court does not affect any question pending in civil Court between same parties.

iv) Section 249 CrPC authorizes the Magistrate to stop the criminal proceedings, at any stage, initiated through any mode except through private complaint, without pronouncing the judgment either of acquittal or conviction and then release the accused.

v) See analysis no. v.

vi) See analysis no. vi.

vii) See analysis no. vii.

viii) Criminal proceedings can be stayed on the ground that subject matter is pending determination before civil Court.

ix) See analysis no. ix.

x) See analysis no. x.

xi) No settled criterion is available to stay criminal proceedings and it varies from case to case confining to pure discretion of the Court.

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24. **Lahore High Court**
Muhammad Akram Rahi v. The Copyright Board and three others
F. A. O. No. 46541 / 2022
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC3351.pdf

Facts: This Appeal is directed against the impugned Order communicated to the Appellant on behalf of Respondent No. 1 (the "Copyright Board"), whereby, an application for rectification of Respondents No. 2-a to 2-c (the "Respondents")

filed through special attorney, was accepted and in consequence thereof, copyright entry in favour of the Appellant was ordered to be expunged and cancelled.

Issues: i) What is status of the order passed by a forum lacking jurisdiction?
ii) Whether court can decide question of jurisdiction only when it is raised by party in writing?
iii) Whether Copyright Board under Copyright Ordinance is empowered to decided questions of infringement of copyrights?
iv) What types of matters can be adjudicated by Copyright Board under Copyright Ordinance?
v) How the Intellectual Property Organization of Pakistan Act, 2012 (IPO Act) as a subsequent enactment has affected powers of the Copyright Board as designated forum of remedy for all kinds of rectification applications under the Copyright Ordinance?
vi) Whether the Copyright Board under Section 41(2) of the Copyright Ordinance or the Tribunal under Section 18 of the IPO Act has the jurisdiction to decide rectification applications?

Analysis: i) It is well entrenched in our jurisprudence that question of jurisdiction of an adjudicating forum goes to the very root of the case and if such forum is not vested with the jurisdiction to decide the dispute or assumes jurisdiction not vested in it, the order passed by it is void ab initio and of no legal effect.
ii) When the Court does not have jurisdiction, no amount of consent or acquiescence can invest such Court with such jurisdiction. It is also well settled that point of jurisdiction is purely a question of law which can be raised even if it has not been taken in writing, although propriety demands that it should be raised in the first instance. Since the impugned Order is silent with respect to the question of jurisdiction, therefore, notwithstanding that the same was raised and not determined, or it was not raised at all, this Court in appellate jurisdiction which is a continuation of original proceedings, finds it obligatory to address the same.
iii) It is manifestly clear that some of the functions assigned to the Copyright Board under the Copyright Ordinance do not involve instances of infringement of copyrights. However, the Copyright Board is also empowered to decide suits and civil proceedings involving infringement of copyrights or other rights flowing thereunder under Section 65 of the Copyright Ordinance. Similarly, it is empowered to hear appeals against final orders of the Registrar under Section 76 of the Copyright Ordinance without any distinction qua questions involving infringement or otherwise of copyrights. The copyright Board can entertain claims of rectification based on based on infringement of intellectual property rights.
iv) The bare perusal of Section 41(1) of the Copyright Ordinance reflects that the Registrar is empowered with respect to prescribed cases and subject to prescribed

conditions, to amend or alter the Register of Copyrights and indexes by correcting any error in any name, address or particular; or correcting any other error which may have arisen therein by accidental slip or omission. However, Section 41(2) of the Copyright Ordinance confers broad, unlimited and comprehensive powers to the Copyright Board to pass an order with respect to rectification of the Register of Copyrights regarding the making of any entry wrongly omitted to be made or the expunging of any entry wrongly made in or, remaining on the Register or the correction of any error or defect in the Register. The Copyright Board is empowered to exercise such powers on application of the Registrar or of any person aggrieved in this respect. Once again, the power of rectification of the Copyright Board is general in character and does not distinguish between rectification applications simpliciter or based on allegations of infringement of copyrights or breach of intellectual property rights. The term 'rectification' is not specifically defined in the Copyright Ordinance, therefore, will necessarily entail ordinary dictionary meaning and in the context of the Copyright Ordinance, would mean that the Copyright Board can adjudicate all claims against the grant or refusal of registration of copyright or an interest therein on application of the Registrar or an aggrieved person with or without allegations of infringement of intellectual property rights. Therefore, it is abundantly obvious that Copyright Board apart from other functions is also conferred with the jurisdiction to decide claims regarding infringement of copyrights under the Copyright Ordinance which includes rectification applications based on infringement of intellectual property rights.

v) it is vividly evident that purpose of the IPO Act as a subsequent enactment to all other intellectual property laws included in its Schedule is to regulate all such laws under the umbrella of the IPO. Another inevitable result derived from its examination is that multiple forums to adjudicate civil rights and offences under the existing intellectual property laws were eliminated and consolidated by way of vesting conclusive jurisdiction in respect thereof in the Tribunal in terms of Section 18 of the IPO Act read with Section 39 thereof with a right of appeal before the concerned High Court. The conspicuous absence and presence of non-obstante clause in Sections 18(1) and 18(2) of the IPO Act, respectively, implies that dedicated forums under intellectual property laws competent to adjudicate civil proceedings not involving questions of infringement of intellectual property laws can still decide such cases but in case of civil proceedings, wholly or partly, involving determination of any allegation of infringement of intellectual property laws, such forum will be divested of its jurisdiction which will vest in the Tribunal. On the other hand, the Tribunal will have absolute jurisdiction to try any offence under Section 18(2) of the IPO Act. Hence, the Copyright Ordinance must be construed subservient and subordinate to the provisions of the IPO Act to the extent that the latter explicitly or impliedly repeals the former. For example, the Copyright Ordinance establishes an independent Copyright Office under the control and superintendence of the Registrar of Copyrights but the IPO Act explicitly integrates the Copyright Office with the Trade Mark Registry and

Patent Office established under different prior enactments and integrates them with the IPO vesting regulatory powers in the latter. Similarly, there is no ambiguity that jurisdiction of all forums with respect to all suits and civil proceedings regarding infringement of intellectual property laws and that of Magistrate qua offences under the Copyright Ordinance was clearly taken away by the IPO Act by vesting jurisdiction regarding the same with the Tribunal.

vi) The above analysis leads to consider as to how and to what extent, the provisions of Section 41(2) of the Copyright Ordinance can be reconciled with the IPO Act by harmonious construction of both statutes. Conversely, to what extent, the provisions of Section 41(2) of the Copyright Ordinance are so inconsistent with the IPO Act that the former under the doctrine of implied repeal have to give way to the latter to prevail. For the purposes of reconciliation of Section 41(2) of the Copyright Ordinance with the IPO Act, all cases of rectification can be conveniently divided into two categories. The first category of cases is of rectification simpliciter, being not based on any allegation of infringement or breach of any other intellectual property right under intellectual property laws included in the Schedule of the IPO Act. The second category of cases is of rectification based on any allegation of infringement or breach of any other intellectual property right under intellectual property laws included in the Schedule of the IPO Act. The determination of rectification cases by the Copyright Board falling in the first category does not create any inconsistency with the jurisdiction of the Tribunal under the IPO Act which can be conveniently decided by the Copyright Board. However, there is an obvious and irreconcilable inconsistency with respect to second class of cases of rectification based on allegations of infringement of any existing intellectual property right under intellectual property laws included in the Schedule of the IPO Act. Therefore, it is safely concluded that where a rectification application contains allegations of infringement or breach of intellectual property rights under intellectual property laws included in the Schedule of the IPO Act, the jurisdiction to decide such an application would vest with the Tribunal in terms of Sections 17, 18 and 39 of the IPO Act.

Conclusion: i) The order passed by a forum lacking jurisdiction is void ab initio and of no legal effect.

ii) Court can decide question of jurisdiction even when it is not raised by party in writing.

iii) See analysis no. iii.

iv) See analysis no. iv.

v) See analysis no. v.

vi) The determination of simpliciter rectification cases by the Copyright Board does not create any inconsistency with the jurisdiction of the Tribunal under the IPO Act which can be conveniently decided by the Copyright Board. Whereas a rectification application which contains allegations of infringement or breach of intellectual property rights under intellectual property laws included in the

Schedule of the IPO Act, the jurisdiction to decide such an application would vest with the Tribunal in terms of Sections 17, 18 and 39 of the IPO Act.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.106 of 2024 dated 21.06.2024, amendment is made at serial No.4 of the schedule in the Punjab Energy Department (Power Wing) Service Rules,2013.
2. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.107 of 2024 dated 03.07.2024, new Notification is issued under the authority of the Regulation of Mines & Oil Fields and Minerals department (Government Control) Act,1948, to determine rates of royalty of the minerals produced and carried away from the licensed or leased areas.
3. Vide Act VIII of 2024 dated 27.06.2024, the Punjab Finance Act 2024 is promulgated.
4. Vide Ordinance V of 2024 dated 27.05.2024, section 140 of the Elections Act, 2017 is amended.
5. Vide Ordinance VI of 2024 dated 27.05.2024, sections 24 and 36 of the National Accountability Ordinance, 1999 are amended.
6. Vide Ordinance VII of 2024 dated 06.06.2024, sections 4, 10 and 13 of the State-Owned Enterprises (Governance and Operations) Ordinance,2024 are amended.
7. Vide Act I of 2024 dated 17.04.2024, the Islamabad University of Health Sciences and Emerging Technologies, Islamabad Act,2024 is promulgated.
8. Vide Act II of 2024 dated 19.04.2024, sections 1, 2, 3, 4, 5, 5C, 6, and 8 of the Publication of the Holy Quran (Elimination of Printing and Recording Errors) Act,2024 are amended.
9. Vide Act III of 2024 dated 19.04.2024, the Toshakhana (Management and Regulation) Act,2024, is promulgated.
10. Vide Act IV 0f 2024 dated 26.04.2024, The Federal Ziauddin University Act,2024, is promulgated.
11. Vide Act V of 2024 dated 09.05.2024, Amendments have been made in the Sales Tax Act, 1990, the Federal Excise Act, 2005 and the Income Tax Ordinance, 2001.
12. Vide Act VI of 2024 dated 22.06.2024 sections 2, 3A, 6, 7, 8, 14,16 and 22A of the Pakistan Broadcasting Corporation Act, 2024 have been amended.
13. Vide Act VII of 2024 dated 22.06.2024, section 2, 3, 14, 15, 17, 18,19, 20, 22, 23 and 40 of the Pakistan National Shipping Corporation Act, 2024 have been amended.
14. Vide Act VIII of 2024 dated 22.06.2024, Sections 2, 3, 3A, 4, 5, 6, 8, 10, 11,13, 13A,14, 16 and 28 of the Pakistan Postal Services Management Board Act, 2024 have been amended.

15. Vide Act IX of 2024 dated 22.06.2024, sections 2,3,4,5,6,7,8,9,10.11.15,16 and 33 of the National Highway Authority Act, 2024 have been amended.
16. Vide Act X of 2024 dated 30.06.2024, the Pakistan Finance Act, 2024, is promulgated.

SELECTED ARTICLES

1. COURTING THE LAW
https://courtingthelaw.com/2024/05/21/commentary/voice-for-the-voiceless-stray-animal-welfare/

Voice for the Voiceless – Stray Animal Welfare by Ahsan Ahmed Munir

Pakistan is rated as a poor *performer ("E") under the* Animal Protection Index (API). *As the new provincial and federal governments take office, it is imperative that the respective legislators address this longstanding critical issue and focus dedicatedly on the protection and welfare of stray animals in Pakistan, particularly dogs. The stray dog population in Pakistan is estimated to be at least 3 million, so it is alarming that these animals face culling, exposure to disease-prone environments and neglect.*
This article aims to critically analyze and explore the legislation enacted for the safety of stray animals in Pakistan and evaluate its implementation. Furthermore, it will compare Pakistan's animal protection laws with those of other countries, such as India, the United States and the United Kingdom, to highlight areas for improvement and effective practices that could be adopted.

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

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

Today, the idea that the President possesses at least some constitutional authority to direct administrative action is accepted by the courts, Congress, and the legal academy. But it was not always so. For most of American history — indeed until relatively recently — Presidents derived their authority over the administrative state largely from statute. Any role for the White House in agency rulemaking or adjudication had to be legally specified. Scholars mostly agree about when this change occurred. But the dominant shared narrative — exemplified by then-Professor Elena Kagan's seminal article Presidential Administration — is Whig history. It offers a depoliticized interpretation that presents White House primacy as the product of steady progress toward greater administrative rationality.
This Article offers a historical corrective. It explains how "administration under law" was lost and replaced with a new constitutional baseline, "presidential administration." It is both an account of constitutional change — how one understanding of constitutional text and structure gave way to a different one — as well as a history of the regulatory state and how, beginning in the 1980s, federal officials reworked the relationship between the President, Congress, and administrative agencies in order to expand the role of market actors in governing economic activity. The Article draws attention to the intense political conflict that accompanied the advent of presidential administration.

What is today bipartisan was originally nothing of the sort. It also reveals how a new interpretation of Article II took hold without any fundamental doctrinal or statutory change or shift in formal law. It highlights the emergence of a neoliberal consensus around aspects of economic regulation that incentivized and buttressed presidential administration as an approach to administrative governance. And it reveals the relative novelty of originalist arguments about the "Unitary Executive."

3. **MANUPATRA**
https://articles.manupatra.com/article-details/From-Script-to-Screen-Navigating-IPR-in-the-Entertainment-Realm

From Script to Screen: Navigating IPR in the Entertainment Realm by Kumar Nishant

Intellectual property rights (IPR) are crucial for protecting and fostering `innovation in the entertainment industry, a sector known for its creativity and dynamism. This article delves into the roles of various IPR types, including trade secrets, copyrights, trademarks, and patents, within the entertainment industry. It analyzes the current legal landscape, traces the historical evolution of IPR in filmmaking, and assesses the impact of intellectual property protection on stakeholders such as distributors, consumers, and filmmakers. Furthermore, it addresses the challenges and opportunities presented by the digital age, discussing issues like licensing, piracy, and the balance between cultural content access and protection. The article aims to underscore the vital importance of intellectual property rights in driving economic growth, encouraging innovation, and shaping the future of the entertainment industry.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Harmonizing-Incentives-for-Innovation-and-Healthcare-Accessibility-The-Intersection-of-Intellectual-Property-and-Clinical-Trials

Harmonizing Incentives for Innovation and Healthcare Accessibility: The Intersection of Intellectual Property and Clinical Trials by Anushka Gupta

In the pharmaceutical industry, intellectual property (IP) is crucial for fostering innovation, especially in clinical trials. But IP can also restrict access to healthcare by driving up the cost of medications and therapies for some people. Intellectual property rights are crucial to the pharmaceutical industry's ability to foster innovation and assist in the creation of novel medications. Furthermore, clinical trials are essential to the development of new medications because they supply the data required for regulatory approval and marketing. Clinical trials and intellectual property interact to create significant legal and ethical questions that should be thoroughly thought through. In this paper, the importance of intellectual property in the drug-innovation process, its influence on clinical trials, and the potential effects it may have on the cost and availability of novel therapies are examined. This study also examines how to maintain access to healthcare while promoting innovation through intellectual property, particularly in the context of clinical trials. It looks at how intellectual property laws have developed in the pharmaceutical sector, how exclusivity and patents spur

innovation, and how these factors impact access to healthcare. The study also addresses other types of innovation incentive, such reward-based schemes and open-source medication development.
