LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-08-2024 to 15-08-2024)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

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1. **Supreme Court of Pakistan**
Abdul Rehman Khan Kanju v. Election Commission of Pakistan through its Secretary, Islamabad and others
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Civil Petition No. 1729/2024
Zulfiqar Ahmed v. Election Commission of Pakistan through its Secretary, Islamabad and others
Civil Petition No. 1767/2024
Rana Muhammad Arshad v. Muhammad Atif and others
Civil Petitions No. 2433/2024
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1573_2024.pdf

Facts: These Civil Petitions for Leave to Appeal arose out of the general elections held throughout Pakistan on 8 February 2024. Four of these Cases are in respect of three different National Assembly constituencies and one is in respect of a Provincial Assembly constituency.

Issues: i) What does section 95(5) of the Elections Act, 2017 stipulates?
ii) What significant changes were brought by the amendment in section 95(5) of the Elections Act, 2017?
iii) Whether High Court may exercise writ jurisdiction to determine the facts in dispute?
iv) Whether rights and remedies granted by the law may be negated under mob rule?
v) What is the requirement of notice under section 95(1) of the Elections Act, 2017?
vi) Whether counting and recounting is a judicial act in nature?
vii) What is the remedy available to the person aggrieved of the order of Returning Officer?
viii) What are the constitutional pre-conditions for exercising jurisdiction under Article 199 of the Constitution?

Analysis: i) Section 95(5) of the Elections Act, 2017 stipulates that when the margin of victory between the returned candidate and the runner up candidate is less than five percent of the total votes polled in the constituency or eight thousand votes in the case of a National Assembly constituency and four thousand in the case of a Provincial Assembly constituency then, before the commencement of the consolidation proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request to challenge in writing is made to that effect by a contesting candidate or his election agent.
ii) Amendment made three significant changes. Firstly, it reduced the numerical differences in votes from ten thousand and set different limits for the National and Provincial Assembly constituencies, respectively eight and four thousand.

Secondly, it created another category, which was of excluded votes which were equal to or more than the margin of victory. And, thirdly, the discretion vesting in the Returning Officer, that the request for recount was not unreasonable, was removed. When the writ petitions were filed before the High Court the amended section 95(5) was in place. However, the significance of the changes made in section 95(5) were not considered, let alone appreciated, by the learned Judges of the High Court.

iii) In respect of disputed facts as a general rule the High Courts do not exercise writ jurisdiction under Article 199 of the Constitution.

iv) Returning Officers cannot surrender their powers to mob rule nor can forego their statutory duty to recount. If this is accepted it would create a very dangerous precedent and render the law regarding recounting meaningless by those resorting to lawlessness. This would also deprive the candidate seeking recount of the ballot papers of this statutory right/remedy. The rights and remedies which the law grants cannot be negated.

v) Section 95(1) of the Elections Act requires the Returning Officer to give to all contesting candidates and to their election agents 'a notice in writing of the day, time and place fixed for the consolidation of the results'… When the petitioners' allege that the notices were not issued it cannot be assumed that the requisite notices regarding consolidation had been given.

vi) The counting and the recounting of ballot papers is not a judicial or even a quasi-judicial act. It is an administrative-ministerial act. The only prerequisite to undertake it is for the Returning Officer to simply determine the percentile/numerical difference between the first two candidates, upon receipt of an application requesting recount.

vii) If a Returning Officer does not do an honest recount or does not do the recount in accordance with the law, then the affected party has available remedies. Depending upon the particular facts of the case this could be by approaching the Commission or filing an election petition before the Election Tribunal, constituted under Article 225 of the Constitution. Thereafter, the jurisdiction of this Court can also be invoked.

viii) The High Court's jurisdiction under Article 199 of the Constitution can only be invoked if a petitioner is an 'aggrieved' person. It is not understandable how anyone can be stated to be aggrieved if the ballot papers are recounted. Grievance against the administrative-ministerial act of recounting of ballot papers is also not envisaged in Article 199…Constitutional preconditions before exercising jurisdiction under Article 199 of the Constitution.. were that the petitioner must be aggrieved and must not have other adequate remedy… jurisdiction of the High Court (under Article 199 of the Constitution) can only be invoked when 'no legal remedy is available to an aggrieved party' 'or in respect of the orders which are coram non judice, without jurisdiction or mala fide.'

Conclusion: i) See above analysis no.i.

ii) See above analysis no.ii.

iii) High court do not exercise jurisdiction under article 199 of the Constitution to determine the disputed facts.
iv) Rights and remedies granted by the law may not be negated under mob rule.
v) See above analysis no.v.
vi) See above analysis no.vi.
vii) See above analysis no.vii.
viii) See above analysis no.viii.

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2. **Supreme Court of Pakistan**
Zafar Iqbal and others v. Muhammad Rafiq and others
Civil Appeal No.477-L OF 2011
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._477_l_2011.pdf

Facts: The predecessors of the respondents filed civil suit for Declaration and Injunction claiming ownership of 332 Kanal of Shamlat Deh (joint holding of the villagers) on the basis of adverse possession. The plaintiffs challenged the judgments and decrees by filing Civil Revision before the High Court which has been accepted vide judgment and the suit filed by the plaintiffs has been decreed. Feeling aggrieved of the above judgment passed by the High Court in revisional jurisdiction, the defendants filed the instant appeal.

Issue: Whether the Declaratory Suit claiming exclusive ownership of a particular piece of land in a joint holding i.e. Shamlat Deh is maintainable?

Analysis: …that the Declaratory Suit filed by the plaintiffs claiming exclusive ownership of the suit land, being a joint holding, is not maintainable… According to the settled principles, the vendee of a co-sharer who owns an undivided Khata in common with others, is clothed with the same rights as the vendor has in the property no more and no less. If the vendor was in exclusive possession of a certain portion of the joint land and transfers its possession to his vendee, so long as there is no partition between the co-sharers, the vendee must be regard as stepping into the shoes of his transferor qua his ownership rights in the joint property, to the extent of the area purchased by him, provided that the area in question does not exceed the share which the transferor owns in the whole property.

Conclusion: The Declaratory Suit filed by the plaintiffs claiming exclusive ownership of the suit land, being a joint holding, is not maintainable.

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3. **Supreme Court of Pakistan**
Asma Haleem v. Abdul Haseeb Chaudhry and others
C.P.L.A. No. 3300 of 2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3300_2024%20.p

df

Facts: The petitioner filed a suit for partition etc. regarding the constructed house in which the trial court issued a preliminary decree. Thereafter, a court auctioneer was appointed by the trial court who conducted the auction proceedings and submitted his final report to the court which was also objected by the petitioner. The said objections were turned down by the trial court against which the petitioner preferred an appeal which was allowed. A revision petition was filed by the respondent No. 7 which was allowed. Hence, the instant petition for leave to appeal.

Issue: Whether cost can be imposed to curb the practice of instituting frivolous and vexatious cases under Order XXVIII, Rule 3 of the Supreme Court Rules, 1980?

Analysis: It is significant to highlight that according to the statistics provided by the Law & Justice Commission of Pakistan, there are about 2.2 million (2,255,295) cases pending before all courts in the country. Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of genuine disputes. Such litigation is required to be rooted out of the system and strongly discouraged and one of the ways to curb such practice of instituting frivolous and vexatious cases is by imposing of costs under Order XXVIII, Rule 3 of the Supreme Court Rules, 1980 which lay the foundation for expeditious justice and promote a smart legal system, enhancing access to justice by entertaining genuine claims.

Conclusion: Cost can be imposed to curb the practice of instituting frivolous and vexatious cases under Order XXVIII, Rule 3 of the Supreme Court Rules, 1980.

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4. **Supreme Court of Pakistan**
Islamic Republic of Pakistan through Secretary, Ministry of Defence and another v. M/s Rashid Builders (Pvt) Limited
Civil Appeal No.296/2015
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._296_2015_dt_07-08-2024.pdf

Facts: The appellant has challenged the judgment of High Court vide which High Court dismissed the RFA filed by appellant against judgment of trial court whereby trial court decreed the suit for recovery of respondent. The appellant filed CPLA and leave to appeal was granted.

Issues: i) What are concurrent delays?
ii) How the claim of respondent fails the 'but-for' test of causation?

Analysis: i) Where the delays are mutual and are condoned by both parties at different points in time and the record very much reflects so, It would be pertinent to call the delays as "concurrent delays"... we are of the considered view that the initial events such as delay in provision of complete site on part of the Appellants, delay in takeover of the available sites on part of the Respondent, delay in provision of the complete drawings on part of the Respondent, delay in provision of M.S. round bars on part of the Appellants, were all relevant events which delayed the project and thus were concurrent in nature.

ii) We believe that the Respondent's claims would fail the "but-for" test of causation. The question to ask in the "but-for" test over here would be: would the Respondent still be delaying the project but for the Appellants' delays? The answer is yes. In simpler terms, the "but-for" test, outlined above, is asking if the delays by the Respondent are independent of the delays by the Appellants. If the Respondent's delays are only happening because the Appellants caused delays first, then the Appellants‟ delays are the root cause. However, if the Respondent would still be causing delays regardless of the Appellants' actions, then the Respondent's delays are independent. Hence, applying the "but-for" test to the matter at hand would mean that the Respondent's delays were independent and thus the Respondent was not entitled to recover the amount that it sought to recover through the suit of recovery.

Conclusion: i) Where the delays are mutual and are condoned by both parties at different points in time and the record very much reflects so, It would be pertinent to call the delays as "concurrent delays".

ii) See analysis no. ii.

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5. Supreme Court of Pakistan

IFFCO Pakistan (Private) Limited v. Ghulam Murtaza & others etc.
Civil Petitions No.525-K to 541-K/2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._525_k_2023.pdf

Facts: The learned Member (Single Bench) of NIRC allowed the petition of the petitioner and held that the respondents are employees of IFFCO and also allowed them to join lawful trade union activities or to join the trade union of their own choice. Being aggrieved, the present petitioner (IFFCO), challenged the order before the full bench of the NIRC, but the appeal was dismissed. Thereafter, the petitioner challenged the appellate judgment in the Sindh High Court, but all of the constitution petitions were dismissed. Hence, these civil petitions.

Issues: i) What do the terms 'Insourcing' and 'Outsourcing' donate?

ii) Is the Toll Manufacturing method also a genre of outsourcing?

iii) What is the yardstick to decide the controversy rampant between a direct employee of a company and an employee through an independent contractor?

iv) Whether the outsourcing should be used as a weapon of circumvention of

labour laws by means of sham agreements?

v) Is it judicious to ask High Court to revisit and draw some other conclusion or different interpretation of evidence if the facts have been justly tried by two courts and the both courts concurrently reached the same conclusion?

Analysis: i) Insourcing means and denotes the tactical and premeditated method of passing on a job to the in-house employees within the employer's establishment, while outsourcing is germane to the practice of entrusting a task to an exterior entity characterized as an outsourcing agency, separated from the entrepreneur's internal human resource. In general, the theory and notion of outsourcing is predominantly based on the element of downsizing the cost effectiveness and every entrepreneur has the right and discretion to evolve the best suited business strategy and may outsource business activity to some external force or outsourcing agency/contractor and when it outsources any specific task or job/work to the contractor/agency to accomplish or perform, it will not be responsible for the manpower arrangement, or the supervision or control on such manpower.

ii) The Toll Manufacturing method is also a genre of outsourcing the task in which, for all intents and purposes, when a company or firm wants to launch some products in the market as a part of its business venture but does not want to make huge investments for infrastructure which may include plant, machinery, and manpower, they use the services of toll manufacturing undertakings having adequate paraphernalia with sufficient experience and skilled labourers to optimize the production on providing raw material and/or semi-finished objects as per required specifications. In essence, "Toll Manufacturing" or "Tolling" is a stratagem of outsourcing whole or part/jobwise production to a third party company/contractor where the principal company/firm provides the raw materials or semi-finished products for production.

iii) In our view, the foremost distinction, rather the yardstick, to decide the controversy rampant between a direct employee of a company and an employee through an independent contractor rests on the extent of control & supervision on human resource, ongoing control of independent contractor, if any, financial risks and obligations, as well as the provision of plant, machinery, and premises, and finally supply of raw material and allied set-up.

iv) Without a doubt, the employer has the right to administer, operate and carry out its business activity in the best suited manner, strategy and discernment and may make use of the most efficacious and proficient resources in its business planning. There is no bar to contract out the whole job or in the bits and pieces to the outsource contractor, including human resource within its own premises or through toll manufacturing agreements but what is crucial is that the outsourcing should not be used as a weapon of circumvention of labour laws by means of sham agreements.

v) The learned Full Bench of the NIRC re-evaluated and re-examined the entire evidence on record. If the facts have been justly tried by two courts and both the courts concurrently reached the same conclusion, then it was not judicious to ask

the High Court to revisit and draw some other conclusion or different interpretation of evidence. We are sanguine that the High Court has the powers to re-evaluate the concurrent findings of fact arrived at by the lower fora if the concurrent findings are not based on reasonable appreciation of evidence on record or are perverse and unjustified, but it cannot upset such findings if the same are based on relevant evidence or are without any misreading or non-reading of evidence. The learned High Court in this case examined the concurrent findings recorded below which were neither found in violation of law nor found to be based on flagrant and obvious defect floating on the surface of record, hence the Court rightly declined to interfere. The learned High Court rightly scrutinized the facts and law and it was not in its dominion under the constitutional jurisdiction to judge the credibility of the witnesses examined by the parties. Predominantly, the NIRC Single Bench and NIRC Full Bench, both already considered the oral and documentary evidence in light of the circumstances of the case and the probabilities, and rendered appropriate findings on it, therefore, in our view, the interference could only be permissible if the concurrent findings were found to be manifestly erroneous, illegal or violative of some fundamental rules of procedure or natural justice, which is missing in the case in hand.

Conclusion: i) See above analysis no.i.
ii) The Toll Manufacturing method is also a genre of outsourcing.
iii) See above analysis no. iii.
iv) The outsourcing should not be used as a weapon of circumvention of labour laws by means of sham agreements.
v) It is not judicious to ask High Court to revisit and draw some other conclusion or different interpretation of evidence if the facts have been justly tried by two courts and the both courts concurrently reached the same conclusion.

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6. **Supreme Court of Pakistan**
Syed Raheel Ahmed v. Mst. Syeda Zona Naqvi and others
Civil Petition No.473-K of 2024
Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._473_k_2024.pdf

Facts: The respondent no. 01 filed a suit for dissolution of marriage, maintenance, and recovery of dowry articles and gold ornaments which was decreed by family court. Against this judgment, the petitioner filed appeal before ASJ which was dismissed, thereafter, the petitioner filed Constitutional petition in the High Court which was also dismissed, hence, this petition.

Issues: i) Whether High Court while exercising constitutional jurisdiction, can act as court of appeal against family court in the absence of specific statutory provisions conferring such a right of appeal in family cases?
ii) Whether Under Article 199 of the Constitution, High Court can sit as a court of appeal for the purpose of addressing factual controversies?

iii) Whether such orders against which statute does not grant the right to appeal can be contested by invoking the constitutional jurisdiction of the High Court?

Analysis: i) As per section 14 of the Family Courts Act, 1964, decision of Family Court can be challenged only once before the District Court as the only appellate forum and no further right of appeal has been provided against the decision of such appellate court. The perusal of section 14 does not in any manner, whatsoever, envisage any right to appeal against the decision of appellate court in the High Court indirectly by filing a constitutional petition… In the realm of family law, the Legislature has intentionally refrained from granting the right of appeal to the High Court from decisions rendered by appellate courts. This deliberate omission indicates a purposeful legislative strategy to bring family litigation to a definitive conclusion. By precluding the possibility of further appeal to the High Court, the Legislature is effectively aiming to prevent prolonged family disputes, ensuring that appellate court rulings are conclusive and that family law matters are resolved with definitive closure… Therefore, in absence of any express right to appeal, the decisions of appellate court pertaining to family matters are considered to be final and conclusive.

ii) This court has time and again delved into the question of invocation of jurisdiction of High Court under Article 199 of the constitution against appellate decisions and observed that in such circumstances the jurisdiction of High Court is limited and concerned only with whether or not the courts below acted within the jurisdiction. If such a court has the jurisdiction to decide a matter, it is considered competent to make a decision, regardless of whether the decision is right or wrong and even if the said decision is considered to be incorrect, it would not automatically render it as being without lawful authority so as to invoke constitutional jurisdiction. The High Court should not disturb factual determinations through a reassessment of evidence within its constitutional jurisdiction or use this jurisdiction as a substitute for appeals or revisions. Moreover, any interference with the findings of fact by the lower fora was beyond the scope of the High Court's jurisdiction under Article 199 of the Constitution.

iii) It is a trite law that when a statute does not grant the right to appeal against certain orders; those orders cannot be contested by invoking the constitutional jurisdiction of the High Court.

Conclusion: i) The High Court is not vested with the jurisdiction to act as a court of appeal against Family Court decisions in the absence of specific statutory provisions conferring such a right of appeal in family cases.

ii) Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the High Court cannot sit as a court of appeal for the purpose of addressing factual controversies.

iii) When a statute does not grant the right to appeal against certain orders; those orders cannot be contested by invoking the constitutional jurisdiction of the High Court.

7. **Supreme Court of Pakistan**
Hafiz Qari Abdul Fateh through L.Rs v. Ms. Urooj Fatima and others
Civil Petition No.174-K of 2022
Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._174_k_2022.pdf

Facts: Petitioner's suit seeking specific performance of an oral agreement along with decree of declaration and injunction instituted against respondents was decreed. However, appeal preferred by some of the respondents against aforementioned decree was allowed. Eventually, the Civil Revision preferred by the Petitioner before the High court was dismissed as well, hence this petition.

Issues: i) Which oral agreement to sell may be valid and enforceable in eyes of law?
ii) How the terms and conditions of an oral agreement to sell may be established?

Analysis: i) It is a settled principle of law that a contract is an agreement having a lawful object, voluntarily entered into by two or more parties who are competent to contract, each of whom intends to create one or more legal obligations between them. The basic requirements of a valid and enforceable contract are offer, acceptance, exchange of consideration and mutuality of obligations.
ii) It is a well-established legal principle that when a party seeks a decree for specific performance of an oral agreement, the onus would be on that party to prove it to be falling in the definition of agreement in Section 2(h) of the Contract Act, 1872. A party claiming the existence of an oral agreement must clearly specify the date, time, place, and names of witnesses thereof in pleadings, such as the plaint or written statement.

Conclusion: i) An oral agreement to sell by which the parties, competent to contract, intend to be bound is valid and enforceable in eyes of law.
ii) Firstly, the terms and conditions of an agreement to sell have to be stated in detail in the pleadings in terms of Order VI, Rule 2 of the Civil Procedure Code, 1908, and secondly those have to be established through independent evidence.

8. **Supreme Court of Pakistan**
Waheed Gul Khan, Mumtaz Ali v. Province of Sindh and others
Civil Petitions No.154-K of 2022 & 166-K of 2022
Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._154_k__2022.pdf

Facts: Through these petitions, the petitioners have called in question the order passed by the learned High Court whereby the constitutional petitions filed by them were dismissed through a consolidated order holding that mere passing a written test and being called for interview doesn't create any right/interest in the favour of the petitioners.

Issues: i) Whether mere passing a written test and being called for interview creates any right/interest in the favour of the candidates?
ii) Whether interview result can be challenged in the constitutional jurisdiction of the High Court?

Analysis: i) It is a settled principle of law that mere qualifying for the interview does not create any vested right for appointment to a specific post in favour of the candidates.
ii) An interview is inherently a subjective evaluation, and a Court of law does not have jurisdiction to substitute its opinion with that of the Interview Board to provide relief to anyone. The role of the Interview Board is to evaluate candidates based on a variety of subjective criteria, which may include interpersonal skills, presentation, and other intangible qualities that are difficult to measure objectively. These assessments are inherently qualitative and depend on the opinion of interviewers, who are appointed for their expertise and ability to make such evaluations. However, this does not mean that the decisions of the Interview Board are beyond scrutiny. If there were any indications of mala fides, bias, or significant errors in opinion that are apparent from the records, the Court would certainly be compelled to intervene.

Conclusion: i) Mere qualifying for the interview does not create any vested right for appointment to a specific post in favour of the candidates.
ii) An interview is inherently a subjective evaluation, and a Court of law does not have jurisdiction to substitute its opinion with that of the Interview Board to provide relief to anyone.

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9. **Supreme Court of Pakistan**
Yar Muhammad Khan v. The State and another
Criminal Petition No.271 of 2024
Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._271_2024.pdf

Facts: Through this petition, the petitioner sought post-arrest bail in case registered u/s 302/324/337-F(v)/A(i)/337-D/34 PPC and 15-AA.

Issue: Whether mere registration of counter version of the occurrence by an accused can be made basis for grant of post-arrest bail to him particularly when incriminating material is available on record to prima facie connect him with commission of a heinous offence?

Analysis: Statements of the witnesses of the occurrence in support of prosecution version and the positive report of the firearm makeup sufficient incriminating material to prima facie establish involvement of an accused in the commission of a heinous offence.

Conclusion: Mere registration of counter version of the occurrence by an accused cannot be

made basis for grant of post-arrest bail to him particularly when incriminating material is available on record to prima facie connect him with commission of a heinous offence.

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10. **Supreme Court of Pakistan**
Muhammad Saleem v. ADJ
Civil Petition No.3601-L of 2022
Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3601_l_2022.pdf

Facts: Through the instant petition, the petitioner assailed the order of Single Bench of High Court, whereby, Writ Petition filed by the petitioner was dismissed with imposition of cost upon the defendant holding the same as frivolous and otherwise not maintainable in law.

Issue: Can an application for satisfaction of the judgment and decree in installments be entertained by the Supreme Court where no such application has been filed by the defendant being judgment debtor before the Executing Court?

Analysis: The request made by learned counsel for the defendant for satisfaction of the judgment and decree dated 24 September 2019 passed by the Trial Court in installments cannot be entertained by this Court as no such application has been filed by the defendant, being judgment debtor, before the Executing Court.

Conclusion: An application for satisfaction of the judgment and decree in installments cannot be entertained by the Supreme Court where no such application has been filed by the defendant being judgment debtor before the Executing Court.

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11. **Supreme Court of Pakistan**
Abdul Qudoos son of Haji Abdul Razzaq v. Hafiz Israr Ahmed son of Haji Ghulam Nabi and another
Criminal Petition No.660 of 2024
Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._660_2024.pdf

Facts: Through this petition, the petitioner assailed the order passed by the high court whereby pre-arrest bail granted to him by the Sessions Judge was cancelled.

Issue: cancellation of pre-arrest bail.

Analysis: After tentative assessment of the material available on record, through a well-reasoned and speaking order, the Sessions Judge... granted pre-arrest bail to the petitioner but same has wrongly been cancelled …order without appreciating that no grounds for cancellation of pre-arrest bail of the petitioner were available to the complainant. While cancelling the pre-arrest bail of the petitioner…High Court has also failed to appreciate that there was nothing on record to show that the petitioner ever abused or misused the concession of pre-arrest bail.

Conclusion: See above analysis.

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12. **Supreme Court of Pakistan**
Zeeshan S/o Gul Hussain v. The State & another
Criminal Petition No.556 of 2024
Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._556_2024.pdf

Facts: The petitioner has sought post-arrest bail in FIR u/s 302/324/427/34 PPC.

Issue: Whether mere absconsion of accused can be made basis for refusal of grant of post arrest bail?

Analysis: Mere absconsion of the petitioner for almost seven months cannot be made a basis to refuse him post-arrest bail.

Conclusion: Mere absconsion of accused cannot be made basis for refusal of grant of post arrest bail.

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13. **Supreme Court of Pakistan**
Raza Khan v. The State & another
Criminal Petition No.368 Of 2024
Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._368_2024.pdf

Facts: Through this petition, the petitioner seeks post-arrest bail u/s 4/5 of the Khyber Pakhtunkhwa Elimination of Custom of Ghag Act, 2013 r/w section 25 of the Telegraph Act, 1885.

Issue: Grant of post-arrest bail.

Analysis: Keeping in view the peculiar circumstances of the instant case and on the basis of tentative assessment of the material available on record, the petitioner, being prima-facie involved in the commission of non-bailable offences under the provisions of GHAG Act, 2013, is held not entitled for the discretionary relief of post-arrest bail.

Conclusion: See above analysis.

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14. **Lahore High Court**
The State v. Babar alias Jani
Murder Reference No.103 of 2021
Babar alias Jani v. The State
Crl. Appeal No. 43616-J of 2021
Ms. Justice Aalia Neelum, HCJ
https://sys.lhc.gov.pk/appjudgments/2024LHC3592.pdf

Facts: Appellant was convicted and sentenced to death for committing Qatl-e-Amd by the trial court. Murder reference was sent to the High Court for confirmation of the conviction and sentence while the appellant assailed the same through criminal appeal.

Issues: i) What is the requirement regarding entry if the case property is taken away from Malkhana and redeposited in the same?
ii) What is the requirement regarding the safe custody of the case property?
iii) How to prove the redepositing of the case property in Malkhana?
iv) Whether mere absconsion can be taken as proof of guilt and the same may be made ground of conviction?

Analysis: i) It is necessary that as and when case property is taken out from Malkhana, necessary entry is made in the Malkhana Register and at the time when case property is redeposited in MalkhanaIt is also necessary that when case property is re-deposited in the Malkhana, an entry in the Malkhana Register must be made.
ii) Case property in murder cases must be kept in safe custody from the date of seizure till its production in the Court.
iii) A dire necessity has been cast upon the prosecution to produce in Court the abstract of the Malkhana Register for ensuring, dispelling, of any aura of skepticism seeping into the prosecution case, especially vis-a-vis safe custody of the case property, "being," redeposited in the Malkhana.
iv) The absconding cannot be taken as proof of guilt if sufficient connecting evidence against the accused is unavailable… by now, it is an established proposition of law that the absconding creates merely a suspicion in mind, but the same is not conclusive proof of guilt…mere absconsion of the accused is no ground to convict him if the prosecution has failed to prove its case against the accused.

Conclusion: i) Entry in the Malkhana register is necessary whenever case property is taken away and redeposited in the same.
ii) See above analysis no. ii.
iii) Prosecution is duty bound to produce the abstract of Malkhana register to prove the depositing of the case property in Malkhana.
iv) See above analysis no. iv.

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15. Lahore High Court
Kashif Jamal v. The State
Criminal Appeal No.865 of 2022
Mr. Justice Sadaqat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC3629.pdf

Facts: Appellant faced trial in case pertaining offence under Section 302 PPC and has ultimately been convicted and sentenced by the Trial Court to imprisonment for life as *Ta'zir* with compensation of Rs.5,00,000/- payable to legal heirs of the

deceased u/s 544-A Cr.P.C., and in default thereof to further undergo simple imprisonment for six months. Hence, this appeal.

Issues: i) What would be effect of unexplained delay caused in conduct of post mortem of deceased in a murder occurrence?
ii) What would be effect of recovery of electric bulb qua identification of an accused if eye-witness had not disclosed said source of light in the FIR as well as in his examination-in-chief recorded before the trial Court?

Analysis: i) Unexplained delay in conduct of post mortem of a deceased in a murder occurrence would suggest that time had been consumed by the police to cook up a story for the prosecution before preparing police papers necessary for getting a post-mortem examination of the dead body.
ii) Mere recovery of electric bulb would not prove that same had been litting at or near the place of occurrence at the time of occurrence, unless eye-witness had discloses said source of light in the FIR as well as in his examination-in-chief recorded before the trial Court.

Conclusion: i) Unexplained delay in conducting post mortem of a deceased in a murder occurrence would bring forth possibility that time had been consumed by the police in procuring/planting eye-witnesses to falsely involve accused.
ii) If the eye-witness had not disclosed source of light in the FIR as well as in his examination-in-chief recorded before the trial Court and mere recovery of electric bulb has been shown effected later, then the identity of the accused in dark hours of the night would not be free from doubt.

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16. **Lahore High Court**
Rahat Abbas & another v. The State & another
Crl. Misc. No.1979-B/2024
Mr Justice Syed Shahbaz Ali Rizvi, Mr Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC3574.pdf

Facts: Through this petition filed under Section 497 Cr.P.C., the petitioners seek their release on post-arrest bail in case FIR for offences under Sections 324, 353, 186, 337-H(2), 148 & 149 PPC read with Section 7 of the Anti-Terrorism Act, 1997.

Issues: i) Whether late submission of an investigation report violates Constitutional provisions in Pakistan?
ii) Whether the interpretation of term ‘unnecessary delay’ used in section 173 of CrPC is strict or flexible?
iii) What is purpose of submitting interim investigation report?
iv) What is rationale behind routing the investigation report through a prosecutor?
v) What is scope of Section 9(5)(a) of The Prosecution Act regarding return of defective investigation report and whether it can be returned simply because it lacks plausible and cogent evidence sufficient for conviction?
vi) What constitutes a defective investigation report?

vii) Whether under the pretext of a defective investigation, an investigation report can be withheld from reaching the court?
viii) How the prosecutor ought to ensure that the investigating officer is not left in the lurch on return of defective investigation report?
ix) What role prosecution department can plays in prevention of delay in submission of investigation report?
x) What are criteria for extension of judicial remand?
xi) What are different stakeholders responsible for timely submission of investigation reports?

Analysis: i) The late submission of an investigation report also violates several Constitutional provisions in Pakistan, specifically Articles 4, 9, 10, and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. Article 4 ensures that individuals are dealt with according to the law, and delays violate the due process of law. Article 9 protects personal security and liberty, which are compromised by extended incarceration and prolonged uncertainty. Article 10 provides safeguards for arrest and detention, and delays hinder the right to a timely trial resulting in prolonged detention. Finally, Article 10-A guarantees a fair trial, and justice delayed is inherently unjust. The delayed submission of investigation reports flagrantly breaches Article 10-A, undermining the right to a fair trial. Such delays compromise due process, leave both the accused and the victim in a state of uncertainty, and undermine public trust in the judicial system.
ii) Section 173 of CrPC was designed to ensure a swift transition from investigation to prosecution, albeit without setting a strict deadline. Although, the Code does not fix a timeline for the completion of a criminal investigation, however, it mandates its completion without unnecessary delay. The term „unnecessary delay" is inherently flexible, as its interpretation varies with the nature and complexity of each case. In simpler cases, a delay might be deemed unnecessary if basic investigative steps are not promptly taken and the available evidence is not collected. Conversely, in more intricate cases involving extensive evidence and multiple witnesses, what constitutes unnecessary delay is more lenient, allowing for thorough and meticulous investigation. This approach ensures that the criminal justice system remains both efficient and fair, adapting to the unique demands of each case.
iii) The concept of an interim investigation report was introduced to serve a multitude of purposes. It establishes judicial oversight to ensure prompt submission of investigation reports, enabling the court to evaluate whether the evidence suffices for trial and facilitating the swift conclusion of criminal cases. It provides the court with crucial insights into the progress of the investigation, thereby upholding transparency and fostering a more dynamic criminal justice system. Moreover, it empowers the court to expedite the investigation by issuing necessary directions when an investigation is incomplete thus preventing undue delays. The submission of an interim report also serves as a safeguard against the fabrication and dishonest conduct by the investigating officer during subsequent

stages of an investigation. Given the constraints of Section 172 of the Code, which classifies the case diaries as a privileged document, the interim report stands as the sole document capable of reflecting the status of an investigation. It ensures transparency, preventing the crafting and padding of evidence or the false implication of an innocent person at a later stage.

iv) The 1992 Amendment introduced a pivotal change in the procedure for submitting investigation reports, mandating that such reports must be filed through the Public Prosecutor. The rationale behind routing the investigation report through a prosecutor is to engage the prosecutor at a very early stage, allowing him to assess the investigation report and render his expert opinion. This early involvement is crucial for a successful prosecutorial system, as it ensures that the case is meticulously evaluated from the outset. By scrutinizing the report, the prosecutor can identify any flaws or deficiencies, provide necessary corrections, and ensure that the evidence is robust and legally cogent. It is pertinent to observe here that when the law mandates an investigation report to be forwarded by a specific authority, it must be done with the reasoning of that authority and due diligence. This process should not reduce the authority to a mere post office but should involve a thoughtful application of mind to ensure the purpose of forwarding is fulfilled meaningfully. In forwarding even an interim investigation report, the prosecutor should render his opinion and highlight any shortcomings on the part of the investigating agency. This process ensures that the report not only communicates findings but also undergoes preliminary scrutiny to uphold the quality and integrity of the investigation.

v) The ambit of Section 9(5)(a) of The Prosecution Act is strictly confined to the act of returning a defective investigation report for the rectification of its deficiencies. It does not extend to directing the investigating officer to reinvestigate or craft the evidence against the accused. In our considered opinion, a „defective investigation report" is intrinsically distinct from a „defective investigation" itself. Allowing the prosecution to review and direct the rectification of investigative flaws would unleash a torrent of reinvestigations, creating ample opportunities for tampering with evidence in an overzealous pursuit of convictions in every criminal case. However, at the conclusion of the investigation, when the investigation report reaches the prosecutor, he cannot be permitted to return it to the investigating agency simply because it lacks plausible and cogent evidence sufficient for conviction. Instead, the report should be forwarded to the court, accompanied by his assessment as required under Section 9(7) of The Prosecution Act. This ensures that the prosecution does not overstep its bounds, but rather lets the chips fall where they may within the judicial process. Returning the investigation report to the investigating agency after the completion of the investigation to rectify defects in the investigation process would constitute an overreach, going beyond the purview of the provisions of The Prosecution Act. This would be akin to overstepping one's bounds, disrupting the intended separation of responsibilities within the criminal justice system.

vi) To discern what constitutes a defective investigation report, one must turn to

Section 173(1)(a) & (b) of the Code, which delineates the requisite elements of such a report. The investigation report, in a form prescribed by the Provincial Government, must include the names of the parties involved, the nature of the information received, and the identities of individuals familiar with the circumstances of the case. Additionally, it must state whether the accused, if apprehended, has been remanded into custody or released on bond, specifying whether the release with or without sureties. Furthermore, the investigation report must be communicated to complainant, as prescribed by the Provincial Government, regarding the actions taken by the investigating officer. Should any of these essential elements be missing from the investigation report, it may rightfully be deemed defective.

vii) Section 13(9)(d) of The Prosecution Act explicitly mandates that a prosecutor shall report to the District Public Prosecutor any details of investigations conducted in violation of the law or the instructions issued by the Prosecutor General. The District Public Prosecutor, in turn, may inform the head of Investigation of the District and the Prosecutor General to take appropriate action against the delinquent investigating officer. However, under the pretext of a defective investigation, an investigation report cannot be withheld from reaching the court. Such conduct on the part of the prosecutors is a flagrant violation of the mandate of the law.

viii) In the case of a defective investigation report, the same may be returned to the investigating agency to rectify those defects. Section 12(2) of The Prosecution Act mandates that when a prosecutor returns a defective report for correction, he must also set a deadline for the removal of those defects. The prosecutor must ensure that the investigating officer is not left in the lurch, providing clear instructions and a reasonable timeframe, thus ensuring that the investigation proceeds without a hitch and no stone is left unturned.

ix) According to Section 12 of The Prosecution Act, upon registration of a criminal case, it is mandatory to forward a copy of the crime report to the District Public Prosecutor forthwith. The investigation officer is obliged to deliver the investigation report to the designated prosecutor within the prescribed period and if the investigation extends beyond the allotted timeframe, the officer must document the reasons and duly inform the prosecutor of these extenuating circumstances. Under Section 13(9)(d) of The Prosecution Act, a prosecutor is obliged to report any delays in the submission of investigation reports to the District Public Prosecutor. This issue may also be escalated to the district head of investigation and the Prosecutor General, paving the way for necessary actions against the investigating officer. If a prosecutor fails to fulfill this mandatory duty, proceedings should also be initiated against him under The Punjab Criminal Prosecution Service Inspectorate Act, 2018.

x) Section 344 of the Code envisages that no extension of judicial remand shall be granted without reasonable cause, thereby safeguarding the liberty of the accused against arbitrary detention. „Reasonable cause“ is a legal standard that requires a justification rooted in logic and facts, demonstrating that the extension of judicial

remand is necessary and warranted under the circumstances.
xi) The timely submission of investigation reports is not solely the duty of the investigating agency. Rather, it is a shared responsibility among the concerned Prosecutors, Area Magistrates, Criminal Justice Coordination Committees, and Superintendents of Prisons.

Conclusion: i) The late submission of an investigation report violates several Constitutional provisions in Pakistan, specifically Articles 4, 9, 10, and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.
ii) The term „unnecessary delay" is inherently flexible, as its interpretation varies with the nature and complexity of each case.
iii) See analysis no. iii.
iv) The rationale behind routing the investigation report through a prosecutor is to engage the prosecutor at a very early stage, allowing him to assess the investigation report and render his expert opinion.
v) The ambit of Section 9(5)(a) of The Prosecution Act is strictly confined to the act of returning a defective investigation report for the rectification of its deficiencies. It does not extend to directing the investigating officer to reinvestigate or craft the evidence against the accused and cannot be returned because it lacks plausible and cogent evidence sufficient for conviction.
vi) See analysis no. vi.
vii) Under the pretext of a defective investigation, an investigation report cannot be withheld from reaching the court.
viii) The prosecutor must ensure that the investigating officer is not left in the lurch, therefore, when a prosecutor returns a defective report for correction, he must also set a deadline for the removal of those defects u/s 12 of The Prosecution Act.
ix) See analysis no. ix.
x) See analysis no. x.
xi) Timely submission of investigation reports is a shared responsibility among the concerned Prosecutors, Area Magistrates, Criminal Justice Coordination Committees, and Superintendents of Prisons.

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17. **Lahore High Court**
Zubaida Qureshi v. Ex-officio Justice of Peace and others
Writ Petition No.1359/2024
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC3636.pdf

Facts: The Petitioner filed an application under section 22-A Cr.P.C. before the Ex-officio Justice of Peace, seeking an order directing the SHO to register an FIR. The Ex-officio Justice of Peace dismissed the Petitioner"s application by order. He noted that the Petitioner filed the application under section 22-A Cr.P.C. after two months and 15 days. The Ex-officio Justice of Peace found no satisfactory explanation for this delay. He was also satisfied with the report of the S.P./District

Complaint Officer and saw no reason to disregard it. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner has assailed the aforementioned order of the Ex-officio Justice of Peace before this Court.

Issues:

i) What is the purpose of the supervision of the National Commission for Human Rights during the investigation of the complaints against public officials accused by Federal Investigation Agency?
ii) How many types of referential legislation?
iii) What is the difference between "inquiry" and "investigation"?
iv) Whether mistakes or absurdities can be attributed to the legislature when interpreting a statute or discerning legislative intent?
v) Whether the criminal prosecution and departmental proceedings serve different purposes?
vi) Whether the timelines for investigation under subsections (1) to (3) of section 13 of the The Torture and Custodial Death (Prevention and Punishment) Act No. XXVIII of 2022
are mandatory?
vii) What is custody?
viii) Whether a new FIR is needed for additional information or new circumstances discovered during the investigation?

Analysis:

i) The Act of 2022 grants exclusive jurisdiction to the Federal Investigation Agency (FIA) for investigating complaints against public officials accused of offences under the Act, but it must do so under the supervision of the National Commission for Human Rights (the "HR Commission"). This arrangement ensures that investigations are fair, impartial, and free from conflicts of interest. By involving an independent oversight body, the Act aims to safeguard the integrity of the investigation process, thereby maintaining public trust and upholding justice. If an agency involved in the dispute were responsible for the investigation, the credibility of the process could be compromised, which would be detrimental to both public interest and the pursuit of justice.

ii) There are two primary types of referential legislation: (i) simple reference and (ii) incorporation by reference.4 Simple reference involves the new law merely citing or mentioning provisions of an existing law, as mentioned in section 28(1) of the General Clauses Act 1897. On the other hand, in incorporation by reference, the new law makes the existing law an integral part of itself, as if the provisions of the old law were directly included in the new text.

iii) Terms, "inquiry" and "investigation" are commonly considered interchangeable, they carry distinct meanings in the legal context. The Black's Law Dictionary defines "inquiry" as "(a) a question someone asks to elicit information; (b) the act or process of posing questions to elicit information." 7 On the other hand, it describes "investigation" as "the activity of trying to find out the truth about something, such as a crime, accident, or historical issue; esp., either an

authoritative inquiry into certain facts, as by a legislative committee, or a systematic examination of some intellectual problem or empirical question, as by mathematical treatment or use of the scientific method." 8 According to the Oxford Advanced Learner's Dictionary, "inquiry" signifies "a solicitation for information", while "investigate" denotes "the comprehensive exploration and scrutiny of all facts surrounding a particular event, such as a crime or an accident, with the objective of ascertaining the truth."

iv) It is well established that mistakes or absurdities cannot be attributed to the legislature when interpreting a statute or discerning legislative intent. Generally, when interpreting statutes, it is assumed that the legislature chooses its words carefully. Therefore, if a word or phrase is included, it is not considered redundant; similarly, if a word or phrase is omitted, such omission is not deemed inconsequential. A change in language implies a change in intent.12 It is also well settled that the legislature is presumed to be mindful of existing laws, and thus, the expression of legislative will should not be ignored lightly.

v) It is well-established that criminal prosecution and departmental proceedings serve different purposes. The objective of a criminal trial is to punish the accused for their crimes. In contrast, departmental proceedings aim to investigate misconduct to maintain discipline, decorum, and departmental efficiency, thereby preserving public confidence in the institution. Even if a criminal court acquits the accused, it does not preclude an employer from exercising disciplinary powers under the applicable service rules and regulations.

vi) Considering the language of the Act of 2022, it can be concluded that the timelines for investigation under subsections (1) to (3) of section 13 of the Act are mandatory for the following reasons: First, a holistic analysis of the Act indicates that treating these provisions as directory would undermine its very object and purpose. Second, delays may cause destruction of evidence. Third, non-compliance or delay has specific consequences, such as a change of investigation. However, sub-sections (4) and (5) of section 13 are directory in nature because they do not prescribe any penalty or consequence for noncompliance. Tallat Ishaq's case has authoritatively settled this point.

vii) Applying the principles settled in the above and other precedents on the subject, it is observed that under section 2(1)(f) of the Act of 2022, "custody" encompasses any situation where a person is detained or deprived of liberty by anyone, including public officials or others acting in an official capacity, regardless of the legality or location of the detention. This definition includes all forms of temporary or permanent restraint on a person‟s movement, whether imposed by law, force, or other means. It also covers instances where a person is considered to be in custody during search, arrest, or seizure proceedings.

viii) In Sughran Bibi's case, the Supreme Court stated that the purpose of the FIR is to set the law in motion. The FIR is essentially an "incident report" because it informs the police for the first time that an occurrence involving the commission of a cognizable offence has taken place. Once the FIR is registered, the occurrence becomes a "case", and all investigative steps under sections 156, 157,

and 159 Cr.P.C. are part of this case. The Investigating Officer should seek the truth and gather information from those familiar with the incident, not just establish the FIR‟s version. A new FIR is not needed for additional information or new circumstances discovered during the investigation; these are part of the ongoing case. After completing the investigation, the Investigating Officer should file a report under section 173 Cr.P.C. on the real facts that he discovers, regardless of the initial or other versions of the incident. The Supreme Court emphasized that the power to investigate pertains to the offence, not just the FIR details. Any information about the offence, including its background and perpetrators, is the informant‟s version and should not be accepted as the whole truth. All versions of the incident are recorded under section 161 Cr.P.C., whether supplemental or divergent, and all of them are part of the same "case" that originated with the registration of the FIR as aforesaid.

Conclusion: i) By involving an independent oversight body, the Torture and Custodial Death (Prevention and Punishment) Act No. XXVIII of 2022 aims to safeguard the integrity of the investigation process, thereby maintaining public trust and upholding justice.
ii) See above analysis No. ii.
iii) See above analysis No. iii.
iv) It is well established that mistakes or absurdities cannot be attributed to the legislature when interpreting a statute or discerning legislative intent.
v) It is well-established that criminal prosecution and departmental proceedings serve different purposes.
vi) See above analysis No. vi.
vii) See above analysis No. vii.
viii) A new FIR is not needed for additional information or new circumstances discovered during the investigation; these are part of the ongoing case.

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18. **Lahore High Court**
Sikandar Hayat v. The State, etc.
Criminal Misc. No. 2325-B/2024
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC3567.pdf

Facts: The petitioner seeks pre-arrest bail in case FIR alleging violations of sections 2(9), 2(14)(a), 2(33A), 2(37), 3,6,7,8,(1)(a), 8(1)(ca), 8(1)(caa), 8(1)(d), 8A, 22, 23, 25, 26, 34(1)(c), 37A, 37 B and 73 of the Sales Tax Act, 1990, punishable u/s 33(3), (5) (8) (11c) (13 (16) & (18) of the Sales Tax Act 1990, read with relevant provisions of Cr.P.C. and PPC 468 & 420.

Issues: i) How Tax Fraud has been defined in section 2(37) of the Sales Tax Act 1990?
ii) Upon whom burden of proof lies in the matter of tax fraud?

Analysis: i) Tax Fraud is defined in section 2(37) of the Sales Tax Act 1990, which inter

alia categorized instances of falsifying or causing falsification of the invoices as constituent of tax fraud.
ii) Section 2(37) of the Sales Tax Act 1990 places burden of proof on the accused that entries in the sales tax return(s) are lawful and outcome of lawfully conducted transactions.

Conclusion: i) Tax Fraud has categorized instances of falsifying or causing falsification of the invoices as constituent of tax fraud.
ii) Burden of proof lies on the accused to prove that entries in the sales tax return(s) are lawful and outcome of lawfully conducted transactions.

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19. **Lahore High Court**
Muhammad Asad Mehmood v. Government of Punjab through Secretary Home Department, Punjab, Lahore and others
W.P. No. 5770/2024
Mr. Justice Asim Hafeez.
https://sys.lhc.gov.pk/appjudgments/2024LHC3609.pdf

Facts: Instant petition seeks declaration to the extent of invalidity of detention orders passed in exercise of powers under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960.

Issues: i) Whether a representation / appeal of a detainee pending before the Secretary Home Department, Government of Punjab, would be deemed an adequate and efficacious alternate remedy especially when the basic detention order under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960 is inherently defective?
ii) How justification and justiciability of a detention order under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960 has to be ascertained and adjudged?
iii) Whether mere registration of a criminal case pertaining general allegation of a detainee being an "Anti-State campaigner", would *per se* justify his preventive detention under Section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960?

Analysis: i) The stance regarding availability of alternate remedy would be repelled if the detention order under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960, evidently fails to meet the statutory test for encumbering one's personal liberty / freedom.
ii) Law permitting preventive detention has to be construed strictly and no reinventing of wheel is required as jurisprudence regarding scope of preventive detention, embodied in section 3(1) of West Pakistan Maintenance of Public Order Ordinance, 1960, is well-settled.
iii) Mere registration of criminal cases would not make a detainee an "*Anti-State campaigner",* an often used cliché, which is akin to a "*lawfare mechanism*"

adopted these days to cause problems for opponent(s). This is serious allegation and has had to be justified with compelling reasons/grounds conspicuously.

Conclusion: i) Where the basic detention order under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960 is inherently defective, then representation / appeal of detainees pending before the Secretary Home Department, Government of Punjab would not be deemed an adequate and efficacious alternate remedy to cure illegality and incidence of abdication of jurisdiction.

ii) The justification and justiciability of a detention order under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960 has to be ascertained and adjudged in the context of the material / evidence, available and referred to in the order and sufficient enough to meet exception to the fundamental rights, guaranteed under the Constitution of Pakistan.

iii) Mere registration of a criminal case pertaining general allegation of a detainee being an "Anti-State campaigner", would not *per se* justify the preventive detention under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960.

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20. **Lahore High Court**
Muhammad Iqbal Khan Lashari, etc. v. Federation of Pakistan, etc.
W.P. No. 5106/2024.
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC3617.pdf

Facts: This and connected constitutional petition, primarily question the legality of decisions taken at the meeting chaired by Senior Member Board of Revenue/Chief Land Commissioner Punjab, which meeting apparently was carried out pursuant to the letter addressed to the Managing Director Cholistan by Secretary Implementation Committee, wherein, on the application of some of the legal heirs of Late Ameer of Bahawalpur, who had alleged conduct of illegal sale of land by some of the legal heirs, a request was made for taking action in wake of violations of Acceding State (Property) Order 1961.

Issues: i) Whether mutation, once executed and recorded by the revenue officer, can be cancelled by or under orders of the Board of Revenue unilaterally and without issuance of prior notices?

ii) Whether mutation, which otherwise merely evidence alleged title or embodiment of underlying transaction, or for that matter the alleged executory agreements, is enforceable or extends any right unto the third party?

iii) Whether cancellation of Mutation does imply or warrant per se cancellation, rescission or termination of the contractual-cum-executory arrangement?

Analysis: i) It is pertinent to distinguish the scope and effect of cancellation of Mutations, from ordinary proceedings relating to the cancellation of Mutations. Provisions of Acceding State (Property) Order 1961 [President's Order No.12 of 1961] and decisions by Hon'ble Supreme Court of Pakistan are distinguishing features,

which extend protection to the orders of cancellation of Mutations. Ordinarily, the Revenue Authorities, when confronted with the matters calling for cancellation of recorded Mutation(s), may either assume jurisdiction to review the Mutation(s), subject to notice or suggest the parties to approach court exercising general jurisdiction, in case an intricate question of law is involved or issue of determination of title requires recording of evidence… There is no cavil that ordinarily Land Commission had the authority to determine the validity or voidness of any transaction found violative of Land Reforms Regime.

ii) The Mutations, which otherwise merely evidence alleged title or embodiment of underlying transactions, or for that matter the alleged executory agreements, are neither enforceable nor extend any rights unto the third parties, except an option to exercise remedies, such as are available for the enforcement of executory arrangements, which in this case are otherwise narrowed down, curtailed and subjected to the applicability of Land Reforms Regime. No comments or observations are recorded qua the legality or otherwise of the transactions and executory agreements. In wake of the conditions imposed and encumbrance placed no rights / interest in the property could be claimed based on Mutations, which act of recording of alleged title is otherwise contrary to the directions / decisions of the Apex Court. Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973, mandates that decisions are binding and need to be enforced. There is another downside of the Mutations, executed and recorded. Acknowledging purported conveyance by way of alleged Mutations otherwise have had the effect of reducing the holdings of those legal heirs, against whom claim of sale is alleged. Actually, execution of Mutations or execution of executory agreements, voluntarily or involuntarily, implies evading of statutory obligations under the Land Reforms Regime… When asked that how any alleged right / interest could be claimed based on alleged Mutations, in wake of the orders of Hon'ble Supreme Court of Pakistan, learned counsel submit that choice and exchange of areas must be provided under the Land Reforms Regulations and declarant is eligible to give its choice, where holding(s) is found in excess of statutory ceiling prescribed. Be that as it may, choice and exchange of area(s) is otherwise subject to limitations prescribed, which matter is within the jurisdiction of the Land Commission and no observations can be recorded now, acknowledging an option of alleged acquirer of rights / interest from the legal heirs, which matter will be considered by Land Commission, when circumstances would warrant.

iii) It is pertinent to observe that cancellation of Mutations does not imply or warrant per se cancellation, rescission or termination of the contractual-cum-executory arrangements, - [authenticity of alleged transactions is not subject matter of present proceedings and no determination thereof is solicited] - which alleged contractual arrangements may be enforced, by the beneficiaries of cancelled Mutations or the persons claiming executory agreements - [without prejudice to the right(s) and entitlement of the legal heirs concerned to admit or deny alleged contractual transactions whenever the occasion arises] - but only

upon the enforcement and conclusive implementation of the Land Reforms Regime.

Conclusion: i) The Revenue Authorities calling for cancellation of recorded Mutation(s), may either assume jurisdiction to review the Mutation(s), subject to notice or suggest the parties to approach court exercising general jurisdiction, in case an intricate question of law is involved or issue of determination of title requires recording of evidence.

ii) The Mutation, which otherwise merely evidence alleged title or embodiment of underlying transaction, or for that matter the alleged executory agreement, is neither enforceable nor extends any right unto the third party, except an option to exercise remedies, such as are available for the enforcement of executory arrangements.

iii) Cancellation of Mutation does not imply or warrant per se cancellation, rescission or termination of the contractual-cum-executory arrangement.

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21. **Lahore High Court**
Shahid Mahmood & Company (Pvt.) Limited and 2 others v. Zahid Mahmood and 5 others
C. O. No. 62104 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC3655.pdf

Facts: In this petition, extra ordinary general meeting (EOGM), the decisions taken therein and superstructure built thereupon were challenged. Besides request to rectify the register of directors and other prayers, the petitioners also sought to declare some documents as null and void.

Issues: i) Whether a notice of meeting at which directors are proposed to be elected, specifying the number of directors fixed and names of retiring directors, is mandatory?

ii) Whether failure to convene a meeting / EOGM in the manners provided in the Companies Act, 2017 or not issuing notice of the same carries penal consequences?

iii) Whether meeting or election of directors can be called into question after thirty days?

Analysis: i) To refute the allegation of filing fake documents with the SECP, respondents No. 1 to 5 have asserted that decision(s) and the documents are in pursuant to the decisions taken in EOGM under section 133(5) of the Act of 2017, which took place on 31.12.2020 and respondents No. 1 and 2 were elected as directors after adopting procedure and in compliance of substantial law given in section 159 of the Act of 2017… Sub-section 2 of Section 159 of the Act of 2017, reproduced above, requires notice of meeting at which directors are proposed to be elected, specifying number of directors fixed and names of retiring directors. Any member, retiring or otherwise, can give notice of intention to offer himself for

election of directors in terms of Section 159(3) ibid. Notices of intention received by company are required to be transmitted to members not later than seven days before the date of meeting… Section 133 of the Act of 2017 permits directors to call EOGM to consider any matter that requires the approval of the company. EOGM can also be requisitioned by members by adopting the course given in section 133 (2) of the Act of 2017 and subsequent sub-sections. However, notice of EOGM is required to be served upon the members under section 133(8) of the Act of 2017… The above provision clearly requires that notice of EOGM should be served to the members in the manners given in section 55 of the Act of 2017… The Act of 2017 has given complete mechanism from calling a meeting, its notice with agenda of any special business, conducting meeting and giving voting rights etc.

ii) In case titled "Khalid Mehmood and 4 others vs. Messrs Multi Plus Corporation Private Limited and 2 others" (2017 CLD 1737) learned Sindh High Court, while interpreting the then applicable provisions of sections 159 and 178 of the Companies Ordinance-1984, concluded that failure to convene meeting / EOGM in the manners provided therein or not issuing notice of the same, since followed by penal provisions, are mandatory. The contravention of provision, as to holding EOGM under Section 133 of the Act of 2017, once again carries penal consequences… To pass a resolution, holding a valid meeting with the required quorum after due notice, has always been considered important even in the previous enactment(s) as well as under the common law.

iii) Section 136 of the Act of 2017 provides that proceedings of general meeting can be declared invalid for the reasons of material defect or omission in the notice or irregularity in the proceedings of the meeting, which prevented members from using effectively their rights. The proviso to the same reads that petition in this regard can be made within thirty days of the impugned meeting. Section 160 of the Act of 2017 also provides thirty days to challenge the election of all the directors or any one or more of them on the ground of material irregularity in holding the election. Admittedly, the legislature has envisaged thirty days period to challenge a meeting, however, the case in hand is not that of irregularity or defective meeting but no meeting at all. It is not the case of the petitioners either that the election of directors has taken place which suffers from material irregularity. The proposition put-forth by learned counsel for petitioner No. 2 and 3 is that no meeting has taken place and only documents are submitted to change the existing position or composition of the board and objection is raised after filing untrue documents with SECP that too after more than two years of the so-called meeting; the peculiar facts and circumstances of the case give rise to the question that in the absence of holding EOGM, if it can be permitted to merely file forms or documents with SECP and then to state that challenge was required to be made within thirty days by simply showing an extract of minutes of so-called meeting that pertains to a period much prior to thirty days, claiming before the Court that delay is caused by the party complaining. The above discussed provisions do not contemplate that instead of holding meeting just to file forms

backed up by some extract from minutes of clueless and so-called meeting and then to take shelter of thirty days period to make challenge. Proviso to section 136 of the Act of 2017 provides that petition shall be made within thirty days of the impugned meeting but present case is one where holding of meeting or EOGM could not be convincingly shown from the record. In the unusual circumstances of the case, respondents No. 1 to 5 should have first persuaded or at-least demonstrated with some certainty that the EOGM has actually taken place and then to seek shelter of the period provided by law to make challenge. Learned counsel for the petitioners has stated that falsehood is further evident from failure to file return or forms for such a long time period. He has stated that even return in terms of section 197(3) of the Act of 2017 for the change claimed in pursuance to the so-called EOGM does not exist. This position is confirmed by SECP. Learned counsel for respondents No. 1 to 5 instead of explaining the reasons for non-compliance of several provisions of the Act of 2017 is simply seeking escape on the basis of period to make challenge, however, he even could not produce copy of notice, the mode adopted under section 55 of the Act of 2017 or any affidavit from the respondents to show the date of issuing notice of the EOGM inviting all entitled to notice, attend and vote in the EOGM.

Conclusion: i) A notice of meeting at which directors are proposed to be elected, specifying the number of directors fixed, and names of retiring directors, is mandatory.
ii) Failure to convene a meeting / EOGM in the manners provided in the Companies Act, 2017 or not issuing notice of the same carries penal consequences.
iii) When the holding of a meeting or the election of directors is in question, the jurisdiction of the court can be invoked even after thirty days.

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22. **Lahore High Court**
Abdul Sattar (deceased) through L.Rs. v. Muhammad Yaseen (deceased) through L.Rs. and 5 others
Civil Revision No.2592 of 2014
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2024LHC3553.pdf

Facts: Through this Civil Revision under Section 115 of the Code of Civil Procedure, 1908, the petitioners invoked supervisory jurisdiction of this Court against the judgment and decree passed by learned Additional District Judge, pursuant whereto the judgment and decree passed by the learned Trial Court in a suit for possession and specific performance of agreement to mortgage/sell was partially upended and accordingly modified by holding the petitioners only entitled to recover an amount of Rs.300,000/- from the respondents No.1(A to F) along with profit as per bank rate.

Issues: i) If there is a contradiction between an oral statement and documentary evidence, does the law prioritize the documentary evidence?
ii) Whether under Transfer of Property Act, 1877, a transaction involving

mortgaged property in favor of a financial institution remains valid, and that the transferee is obligated to pay the mortgage money to the creditor?

iii) Whether appellate court could reverse the findings of a trial court?

iv) Whether a party that acts in anticipation of a court's final order or judgment, or attempts to gain an unfair advantage over its adversary, is liable to correction?

v) Whether the principle of lis pendens applies to the sale of property, regardless of the plea of bona fide purchasers, especially when an injunctive order was in effect?

vi) What is jurisprudence behind the principle qua alienation or transfer pendente lite?

vii) In the case of a conflict between the principles of "bona fide purchaser" and "lis pendens," which principle should prevail?

Analysis: i) under the law if there is contradiction in oral statement and documentary evidence the latter is to be trusted as a witness can lie but a document cannot. It becomes more credible when witness himself admits his signature or thumb impression on the subject matter document i.e. Exh.P-1. In such circumstances it is settled law that documentary evidence takes precedence over oral deposition.

ii) Even otherwise under the provisions of the Transfer of Property Act, 1877, the transaction with respect to mortgaged property in favour of any financial institution does not become void as the mortgage rights of a financial institution remain intact and the transferee of the property remains under an obligation to pay the mortgage money to the creditor.

iii) There could be no denial to legal position that appellate Court can competently reverse the findings of the trial Court but such reversal must always be backed by better and sustainable legal reasoning.

iv) A party attempting to act in anticipation of the final order or judgment of a court or trying to steal march over its adversary, already in court or acting in a manner suggestive of a race against the law is liable to correction and all that needed to be considered is the corrective measures to uphold and maintain the majesty of law.

v) So long as the sale of property forming subject matter of instant Petition is made pendente lite which includes stages of suit proceedings, appeal, revision petition and/or final adjudication of rights and interests of a party by the Hon'ble Supreme Court of Pakistan finally terminating the lis in either way, the principle of lis pendens applies regardless of the plea of bona fide purchasers, especially when an injunctive order was operative in the Petition. The Hon'ble Supreme Court of Pakistan in case reported as Industrial Development Bank of Pakistan through Deputy Chief Manager vs. Saadi Asmatullah and others (1999 SCMR 2874) has already declared that plea of bona fide purchaser of suit property for value without notice does not offset or dilute the principle of lis pendens by holding that even a bona fide purchaser with consideration pendente lite would be bound by the result of the litigation as his rights in such property would be subject to the rights of the parties to the litigation as finally determined by the Court.

vi) The alienation or transfer pendente lite is not simpliciter based upon the principle that filing of a suit is notice to whole world but more so on the public policy that no one should be allowed to affect the rights of the parties pending the decision of cause before a Court of law.

vii) It is a settled position of law that in case of conflict of two principles 'bona fide purchaser' versus 'lis pendens' the latter is to prevail.

Conclusions: i) If there is contradiction in oral statement and documentary evidence the latter is to be trusted as a witness can lie but a document cannot.

ii) Under the provisions of the Transfer of Property Act, 1877, the transaction with respect to mortgaged property in favour of any financial institution does not become void as the mortgage rights of a financial institution remain intact and the transferee of the property remains under an obligation to pay the mortgage money to the creditor.

iii) Yes, appellate Court can competently reverse the findings of the trial Court but such reversal must always be backed by better and sustainable legal reasoning.

iv) See above analysis No. iv.

v) The principle of lis pendens applies regardless of the plea of bona fide purchasers, especially when an injunctive order was operative in the Petition.

vi) The alienation or transfer pendente lite is not simpliciter based upon the principle that filing of a suit is notice to whole world but more so on the public policy that no one should be allowed to affect the rights of the parties pending the decision of cause before a Court of law.

vii) In case of conflict of two principles 'bona fide purchaser' versus 'lis pendens' the latter is to prevail.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 113 of 2024 dated 25.07.2024, amendment is made in the schedule of the Punjab Directorate General of Archaeology Rules, 1988.
2. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.114 of 2024 dated 26.07.2024, Rule 17-A 0f the Punjab Civil Servants (Appointment and Conditions of service) Rules, 1974 is omitted.
3. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 117 of 2024 dated 02.08.2024, amendment is made in para (4), after sub-para (c) of rule 3 of the Punjab Motor Vehicles Rules, 1969.
4. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 118 of 2024 dated 02.08.2024, amendment is made in

rule 9, in sub rule (1), in clause (e) of the Punjab Police Deputy Superintendent (Appointment by Promotion) Service Rules, 2020.

5. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 121 of 2024 dated 02.08.2024, amendment is made in the Punjab Mining Concession Rules, 2002.
6. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No. 122 of 2024 dated 02.08.2024, the rates of the royalty of Limestone & Argillaceous are determined through this amendment in the Punjab Mining Concession Rules, 2002.

SELECTED ARTICLES

1. OXFORD JOURNAL OF LEGAL STUDIES

https://academic.oup.com/ojls/advance-article/doi/10.1093/ojls/gqae026/7731416

Ships of State and Empty Vessels: Critical Reflections on 'Territorial Status in International Law' By Alex Green

In his recent monograph, Territorial Status in International Law, Jure Vidmar offers 'a new theory of statehood' that consolidates his existing work and departs in important ways from legal orthodoxy. As a work of doctrinal law, the text is rigorous; however, its theoretical contribution is somewhat unclear. Vidmar's central theoretical claim—that the status of individual states is established by discrete norms of customary international law—adds very little to his doctrinal argument. By examining his position, this review article examines what it might mean to provide helpful 'theories of statehood'. It begins by framing the theoretical challenge posed by such work before setting out some desiderata for theoretical success in this area. Finally, it sketches out a general approach, grounded in Hannah Arendt's conception of power, which offers a promising means for moving beyond doctrinal description within 'reconstructive' international legal theory.

2. JOURNAL OF LAW & SOCIAL STUDIES

https://www.advancelrf.org/wp-content/uploads/2024/06/Vol-6-No.-2-2.pdf

Exploring the Efficacy of Online Dispute Resolution Mechanisms: A Case Study of Pakistan By Khurram Baig etc.

This research explores the feasibility and efficiency of online practices in managing and resolving conflict in Pakistan. The idea of this research is to evaluate the likely application of Online Dispute Resolution (ODR) platforms to reform and extend the Pakistan's legal system and to enhance access to justice. The study utilizes a doctrinal legal research method to explore global practices, legal frameworks, and ODR literature. The objective of the paper is to try and bring out some talking points and conclusions that are pertinent to Pakistan. Finally, the study, which contributes to a nascent field of

research knowledge, is a perfectly synthesized document that fully defines the key learning points and best Practices re ODR in Pakistan. Adopting international best practices, evolving enabling legislation, and investing in technical enabling platforms offers Pakistan a window of opportunity to deliver justice to its citizen's right in their homes through online dispute resolution (ODR).

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Cyber-Crime-from-the-perspective-of-Psychological-Attributes

Cyber Crime from the perspective of Psychological Attributes By Nandini Shankar

In the developing world of time and technology, there's also been a development of human greed through the means of cyber crime and fraud. Nowadays it's so easy to fraud someone whether it is for financial gain, privacy data, intellectual property, or to generate profitable information. We've all been victims of cyber fraud but some of us would've also committed fraud whether it's just about hacking the neighbours wifi password. A cybercrime is a crime, no matter how small harm it causes to an individual, mis-user must suffer its consequences.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/The-Legal-Maze-of-Sharing-Content-Online-Who-bears-the-blame

The Legal Maze of Sharing Content Online: Who bears the blame? By Shreya Jindal

Can a person be found guilty of defamation for reposting the allegedly defamatory content? The recent discourse on whether a mere post or a repost of some already generated defamatory statement on social media platforms can be considered defamation per se, started when the CM of the National Capital Territory of Delhi reposted a tweet by YouTuber Dhruv Rathee, which had a URL to the allegedly defamatory content about the ruling political party of India. Subsequently, Mr. Arvind Kejriwal apologised before the Hon'ble Supreme Court and expressed his regret stating that he made a mistake by retweeting the defamatory content posted by Dhruv Rathee. The Apex Court upheld the order issued by the Delhi High Court consisting of a summons to Mr Kejriwal in the criminal defamation matter.

5. **LUMS LAW JOURNAL**
https://sahsol.lums.edu.pk/sites/default/files/2024-07/Sedition%20Law%20in%20Pakistan%20An%20Infringement%20upon%20the%20Right%20to%20Free%20Speech.pdf

Sedition Law in Pakistan: An Infringement upon the Right to Free Speech By Marha Fathma and Zarak Ahmed Swati

The sedition laws of Pakistan are a colonial relic often seen as a political tool to crush dissent. This paper analyses the historical development of these laws in Pakistan and performs a cross-jurisdictional analysis of similar laws in other jurisdictions. It examines case law in light of the right to free speech granted under different Pakistani constitutions while discussing current events in relation to sedition laws. Finally, the paper attempts to draw a conclusion regarding whether the country's sedition laws infringe upon the right to freedom of speech granted under Article 19 of the Constitution.