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FORTNIGHTLY CASE LAW BULLETIN

(16-02-2024 to 29-02-2024)

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**
Hamza Rasheed Khan, etc. v. Election Appellate Tribunal, Lahore High Court, Lahore and others, etc.
Civil Appeal No. 984 of 2018 etc.
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._982_2018_19022024.pdf

Facts: All cases involving the same constitutional-legal question relating to the disqualification of a candidate under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 fixed before a Bench constituted by the Committee under the Supreme Court (Practice and Procedure Act), 2023.

Issues: i) Whether Article 17(2) and Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 have equal standing?
ii) Whether the High Courts and the Supreme Court are empowered to strike down any law or legislate it?
iii) Whether the courts are empowered to make a negative declaration with regard to any of the matters mentioned in the said clause (f)?
iv) Whether the Judges have the ability to adjudicate the matters of morality?
v) Whether the courts have jurisdiction or authority to deal with the matter which the Constitution indeterminate or vague?

Analysis: i) Article 17(2) of the Constitution is a Fundamental Right whereas Article 62 prescribes who is qualified to contest elections. If any provision of the Constitution has the effect of curtailing or abridging any Fundamental Right it must not be interpreted to undermine the Fundamental Rights. Clauses (d), (e), (f) and (g) of Article 62(1) of the Constitution do not state that the disqualification of a candidate will be permanent. If clause (f) of Article 62(1) of the Constitution is read to mean that it imposes a permanent or lifetime disqualification then clauses (d), (e) and (g) too can be interpreted in like manner.
ii) Neither the High Courts nor the Supreme Court can rewrite any law, much less the Constitution, nor can they insert anything therein. The Constitution was carefully crafted by its framers and the domains of the Judiciary and that of the Legislature were kept separate. The High Courts and the Supreme Court may strike down any law which is unconstitutional, but they are not empowered to legislate.
iii) The law does not empower a court to make a negative declaration with regard to any of the matters mentioned in the said clause (f), that is, to declare that someone is not sagacious, is not righteous, is profligate, is dishonest or is not ameen. The Constitution does not even disqualify a criminal permanently from contesting elections, either under clause (g) or clause (h) of Article 63(1), therefore, it does not then stand to reason that indeterminate matters in respect of

which opinions may vary - good character, sagacity, righteousness and honesty - the disqualification would be permanent.

iv) Judges do not have the ability to adjudicate indeterminate matters of morality, nor are able to bifurcate morality from immorality, virtue from vice, and then proceed to meticulously weigh them. ...Someone devoid of the virtues and qualities of Article 62(1)(d), (e) and (f) may also come to acquire them or possessing them proceed to lose them. And who adjudicates would also matter; one Judge may consider that someone is of good character, etc. but another may have the opposite opinion. Matters which are mentioned in clauses (d), (e) and (f) of Article 62(1) are inherently subjective, and may also change. Earthly judges should adjudicate those matters which are discernible, determinable and which the law clearly expounds, and avoid the domain of Heaven.

v) If the Constitution leaves a matter indeterminate or vague it does not mean that jurisdiction and authority has been conferred upon the Courts. Moreover, in the absence of an objective standard, judges would be left to decide cases as per their individual preferences and varying perceptions of morality. If this is allowed it would be destructive of a clearly defined constitutional and legal order in which the Fundamental Rights of fair trial and due process, stipulated in Article 10A of the Constitution, would stand negated. Applying different standards would also negate equal treatment as mandated by Article 25(1) of the Constitution.

Conclusion: i) Article 17(2) and Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 do not have equal standing.

ii) The High Courts and the Supreme Court may strike down any law which is unconstitutional, but they are not empowered to legislate.

iii) The law does not empower a court to make a negative declaration with regard to any of the matters mentioned in the said clause (f), that is, to declare that someone is not sagacious, is not righteous, is profligate, is dishonest or is not ameen.

iv) Judges do not have the ability to adjudicate indeterminate matters of morality, nor are able to bifurcate morality from immorality, virtue from vice, and then proceed to meticulously weigh them.

v) If the Constitution leaves a matter indeterminate or vague it does not mean that jurisdiction and authority has been conferred upon the Courts.

Additional Note:

Issues: i) Which court is competent to make the declaration mentioned in Article 62(1)(f)?

ii) Who has locus standi to seek declaration mentioned in Article 62 (1)(f) of Constitution?

iii)What is the procedure for making declaration mentioned in Article 62(1)(f) and is Article 10A of the Constitution attracted in making such declaration?

iv)What is the standard of proof required for making declaration mentioned in Article 62 (1)(f) of Constitution?

v) Whether the Article 62(1)(f) is a self-executory provision?
vi) Whether there is any provision in the Constitution that obligates Supreme Court to follow the law declared or the principle of law enunciated in its previous decision?

Analysis: i) In order to assert that a particular court has the jurisdiction to make the declaration mentioned in Article 62(1)(f), it is imperative to identify the provision in the Constitution or under any law that confers such jurisdiction… the Supreme Court, the High Courts, the Election Tribunals and the civil courts do not have the jurisdiction to make the declaration mentioned in Article 62(1)(f). … In no way can the court proceed to make the 'declaration' mentioned in Article 62(1)(f) itself in exercise of its quo warranto jurisdiction. Therefore, in quo warranto proceedings the Supreme Court and the High Courts do not have the jurisdiction to make the 'declaration' mentioned in Article 62(1)(f) of the Constitution…A bare reading of the provisions of Section 154 shows that the Election Tribunals have no jurisdiction to make the 'declaration' mentioned in Article 62(1)(f) that the returned candidate is not sagacious, righteous, non-profligate, honest and ameen. …There is at present no such law, neither statutory law nor common law, that confers such a civil right on any person. Therefore, until any law confers such a civil right the civil courts also have no jurisdiction to try a civil suit filed by a person, seeking against another person a 'declaration' as mentioned in Article 62(1)(f) of the Constitution.

ii) Since no law, including the Constitution, confers on any person a right to seek the declaration as mentioned in Article 62(1)(f), the civil courts have no jurisdiction to try a suit seeking such declaration…no person has locus standi to seek against another person the declaration mentioned in Article 62(1)(f).

iii) No court of law is, at present, competent to make the declaration mentioned in Article 62(1)(f) nor is there any law that prescribes the procedure for making such declaration, …that whenever any law confers the right on any person to seek, and the jurisdiction on any court of law to make, the said declaration, Article 10A of the Constitution will definitely stand attracted to the proceedings conducted in exercise of that jurisdiction for the enforcement of that right. Since any determination made in such proceedings shall have the effect of curtailing a fundamental right of the person in respect of whom such declaration is sought, the right to a fair trial and due process guaranteed by Article 10A shall also be available to such person.

iv) The declaration that a person is not sagacious, righteous, nonprofligate, honest and ameen is such that creates a serious stigma on the reputation of that person. The standard of proof in making such declaration should, therefore, not be a mere preponderance of probability applied generally in civil cases. Rather, the higher standard of 'clear and convincing proof' should be applied for making such declaration.

v) The legislature made it clear that Article 62(1)(f) is not self-executory and therefore cannot be applied by the special forums under the elections law or by

the constitutional courts to disqualify a person from contesting the election for, or holding, the office of a member of Parliament, unless a court of law has made a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Therefore, Article 62(1)(f) of the Constitution, in our considered opinion, is not a self-executory provision… Just as the declaration and the convictions mentioned in Article 63(1)(a), (g) and (h) are to be made by the courts of law that have been conferred jurisdiction, and in accordance with the procedure provided, by or under the laws enacted by the legislature, the declaration mentioned in Article 62(1)(f) is also to be made by a court of law that is conferred jurisdiction, and in accordance with the procedure provided, by or under the law enacted by the legislature. There is, at present, no such law. Until such law is enacted to make its provisions executory, Article 62(1)(f) stands on a similar footing as Article 62(1)(d), (e) and (g), and only serves as a guideline for the voters in exercising their right to vote.

vi) There is no provision in the Constitution that obligates Supreme Court to follow the law declared or the principle of law enunciated in its previous decision but rather it is the doctrine of stare decisis based on the rule of convenience, expediency and public policy which requires this Court to adhere to its previous decisions. We fully recognize the importance of this doctrine which helps maintain certainty and consistency, one of the essential elements of the rule of law, and believe that unless there are compelling reasons to depart, it must be adhered to. Though it is not possible to give an exhaustive list of the reasons that may justify such departure, one reason may be stated confidently, i.e., when the previous decision is found to be 'plainly and palpably wrong', the doctrine of stare decisis does not prevent a court from overruling it. This reason is also named as 'a clear manifestation of error'.

Conclusion: i) No court of law is competent to make the declaration mentioned in Article 62(1)(f) at present.

ii) No person has locus standi to seek against another person the declaration mentioned in Article 62(1)(f).

iii) See above in analysis clause.

iv) The higher standard of 'clear and convincing proof' should be applied for making such declaration.

v) The Article 62(1)(f) is not self-executory provision.

vi) There is no provision in the Constitution that obligates Supreme Court to follow the law declared or the principle of law enunciated in its previous decision but rather it is the doctrine of stare decisis based on the rule of convenience, expediency and public policy which requires this Court to adhere to its previous decisions.

2. **Supreme Court of Pakistan**
Hafiz Malik Kamran Akbar, etc. v. Muhammad Shafi (deceased) through LRs, etc.
Civil Petition No. 2341-L of 2016
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2341_l_2016.pdf

Facts: Through this civil petition the petitioners have sought leave to appeal against the order passed by the High Court whereby the Application moved by them under Section 12 (2) of the Code of Civil Procedure, 1908 was dismissed.

Issues: i) Whether the Court is obligated to frame issues in every case while deciding application under section 12(2) of C.P.C.?
ii) What is the distinction between Order IX Rule 13 and Section 12 (2) of C.P.C.?
iii) What is the interpretation of the term ”person” under Section 12 (2) of C.P.C?
iv) Whether full particulars of fraud, misrepresentation or want of jurisdiction should be mentioned in the application under Sub-section (2) of Section 12 of C.P.C. and not vague allegations?
v) What was the purpose to amend the provision of section 12 of C.P.C?

Analysis: i) It is a well-settled exposition of law that for determining the grounds of alleged fraud, misrepresentation or want of jurisdiction, if any, raised in the application moved under section 12(2), C.P.C., the Court is not obligated in each and every case to frame issues mandatorily in order to record the evidence of parties and exactly stick to the procedure prescribed for decision in the suit but it always rests upon the satisfaction of the Court to structure its proceedings and obviously, after analyzing the nature of allegations of fraud or misrepresentation, the Court may decide whether the case is fit for framing of issues and recording of evidence, without which the allegations leveled in the application filed under Section 12 (2) C.P.C. cannot be decided.
ii) There is an eye-catching distinction between Order 9 Rule 13 and the niceties of Section 12 (2) C.P.C. In case of an ex-parte decree, the defendant may apply under Order 9 Rule 13 C.P.C. for setting aside the ex-parte decree and if the Court is satisfied that summons were not duly served or the defendant was prevented from any sufficient cause from appearing when the suit was called, the Court can make an order for setting aside the decree and appoint a day for proceedings with the suit. However, it is further provided in the same Rule that no ex-parte decree shall be set aside merely on the ground of any irregularity in the service of summons, if the Court is satisfied for the reason that the defendant had knowledge of the date of hearing in sufficient time to appear on that date to answer the claim.
iii) The term “person” provided under Sub-section (2) of Section 12 C.P.C cannot be interpreted narrowly to restrict its scope and application only to the judgment-debtor or his successors but it includes any person adversely affected by the judgment and decree or order of the Court without any distinction on whether he

was party to the original proceedings or not(...)

iv) In tandem, a person can challenge the validity of a judgment, decree, or order on plea of fraud and misrepresentation or want of jurisdiction under Sub-section (2) of Section 12 C.P.C. by making an application with full particulars of the fraud and misrepresentation to the Court which passed the final judgment, decree, or order and not by a separate suit.

v) In the case of Ghulam Muhammad v. M. Ahmad Khan and 6 others (1993 SCMR 662), this Court articulated that the availing of remedy under Section 12, C.P.C. is quite encumbersome. Sub-section (2) of Section 12, enacted by virtue of Ordinance 10 of 1980, expressly ordains that the validity of judgment and decree obtained by fraud and misrepresentation can be assailed through an application to the Court, which passed the final judgment, decree, order and not by a separate suit. It was further held that seemingly, a two-fold purpose is sought to be achieved by the amending provision; firstly from jurisprudential point of view it is the obligation of the Court on whom the fraud is practiced to undo the fraud. Such application lies before the Court passing the final judgment, decree or order. Since on appeal or revision, against the judgment, decree or order, obtained by fraud, the matter is re-opened before the Appellate or Revisional forum, as the case may be, the application has to be filed before the higher court seized of such matter. Secondly, by conferment of the remedy through a simple application, the litigating party is to a large extent, saved from the hardship and encumbersome procedure involved in prosecuting a suit, and the delay in the final decision thereof.

Conclusion: i) The Court is not obligated to frame issues in every case while deciding application under section 12(2) of C.P.C.

ii) See above in analysis portion.

iii) See above in analysis portion.

iv) Yes, full particulars of fraud, misrepresentation or want of jurisdiction should be mentioned in the application under Sub-section (2) of Section 12 of C.P.C. and not vague allegations.

v) See above in analysis portion.

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3. **Supreme Court of Pakistan**
Province of Punjab through Secretary (Primary & Secondary Healthcare Department), Lahore, etc. v. Habz Muhammad Kaleem-ud-Din.
Civil Petition No. 1893-L of 2021
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1893_l_2021.pdf

Facts: Through this civil petition the petitioners have assailed the judgement passed by the High Court whereby the writ petition filed by the Respondent was allowed.

Issues: i) Whether the seniority and merit have to be considered upon promotion to a

selection post?
ii) Whether the jurisdiction of the High Court is barred to entertain matters relating to civil servants and retired civil servants?

Analysis: i) According to Sub-Section 6 of Section 8 of the Punjab Civil Servants Act, 1974 a post may either be a selection post or a non-selection post. As far as promotion to a selection post is concerned, the seniority and merit have to be considered whereas non-selection post is to be filled on the basis of seniority-cumfitness. According to Para 5 of the Promotion Policy, 2010, all posts in BPS-19 and above shall be selection post and will be filled on selection on merit basis. Para 8 of the said policy states that the seniority shall not carry extra weightage for determination of merit for promotion to selection posts.
ii) Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 ousts the jurisdiction of the High Courts and Civil Courts in the matters relating to the terms and conditions of a civil servant as the bar in the Constitution is absolute.

Conclusion: i) Yes, according to Section 8 (6) (a) of the Punjab Civil Servants Act, 1974, the seniority and merit have to be considered upon promotion to a selection post.
ii) Under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 the jurisdiction of the High Court is barred to entertain matters relating to civil servants and retired civil servants.

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4. **Supreme Court of Pakistan**
Zubair Saeed Sabri/Sain Zubair Shah v. The State thr. A.G. Islamabad and another
Criminal Petition for Leave to Appeal No.1359 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1359_2023.pdf

Facts: The petitioner sought bail in case registered against him initially for offence under section 295-C PPC and upon complainant's application, he was charged with sections 295-A and 298-B PPC.

Issues: i) Whether an offence under section 295-C PPC must be investigated by an officer not below the rank of SP?
ii) Whether police are required to obtain a search warrant before entering the house of any person?

Analysis: i) An offence under section 295-C of the PPC must be investigated by an officer not below the rank of SP, as stipulated by section 156A of the Code (…) Article 4(1) of the Constitution of the Islamic Republic of Pakistan ('the Constitution') mandates that individuals must be treated in accordance with law, which includes section 156A of the Code. And, Article 4(2)(a) states that 'no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

ii) The police were required to obtain a search warrant before entering the house of the petitioner, but did not do so. The privacy of home shall be inviolable mandates Article 14(1) of the Constitution (…) without obtaining a search warrant the privacy of the petitioner's home was violated. Article 8 of the Constitution gives paramountcy to the Fundamental Rights (including Article 14), which cannot be abridged, and if any law is made in contravention thereof it states that it shall to such extent be void. Since we are dealing with offences under chapter XV of the PPC, that is, offences relating to religion, in this case relating to Islam, it would be appropriate to also consider relevant Islamic injunctions. Verse 27, chapter 24 (An-Nur) of the Holy Qur'an requires, that: 'Believers do not enter houses other than your own until you have asked permission…'

Conclusion: i) An offence under section 295-C PPC must be investigated by an officer not below the rank of SP.
ii) The police are required to obtain a search warrant before entering the house of any person.

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5. **Supreme Court of Pakistan**
Muhammad Riaz v. Muhammad Akram etc.
Civil Petition No.2148-L/2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Ravi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2178_l_2022.pdf

Facts: The petitioner is the vendee and the defendant in a suit for pre-emption filed by the respondents-plaintiffs. The trial court dismissed the suit vide judgment and decree. Appeal filed there-against was allowed and the suit was decreed by the first appellate court. Revision was filed by the vendee-defendant-petitioner but it was dismissed. Hence, this petition.

Issues: i) Whether it is essential to prove the conditions for the exercise of right of pre-emption in accordance with the provisions of Section 13 of the Punjab Pre-emption Act, 1991?
ii) When the pre-emptors should make demand of their desire to assert their right of pre-emption?
iii) Who can convey the information of the fact of sale?
iv) What are the parameters to establish the essential elements of Talb-i-Muwathibat?

Analysis: i) The right of pre-emption is a piratical right, and the pre-emptor must prove the essential conditions for the exercise of such right in accordance with the provisions of Section 13 of the Punjab Pre-emption Act, 1991. It goes without saying that a pre-emptor, without proving the performance of Talb-i-Mutuathibat and Tatb-i-Ishhad strictly in accordance with the provisions of Section 13 of the Act, 1991, cannot succeed… There is no cavil to the legal proposition that the

pre-emption is a personal right and a pre-emptor is required to prove it through his own statement as per law declared by Supreme Court.

ii) It is the established principle that as soon as the pre-emptors acquire knowledge of the sale of the pre-empted property, they should make an immediate demand of their desire and intention to assert their right of pre-emption without the slightest loss of time.

iii) The fact of the sale of the suit land is a fact that can be seen, such as, by observing or taking part in the sale transaction or by seeing the sale deed or sale mutation. The person who conveys the information of the fact of sale must be a person who has observed the fact of sale and it is he who can then pass on the said fact to another person(s).

iv) The chain of information regarding the sale, starting from the very first person with direct knowledge and passing it on to the person who lastly informs the pre-emptor, must be complete. Only the complete chain of the source of information of the sale can establish the essential elements of Talb-i-Muwathibat, which are: (i) the time, date and place when the pre-emptor obtained the first information of the sale, and; (ii) the immediate declaration of his intention by the pre-emptor to exercise his right of pre-emption, then and there, on obtaining such information.

Conclusion: i) It is essential to prove the conditions for the exercise of right of pre-emption in accordance with the provisions of Section 13 of the Punjab Pre-emption Act, 1991.

ii) As soon as the pre-emptors acquire knowledge of the sale of the pre-empted property, they should make an immediate demand of their desire and intention to assert their right of pre-emption without the slightest loss of time.

iii) The person who conveys the information of the fact of sale must be a person who has observed the fact of sale and it is he who can then pass on the said fact to another person(s).

iv) Only the complete chain of the source of information of the sale can establish the essential elements of Talb-i-Muwathibat.

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6. **Supreme Court of Pakistan**
Province of Punjab through Secretary Population Welfare Department, Lahore, etc. v. Shehzad Anjum, etc.
Civil Petition for Leave to Appeal No.1974-L of 2020
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali.
https://www.supremecourt.gov.pk/downloads_judgements/c.p.l.a.1974_l_2020.pdf

Facts: The respondents filed a writ petition before the High Court, wherein direction was issued to the petitioners. The petitioners filed the Intra Court Appeal which was dismissed. Hence, through this petition for leave to appeal, they have assailed the judgment of Division Bench of the High Court.

Issues: i) Whether a party can file another writ petition for a new relief before the High Court, wherein, in the first writ petition which has been decided, the same cause of action and relief was available but was not claimed?
ii) Whether a person, who has claimed only his regularization in the first writ petition, can file another writ petition claiming that he be regularized from the date of appointment?

Analysis: i) If a party is not satisfied with the judgment of the first writ petition, it should have appealed the same or if the same was not implemented it should have sought its implementation, which could have been by invoking the contempt jurisdiction of the High Court. In any event on the same cause of action, and one which had been decided, another writ petition is not maintainable, and as no fresh cause of action had accrued to it.
ii) Where a person had only sought his regularization, and after he is regularized, he wanted the regularization to take effect from the date of his initial appointment on contract basis, he could not seek this relief subsequently because of the restriction in Order II, rule 2 of the Civil Procedure Code, 1908.

Conclusion: i) If a party is not satisfied with the judgment of the first writ petition, it should have appealed the same, another writ petition is not maintainable, and as no fresh cause of action had accrued to it.
ii) He could not seek this relief subsequently because of the restriction in Order II, rule 2 of the Civil Procedure Code, 1908.

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7. **Supreme Court of Pakistan**
Ali Khan v. Government of Pakistan through A.G. Islamabad and another
C.U.O. 18/2024 in C.P. Nil/2024
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.u.o._18_2024_dt_21_02_2024.pdf

Facts: The petitioner filed a Constitutional petition pertaining to election, directly in Supreme Court of Pakistan in its original Jurisdiction, under Article 184(3) of the Constitution but prior to its filing its contents were broadcast on the electronic media and published in the newspapers. After filing of the petition, and having availed of the maximum publicity, the petitioner sought withdrawal of the same.

Issue: Whether withdrawal of a Constitutional petition after achieving the objective of exploiting a situation and seeking publicity, tantamount to the abuse of the process of the Court?

Analysis: The petitioner did not disclose the fact of being court martialed and mentions the rank which he held before being court martialed. He misused the rank which he had previously held in the Pakistan Army which he could not do so. The petitioner must have used his rank to attract publicity and to ensure that the

contents of his petition are widely broadcast in the media and published in newspapers…This petition has also consumed valuable court time, which is to be spent on deciding the cases of genuine litigants; not use the media for ulterior and nefarious purposes. The petitioner got prominent coverage and then the petition was abandoned and the petitioner left the country.

Conclusion: Withdrawal of a Constitutional petition after achieving the objective of exploiting a situation and seeking publicity, tantamounts to the abuse of the process of the Court.

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8. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Lahore (In all cases) v. M/s Millat Tractors Limited, Lahore etc.
Civil Appeals Nos.87 to 106 of 2024 in Civil Petitions Nos.2447-L etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2447_l_2022.pdf

Facts: These civil petitions for leave to appeal have been filed against a consolidated judgment of the Lahore High Court and two other orders (collectively referred to as the "impugned judgment"), whereby the Tax References filed by the petitioner department and Intra Court Appeals ("ICAs") filed by the taxpayers were decided against the petitioner department.

Issues: i) How income or value of assets of a person are treated as unexplained income and value of asset and added to income of taxpayer chargeable to tax?
ii) Whether provision of section 111(1) of ITO, 2001 is of inquisitorial nature?
iii) Whether initiation and culmination of proceedings under Section 111 of the Ordinance becomes necessary before action can be taken under Section 122 to amend assessments on the basis of proceedings undertaken under Section 111?
iv) What is effect on proceedings under section 111 & 122 if no opinion of Commissioner is formed against the taxpayer u/s 111 or opinion is materially different from what has been confronted to the taxpayer through the notice?
v) Whether a separate notice is required under Section 111 of the Ordinance or whether a notice under Section 122(9) is enough to initiate proceedings for amendment of the assessment on the grounds mentioned in Section 111 of the Ordinance?
vi) What the effect of the Explanation introduced in Section 111 of the Ordinance?
vii) What is purpose of introducing an explanation in an enactment?
viii) Whether an explanation can be given retrospective effect?
ix) When insertion or deletion of any provision in the rules or law will have retrospective effect?
x) Whether explanation added in section 111 of the Ordinance would have retrospective effect?
xi) When the time period provided vide two provisos added after section 122(9)

from the date of issuance of show cause notice for making an order under section 122 commences?

xii) Whether taxpayer can file revised return and deposit tax before issuance of notice u/s 122(9) and after issuance of notice u/s 111?

xiii) Whether simultaneous issuance of notices under section 111 and 122 (9) is of much consequence?

Analysis: i) Once the department has information resulting in an impression or understanding that the grounds in Section 111(1)(a) to (d) relating to unexplained income or asset are attracted, an explanation is called from the taxpayer. At this stage, the information available with the department is mere information. If, however, the taxpayer fails to render any explanation, or the explanation offered by the taxpayer is not satisfactory in the opinion of the Commissioner, the said liability becomes unexplained income and is to be added to the income of the taxpayer chargeable to tax.

ii) Through the opportunity of an explanation, the taxpayer can contest the allegations put to the taxpayer with regards to any of the grounds mentioned in Section 111(1)(a) to (d), where after, an opinion is to be formed by the Commissioner based on the said explanation, if any. As such, said provision is essentially of an inquisitorial nature where the taxpayer is confronted with the information available with the department and an explanation is sought, and the resulting opinion of the Commissioner is not an adverse order per se but can be used to pass an adverse order against the taxpayer by adding the unexplained income to the income of the taxpayer chargeable to tax.

iii) Pursuant to Section 122(5) of the Ordinance, the terminus a quo for initiation of proceedings under Section 122 is when the Commissioner, on the basis of definite information acquired from an audit or otherwise, is of the opinion that any of the grounds mentioned in Section 122(5)(i), (ii) or (iii) is applicable. Thereafter, a notice under Section 122(9) of the Ordinance, specifying the above ground(s), is sent to the taxpayer. If the taxpayer satisfactorily responds to the notice sent under Section 122(9), the proceedings can be dropped. Where, however, the response is not satisfactory, and the Commissioner is satisfied that any of the grounds in Section 122(5) are applicable, the Commissioner can amend the assessment order under Section 122(1) or further amend an amended assessment under Section 122(4) read with Section 122(5). As such, for initiation of proceedings under Section 122, the Commissioner must assess if any of the grounds under Section 122(5) are applicable, and such an assessment is to be based on definite information acquired from an audit or otherwise, which is the prerequisite to attract the provisions of Section 122(5) of the Ordinance. Section 111(1) is mere information. It is only after the taxpayer is confronted with this information through a separate notice by calling for an explanation, and when no explanation is offered or the explanation is not satisfactory in the opinion of the Commissioner under Section 111(1), that it transforms or crystallizes into “definite information” for the purposes of action under Section 122(5) for

amendment of assessment under Section 122. The taxpayer will then be confronted with the grounds applicable under Section 122(5) through a notice under Section 122(9) of the Ordinance. As such, where the Commissioner has formed an opinion against the taxpayer as to the fulfillment of one of the grounds mentioned in Section 111(1)(a) to (d) of the Ordinance, and is of the view that any of the grounds in Section 122(5) is applicable, the process under Section 122 is to be initiated to amend assessments through a notice under Section 122(9). Thus, unless the proceedings under Section 111(1) are initiated and completed, Section 122(5) cannot be given effect to and no notice under Section 122(9) can be issued for the purposes of amending an assessment through an addition contemplated under Section 111.

iv) The proceedings under the notice issued under Section 122(9) can only be formally initiated when the requirement of definite information is satisfied under Section 122(5) after finalization of the proceedings under Section 111 through an opinion of the Commissioner. Therefore, where no opinion is formed against the taxpayer under Section 111, the proceedings under both provisions i.e., Sections 111 and 122 would lapse, and the notice under Section 122(9) would be of no legal effect. Where, however, there is an opinion formed against the taxpayer as definite information for the purposes of Section 122(5), the proceedings on the notice issued under Section 122(9) can formally proceed and shall be deemed to have commenced. It must also be noted that where the opinion formed against the taxpayer under Section 111 is materially different from what has been confronted to the taxpayer through the notice already issued under Section 122(9), and the Commissioner is of the view that another or different ground under Section 122(5) is applicable, a fresh or supplementary show cause notice under Section 122(9) must be issued to the taxpayer by confronting such ground(s) to the taxpayer.

v) Before an assessment can be amended under Section 122 on the basis of Section 111, the proceedings under Section 111(1) are to be initiated, the taxpayer is to be confronted with the information and the grounds applicable under Section 111(1) through a separate notice under the said provision, and then the proceedings are to be culminated through an appropriate order in the shape of an opinion of the Commissioner. This then becomes definite information for the purposes of Section 122(5), provided the grounds mentioned in Section 122(5) are applicable. The taxpayer is then to be confronted with these grounds through a notice under Section 122(9) and only then can an assessment be amended under Section 122. We, however, underline and clarify that even where a notice under Section 111 is issued simultaneously with a notice to amend an assessment under Section 122(9) of the Ordinance, no proceedings can be undertaken under the latter until the proceedings under Section 111 are finalized and result in an opinion against the taxpayer. This is because, even if some basis for action under Section 111 is mentioned in a notice under Section 122(9), it cannot constitute definite information for the purposes of Section 122(5).

vi) On a plain reading of the aforesaid Explanation, it appears that it is couched in

clarificatory and declaratory terms for "removal of doubt". However, we note that the intention behind the Explanation and the effect of adding the Explanation is to take away the right to a separate notice and proceedings under Section 111 if the grounds under Section 111(1)(a) to (d) are confronted to the taxpayer through a notice under Section 122(9) of the Ordinance. Therefore, in essence, it abridges the right to a separate notice and proceedings under Section 111 of the Ordinance, which was the requirement of the law as noted above. As a consequence, the Explanation takes away a substantive right of separate proceedings of the taxpayer, which otherwise existed prior to the introduction of the Explanation in Section 111.

vii) The purpose of an Explanation is ordinarily to explain some concept or expression or phrase occurring in the main provision. It is not uncommon for the legislature to accord either an extended or restricted meaning to such concept or expression by inserting an appropriate Explanation. Such a clarificatory provision is to be interpreted according to its own terms having regard to its context and not as to widen the ambit of the provision. As a general rule, an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows, it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. The object of adding an Explanation to a statutory provision is only to facilitate its proper interpretation and to remove confusion and misunderstanding as to its true nature. It is relied upon only as a useful guide or in aid to the construction of the main provision.

viii) Where the effect of the Explanation warps out of its normal purpose, and acts as a substantive enactment or deeming provision, or enlarges substantive provisions of law or creates new liabilities, such an Explanation cannot be given retrospective effect unless the express language of the Explanation warrants such an interpretation. It is settled law that a change in substantive law which divests and adversely affects vested rights of the parties shall always have prospective application unless by express word of the legislation and/or by necessary intendment/implication such law has been made applicable retrospectively.

ix) Where an insertion or deletion of any provision in the rules or the law is merely procedural in nature, the same would apply retrospectively but not if it affects substantive rights which already stood accrued at the time when the un-amended rule or provision was in vogue. A provision curtailing substantive rights does not have retroactive operation unless the legislature elects to give it retrospective effect. Thus, where existing rights are affected or giving retroactive operation causes inconvenience or injustice, the Court will not favour an interpretation giving retrospective effect even where the provision is procedural.

x) The Explanation added in Section 111 of the Ordinance divests and affects a substantive right of the taxpayer to a separate notice and proceedings under Section 111, the same would not have retrospective effect and would apply prospectively. Therefore, the Explanation would not be applicable to the matters at hand as they pertain to tax years before the Explanation was introduced in

Section 111.

xi) We are also cognizant of the fact that two provisos have been added after Section 122(9) which provide for a time period from the date of issuance a show cause notice for making an order under Section 122. In view of what has been held above, the said time period is to be considered as commencing on the day that the taxpayer is confronted with the opinion formed by the Commissioner under Section 111(1), as it is only then that the proceedings under Section 122 are to be formally taken up. In our view, this reconciliation harmonizes Section 111, its Explanation and Section 122(5) of the Ordinance.

xii) Our view that the process could only be lawfully undertaken in two steps is further fortified from Section 114(6A) of the Ordinance, which extends a right to the taxpayer that the taxpayer can voluntarily file a revised return and deposit the tax before the issuance of a notice under Section 122(9) of the Ordinance, and consequently avoid the penalty stipulated in Section 182 of the Ordinance vis-à-vis the provisions of Section 111 of the Ordinance. If it is held that both the proceedings under Section 111 and 122 are now subsumed, the taxpayer would be deprived of this right which can neither be the legislative intent and nor legally justified. Accordingly, this right, which the legislature has thoughtfully extended to the taxpayers, could only be protected and preserved if the proceedings under Section 111 of the Ordinance are initiated first and the taxpayer could opt to either revise his return with voluntary payment of tax without penalty or contest the proceedings and forego the said right.

xiii) The simultaneity of notices issued under Section 111 and 122(9) is not of much consequence and the proceedings under Section 111 have to proceed first and be finalized before proceedings under Section 122 are formally taken up. After the introduction of the Explanation in Section 111 in the year 2021, a notice encompassing both the grounds under Section 111(1) and Section 122(5) can be issued under Section 122(9), however, the proceedings under Section 111 still have to be concluded first and thereafter the remaining part of the notice under Section 122(9) can be given effect to.

Conclusion: i) Section 111(1) provides that where any of the grounds in Section 111(1)(a) to (d) are applicable, and the taxpayer offers no explanation or the explanation provided, in the opinion of the Commissioner, is not satisfactory, this unexplained income or value of asset(s) shall be included in the income of the person chargeable to tax.

ii) Yes, provision of section 111(1) of ITO, 2001 is of inquisitorial nature.

iii) Yes, the initiation and culmination of proceedings under Section 111 of the Ordinance becomes necessary before action can be taken under Section 122 to amend assessments on the basis of proceedings undertaken under Section 111.

iv) See under analysis no. iv.

v) See under analysis no. v.

vi) The intention behind the Explanation and the effect of adding the Explanation

is to take away the right to a separate notice and proceedings under Section 111 if the grounds under Section 111(1)(a) to (d) are confronted to the taxpayer through a notice under Section 122(9) of the Ordinance.

vii) The purpose of an Explanation is ordinarily to explain some concept or expression or phrase occurring in the main provision.

viii) Where the effect of the Explanation warps out of its normal purpose, and acts as a substantive enactment or deeming provision, or enlarges substantive provisions of law or creates new liabilities, such an Explanation cannot be given retrospective effect unless the express language of the Explanation warrants such an interpretation.

ix) Where an insertion or deletion of any provision in the rules or the law is merely procedural in nature, the same would apply retrospectively but not if it affects substantive rights which already stood accrued at the time when the un-amended rule or provision was in vogue.

x) The Explanation added in Section 111 of the Ordinance divests and affects a substantive right of the taxpayer to a separate notice and proceedings under Section 111, the same would not have retrospective effect and would apply prospectively.

xi) The said time period is to be considered as commencing on the day that the taxpayer is confronted with the opinion formed by the Commissioner under Section 111(1), as it is only then that the proceedings under Section 122 are to be formally taken up.

xii) Yes, the taxpayer can file revised return and deposit tax before issuance of notice u/s 122(9) and after issuance of notice u/s 111.

xiii) The simultaneity of notices issued under Section 111 and 122(9) is not of much consequence and the proceedings under Section 111 have to proceed first and be finalized before proceedings under Section 122 are formally taken up.

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9. **Supreme Court of Pakistan**
Taisei Corporation v. A.M. Construction Company (Pvt) Ltd.
Civil Appeal No.722 of 2012 etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._722_2012.pdf

Facts: The appellant ("Taisei"), a Japanese company, was awarded a contract by the National Highway Authority of Pakistan for carrying out certain works in the Province of Baluchistan, Pakistan. Taisei entered into a subcontract with the respondent ("AMC"), a Pakistani company, for doing some part of the Project. It was agreed in the subcontract that the governing law of the subcontract shall be the law in force at the time in Pakistan, and that any dispute arising between the parties would be settled through arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"), to be held at Singapore. In the course of performing their respective obligations under the subcontract, some disputes arose between the parties. AMC referred the matter to

ICC for arbitration as per the arbitration agreement incorporated in the subcontract, and after holding the arbitration proceedings in Singapore, the arbitrator delivered the award. In order to challenge the Award, AMC filed an application under Section 14 of the Arbitration Act 1940 ("1940 Act") in the Civil Court, Lahore praying for a direction to the arbitrator to file the Award and the record of the arbitration proceedings. Taisei appeared before the Civil Court, Lahore, and filed an application under Order VII, Rule 10 of the Code of Civil Procedure 1908 ("CPC"), to return the application of AMC made under the 1940 Act which was dismissed. The Lahore High Court upheld the order of the Civil Court and dismissed the revision petition of Taisei. Taisie then sought leave from this Court to appeal the judgment of the Lahore High Court, which was granted. In addition to the filing of the application under Order VII, Rule 10, CPC, in the Civil Court, Lahore, Taisei filed a petition under Section 6 of the 2011 Act in the High Court of Sindh at Karachi for recognition and enforcement of the Award. For the rejection of this petition of Taisei, AMC filed an application under Section 11 and Order VII, Rule 11, CPC. A Single Bench of the Sindh High Court allowed AMC's application and dismissed Taisei's petition. Taisei preferred an intra-court appeal, which was allowed by a Division Bench of the Sindh High Court. The Division Bench remanded the matter to the Single Bench to proceed with Taisei's petition in accordance with the 2011 Act, by holding that since an appeal against the Lahore High Court's judgment was pending before the Supreme Court, that judgment did not operate as res judicata. This decision of the Division Bench has been challenged by AMC in Civil Appeal.

Issues:

i) What is concept of "pro-enforcement bias" and what is its purpose?

ii) Whether the statement made by Supreme Court in Hitachi, that an award made on an arbitration agreement governed by the law of Pakistan is not a foreign award, is still valid?

iii) What is meaning of term "foreign arbitral award" in the EAA& FA Act 2011?

iv) Whether an arbitral award can only be treated as foreign arbitral award if it passes the test of being foreign arbitral award under both Acts i.e. the Arbitration (Protocol and Convention) Act, 1937 & EAA& FA Act 2011?

v) Whether addition or omission of the word "foreign" with "arbitral award" in the definition of the term "foreign arbitral award" given in Section 2(e) of the 2011 Act does make any difference in the scope of the definition?

vi) What is effect of use of verb "means" by legislature in defining any word, term or expression whether the definition in Section 2(e) of the 2011 Act is restrictive and exhaustive?

vii) Whether the 2011 Act applies retrospectively to the Award made in arbitration proceedings commenced before its enforcement?

viii) How a new law is construed as to its prospective and retrospective effect?

ix) What is consequence of retrospective effect given by the section 1(3) of the 2011 Act to the arbitration agreement?

x) What is effect of using word "and" between clauses (a) & (b) of section 10 (2) of the 2011 Act?

xi) What is status of the phrase “which are not foreign arbitral awards within the meaning of section 2 of this Act” in section 10(2) (b) of the 2011 Act?
xii) What is object of the saving provisions of Section 10(2) of the 2011 Act?
xiii) Whether a party has a vested right to challenge the validity of an award under sections 30 & 33 of the 1940 Act, If the arbitration proceedings commenced at time when neither the 2011 Act nor any of its predecessor ordinances was in force?
xiv) Can a provincial law deal with a matter that falls within the scope of the subject of “international arbitration” allocated exclusively to the Federal Legislature after the 18th amendment?
xv) Whether Courts in Pakistan can enter into the exercise of examining the merits of a foreign award on the points of facts or law?
xvi) What is difference between approach of recognition and enforcement of a foreign arbitral award under Geneva Convention and New York convention?
xvii) Whether recognition and enforcement of arbitral award in Pakistan can be refused by the courts of Pakistan on the public policy ground?
xviii) Whether the law declared by court through interpretation has prospective or retrospective effect?
xix) Whether the judgment of High Court operates as res judicata if the appeal against such judgment is pending before Supreme Court?

Analysis: i) The approach of minimal interference and support for the arbitral process is enshrined in the concept of "pro-enforcement bias", which refers to the inclination of legal frameworks, such as the New York Convention and national laws, to facilitate the enforcement of arbitral awards. This bias underscores the commitment to uphold the integrity of arbitration as a means of settling international disputes by limiting the grounds on which enforcement can be refused and placing the burden of proof on the party resisting enforcement. The courts' role is to interpret these provisions narrowly to promote certainty and predictability in international transactions. This bias is not about unjustly favoring one party over another but is aimed at promoting the effectiveness and efficiency of arbitration as a dispute resolution mechanism. The pro enforcement bias underscores the commitment of the legal system, embodied in international conventions, like the New York Convention, to respect and uphold the parties' agreement to arbitrate and to ensure that the outcome of such arbitrations (the arbitral awards) are recognized and enforced with minimal interference. This bias is critical in providing parties with the confidence that their decisions to arbitrate disputes will be supported by courts around the world, thus enhancing the attractiveness of arbitration as a method of resolving international commercial disputes. This enforceability is crucial for the fluidity of international trade, providing businesses with the certainty and security needed to engage in cross-border transactions.
ii) Section 9(b) of the 1937 Act, since repealed, had clearly stated that nothing in the said Act was to apply to any award made on an arbitration agreement

governed by the law of Pakistan. In view of these provisions of Section 9(b) of the 1937 Act, this Court decided in Hitachi that "the two awards in question cannot be treated as foreign awards as the same are made on an arbitration agreement governed by the laws of Pakistan". That decision was thus not based on some principle of general application, enunciated by the Court in the exercise of its judicial power, but on the specific provision of a statutory law then in force in Pakistan. The 1937 Act has been repealed and replaced by the 2011 Act. There is no provision in the 2011 Act similar to the provisions of Section 9(b) of the 1937 Act. With the change of law, the statement made by this Court in Hitachi, that an award made on an arbitration agreement governed by the law of Pakistan is not a foreign award, has lost its efficacy.

iii) A combined reading of the above three definitions under section 2(b) (c) & (e) of the Act 2011 leaves little room to speculate or argue as to what the term "foreign arbitral award" means for determining the applicability of the 2011 Act to an award. As per these definitions, an arbitral award made in a State which is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 or in such other State as may be notified by the Federal Government in the official Gazette, is a "foreign arbitral award" for applicability of the 2011 Act. Nothing more is required to make an award the "foreign arbitral award" for applicability of the provisions of the 2011 Act. The law governing the main contract between the parties, the law governing the arbitration agreement, and the law governing the arbitration proceedings are all irrelevant and extraneous in determining the status of an arbitral award under the 2011 Act. In defining a "foreign arbitral award" for applicability of the 2011 Act, the legislature has adopted a pure "territorial approach" and has made in this regard the "seat of arbitration" the sole criterion. Not only the governing laws but also the nationality of the parties to the award are irrelevant in determining the status of an arbitral award under the 2011 Act.

iv) If an arbitral award passes the test of being a foreign arbitral award under both these Acts, only then as per his (counsel) argument it can be treated as a foreign arbitral award for applicability of the 2011 Act. In making this argument, the learned counsel failed to note that the 1937 Act has been repealed by the 2011 Act; it is no longer the law of the land. A court cannot administer a repealed law, except to the extent specified by the legislature itself in the repealing law or some other general law providing the effect of the repeal of laws.

v) The addition or omission of the word "foreign" with "arbitral award" in the definition of the term "foreign arbitral award" given in Section 2(e) of the 2011 Act does not make any difference in the scope of the definition. As an award made in a foreign country is generally called a foreign award, this word has been used only for emphasis and clarity that not all foreign awards but only those foreign awards that are made in a Contracting State or such other State as may be notified by the Federal Government in the official Gazette, shall be dealt with as "foreign arbitral awards" under the 2011 Act.

vi) We all know that when the legislature employs the verb "means" in defining

any word, term or expression, the definition provided is restrictive and exhaustive, and nothing else can be added to the same. Such definition being itself the most authentic expression of the legislature's intent as to the meaning of a particular word used in the law enacted by the legislature is binding on the courts and leaves no room for them to discover by way of interpretation some other intent of the legislature. We cannot, therefore, read anything further into the definition of "foreign arbitral award" given by the legislature in Section 2(e) of the 2011 Act.

vii) A bare reading of these provisions shows that the 2011 Act has prescribed no cut-off date for its retrospective applicability to arbitration agreements and has brought into the scope of its applicability all arbitration agreements made at any time before the date of its commencement. However, it has restricted its retrospective applicability to only those foreign arbitral awards that have been made on or after 14 July 2005, not before that date. This date of 14 July 2005 is actually the date when the first Ordinance for recognition and enforcement of foreign arbitral awards was promulgated in Pakistan, to implement the Convention through domestic legislation. After that, eight more Ordinances were promulgated before the enactment of the 2011 Act, and in all those Ordinances as well as in the 2011 Act, the date for retrospective applicability of the new law to foreign arbitral awards was kept the same, i.e., 14 July 2005.

viii) The well-settled principle in our jurisdiction is that a new law that only deals with the procedure and does not in any way affect the substantive rights of the parties applies both prospectively to future proceedings as well as retrospectively to pending proceedings. However, a law that takes away or abridges the substantive rights of the parties only applies prospectively unless either by express enactment or by necessary intendment the legislature gives to it the retrospective effect. The proper approach, therefore, to the construction of a statute as to its prospective or retrospective applicability, in the absence of legislature's express enactment or necessary intendment, 'is not to decide what label to apply to it, procedural or otherwise, but to see whether the statute if applied retrospectively to a particular type of case would impair existing rights and obligations Such an examination, however, is needed only where the legislature has not, by express enactment or necessary intendment, provided for retrospective effect; as the legislature can by express enactment or necessary intendment also affect the existing rights and obligations. The legislature which is competent to make a law also has the power to legislate it retrospectively and can by legislative fiat take away even the vested rights.

ix) Because of the retrospective effect given by Section 1(3) of the 2011 Act, all courts in Pakistan are to recognize and enforce arbitration agreements, wherein the parties have agreed to have the arbitration held in a Contracting State, within the scope of the provisions of Section 4 of the 2011 Act, not of Section 34 of the 1940 Act, despite that such agreements have been made before the commencement of the 2011 Act.

x) The word "and", coordinating conjunction, has been used therein in its usual meaning conjunctively, not disjunctively, to connect the two clauses (a) and (b).

To come within the compass of the saving provisions of Section 10(2), a foreign arbitral award must therefore fulfill both the conditions mentioned in clauses (a) and (b), i.e., (a) it must have been made before the date of commencement of the 2011 Act, and (b) it must fall within the meaning of "foreign award" as defined in Section 2 of the 1937 Act.

xi) The phrase "which are not foreign arbitral awards within the meaning of section 2 of this Act" is like a proviso to the saving provisions and has qualified them in their scope and applicability. This phrase has exempted from the purview of the saving provisions those foreign awards which though fulfill both the conditions mentioned in clauses (a) and (b) but they are also foreign arbitral awards within the meaning of Section 2 of the 2011 Act. It means that an award which is a foreign arbitral award within the meaning of Section 2 of the 2011 Act shall not come within the scope of the saving provisions and shall therefore be dealt with in accordance with the provisions of the 2011 Act, not of the 1937 Act.

xii) The object of the saving provisions of Section 10(2) of the 2011 Act, in our opinion, is to save certain foreign arbitral awards, after the repeal of the 1937 Act, from falling within the scope of the 1940 Act.

xiii) AMC's right to challenge the validity of the Award under Sections 30 and 33 of the 1940 Act accrued with the commencement of the arbitration proceedings has been taken away by the legislature in the exercise of its legislative power by giving effect to the 2011 Act on all foreign arbitral awards irrespective of the fact, whether they have been made in arbitration proceedings commenced either before or after the 2011 Act came into force. What the legislature intended to save from the operation of the 2011 Act, it provided in Section 10(2) of the 2011 Act. The Award involved in the present case, we have found above, does not come within the purview of Section 10(2) of the 2011 Act.

xiv) No doubt, after the 18th amendment, the subject of "arbitration" other than "international arbitration" has fallen into the domain of the Provincial Legislatures. The question is whether the arbitration made in a foreign country, of a dispute that is governed by the domestic law, as it is in the present case, comes within the compass of "international arbitration"… Certainly a provincial law cannot deal with a matter that falls within the scope of the subject of "international arbitration" allocated exclusively to the Federal Legislature after the 18th amendment. The 1940 Act, a provincial law after the 18th amendment that came into force on 19 April 2010, cannot deal with international arbitration and any award made therein.

xv) In the 1937 Act there was a scope for the courts to enter into the merits of the award; for it provided that the enforcement of a foreign award would be refused if its enforcement was contrary to the law of Pakistan, in addition to the ground of its being contrary to the public policy. The New York Convention implemented in Pakistan by the 2011 Act, contains no ground as to the invalidity of a foreign award or its being against the law of the Contracting States, to refuse its recognition and enforcement and thus leaves no room for the courts of a Contracting State to enter into the exercise of examining the merits of a foreign

award on the points of facts or law.

xvi) In the context of recognition and enforcement of foreign arbitral awards, there has been a global shift from a standard enforcement of awards towards a more "pro-enforcement" approach. The New York Convention, implemented in Pakistan by the 2011 Act, replaced the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 ("Geneva Convention") incorporated in Pakistan under the 1937 Act, and sought to overcome the hurdles that an award-creditor had to meet under the previous regime for the recognition and enforcement of a foreign arbitral award. Its main objective is to facilitate the recognition and enforcement of foreign arbitral awards to the greatest extent possible and to set out a maximum level of control that the Contracting States may exert over such awards. This shift and the underlying objective become evident in the comparison of the New York Convention with the preceding Geneva Convention. Firstly, the Geneva Convention, though a pivotal step for the standardization of enforcement procedures with regards to foreign arbitral awards, had placed the burden on the party relying on the arbitral award to prove five cumulative conditions in order to obtain recognition and enforcement, as required under Article 1 of the Geneva Convention. Conversely, in accordance with its objective, the New York Convention grants the Courts of the Contracting States the discretion to refuse to recognize and enforce a foreign arbitral award only on the grounds listed in Article V of the Convention and places the burden to prove those grounds on the party opposing the recognition and enforcement of the award. Article V(1) provides five grounds whereby the recognition and enforcement of an award may be refused at the request of the party against whom it in invoked, and Article V(2) lists two further grounds on which the Court may refuse enforcement on its own motion. The ultimate burden of proof, however, remains on the party opposing recognition and enforcement. It is, therefore, only when the party against whom the award is invoked discharges this burden that a challenge may be sustained against the recognition and enforcement of an award. Further, Article 2 of the Geneva Convention had provided that even if the conditions laid down in Article 1 are fulfilled, the recognition and enforcement of the award "shall" be refused if the Court is satisfied that any of the grounds provided under this provision, including if the award has been annulled in the country in which it was made27, are fulfilled. Whereas, the New York Convention imposes no such positive obligation to deny the recognition or enforcement of international arbitral awards. Instead, Articles V(1) and (2) provide exceptions to an affirmative obligation of recognizing and enforcing a foreign arbitral award indicating that this "may" be refused provided the grounds enumerated therein are proved, therefore, not being affirmative obligations in their own right. This interpretation is also premised in the cumulative reading of Article III of the Convention, which provides that each Contracting State "shall" recognize arbitral awards as binding and enforce awards in accordance with the Convention, and Article V, which provides that recognition and enforcement of awards may be refused "only" if one of the specified exceptions apply. Therefore, the language of Article V for refusing

recognition and enforcement of foreign arbitral awards is permissive and not mandatory, and the exceptions stated therein are exhaustive and construed narrowly in view of the public policy favouring the enforcement of such foreign arbitral awards. The Courts may nonetheless recognize and enforce the award even if some of the exceptions exist. . In addition to the cumulative requirements under Article 1 and the grounds available to refuse recognition and enforcement under Article 2, Article 3 of the Geneva Convention went further and provided that if the party against whom the award has been made, proves that under the law governing the arbitration procedure there is a ground, other than the grounds in Articles 1 and 2, entitling him to contest the validity of the award in the Court, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving the party reasonable time within which to have the award annulled by the competent tribunal. The New York Convention, however, restricts the grounds for refusing recognition and enforcement to only those specifically mentioned in Article V. These grounds set out a "maximum level of control" that the Contracting States may exert over foreign arbitral awards. Article 1(e) of the Geneva Convention required that it had to be positively demonstrated that recognition and enforcement of the award was not contrary to public policy or the "principles of law" of the country in which it is sought to be relied upon. The New York Convention omits any reference to an award being contrary to "principles of law", a notable omission highlighting the pro-enforcement bias of the New York Convention. Another pro enforcement change in the New York Convention was the elimination of the requirement of "double exequatur". A reference to "final" award, contained in the Geneva Convention38, was replaced with a requirement for a "binding" award in Article V(1)(e) of the New York Convention… Additionally and importantly, the New York Convention provides that a Contracting State may, by its domestic law, reduce the grounds for refusal to recognize and enforce a foreign arbitral award and make the provisions more favourable for a party relying upon such award, but cannot add further grounds.

xvii) The recognition and enforcement of a foreign arbitral award may be refused by the courts of Pakistan on the public policy ground only where it would violate the "most basic notions of morality and justice" prevailing in Pakistan. The public policy ground cannot be used to examine the merits of a foreign arbitral award or to create more grounds of defence that are not provided for in the Convention,45 such as misapplication of the law of Pakistan by the arbitrator in making the award or the arbitrator's decision being contrary to the law of Pakistan.

xviii) While interpreting a provision of law or construing its effect, a constitutional court only declares what the law is and does not make or amend it. The law so declared by the court, therefore, as a general principle applies both prospectively to future cases and as well as retrospectively to pending cases, including the one in which it is declared. It is only as an exception to this general principle that while considering the possibility of some grave injustice or inconvenience due to the retrospective effect, the courts sometimes provide for

the prospective effect of their judgments from such date as they think just and proper in the peculiar facts and circumstances of the case.

xix) In this appeal, we find that the impugned judgment of the Division Bench of the Sindh High Court is completely correct in holding that since an appeal against the Lahore High Court's judgment was pending before this Court, that judgment did not operate as res judicata. The appeal pending before this Court could at most attract the applicability of the principle of res sub judice and the Single Bench of the Sindh High Court could have stayed under Section 10, CPC, the proceeding on Taisei's petition filed under the 2011 Act, till decision of the pending appeal by this Court. But as this Court itself had asked the Single Bench to decide Taisei's petition, the bar of the principle of res sub judice also stood eclipsed.

Conclusion: i) See analysis no. i.

ii) With the change of law, the statement made by Supreme Court in Hitachi, that an award made on an arbitration agreement governed by the law of Pakistan is not a foreign award, has lost its efficacy.

iii) See under analysis no. iii.

iv) No, it is incorrect that an arbitral award can only be treated as foreign arbitral award if it passes the test of being foreign arbitral award under both Acts i.e. the Arbitration (Protocol and Convention) Act, 1937 & EAA& FA Act 2011.

v) The addition or omission of the word "foreign" with "arbitral award" in the definition of the term "foreign arbitral award" given in Section 2(e) of the 2011 Act does not make any difference in the scope of the definition.

vi) When the legislature employs the verb "means" in defining any word, term or expression, the definition provided is restrictive and exhaustive, and nothing else can be added to the same. The definition in Section 2(e) of the 2011 Act is restrictive and exhaustive.

vii) See under analysis no. vii.

viii) See under analysis no. viii.

ix) See under analysis no. ix.

x) The word "and", coordinating conjunction, has been used therein in its usual meaning conjunctively, not disjunctively, to connect the two clauses (a) and (b).

xi) The phrase "which are not foreign arbitral awards within the meaning of section 2 of this Act" is like a proviso to the saving provisions and has qualified them in their scope and applicability.

xii) The object of the saving provisions of Section 10(2) of the 2011 Act, in our opinion, is to save certain foreign arbitral awards, after the repeal of the 1937 Act, from falling within the scope of the 1940 Act.

xiii) The right to challenge the validity of the Award under Sections 30 and 33 of the 1940 Act accrued with the commencement of the arbitration proceedings has been taken away by the legislature in the exercise of its legislative power by giving effect to the 2011 Act on all foreign arbitral awards irrespective of the fact, whether they have been made in arbitration proceedings commenced either before or after the 2011 Act came into force.

xiv) Certainly a provincial law cannot deal with a matter that falls within the scope of the subject of "international arbitration" allocated exclusively to the Federal Legislature after the 18th amendment.
xv) See under analysis no. xv.
xvi) See under analysis no. xvi
xvii) The recognition and enforcement of a foreign arbitral award may be refused by the courts of Pakistan on the public policy ground only where it would violate the "most basic notions of morality and justice" prevailing in Pakistan.
xviii) See under analysis no. xviii.
xix) The judgment of High Court does not operates as res judicata if the appeal against such judgment is pending before Supreme Court.

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10. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Islamabad v. M/s Fauji Foundation & another
Civil Appeal No. 2434 of 2016
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2434_2016.pdf

Facts: A notice u/s 122(9) of the Income Tax Ordinance, 2001, was served upon the taxpayer to show cause as to why for amendment of assessment u/s 122(1) read with 122(5) of the Ordinance and after taking objections, tax payer was ordered to pay balanced tax. The Commissioner of Inland Revenue (Appeals) and Appellate Tribunal Inland Revenue upheld the decision of taxation officer. The taxpayer approached High court u/s 133 of ITO, 2001 where it was held that tribunal arrived at wrong conclusion. Hence, this appeal.

Issues: i) What is a two-pronged test for bringing income under the head "income from business" prescribed u/s 18 (1) (d) of ITO, 2001?
ii) What are two conditions to be complied with before a taxation officer acquires jurisdiction u/s 122(9) of ITO, 2001 in respect of an assessment beyond the period of five years from the end of the relevant financial year?
iii) How a jurisdiction given under a statute ought to be exercised?
iv) Whether an action u/s 122 of ITO, 2001 can be justified on the ground that the opinion of the Taxation Officer regarding chargeability of income is different from the one under which it was originally assessed in the deemed order under section 120(1) of the Income Tax Ordinance, 2001?

Analysis: i) It would appear from the perusal of the provision of 18 (1) (d) of ITO, 2001 that it prescribes a two-pronged test for bringing income under the head "income from business". The first is that any benefit or perquisite must have a fair market value, not necessarily whether it can be converted into money. The second is that a person may have received the value of that benefit or perquisite during or under a past, present, or prospective business relationship. The coexistence of both is necessary. The absence of one of them will not constitute income from a business.

ii) According to section 122(5) of the Income Tax Ordinance, 2001, two conditions have to be complied with before a Taxation Officer acquires jurisdiction to issue notice under section 122(9) in respect of an assessment beyond the period of five years from the end of the relevant financial year. These two conditions are: firstly, that the Taxation Officer must have obtained definite information from the audit or otherwise; and secondly, that on that basis he must also be satisfied that income chargeable to tax had escaped assessment or total income has been undervalued, or assessed at too low a rate, or has been the subject of excessive relief or refund or any amount under a head of income has been misclassified… above-stated two conditions must coexist for the Taxation Officer to assume jurisdiction. The absence of any of these will act as a bar to initiate proceedings to amend an original assessment order.

iii) Whenever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.

iv) An action under section 122 cannot be justified merely on the ground that the opinion of the Taxation Officer regarding chargeability of income is different from the one under which it was originally assessed in the deemed order under section 120(1) of the Income Tax Ordinance, 2001. This is so because otherwise the taxpayer might become the victim of the freaks of a Taxation Officer's opinion from time to time. In other words, we may say that there is no jurisdiction on the part of the Taxation Officer to start upon a venture of amending the original assessment order in a haphazard fashion, on mere suspicion in the hope of unearthing an escapement of tax. So, to protect the taxpayer from the sword of Revenue hanging over its head, the law has provided a safeguard in the shape of section 122(5) for setting in motion the machinery of making amendments to the original assessment order

Conclusion: i) See under analysis no. 01.

ii) See under analysis no. 02.

iii) Whenever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.

iv) An action under section 122 cannot be justified merely on the ground that the opinion of the Taxation Officer regarding chargeability of income is different from the one under which it was originally assessed in the deemed order under section 120(1) of the Income Tax Ordinance, 2001.

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11. **Supreme Court of Pakistan**
Chairman Evacuee Trust Property Board, Lahore & others v. Sufi Nazir Ahmed & others etc.
Civil Appeal Nos. 248, 249, 250, 251 & 252 OF 2014 & C.M.A. No. 5086 of 2022 In Civil Appeal No.250 of 2014
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._248_2014.pdf

Facts: The Peshawar High Court declared the amendments to clauses 10 and 11 of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 illegal relying upon Muzzafar case. The Supreme Court, therefore, called upon to examine whether these amendments could be said to be unreasonable in the light of Muzzfar Khan case.

Issue: Whether clauses 10 and 11 of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 are arbitrary, oppressive and unreasonable?

Analysis: Taking all the facts and circumstances in consideration, we have no doubt that the existing provisions of the Scheme relating to rent determination and fixation can no longer be considered unreasonable. The whole procedure of the Scheme is neither too mechanical, nor too rigid. It is a fundamental principle of justice that legitimate expectation ought not to be thwarted. The protection of legitimate expectation is at the heart of the constitutional principle of the rule of law, which requires fairness, reasonableness, regularity, predictability, a proper hearing, and certainty in the dealings of the government or its instrumentalities with the public. We find that legitimate expectation is present in the Scheme, and its existence brings procedural fairness in two ways: first, a policy or practice that dictates a particular procedure to be followed gives rise to the right of the tenant to demand that the procedure for assessment or reassessment of rent be followed; and secondly, if there is a legitimate expectation of a reasonable benefit, it may give rise to a right for a fair procedure before the benefit is withheld.2 It is clear from clauses 10 and 11 of the Scheme that the District Officer is mandated to fix the rent of the evacuee trust property, keeping in view the market rent and rent of other properties in the vicinity in similar circumstances. This means that his powers are not unbridled. He cannot act on his whims while assessing the rent. He is bound to observe the standards mentioned in the Scheme, so as to eliminate any improper motive and possibility of coercion. It is also evident that to bring transparency in the rent assessment procedure, the existing clause 10 ensures that not only the proposed assessment is open to inspection by the tenant but also provides them an opportunity for objections and hearings. An additional measure to prevent unfairness in the determination of rent is provided by empowering the Chairman of the Board or the Administrator concerned to suo moto examine the correctness or propriety of the determination of rent. At that, it has been mandated to periodically reassess the rent every six years and increase it at the rate of eight per cent per annum. After considering all things, we are poised to conclude that

all those shortcomings which were found illegal in the erstwhile procedure of assessment and reassessment of rent in Muzzafar Khan, has been remedied in the Scheme, and as such, we cannot accept the view expressed by the Peshawar High Court that clauses 10 and 11 of the Scheme are arbitrary, oppressive and unreasonable.

Conclusion: Clauses 10 and 11 of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 are not arbitrary, oppressive and unreasonable.

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12. **Supreme Court of Pakistan**
Anjuman Ghulaman Mustafa v. Darul Islamia Society & others
C.P.L.A. No. 6052 of 2021
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p.l.a.6052_2021.pdf

Facts: Through this C.P.L.A, the petitioner (judgment-debtor) seeks leave to appeal against the concurrent findings of the three courts below claiming the proceedings taken out by the respondent for executing the decree are patently out of time.

Issues: i) When the Court of last instance passes the decree, whether only that decree can be executed?
ii) Whether mere filing a petition for leave to appeal automatically extends the time for filing an execution application?

Analysis: i) In such a situation, the case of Abdul Qayyum urges us to remember that till such time, an appeal or revision from a decree is not filed, or such proceedings are pending but no stay order has been issued, such decree remains capable of execution but when the Court of last instance passes the decree only that decree can be executed, irrespective of the fact, that the decree of the lower Court is affirmed, reversed or modified.
ii) Unless the Supreme Court stays the proceedings of the decree or converts the petition into an appeal, the period of limitation cannot be deemed to have been clogged. Merely filing a petition for leave to appeal does not automatically extend the time for filing an execution application. However, if the leave is granted, the petition is converted into an appeal and allowed, in which case, the order of the Supreme Court will merge into the order of the lower forums and, thus, the period of limitation will start from the order of the Supreme Court.

Conclusions: i) Yes, when the Court of last instance passes the decree, only that decree can be executed.
ii) Merely filing a petition for leave to appeal does not automatically extend the time for filing an execution application.

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13. **Supreme Court of Pakistan**
Alay Javed Zaidi v. Habibullah & Others
Civil Petition No.1278-K of 2023
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1278_k_2023.pdf

Facts: Respondent No.1, being new landlord of rented commercial premises filed an application against the petitioner/tenant for fixation of fair rent under Section 8 of the Sindh Rented Premises Ordinance, 1979 which was allowed by Rent Controller and rent was enhanced. Being dissatisfied with the said judgment, both the petitioner and Respondent No.1 preferred their respective First Rent Appeals wherein the amount of fair rent was reduced by District Judge. The petitioner challenged the said judgment in appeal before the High Court through a Constitutional petition but the same was dismissed.

Issues: i) Whether institution of application for fair rent by a new owner of rented premises can be deemed to be a sufficient intimation to the petitioner regarding change of ownership as required under section 18 of the Sindh Rented Premises Ordinance, 1979?
ii) Whether for determination of fair rent of the premises under section 8 of the Sindh Rented Premises Ordinance, 1979, it is necessary that all four factors must co-exist in each and every case seeking fixation of fair rent?

Analysis: i) It is a settled proposition of law that even institution of application for eviction would be deemed to be substantial compliance of the provisions of Section 18 of the SRPO, 1979….In the same vein, the institution of application for fair rent by Respondent No.1 can be deemed to be a sufficient intimation to the petitioner regarding change of ownership in respect of subject tenement.
ii) It is a settled principle of law that it is not necessary that all these four factors must co-exist, rather one or two grounds are sufficient.

Conclusion: i) The institution of application for fair rent by a new owner of a rented premises can be deemed to be a sufficient intimation to the petitioner regarding change of ownership as required under section 18 of the Sindh Rented Premises Ordinance, 1979.
ii) For determination of fair rent of the premises under section 8 of the Sindh Rented Premises Ordinance, 1979, it is not necessary that all four factors must co-exist in each and every case seeking fixation of fair rent.

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14. **Supreme Court of Pakistan**
Ghulam Mustafa v. Mst. Mah Begum and others.
Civil Appeal No.43-Q of 2018
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._43_q_2018.pdf

Facts: The appellant filed a civil suit for declaration, recovery of possession by way of partition, and permanent injunction of property in the Court of Civil Judge. The said suit was dismissed. Aggrieved thereof, the appellant filed an appeal, which too met the same fate, leading to the Civil Revision before the High Court which was dismissed. Hence, the present petition before this Court, wherein leave to appeal has been granted.

Issues: i) Whether the consequential reliefs even within time, would be of legal avail when the main relief of declaration of ownership is barred by time?
ii) When co-owner of the joint property despite knowledge of an "actual denial of his right" has not challenged it within limitation would be denuded of the right to challenge the same?

Analysis: i) What is pertinent to note that in the suit filed by the appellant, the reliefs for recovery of possession and permanent injunction are consequential ones, dependent on the main relief of declaration of ownership of the disputed property, which in the present case was filed after 14 years, and thus, goes clearly beyond the six-year period of limitation provided under Article 120 of the First Schedule to the Limitation Act, 1908. By now, it is settled that when the main relief of declaration of ownership is barred by time, the consequential reliefs, even if within time, would be of no legal avail.
ii) A co-owner of the joint property who, despite possessing knowledge of an "actual denial of his right", refrains from challenging the said invasion of his right within the stipulated period of limitation, is denuded of the right to challenge the same. Similarly, in cases of joint property, where the third party interest is created and reflected in subsequent revenue records (Jamabandi), the same would not give rise to a renewed cause of action since it amounts to the actual denial of his right.

Conclusion: i) When main relief of declaration of ownership is barred by time, the consequential reliefs, even if within time, would be of no legal avail.
ii) When a co-owner of the joint property despite knowledge of an "actual denial of his right" has not challenged it within limitation would be denuded of the right to challenge the same.

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15. **Supreme Court of Pakistan**
M/s Pak Telecom Mobile Limited v. Muhammad Atif Bilal, etc.
Civil Petition No. 34 of 2022
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._34_2022.pdf

Facts: The petitioner has challenged the concurrent decisions of the Single Member and Full Member Bench of the Industrial Relations Commission as well as High Court, wherein the grievance petition of respondent no.1 was accepted. Hence, this petition.

Issues: i) Which is the competent forum for redressal of individual grievance of a worker,

who has been terminated, removed, retrenched, discharged, or dismissed from employment in a trans-provincial establishment, and which law is applicable**?**
ii) Whether in seeking a remedy under Section 33 of IRA of 2012, the term worker referred therein should be understood as defined in Section 2(xxxiii) of the IRA of 2012 or as outlined in or provided in the law (Standing Orders of 1968?
iii) Whether onus of proof would lie on the aggrieved worker filing the grievance petition under Section 33 of IRA of 2012, to prove that he fulfills the conditions precedent of a workman / worker provided under the applicable law or otherwise?
iv) What is the mode and manner of proof required of a worker to enforce his rights under the labour law?

Analysis: i) The appropriate forum of redressal for a workman who is terminated, removed, retrenched, discharged, or dismissed from service in a trans-provincial establishment is NIRC, as provided under Section 33 of the IRA of 2012. The said provision states that a 'worker' may bring his grievance in respect of any right guaranteed or secured to him by or under any law. The relevant applicable law for the purpose of right of reinstatement is Standing Orders of 1968, specifically Order 12(3). The competent forum for the redressal of personal grievance of a worker/workman of a tans-provincial establishment is NIRC, and the mode and manner of enforcing any right guaranteed or secured to him by or under any law has been provided under section 33 of the IRA of 2012.

ii) Where a workman is terminated, removed, retrenched, discharged, or dismissed from service in a trans-provincial establishment, he would be required to first prove that he fulfills the conditions precedent of a workman provided under IRA of 2012, to render his individual grievance maintainable under Section 33 of the IRA of 2012. Once, the grievance petition is held to be filed by the legally competent person, then in order to enforce his rights under Standing Order 12(3) of the Standing Orders of 1968, the aggrieved petitioner would have to prove that he is a workman envisaged under Standing Order 2(i) of Standing Orders of 1968.

iii) Regarding the onus of proof, it is trite law that the initial onus is on the person asserting a fact for seeking a relief. The initial onus was upon the aggrieved worker to prove that he was a workman under both statutes, Standing Orders of 1968 and IRA of 2012.

iv) To determine whether a person is a workman is a finding of fact, routed in evidence and the person who approaches the court on the basis of an averment that he is a workman carries the initial burden of proof to establish that he is a workman. To emphasize, when dealing with the question of burden of proof in establishing the status of the workman, the Supreme Court has consistently held that such burden lies on the person claiming to be a workman. It is the bounden duty of a person who approaches the Labour Court to demonstrate through evidence the nature of duties and functions, and to show that he is not working in any managerial or administrative capacity and that he is not an employer. In the absence of such evidence, a grievance petition would not be maintainable before

the Labour Court for lack of jurisdiction. This burden of proof is to be discharged by the claimant through documentary and oral evidence supporting his claim that the nature of his work is, in fact, manual or clerical. This requires the production of evidence, documentary or oral, which shows the nature of duties and the functions of the claimant pursuant to his claim that he is a workman. It has been clarified that even if there does not exist the power to hire or fire any person, the nature of the job as performed by the person must be evident from the holistic view of the record produced and that it has to be determined through overall record whether he was employed as a workman doing manual and clerical work and whether he was discharging his functions in a managerial and supervisory role. Accordingly, it is vital for the court to consider all the evidence and to ascertain the duties and functions of the person claiming to be a workman and to ensure that the workman has discharged his burden with the required evidence.

Conclusion: i) The appropriate forum of redressal for a workman who is terminated, removed, retrenched, discharged, or dismissed from service is NIRC, as provided under Section 33 of the IRA of 2012. The relevant applicable law is Standing Orders of 1968, specifically Order 12(3).

ii) The aggrieved workman is required to first prove that he fulfills the conditions precedent of a workman provided under IRA of 2012, to render his individual grievance maintainable under Section 33 of the IRA of 2012. Once, the grievance petition is held to be filed by the legally competent person, then in order to enforce his rights under Standing Order 12(3) of the Standing Orders of 1968, the aggrieved petitioner would have to prove that he is a workman envisaged under Standing Order 2(i) of Standing Orders of 1968.

iii) It is trite law that the initial onus is on the person asserting a fact for seeking a relief.

iv) To determine whether a person is a workman is a finding of fact, routed in evidence and the person who approaches the court on the basis of an averment that he is a workman carries the initial burden of proof to establish that he is a workman.

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16. **Supreme Court of Pakistan**
Waqas Shahzad v. Inspector General Police Punjab Lahore and others
Civil Petition No.152 of 2022
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._152_2022.pdf

Facts: Civil Petition for leave to appeal was filed against the dismissal of a police officer for incompetence and illegal activities. The petitioner was found guilty after inquiry and dismissed from service by the competent authority. The Punjab Service Tribunal upheld the dismissal.

Issues: (i) Whether revision can be filed as a vested right under Section 17 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 or under Rule 12 of the Punjab Police (E&D) Rules, 1975?
(ii) Whether the competent authority can exercise revisional jurisdiction on its own motion without filing of application by any party?

Analysis: (i) It is clear beyond any shadow of doubt that under Section 17 of the Punjab Employees Efficiency, Discipline and Accountability Act, the powers of revision are on its own motion and not on application of any aggrieved person. Likewise, under Rule 12 of the Punjab Police (Efficiency & Discipline) Rules, 1975, the provision of revision is also exercisable on its motion of the authorities mentioned in the rules, and there is no opportunity provided under the rule to file revision as a vested right. Obviously, in case of any adverse findings or punishment or enhancement of punishment imposed in exercise of suo motu powers of revision within the time frame, the aggrieved person may approach the service tribunal for redress but the fact remains that revision cannot be filed as a matter of right and in case of rejection or dismissal of departmental appeal, the aggrieved employee should file the appeal before the Tribunal rather than filing revision petition or waiting for the decision of revision by the competent authority which is in fact detrimental and prejudicial to the own interest of such person who despite having in hand an adverse order passed against him in the departmental appeal, prefers to file revision petition which is not a vested right but such provision is provided to exercise suo motu powers and not based on the condition to apply by an aggrieved person.
(ii) The powers of revision are on its own motion and not on application of any aggrieved person.

Conclusion: (i) Revision cannot be filed as a vested right under Section 17 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 or under Rule 12 of the Punjab Police (E&D) Rules, 1975.
(ii) The competent authority may exercise revisional jurisdiction on its own motion without filing of application by any party.

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17. **Lahore High Court**
Muhammad Aslam v. Judge Family Court, Ferozewala, etc.
Writ Petition No. 126306 of 2017
Mr. Justice Muhammad Ameer Bhatti, HCJ, Mr. Justice Masud Abid Naqvi, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC438.pdf

Facts: This judgment deals with ten petitions brought under Article 199 of the Constitution of the Islamic Republic of Pakistan, as these involve similar questions in controversy regarding appeal from a decree of maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs.

Issues: i) Whether a decree for maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs is appealable under section 14(2)(c) of the

Family Courts Act, 1964 by the judgment debtor if the aggregate amount of the decree is more than Rs.5000/- per month?

ii) What is the purpose or object of curtailing and restricting the right of appeal against a decree qua maintenance under section 14(2)(c) of the Family Court Act,1964?

iii) Whether the right to fair trial includes one right of appeal as per Article 10A of the Constitution?

iv) Whether the High Court has the jurisdiction to declare any provision of the Family Court Act to be repugnant to injunctions of Islam?

v) Whether 10% annual increase under section 17A(3) of the Act would render the decree appealable?

vi) Whether the remedy under Article 199 of the Constitution can be equated with the right of appeal?

Analysis: i) It is nowhere specified in clause 14(2)(c) that no appeal shall lie from a decree cumulatively for an amount of Rs.5000/- or less per month. Had the legislature intended so, it would have added words "in aggregate" or "in total" after the words five thousand occurring in clause (c) of section 14(2) ibid. It is trite law that reading in of words or meaning into a statutory provision is not permissible when its meaning is otherwise clear. As a matter of statutory interpretation, Courts generally abstain from providing omissions in a statute… When the amount of Rs.5000/- or less is not specified in section 14(2)(c) to be in aggregate, the decree passed for such an amount for each of the claimants remains not appealable. The decree may be passed in a suit allowing, rejecting or partly allowing claims of plaintiffs therein. The claim for maintenance in relation to each of the plaintiffs constitutes an independent cause of action that may be allowed, rejected or partly allowed in favour of any plaintiff. The plaintiffs can jointly file their claims or separately… In view of the foregoing, it is found that in terms of section 14(2)(c) of the Act, a decree for maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs is not appealable.

ii) Maintenance is a basic condition for subsistence with dignity, as guaranteed under Articles 9 and 14 of the Constitution. The decree for maintenance, if any, is for the benefit of wife or a child. The purpose or object of curtailing and restricting the right of appeal against a decree qua maintenance under section 14(2)(c) of the Act is to ensure that the disputes qua maintenance are resolved expeditiously and benefits conferred through such decree reach the decree holder(s) without being frustrated. The legislature manifestly intends to save the wife and or child, who usually fall within the marginalized or disadvantage segment of the society, from having to incur cost, face delays and bear rigors of litigation in appeal for realization of a meager decretal amount specified therein.

iii) Article 10A of the Constitution guarantees right to fair trial and due process for the determination of civil rights and obligations of a person, however, there is nothing in the language of the said article that guarantees at least one right of appeal against all such determinations.

iv) In view of the provisions of Article 203D, it is essentially authority of the Federal Shariat Court, if any, to declare any law repugnant to injunctions of Islam and jurisdiction of High Court in that regard is indeed expressly barred under Article 203G of the Constitution. Resultantly, we are unable to declare the provision of section 14(2)(c) of the Act to be repugnant to injunctions of Islam.
v) As regards plea qua annual increase under section 17A(3) of the Act, suffice it to say that the said provision comes into operation where the Family Court has failed to prescribe the annual increase in the maintenance while passing the judgment and decree. Annual increase under the said provision does not form part of adjudication resulting in the decree, however, the same is automatically enforceable by operation of law, therefore, it cannot be taken into consideration for the purpose of section 14(2)(c) of the Act.
vi) The remedy under Article 199 of the Constitution cannot be equated with the right of appeal provided under any law inasmuch as the former is confined to interference in the cases of violation of law whereas the latter includes arriving at any point of view after reappraisal of evidence.

Conclusion: i) In terms of section 14(2)(c) of the Act, a decree for maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs is not appealable.
ii) The purpose or object of curtailing and restricting the right of appeal against a decree qua maintenance under section 14(2)(c) of the Act is to ensure that the disputes qua maintenance are resolved expeditiously and benefits conferred through such decree reach the decree holder(s) without being frustrated.
iii) There is nothing in the language of the Article 10A of the Constitution that guarantees at least one right of appeal against all such determinations.
iv) Under article 203G of the Constitution jurisdiction of High Court to declare any provision of the Family Court Act to be repugnant to injunctions of Islam is expressly barred.
v) Annual increase does not form part of adjudication resulting in the decree, however, the same is automatically enforceable by operation of law, therefore, it cannot be taken into consideration for the purpose of appeal.
vi) See above in analysis clause.

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18. **Lahore High Court**
Ulfat Rasool v. The State
Murder Reference No. 279 of 2019.
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC453.pdf

Facts: Being aggrieved, the petitioner assailed the decision of the trial court through Criminal Appeal wherein he was convicted and sentenced in a murder case.

Issues: i) What is the settled criminal law in cases of circumstantial evidence?
ii) What is the law for proving audio tape or video before the court?

iii) What is the settled law regarding benefit of doubt to the accused?

Analysis: i) It is the settled law that in case of circumstantial evidence, every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused. But if any link in the chain is missing then its benefit must go to the accused.
ii) No audio tape or video could be relied upon by a court until the same was proved to be genuine and not tampered with or doctored. A person recording the conversation or event had to be produced in evidence and he must produce the audio tape or video himself and safe custody of the audio tape or video, after its preparation till production before the Court, must also be proved. With the advancement of science and technology, it is now possible to get a forensic examination, audit or test conducted through an appropriate laboratory so as to get it ascertained as to whether an audio tape or a video is genuine or not and such examination, audit or test can also reasonably establish if such audio tape or video has been edited, doctored or tampered with or not.
iii) It is well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused .

Conclusion: i) It is the settled law that in case of circumstantial evidence, every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused.
ii) No audio tape or video could be relied upon by a court until the same was proved to be genuine and not tampered with or doctored.
iii) If there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

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19. **Lahore High Court**
Abdul Rahman and others v. Muhammad Farooq and others.
R.F.A.No. 14953 of 2022
Mr. Justice Shahid Bilal Hassan, Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC660.pdf

Facts: Through this Regular First Appeal the appellants have called in question judgment and decree passed against them while dismissal of their suit by the trial court.

Issues: i) What is the definition of the term "Issue"?
ii) Whether the stage of framing of issues is very important in trial of civil suit?
iii) How much are the kinds of Issues?
iv) What is the main object of framing Issues?
v) What are the duties of Court while framing the Issues?
vi) Which matters should be considered by the court before framing the Issues?
vii) Which materials can be considered by the court while framing of Issues?
vi) Whether the court can amend or strike down any issues at any time before

passing of decree?

vii) Whether the appellate court can frame the issue and refer it for trial to the lower court.

Analysis: i) The term "issue" in a civil case means a disputed question relating to rival contentions in a suit. It is the crucial point of disagreement, argument or decision. It is the point on which a case itself is decided in favour of one side or the other, by the court…According to the dictionary meanings, "issue" means a point in question; an important subject of debate, disagreement, discussion, argument or litigation. Issues mean a single material point of fact or law in litigation that is affirmed by one party and denied by the other party to the suit and that subject of the final determination of the proceedings.

ii) Framing of issues is probably the most important part of the [trial] of a civil suit. For a correct and accurate decision in the shortest possible time in a case, it is necessary to frame the correct and accurate issues. Inaccurate and incorrect issues may kill the valuable time of the court...The stage of framing of issues is very important in trial of civil suit because at that stage the real controversy between the parties is summarized in the shape of issues and narrowing down the area of conflict and determination where the parties differ and then parties are required to lead evidence on said issues. The importance of framing correct issues can be seen from the fact that parties arerequired to prove issues and not pleadings as provided by Order XVIII, Rule 2, CPC…

iii) As per the Order XIV Rule 1(4) of the Code of Civil Procedure, 1908, issues are of two kinds: (1) Issues of fact, (2) Issues of Law. Issues, however, may be mixed issues of fact and law. Rule 2(1) of Order XIV provides that where issues: both of law and fact arise in the same suit, notwithstanding that a case may be disposed of on a preliminary issue, the court should pronounce judgment on all issues, but if the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first, if that issue relates to: The jurisdiction of the court; or A bar to the suit created by any law for the time being in force. For that purpose, the court may, if it thinks fit, postpone the settlement of the other issues until the issues of law have been decided.

iv) The main object of framing of issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ. An obligation is cast on the court to read the plaint and the written statement and then determine with the assistance of the learned counsel for the parties, material propositions of fact or of law on which the parties are at variance. The issue shall be formed on which the decision of the case shall depend. The object of an “issue” is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment then proceeding issue-wise would be able to tell precisely how the dispute was decided.

v) It is duty of Court to frame issues from material propositions. To frame issues, court is to find out questions of fact, questions of law and mixed questions of fact

and law from pleading of parties and other materials, which are produced with pleading and parties are to produce their evidence to prove or disprove framed issues. The relevant provisions in this regard are; a) Order 14 Rule 1 to 6,b) Order 18 Rule 2,c)Order 20 Rule 5,d)Order 41 Rule 31,e) Order 15 Rule 1 of CPC 1908… The Court is bound to give decision on each issue framed as required by Order XX, Rule 5, CPC. Therefore, the Courts while framing issues should pay special attention to Order XIV of CPC and give in depth consideration to the pleadings etc. for the simple reason that if proper issues are not framed, then entire further process will be meaningless, which will be wastage of time, energy and would further delay the final decision of the suit.(…)

vi) Matters to be considered before framing of issues are:-

i. Reading of the plaint and written statement, the court shall read the plaint and written statement before framing an issue to see what the parties allege in it.
ii. Ascertainment whether allegations in Pleadings are admitted or denied, Order 10 Rule 1 permits the court to examine the parties for the purpose of clarifying the pleadings, and the court can record admissions and denials of parties in respect of an allegation of fact as are made in the plaint and written statement.
iii. Admission by any Party. If any party admitted any fact or document, than no issues are to be framed with regard to those matters and the court will pronounce judgment respecting matters which are admitted.
iv. Examination of material proposition. The court may ascertain, upon what material proposition of law or fact the parties are at variance.
v. Examination of witnesses. The court may examine the witnesses for purpose of framing of issues.
vi. Consider the evidence. The court may also in the framing of issues take into consideration the evidence led in the suit. Where a material point is not raised in the pleadings, comes to the notice of the court during course of evidence the court can frame an issue regarding it and try it.
vii. Examination of any witnesses or documents under Order 14 Rule 4. Under this rule any person may be examined and any document summoned, for purposes of correctly framing issues by court, not produced before the court.

vii) The court may frame the issues from all or any of the following materials.

i. Allegations made on oath. Issues can be framed on the allegations made on oath by the parties or by any persons present on their behalf or made by the pleader of such parties.
ii. Allegations made in Pleadings. Issue can be framed on

the basis of allegations made in the pleadings.

iii. Allegations made in interrogatories. Where the plaint or written statement does not sufficiently explain the nature of the party's case, interrogatories may be administered to the party, and allegations made in answer to interrogatories, delivered in the suit, may be the basis of framing of issues.

iv. Contents of documents. The court may frame the issue on the contents of documents produced by either party.

v. Oral examination of Parties. Issues can be framed on the oral examination of the parties.

vi. Oral objection. Issues may be framed on the basis of oral objection.

viii) At any time before passing of decree, court can amend framed issues on those terms, which it thinks fit. However, such amendment of framed issues should be necessary for determination of matters in controversy between parties. Moreover, at any time before passing of decree, court can strike out framed issues especially when it appears to court that such issues have been wrongly framed or introduced. Regarding amendment of framed issues, court possesses discretionary power. Court can exercise this power when no injustice results from amendment of framed issue on that point, which is not present in pleading(s). However, it cannot be exercised when it alters nature of suit, permits making of new case or alters stand of parties through rising of inconsistent pleas. Regarding amendment of framed issues, court also has mandatory power. In fact, court is bound to amend framed issues especially when such amendment is necessary for determination of matters in controversy, when framed issues of do not bring out point in controversy or when framed issues do not cover entire controversy...

ix) When the lower court omitted to frame an issue before trying a matter in controversy, the appellate court can frame the issue and refer it for trial to the lower court. There is no need to remand the entire case. Then the lower court should try such issues and return the evidence and its decision to the appellate court.

Conclusion: i) See above in analysis portion.

ii) Yes, the stage of framing of issues is very important in trial of civil suit.

iii) As per the Order XIV Rule 1(4) of the Code of Civil Procedure, 1908, issues are of two kinds.

iv) The main object of framing of issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ.

v) See above in analysis portion.

vi) See above in analysis portion.

vii) See above in analysis portion.

viii) Yes, the court can amend or strike down any issues at any time before passing of decree but subject to certain legal exceptions.

ix) Yes, the appellate court can frame the issue and refer it for trial to the lower court.

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20. **Lahore High Court**
Muhammad Adil Nawaz Bhatti v. Chairman Union Council and others
Writ Petition No.62590 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC538.pdf

Facts: After contracting marriage, the petitioner and respondent No.3 went to reside abroad. Afterwards, the petitioner sent three separate notices of divorce to the Chairman Union Council but he was advised to approach the concerned forum abroad. Then, the petitioner sent a request to the Consulate General Pakistan in Germany and also moved a detailed application with relevant documents to the respondent No.1 requesting him to issue divorce effectiveness certificate, which request was declined. Later, the petitioner approached the Consulate General of Pakistan regarding issuance of divorce effectiveness certificate but he was advised to approach Arbitration Council in Pakistan on score that Pakistan Mission abroad could no more act as Arbitration Councils. Lastly, the petitioner moved a detailed application to the ADLG City Lahore with the request for issuance of divorce effectiveness certificate but the same was again refused; hence, the instant constitutional petition.

Issue: Which authority is competent to issue divorce effectiveness certificate, in case when the wife is residing abroad at the time of transmitting notices of *Talaq* by the husband?

Analysis: Sections 2(b) and 7 of the Muslim Family Laws Ordinance, 1961 and Rule 3(b) of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 state that the Union Council and/or the Chairman, which would have jurisdiction in the matter of issuance of divorce effectiveness certificate would be the Union Council and/or the Chairman within whose territorial jurisdiction the wife was residing at the time of pronouncement of divorce. If the wife was residing abroad at the time of alleged notices of *Talaq,* then the jurisdiction for taking up the matter of divorce is with the designated officer in the Pakistan Consulate/Mission in that country where she was residing, as per S.R.O.No.1086(K)61 dated 09.11.1961.

Conclusion: Under the Muslim Family Laws Ordinance, 1961 and S.R.O.No.1086(K)61 dated 09.11.1961, the designated officers of Pakistan Mission abroad are authorized to discharge the functions of Chairman Union Council, if the wife was residing abroad at the time of transmitting notices of *Talaq* by the husband.

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21. **Lahore High Court**
Chairman, National Highway Authority through its G.M. & another v. Abdul Hameed and another
F.A.O. No.5549 of 2023
Mr. Justice Shahid Bilal Hassan

https://sys.lhc.gov.pk/appjudgments/2024LHC546.pdf

Facts: The respondent No.1challenged an award through reference in which trial Court issued notices to all the appellants initially. The respondent No.1 did not deposit the process fee and talbana. However, ignoring that fact, the trial Court resorted to issuance of notice through publication in newspaper and adjourned the case and on the said date the appellants were proceeded against ex parte. Eventually, the reference was decreed ex parte after recording evidence. The appellants on gaining knowledge filed an application for setting aside ex parte proceedings. The trial Court dismissed the said application. The appellants earlier filed a writ petition against the said order but the office raised objection which was sustained. Hence, the instant appeal.

Issues: i) Whether substitute service can be ordered without verifying all efforts to effect the service in the ordinary manner?
ii) Whether delay in filing the application under Order IX, Rule 13, Code of Civil Procedure, 1908 can be condoned on the ground that basic order for initiating ex-parte proceedings has no backing of law?

Analysis: i) When the position remained as such, the act of the Court for resorting to substituted service cannot be said more than an illegality and nullity in the eye of law. It is a settled principle of law that unless all efforts to effect the service in the ordinary manner are verified to have been failed, substitute service cannot be resorted to. There is a series of authorities on this proposition of law. However, the reference can be made to Mrs. Nargis Latif v. Mrs. Feroz Afaq Ahmed Khan (2001 SCMR 99) and Haji Akbar and others v. Gul Baran and 7 others (1996 SCMR 1703). I have no, slightest doubt in holding that the orders for substitute service were passed in a mechanical fashion and without proper application of mind. Such orders were passed without ascertaining the reasons for non-service and without verifying the factum as to whether all other modes of service were exhausted and were rendered futile. In such circumstances the substituted service being in violation of the law and the rule laid down by the Honourable Supreme Court as referred above could not be deemed to be valid service.
ii) Therefore, when the basic order for initiating ex parte proceedings against the present appellants has no backing of law and has been passed without adopting due process of law, the superstructure and edifice built thereon i.e. subsequent ex parte decree cannot stand because if the same is allowed to hold field, it would definitely infringe the rights of the appellants' inalienable right of defending the case and would amount to condemn the appellants without affording an opportunity of hearing. The above fact is sufficient to condone the delay in filing the application under Order IX, Rule 13, Code of Civil Procedure, 1908.

Conclusion: i) Substitute service cannot be ordered without verifying all efforts to effect the service in the ordinary manner.
ii) Delay in filing the application under Order IX, Rule 13, Code of Civil

Procedure, 1908 can be condoned on the ground that basic order for initiating ex-parte proceedings has no backing of law and has been passed without adopting due process of law.

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22. **Lahore High Court**
Muhammad Akram v. Province of Punjab through Collector and others.
Civil Revision No.5690 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC551.pdf

Facts: Through this civil revision, Petitioner assailed the concurrent findings on record of Civil Court as well Appellate Court whereby his suit for specific performance of agreement to sell was dismissed.

Issues: i) Whether question of law of limitation is a mere technicality or a hyper technicality?
ii) Whether the concurrent findings on record, where no legal infirmity or illegality, can be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) It is a settled law that limitation is not a mere technicality or a hyper technicality rather once limitation expires; a right accrues in favour of the other side by operation of law which cannot lightly be taken away (…) Moreover, it is a settled principle of law that question of law even if not taken or raised by the opposite party, could be considered by the Courts even at appellate and revisional stage.
ii) … however, in the instant case, the learned Courts below have minutely dilated upon the evidence of the parties and have also rightly non-suited the petitioner on merits as well. There appears no legal infirmity or illegality in the impugned judgments and decrees warranting interference by this Court in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908. The findings recorded by the learned Courts below are upheld and maintained. Resultantly, it is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion. The impugned judgments and decrees do not suffer from any infirmity, rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Conclusion: i) Question of law of limitation is not a mere technicality or a hyper technicality.
ii) The concurrent findings on record, where no legal infirmity or illegality, cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

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23. **Lahore High Court**
Sana Ullah v. The State etc.
Crl. Appeal No.78000-J of 2019
Muhammad Arshad v. Sana Ullah, etc.
Crl. Revision No.69601 of 2019
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC631.pdf

Facts: Criminal Appeal was filed by convict/appellant against his conviction and sentence passed under sections 302/427/34 of PPC. The complainant, dissatisfied with the impugned judgment, preferred a Criminal Revision for awarding a death sentence to appellant.

Issues: i) Whether the Medical Evidence is sufficient to connect the accused with the commission of offence?
ii) Whether the joint Identification Parade of many accused in one go is proper and safe?
iii) Whether a single circumstance is sufficient to extend the benefit of doubt to an accused as of, right?

Analysis: i) By now, it is well-settled law that medical evidence can only indicate that the deceased had lost his life due to specific injuries, but it does not lead to the culprits. (…) As far as medical evidence is concerned, it only supports the prosecution case to the extent that the deceased lost his life due to fire-arm injury but it does not lead to the culprits
ii) Apart from that the test identification parade held in this case was a joint parade wherein two accused persons had been made to stand with dummies in two lines and their identification had taken place simultaneously in one go. This Court has also clarified in the cases of Lal Pasand v. The State (PLD 1981 SC 142), Ziaullah alias Jaji v. The State (2008 SCMR 1210), Bacha Zab v. The State (2010 SCMR 1189), Sahfqat Mahmud and others v. The State (2011 SCMR 537) and Gulfam and another v. The State (2017 SCMR 1189) that the identification of many accused in one go is not proper besides being unsafe.
iii) Per the dictates of the law, the benefit of every doubt will be extended in favor of the accused/appellant. The conviction and sentence the trial court recorded cannot be sustained. Reliance has been placed on the case reported as Muhammad Akram v. The State (2009 SCMR 230), wherein the Hon'ble Supreme Court of Pakistan had held that even a single circumstance creating reasonable doubts in a prudent mind about the guilt of the accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.

Conclusions: i) Medical evidence can only indicate that the deceased had lost his life due to specific injuries but it does not lead to the culprits.
ii) Joint Identification Parade test of many accused in one go is not proper besides being unsafe.
iii) Even a single circumstance creating reasonable doubts in a prudent mind

about the guilt of the accused makes him entitled to its benefit, not as a matter of grace and concession but as a matter of right.

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24. **Lahore High Court**
Muhammad Bilal v. The State etc.
Crl. Appeal No.56380 of 2021
Muhammad Saleem v. Muhammad Bilal, etc.
Crl. Revision No.42144 of 2021
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC686.pdf

Facts: Through Criminal Appeal, the appellant has assailed his conviction and sentenced to rigorous imprisonment for life as Tazeer with the direction to pay Rs.5,00,000/- as compensation to the legal heirs of the deceased awarded by the Additional Sessions Judge. The complainant, dissatisfied with the judgment preferred a Criminal Revision for awarding death sentence to respondent.

Issues: i) Whether an adverse inference can be drawn under Article 129 (g) of Qanun-e-Shahadat Order, 1984 upon non-production of a material witness?
ii) Whether site plan can be used to contradict or disbelieve eyewitnesses?
iii) Whether a report of an expert is per-se admissible without examination of the expert?
iv) Is it incumbent upon the prosecution to produce members of the PFSA team who collected the crime empties and prepared separate parcels to prove the chain of safe custody?

Analysis: i) I have noted that the said Constable was not produced as a witness by the prosecution. Thus, it was established from the recovery memo of possession of nine (9) photographs (Ex. PN) that Constable produced the nine (9) photographs (Ex. PN) on 10.08.2018 before S.I. the investigating officer, therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had Constable, been appeared as witness then his deposition would have been unfavorable to the prosecution.
ii) Although the site plan is not a substantive piece of evidence in terms of Article 22 of the Qanune-e-Shahdat Order 1984 as held in the case of Mst. Shamim Akhtar v. Fiaz Akhter and two others (PLD 1992 SC 211), but it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses.
iii) Besides, a bare reading of Section 510 Cr.P.C., a report of an expert is per se admissible without examination of the expert (...) A bare reading of this Section makes it abundantly clear that the reports of the Chemical Examiner or Assistant Chemical Examiner to the Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any Serologist, fingerprint expert, or fire-arm expert or the Chemist or the Pharmacist or the Forensic Scientist or Handwriting expert are admissible per se without they being formally proved by the person who has made the same.

iv) It is in prosecution evidence that a team consisting of the members of the Punjab Forensic Science Agency inspected the place of occurrence, collected evidence, prepared three parcels separately, and handed them over to S.I the investigating officer. The members of the PFSA team are not officers covered by Section 510 of the Code of Criminal Procedure, and thus, the positive report of Punjab Forensic Science Agency (Ex. PW) is not conclusive and reliable in the absence of the officers above being examined in Court, who collected and prepared the parcels from the spot and prepared separate parcels to prove the fact that they collected evidence from the place of the occurrence and after that, they prepared parcels which were handed over to S.I the investigating officer. The report in question is of no help to the prosecution as there is nothing on record to prove that the three parcels alleged to have been made by the members of the PFSA team on the spot. Thus, there can be no dispute that it was incumbent upon the prosecution to produce members of the PFSA team who collected the crime empties and prepared separate parcels to prove the chain of safe custody. Without such proof, the PFSA report cannot corroborate the prosecution's case.

Conclusion: i) An adverse inference can be drawn under Article 129 (g) of Qanun-e-Shahadat Order, 1984 upon non-production of a material witness.
ii) Site plan can be used to contradict or disbelieve eyewitnesses.
iii) A report of an expert is per-se admissible without examination of the expert.
iv) It is incumbent upon the prosecution to produce members of the PFSA team who collected the crime empties and prepared separate parcels to prove the chain of safe custody.

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25. **Lahore High Court**
Syed Sibt Hassan v. Saba Batool etc.
Writ Petition No.38567/2022
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC572.pdf

Facts: The respondents No.1 & 2 in this writ petition, who are also petitioners in connected Petition, filed a family suit for recovery of maintenance allowance, dowry articles, delivery expenses and dower against the petitioner and suit was decreed by the Trial Court, however, the claim of respondent No.1 for dower was dismissed. The respondents filed constitutional petition, wherein the matter was remanded back to the appellate court to decide the question of dower while recording the finding about validity and effect of the Agreement. In post-remand proceedings, the appellate court upholds the validity of the agreement. The petitioner being aggrieved of the impugned judgment & decree has filed this constitutional petition.

Issues: i) Whether burden to prove the agreement regarding enhancement of dower after marriage lies on the beneficiary?
ii) Whether enhancement of dower amount after marriage is permissible and executable under law?

Analysis: i) Regarding validity of the Agreement, no doubt under Section 17 of the Family Courts Act, 1964 (Act), the Qanun-e-Shahadat Order, 1984 (QSO) and the Code of Civil Procedure, 1908 (CPC) are not applicable in family matters, however, as the respondents were beneficiary of the Agreement, initially the burden of proof was on them to prove the execution of the Agreement.

ii) There is no cavil with the proposition settled by the Supreme Court in case of 'Muhammad Bashir Ali Siddiqui' supra, followed by this Court in case of 'Muhammad Asif' supra (relied upon by petitioner's counsel) that a stringent condition cannot be imposed to keep the parties in marriage bond. However, perusal of the Agreement shows that the petitioner agreed to pay enhanced amount as dower in case of divorce. This stipulation in the Agreement is not stringent condition imposed to keep the parties in marriage bond rather it is enhancement of the dower amount by the husband, which is not only permissible but also executable as discussed below. Under Para-287 of the "Principles of Mahomedan Law" by DF Mulla, the dower may be fixed either before or at the time of marriage or after marriage and can also be increased after marriage…

Conclusion: i) Burden to prove the agreement regarding enhancement of dower after marriage lies on the beneficiary.

ii) Enhancement of dower amount after marriage is not only permissible but also executable under law.

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26. **Lahore High Court**
The State v. Umer Draz and etc.
Murder Reference No.223 of 2019
Umer Draz etc. v. The State
Criminal Appeal No. 44377 of 2019
Rahtas Khan v. Tariq Aziz
P.S.L.A.No.55094 of 2019
Rahtas Khan v. Abdul Ghafar
Criminal Revision No. No.55096 of 2019
Mr. Justice Sadaqat Ali Khan, Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC714.pdf

Facts: Appellants had filed Criminal Appeal against their convictions u/s 302/324/148/149 PPC, complainant filed Crl.P.S.L.A against acquittal of respondents/co-accused and Crl.Rev. for enhancement of compensation whereas trial Court had sent Murder Reference for confirmation of death sentence.

Issues: (i) Duty of a Court in dealing with cases of two versions?

(ii) Evidentiary value of recovery effected on the pointation of accused in absence of positive report of PFSA?

(iii) Relevance of nature of offence at the time of appraising or re-appraising evidence to determine the guilt of accused persons?

(iv) Effect of failure on part of the prosecution to prove its case?

Analysis: (i) The duty of a Court in such like cases is to review entire evidence and circumstances at the close, before arriving at a conclusion regarding the truth or falsity of the defence plea. All factors favouring belief in accusation must be placed in juxta position to the corresponding factors favouring the plea in defence. However, it is not ignored that basic duty of the prosecution to prove its own case beyond shadow of doubt against an accused. If prosecution is failed to prove its case beyond shadow of doubt against an accused then there is no need to consider prosecution case and defence plea in juxta position with each other rather an accused is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased.

(ii) Recovery on pointing out of (appellants), respectively in absence of positive report of PFSA regarding matching of crime empties with weapons of offence is inconsequential.

(iii) Gruesome, heinous and brutal nature of the offence may be relevant at the stage of awarding suitable punishment for conviction but it is totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused persons as possibility of an innocent person having been wrongly involved in cases of such nature cannot be ruled out. An accused person is presumed to be innocent till the time he is proven guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against an accused beyond reasonable doubt on the basis of legally admissible, confidence inspiring, trustworthy and reliable evidence which is missing in the present case.

(iv) Law is settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased.

Conclusion: (i) The duty of a Court in such like cases is to review entire evidence and circumstances at the close, before arriving at a conclusion regarding the truth or falsity of the defence plea.

(ii) See analysis part.

(iii) Nature of the offence may be relevant at the stage of awarding suitable punishment for conviction but it is totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused persons.

(iv) See analysis part.

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27. **Lahore High Court**
Commissioner Inland Revenue v. Muhammad Osman Gul
ICA No.35908 of 2023
Mr. Justice Shahid Karim, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC463.pdf

Facts: This judgment decided a cluster of Intra Court Appeals brought by the Income Tax Department/Federal Board of Revenue (FBR) and brought by the private

parties to challenge the judgment passed by a learned Single Judge of this Court and a large number of connected constitutional petitions which were decided by the same judgment.

Issues: i) What is the scope of judicial review in case of imposition of tax by the legislature?
ii) What is the definition of word "income" in Income Tax Ordinance, 2001?
iii) Whether object of Section 7E of Income Tax Ordinance, 2001 can be defeated on the ground that the legislature does not have power to tax deemed income?
iv) What is the legislative intent of Section 7E of Income Tax Ordinance, 2001?
v) What is meant by taxable income?
vi) What is the concept of inserting Section 7E in the Finance Act, 2022?
vii) Whether Entry 47 applies to the provisions of Section 7E and is a tax on income duly covered by the term as defined in section 2(29) of the 2001 Ordinance?
viii) Whether the legislature can impose a tax on certain set of persons and to grant exemption in respect of the other set of persons?
ix) Whether a person may be subjected to more than one tax on his income?
x) What is the intention of legislature by not defining the term 'income' in the Constitution?
xi) What does the sentence "any amount treated as income under any provision of this Ordinance" connotes under The 2001 Ordinance?
xii) Whether the courts can rely upon Parliamentary debates?
xiii) Whether the courts can use the device of reading down in order to re-write a statutory provision?
xiv) Whether taxpayers were being subjected to double taxation under section 7E and section 37 of the Ordinance as these were taxes of same genus?
xv) Whether classification in section 7E in respect of capital assets allotted to certain persons is discriminatory?

Analysis: i) From the portion of the 'Treatise' set out above, it is clear that the power of taxation is unlimited in its reach as to subject and by its very nature it acknowledges no limits and may be carried to any extent which the government may find expedient. The judiciary can afford no redress against taxation so long as the legislature in imposing it keeps within the limits of legislative authority and violate no express provisions of the constitution. The 'Treatise' by Cooley relied upon hereinabove is a seminal study of taxation and is considered as an authority on the subject of taxes and their nature and kinds.
ii) This is true basis on which we have proceeded to consider the extent and meaning of the word 'income' as used in the Constitution and the law and have arrived at the conclusion by recognizing that the word 'income' has taken colour and content according to the circumstances and the times in which it has been used in the 2001 Ordinance. (…) The simple proposition in our opinion is that if the term 'income' has not been defined in a certain manner by the Constitution, it

must be given its widest and broadest meaning and the amplitude of the term cannot be confined to mean a certain thing and not the other. It would then be left to the legislature to define the term 'income' which has been done by providing a definition in the 2001 Ordinance as set out above.

iii) Applying the purposive approach to the interpretation of Section 7E, we have no doubt that the purpose that the provision was enacted to accomplish, was to treat as income chargeable to tax, an amount equal to five percent of the fair market value of capital assets, which the taxpayers use for increase in wealth on account of rise in value of the immovable property. The purpose is also clear from the speech of the Finance Minister and the accomplishment of the object of section 7E cannot be frustrated by holding that the legislature does not have power to tax deemed income.

iv) The tax has been levied on notional income but not a notional asset (from which it is deemed to arise). The legislature has intended to tax an asset apparently lying dormant and not generating an income in cash but indeed capable of increment in value. It is that value addition that section 7E seeks to tax. Notionally the augmentation in value does become part of taxpayer's income.

v) Thus, taxable income as envisaged in the Ordinance would mean the total income of a person for the year reduced by the total of any deductible allowances. Section 10 of the Ordinance further defines the term 'total income' to mean a persons' income under all heads of income for the year. The heads of income have been provided in section 11 and include salary, income from property, income from business, capital gains and income from other sources. These heads of income clearly relate to real and tangible income and so the legislature in including the words "any amount treated as income under any provision of this Ordinance' was cognizant of what taxable income was and so proceeded to extend the meaning of the term 'income' to include deemed and notional income imputable to a taxpayer.

vi) The definition of 'income' given in the 2001 Ordinance does not restrict the meaning of the term 'income' but uses the word 'includes' which would leave it open for a specific sum to be included in the term 'income' as the case may require. By the Finance Act, 2003 the words "any amount treated as income under any provision of this Ordinance" were added to the definition. With the addition of these words in the term 'income', we cannot help concluding that the legislature would deem any amount to be income if it has been treated as such under any provision of the 2001 Ordinance. It does not matter whether the amount so treated is tangible income in the form of cash or money or rather notional or deemed income. If the legislature treats a certain amount as income then it must be held to be income for the purposes of chargeability of tax. This is precisely what Section 7E has done by treating an income to be the notional income of a taxpayer at a certain time. We may clarify however that the notional income is not such that it is incapable of being realised at a future time and in fact the premise of taxation under Section 7E is that in the foreseeable future that notional income would be converted into real tangible income in the hands of the taxpayer. Section

7E presumes that a resident person has certain capital assets situated in Pakistan which though do not generate any income chargeable to tax but may be so charged to a notional income which the resident person shall be treated to have derived. The measure of tax is an amount equal to 5% of the fair market value of capital assets situated in Pakistan.

vii) Thus, we have no doubt in our mind that Entry 47 applies to the provisions of Section 7E and is a tax on income duly covered by the term as defined in section 2(29) of the 2001 Ordinance. The legislature has treated deemed/ notional income of a taxpayer holding a capital asset situated in Pakistan as a category of income and so the taxpayers cannot turn around and say that he cannot be taxed on such income being ultra vires. If this were the case, the petitioners before the learned Single Judge ought to have challenged the words inserted by Finance Act, 2003 by which the notion of deemed income was introduced in the 2001 Ordinance.

viii) Entry 47 simply says that the legislature has the power to impose taxes on income other than agricultural income. The learned Addl. Attorney General is right when he contends that the words used would mean a wide array of different taxes which may be imposed on income and this is clearly discernible from reading of the Ordinance which indeed imposes taxes of different nature on the income of a person or different persons.

ix) It may be that the legislature chooses to impose a tax on certain set of persons and to grant exemption in respect of the other set of persons. By this mere categorization the tax will not be unconstitutional. Moreover, a person may be subjected to more than one taxes on his income to be caught by double taxation. In case the law permits clearly and without equivocation, such a tax would not be unlawful by the mere fact that it taxes the same income twice over.

x) As stated earlier, the term 'income' has not been defined in the Constitution. The intention is clear and we do not harbour any doubt in this regard viz. that the framers of the Constitution intended the term to be elastic in the hands of the legislature to define it in whatever manner it deems appropriate in a given case. This is the very essence of Entry 47 and to attribute an intention to restrict or circumvent the powers of the legislature to define the term 'income' would be an unconstitutional argument.

xi) For the purposes of these cases, the important words in the definition are "any amount treated as income under any provision of this Ordinance". These words do not convey the meaning as proffered by the learned Single Judge to mean that the word "amount" used in this sentence would relate to a tangible and realisable amount and not an amount which is notional. This would be reading the word 'amount' separately and out of context with the entire sentence reproduced above. The sentence "any amount treated as income under any provision of this Ordinance" has to be read as a whole. Clearly, these words, when read as a whole, would convey ineluctably that the legislature may treat any amount as income and the use of word 'treated' is crucial and would connote an amount which may be deemed or imputed as income. Otherwise there was no logical basis for insertion of these words so as to confer power on the legislature to treat certain amounts as

income. The purpose of these words cannot be defeated by a fantastic set of reasoning to achieve a desired result.

xii) It is not unusual for the courts to rely upon Parliamentary debates as an extrinsic material to gauge the intention of the legislation. The milestone case in relation to looking beyond the legislative wording was Pepper v. Hart (1992) 65 TC 421 which opened up transcendent interpretative possibilities by allowing reference to parliamentary record to establish parliamentary intention while interpreting legislation which is ambiguous or obscure. The case of Pepper has been cited with approval by our superior courts which have also used the concept to analyse the parliamentary debates for reaching the true intention behind a legislative measure.

xiii) Suffice to say that the courts cannot use the device of reading down in order to re-write a statutory provision. There is no compulsion on the courts to save legislation and if it is beyond the legislative competence and is unconstitutional, it must be struck down and not saved.

xiv) Mr. Shahbaz Butt, Advocate, representing some of the respondents drew a comparison between section 7E and section 37 of the Ordinance to assert that the taxpayers were being subjected to double taxation as these were taxes of same genus. This argument was not raised before the learned Single Judge and thus there is no obligation on us to consider it at the appellate stage. Yet, the argument is rebutted with the following observations: • Section 7E concerns with tax on income whereas section 37 is a tax on capital gains. • Income is either earned or deemed to be earned from various sources during the tax year regardless of sale or disposal of any asset whereas tax on capital gains is a tax on profits arising from eventual sale/ disposal of an asset. (…) It is clear from the above illustrations that the incidence of tax in respect of both sections 7E and 37 of the Ordinance are distinct and separate and are triggered under different circumstances. There is no duplication in the imposition of taxes under Section 7E and 37 and the question of double taxation does not arise.

xv) The classification which was made in section 7E is in respect of capital assets allotted to certain persons which include Shaheeds of Pakistan Armed Forces or their dependents, persons who died while in the service of Pakistan Armed Forces or Federal or Provincial Government etc. It must be borne in mind that the exclusion is in respect of capital asset and not in respect of persons and strictly therefore the provisions of Article 25 are not attracted. If the rule applied by learned Single Judge were to hold sway, the entire Sub-section (2) should have been struck down being discriminatory and not merely clause (d) of Sub-section (2).

Conclusions: i) The judiciary can afford no redress against taxation so long as the legislature in imposing it keeps within the limits of legislative authority and violate no express provisions of the constitution.

ii) The word ‘income’ takes colour and content according to the circumstances and the times in which it has been used in the 2001 Ordinance.

iii) The object of section 7E of Income Tax Ordinance, 2001 cannot be frustrated by holding that the legislature does not have power to tax deemed income.
iv) The legislature has intended to tax an asset apparently lying dormant and not generating an income in cash but indeed capable of increment in value. It is that value addition that section 7E seeks to tax. Notionally the augmentation in value does become part of taxpayer's income.
v) Taxable income as envisaged in the Ordinance would mean the total income of a person for the year reduced by the total of any deductible allowances.
vi) Section 7E presumes that a resident person has certain capital assets situated in Pakistan which though do not generate any income chargeable to tax but may be so charged to a notional income which the resident person shall be treated to have derived. The measure of tax is an amount equal to 5% of the fair market value of capital assets situated in Pakistan.
vii) Entry 47 applies to the provisions of Section 7E and is a tax on income duly covered by the term as defined in section 2(29) of the 2001 Ordinance.
viii) If the legislature chooses to impose a tax on certain set of persons and to grant exemption in respect of the other set of persons. By this mere categorization the tax will not be unconstitutional.
ix) A person may be subjected to more than one taxes on his income to be caught by double taxation. In case the law permits clearly and without equivocation, such a tax would not be unlawful by the mere fact that it taxes the same income twice over.
x) The term 'income' has not been defined in the Constitution. The intention is clear that the framers of the Constitution intended the term to be elastic in the hands of the legislature to define it in whatever manner it deems appropriate in a given case.
xi) The sentence "any amount treated as income under any provision of this Ordinance" connotes that the legislature may treat any amount as income and the use of word 'treated' is crucial and would connote an amount which may be deemed or imputed as income.
xii) It is not unusual for the courts to rely upon Parliamentary debates as an extrinsic material to gauge the intention of the legislation.
xiii) Suffice to say that the courts cannot use the device of reading down in order to re-write a statutory provision.
xiv) Incidence of tax in respect of both sections 7E and 37 of the Ordinance are distinct and separate and are triggered under different circumstances.
xv) The classification which was made in section 7E is in respect of capital assets allotted to certain persons. That exclusion is in respect of capital asset and not in respect of persons and strictly therefore the provisions of Article 25 are not attracted.

28. **Lahore High Court**
Muhammad Younas Khan and 15 others v. Sui Northern Gas Pipelines Limited (SNGPL) Through its Managing Director and 4 others
Writ Petition No.4315 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC748.pdf

Facts: The petitioners, registered distribution contractors, challenged a memorandum issued by Sui Northern Gas Pipelines Limited (SNGPL) regarding security deposits and conditions for pre-qualification.

Issues: i) Whether a memorandum can be given effect retrospectively?
ii) Whether High Court can settle the terms and contract inter-se parties?
iii) In what situations High Court exercises its constitutional jurisdiction in the matter of contractual obligations?
iv) Whether anyone can be deprived to earn his livelihood because of the unfair or discriminatory treatment on the part of any State functionary?

Analysis: i) It is trite law that a notification/memorandum or an executive order cannot operate retrospectively unless it is specifically provided therein.
ii) There is no cavil that High Court in exercise of constitutional jurisdiction can neither settle the terms and conditions of the contract inter-se parties nor direct the executive to insert or exclude certain condition in the contract, which undoubtedly is within the domain of the executive.
iii) There is also no denial to the proposition that in the matter of enforcement of contractual obligations, High Court in ordinary course abstains to exercise constitutional jurisdiction for enforcement of the terms and conditions of the contract or to remedy the breach of contract but at the same time the constitutional jurisdiction cannot be abridged if some perversity or patent illegality is floating on the surface of the record. It is an oft repeated principle of law that though constitutional jurisdiction ordinarily should not be exercised in case of breach of contract but if such breach does not entail any inquiry or examination of minute or controversial questions of fact, if committed by Government, semi-Government or Local Authorities it can adequately be addressed in exercise of jurisdiction contemplated under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.
iv) Needless to mention here that right of trade and business is guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. While discharging official functions efforts should be made to ensure that no one should be denied to earn his livelihood because of the unfair or discriminatory treatment on the part of any State functionary.

Conclusion: i) It is trite law that a notification/memorandum or an executive order cannot operate retrospectively unless it is specifically provided therein.

ii) There is no cavil that High Court in exercise of constitutional jurisdiction can neither settle the terms and conditions of the contract inter-se parties nor direct the executive to insert or exclude certain condition in the contract.
iii) See above in analysis clause.
iv) While discharging official functions efforts should be made to ensure that no one should be denied to earn his livelihood because of the unfair or discriminatory treatment on the part of any State functionary.

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29. **Lahore High Court**
Mehwish Mughal and another v. Amira Bukhari etc.
C.R.No.16524/2023
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC726.pdf

Facts: Through this civil revision the petitioners have challenged the validity of the judgment & decree passed by the Civil Judge who dismissed the suit for declaration and cancellation of documents, possession through partition with permanent injunction filed by the petitioners and also assailed the judgment & decree passed by the Additional District Judge who dismissed the appeal of the petitioners.

Issues: i) Whether presumption of truth is attached to the judicial proceedings and records?
ii) Whether onus to prove of alleged fraud in inheritance mutation must be dislodged by the defendant once it shifted from plaintiff side?
iii) Whether inheritance opens to the legal heirs right after the death of the person according to principles of Quran and Sharia and any unauthorized entry in the revenue record can affect such right?
iv) What is the main object of registration and sanctioning of mutation of inheritance and whether limitation can run against the inheritance matters as well as against any patently void order/entry?
v) Whether High Court has jurisdiction to interfere with illegal and perverse concurrent findings of the lower fora?

Analysis: i) It is settled law that presumption of correctness/sanctity/truth is attached to the judicial proceedings/judicial record.
ii) Once the plaintiffs challenged the inheritance mutation while in the plaint asserting the existence of fraud and subsequently proved the same through cogent evidence, thus onus was shifted upon the defendants to prove the validity of the said mutation through affirmative and corroborative evidence (…)
iii) The moment predecessor closed his eyes, all his legal heirs according to the principles of Quran & Sharia became absolute owner to the extent of their respective shares in estate of the deceased and without resorting to the legal course of independent transaction, the said ownership cannot be taken away by means of any unauthorized entry in the revenue record and if any entry is made in

clandestine manner with collusiveness of the revenue staff, such entry is devoid of any legality and creating any valid right (…)
iv) The main object of registration and sanctioning of mutation of inheritance is mere formality to update the official record whereas all legal heirs of a deceased become absolute owners of the property to the extent of their respective share until and unless they themselves voluntarily and legally further alienate their said share/right and the said legal heirs by operation of law become joint owners in the estate having constructive possession over their share and no limitation runs against the inheritance matters as well as against any patently void order/entry.
v) When the decisions of the lower fora suffer from blatant misreading and non-reading of the evidence as well as misapplication of law, as such the same are not sustainable in the eyes of law and are liable to be set-aside than High Court is well within jurisdiction under section 115 CPC to interfere with illegal and perverse concurrent findings of the lower fora (…)

Conclusion: i) Yes, presumption of truth is attached to the judicial proceedings and records.
ii) Yes, onus to prove of alleged fraud in inheritance mutation must be dislodged by the defendant once it has shifted from plaintiff side.
iii) Yes, inheritance opens to the legal heirs right after the death of the person according to principles of Quran and Sharia and any unauthorized entry in the revenue record cannot affect such right.
iv) The main object of registration and sanctioning of mutation of inheritance is mere formality to update the official record and no limitation can run against the inheritance matters as well as against any patently void order/entry.
v) Yes, High Court has jurisdiction under section 115 CPC to interfere with illegal and perverse concurrent findings of the lower fora.

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30. **Lahore High Court**
Bakhsh v. Member (Judicial VII), Board of Revenue etc.
Writ Petition No. 56073/2020
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC737.pdf

Facts: The Petitioner obtained state charagah land under lease scheme but lease was cancelled due to non-payment of lagaan. Thereafter, the petitioner filed application for purchase of the state land through private treaty which was dismissed. The respondents No.3 & 4 filed separate applications for lease of state land under lambardari grant. District Collector allotted land to the respondents No.3 & 4, leading to legal challenges and appeals. The Member, Board of Revenue recalled the consolidated order passed in revision petitions of the parties, set aside the order passed by the Additional Commissioner (Revenue) and upheld the order passed by the District Collector. Hence, these two writ petitions have been filed.

Issues: i) Whether possession of tenant/lessee over the land leased amount to illegal after expiry/cancellation of lease and law always leans in favour of the law abiding

person?

ii) Whether proprietary rights can be granted on charagah land or it can be sold through private treaty to any person?

iii) Whether state charagah land can be converted into simple state land for its onward allotment against any sort of claim, grant of its proprietary rights or any other alternative use?

iv) Whether state land under lumberdari grant can be granted second time to same person or his family member?

Analysis: i) The appeals of the petitioners were also dismissed thus the petitioners were no more tenants/lessees over the land in question and after expiry/cancellation of lease, the possession of the petitioners over the said land is that of an illegal nature. It is well settled that law always leans in favour of the law abiding persons and lends nil support to the illegal occupants, usurpers, transgressors, encroachers and grabbers of the State land.

ii) Moreover, admittedly, land in question is a Charagah land and under the law/policy neither its proprietary rights can be granted nor it could be sold through private treaty to any person. With regard to the Charagah land and its settled objectives of utilization, a policy Notification dated 3rd September 1979 (under Temporary Cultivation Lease Scheme) and Notification dated 20th April, 1983 were issued by Colonies Department which placed an embargo on the grant of proprietary rights of Charagah land and such lands were expressly excluded from any grant or grant of proprietary rights under Temporary Cultivation Lease Scheme. In Clause 2 of the aforementioned notification dated 03.09.1979 following lands have been excluded from every grant… Through another Notification No.1925-83/1253-CLI dated 20th April, 1983, the Govt. of the Punjab Colonies Department, the Charagah Land was excluded from any grant of proprietary rights… In the subsequent Notification No.7402-86/374-CLI dated 1st February, 1995, issued by the Board of Revenue, Punjab, Lahore, a clarification has been furnished regarding the land of prohibited Zone previously enunciated under notifications of 1979 and 1983 for the purpose of grant of proprietary rights… In the policy notification dated 04.02.1998, the exception from grant of proprietary rights of state charagah land remained intact… Perusal of the afore quoted policy notifications makes it abundantly clear that Charagah lands have expressly been excluded from any kind of grant or grant of proprietary rights, as such its any alienation or grant under Lambardari grant will straightway offend policies on the subject.

iii) The successive policies/notifications on the subject manifestly place restrictions on conversion of the State charagah land into simple state land for its onward allotment against any sort of claim, grant of its proprietary rights or its any other alternative use. Further change of character of the Charagah land was subservient to the manifestly described wider scope of public purpose, which is to be adjudged objectively by the Board of Revenue.

iv) As regard the grant of lease of the land in question to respondents No.3/

Lambardar is concerned, suffice it to say that respondent No.3 is descendant of Latkan s/o Karam who had earlier obtained land under Lumberdari grant and then proprietary rights were granted to him on 19.01.1957 and mutation was accordingly incorporated on 22.03.1957, thus the second time allotment of the State land under lumbardari grant is not warranted by law. Reference in this regard is made to Clause 16(h) of the General Colony Conditions 1938 wherein the word "grantee"… Similarly "tenant" has been defined in Section 3 of the Colonization of Government Lands (Punjab) Act, 1912…The Colonies Department, Government of the Punjab vide notification No.3910-76/2686-CV dated 13.07.1976 while describing the conditions for disposal of Lambardari grant held that the grant of state land shall be subject to the General Colony Conditions 1938…As the predecessor of respondent No.3 had already been granted state land under Lambardari Grant as such the respondent No.3 is not entitled for any new allotment under the said grant. As perNotification No.315-90/1593-CV dated 29.10.1990, a family member cannot obtain more than one lot as Lumberdari Grant as such the respondent No.3 is not eligible for grant of land. The Colonies Department, Government of Punjab has issued notification dated 17.01.2006 regarding statement of conditions for grant of state land on lease to the Lambardars wherein in Clause 7, the ineligibility criteria has been given…

Conclusion: i) The possession of tenant/lessee over the land leased amount to illegal after expiry/cancellation of lease and law always leans in favour of the law abiding person.
ii) Proprietary rights cannot be granted on charagah land and it cannot be sold through private treaty to any person.
iii) State charagah land cannot be converted into simple state land for its onward allotment against any sort of claim, grant of its proprietary rights or any other alternative use.
iv) State land under lumberdari grant can be granted second time to same person or his family member.

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31. **Lahore High Court**
The State v. Muhammad Kashif
Capital Sentence Reference No. 01 of 2020
Muhammad Kashif Vs. The State
Criminal Appeal No. 285- J of 2020
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC587.pdf

Facts: Convict lodged Criminal Appeal through jail assailing his conviction and sentence. The trial court submitted capital sentence reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Whether the confession before Investigating officer or other Police Officials during the custody is admissible as per law?

ii) When article 40 of the Qanun-e-Shahadat Order, 1984 comes into operation?
iii) Whether prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt?
iv) Whether all the citizens, regardless of religion, are equal before law?
v) Who is to prove the guilt of the accused?
vi) Whether a single circumstance is enough to extend the benefit of doubt to the accused?

Analysis: i) The accused, while in the custody of the police, if confessed to his guilt before the Investigating Officer of the case and other police officials, the same cannot be considered as proof against the accused. Articles 38 and 39 of the Qanun-e-Shahadat Order,1984 are quite clear on the subject and such admission, in view of the above said Articles of the Qanun-e-Shahadat Order,1984, is inadmissible.

ii) Article 40 of the Qanun-e-Shahadat Order, 1984 comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody. Thus, in order to apply Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source.

iii) It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person. Even evidence of an uninterested witness, not inimical to the accused, may be corrupted deliberately while evidence of an inimical witness, if found consistent with the other evidence corroborating it, may be relied upon…It is a known and settled principle of law that the prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw a conclusion whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges, so imputed against the accused, have not been proved beyond a reasonable doubt, then the accused becomes entitled to acquittal. In such a situation the Court has no jurisdiction to abridge such right of the accused. To ascertain as to whether the accused is entitled to the benefit of the doubt the Court can conclude by considering the agglomerated effect of the evidence available on record…

iv) Citizens, regardless of religion, are equal before law and entitled to equal protection thereof and it is so guaranteed under the Constitution.

v) It is a well settled principle of law that one who makes an assertion has to prove it. Thus, the onus rests on the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial. Presumption of innocence remains throughout the case until such time the prosecution on the evidence satisfies the Court beyond reasonable doubt that the accused is guilty of the offence alleged against him. There cannot be a fair trial, which is itself the primary purpose of

criminal jurisprudence, if the judges are not able to clearly elucidate the rudimentary concept of the standard of proof that the prosecution must meet in order to obtain a conviction.

vi) Where there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of criminal justice…It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) In view of the Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, the confession before Investigating officer or other Police Officials during the custody is inadmissible.

ii) Article 40 of the Qanun-e-Shahadat Order, 1984 comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody.

iii) It is a known and settled principle of law that the prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling.

iv) Citizens, regardless of religion, are equal before law and entitled to equal protection thereof and it is so guaranteed under the Constitution.

v) The onus rests on the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial.

vi) It is not necessary that there should be so many circumstances rather a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused.

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32. **Lahore High Court**
Netherlands Financierings Maatschappij Voor Ontwikkelingslanden N.V. (F.M.O.) v. Morgah Valley Limited and SECP
Civil Original No.08 of 1989
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1.pdf

Facts: The Respondent Company failed to pay back loan amount secured from the Petitioner through agreement executed between them, where-after order for winding up the respondent Company was passed in the Petitioner's petition and Civil Appeal preferred by the Respondent Company was dismissed in default by the Supreme Court of Pakistan, thus, execution proceedings were conducted ahead, but not a single penny was paid to the Petitioner. This detailed order is intended to decide aforementioned longstanding dispute pending amongst the parties in relation to non-payment of loan amount mentioned afore, which has now finally been paid by the Respondent Company to the Petitioner through process of mediation.

Issues: i) What is mediation?
ii) How mediation may benefit parties to litigation?
iii) What is the value of international covenants/declarations in absence of availability of specific law in Pakistan?
iv) Whether the Court may initiate mediation amongst parties to *lis*, brought under the Companies Ordinance, 1984, for resolution of a corporate dispute under Section 276 and 277 of the Companies Act, 2017?

Analysis: i) Mediation involves the intervention of a third person/mediator to assist the parties in negotiating jointly acceptable resolution of issues in conflict. The mediator, as a neutral third party, in the process of mediation views the dispute objectively and assists the parties in considering alternatives and options that they might not have considered.
ii) Mediation tends to be a faster method of resolution of disputes, putting more control in the hands of the parties involved. The mediation process preserves relationship of parties as they actively engage in finding mutually agreeable solutions. The flexibility of mediation allows for a more personalized and tailored resolution to the specific needs and concerns of the parties involved.
(iii) In case of absence of specific provisions in the law of country, the approach to follow guidelines and principles formulated in international covenants has already been recognized by Supreme Court of Pakistan in various cases.
iv) No specific and clear provision enabling the Court to initiate mediation process is available in the Companies Ordinance, 1984 and so is the case in the Companies (Court) Rules, 1997. However, Section 276 (1) of the Companies Act, 2017 authorizes the parties to proceedings before the Securities Exchange Commission of Pakistan or the Appellate Bench to apply, with mutual consent, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. Moreover, under Section 277 of the Act ibid, a company, its management or its members or creditors may by written consent, directly refer a dispute, claim or controversy arising between them or between the members or directors inter-se, for resolution, to any individual enlisted on the mediation and conciliation panel maintained by the Securities Exchange Commission of Pakistan under Section 276(2) of the Act ibid. The Courts are also expected to decide the disputes brought before them by the parties within a reasonable time and in an expeditious manner.

Conclusion: i) Mediation is a process where the parties meet with a mutually selected impartial and neutral person who assists them in negotiating their differences.
ii) The mediation can be a potent tool, offering parties to *lis* the chance to make substantial cost savings if a settlement can be reached and it helps parties to identify aspects of the dispute that may not warrant litigation.
(iii) Though international covenants/declarations are not binding upon courts of the Pakistan, however, they carry quite a considerable persuasive value in absence of specific law in the Country.
iv) Making basis upon the strong principles developed by Supreme Court of Pakistan to safeguard the interest of the Company and to resolve corporate

dispute, Section 276 and 277 of the Companies Act, 2017 can be invoked in order to protect the interest of the Company by initiating the process of the Early Neutral-Party Evaluation and then mediation.

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33. **Lahore High Court**
Zafar v. The State
Criminal Appeal No.79782-J/2022
Mazhar v. The State
Criminal Appeal No.79783-J/2022
Feroz v. The State
Criminal Appeal No.79784-J/2022
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC579.pdf

Facts: Through these criminal appeals the appellants assailed their convictions and sentences passed by Addl. Sessions Judge/trial court in case/FIR registered under Sections 302, 34 PPC.

Issue: Whether direct surviving legal heirs of the deceased are quite competent to effect compromise under Section 345 (2) of Cr.P.C., where punishment has been passed as Ta'zir?

Analysis: Admittedly in this case, appellants have been convicted under Section 302 (b) PPC and sentenced as Ta'zir. It is trite law that direct surviving legal heirs of the deceased are quite competent to effect compromise under Section 345 (2) Cr.P.C. where punishment has been passed as Ta'zir. In this case, two widows of the deceased, son, daughters of the deceased are the only surviving legal heirs of the deceased as father and mother of the deceased, respectively have died. It is worth mentioning here that father of the deceased died prior to murder of the deceased, however, though mother died after the occurrence yet her legal heirs cannot be termed as legal heirs of deceased by any stretch of imagination for the purpose of compromise in this case…….. Though as per reports of learned Sessions Judge, Chiniot (mentioned above), compromise is incomplete between the legal heirs of the deceased and the appellants because brother and sister of the deceased, respectively have not entered into compromise, however, keeping in view the dictum laid down in Muhammad Yousaf's case (supra), Zulifqar and Mst. Khairan Bibi (mentioned above) are not legal heirs of the deceased of the case for the purpose of compounding the offence as this is case of Ta'zir, so aforementioned reports of learned Sessions Judge, to said extent are misconceived and as such discarded.

Conclusion: Direct surviving legal heirs of the deceased are quite competent to effect compromise under Section 345 (2) of Cr.P.C., where punishment has been passed as Ta'zir.

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34. **Lahore High Court**
Ghulam Mustafa v. Muhammad Mushtaq, etc.
Civil Revisions No. 390, 479, 480 of 2020 and Crl.Org. No.11 of 2021
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC560.pdf

Facts: These civil revisions are filed against orders and judgments of Civil Judge Ist Class and Additional District Judge whereby objection petition filed by respondent No. 1 was allowed, and appeals filed by petitioners were dismissed. Similarly, Crl. Org. No.11-W of 2021 in Civil Revision No.390 of 2020 filed by petitioner is also being decided through this single judgment.

Issues: i) Whether a party to the suit, which has finally been decreed, can move any application before the court for resolution of a question arising out of execution of the decree where no execution petition was filed by the decree holder?
ii) What matters are covered under exclusive jurisdiction of an executing court under section 47 of C.P.C?
iii) Whether concurrent findings of both the courts below on a question of fact can be taken to any exception at revisional stage by High Court?
iv) What are the basic ingredients for a petitioner to initiate contempt proceedings in respect of violation of any injunctive order and what is required for awarding punishment under Order XXXIX Rule 2(3) of CPC?

Analysis: i) … So, all questions that arise between parties or their representatives having nexus with the execution, discharge or satisfaction of the decree must be decided under section 47 of CPC. The words "all questions arising" should be read to denote as "all questions directly arising". These words only mean that the questions must be such that they relate to or affect the rights of the parties to the suit during the course of execution of decree. The expression "relating to execution" has not been defined elsewhere in the Code of Civil Procedure probably with the intention of leaving it flexible, vividly with the purpose to include any question that either hinders or affects the rights of any of the parties and it would even apply to a dispute arising in relation to execution of a decree after it had been executed as it would be a dispute relating to the execution of a decree before it had been executed. The question as to deficient or flawed execution essentially is one relating to the execution of a decree, therefore, such question must also be answered and resolved by the executing court as per the provisions of section 47 of CPC. Similarly, the words "the court executing the decree" in no way restrict the applicability of section 47 of CPC only to the proceedings initiated by the decree holder. This section would also be applicable to the proceedings initiated by the judgment debtor in case of flawed execution of decree. Therefore, filing of an application by one of the judgment debtors even in the absence of any execution petition before the court could not be objected to on the ground that no execution petition was filed by the judgment debtor for the

execution of the decree particularly when the right of judgment debtor has been affected by the wrong implementation of decree.

ii) There is no cavil with the proposition that the spirit and object of the provisions of section 47 of CPC is to provide swift relief to the parties in a matter arising out of execution of decree. The exclusive jurisdiction of an executing court in view of the scope of section 47 of CPC will indeed cover all matters concerned with the execution including wrong/flawed implementation of decree, discharge or satisfaction of an existing decree between the same parties.

iii) Where concurrent findings of both the courts below on a question of fact are based on proper appreciation of material available on the record and do not suffer from any illegality or material irregularity affecting the merits of the case, same cannot be taken to any exception at revisional stage.

iv) …it may be observed that in the event of initiating contempt proceedings in respect of violation of any injunctive order, the person wishing to initiate contempt proceedings against the contemnors is required to have provided all necessary details qua violation of the injunctive order… There is no cavil with the proposition that contempt proceedings under the provisions of order *XXXIX* Rule 2(3) CPC are considered *quasi* criminal proceedings since same entail punishment of detention for a period not exceeding six months, therefore, same are to be proved upto hilt and all doubts are required to be excluded before awarding punishment in terms of Order XXXIX Rule 2(3) of CPC.

Conclusion: i) Filing of an application by one of the judgment debtors even in the absence of any execution petition before the court could not be objected to on the ground that no execution petition was filed by the judgment debtor for the execution of the decree particularly when the right of judgment debtor has been affected by the wrong implementation of decree.

ii) The exclusive jurisdiction of an executing court in view of the scope of section 47 of CPC will indeed cover all matters concerned with the execution including wrong/flawed implementation of decree, discharge or satisfaction of an existing decree between the same parties.

iii) See corresponding analysis above.

iv) In the event of initiating contempt proceedings in respect of violation of any injunctive order, petitioner is required to provide all necessary details qua violation of the injunctive order. Whereas, contempt needs to be proved upto hilt and all doubts are required to be excluded before awarding punishment in terms of Order XXXIX Rule 2(3) of CPC.

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35. **Lahore High Court**
Muhammad Ghause v. Additional District Judge, Bahawalpur & 02 others
W.P. No.7630 of 2018
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC676.pdf

Facts: This is a petition that has been filed under Article 199 of the Constitution of the

Islamic Republic of Pakistan, 1973 to assail judgments and decrees passed by Judge Family Court and Additional District Judge, whereby suit instituted by respondent against petitioner for recovery of Rs.5,00,000/- as additional dower was decreed and same was upheld by Appellate Court.

Issues: i) Whether findings over factual controversy recorded by courts below can be reviewed by High Court in constitutional jurisdiction?
ii) Whether stipulation agreed between the parties qua payment of certain amount on the event of divorce or contracting of second marriage curtail the right of husband to pronounce divorce or even to contract second marriage?
iii) Whether mentioning the dower is essential to the validity of marriage?
iv) Whether the payment of dower could be deferred for an indefinite period?
v) Whether any amount/property agreed to be paid by the husband to wife on the happening of some future event, could be counted as a deferred dower?
vi) When the deferred dower becomes payable when no specific or definite period is settled for its payment?

Analysis: i) The findings over factual controversy recorded by both the courts below having jurisdiction to decide the matter can hardly be reviewed while invoking the extraordinary constitutional jurisdiction of this Court. In case "Shajar Islam v. Muhammad Siddique" (PLD 2007 SC 45), the Supreme Court observed that this Court should not interfere with the findings on controversial questions of facts based on evidence even if those findings were erroneous. (…) Last but not the least, this Court in its extraordinary constitutional jurisdiction would not take any exception to the judgments passed by the courts having jurisdiction and lawful authority to decide the matter on merits unless some jurisdictional error or blatant illegality has been shown to be committed causing miscarriage of justice.
ii) Needless to observe that the stipulation agreed between the parties qua payment of certain amount by petitioner to the respondent on the event of divorce or contracting of second marriage, in no way curtail the right of husband to pronounce divorce or even to contract second marriage. Any stipulation or condition agreed between the parties mutually and with their free consent cannot be considered as an absolute bar to either pronounce divorce or to contract second marriage. (…) As far as contractual obligation in column 19 is concerned, it was agreed and factum of Nikah Nama is not disputed. The amount agreed in terms of clause-19 of Nikah Nama is spousal support - having all the attributes of alimony - wherein reasonable benefits were offered to enable ex-wife to have dignified and comfortable life. There is no restriction that husband cannot agree to arrange for maintenance or agree to extend fiscal advantage to the wife, even after the divorce. This nature of the benefit / advantage, which is not in any manner is restricting right of divorce, is in fact an act of bestowing benefit or gift upon wife to support her, hence, cannot be termed as illegal or contrary to the spirit of ISLAM and teachings of Quran." (…) An agreement for dower was nonetheless binding on the petitioner as the same was made at the time of solemnization of

marriage. Even as per para 336(2) of the Principles of Muhammadan Law by D.F. Mulla, if the marriage was consummated, the wife becomes entitled to immediate payment of whole of the unpaid dower both prompt and deferred.

iii) Dower is a sum of money or other property which wife is entitled to receive from husband in consideration of marriage. The word 'consideration', however, cannot be deemed at par with the sense in which the word is used under the provisions of the Contract Act, 1872. A marriage is valid although no mention be made of the dower by the contracting parties as the term Nikah in its literal sense signifies a contract of union which is fully accomplished by the bond of a man and woman. Moreover, payment of dower is enjoined merely as a token of respect, therefore, the mention of it is not absolutely essential to the validity of marriage.

iv) There being no classification of the dower as prompt and deferred in the Holy Quran and Sunnah, the deferment of payment of dower for an indefinite period with the consent of the wife was not prohibited. (…) There being no classification of the dower as prompt and deferred in the Holy Qur'an and Sunnah, the deferment of the payment of dower for an indefinite period with the consent of the wife is not prohibited, but if a wife makes demand of its payment, the husband being under an obligation to make payment of the same, cannot further defer it on any excuse. The provisions of section 6(5) of the Muslim Family Laws Ordinance, 1961 being not in conflict with Islam, it is mandatory for a husband to pay entire amount of dower, whether prompt or deferred, in case of entering into contract of second marriage in presence of first wife without her permission.

v) Any amount/property agreed to be paid by the husband to wife on the happening of some future event, by all intents and purposes be counted as a deferred dower to be paid by the husband on the happening of such event. While discussing the scope and nature of prompt and deferred dower (…) Dower has important uses which affect the domestic life of the Muhammedans. The law giver of Islam was anxious to safeguard the wife against the arbitrary exercise of the right of divorce by the husband. If she survived her husband and his other heirs illtreated her, she could not be thrown into street but would be able, apart from her legal share, to enforce against them her claim for dower which must be paid out of the heritage before the assets of the husband are distributed among the heirs. This is the keystone of the Muhammedan Law of dower in its purity. (…)

vi) Where no specific or definite period is settled for the payment of deferred dower, wife would become entitled to dower at the event of dissolution of marriage or on the death of any of the spouses. If deferred dower is agreed to be paid on the happening of some specified event, the same would become payable on the occurrence of that specified event.

Conclusions: i) The findings over factual controversy recorded by the courts below can hardly be reviewed by High Court while invoking the extraordinary constitutional jurisdiction unless some jurisdictional error or blatant illegality has been shown to be committed causing miscarriage of justice.

ii) The stipulation agreed between the parties qua payment of certain amount by petitioner to the respondent on the event of divorce or contracting of second marriage, in no way curtail the right of husband to pronounce divorce or even to contract second marriage.

iii) The mentioning of dower is not absolutely essential to the validity of marriage.

iv) Deferment of payment of dower for an indefinite period with the consent of the wife is not prohibited.

v) Any amount/property agreed to be paid by the husband to wife on the happening of some future event, by all intents and purposes be counted as a deferred dower to be paid by the husband on the happening of such event.

vi) Where no specific or definite period is settled for the payment of deferred dower, wife becomes entitled to dower at the event of dissolution of marriage or on the death of any of the spouses. If deferred dower is agreed to be paid on the happening of some specified event, the same would become payable on the occurrence of that specified event.

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36. **Lahore High Court**
Hafiz Malik Muhammad Umar v. Government of Punjab, etc.
Writ Petition No.15167 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC709.pdff

Facts: The petitioner applied for the post of Naib Qasid pursuant to an advertisement. The petitioner was awarded additional marks for having qualification equivalent to matric but was not appointed. The petitioner filed writ which was dismissed and the Intra Court Appeal was preferred which was disposed of and the matter was remitted to the Appellate Authority to re-examine the same. Through the impugned order, the said representation/appeal has been dismissed, hence, instant writ petition.

Issue: What is purpose of preparation and fixation of waiting list in any recruitment process and whether subsequent improvement in deficiency of requisite qualification would operate retrospectively?

Analysis: This Court is of the opinion that, in any recruitment process, the purpose of preparation and affixation of the waiting list is that if any selected candidate does not join then the candidate next in line would be considered for appointment. Certainly, the object of maintaining a waiting list is not to enable a candidate to make up any deficiency in his additional qualifications entitling him to the award of extra marks as the requisite qualification for a post has to be complete as on the cutoff/closing date of the job application. If someone is deficient with respect to the requisite qualification (including additional qualifications forming basis of award of extra marks) on the cut-off date/closing date, the subsequent improvement would not operate retrospectively unless some law and/or policy so envisages.

Conclusion: The purpose of preparation and affixation of the waiting list is that if any selected candidate does not join then the candidate next in line would be considered for appointment and the subsequent improvement would not operate retrospectively unless some law and/or policy so envisages.

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37. **Lahore High Court**
Muhammad Islam v. Bagh Ali (deceased) through LRs.
Regular Second Appeal No.230/2016.
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC626.pdf

Facts: Through this Regular Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, the appellant, has laid challenge to the impugned judgments and decrees. Through the former judgment, the suit of the respondent, for specific performance of contract instituted on the basis of agreement to sell in respect of the suit property was decreed by the Trial Court and through the latter judgment, the appeal preferred by the appellant against the former judgment was dismissed.

Issue: Whether the suit for specific performance of the contract based on an agreement to sell can be decreed when the second marginal witness of the agreement is not produced by the vendee in compliance of Article 79 of the Qanun-e-Shahadat Order, 1984?

Analysis: The simple reading of Article 81 of the Qanun-e-Shahadat Order, 1984 shows that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary. Article 81 of the Qanun-e-Shahadat Order, 1984 is an exception to the general rule contained in Article 79 of the Qanun-e-Shahadat Order, 1984. If the agreement has been admitted in the prior suit by recording statement before the Trial Court, the non-production of both the marginal witnesses is not fatal. Moreover, in terms of Article 91 of the Qanun-e-Shahadat Order, 1984, presumption of genuineness is attached to documents forming part of the judicial proceedings.

Conclusion: The suit for specific performance of the contract based on an agreement to sell can be decreed when the second marginal witnesses of the agreement is not produced by the vendee in compliance of Article 79 of the Qanun-e-Shahadat Order, 1984 when the agreement has been admitted in the prior suit.

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38. **Lahore High Court**
Sabir Hussain v. Additional District Judge etc.
W.P No.993/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC621.pdf

Facts: The petitioner instituted the suit for specific performance of an agreement to sell against contesting party, wherein he filed an application for comparison of thumb impression of said respondents over the agreement with their specimen/admitted thumb impressions, which application was dismissed. The said order has been upheld by the Revisional Court vide impugned order, hence, this petition.

Issues: i) Whether there is any hindrance in allowing an application for comparison of thumb impression?
ii) Is there any time limit stipulated for filing the application of comparison of the signatures and/or thumb impression through expert?
iii) Whether the competency to contract is to be decided on the basis of the report of the finger impression expert?

Analysis: i) In order to ensure that correct conclusion is reached in the matter, the court can look around for an evidence of un-impeccable caliber such as finger expert, more particularly, when there is a complete denial on part of the respondents/defendants that they have not affixed their thumb impression on the agreement.It is the right of a litigant to seek any possible assistance including comparison of the disputed thumb impressions, from the courts of law so as to discharge the burden of proof placed upon him.
ii)The object for production of evidence is to assist to the courts to reach a just conclusion and one such mode is an application for comparison of thumb impression, which is in the interest of justice to reach a fair, just and proper decision, even at the cost of some delay in conclusion of the trial. Mere fact that application for comparison of thumb impression has been moved after conclusion of entire evidence is not a cogent reason to dismiss the application.
iii) Even if it is proved that alleged thumb impression of one of the parties on the agreement is genuine, the same will merely go on to prove, or otherwise, the execution of the agreement without having any bearing on the competency of the said party.

Conclusion: i) The only hindrance in allowing an application for comparison of thumb impression could be the intention of plaintiff to fill in the lacunae of his case after the conclusion of evidence.
ii) No time has been stipulated for filing the application of comparison of the signatures and/or thumb impression through expert, in terms of Article 84 of the of *Qanun-e-Shahadat* Order, 1984.
iii) The competency to contract is a question of law and is to be decided by the trial court on the basis of applicable law and not on the basis of the report of the finger impression expert.

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39. **Lahore High Court**
Shaukat Ali v. Abdul Ghaffar
RFA No.245/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC651.pdf

Facts: Regular First Appeal was filed against the order passed by the Additional District Judge in a suit, instituted by the respondent against the appellant, under Order XXXVII, Code of Civil Procedure, 1908 ("CPC"), for recovery of Rs.1,000,000/.

Issue: Whether the two marginal witnesses are mandated to appear and prove the execution of pronote and what is the effect of non-production of the marginal witnesses?

Analysis: In the instant case, the document in question is pronote which is not required by any law to be attested by two witnesses. Therefore, when a document is not required by any law to be attested, the failure to produce marginal witness is not fatal and detrimental to the case in such situation where the defendant of a case under Order XXXVII, CPC fails to put up a probable defence. However, this rule is not applicable in the present case, as observed above, since appellant showed probable defence and the burden to prove had shifted back to the respondent on account of denial by him to have executed any pronote and/or the receipt, therefore, the respondent was obligated to prove the issuance and execution of the pronote by producing both attesting witnesses of the pronote.

Conclusion: See analysis part.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification No. 07 of 2024 dated 23.01.2024, the Chancellor of the University of Child Health Sciences, Lahore approved "The University of Child Health Sciences Employees (Appointment, Terms and Conditions of Service) Statutes 2024".
2. Vide Notification No.15 of 2024 dated 01.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "The Primary and Secondary Healthcare Department (Directorate of Drugs Control, Punjab) Service Rules, 2024".
3. Vide Notification No.17 of 2024 dated 06.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "the Punjab Registration of Christian Divorce Rules, 2024".
4. Amendment in the Punjab Government Servants (Conduct) Rules, 1966 in Rule 21 and 22 vide Notification No. SOR-IV(S&GAD) 1-2/2023 published in the official Punjab Gazette through Notification No.18 of 2024 dated 06.02.2024.

5. Amendment in the Punjab Wildlife (Protection, Preservation, Conservation and Management) Rules, 1974 in Rule 3 vide Notification No.SOP(WL)12-13/2001-V published in the official Punjab Gazette through Notification No.19 of 2024 dated 07.02.2024.
6. Vide Notification No.20 of 2024 dated 14.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "the Punjab Christian Marriage (Preparation and Submission of Returns of Solemnized Marriages) Rules, 2023".
7. Amendment in the Punjab Government Rules of Business, 2011 in the 1st & 2nd Schedule vide Notification No. SO(CAB-I)2-14/2012 published in the official Punjab Gazette through Notification No.21 of 2024 dated 14.02.2024.
8. Amendment in schedule of the Punjab Specialized Healthcare and Medical Education Department (Financial Management Cell) Employees Service Rules, 2018 vide Notification No. SOR-III(S&GAD) 1-3/2018(P) published in the official Punjab Gazette through Notification No.22 of 2024 dated 15.02.2024.
9. Amendments in the Schedule of Posts of the Punjab Emergency Service (Appointment & Condition of Service) Regulations, 2022 vide Notification No.1378/2024(ESD) published in the official Punjab Gazette through Notification No.24 of 2024 dated 16.02.2024.
10. Amendment in Schedule of the Chief Minister's Secretariat Household Staff Service Rules, 2012 vide Notification No. SOR-III(S&GAD) 1-19/2004 published in the official Punjab Gazette through Notification No.25 of 2024 dated 16.02.2024.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/EXISTENCE-OF-ALTERNATIVE-REMEDY-AS-AN-OBSTACLE-FOR-AVAILING-WRIT-JURISDICTION

Existence of Alternative Remedy as An Obstacle for Availing Writ Jurisdiction by Rahul Goyal

ABSTRACT

This research explores the intricate relationship between the existence of alternative remedies and the impediments they pose to accessing writ jurisdiction. Writ jurisdiction, a potent legal mechanism often invoked to protect fundamental rights, faces challenges when alternative remedies are available to aggrieved parties. The study delves into jurisprudential foundations and examines judicial precedents to elucidate the conditions under which alternative remedies may serve as obstacles to the invocation of writs. The analysis encompasses both theoretical and practical dimensions, considering the balance between administrative efficiency and the imperative to safeguard individual rights. The research aims to provide a nuanced understanding of how the presence of alternative remedies shapes the contours of writ jurisdiction, influencing legal strategies and access

to justice. Additionally, it discusses potential reforms and jurisprudential developments that may enhance the coherence of this complex interplay within the legal framework.

2. MANUPATRA

https://articles.manupatra.com/article-details/STAMPING-OF-ARBITRATION-AGREEMENTS-UNRAVELLING-THE-ENFORCEABILITY-SAGAS-FINAL-VERDICT

Stamping of Arbitration Agreements: Unravelling the Enforceability Saga's Final Verdict by Ayushi Inani And Yashpal Jakhar

On 13 December 2023, a seven-judge bench of Supreme court in IN RE: INTERPLAY BETWEEN ARBITRATION AGREEMENTS UNDER THE ARBITRATION AND CONCILIATION ACT 1996 AND THE INDIAN STAMP ACT 1899 unanimously held that while unstamped agreements are inadmissible, they are not rendered void ab initio (void from the beginning) because of they are unstamped as it is a curable defect. The ruling made "a historic and fastest ever curative verdict" that will not only boost arbitration ecosystem in India but will promote India as an international arbitration hub. The judgement resolved the tussle that has been ongoing since 2011 in the judgement SMS Tea Estates Pvt. Ltd. V. Chandmari Tea Co.[1] The recent judgement overruled 3:2 judge bench in N.N Global case where court held that arbitration agreements on the basis of unstamping will be unenforceable and void ab initio.

3. MANUPATRA

https://articles.manupatra.com/article-details/With-great-power-comes-great-responsibility-Nexus-between-Law-Authority-Morality-and-Responsibility

With great power comes great responsibility: Nexus between Law, Authority, Morality, and Responsibility by Divyanshi Gupta

INTRODUCTION

Law, authority, morality, and responsibility initiating with the formulation of law sum up the major prerequisites required for the establishment of equity in a country. The total course of enacting, executing, and keeping an eye on the application of the laws by the Constitution of India includes parts of authority, morality, and responsibility. Several jurists have defined law, among which the definition provided by Austin, "Law is a command of the sovereign backed by a sanction," is the most prevalent. It is the responsibility of the legislature to formulate laws to resolve issues prevalent in the economy. Then the judiciary comes into the frame, whose responsibility it is to ensure that the laws formulated are just and in line with equity, good conscience, and the principles of natural justice. When a law is framed and is morally and legally just, it is the responsibility of executive authorities to ensure that the laws are carried out appropriately.

The subjects-law, authority, morality, and responsibility are not interchangeable yet work in coordination with each other. All these notions are mutually reinforcing and thus cannot function efficiently without balance among them. When a law gives authority to an individual, it is bundled with responsibilities to do the needful with their authority within the frame of an ethical and moral set of rules.

4. **Latest Laws**
https://www.latestlaws.com/articles/administrative-tribunals-types-roles-and-case-laws-212095/

Administrative Tribunals: Types, Roles, and Case laws By Yash Gupta

INTRODUCTION

Tribunals are quasi-judicial entities established to address matters such as resolving tax or administrative disputes. It performs many functions such as dispute resolution, determination of rights between conflicting parties, issuance of administrative rulings, review of previously issued administrative rulings, and other activities.

The term 'Tribunes,' denoting the 'Magistrates of the Classical Roman Republic,' serves as the etymological origin for the term 'Tribunal.' The term 'trial' pertains to the position of the 'Tribunes,' a Roman official who safeguards the citizens from the arbitrary conduct of aristocratic magistrates in both monarchy and republic. In broad terms, a tribunal refers to any entity or person with the authority to make decisions, pass judgments, or resolve claims or conflicts, irrespective of whether they are explicitly labelled as a tribunal.

5. **Harvard Law Review**
https://harvardlawreview.org/print/vol-136/precedent-reliance-and-dobbs/

Precedent, Reliance, and Dobbs by Nina Varsava

ABSTRACT

Our system of stare decisis enables and encourages people to rely on judicial decisions to form expectations about their legal rights and duties into the future, and to structure their lives and mentalities based on those expectations. In following precedent, courts serve the reliance interests of those subject to the law and accordingly support their autonomy, self-governance, and dignity. Despite widespread reliance on the precedents protecting the right to abortion, in Dobbs v. Jackson Women's Health Organization the Supreme Court declined to give any consideration to those interests. This move signals a notable shift in the Court's stare decisis jurisprudence and would seem to overrule Planned Parenthood of Southeastern Pennsylvania v. Casey as a precedent about precedent. This Article illuminates the treatment of stare decisis in the Dobbs majority opinion, focusing on its approach to reliance. I explain why the Justices joining that opinion determined that whatever reliance interests had attached to the precedents protecting the right to abortion were irrelevant for the purposes of a stare decisis analysis. The Justices' refusal to recognize the reliance interests at stake here, I argue, is inconsistent with the Court's previously prevailing stare decisis jurisprudence and is also mistaken as a matter of first principles, undermining basic rule of law values that stare decisis is meant to protect.

6. **Harvard Law Review**
https://harvardlawreview.org/print/vol-137/transinstitutional-policing/

Transinstitutional Policing By Sunita Patel

ABSTRACT

Policing has become a permanent fixture within other institutions and occurs in more ways and places than are often recognized. For race-class subjugated communities, this means policing has inserted itself into every facet of life, from education and health care to mass transit and housing. Police serve as instruments of control in many spaces and connect the bureaucratic management of safety inside formal institutions of care, learning, and public services. Police connect these safety services to ordinary street policing and wellness checks in the home.This Article provides a framework for analyzing policing within institutional settings. I examine K–12 schools, emergency departments, mass transit, veterans health care, public housing, and universities and colleges. This Article describes six features of transinstitutional policing. The first three — red flagging, street policing, and wellness checks — show how policing the public relies upon police presence within formal institutions. The second three — networked information, bureaucratic conflict and cooperation, and vulnerable privacy — tie surveillance of the public to transinstitutional policing. This framework highlights the susceptibility of institutions to the logics of policing and the ways policing undermines noncarceral and socially valuable institutional goals. This Article frames an emerging literature as a transinstitutional approach of studying policing across and between multiple institutional domains. Examining policing through a transinstitutional lens offers a deeper understanding of the corrosive influence of policing on spaces of learning, care, and public services. The punitive and carceral aspects of these settings become amplified and more visible when the institution of policing takes hold. The features analyzed here have made it easy for police leaders and bureaucratic administrators of these institutions to resist police reform, even though the locations I study are places where advocates and institutional clientele contest policing and broader carceral control. Part I provides a continuum of embedded policing and explains why I focused on these particular institutions. Parts II and III provide the six-feature framework. Part IV offers an analysis of how we got here and draws out lessons learned to further understand transinstitutional policing.