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FORTNIGHTLY CASE LAW BULLETIN

(01-12-2024 to 15-12-2024)

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

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
M/s Inter Quest Informatics Services (in all cases) v. The Commissioner of Income Tax, etc. (in all cases)
Civil Review Petitions No.988 to 1001 of 2023 in Civil Appeals No.94 to 106 of 2008 & 550/2011.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._988_2023.pdf

Facts: A company disputed the classification of its income under a Double Taxation Treaty, challenging its designation as royalties subject to tax in Pakistan rather than business profits exempt under the treaty.

Issues: i) Are the petitioner's receipts correctly classified as "royalties" under Article 12 of the tax treaty between Pakistan and the Netherlands?
ii) Were the High Court's determinations regarding the classification of the petitioner's income as business profits legally correct?
iii) Did the majority judgment err in overlooking material facts or misapplying the law?

Analysis: i) The nature of the receipts was explained by the petitioner in its tax returns, and there was no dispute regarding this fact before the Income Tax Officer, the Commissioner (Appeals), or the Tribunal. It was, and remains, an admitted fact that the receipts were rentals received by the petitioner for the lease of FLIC tapes containing computer software programs… The minority judgment, after a detailed examination of all clauses of the definition of 'royalties,' concluded that the receipts received by the petitioner for the lease of FLIC tapes containing computer software programs fall neither within the clause 'information concerning industrial, commercial, or scientific experience' nor within any other clause of the definition of 'royalties.
ii) The High Court ruled in favor of the petitioner, holding that the amounts received by the petitioner for leasing FLIC tapes (software programs) under the Agreements did not qualify as 'royalties' under the Convention and were not subject to income tax in Pakistan… For the same reasons as recorded in the minority judgment, we hold that the Tribunal was not correct, and the High Court was correct, in determining that the receipts received by the petitioner for the lease of FLIC tapes containing computer software programs were not income from 'royalties' but were 'business profits,' as claimed by the petitioner in its tax returns.
iii) For the above reasons, we find that the majority judgment under review suffers from errors apparent on the face of the record. It proceeded on an erroneous assumption of a material fact and overlooked the material question of law and important aspects of the matter involved… We are sure that had this Court considered the aspects of the definition of 'royalties' as discussed in the minority judgment, it would not have rendered the majority judgment under review.

Conclusion: i) No, the receipts do not qualify as royalties under the treaty.

ii) Yes, the High Court correctly determined the income to be business profits.
iii) Yes, the majority judgment erred by overlooking material facts and misapplying the law.

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2. **Supreme Court of Pakistan**
Tassawar Hussain v. The Regional Police Officer, Multan and another
Mr. Justice Amin-ud Din Khan, Mr. Justice Muhammad Ali Mazhar,
Mr. Justice Irfan Saadat Khan
Civil Petition No. 1181-L of 2016
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1181_l_2016.pdf

Facts: The petitioner, a civil servant, was dismissed from service, allegedly without being served a show cause notice or dismissal order, through an ex-parte order while he was behind bars. After his release, his departmental appeal was rejected as time-barred, and the Service Tribunal upheld the decision.

Issues: i) Whether departmental appeal can be dismissed solely due to limitation without considering whether the delay was excusable or not?

Analysis: i) The nitty-gritties of the case unequivocally demonstrate that the petitioner was issued a show cause notice on the allegation of absence without leave. This is also a ground reality which cannot be ignored inconspicuously that when the show cause notice was issued on 25.11.2010 and the dismissal order was passed on 11.01.2011, the petitioner was behind the bars and obviously, he was not in a position to diligently pursue and avail the remedy of departmental appeal in accordance with law… We are mindful that the Service Tribunal is the first judicial fact-finding forum in service laws meant for civil servants where all relevant facts of the case in respect of matters relating to the terms and conditions of service of civil servants are required to be considered judiciously and not in a slipshod manner. The insight of discretion in the judicial power is preordained to advance the cause of justice in a judicious manner rather than perpetuating injustice… In our comprehension, the departmental appeal could, no doubt, be transmitted by the petitioner through the jail superintendent/authority, provided that he received the dismissal order in jail, but in this case when no order was served, the petitioner cannot be declared guilty or solely responsible for the delay in filing of the departmental appeal. On the contrary, he was a victim of circumstances, therefore the department cannot take the refuge of limitation. We have also come across, time and again in different cases, that convicts used to send their memo of appeals, even hand-written, to the Appellate Courts for consideration, but in case jail appeals are found to be barred by time, the Courts also have to be sanguine to the situation that the captive, having meager financial resources, might not have been in a position to engage counsel and file appeal in the normal course but due to lack of proper facilitation, assistance and hardship, they send appeals from jail premises even after the lapse of the limitation period. Thus, in order to advance the free flow of the administration of criminal justice, the Courts generally, under a sympathetic consideration, take a

lenient view and condone the delay to decide the appeals on merits without sticking to the question of limitation.

Conclusion: i) Being mixed questions of law and fact it necessitate a combination of scrutiny of questions of law and fact, which cannot be decided hypothetically or cursorily.

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3. **Supreme Court of Pakistan.**
Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar and others v. Aurangzeb (Ex-Primary School Head Teacher) GPS Wanna Khel Tehsil Takhtbhai District Mardan (deceased) through L.Rs
Civil Petition No.531-P of 2024
Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar,
Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._531_p_2024.pdf

Facts: The leave to appeal by the department is dismissed. Respondent was a school teacher and was compulsorily retired from service, under the efficiency and discipline rules, by the department/competent authority after show cause notice with regular inquiry dispensed with. The Provincial Service Tribunal reinstated him to service.

Issues: i) What is the purpose of regular inquiry under the efficiency and discipline rules?
ii) Under what conditions regular inquiry could be dispensed with by the competent authority?
iii) What is the goal of initiating departmental proceedings, and standards for burden of proof?
iv)What is the paramount consideration for Supreme Court to grant a leave to appeal?

Analysis: i) The show cause notice was issued to the respondent under the provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 ("Rules"), with the direction to submit a reply within 5 days as to why the major penalty should not be imposed upon him. In our considered view, the allegations jotted down in the show cause notice, on the face of it, could not be proved without proper inquiry and without providing an opportunity to adduce evidence not only to the complainants but also to the delinquent employee for him to be able to defend himself against the charges, produce witnesses, if any, to prove his innocence, as well as avail the right to cross-examine the witnesses adducing against him. On the contrary, the competent authority imposed the major penalty of compulsory retirement from service upon the delinquent employee on the basis of a show cause notice alone, without following the principle of natural justice and due process enunciated under the law.
ii) There must be some logical reasons for dispensing with the inquiry typically based on the nature of allegations, which should be obvious through overwhelming documentary evidence that cannot be denied. Additionally, after the proper

application of an independent and impartial mind, the competent authority should reach a conclusion that no regular inquiry is required, and that punishment can be imposed based on the mere issuance of a show cause notice, submission of a reply, and affording the right of personal hearing… Therefore, it is imperative for the competent authority to first sift and pore over the allegations set out in the show cause notice, applying a judicious approach, to reach a just and proper conclusion as to whether the allegations require regular inquiry or not, or if the matter is so obvious, with foolproof and credible documentary evidence, that it cannot be refuted or denied by the accused employee who was called upon to submit a reply to a show cause notice, and owing to the trustworthy documentary evidence on the record, the regular inquiry can be dispensed with, but the reasons for such dispensation should be communicated to the accused employee.

iii) The predominant goal of initiating a departmental proceeding, including the inquiry, is to decide whether the allegations of misconduct in the show cause notice are proven and then to confront the delinquent regarding why disciplinary action, including the imposition of a minor or major penalty, should not be taken. However, before taking such a drastic action, a fair opportunity should be provided to the employee to defend the allegations. It is a well-settled exposition of law that in departmental inquiries, the standard of proof is based on the balance of probabilities or preponderance of evidence. A regular inquiry is commenced only when an even handed and fair opportunity to present a defense is offered.

iv) According to the parameters laid down under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, this Court may grant leave to appeal against the judgment, decree, order, or sentence of an Administrative Court or Tribunal only if it is satisfied that the case involves a substantial question of law of public importance, which is otherwise sine qua non.

Conclusion: i) The purpose of regular inquiry to provide an opportunity to complainant to adduce evidence but also to the delinquent employee enables him to defend the charges.

ii) The regular inquiry could only be dispensed with when there is overwhelming documentary evidence that cannot be denied by the accused employee.

iii) The paramount goal of regular inquiry is to decide whether the allegations are proven and then to confront the delinquent. The standards of proof are based on preponderance of evidence.

iv) The Supreme Court may grant leave to appeal against the judgment, decree, order or sentence of an Administrative Court or Tribunal only if it is satisfied that the same case involves a substantial question of law of public importance.

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4. ` Supreme Court of Pakistan
Govt. of Balochistan through Secretary Energy Department, Quetta and another v. Muhammad Yasir
Mr. Justice Amin-ud-Din khan, Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan
Civil Petitions No.187-Q and 188-Q of 2024
https://www.supremecourt.gov.pk/downloads_judgements/c.p._187_q_2024.pdf

Facts: A candidate, after clearing all formalities, was appointed to a post through a proper recruitment process. Subsequently, the appointment was cancelled without notice due to a departmental error in the advertisement and vacancy availability.

Issues: i) Whether cancellation of appointment of a person without issuing a show cause notice or providing an opportunity for hearing is against the principles of natural justice and due process?
ii) What are the parameters of Review Jurisdiction?

Analysis: i) The respondent was at Serial Number 02 on the merit list and was appointed on 08.08.2023, but his appointment order was withdrawn/cancelled on 27.09.2023 without any show cause notice or any opportunity to be heard. This action was in sheer contravention of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), and lacked due process of law. To enjoy the protection of law and to be treated in accordance with the law is a basic fundamental right of every citizen within the precincts ad confines of Article 4 of the Constitution which, in fact, assimilates the doctrine of equal protection of law and accentuates that no action detrimental to life and liberty can be taken without due process. In our view, public functionaries are supposed to execute and perform their duties in good faith, honestly, and within the bounds of their legitimately recognized powers, ensuring that individuals are treated in accordance with the law. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, explain, and contest the claims against him before he is found guilty and condemned. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body, or any departmental authority regulated under some law, must be rational and impartial, and the decision-maker has an adequate level of decision-making independence, and the reasons of the decision arrived at should be amply well-defined, just, and understandable.

ii) The parameters of review jurisdiction have been dealt with in detail by one of us in the case of Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi v. M/s. MSC Switzerland Geneva & others (2023 SCMR 1011 = 2023 PTD 964 = 2023 SCP 150) wherein it was held that the review of a judgment or order may be entreated only in instances or occurrences of errors in the judgment or order, floating on the surface of record with a substantial impact on the final outcome of the lis, but it does not connote and entail a right of rehearing of the decided case despite there being a mindful and thoughtful decision on the point of law as well as of fact. Every judgment articulated by the Courts or Tribunals is presumed to be a solemn and conclusive determination on all points arising out of the lis. Mere irregularities having no significant effect or impact on the outcome would not be sufficient to warrant the review of a judgment or order, however, if the anomaly or ambiguity is of such a nature so as to transform the course of action

from being one in the aid of justice to a process of injustice, then obviously a review petition may be instituted for redressal to demonstrate the error, if found floating conspicuously on the surface of the record, but a desire of rehearing of the matter cannot constitute a sufficient ground for the grant of review which, by its very nature, cannot be equated with the right or remedy of appeal. The clemency by dint of review is accorded to nip in the bud an irreversible injustice, if any, done by a Court, such as a misconstruction of law, a misreading of the evidence, or a non-consideration of pleas raised before a Court, which would amount to an error floating on the surface of the record, but where the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. Review, by its nature, is neither commensurate to a right of appeal or an opportunity of rehearing merely on the ground that one party or the other conceived himself to be dissatisfied with the decision of the court, nor can a judgment or order be reviewed merely because a different view could have been taken.

Conclusion: i) Cancellation of appointment of a person without issuing a show cause notice or providing an opportunity for hearing is against the principles of natural justice and due process.
ii) See above analysis (ii).

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5. **Supreme Court of Pakistan**
Chairman Pakistan Ordinance Factories, POF Board, Wah Cantt. v. Akhtar Tanveer and others
Civil Petition No.1017 of 2022
Mrs. Justice Ayesha A. Malik, Mr. Irfan Saadat Khan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1017_2022.pdf

Facts: The case concerns an employee of Pakistan Ordnance Factories, who was dismissed for wilful absence after leaving for study in China without obtaining prior approval or security clearance. The Federal Service Tribunal converted his dismissal into compulsory retirement, which was challenged before the Supreme Court.

Issues: i) Whether absence from duty without approval constitutes sufficient grounds for the imposition of a major penalty, and whether subsequent foreign education What principles govern the exercise of judicial discretion by tribunals under Section 5 of the Service Tribunal Act, 1973, when modifying penalties?

Analysis: i) It was held in the case of Tahira Waheed that if a Government Officer leaves the department without getting sanctioned leave in his favour, he does so at his own risk and in such situation, the presumption would be that he is absent from duty. Wilful absence means unauthorized or deliberate absence from duty. It demonstrates intentional neglect of responsibilities and is reckless conduct. This Court has held that habitual or wilful absence involves an element of indiscipline which may sometime constitute gross misconduct and also ruled in the case of Secretary Education that on account of wilful absence from duty major penalty of

dismissal from service can be imposed

ii) Judicial discretion must be exercised strictly within the confines of the law, being reasonable, fair, and justifiable. This Court has consistently held that where the penalties awarded by the competent departmental authorities are to be interfered with in exercise of the discretionary powers of the Tribunal, such discretion has to be exercised in a circumscribed, restricted and structured manner by giving legally sustainable reasoning which justifies the conclusions reached by it.

Conclusion: i) On account of wilful absence from duty, major penalty of dismissal from service can be imposed.

ii) The Tribunal's exercise of discretion was arbitrary, exceeding its jurisdiction and lacking lawful authority.

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6. **Supreme Court of Pakistan**
Ubaidullah v. Haji Atta Muhammad Bangulzai & others
Civil Appeal No. 1394 of 2024
Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/ca_1394_2024.pdf

Facts: Through these Civil Petition, the petitioner has assailed the judgment of passed by the Election Tribunal-I Baluchistan, Quetta, whereby the election petition filed by the respondent No. 1, under Section 139 of the Election Act, 2017 was allowed.

Issues: i) Whether the furnishing of original affidavits is a mandatory requirement of law and ought to have been fulfilled?

ii) What is effect of non-furnishing of original affidavits with the election petition?

iii) Whether non-furnishing of original affidavits, which were notarized only and not solemnized before the Oath Commissioner, is a technical lapse?

Analysis: i) The requirement of furnishing the original affidavits is a mandatory requirement, as clearly spelt out in Section 144(2)(a) of the Act of 2017, which stipulates the submission of a complete list of witnesses and their statements on affidavits which "shall" be attached with the petition. The wording used in this section makes it a mandatory requirement to file statements of witnesses on affidavits, alongwith the election petition…

ii) The said petition would be considered deficient and as per sub-section 1 of section 145 of the Act of 2017, if provisions under Sections 142, 143 and 144 of the Act of 2017 are not complied with, then the Election Tribunal shall summarily reject the election petition.

iii) We tend to disagree with the contention of counsel for the respondent No. 1, that non-furnishing of original affidavits, which were notarized only and not solemnized before the Oath Commissioner, was a technical lapse. If the wordings of section 145 of the Act of 2017 are examined then it is quite evident that in case of noncompliance of sections 142, 143, 144 and 145 of the Act of 2017, the matter could be summarily rejected by the ETB. …… has also conceded during the course

of his arguments that original affidavits were not produced rather, only "marked" or "identified affidavits" were produced, which in our view by no stretch of imagination could be considered as fulfillment of the mandatory requirement provided under the law. It is also a settled proposition of law that in case of non-compliance of any mandatory requirement, it is the person presenting those documents, who has to face the brunt of non-compliance.

Conclusion: i) The furnishing of original affidavits is mandatory requirement under the law.
ii) The election petition shall be rejected summarily.
iii) See analysis Para No. iii

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7. **Supreme Court of Pakistan.**
Mir Hammal Khan v. Election Commission of Pakistan, thr. Secretary, Islamabad and others
Civil Appeal No. 1357 of 2024
Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/ca_1357_2024.pdf

Facts: This civil appeal has been filed against the judgment passed by the Election Tribunal Balochistan, Quetta (hereinafter referred to as "ETB") whereby the election petition filed by the present appellant, under Section 139 of the Election Act, 2017 (hereinafter referred to as "Act of 2017") was dismissed.

Issues: i) What is nature of charge of ‘corrupt and illegal practice’; upon whom the burden of proof lie?
ii) What is effect of non-submission of affidavits, in derogation of statutory provisions, with the petition before Election Tribunals?
iii) What is the effect of an affidavit not attested on ‘Oath’?

Analysis: i) Whenever a charge of illegal and corrupt practices is levelled, the onus is always on the person who alleges it. The person alleging corrupt and illegal practices has to prove the allegations with cogent material/ evidence, be it direct or circumstantial. It has to be pointed out with strong, weighty and plausible grounds that the exercise carried out was false and while levelling such charges there is no room of any intendment or hypothesis. As per Justice A.R. Cornelius in the case of Muhammad Saeed4 "A charge of a corrupt practice is a quasi-criminal charge"
ii) The requirement of the furnishing affidavits is a mandatory requirement as clearly spelt out under Section 144(2) (a) of the Act of 2017 which stipulates that submission of "complete list of witnesses and their statements on affidavits". The wording used under this section makes it a mandatory requirement that while presenting the election petition some documents, which include the statements on affidavits have to be filed otherwise the said petition would be considered as deficient or lacking and as per sub section 1 of section 145 of the Act of 2017, if provisions under Section~ 142, 143 and 144 of the Act of 2017 have not been

complied with then the Election Tribunal shall summarily reject the election petition.
iii) If a document is produced as evidence but was only categorized as "marked" or "identified", it cannot be considered as valid evidence as mandatory requirements of the law have to be fulfilled and in case of non-compliance the person presenting those documents has to face the brunt of non-compliance.
This Court in the case of Lt. Col. (Rtd.) Ghazanfar Abbas Shah7 has categorically observed that if the affidavits filed by a party are flawed in any way and are not verified on oath, it will be considered that the same have not been attested on oath and the election petition is liable to be, inter alia, dismissed on this basis alone.

Conclusion: i) A charge of a corrupt practice is a quasi-criminal charge. The onus is always on the person who alleges it.
ii) The statements on affidavits have to be filed otherwise the said petition would be considered as deficient or lacking.
iii) It cannot be considered as valid evidence as mandatory requirements of the law have to be fulfilled and in case of non-compliance the person presenting those documents has to face the brunt of non-compliance.

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8. **Supreme Court of Pakistan**
Gul Sadem Khan v. Mst. Halima and others
Civil Petition Nos.421-P of 2022
Mr. Justice Yahya Afridi, Chief Justice, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._421_p_2022.pdf

Facts: The case concerns a guardianship petition filed by the petitioner seeking custody of his two minor sons, which was resisted by the respondent. The petition was dismissed by the trial court, and the appellate court disposed of the appeal with certain modifications. Dissatisfied, the petitioner pursued constitutional and subsequent legal remedies, which were also dismissed.

Issues: i) What is the paramount consideration for the Court while deciding applications for custody of minors?
ii) Can poverty be considered a valid ground to disentitle a mother from the custody of her minor children?
iii) What factors disentitle a father from obtaining custody of his minor child?
iv) Does the remarriage of the mother disentitle her from custody of her minor child under Muhammadan Law?

Analysis: i) Prime and paramount consideration while deciding application for custody of the minor is the welfare and betterment of the minor(s) and nothing else. (…)Welfare of the minor would overweigh against all other considerations. It is also apparent from the bare reading of section 17(2) of the Act that character and capacity of the proposed guardian as well as age and sex, is also an important factor to be considered while determining the welfare of the minor.

ii) poverty has also not been considered a valid ground for disentitling the mother from custody of the minor(s).
iii) There are many factors, which may not entitle the father to the custody of minor and some of the factors could, where the father is habitually involved in crimes or is a drug or alcohol addict, maltreats his child/children, does not have a capacity or means to maintain and provide for the healthy bringing up of his child/children or where the father deliberately omits and fails in meeting his obligation to maintain his child/children. The factors noted above are not exhaustive and they may also not be considered as conclusive for that each case has to be decided on its own merit in keeping with the only and only paramount consideration of welfare of minor.
iv) Although Mohammadan Law delineates that the mother disentitles herself from the custody of minor(s) if she re-marries, however, this is not an absolute rule but one that may be departed from if there are exceptional circumstances to justify such departure and even in a situation of a second marriage if the welfare of the minor lies with the mother then she should be awarded custody.

Conclusion: i) Welfare and betterment of the minor outweigh all other considerations in custody cases.
ii) Poverty is not a valid ground to deny a mother custody of her minor children.
iii) Misconduct, neglect, or inability to care for the child may disentitle a father from custody.
iv) A mother's remarriage does not bar custody if the minor's welfare lies with her.

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9. **Supreme Court of Pakistan**
Late Sher Ayaz Khan @ Sheraz Khana through His L.Rs. & others v. Gul Najeeb Khan
Civil Petition Nos.406 of 2022
Mr. Justice Justice Amin-Ud-Din Khan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._406_2022.pdf

Facts: A sale mutation was pre-empted by respondent and one another person (rival claimant) by way of filling of two pre-emption suits. After going through the procedural formalities, both the suits were dismissed. The said judgment was impugned by both the parties in the form of appeals which too, were dismissed. Accordingly, separate Revisions Petitions were preferred. Revision petition of the rival claimant was dismissed while that of respondent was remanded to appellate Court for deciding the application for permission to amend the plaint and then to decide the case a fresh. In post-remand proceedings, directions were complied with and the appellate Court accepted the appeal and rejected the cross-objections being barred by limitation. Petitioners assailed that order through Revision which was dismissed by Peshawar High Court (Bannu Bench), accordingly the instant petition.

Issues: i) What is the legal requirement for a pre-emptor in order to succeed in a suit for pre-emption and what is the effect of non-compliance?

ii) What are the dictionaries' meanings of "Immediate"?
iii) On which factor, exercise of right of pre-emption depends?
iv) Which Talb is the foundation of rest of Talbs?
v) On which Talb, timelines and conditions for the making of Talb-i-Ishhad and Talb-iKhusumat depends?
vi) Can the Court examine the evidence on Talb-i-Ishhad if Talb-i-Muwathibat is not proved?

Analysis: i) There is no cavil to the proposition that in order to succeed in a suit for possession through pre-emption, it is imperative and essential to prove the performance of Talbs in accordance with law, prescribed under section 13 of N.W.F.P. Pre-emption Act, 1987 and when Talbs are not proved in accordance with law, same results fatal to the pre-emptor's case.
ii) In Black's Law Dictionary, Eighth Edition one page 764 defines the word 'Immediate' to mean "occurring without delay; instant". In Webster Comprehensive Dictionary Encyclopaedic Edition on page 631 the word 'immediate' has been defined to mean "without delay; instant."
iii) The exercise of this right depends entirely on the timely making of the various demands set out in section 13 of the Act, 1987.
iv) The making of Talb-i-Muwathibat is the foundation on which the making of Talb-i-Ishhad and Talb-i-Khusumat is based.
v) The timelines and conditions for the making of Talb-i-Ishhad and Talb-iKhusumat provided in sections 13(3) and 13(4) of the Act ibid depend entirely upon the making of Talb-i-Muwathibat. Therefore, the date, time and place of making such demand is pivotal and foundational to the exercise of the right of pre-emption, the importance of which cannot be over-looked.
vi) When the first and primary Talb i.e. Talb-i-Muwathibat, is found to have not been proved, we need not examine the evidence on the making of the second Talb (Talb-i-Ishhad) as where Talb-i-Muwathibat is not proved to have been made then the performance of Talb-i-Ishhad and all other requirements to successfully enforce the right of preemption cannot withstand.

Conclusion: i) In order to succeed in a suit for pre-emption, there is a legal requirement to prove the performance of Talbs and failure in doing so, is fatal to the case.
ii) See above analysis No.ii
iii) See above analysis No.iii
iv) On preferential basis, Talb-i-Muwathibat is preferred on rest of two.
v) The requirements of date, time and place of making Talb-i-Muwathibat is significant in exercising the right of pre-emption.
vi) See above analysis No. vi

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10. **Lahore High Court**
Robina Kausar v. Muhammad Latif
Civil Revision No. 432 of 2017
Mr. Justice Shujaat Ali Khan

https://sys.lhc.gov.pk/appjudgments/2024LHC5640.pdf

Facts: Petitioner-mortgagor entered into an agreement and mortgaged her property in favour of respondent-mortgagee, with condition that if the petitioner fails to repay the amount, she would get the said land transferred in the name of the respondent. The respondent/Plaintiff filed suit for specific performance of agreement, which was decreed. An appeal filed by the petitioner/defendant was dismissed. Hence, this revision petition.

Issues: i) Whether time consumed in dealing with Office Objection can be attributed to the petitioner especially when Court allows application seeking extension of time to remove Office Objection?

ii) Whether while deciding a revision petition, the High Court can see validity of the decisions impugned before it if an application for condonation of delay has not been filed?

iii) Whether revision is not maintainable if the court fee is paid subsequently?

iv) What remedy is available to the mortgagee If mortgaged money is not paid?

v) What are implications if a document, compulsorily registerable, is not registered?

vi) Whether the non-repayment of mortgaged money does not call for no interference in civil revision?

vii) In which circumstances the concurrent findings of courts below can be disturbed by High Court in revision petition?

Analysis: i) All the subsequent proceedings (prior to allocation of proper number to this petition) revolved around the Office Objection. In the given circumstances, the time consumed, while dealing with Office Objection, cannot be attributed to the petitioner especially when this Court allowed applications seeking extension of time to remove Office Objection and that for condonation of delay in filing application for extension of time.

ii) This Court, while deciding a revision petition, has to see validity of the decisions impugned before it and if the same are found to be untenable the question of limitation assumes secondary status. In this backdrop, the objection raised by learned counsel for the respondent-mortgagee against maintainability of this petition on the point of limitation is spurned.

iii) Now taking up the second objection of the respondent's side against maintainability of this petition on account of non- affixation of court fee, I am of the view that though initially the Office raised objection against maintainability of this petition inter-alia on account of non-affixation of court fee but subsequently the petitioner-mortgagor provided the same after getting the same issued from the Treasury on 30.01.2017, thus the objection, under discussion, being without any substance cannot be given any weightage.

iv) There is no cavil with the fact that an owner can mortgage his property but mortgagee has no right to get transferred the mortgaged property in his name

through a decree for specific performance. If the mortgage money was not being returned by the petitioner-mortgagor, the respondent- mortgagee could resort to remedy provided under section 67 of the Transfer of Property Act, 1882. The mortgagee can approach the Civil Court claiming that mortgagor be absolutely debarred of his right to get the mortgaged property redeemed or it can pray for decree for sale of the property but the recitals of the suit filed by the respondent-mortgagee speak otherwise. In my humble view, a suit for specific performance can be filed for enforcement of an agreement to sell but the same is not maintainable on the basis of a penal clause in an agreement, which otherwise does not fulfill the standards set for an agreement to sell. If findings of the courts below are considered in the light of the afore-referred judgments there leaves no ambiguity that respondent-mortgagee was not entitled for decree for specific performance on the basis of penal clause in the mortgage deed.---- In my humble estimation does not permit a mortgagee to bring a suit for specific performance on the basis of a penal clause in the mortgage deed/agreement.

v) The Apex Court of the country in the case reported as (PLD 2008 SC 73) has held that when a document is compulsorily registerable and party concerned fails to do so, such document does not confer any right and such document is not enforceable under the law. Insofar as the case in hand is concerned, without registration of the mortgage deed inter-se rights and duties of the parties could not be enforced until and unless the mortgagee provided the requisite fee which was payable against registration of said document along with any penalty. Though the safer course for the learned trial court was to impound the mortgage deed and refuse to proceed further till the payment of requisite fee along with penalty (if any) but neither the trial court nor the appellate court attended to the said important aspect of the matter, thus the decisions rendered by them do not qualify the test set for a judicial decision.

vi) While assisting the Court, learned counsel appearing on behalf of the respondent-mortgagee put much emphasis on the fact that since the petitioner-mortgagor failed to repay the amount, even during pendency of proceedings before the Deputy District Officer (Revenue), Toba Tek Singh, in the application filed by her as well as during proceedings before the learned Trial Court, no interference is called for in these proceedings. In this regard, I am of the view that irrespective of any lapse on the part of the petitioner-mortgagor, the respondent-mortgagee was bound to establish that he was entitled for decree of specific performance on the basis of penal clause in the mortgage deed. Further, rights of the respondent-mortgagee were to be governed under the relevant law.

vii) There is no denying the fact that concurrent findings of facts recorded by the courts below are rarely interfered with by this Court in exercise of its revisional jurisdiction but when the decisions of the fora below are arbitrary or suffer from material illegality, same cannot not be considered sacrosanct rather this court should not feel shy to undo the same. Reliance in this regard is placed on (2024 SCMR 1390).

Conclusion: i) No. It cannot be attributed to the petitioner.
ii) Yes, the High Court can see validity of the decisions impugned before it.
iii) In such circumstance, the revision is maintainable.
iv) See analysis above No. iv.
v) See analysis above No. v.
vi) See analysis above No.vi.
vii) Yes, it can be disturbed.

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11. **Lahore High Court**
Muhammad Imran v. The Federation of Pakistan etc.
W.P. No.15304 of 2022
Mr. Justice Abid Aziz Sheikh.
https://sys.lhc.gov.pk/appjudgments/2024LHC5588.pdf

Facts: The petitioner, an employee of the Pakistan Industrial Technical Assistance Centre (PITAC), challenged his transfer from Lahore to Quetta, asserting that the Ministry lacked jurisdiction to issue the order, as such authority rested exclusively with PITAC's Executive Committee under its statutory Rules and Regulations. The petitioner sought enforcement of these rules through a constitutional petition.

Issues: i) Is a constitutional petition maintainable against PITAC for enforcement of its Rules and Regulations?
ii) Does the Ministry have the authority to transfer BPS-18 and above officers in PITAC?

Analysis: i) From above facts, it is manifest that PITAC is a Government owned and controlled entity and its Rules, Regulations and bye-laws, being also framed by the Central Government/Federal Government, have statutory status. In view of above, this constitutional petition for enforcement of aforesaid Rules and Regulations, against PITAC is maintainable.
ii) From above Column-4 of Appendix-I read with Clause 59 of the Rules and Regulations, it is evident that the power to transfer BPS-18 to BPS-19 Technical and Non-Technical officers of PITAC, is with the Executive Committee of PITAC and the Ministry has no jurisdiction to transfer Grade-18 officers of PITAC or to direct Assistant Director (Admn.) to transfer BS-18 officers as happened in the present case.

Conclusion: i) The constitutional petition for enforcing the statutory Rules and Regulations against PITAC is maintainable.
ii) The power to transfer BPS-18 to BPS-19 Technical and Non-Technical officers of PITAC, is with the Executive Committee of PITAC and the Ministry has no jurisdiction to transfer Grade-18 officers of PITAC.

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12. **Lahore High Court**
Sher Azam Khan etc. v. The State etc.
Crl. Appeal No.12779 of 2023
Ghulam Farooq Khan v. The State etc.
Crl. PSLA No.19569 of 2023
Mr. Justice Sadaqat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC5656.pdf

Facts: Two victims were shot near a shoe shop, allegedly due to a prior altercation. One died on the spot, and the other succumbed later. The appellants challenged their conviction, while the complainant appealed against the acquittal of a co-accused. Both appeals were decided in a single judgment.

Issues: i) What is the impact of discrepancies between ocular evidence and medical evidence on the credibility of the prosecution's case?
ii) What is the evidentiary value of public documents prepared by rescue officials concerning the presence of witnesses?
iii) What are the implications of non-compliance with mandatory provisions of Section 103 Cr.P.C. during recovery proceedings?
iv) What is the standard for giving the benefit of the doubt in criminal cases?

Analysis: i) This conflict between ocular and medical evidence is not ignorable, rather shatters the credibility of the eyewitnesses creating doubt regarding their presence at relevant time at the place of occurrence.
ii) Presumption of correctness is attached to them (public documents), certified copy thereof is relevant and admissible in evidence unless contrary is proved rebutting such presumption completely,
iii) I.O. has not joined any independent person from the vicinity to witness the recovery proceedings in violation of mandatory provisions of Section 103 of Cr.P.C. which are not believable.
iv) It is settled principle of law that for giving benefit of doubt, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in the prudent mind about the guilt of the accused, then he would be entitled to its benefit not as a matter of grace or concession but as of right.

Conclusion: i) Conflict between ocular and medical evidence casts doubt on eyewitnesses.
ii) Prosecution failed to rebut public documents, negating eyewitnesses' presence.
iii) Recovery proceedings violated Section 103 Cr.P.C., rendering them unreliable.
iv) Any reasonable doubt entitles the accused to its benefit.

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13. **Lahore High Court, Lahore**
Rizwan Sami Khan v. The State, etc.
Criminal Appeal No.41759 of 2022
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Muhammad Amjad Rafiq

https://sys.lhc.gov.pk/appjudgments/2024LHC5634.pdf

Facts: Through this appeal, appellant has assailed the judgment of trial/GBV Court, in case registered for offence under Sections 376, 292, 500 and 509 PPC whereby, the appellant was convicted and sentenced**.**

Issues: Whether potency test of the accused of sexual offences punishable under Sections 376, 377 and 377-B, PPC is necessary to establish the fact that accused was then potent and able to perpetrate the offence?

Analysis: Proof of potency of the appellant/accused in a case of sodomy etc. is a requirement to be met with. For this reason the legislature inserted Section 53-A in the Code of Criminal Procedure, 1898 through Criminal Law Amendment Act XLIV of 2016 ……This provision highlights the relevance and significance of potency test of the accused of sexual offences punishable under Sections 376, 377 and 377-B, PPC while in the instant case the prosecution has not bothered to procure and bring such material piece of evidence on record. Consequently, the appellant was then potent and able to perpetrate the offence as alleged is a fact that could not be established by the prosecution during trial that creates serious doubt about the prosecution case.

Conclusion: Yes, potency test of the accused of sexual offences punishable under Sections 376, 377 and 377-B, PPC is necessary to establish the fact that accused was then potent and able to perpetrate the offence.

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14. **Lahore High Court**
Mst. Robina Iqbal v. Additional District Judge etc.
WP No. 997/2024-BWP
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC5708.pdf

Facts: The petitioner and the respondent, after the dissolution of their marriage, were involved in a custody dispute concerning their minor daughter. The respondent filed a guardianship petition, which was allowed by the trial court and upheld on appeal, leading the petitioner to file this writ petition. The core issue revolved around the welfare of the minor and whether the remarriages of the parties impacted their suitability for custody.

Issues: i) What is the paramount consideration in custody cases?
ii) What factors should be considered when determining the welfare of a minor?
iii) Does remarriage disentitle a mother from retaining the custody of the minor?
iv) Can poverty of a mother be a ground for disqualification in custody cases?
v) Is Muhammadan Law binding law for determining disqualification in custody matters?

Analysis: i) the primary and the foremost consideration for taking a decision qua custody of minors is their welfare.

ii) there are many factors, which are required to be considered by the courts for determining the welfare of the minor, which include the age, sex and religion of the minor, character and capacity of the proposed guardian, his/her nearness of the kin with the minor, wishes, if any, of the deceased parents (if the parents of the minors are not alive) and the existing relationship of the proposed guardian with the minor. Apart from the above, the court can consider the intelligent preference of the minor, if the minor is old enough. It has also been held in the above judgments that the courts while determining the welfare can ignore the fact that father is the natural guardian, whereas, the mother has the right of Hizanat

iii) remarriage, especially of a mother, does not disentitle her to retain the custody of the minor.

iv) poverty of a mother does not disentitle her from retaining/seeking custody of the minor.

v) it has been held by the Federal Shariat Court in the judgment reported as Messrs Najaat Welfare Foundation through General Secretary v. Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 4 others (PLD 2021 FSC 1) that Muhammadan Law by D.F.Mullah is a reference book and is not a statue having binding force thus Muhammadan Law can only be consulted as a reference book and cannot be termed to be statutory law having binding effect, upon which any presumption can be drawn against a person.

Conclusion: i) The foremost consideration is the welfare of the minor.
ii) Courts may ignore the father's status as natural guardian and focus on welfare.
iii) A mother's remarriage does not disqualify her from custody.
iv) A mother's poverty does not disqualify her from custody.
v) Muhammadan Law is a reference guide, not a binding statute.

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15. **Lahore High Court**
Space Com International, LLC v. Wateen Telecom Limited
Civil Original No.25854 of 2023
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC5494.pdf

Facts: The case involves a dispute arising from an agreement related to the provision of satellite communication services, where one party sought enforcement of an arbitral award, and the other resisted it, arguing jurisdictional and procedural inconsistencies in the arbitration process. The central issues pertain to the designated seat of arbitration, applicable procedural rules, and the recognition and enforcement of the arbitral award.

Issues: i) How does Dubai International Financial Centre (DIFC) differ from DIFC-London Court of International Arbitration (LCIA)?
ii) Can arbitrators assess their own jurisdiction during arbitration?
iii) Whether an arbitral tribunal's own determination of its jurisdiction binds the enforcing court?

iv) Whether the enforcement court can conduct a de novo review of the parties' arbitration agreement to determine jurisdiction?
v) How the choice of the seat of arbitration affects procedural law and the supervisory role of national courts?
vi) What is the significance of the seat of arbitration?
Vii) Whether the arbitration rules can supplant the explicit designation of a seat of arbitration?
viii) Can an arbitration agreement have a different governing law from the main contract?
ix) Why is the agreed seat of arbitration essential?

Analysis: i) It is pertinent to mention that DIFC has a separate court and a legal system which governs matters of arbitration and is the appointing authority in DIFC arbitration law. DIFC-LCIA, on the other hand, is an arbitral institution and differs from DIFC on that account.
ii) It is well established that the arbitrators are entitled to inquire into the merits of the issue whether they have jurisdiction or not, not for the purpose of reaching any conclusion which will be binding upon the parties but for the purpose of satisfying themselves as a preliminary matter whether they ought to go on with the arbitration or not.
iii) "The nature of the present exercise, is, in my opinion, also unaffected where an arbitral tribunal has either assumed or, after full deliberation, concluded that it had jurisdiction there is in law no distinction between these situations. The tribunal's own view of its jurisdiction has no legal or evidential value, when the issue is whether the tribunal had any legitimate authority
iv) This Court is not precluded in any sense whatsoever from conducting a de novo review of the Respondent's evidence and submissions with reference to Article V(I)(d) of the convention. (…) As such, this Court is required by the Article V of the Convention to conduct a fresh review of the Parties' evidence to assess whether the grounds enumerated in Article V of the Convention are met or not.
v) "The choice of an arbitral seat is one of the most important matters for parties to consider when negotiating an arbitration agreement because the choice of seat carries with it the national law under whose auspices the arbitration shall be conducted." (b). Second, the selection of the seat of arbitration by the Parties designates the system of courts that would have supervisory jurisdiction over the arbitration and would be the forum of remedies against the arbitral awards.
vi) The seat of arbitration relates to the law governing the arbitration process and entails in itself a selection of curial / procedural law, that is, national law under whose supervision the arbitration shall be conducted. (…) The seat is the legal, rather than the physical, place of arbitration proceedings, and hearing can be held in other jurisdictions.
vii) The contractual wording of clause 14 makes clear that the parties to MSA 2014 resolved that the seat of arbitration would be Dubai, UAE. Clause 14 of the agreement goes on to state further that arbitration shall be pursuant to the rules of

arbitration of DIFC. This, however, does not depreciate the primary argument regarding the seat of arbitration

viii) It is now an established principle of arbitration that while the law of an arbitration agreement usually follows the proper law of the main contract, an arbitration agreement is separable from the main contract between the parties and an arbitration agreement may have a different law from that of the proper law.

ix) The agreement of the parties, thus, retains primacy concerning arbitral procedure. Although the standard of proof for showing that the agreed arbitral procedure was breached is high and the burden is substantial, yet the agreement regarding the seat is a core arbitral procedure and the prerequisite of causality is not attracted. This defect is essential to the award and constitutes a ground for refusal.

Conclusion: i) DIFC and DIFC-LCIA are distinct entities.
ii) Arbitrators can preliminarily assess jurisdiction.
iii) A tribunal's jurisdictional ruling holds no binding value.
iv) Courts can review arbitral compliance a new.
v) The arbitral seat determines governing law and courts.
vi) The seat is the legal jurisdiction for arbitration.
vii) See analysis No.vii.
viii) Arbitration agreements can have separate governing laws.
ix) Breach of seat agreement justifies refusal of enforcement.

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16. **Lahore High Court, Lahore**
Muhammad Munir v. Mansoor Rasheed and Others
Writ Petition No. 3168 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC5428.pdf

Facts: Through the writ petitions under Article 199 of Constitution of Pakistan 1973, the petitioner has approached the High Court after ejectment applications were accepted; feeling dissatisfied, the respondents preferred their respective appeals before the learned Additional District Judge, Rawalpindi. The appeals were allowed and resultantly, the ejectment applications were dismissed.

Issues: i) What is object and purpose of Punjab Rented Premises Act, 2009?
ii)What is imperative to invoke provisions of Punjab Rented Premises Act, 2009?
iii) What is definition of Waqf?
iv) What is effect of Sale Deed, when a specific clog was imposed in the Waqf-deed and Waqf becomes invalid under Section 2(e) of The Punjab Waqf Properties Ordinance, 1979?
v) Whether one is precluded to seek eviction of tenant under the Punjab Rented Premises Act, 2009?

Analysis: i) It would be advantageous to observe that "Act, 2009" was promulgated to regulate relationship of landlord and tenant in respect of rented premises and to

provide mechanism for settlement of disputes interse landlord and tenant in an expeditious and cost-effective manner and for connected matters therewith.

ii) It is thus imperative for the applicant invoking provisions of the "Act, 2009", seeking eviction of a person arraying him as respondent in the application, to first establish relationship, being landlord and tenant.

iii) Waqf means the permanent dedication by a person professing Islam of any property for any purpose recognized by the Muslim as religious, pious or charitable. Waqf is always of permanent character. In the case of FARAZ AHMAD BHUTTA versus ADDITIONAL DISTRICT JUDGE and others (PLD 2011 Lahore 483), this Court while dealing with a similar proposition held as under:-

> "10. In order to examine the creation of Waqf, the principle laid down by D.F. Mulla in this respect are to be considered. According to section 173 of Muhammadan Law, a Waqf is a permanent dedication by a person professing the Muslim faith of any property, recognized by the Muslim Law as religious, pious or charitable. Section 174 of the Muhammadan Law directs a waqf to make a permanent waqif without limiting the period while the object of the Waqf has been described in 178 mentioning that it should be for religious, pious and writable purposes and Waqf could be in favour of settlor's family, children and descendants.
>
> 11. Doctrine of press has been laid down in section 181 and the creation of Waqf by inter vivos or testamentary has been provided in sections 184 and 185. To complete a testamentary waqf, section 186 provides the procedure. Section 189 of Muhammadan Law clearly provides that testamentary waqf can be revoked any time before the death of the waqif meaning thereby the other waqif's are not revocable. Further section 193 provides that Waqf property cannot be alienated t except in the case mentioned in sections 207 and 208 which sections provide the powers of Mutawali to sell or mortgage of the Waqf property with the 'permission of the court or if such power has been given expressly in the Waqf deed…."

iv) Adverting to the contention of learned counsel for the petitioner that by virtue of Section 2(e) of the "Ordinance", Waqf-deed is invalid and sale deed executed by the father of the petitioner Haji Mehr Din in his name is valid one and equips him with the right to seek eviction of the respondents being landlord; suffice to observe that Section 2(e) of the "Ordinance" has been misconstrued by the learned counsel. As already observed that a specific clog was imposed in the Waqf-deed on using the premises in question for the personal benefit of legal heirs, so Section 2(e) of the "Ordinance" would not come to rescue the petitioner.

v) When the petitioner did not succeed in establishing that he is landlord of the premises in question, he is precluded to move an application, seeking eviction of the respondents under the "Act, 2009".

Conclusion: i) See analysis Para No.i
ii) Firstly, relationship of landlord and tenant has to be established.
iii) See analysis Para No.iii
iv) See analysis Para No.iv
v) To invoke provisions of the Act, one has to establish that he is landlord.

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17. **Lahore High Court**
Mst. Shamim Akhtar v. Federation of Pakistan Through Secretary Ministry of Defence, Government of Pakistan, Rawalpindi Cantt. and another
Intra Court Appeal No. 41 of 2021
Mr. Justice Mirza Viqas Rauf, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC5593.pdf

Facts: Appellant, a mother of a martyred Captain, sought entitlement to full special family pension after the death of her son's widow. The department denied her claim. Appellant moved constitutional petition which was dismissed and the said order was assailed through of this Intra Court Appeal.

Issues: i) Which law empowers the Federal Government to make regulations for governance etc. of Pakistan Army?
ii) What Regulations were framed by Federal Government under Pakistan Army Act, 1952?
iii) Does Regulation No.49.b.(1) of the Pension Regulations, Volume-I (Armed Forces), 2010 entitle the appellant to receive a full special family pension as the second-life dependent ?
iv) Does Article 25 of the Constitution, which ensures equality before the law, support the appellant's claim of discrimination based on disparity in pension regulations for Commissioned and Junior Commissioned Officers?

Analysis: i) Section 176A of the Pakistan Army Act, 1952 empowers the Federal Government to make regulations for the governance, command, discipline, recruitment, terms and conditions of service, rank, precedence and administration of the Pakistan Army and generally for all or any of the purposes of the Act.
ii) In exercise of powers conferred thereunder the Federal Government framed the Pension Regulations, Volume-I (Armed Forces) 2010.
iii) From the bare reading of both the clauses of Regulation No.49 it clearly manifests that when the deceased officer survives widow in such case clause b(1) of Regulation No.49 would be attracted... The case of the appellant being mother would thus be covered under the former clause and she cannot press into service the Regulation No.63 in support of her claim, as the said provision of law primarily deals with the cases of normal pension and it carries the eventualities where the

original grantee, dies or suffers some disqualification. The appellant is precluded to take refuge of said provision of law."

iv) Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 though ordains that all citizens are equal before law and are entitled to equal protection of law and also guarantees that there shall be no discrimination on the basis of sex but by now it is well entrenched principle that equality does not prohibit classification for differently placed prisons. The doctrine of reasonable classification is founded on the assumption that the State has to perform multifarious activities and deal with a vast number of problems. Right of equality of citizens is always founded on an intelligible differentia, which distinguishes persons or things that are grouped together from those, who have been left out. Right of equality is always to be weighed amongst equal in all respects and it is not necessary that every citizen shall be treated alike in all eventualities. Thus in the light of clear distinction of service cadre and nature between the Commissioned Officer and Junior Commissioned Officer, the contention of learned counsel for the appellant is highly ill-founded.

Conclusion: i) See above analysis No.1

ii) See above analysis No.ii

iii) The appellant is not entitled to the full special family pension under Regulation No.49.b.(1).

iv) The appellant's claim of discrimination under Article 25 of the Constitution is not supported, as the distinction between service cadres is reasonable and lawful.

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18. **Lahore High Court**
Adil Khalil Sattar v. Saad Nasim Khan
Civil Revision No.212-D of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC5701.pdf

Facts: The petitioner filed a suit for possession through pre-emption, claiming superior rights over the respondent's purchase of land. The plaint was rejected due to being filed beyond the prescribed limitation period and appeal against the order was also dismissed in limine by the lower appellate court.

Issues: i) Does the limitation period for filing a suit for pre-emption begin from the date of mutation attestation or from the date of knowledge under the Punjab Pre-emption Act, 1991?

ii) Can the absence of a public notice under Section 31 of the Punjab Pre-emption Act, 1991 extend or alter the limitation period prescribed under Section 30 of the Act?

Analysis: i) It is manifestly clear… in case a sale is made through mutation the limitation will be counted from the date of attestation of mutation, and the pre-emptor is bound to bring his suit within four months from such date. Section 30(d) is not an exception to clauses (a) to (d); rather it is a residual provision and would only come into play if none of the preceding clauses are applicable.

ii) Section 31 deals with the issuance of public notice by the officer registering the sale deed or attesting the mutation of a sale within two weeks of registration or attestation… Even in case of non-issuance of notice in terms of Section 31 of the Act, 1991 there would be no adverse effect on the provision of Section 30 regulating the limitation for instituting a suit for pre-emption. Both these sections are independent… Section 31 does not control or regulate the period of limitation prescribed by Section 30.

Conclusion: i) The limitation period begins from the date of mutation attestation, not from the date of knowledge if the case falls under Section 30(b).
ii) The absence of a public notice under Section 31 does not affect the limitation period defined in Section 30.

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19. **Lahore High Court**
Sultan Khan and another v. Muhammad Nawaz (deceased) through his legal Heirs and others
Civil Revision No. 689-D of 2012
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC5569.pdf

Facts: Deceased respondent instituted a suit for possession of land and alleged that the petitioners and other respondents forcibly occupied his land. The trial court dismissed the suit, but the Appellate court reversed the decision and decreed the suit in favour of the respondent's heirs. The petitioners contested that decree, leading to the instant revision petition under Section 115 of the Code of Civil Procedure.

Issues: i) When is a person required to seek a declaration of title under Section 42 of the Specific Relief Act, 1877?
ii) Definition of adverse possession.
iii) Definition of Trespass.
iv) Is adverse possession still recognized and protected under Section 28 and Article 144 of the Limitation Act, 1908?
v) Does prolonged illegal possession of a trespasser affects the ownership rights of the actual owner?
vi) What is the principle regarding preference to the findings of appellate court over lower court judgments in revisional jurisdiction?

Analysis: i) A person is only obliged to seek declaration when somebody is interested to deny his legal right or character as ordained in Section 42 of the Specific Relief Act, 1877.
ii) The term "adverse possession" is defined in various law dictionaries as under :-
Black's Law Dictionary Tenth Edition adverse possession. (18c)
1. The enjoyment of real property with a claim of right when that enjoyment is opposed to another person's claim and is continuous, exclusive, hostile, open, and

notorious. • In Louisiana, it is the detention or enjoyment of a corporeal thing with the intent to hold it as one's own. La. Civ. Code art. 3421. – Also termed *adverse dominion*. Cf. PRESCRIPTION (5).

Webster's New World Law Dictionary

adverse possession n. A method of acquiring title to real estate by actually, continuously, and openly occupying the property for an uninterrupted amount of time to the exclusion of all others and in defiance of the real owner's rights. The required period of occupancy, as well as other possible conditions, are set by statute.

KJ Aiyar Judicial Dictionary 16th Edition

Adverse possession. Possession of (usually of land) which is inconsistent with the right of a person who claims to be the true owner. Trespass does not constitute adverse possession. There must be real possession accompanied by intent to possess. It must be 'adverse' to the owner and must not be permissive.''

iii) Whereas "trespass" is defined as under :-

Black's Law Dictionary Tenth Edition trespass (tres-pes or tres-pas), *n*. (13c)

1. An unlawful act committed against the person or property of another; esp., wrongful entry on another's real property. Cf. *unlawful entry* under ENTRY (1). 2. At common law, a lawsuit for injuries resulting from an unlawful act of this kind. • The lawsuit was instituted by a writ of trespass. 3. *Archaic*. MISDEMEANOR. — trespass, *vb*. — trespassory (tres-pe-sor-ee), adj.

Webster's New World Law Dictionary trespass

1. *n.* An illegal act committed against another's person or property; especially entering upon another's land without the owner's permission. 2 *n*. In common law, a legal suit for injuries resulting from an instance of the first definition. 3 *v*. To enter upon property without permission, either actual or constructive. *trespass on the case*. A common-law precursor to today's negligence, nuisance, and business torts, it was a suit to remedy injury to person or property not resulting directly from the defendant's conduct but a later consequence of same.

KJ Aiyar Judicial Dictionary Sixteenth Edition Trespass.

The act of breaking into computers or networks either without authorization or in excess of one's authorization. A forcible entry on the land of another with strong hand and against the will of the owner constitutes a trespass.

iv) Initially adverse possession was duly recognized by law and it was protected under Section 28 and Article 144 of the Limitation Act, 1908 but both these provisions were declared repugnant as against the injunctions of Islam in the case of 1991 SCMR 2063.

v) With the afflux of time illegal possession upon the property of the other, irrespective of howsoever it is long, would not extinguish the ownership of the actual owner and validate the possession of trespasser. Reference to this effect can be made to the case of Muhammad Zaman Versus Nazir Ahmed And 2 Others (2003 CLC 1628)

vi) It is cardinal principle of law that in the matter of giving preference to the judgments of lower courts, while analyzing the same in exercise of revisional

jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity.

Conclusion: i) A person is only obliged to seek declaration when somebody is interested to deny his legal right
ii) See above analysis No ii.
iii) See above analysis No iii.
iv) Both these provisions were declared repugnant as against the injunctions of Islam
v) Illegal possession upon the property of the other would not extinguish the ownership of the actual owner.
vi) The preference and regard is always given to the findings of the appellate court.

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20. **Lahore High Court.**
Al-Makkah Press (Pvt.) Ltd. Etc. v. Standard Chartered Bank (Pakistan) Limited etc.
EFA No.248622/2018
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC5472.pdf

Facts: In a banking recovery suit filed in the High Court, the decree amount was less than the pecuniary jurisdiction of the High Court. An application was filed to transfer execution proceedings to a lower court, arguing that the pecuniary jurisdiction should be based on the decree amount.

Issues: i) Can a decree of an amount below the pecuniary jurisdiction of the High Court be executed by the High Court if the initial suit was within its jurisdiction?
ii) Does the Financial Institutions (Recovery of Finances) Ordinance, 2001, require re-determination of pecuniary jurisdiction after the decree is passed?
iii) Does the addition of cost of funds to the decree amount affect the jurisdiction of the executing court?
iv) Is the High Court's jurisdiction to execute decrees affected by subsequent changes in pecuniary limits?

Analysis: i) It is an established position of law that for the purposes of determining the valuation of the suit, only the allegations in the plaint are to be looked at, and that the plaintiff has an absolute discretion to put his own valuation on the suit. It is also an equally established principle of law that question of jurisdiction is to be determined with reference to the amount claimed in the suit and not with reference to the decree that may be passed… The decree passed by the learned Banking Judge of this Court is liable to be exclusively executed by the said Court itself.
ii) Under the Ordinance, 2001, suit proceedings would stand converted into execution by the operation of law, upon pronouncement of the judgment and decree, and the Court which had pronounced the judgment is obligated to act and

exercise jurisdiction to execute the decree, without the necessity of re-visiting or re-determining its own pecuniary jurisdiction.
iii) Cost of Funds is deemed as part of the ensuing decree. Since it forms part of the decree, the High Court, irrespective of decreed amount of below pecuniary jurisdiction, would execute it in accordance with the mandate of sub-section (1) of section 19 of the Ordinance, 2001, since it had passed the decree.
iv) Jurisdiction of the High Court to execute the decree, upon conversion, would not be affected notwithstanding the fact that adjudicated claim/decreed amount fell below the pecuniary limits of the High Court that passed the decree.

Conclusion: i) The High Court retains jurisdiction to execute the decree regardless of the decreed amount.
ii) No re-determination of pecuniary jurisdiction is required after the decree is passed.
iii) The addition of cost of funds does not alter the jurisdiction of the court executing the decree.
iv) The High Court's jurisdiction to execute decrees is unaffected by changes in pecuniary limits.

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21. **Lahore High Court**
Mushtaq Ahmad etc. v. Allah Ditta etc.
Civil Revision No.525 of 2013
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC5612.pdf

Facts: The case concerns the validity of transactions executed through a General Power of Attorney after the death of the principals, which included the sale of land, an arbitration agreement, and subsequent legal proceedings. The respondents alleged fraud, misrepresentation, and fabrication in these transactions, resulting in challenges to their legal standing and enforceability.

Issues: i) Does a General Power of Attorney become redundant upon the death of the principal, invalidating any subsequent transactions?
ii) Are legal proceedings against deceased persons null and void?
iii) Does fraud vitiate legal proceedings, including arbitration agreements and awards?
iv) Should costs deter frivolous litigation?

Analysis: i) After the death of the aforementioned principals, the general power of attorney by operation of law became redundant and thereafter any transaction made by the said general power of attorney on the basis of said defunct instrument (General Power of Attorney) that would be considered as void, illegal and fraudulent in nature.
ii) It is settled law that a suit or proceeding initiated against a dead person are nullity in the eyes of law and such flaw in itself is not curable defect. (…) any

superstructure built on the basis of the said instrument shall stand automatically dismantled.
iii) Fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction, that stand automatically dismantled and any ill-gotten gain achieved by fraudster are not liable to be validated under any norms of laws.
iv) As the petitioners have filed frivolous litigation without any just reason and such practice shall be discouraged and deprecated even by imposition of substantial cost upon the fraudulent litigants.

Conclusion: i) Power of Attorney void after principal's death.
ii) Actions against deceased are incurably null.
iii) Fraud invalidates proceedings entirely.
iv) Costs deter frivolous litigation.

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22. **Lahore High Court**
Akhtar Ali, Civil Judge 1st Class, Lahore v. The Registrar, Lahore High Court, Lahore
Service Appeal No.01 of 2018
Mr. Justice Muhammad Sajid Mehmood Sethi Chairman, Mr. Justice Rasaal Hasan Syed Member, Mr. Justice Abid Husain Chattha member.
https://sys.lhc.gov.pk/appjudgments/2024LHC5444.pdf

Facts: The appellant, a Civil Judge, was subjected to disciplinary proceedings for alleged inefficiency and misconduct while handling an execution petition, including issuing warrants of possession with alleged irregularities. Following an inquiry, minor penalties of withholding one increment and promotion were imposed, which the appellant challenged, arguing procedural and substantive errors in the penalties imposed.

Issues: i) Do judicial officers have absolute immunity under the Judicial Officers Protection Act, 1850?
ii) Can the quality of a judicial order be assessed through disciplinary proceedings?
iii) Can inquiry officers review judgments of judicial officers?
iv) Can multiple penalties be imposed on civil servants under the Punjab Civil Servants Rules?
v) Are similar rules on penalties present in Indian jurisdictions?
vi) Is 'or' in Rule 4(1)(a)(ii) of the Punjab Civil Servants Rules disjunctive or conjunctive?

Analysis: i) Judicial Officers enjoy a degree of immunity for actions taken in the course of their official duties under the Judicial Officers Protection Act, 1850. However, this immunity is not absolute, particularly in cases involving acts of mala fide intention or gross negligence. A Judicial Officer, while hearing a case, is at liberty to decide the matter by applying the law to the facts based on the available record. (…) the erroneous exercise of judicial power, resulting in an order based on an incorrect

application of the law, cannot and should not cast doubt on the integrity of the Judicial Officer.

ii) The quality of a judgment or order passed by a Judicial Officer can only be properly assessed in appellate judicial proceedings and, ordinarily, not through disciplinary proceedings, unless extraneous factors that influenced the judgment or order are proven with cogent material presented before the inquiry officer.

iii) The inquiry officer or hearing officer conducting disciplinary proceedings cannot act as an appellate or revisional forum over the judgments or orders passed by the Judicial Officer. (…)The inquiry officer or hearing officer must proceed with extreme caution in such matters, as any overreach would have a chilling effect on the functioning of the subordinate judiciary, impeding its ability to perform judicial functions freely and fairly.

iv) From the combined reading of Rules 3 & 4 it is clear without any doubt that more than one penalties, mentioned supra, can be imposed against a civil servant.

v) From Indian jurisdiction, we have also found Rule 8 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 to be alike to Rule 3 of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999 to extent of permitting imposition of more than one penalty. (…) in Indian jurisdiction, The Central Civil Services (Classification, Control and Appeal) Rules, 1965,5 U.P. Government Servant (Discipline and Appeal) Rules, 1999,6 The Maharashtra Civil Services (Discipline and Appeal) Rules, 19797 and Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957,8 provide penalties of 'withholding of increments' and 'withholding of promotion' separately under different clauses.

vi) the word 'or' appearing in Rule 4(1)(a)(ii) of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999, particularly regarding the penalties of withholding an increment or promotion, be termed as disjunctive. This means that only one minor penalty (either withholding of increment or withholding of promotion) should be awarded at a time, rather than combining both penalties.

Conclusion: i) Judicial immunity is qualified and does not extend to acts of mala fide intent or gross negligence.

ii) Judicial orders should be evaluated in appellate proceedings, not disciplinary ones, unless extraneous influence is proven.

iii) Inquiry officers cannot act as appellate forums, as overreach may harm judicial independence.

iv) Rules 3 and 4 allow imposition of multiple penalties on civil servants.

v) Indian rules allow separate penalties for withholding increments and promotions under distinct clauses.

vi) 'Or' in the rule is disjunctive, permitting only one penalty (either increment or promotion withholding) at a time.

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23. **Lahore High Court**
Anjum Mumtaz Malik v. Registrar, Lahore High Court, Lahore & others
Service Appeal No.01 of 2016
Mr. Justice Muhammad Sajid Mehmood Sethi Chairman, Mr. Justice Rasaal Hasan Syed Member, Mr. Justice Abid Husain Chattha member
https://sys.lhc.gov.pk/appjudgments/2024LHC5438.pdf

Facts: The case involves an appeal challenging the denial of proforma promotion for a judicial officer who was initially deferred due to adverse remarks in a performance evaluation report (PER). The officer later earned consecutive satisfactory evaluations and sought promotion retroactively from the date when his juniors were promoted, which was declined by the administrative authorities.

Issues: i) Is a civil servant entitled to proforma promotion if adverse PER remarks are later resolved?
ii) Can officiating promotions block proforma promotion for eligible civil servants?
iii) Can officiating promotions be made only for vacant posts under Rule 13(1) of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974?
iv) Does the principle of proforma promotion ensure fairness for bypassed senior civil servants?

Analysis: i) In cases where a temporary embargo has been placed on a civil servant's right to promotion, or legal restraint has been imposed on his/her claim, the removal of such obstacles entitles the officer to remedy the monetary loss and loss of rank through proforma promotion. There is no dispute with the proposition that it is an inalienable right of every civil servant to be considered for promotion along with his batchmates once he fulfills the eligibility criteria.
ii) Officiating promotions cannot permanently preclude civil servants from receiving proforma promotions if they satisfy all criteria and their juniors have been promoted to substantive posts. The Punjab Judicial Service Rules, 1994, mandate that promotions to posts such as Additional District and Sessions Judges must adhere to the principles of seniority-cum-fitness.
iii) an appointment by promotion on an officiating basis, under Rule 13(1) of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, can be made against posts that fall vacant due to the circumstances mentioned in the said Rule.
iv) the principle of proforma promotion seeks to ensure fairness in cases where administrative inefficiency or procedural delays result in a senior civil servant being bypassed. Adverse ACRs, once resolved or mitigated through subsequent satisfactory reports, lose their impact on the civil servant's promotion eligibility.(…)Failure to grant proforma promotion in such cases would contravene the principles of fairness and equity.

Conclusion: i) Civil servants are entitled to proforma promotion once obstacles to their promotion are removed.

ii) Officiating promotions cannot bar proforma promotion for eligible senior officers.
iii) Officiating promotions are valid only for posts vacant under Rule 13(1).
iv) Proforma promotion ensures fairness by addressing bypasses due to administrative delays or resolved adverse ACRs

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24. **Lahore High Court.**
Muhammad Waqas v. The State etc.
Criminal Appeal No.66722 of 2019
The State v. Muhammad Waqas
Murder Reference No.215 of 2019
Hon'ble Chief Justice Ms. Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC5556.pdf

Facts: The appellant stood convicted with death sentence for murder of his wife. He administered intoxicant to complainant and family with the help of his sister in law and went back to his own house. He administered poison to his wife, but feeling her breathing put pillow to choke her breath causing her death.

Issues: i) Whether burden of proof could be shifted upon accused in a criminal trial?
ii) Where an offence is committed in a privacy of room; what would be nature of initial burden upon prosecution and that upon the other partner to room?
iii) What is significance of first version of accused in such cases?
iv)What would be effect upon prosecution, when omitted part of a statement confronted to and conceded by witness?
v) What is the liability of surviving partner, when the other partner breathes last in privacy of room at night odd hours?
vi)What is duty of prosecution towards defence plea and responsibility of Judge?
vii) What is effect of circumstantial evidence upon sentencing of convict?

Analysis: i) where a wife met with an unnatural death inside the privacy of room at odd hours of the night, the only one person who has access to the bedroom was the husband and he was the sole person, who has exclusive knowledge as to what happened to his wife inside the room, as such onus was also shifted upon him to prove this fact. In this regard reference can be made to Article 122 of Qanun-e-Shahadat 1984.
ii) Herein the instant case, two dirty scars around the neck of the deceased were visible as noted by the Medical Officer but the appellant who was supposed to be the protector of his wife, instead of exploring cause of such marks on the neck of deceased, prematurely announced that the deceased died due to cardiac arrest. This haste on the part of the appellant suggested something fishy on his part. It is, therefore, observed that in cases where the offence is committed in a privacy of room, no doubt initial burden is upon the prosecution but the onus would comparatively be of lighter nature and if the husband or the wife as the case may be failed to offer an explanation how his/her partner met with unnatural death inside the bedroom, the same can be considered an additional factor qua his/her guilt.

iii) Besides above, in such like cases where the offence was committed in the privacy of room, the first version of the accused is of much significance…During investigation first version of the appellant was found correct. It is well settled by now that first plea of an accused is admissible piece of evidence…in cases where a partner met with unnatural death in a privacy of room, first version of the surviving partner has persuasive value and cannot be ignored at all, as such the same also strengthen the version of the prosecution.

iv) Main part of the motive has been clearly stated by the complainant in his examination in chief, which served the very purpose. Even otherwise, when the omitted part of Fard Bayan (Ex.PD) was confronted to the complainant, he conceded said facts, as such by confronting the same, the defence helped the prosecution in many words to establish the same.

v) Appellant being the sole person, having access to his bedroom, where the deceased breathed her last in odd hours of the night was supposed to have exclusive knowledge regarding the circumstances, faced by the deceased, prior to her death and he was duty bound to explain the same to the satisfaction of a prudent mind and his failure to do so was an additional factor pointing finger towards him. It is reiterated that in cases where crime committed in the privacy of room, first version of the accused has also persuasive value and can be considered an additional factor in the chain of circumstantial evidence. Similarly, while scanning circumstantial evidence, in cases where a partner breathed his/her last, inside the privacy of room, stringent principles may not be applied and the conduct of the surviving partner in dealing with such situation must be taken due care of. If a surviving partner instead of informing the police and without making any effort to determine the cause of death, in particular, when some kind of marks or violence was visible upon the dead body, adverse inference can be drawn against him/her.

vi) It is not the duty of the prosecution to meet each and every hypothesis put forward by an accused. No doubt, it is the duty of a Judge presiding over a criminal trial to ensure that no innocent person is punished but at the same it is also an obligation of the Court to see that a guilty person does not escape.

vii) Here in the instant case, there is no direct evidence against the appellant and the entire case hinges upon circumstantial evidence, therefore, as a matter of caution, we consider it a mitigating circumstance for awarding the appellant lessor punishment. Even otherwise, it is settled principle of law that when a case qualifies the awarding of both sentences of imprisonment for life and that of the death, the proper course for the Courts, as a matter of caution, is to give preference to the lesser sentence.

Conclusion: i) When wife dies in privacy of room, husband being the only person was under the burden to prove.

ii) Initial burden upon prosecution would be comparatively lighter and husband or wife to offer an explanation how his/her partner met with unnatural death inside the bedroom.

iii) The first version of the accused is of much significance and is admissible piece

of evidence.
iv) Confronting such omitted portion by defence would be helping prosecution to establish the case.
v) See analysis (v)
vi) See analysis (vi)
vii) As a matter of caution circumstantial evidence is to be considered as mitigating factor for awarding lesser punishment.

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25. **Lahore High Court Lahore**
Muneeb Riaz v. The State, etc.
Criminal Miscellaneous No.63844-B/2024
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC5566.pdf

Facts: Petitioner has sought post arrest bail in an FIR in respect of an offence under Section 20, 21 & 24 of the Prevention of Electronic Crimes Act, 2016. The complainant alleged that the petitioner was married to the complainant's sister but she obtained divorce from him before *rukhsati*. It is alleged that the petitioner edited and converted pictures of the complainant's sister and mother into nude images, threatened to upload them on social media and shared them via WhatsApp with the Complainant.

Issues: Whether it is universal rule and compulsion over the Court to grant bail in cases where the offences do not fall under the prohibitory limb of Section 497 Cr.P.C.?

Analysis: The offence with which the petitioner has been charged, does not attract the prohibitory limb of Section 497 Cr.P.C. and in the offences not falling under the prohibition, the bail is granted as a rule in many a cases by the Apex Courts but it has never been considered as universal rule and compulsion over the Court rather it depends upon facts and circumstances of each case. Here in the instant case the petitioner has victimized not only a young girl in revenge of taking divorce before Rukhsti but also her mother and harmed their reputation and privacy explicating their images in the forum of edited nude photos and then shared the same to their closest and sensitive relative i.e. the brother/son. This fact alone makes case of the petitioner being exceptional and extra ordinary circumstance of the case for refusal of bail.

Conclusion: It has never been considered as universal rule and compulsion over the Court rather it depends upon facts and circumstances of each case.

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26. **Lahore High Court Lahore**
Rai Muhammad Usama v. District Police Officer, etc.
Mr. Justice Asjad Javaid Ghural
Writ Petition No.50329-Q/2024
https://sys.lhc.gov.pk/appjudgments/2024LHC5547.pdf

Facts: FIR was registered against the petitioner and others under section 16 of the Punjab

Maintenance of Public Order Ordinance, 1960 and section 341 of Pakistan Penal Code, 1860. The petitioner, through writ petition, prayed for its quashing.

Issues: i) Whether extraordinary Constitutional jurisdiction can be invoked for quashing of FIR?

ii) What are constituent elements of offence under section 16 of the Punjab Maintenance of Public Order Ordinance, 1960.

iii) Whether obstruction in flow of traffic amounts to committing offence under section 341 of the Pakistan Penal Code, 1860.

iv) What is the importance of "mens rea" to establish an offence.

v) What protection is available to peaceful assembly under the Constitution of Islamic Republic of Pakistan, 1973.

Analysis: i) Ordinarily, time and again 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, without jurisdiction or there is no likelihood of the conviction of the accused persons.

ii) In order to attract the provision of said offence not only making of speech or words whether spoken or written or by signs or by visible or audible representations or otherwise publishes any statement, rumour or report is necessary but as a consequence thereof fear or alarm to the public or any section of the public or any activity prejudicial to the public safety or the maintenance of public is sina qua non.

iii) Bare reading of definition of "wrongful restraint" contained in Section 339 PPC attracting the provision of Section 341 of PPC it is manifestly clear that obstruction should be of a human being and mere allegation that due to the act of the petitioner flow of the traffic was disturbed was not sufficient to constitute said offence. Reliance is placed on case reported as "Mst. Riaz Bibi ..Vs.. S.H.O. Police Station, Zahirpir (2002 P Cr.LJ 530)", wherein it has been laid down as under:- "Where it is not disclosed that a human body was obstructed and that the obstruction was only to vehicle and passage was common to both, thus no offence would be committed under section 341, P.P.C."

iv) Needless to observe that mens rea is a basic component in order to establish that a crime has taken place. It is derived from the maxim " actus reus non facit reum nisi mens sit rea" which means "that an act is not guilty unless the mind is not guilty". No person can be held accountable under the criminal law unless he can be proved to have acted with intention to commit a crime... In the words of Sir Matthew Hale one of the greatest scholars on the history of English Common Law and Jurist "Where there is no will to commit an offence there can be no just reason to incur the penalty."

v) We are living in a democratic country and peaceful assembly is very important right for preservation of a democratic political system. This right has also been guaranteed under Article 16 of the Constitution of Islamic Republic of Pakistan, 1973... From the very language of this Article four necessary preconditions are necessary for exercise of this right. Firstly, person should be a citizen of Pakistan. Secondly, gathering must be peaceful. Thirdly, the participants of such gathering should be weaponless. Fourthly, the right is subject to reasonable restriction imposed by 'law' in the interest of 'public peace'. The term 'law' here clinches both primary and secondary legislation and implies that restrictions placed upon the right of an individual must have backing of law.

Conclusion: i) There is no bar on the power of Hon'ble High Court regarding quashing of FIR.
ii) See above analysis (ii)
iii) See above analysis (iii)
iv) It is basic component in order to establish that a crime has taken place.
v) See above analysis (v)

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27. **Lahore High Court**
Munir Hussain Shah v. The State etc.
Criminal Appeal No 78457 of 2019
The State v. Munir Hussain Shah
Murder Reference No 300 of 2019
Hon'ble Chief Justice Ms Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC5665.pdf

Facts: The appellant was convicted under Section 302(b) of the Pakistan Penal Code for the murder of the deceased, resulting from a motive linked to a land dispute. The appellant entered the victim's house at night and fired two gunshots, causing fatal injuries. The trial court sentenced the appellant to death, which was challenged in this appeal and simultaneously the murder reference sent up by the trial court was also decided

Issues: i) Whether the prompt reporting of the incident establishes the credibility of testimony of witnesses and rules out the possibility of deliberation or fabrication?
ii) Can the presence of an eyewitness at the scene of occurrence be disbelieved solely based on their non-residency in the area?
iii) Is the quality of evidence more significant than the number of witnesses in determining the proof or disproof of a fact under the law?
iv) Can the solitary statement of a witness, who was present in his own house at the time of the incident, be sufficient to establish the prosecution's case beyond a reasonable doubt?
v) In cases where an incident occurs inside a house, should the testimonies of the house's inmates be given greater credence compared to external witnesses?
vi) Can the evidence of eyewitnesses be disregarded solely on the basis of their relationship with the deceased if their testimony is otherwise credible and

trustworthy?

vii) What is the purpose to collect blood stained earth from the place of occurance and what is the effect of the non-collection of blood-stained earth?

viii) Can Call Data Records (CDR) alone establish the identity of the SIM user without forensic analysis or audio/video evidence?

ix) How does the onset and duration of rigor mortis, as described in forensic literature, aid in estimating the time of death?

x) What factors influence the onset and duration of rigor mortis, and how do they vary across different individual conditions?

xi) Can the failure to prove motive and the inconsequential recovery of the weapon justify the reduction of a capital punishment sentence to life imprisonment?

Analysis: i) Incident took place on 16.04.2017 at about 02:00 a.m. (night), which was reported to the police promptly on the same day at about 03:30 a.m…which not only confirms presence of the eye witnesses at the spot but also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case and also rules out the possibility of mistaken identity or substitution.

ii) No doubt the place of occurrence was not the abode of this witness but this fact alone cannot be made universal rule for disbelieving the presence of an eye-witness at the place of occurrence. If a witness furnished a plausible explanation of his presence at the place of occurrence at the relevant time the same ought to have been considered and if the same was found plausible or appeals to a prudent mind, the same shall be given weightage, irrespective of the fact that the acclaimed eye-witness was the resident of the same vicinity or not.

iii) In the matter of appreciation of the evidence it is not the number of witnesses rather quality of evidence is worth importance. There is no requirement under the law that a particular number of witnesses are necessary to prove/disprove a fact. It is time honoured principle that evidence must be weighed and not counted.

iv) Complainant, was the resident of the same house and his presence in his own house at night time cannot be questioned…This sole statement is sufficient to believe the prosecution version and bring home guilt against the appellant beyond shadow of doubt.

v) In such like cases, when incident took place inside the house, testimonies of the inmates of the house have more credence as compared to anyother witness, as it would be unrealistic for a person other than the inmate of the house to state what happened inside the house.

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

vii) The purpose of collection of blood stained earth from the place of occurrence is to detect the human blood from the crime scene and it was the duty of the Investigating Officer to collect the same…Even otherwise, non collection of blood stained earth from the crime scene at the most could be considered as an irregularity

on the part of the Investigating Officer and no premium can be extended to the appellant on that basis.

viii) CDR only shows that the SIM registered in the name of a particular person is being used in geographical jurisdiction of a specific Tower but in the absence of forensically evaluated voice record transcript/ end to end audio or video recording, it does not unveil who was carrying/using the SIM at the relevant time.

ix) Rigor mortis is a fourth stage of death. It is one of the recognizable sign of death characterized by stiffening of the limbs of the corpse caused by chemical changes in the muscles. According to Medical Jurisprudence & Toxicology by Dr. Gupta & Agrawal normally rigor mortis starts to develop after three hours of the death and completes in 12-18 hours. Dr. S. Siddiq Husain in Chapter-V of his book "Forensic Medicine and Toxicology" observed that in moderate climate the rigor mortis completes in 8 to 12 hours.

x) There is a consensus in Medical Jurisprudence that onset and duration of rigor mortis varies between individuals due to number of factors including:-(i) Body condition: Rigor mortis sets in more quickly in people who are thin or emaciated. In people with low muscle mass, rigor mortis may not form at all or may be minimal. (ii) Age: Rigor mortis occurs earlier in both early youth and old age. (iii) Temperature: Warmer temperatures speed up the onset of rigor mortis. Cold temperatures slow down the process of rigor mortis. (iv) Physical activity: If a person engages in strenuous exercise before death, rigor mortis may set in immediately. (v) Illness. Illness is a physiological stress that can lead to a rapid onset of rigor mortis. (vi) Body fat: Fat insulates the body, slowing the rate of rigor mortis.

xi) Here in the instant case, we have taken note of some mitigating factors. Firstly, recovery of weapon of offence from the appellant remained inconsequential. Secondly, motive as set out by prosecution remained unproved, which alone is sufficient for reduction of quantum of sentence…however his sentence of capital punishment is converted into one of imprisonment for life.

Conclusion: i) Prompt reporting excludes chances of deliberation and also rules out the possibility of mistaken identity or substitution.

ii) See above analysis No ii.

iii) It is not the number of witnesses rather quality of evidence is worth importance.

iv) See above analysis No iv.

v) See above analysis No v.

vi) Mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence.

vii) See above analysis No vii.

viii) In the absence of forensically evaluated voice record transcript/ it does not unveil who was carrying/using the SIM at the relevant time.

ix) See above analysis No ix.

x) See above analysis No x.

xi) See above analysis No xi.

28. **Lahore High Court**
Muhammad Waqar v. The State etc.
Crl. Misc. No.50519/B/2024
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC5679.pdf

Facts: The petitioner applied for post-arrest bail in a homicide case involving alleged torture and ante-mortem drowning. The prosecution relied on eyewitness accounts, medical evidence, and forensic reports to substantiate the allegations.

Issues: i) What does the diatom test reveal about the cause of death in drowning cases?

Analysis: i) The diatom test is an effective method for determining whether death was caused by drowning. When a person is alive, and death occurs due to true drowning, referred to as ante-mortem drowning, it means the individual inhaled water while their mouth and nose were submerged. During this process, diatoms present in the water enter the lungs and, through blood circulation, reach the liver or other organs as blood continues to flow in the arteries and veins. In such cases, both the diatoms in the control water sample and those in the deceased's liver test positive. On the other hand, if the individual was already dead before entering the water, the lungs may contain diatoms, but the liver will not test positive for diatoms because blood circulation ceases after death. In this scenario, diatoms in the control water sample test positive, whereas those in the deceased's liver test negative.

Conclusion: i) It distinguishes between ante-mortem and post-mortem drowning by analyzing diatom presence in the liver.

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29. **Lahore High Court**
National Accountability Bureau v. Ch. Parvez Elahi etc.
Writ Petition No.48984/2024
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC5682.pdf

Facts: The National Accountability Bureau filed a reference against the respondents alleging corruption and corrupt practices. During the proceedings, the respondents challenged the prosecution's failure to provide certain statements made by witnesses and approvers during the inquiry stage, arguing this omission violated their right to a fair trial. The Accountability Court allowed the applications, leading NAB to file a writ petition against the order.

Issues: i) Are the provisions of section 265-C Cr.P.C. exhaustive, and an accused cannot demand documents other than those specified therein?
ii) Is the prosecution obligated to disclose/turn over exculpatory evidence to the accused?

iii) Can an accused request document production before trial under Section 94 Cr.P.C., despite Section 265-F(7) Cr.P.C.?
iv) Does Articles 4 & 10A of the Constitution of Pakistan, 1973 require the prosecution to disclose evidence assisting the defence?
v) What is the legal distinction between "inquiry" and "investigation" under the Code of Criminal Procedure and the National Accountability Ordinance (NAO)?
vi) How are the stages of "inquiry" and "investigation" under the NAO interconnected, and what is their procedural significance in the filing of a reference?
vii) When does an accused gain the right to access evidence from an inquiry or investigation?
viii) What is included in “report” and whether NAB provide the inquiry report if converted to an investigation??
ix) Can Section 265-C Cr.P.C. override the NAO?

Analysis: i) section 265-C Cr.P.C. mandates the supply of specific documents to the accused, the court may also direct the prosecution to produce additional materials not explicitly mentioned in the section, and let the accused have access to them. However, in each case, the court must first determine whether the documents the accused requests are necessary or desirable for the trial and would foster justice and fairness. Courts derive this authority from section 94(1) Cr.P.C., and Articles 4 and 10A of the Constitution, which obligate them to ensure that every accused is dealt with according to the law and receives a fair trial.
ii) The prosecution’s duty to disclose exculpatory evidence is fundamental to ensuring a fair trial and upholding the principles of natural justice. In an adversarial system, both the prosecution and the defence must have equal access to relevant evidence, with the prosecution bearing the responsibility not only to secure convictions but also to ensure justice. This includes disclosing evidence that may weaken its case if it serves the interests of truth and fairness. (…) Courts in Pakistan, in line with international legal standards, have recognized that the prosecution must act fairly, which includes an obligation to disclose any evidence that may help the defence.
iii) It ruled that any party may apply to the court for an order under section 94 Cr.P.C., which must allow its request if the condition mentioned above is satisfied (i.e., it is necessary or desirable for the proceedings). It clarified that section 265-F(7) does not control or limit the power of a court under section 94(1). “The provisions of these two sections differ from each other in their extent and scope. They are not opposed to each other.
iv) The concept of a fair trial is rooted in justice, where both the prosecution and the defence should have equal access to all relevant information. Articles 4 and 10A create a constitutional framework that demands transparency and fairness in criminal proceedings. The State, through the prosecution, cannot selectively present evidence that supports its case while withholding material that might assist the defence.
v) The Code defines the two terms in section 4(1) as follows: (k) “Inquiry”.–

"Inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court. (l) "Investigation".– "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. (…)The NAO also recognizes the distinction between inquiry and investigation. Section 18(c) of the NAO stipulates that when the Chairman of NAB, or an officer duly authorized by him, deems it necessary and appropriate to initiate proceedings against a person, he shall first refer the matter for inquiry. If, upon completion of the inquiry, the allegations of an offense under the Ordinance are substantiated with material evidence, the matter shall be converted into an investigation. (…) Section 18(g) of the NAO is another provision pointing to the aforementioned distinction.

vi) Even though "inquiry" and "investigation" are distinct legal concepts, they are interconnected. Both stages are crucial in legal procedures, and findings from an inquiry often lead to an investigation. Under the NAO, while inquiry and investigation are separate stages preceding the filing of a reference, they are inherently linked. An inquiry is the first step, which may lead to the second step, i.e., investigation, and then to the final step, i.e., the preparation and filing of a reference against the accused.

vii) In general, the accused is not automatically entitled to all the evidence collected during an inquiry, especially in cases where the inquiry is preliminary and has not led to formal charges or an investigation. However, once an investigation has been initiated and charges are brought, the accused typically has the right to access the evidence against them to prepare an effective defence.

viii) Second, the proviso to section 18(c) of the NAO explicitly mandates that the NAB must provide the inquiry report to the accused if the inquiry is converted into an investigation. We have held that the "report" includes all evidence, such as witness statements, on which it is based.

ix) Section 265-C Cr.P.C. is a general law. It cannot override the NAO, which is a special law. In fact, section 3 of the NAO provides that the provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

Conclusion: i) Courts may order additional disclosures under Section 94(1) Cr.P.C. and Articles 4 and 10A.

ii) Prosecution must disclose exculpatory evidence to ensure fairness.

iii) See analysis No.iii.

iv) Fair trials require transparency under Articles 4 and 10A.

v) NAO distinguishes inquiry as preliminary and investigation as evidence-focused.

vi) Inquiry and investigation are distinct but interconnected stages.

vii) Accused gains access to evidence after investigation and charges.

viii) NAB must provide the inquiry report if converted to investigation.

ix) NAO, as special law, overrides Section 265-C Cr.P.C.

30. **Lahore High Court**
Fauji Fertilizer Company Limited and Fauji Fertilizer Bin Qasim Limited v. Security and Exchange Commission of Pakistan and another
Civil Original No.04 of 2024
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC5533.pdf

Facts: The petitioners sought approval of a merger scheme under the Companies Act, 2017, to amalgamate their businesses, transferring all assets, liabilities, and obligations to the transferee company. This included compliance with statutory requirements and obtaining NOCs from secured creditors.

Issues: i) What time frame provided under the Companies Act,2017 to decide a petition?
ii) What is the role of courts in arbitration, especially in international commercial arbitration?
iii) What is purpose of section 6(11) of the Companies Act,2017?
iv) Whether the Court has the jurisdiction to scrutinize or substitute its judgment for the collective commercial wisdom of the shareholders when a scheme of arrangement is found to be reasonable and fair and meets the statutory requirements for sanction?
v) Whether the sanction can be withheld when the majority of the members of both the companies approve the sanction of merger?
vi) What principles guide the Court in assessing the validity and fairness of a scheme of arrangement?

Analysis: i) According of Section 6(11) of the Companies Act, 2017 every petition presented to a Company Judge is to be decided within one hundred and twenty days from the date of its presentation and under the provisions of Sub-Section (7) of this section, the Company Judge can fix a date and allocate time for hearing of the case in light of the judgment reported as (2022 CLD 718).
ii) The role of courts in the context of arbitration has therefore evolved with a trend towards minimal interference. More significant is the minimal interference in international commercial arbitration that stands as a cornerstone in the resolution of cross-border commercial disputes, offering a preferred alternative to litigation in national courts for businesses worldwide. International commercial arbitration plays a crucial role in resolving disputes arising from cross-border trade and commerce, expeditiously and efficiently. The global view on international commercial arbitration is therefore overwhelmingly positive, with businesses and legal professionals alike recognizing its benefits over traditional litigation.
iii) If Section 6(11) is read with the "Preamble" of the Act, it would clear that the Act has been introduced by the legislature with intent to protect the interests of shareholders, creditors, stakeholders and general public by inculcating the principles of good governance and safeguarding minority interests in corporate entities and providing an alternate mechanism for expeditious resolution of

corporate disputes as well as the matters connected thereto. Keeping in view the provisions contained in Section 6 of the Act coupled with the fact that the foundation of rule of law is the access to justice and the dispensation of justice in a timely fashion as is the mandate of Article 37(d) of the Constitution, which provides in unequivocal terms that all the governmental authorities are liable to provide inexpensive and expeditious justice to the people of this country.

iv) Where a scheme of arrangement was found to be reasonable and fair, at such juncture, it was not duty or province of the Court to supplement or substitute its judgment against collective wisdom and intellect of all shareholders of the company involved. The Court cannot, therefore, undertake the exercise of scrutinizing the Scheme placed for its sanction with a view to finding out whether a better scheme could have been adopted by the parties. Once the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval of the Scheme.

v) It has been held in (PLD 2001 Lahore 230) that where required majority of the members of both of the company has approved the resolution of merger of both the companies the sanction for merger could not be withheld unless it was shown that same was unfair, unreasonable or against the national interest. It was further observed that the shareholders were best judges of their interest and were better informed with the market trends than the Court, which was least equipped in evaluating such trends.

vi) It is settled principle of law that the approach is channelized to ascertain (i) whether the statutory requirements were complied with and (ii) to determine whether the scheme as a whole has been arrived at by the majority, bona fide and the interest of whole body of shareholders in whose interest the majority purported to act and (iii) whether scheme is such that fair and reasonable shareholder will consider it to be for the benefit of the company for himself.

Conclusion:

i) As per The Companies Act, 2017 every petition presented to a Company Judge is to be decided within one hundred and twenty days from the date of its presentation.

ii) See above analysis No.ii.

iii) The purpose of this provision is the dispensation of expeditious justice.

iv) See above analysis No.iv

v) No. In such case it cannot be withheld unless it was shown that same was unfair, unreasonable or against the national interest.

vi) See above analysis No.vi

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31. **Lahore High Court Lahore**
Reliance Weaving Mills Limited v. Federal Board of Revenue (FBR) through Chairman, etc.
Writ Petition No. 15377 of 2024
Mr. Justice Muzamil Akhtar Shabir

https://sys.lhc.gov.pk/appjudgments/2024LHC5453.pdf

Facts: The petitioner, engaged in textile manufacturing, export, and local sales, filed a Sales Tax Reference (STR) challenging a tax demand of Rs. 39,360,490 raised by the tax authorities. During the pendency of the STR, the Inland Revenue authorities issued recovery notices, which the petitioner sought to suspend via this constitutional petition.

Issue: i) Can the Court stay recovery proceedings under its constitutional jurisdiction when an alternate remedy is available?
ii) Should the petition be entertained if no attempt was made to expedite the pending Sales Tax Reference?

Analysis: i) It is settled by now that there is no legal impediment in the way of court or tribunal to decide question of its own jurisdiction to entertain and decide a matter. Reliance is placed on Muhammad Salman v. Naveed Anjum and others (2021 SCMR 1675), Government of Punjab v. Sanosh Sultan (PLD 1995 SC 541) and Raunaq Ali v. Chief Settlement Commissioner (PLD 1973 SC 236). Although this Court may in appropriate cases exercise its constitutional jurisdiction despite availability of alternate remedy, yet that jurisdiction is to be exercised by keeping in view the question whether equally efficacious remedy is available to the petitioner or not
ii) Petitioner has not made any attempt to get his reference application and the stay application fixed for hearing before approaching this Court for redress of grievance through the instant constitution petition. Needless to mention here that proper procedure for exercising of jurisdiction is dependent upon two principles of law that "what can be done directly should not be allowed to be done indirectly" and "what cannot be done directly cannot be done indirectly". Reliance may be placed on Muhammad Hanif Abbasi v. Imran Khan Niazi and others (PLD 2018 SC 189) and Federal Board of Revenue v. Dewan Salman Fiber Ltd. and others (2023 SCMR 1871).

Conclusion: i) No, the Court cannot stay recovery proceedings under its constitutional jurisdiction when an alternate efficacious remedy is available.
ii) No, the petition cannot be entertained without exhausting procedural avenues to expedite the pending STR.

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32. **Lahore High Court**
Province of Punjab and others v. Ch. Abdul Hameed
C.R. No.55609 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC5621.pdf

Facts: The respondent's conveyance deed, executed following approval of land sale in their favor, was canceled by the Board of Revenue citing jurisdiction under Section 30(2) of the Colonization of Government Land (Punjab) Act, 1912. The respondent challenged this cancellation, asserting it was made without jurisdiction and contrary

to established procedures.

Issues: i) Did the Member (Colonies), Board of Revenue, Punjab, have the jurisdiction to cancel the conveyance deed under Section 30(2) of the Act after the lapse of limitation?
ii) Were the preconditions under Section 30(2) for cancellation of the conveyance deed met?

Analysis: i) Reference was time-barred which could not be entertained on this score which aspect was ignored although it was the primary duty of the Member (Colonies), Board of Revenue, Punjab to attend to the question of limitation first; even if it was not raised. The order dated 13.12.2017 passed by the Member (Colonies), Board of Revenue, Punjab on a time-barred reference is without jurisdiction and is liable to be annulled.
ii) As to the grounds on which interference was made by the Member (Colonies), Board of Revenue, Punjab it is observed that none of these could be considered to be concealment of fact on the part of respondent nor the same could constitute fraud or misrepresentation. This being so there was no question of fraud or misrepresentation or concealment of facts on the part of respondent and therefore, the pre-requisites of section 30(2) of the Act were not attracted.

Conclusion: i) No, the Member (Colonies), Board of Revenue, Punjab, lacked jurisdiction as the review was time-barred.
ii) No, the preconditions under Section 30(2) were not fulfilled to justify the cancellation.

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33. **Lahore High Court, Lahore**
Sakhawat Hussain v. Addl. District Judge, etc.
Writ Petition No. 22286 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC5579.pdf

Facts: Through this writ petition under Article 199 of Constitution of Pakistan 1973, the petitioner has called in question the validity and legality of judgments/orders of the Courts below whereby his application for DNA examination was dismissed concurrently.

Issues: i) Whether the birth of child is conclusive proof under Article 128 of Qanun-e-Shahadat Ordinance, 1984?
ii) What is impact of Article 2(f)(9) of the Qanun-e-Shahadat Order, 1984?
iii) What is the stipulation in Article 128 of the Qanun-e-Shahadat Order, 1984?
iv) When and how the parentage of child can be denied?
v) Whether the filing of application for DNA analysis is a tactic to evade and delay the suit for maintenance and such practice should be discharge?

Analysis: i) As per Article 128 of the Qanun-e-Shahadat Order, 1984, a child born to a woman during the subsistence of valid marriage or within two years after its dissolution is conclusive proof of his legitimacy, provided that the woman remains unmarried after the divorce. Said fact was regarded as a "conclusive proof" and no evidence could be admitted to refute the same.

ii) Article 2(f)(9) of the Qanun-e-Shahadat Order, 1984, provides that "when one fact is declared by this order to be conclusive proof of another, the Court was, on proof of the one fact, regard the other as proved and shall not allow evidence to be given for the purpose of disproving it".

iii) The stipulation in Article 128 of the Qanun-e Shahadat Order, 1984 is that the birth of a child within the period specified in said Article is conclusive proof that he is a legitimate child. Once the relevant facts as to commencement of dissolution of marriage and the date of birth of a child within a period envisioned in Article 128 are proved and the date of birth is within the period specified in Article 128(1), then the Court cannot allow evidence to be given for disproving the legitimacy of a child born within the aforesaid period.

iv) For this purpose, it is necessary to ascertain the rules of Muslim Personal Law when a person denies that he is the natural/biological father of children born within the period stipulated in Article 128 ibid. The Muslim Personal Law (Shariat) is clear and well-settled on the subject. Firstly, it provides that legitimacy/paternity must be denied by the father immediately after birth of the child as per Imam Abu Hanifa and within the post-natal period (maximum of 40 days) after birth of the child as per Imam Muhammad and Imam Yousaf. There can be no lawful denial of paternity after this stipulated period. The Hedaya, Fatawa-e-Alamgiri and other texts are all agreed on this principle of Shariat.

v) It is becoming a common practice in our society that whenever a suit for recovery of maintenance allowance is filed against a person he comes forward to the Court and challenges the legitimacy of the child by moving an application requesting for conducting DNA analysis of the child. Ethically, questioning the paternity of a child during a maintenance suit can be seen as a tactic to evade responsibility rather than a legitimate claim based on evidence. It often reflects a desire to avoid financial obligations and may be motivated by personal animosity or financial concerns. Such practice should be discouraged and dealt with an iron hand because encouraging such practices would only serve to erode trust in the family unit and the legal system that is designed to protect the interests of vulnerable children. When a parent questions the legitimacy of the child, it creates an atmosphere of doubt and insecurity. This practice undermines the child's sense of identity, dignity, and belonging, which can have long-lasting psychological effects. It is crucial that courts focus on the child's needs and emotional welfare, rather than allowing a parent to challenge paternity without valid justification. The use of DNA tests to challenge paternity, while scientifically valid, should not be viewed as a tool for harassment or delay in matters of child maintenance.

Conclusion: i) Birth of child is a "conclusive proof" and no evidence could be admitted to refute the same.
ii) See Analysis Para No.ii
iii) The stipulation in Article 128 of the Qanun-e Shahadat Order, 1984 is that the birth of a child within the period specified in said Article is conclusive proof that he is a legitimate child.
iv) It provides that legitimacy/paternity must be denied by the father immediately after birth of the child
v) The filing of application for DNA analysis is tactic to avoid the responsibility to pay maintenance and used as a tool to delay matters of maintenance

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34. **Lahore High Court**
Sheikh Nadeem Anwar v. Learned Illaqa Magistrate, etc.
Writ Petition No.36921 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC5466.pdf

Facts: The case involves a dispute where the police submitted a cancellation report for a criminal complaint, citing findings that indicated no criminal offence was committed and instead characterised the matter as a business dispute. This cancellation was agreed upon by the Magistrate, despite changes in the investigation and differing opinions from legal authorities regarding the applicability of criminal offences. The petitioner challenged this cancellation, asserting that the Magistrate should have considered a higher legal opinion suggesting that an offence was indeed committed.

Issues: i) What is the Investigating Officer's prerogative for case cancellation, and when can a Magistrate agree?
ii) What is the role of the Prosecutor under Section 9(4) of the CPS Act 2006 in case cancellation reports?
iii) What tests must a prosecutor apply under Section 17 of the CPS Act 2006?
iv) Does the Magistrate act in a judicial or administrative capacity when agreeing with a cancellation report?
v) What is the Prosecutor General's duty under Punjab Rules of Business 2011?
vi) What is the Prosecutor General's role under section 6 of the CPS Act, 2006, in advising on criminal litigation?
vii) Is the Prosecutor General's opinion binding on the Court under section 9(7) of the CPS Act, 2006?
viii) Does a Court need to provide reasons for disagreeing with the Prosecutor General's opinion?

Analysis: i) It is prerogative of Investigating Officer to recommend the case for cancellation on any of the grounds mentioned in Rule 24.7 of Police Rules 1934 i.e., case false and frivolous owing to mistake of law or mistake of facts, matter of civil dispute, or noncognizable case. Case cancellation Report is identified in law as "final

report" as per Rule 25.57 of Polic Rules 1934 and is regarded as report under section 173 of Cr.P.C.

ii) As per section 9 (4) of the Punjab Criminal Prosecution Service (Constitution, Function and Powers) Act, 2006 (the CPS Act 2006), such report shall be sent through Prosecutor; it is as under;

(4) A police report under section 173 of the Code including a report of cancellation of the first information report or a request for discharge of a suspect or an accused shall be submitted to a Court through the Prosecutor appointed under this Act.

iii) As per Code of Conduct for prosecutors issued under section 17 of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006, concerned prosecutor is required to apply evidential and public interest tests on report submitted under section 173 Cr.P.C. in order to evaluate the evidence and applicability of offences against the accused.

iv) Similarly, while agreeing with the police opinion, Magistrate functions in administrative capacity and is not expected to give reasons for such agreement as mentioned in Rule 2, Chapter 11-D Volume-III of High Court Rules & Orders

v) It is the official duty of Prosecutor General, Punjab to give legal opinion on criminal matters to any of the department of the government as mentioned in Government of the Punjab Rules of Business 2011. Rule 3 deals with allocation of business and as per sub-rule (3) the business of the Government shall be distributed amongst several Departments in the manner indicated in the Second Schedule which outlined the functions of Public Prosecution Department

vi) Public Prosecution Department shall advice to other administrative departments as a regulatory function for implementation of policy, on the subject, in cases relating to criminal litigation and Prosecutor General being head of service as per section 6 of the CPS Act 2006 as principal law officer is responsible to give such opinion on criminal matters on behalf of Public Prosecution Department.

vii) Thus, rendering an opinion by Prosecutor General is his regulatory function which opinion is not binding on any Court; however, pursuant to section 9 (7) of the CPS Act 2006 when any Prosecutor including Prosecutor General, Punjab submit his opinion in the form of assessment report to the Court concerned while applying the evidential and public interest tests, then as per section 9 (7) of the CPS Act 2006, the Magistrate or the Court shall give due consideration to such submission.

viii) The words "due consideration to such submission" have strong connotation that Court cannot simply ignore it rather while disagreeing with such opinion, shall give the reasons. Thus, an administrative opinion or opinion in official capacity does not bind the Court to give reasons for disagreement rather it is regulated by the discretion of Court to consider or not to consider it.

Conclusion: i) The investigating officer can recommend case cancellation on specified grounds under the law.

ii) Case cancellation reports must go through the prosecutor to the court.

iii) Prosecutors must apply evidential and public interest tests.

iv) Magistrates act administratively when agreeing with cancellation reports.
v) The Prosecutor General provides legal opinions to government departments.
vi) The Prosecutor General advises on criminal litigation.
vii) The Prosecutor General's opinion is non-binding but requires due consideration.
viii) Courts must give reasons if they disagree with the Prosecutor General's opinion.

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35. **Lahore High Court**
Muhammad Ali v. Iftikhar Hussain etc.
Case No.FAO No.83/2016
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC5600.pdf

Facts: The case involves a dispute over ownership and tenancy of certain shops. The landlord claimed to have bought the property through registered sale deeds and accused the tenants of failing to pay rent and unlawfully subletting the premises. The landlord filed eviction petitions, which the tenants opposed by denying the landlord-tenant relationship and citing pending civil litigation regarding the property's ownership citing a third party as their landlord.

Issues: i) What is the principle qua construction of power of attorney?
ii) What is the limit of such construction?
iii) In what circumstance, construction is made advantageous to the interest of principal?
iv) What is the scope of authority described in the instrument and nature of the action?
v) What is the underline principle of Shajar Islam case (PLD 2007 SC 45)?

Analysis: i) There is no cavil with the proposition that a power of attorney and/or the extent of powers conferred thereunder should be construed strictly.
ii) In the same vein, such strict interpretation is to be confined to such power of attorney only where the same runs counter to the interest of the principal.
iii) Where the issue involves accretion of right of the principal, the same may be interpreted to the advantage of the principal.
iv) Where a person is authorized by the principal (the respondent in the present case) to act as an attorney or an agent in respect of his property forming subject matter of the suit specified therein and the scope of such authority is described in an instrument, any incidental action of such attorney or agent is lawful.
v) In case titled "Shajar Islam v. Muhammad Siddique and 2 others" (PLD 2007 SC 45), the Supreme Court of Pakistan held that if a person proves his title qua the rented premises and the occupant of the same cannot come up with a better title, then the latter is liable to be evicted.

Conclusion: i) See above analysis No.1

ii) Principle of strict construction is applied when it is against the interest of principal.
iii) In case of accrual of right, such construction is adopted which is advantageous to the Principal
iv) See above analysis No. iv
v) See above analysis No. v

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36. **Lahore High Court**
Sardar Muhammad Boota v. Jaffar Ali (deceased) through LRs and Others
RSA No. 02 of 2013
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC5715.pdf

Facts: The case revolves around a dispute concerning an agreement for the sale of land. The plaintiff sought specific performance of the agreement, claiming part payment had been made, but the defendant refused to complete the transaction. The suit was dismissed upon the parties' reference to arbitration but was later restored, leading to further disputes involving subsequent purchasers.

Issues: i) Does Section 52 of the Transfer of Property Act, 1882 restrict property transfer during a suit, with exceptions for collusion?
ii) What is the effect of collusion on the Rule of Lis Pendens?
iii) What is the scope of Section 52 of the Transfer of Property Act, 1882?
iv) Can collusion arising during judicial proceedings affect the applicability of Section 52 of the Transfer of Property Act, 1882?

Analysis: i) Section 52 of the Act provides that during the pendency in any Court….. of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose. It embodies the rule of lis pendence, which are both available in Equity and Common Law. The legislature has provided a clear exception to applicability of this rule in the cases where collusive action is involved.
ii) true scope of section 52 of the Act does not prevent the vesting of title in transferee in a sale pendent lite but only makes it subject to rights of other parties as decided in the suit.
iii) the exception of collusiveness or fraud is not only applicable to the commencement of proceedings but the parties are precluded to have benefit of section 52 of the Act if this collusiveness is made during the proceedings or a decree is obtained by collusion, which otherwise, or initially started with bona fide.
iv)We are also confronted with another phenomenon that at times the judicial proceedings do not commence with collusion or fraud but subsequently the parties resort to collusion as well as fraud in order to jeopardize the right or interest of a

third party. The proceedings may not be collusive from the very inception but collusion, if resorted to subsequently, is as good a collusion as that intended from the very beginning. (…) It is altogether immaterial as to whether the proceedings were collusive from the very inception or they became so at some subsequent stage. A suit may be collusive even at its very inception or a decree may be obtained by collusion in a suit which had initially started bona fide.

Conclusion: i) This prohibits property transfers during the pendency of non-collusive suits involving immovable property rights, except under court authority.
ii) It allows the vesting of title in a transferee during a pending suit, subject to the rights decided in the suit.
iii) Collusion nullifies section 52 protection.
iv) Collusion during judicial proceedings, whether at inception or later, equally nullifies the protections under section 52.

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification No.FD.SR-III-4-244/2023(B) dated 02-12-2024, amendments chapter IV of ordinary pensions, section III-C family pension in rule 4.10 and chapter VIII commutation of civil pensions.
2. Vide Notification in official Gazette of Punjab dated 17-10-2024, The Punjab Enforcement and Regulation Act, 2024 was promulgated.
3. Vide The Institute of Southern Punjab Multan (Amendment) Act, 2024 dated 05-11-2024, amendments are made in preamble, sections 1, 2, 3, 4, 6 19 & schedule and general amendment in the Institute of Southern Punjab Multan Act, 2010.
4. Vide Act XIII of 2024 dated 05-11-2024, The Senate Hill University Act, 2024 was promulgated.
5. Vide The Registration (Amendment) Act, 2024 published in the Official Gazette of Punjab dated 21-11-2024, the amendments are made in section 38 of the Registration Act, 1908.
6. Vide The Punjab Agricultural Income Tax (Amendment) Act, 2024, published in the Official Gazette of Pakistan dated 27-11-2024, the amendments are made in sections 2, 3, 3B, 4, 11 & Act I, insertion of section 3-AA, omission of schedule was made in the Punjab Agricultural Income Tax Act, 1997.

SELECTED ARTICLES

1. **MANUPATRA**
   https://articles.manupatra.com/article-details/Impact-of-Modern-Developments-on-Negligence-Law

   Impact of Modern Developments on Negligence Law by Rashi Singh

The law of negligence is one of the most basic principles of tort law. It sets the boundaries for liability based on harm, as a result of a failure of a legal duty. Those relationships that involve an obligation of due care by one party to another require reasonable conduct to obviate foreseeable harm. Negligence is the most commonly litigated cause of action in civil litigation-its gubbins involving cases such as motor vehicle collisions, work place injuries, professional negligence, and many others. A claim for negligence will have three basic elements of proof: duty of care, breach of duty, and causation. A duty of care is established where there is an identified legal obligation to act reasonably so as not to cause harm to others. This duty depends upon the relationship in which the parties stand, as established in Donoghue v. Stevenson, introducing the "neighbor principle." A breach of duty arises when the defendant fails to comply with a standard of care expected of a reasonable person in like circumstances, objectively so viewed.

2. **MANUPATRA**
   https://articles.manupatra.com/article-details/COMPREHENSIVE-ANALYSIS-OF-WORKING-WOMENS-RIGHTS-THE-NATIONAL-PERSPECTIVE

   Comprehensive Analysis of Working Women's Rights: The National Perspective by Prakash Kumar Patel

   Women's participation in the workplace is crucial for the development of the economy and gender equality. The participation rate of women workers is increasing day by day, indicating notable shifts in the country's social and economic dynamics. Women's participation has been increased across various sectors from agriculture and manufacturing to technology and services. But still, there remains a substantial obstacle standing in the way of their full and fair involvement in the workforce. Obstacles include wage disparity, discrimination in the workplace, sexual harassment, and the challenges to maintain professional and personal obligations still hinder women's ability to advance in their careers and achieve financial independence.

3. **Lawyers Club India**
   https://www.lawyersclubindia.com/articles/s-498a-ipc-often-used-against-husband-and-his-family-to-meet-wife-s-unreasonable-demands-growing-tendency-of-misuse-sc-17257.asp

   S. 498A IPC Often Used Against Husband and His Family to Meet Wife's Unreasonable Demands, Growing Tendency of Misuse: SC Adv. Sanjeev Sirohi

   Even as I sit to write on misuse of Section 498A IPC, news is pouring in all newspapers and so also in news channels and in media that Atul Subhash who was a 34-year-old techie and automobile company senior executive committed suicide and in his suicide note wrote that he took the extreme step as his wife and in-laws demanded Rs 3 crore to withdraw the cases against him and Rs 30 lakhs to grant visitation rights to see his son and was told repeatedly to either pay or to die if he could not pay the money or pay for the visitation

rights. He also wrote that his wife was already receiving Rs 40,000 every month as maintenance despite working at Accenture and earning her own money and yet she demanded Rs 2-4 lakhs more. He also wrote that the tax I pay on my salary is helping the police and the legal system harass me and my family. Nothing on earth can be more unfortunate than this that this is the punishment that a men gets in India for earning well from society! Yet we see that no safeguards most disgracefully in our laws inserted for men not even in the revised penal laws! Most disgusting indeed!

4. **Lawyers Club India**
   https://www.lawyersclubindia.com/articles/what-laws-and-compliances-are-to-be-followed-by-the-concert-managers--17261.asp

   What Laws and Compliances Are to Be Followed By The Concert Managers? By Sankalp Tiwari

   Concerts—from small, acoustic performances to large festivals that attract people from around the globe—are a beautiful synthesis of art and commerce with legality. Such events bring people under the spell of music, and yet, the actual organizing of such events requires quite a lot of planning and effort in terms of complying with a complex network of legal provisions. The organizers are not only to design memorable experiences but also ensure compliance with a wide array of legal frameworks, ranging from labour and safety laws to environmental protections and intellectual property regulations. This makes concert planning highly regulated and intricate, adding one unique layer of requirements in every jurisdiction.

5. **MANUPATRA**
   https://articles.manupatra.com/article-details/Towards-Consistency-Addressing-Disparities-in-Sentencing-Practices-in-India-s-Criminal-Justice-System

   Towards Consistency: Addressing Disparities in Sentencing Practices in India's Criminal Justice System by Garima Sachan

   Sentencing is a critical phase where judges determine appropriate punishments postconviction, and the existing framework primarily relies on statutory provisions that offer broad discretion without detailed guidelines. This lack of specificity often leads to significant variations in sentencing outcomes across similar cases, as evident through the notable judicial decisions involving severe crimes. These disparities in sentencing practices within India's criminal justice system highlight the need for reform. In this article, we will examine the inconsistencies and incoherence in current sentencing methodologies, emphasising that the limited range of punishments and inadequate deterrence undermine the principles of justice. These discrepancies, illustrated through various landmark cases, reveal how different courts have imposed vastly different sentences for similar offences. Despite the constitutional mandate for equality in sentencing, there has been minimal progress in standardising norms and procedures, resulting in a compromised ability to

achieve the objectives of punishment, i.e., deterrence, rehabilitation, and accountability. To address these challenges, the article advocates for comprehensive reforms.
