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FORTNIGHTLY CASE LAW BULLETIN

(16-03-2024 to 31-03-2024)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Supreme Court of Pakistan**
Shaukat Aziz Siddiqui v. Federation of Pakistan, Secretary Ministry of Law and Justice and another
Constitution Petition No. 76 of 2018
Islamabad Bar Association through its General Secretary v. Federation of Pakistan, Secretary Ministry of Law and Justice and others
Constitution Petition No. 15 of 2020
Karachi Bar Association through its President and another v. Federation of Pakistan, Secretary Ministry of Law and Justice and others
Constitution Petition No. 2 of 2021
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/const.p._76_2018.pdf

Facts: The petitioner along with other petitioners assailed the opinion of The Supreme Judicial Council trough this constitution petition filed under Article 184(3) of the Constitution, wherein the petitioner no.1 was found guilty of misconduct and opined that he be removed from his office as judge of High Court under Article 209(6) of the Constitution.

Issues: i) Whether removal of a Judge under clause (6) of Article 209 can be called in question in Court?
ii) What are the requirements of Article 209 of the Constitution with regard to whether a judge is guilty of misconduct?
iii) Whether the Fundamental Rights include the right to a fair trial and due process?
iv) Whether the Fundamental Rights of the people require protection from the excess of the executive?
v) Whether the judges who fall within the ambit of Article 209 of the Constitution are sacred cows?
vi) Whether the Constitution guarantees that a Judge's tenure is secure?
vii) Whether removing a judge without inquiry receives a severe setback?
viii) Whether the code of conduct prohibits a judge from addressing a Bar Association or even a public gathering?
ix) Whether Judges are to be adjudged by unspecified, arbitrary and vague notions of misconduct?

Analysis: i) The removal of a Judge under clause (6) of Article 209 shall not be called in question in Court and the bar contained in Article 211 does not protect acts which are mala fide or coram non judice or were acts taken without jurisdiction, and in such circumstances the Supreme Court has exercised jurisdiction.
ii) Article 209(5) of the Constitution requires that the SJC has to inquire into the matter with regard to whether a judge is guilty of misconduct. Article 209(6) commences by stating that, if after inquiring into the matter, and concludes by stating that, if the SJC is of the opinion that a Judge has been guilty of

misconduct he should be removed from office. However, Article 209(7) of the Constitution simultaneously safeguards the tenure of a Judge by stipulating that, A judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article, including clauses (5) and (6), which require that an inquiry has to be conducted by the SJC before determining whether a Judge is guilty of misconduct. Article 195 of the Constitution renders further protection to a Judge by stating that a Judge cannot be removed from office except 'in accordance with the Constitution', and the Constitution does not permit the removal of a Judge from office without first holding an inquiry with regard to any alleged misconduct.

iii) The Fundamental Rights enshrined in the Constitution include the right to a fair trial and due process and all citizens, including Judges, must be dealt with in accordance therewith.

iv) The Fundamental Rights of the people require protection from the excess of the executive and the vested Interest, both commercial and political. In order to safeguard the Fundamental Rights of the people guaranteed under the Constitution, the Independence of Judiciary obviously must be insulated from the onslaught of the Executive and such vested Interests, who are past masters at Institutional Capture. Thus, the security of tenure of Judges more so those of the Superior Courts is imperative and, therefore, adequate safeguards in this behalf are provided including by enacting what appears to be a rather cumbersome and strict process for their removal. This cardinal principle is reflected in the Constitutional dispensation of almost all Democratic countries peopled by citizens and not subjects. The exceptions, in this behalf, are almost always found in countries either under Military Dictatorships or ruled by Fascist regimes. The said safeguard is reflected in our Constitution under Article 209. It is no coincidence that each and every time a Military Dictatorship is imposed in Pakistan and a Constitutional deviation occurs an essential feature of the new dispersion is the promulgation of some Pseudo Legal Instrument enabling the removal of Judges by the Executive without the necessity of resorting to the provisions of Article 209 of the Constitution.

v) It does not mean that those falling within the ambit of Article 209 of the Constitution are sacred cows beyond the pale of accountability. If a person looses or abandons the necessary attributes of a Judge of integrity, probity, legal expertise and mental balance then he is not entitled to any security of tenure and must be weeded out post-haste with surgical precision through due process in terms of Article 209 of the Constitution. Such removal is necessary to preserve the Independence of Judiciary. Accountability strengthens rather than weakens institutions.

vi) The Constitution guarantees that a Judge's tenure is secure because it makes for an independent Judiciary while enabling a Judge to be removed from office if he commits misconduct, after providing him a fair trial and due process, as mandated by Article 10A of the Constitution.

vii) If a Judge can be removed without even inquiring into the allegations levelled

by or against the Judge the independence of the Judiciary receives a severe setback. The removal of a Judge is undoubtedly a matter of public importance and of public interest. And, an independent Judiciary is the foundation on which all the Fundamental Rights enshrined in the Constitution rest. Without an independent Judiciary Fundamental Rights are jeopardized.

viii) The Code of Conduct issued by the SJC does not prohibit a judge from addressing a bar association or even a public gathering, neither does any law.

ix) If Judges are to be adjudged by unspecified, arbitrary and vague notions of what constitutes appropriate traits and patterns of behavior of a Judge and the SJC is to consider whether an alleged conduct of a Judge is offensive to the qualities and behavior traditionally expected of a Judge it would place a Judge at the complete mercy of those who constitute the SJC.

Conclusion: i) The removal of a Judge under clause (6) of Article 209 shall not be called in question in Court.

ii) Article 209(5) of the Constitution requires that the SJC has to inquire into the matter with regard to whether a judge is guilty of misconduct.

iii) The Fundamental Rights enshrined in the Constitution include the right to a fair trial and due process.

iv) The Fundamental Rights of the people require protection from the excess of the executive and the vested interest, both commercial and political.

v) It does not mean that those falling within the ambit of Article 209 of the Constitution are sacred cows beyond the pale of accountability.

vi) The Constitution guarantees that a Judge's tenure is secure because it makes for an independent Judiciary.

vii) If a Judge can be removed without even inquiring into the allegations levelled by or against the Judge, the independence of the Judiciary receives a severe setback.

viii) The Code of Conduct issued by the SJC does not prohibit a judge from addressing a Bar Association or even a public gathering.

ix) If Judges are to be adjudged by unspecified, arbitrary and vague notions of misconduct, it would place a Judge at the complete mercy of those who constitute the SJC.

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2. **Supreme Court of Pakistan**
The Secretary School Education, Government of the Punjab, Lahore etc.v. Riaz Ahmed and others
Civil Petitions No.928-L to 930-L of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p.l.a.928_l_2021.pdf

Facts: Leave against the judgment of the Punjab Service Tribunal, has been sought whereby appeals filed by the respondents were allowed and the Graduate Primary Teachers were declared eligible for the grant of selection grade.

Issues: (i) Whether Graduate Primary Teachers are entitled for the grant of selection grade on the basis of Rule 8(3) of the Punjab Civil Servants Pay Revision Rules, 1977 ('Rules of 1977') read with the notification dated 25.08.1983 ('Notification dated 1983')?
(ii) Connotation of the term "Selection Grade"?
(iii) Whether retrospective regularization could create a right for claiming financial benefits?

Analysis: (i) The grant of selection grade and its eligibility criterion is thus necessarily governed under a policy which has to be formulated by the Government. It is not one of the terms and conditions of the civil servant under the Act of 1974 nor the Rules of 1974 or the Rules of 1977. A right, therefore, does not accrue in favour of a civil servant to claim selection grade in the absence of a specific policy that has been competently formulated by the Government. No court or tribunal has the power and jurisdiction to compel the Government to make a policy, or to interfere with a policy which has been competently made in relation to a specified post. As a corollary, the tribunal is bereft of jurisdiction to assume that a right exists in favor of a civil servant for the grant of selection grade unless the Government has formulated a policy. A higher pay scale was never sanctioned for the post of 'Graduate Primary Teacher' and, therefore, the aforementioned rule was not attracted. The notification dated 1983 also does not include the post of 'Graduate Primary Teacher' for the purposes of grant of selection grade.
(ii) The grant of selection grade is not an appointment against a post in the mode of promotion. Selection grade is thus not an appointment against a higher post but is meant to extend financial benefits of a higher grade. The selection grade is meant to financially compensate a civil servant who, despite serving against a particular post for a considerably long period, does not have the prospect of being promoted to a higher post. The grant of selection grade and its eligibility criterion is thus necessarily governed under a policy which has to be formulated by the Government.
(iii) The retrospective regularization, after withdrawal of the policy, could not create a right to claim a financial benefit which otherwise did not exist at the relevant time i.e. when the policy remained enforced.

Conclusion: (i) The Tribunal, in the absence of a policy specifically covering the grant of selection grade for the post of 'Graduate Primary Teacher' was not competent to purportedly create a right in favour of the respondents. The aforementioned rule and notification was not attracted to the facts of the case.
(ii) Selection grade is not an appointment against a higher post but is meant to extend financial benefits of a higher grade. The grant of selection grade and its eligibility criterion is thus necessarily governed under an executive policy.

(iii) See analysis part (iii) above.

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3. Supreme Court of Pakistan
Amir Sultan (In C.P. 3531/2021)Haseeb Ullah (In C.P. 3495/2023) and Employees Old-Age Benefits Institution through its Chairman Karachi (In all other cases) v. Adjudicating Authority-III EOBI, Islamabad and another (In C.P. 3531/2021 & C.P. 3495/2023) Muhammad Siddique Mughal and another (In C.P. 408/2023) Muhammad Ishtiaq and another (In C.P. 2451/2023)Sajjad Hussain and another (In C.P. 2452/2023) Muhammad Zahoor and another (In C.P. 2453/2023) Muhammad Zahir Hussain Shah and another (In C.P. 2454/2023) Malik Shahzad Ahmed and another (In C.P. 2455/2023) Muhammad Shabbir and another (In C.P. 2456/2023) Muhammad Hanif Khan and another (In C.P. 2457/2023) Ali Hussain and another (In C.P. 2468/2023) Syed Zahoor Hussain Shah and another (In C.P. 2469/2023)NiazGul and another (In C.P. 2471/2023)Riaz Ahmed and another (In C.P. 2471/2023) Saleem Iqbal and another (In C.P. 2472/2023) Muhammad Sadiq and another (In C.P. 2473/2023),C.P. No.3531/2021, C.P. Nos. 408, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2468, 2469, 2470, 2471, 2472, 2473 of 2023 and C.P No. 3495/2023.
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.3531_2021.pdf

Facts: The question decided here arises out of two sets of judgments from different High Courts, giving rise to conflicting opinions on the interpretation of Section 22(2) of the Employees' Old-Age Benefits Act, 1976.

Issue: What is the stage when the exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976 becomes applicable?

Analysis: Under Section 22(1) of the Employees' Old-Age Benefits Act, 1976, an insured person is entitled to monthly old-age pension at the rate specified in the Schedule to the Act ibid; (i) if he is sixty years of age or fifty five years in case of a woman and (ii) contribution in respect of him were paid for not less than fifteen years. Section 22(2) of the Act ibid provides an exception to the above to the effect that an insured person will also be entitled to an old-age pension if he on 1st July 1976 or on any day thereafter on which this Act ibid becomes applicable to the industry or establishment was (i) over forty years of age or thirty five years in case of a woman, and contribution in respect of him was paid for not less than seven years or (ii) over forty five years of age or forty years in case of a woman, and contribution in respect of him was paid for not less than five years. It is at these two points in time when the age of the insured person in terms of Section 22(2)(i) and (ii) of the Act ibid becomes relevant for invoking the exception of reduced years of contribution under the said provision.

Conclusion: To avail the exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976, the insured person must satisfy that he was in employment in the

industry or establishment on the first day of July 1976 or on the day the Act ibid became applicable to such an industry or establishment and was of the age mentioned in Section 22(2)(i) and (ii) of the Act ibid.

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4. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Large Taxpayers Office, Islamabad v. Pakistan Oilfields Ltd., Rawalpindi, etc.
Civil Petitions No. 3472 to 3475/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3472_2023.pdf

Facts: The petitioner sought leave to appeal against an order of the Islamabad High Court, whereby it had, as interim relief, restrained the petitioner from recovering the supertax under Section 4C of the Income Tax Ordinance 2001 as amended by the Finance Act 2023.

Issue: Whether the provisions of Article 199(4) of the Constitution are mandatory in nature?

Analysis: It is a well-established principle that where any provision couched in a negative language requires an act to be done in a particular manner then it should be done in the manner as required by the statute otherwise such act will be illegal and without jurisdiction. The use of the negative language, i.e., “shall not”, in Article 199(4) leaves no doubt that its provisions are mandatory and an interim order passed without adhering to the procedure provided therein will be illegal and without jurisdiction.

Conclusion: The provisions of Article 199(4) of the Constitution are mandatory in nature.

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5. **Supreme Court of Pakistan**
Malik Arshad Hussain Awan v. M/s United Bank Limited
Civil Petition No. 1393-L of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1393_l_2020.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the High Court that the petitioner’s brother had to be first adjudged as mentally disordered by the Court of Protection under the provisions of the (Punjab) Mental Health Ordinance, 20011 before the petitioner could be entitled to file an application under Order XXXII, CPC, before the Banking Court.

Issues: i) How the court can appoint guardian for the persons of unsound mind: one who is already adjudged by a court of competent authority as a person of unsound mind; and the other, who is not so adjudged but the court itself on inquiry finds that the person is of unsound mind?

ii) What is the mandate and wisdom of Order XXXII of the Code of Civil Procedure, 1908?
iii) What is the subject and scope of the Mental Health Ordinance, 2001?
iv) How scope of the Mental Health Ordinance, 2001 is different and broader when compared to that of Order XXXII of the Code of Civil Procedure, 1908?

Analysis: i) Rule 15 of Order XXXII of the Code of Civil Procedure, 1908 provides that Rules 1 to 14 of Order XXXII shall apply to (i) persons adjudged to be of unsound mind and (ii) persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued. The said Rule, therefore, acknowledges two categories of persons of unsound mind: one who is already adjudged by a court of competent authority as a person of unsound mind; and the other, who is not so adjudged but the court itself on inquiry finds that the person is of unsound mind. In both cases, the court is to appoint a guardian for the suit for such a person. In the first category, in view of the provisions of Rule 4(2) of Order XXXII of the Code of Civil Procedure, 1908 the court is to ordinarily appoint the same person as guardian for the suit who has been appointed the guardian under the Mental Health Ordinance, 2001; while in the second, the court may appoint any suitable person who has no interest against the person of unsound mind. In the second category, the court cannot decline to appoint the guardian for the suit merely for the reason that the defendant has not been so adjudged under the Mental Health Ordinance, 2001 by the competent authority.

ii) The mandate and wisdom of Order XXXII of the Code of Civil Procedure, 1908 is to ensure smooth continuation of proceedings and expeditious trial of suits wherein a minor or a person of unsound mind sues or is sued. The concept of next friend or guardian for the suit is to provide proper representation to a minor or a person with unsound mind during litigation, in order to protect his interests; therefore, their role is limited to the particular litigation or legal action for which they are appointed. Guardian for the suit is also called as "Guardian ad Litem"; the Latin term “ad litem” means “for the lawsuit”. Thus, guardian for the suit is appointed by a court specifically for the duration of legal proceedings and his role is temporary and limited to the particular lawsuit or legal matter. This might involve making decisions about litigation, settlement or other legal strategies. A guardian of the person or property of a minor or a person of unsound mind, on the other hand, is a person legally appointed to manage all the affairs of another person. Such a guardian has the authority to make decisions on behalf of the said person in various aspects of life, including financial, medical, and personal matters.

iii) This law deals with the care and treatment of mentally disordered persons, management of their property and other related matters. Under Section 29 of the Mental Health Ordinance, 2001, whenever a person is possessed of property and is alleged to be mentally disordered, the Court of Protection may, upon an application by any of his relatives filed after having obtained consent in writing of

the Advocate-General, direct an inquiry for the purposes of ascertaining whether such person is mentally disordered and incapable of managing himself, his property and his affairs. In case any person is found to be mentally disordered and incapable of taking care of himself, the Court of Protection appoints a guardian under Section 32 of the Mental Health Ordinance, 2001. A guardian so appointed under MHO is someone who is legally appointed to take care of and manage the personal and property interests of a mentally disordered person.

iv) The scope of the Mental Health Ordinance, 2001 is different and broader when compared to that of Order XXXII of the Code of Civil Procedure, 1908. It provides for care and treatment of mentally disordered persons, for the management of their properties and their affairs and to encourage community care of such persons. It is not limited only to representation before court in a suit. While the Mental Health Ordinance, 2001 does not specifically provide for representation before court while suing or being sued but it goes without saying that once a guardian is appointed by the Court of Protection he is to ordinarily act as the next friend and the guardian for the suit for the purposes of Order XXXII of the Code of Civil Procedure, 1908 (see Rule 4(2) of the said Order). The important thing is that where no such guardian has been appointed under the Mental Health Ordinance, 2001, it does not preclude the Civil Court, or the Banking Court in the present case, to proceed and appoint a guardian for the suit under Order XXXII, so that the interest of a mentally disordered person is protected before the court of law and also ensures the continuation and efficient conclusion of the trial

Conclusion: i) The court is to ordinarily appoint the same person as guardian for the suit who has been appointed the guardian under the Mental Health Ordinance, 2001; while in the second, the court may appoint any suitable person who has no interest against the person of unsound mind.

ii) The mandate and wisdom of Order XXXII of the Code of Civil Procedure, 1908 is to ensure smooth continuation of proceedings and expeditious trial of suits wherein a minor or a person of unsound mind sues or is sued.

iii) Mental Health Ordinance, 2001 deals with the care and treatment of mentally disordered persons, management of their property and other related matters.

iv) The scope of the Mental Health Ordinance, 2001 is different and broader when compared to that of Order XXXII of the Code of Civil Procedure, 1908.

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6. **Supreme Court of Pakistan**
Shaukat Mahmood v. Election Commission of Pakistan
Civil Petition No. 183 of 2024
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._183_2024_20032024.pdf

Facts: The Petitioner filed nomination papers to contest the general election of 2024 as a

Member of the National Assembly. However, the Returning Officer rejected the Petitioner's nomination papers. Aggrieved of the Returning Officer's Order, the Petitioner filed an Appeal under s. 63 of the Election Act, 2017, which was dismissed by the Election Appellate Tribunal. Subsequently the Petitioner challenged both the Order of the Returning Officer and that of the Tribunal in the Lahore High Court, via Writ Petition. However, this Writ Petition was dismissed by a full bench of the Lahore High Court ultimately; the Petitioner has challenged the Impugned Order through this petition and sought Leave to Appeal.

Issues: i) Whether Electoral laws and rules can be used as an arbitrary filtering mechanism upon the whims of a Returning Officer?
ii) Whether the Election Act, 2017 creates any distinction between an 'exclusive bank account' or a 'joint bank account' and whether a 'joint bank account' could be 'exclusive' as well?
iii) Whether existing bank account cannot be a joint account as per the Election Act, 2017?
iv) Whether Rules must be consistent with the statute under which they are framed?
v) Whether S.R.O. which amended r. 51 of the Election Rules, 2017, by adding the proviso, conflicts with the Constitution and said proviso is violative and beyond the scope of its parent and enabling statute, the Election Act of 2017?
vi) What would be the cut-off time if the ECP has fixed the last date for scrutiny of nomination papers without mentioning office hours and whether the Returning Officer has any right to determine the cut-off period?

Analysis: i) Elections are the bedrock of a democracy; and as the 16th President of the United States of America, Abraham Lincoln, once said, elections belong to the people. Therefore, it is essential that those wishing to contest elections be facilitated as far as is legally permissible. It goes without saying that it is against democratic norms and principles to add technical bottlenecks in the way of any individual, who is a citizen of this country, trying to contest elections. And in this backdrop, it is pertinent to say that electoral laws and rules cannot be used as an arbitrary filtering mechanism, dependent on the whims of a Returning Officer. Therefore, a Returning Officer should exercise the discretional powers available to him in a rational and meticulous manner.
ii) A mere cursory glance at s. 60(2)(b) of the Act shows that there is a requirement of a declaration that an 'exclusive' bank account, for the purpose of recording election expenses, has been opened, or an existing bank account be dedicated for the same, to be nominated for an election. However, the aforementioned section, or rather any section of the Act, does not create a distinction between an 'exclusive bank account' or a 'joint bank account.' After all, a 'joint bank account' could be 'exclusive' as well.
iii) Moreover, s. 60(2)(b) of the Act gave the Petitioner the option to dedicate an existing bank account for recording election expenses; in this regard, the Act does

not specify, once again anywhere in the 241 sections of Act, that this existing bank account cannot be a joint account.

iv) Rules have to be consistent with the statute under which they are framed and with all that is deemed to be incorporated in the statute. This observation in Sh. Abdur Rahman was further confirmed by this Court in Province of East Pakistan by stating that the rule making authority cannot clothe itself with power which the statute itself does not give. Since the Rules are the wheels on which the hypothetical vehicle of the Act runs, it is tantamount that both work in harmony; otherwise, the Act would not be able to serve the purpose for which it was passed by the legislature.

v) In our view, the Petitioner has showed that S.R.O. No. 1793(I)/2023, dated 12.12.2023, which amended r. 51 of the Rules, by adding the proviso, impinges upon the fundamental rights guaranteed under the Constitution and is in conflict with the Constitution, specifically the right to contest elections, which is a fundamental right guaranteed by Article 17(2) 5 of the Constitution, and has been upheld by this Court numerous times. The Petitioner, has also been successful in showing that the aforementioned proviso was beyond the legislative competence of the delegatee, the ECP, making it and that the proviso is violative and beyond the scope of its parent and enabling statute, the Act of 2017.(…) When the legislature has already mandated that the declaration required for nomination for election will be that of opening an exclusive bank account or dedicating an existing bank account, it was beyond the legislative competence of the ECP to require that such bank account shall not be a joint signatory account. At this juncture, it is quite clear to us that the legislature did not envision such a bifurcation, and therefore the proviso added by the ECP (and that too a mere 8 days prior to the date of filing nomination papers) 7 is violative and beyond the scope of its parent statute. Therefore, S.R.O. No. 1793(I)/2023, dated 12.12.2023, which amended r. 51 of the Rules, by adding the proviso, is in conflict and contradiction hence is not applicable to the matter at hand.

vi) We also wish to delve upon the conduct of the Returning Officer towards the Petitioner. As noted in Paragraph 4 of this judgement, Counsel for the Petitioner stated in his arguments advanced at the bar that the scrutiny for nomination papers of the Petitioner was fixed for 0 3:00 PM on 30.12.2023; whereas the Petitioner reached the Returning Officer's office at about 4:00 PM. The Returning Officer did not entertain the Petitioner citing the reason that his application was submitted after office hours. The election programme/schedule announced by the ECP, dated 15.12.2023, no Serial No. 4 states that the last date for scrutiny of nomination papers by the Returning Officer is from 24.12.2023 to 30.12.2023. We have carefully perused the one -page notification multiple times, and in any of those instances have not come across any official "office hours." With due respect to the Returning Officer, if the ECP has fixed the last date for scrutiny of nomination papers as 30.12.2023, the Returning Officer has no right to determine the cut - off period on 30.12.2023 or what "office hours" he or she will operate until on the last date, i.e. 30.12.2023. In our view, until the clock strikes

midnight on 30.12.2023 or whatever the last date of the scrutiny of nomination paper may be for any future election, the Returning Officer must scrutinize all nomination papers submitted to him, in the best interest of justice and to uphold the fundamental right of any individual to contest elections.

Conclusions: i) Electoral laws and rules cannot be used as an arbitrary filtering mechanism, dependent on the whims of a Returning Officer. Therefore, a Returning Officer should exercise the discretional powers available to him in a rational and meticulous manner.

ii) Election Act, 2017, does not create a distinction between an 'exclusive bank account' or a 'joint bank account.' and, a 'joint bank account' could be 'exclusive' as well.

iii) Section 60(2)(b) of the Election Act gave the candidate the option to dedicate an existing bank account for recording election expenses; and in this regard, the Act does not specify anywhere that this existing bank account cannot be a joint account.

iv) Rules must be consistent with the statute under which they are framed and with all that is deemed to be incorporated in the statute. The rule making authority cannot clothe itself with power which the statute itself does not give.

v) The S.R.O. which amended r. 51 of the Rules, by adding the proviso, impinges upon the fundamental rights guaranteed under the Constitution and conflicts with the Constitution, and the said proviso is beyond the legislative competence of the delegatee, the ECP, making it and that the proviso is violative and beyond the scope of its parent and enabling statute, the Election Act of 2017.

vi) If the ECP has fixed the last date for scrutiny of nomination papers without mentioning any official "office hours.", the Returning Officer has no right to determine the cut-off period or what "office hours" he or she will operate until the clock strikes midnight on the last date of the scrutiny of nomination paper.

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7. **Supreme Court of Pakistan**
Sanam Javaid Khan (Presently confined in Kot Lakhpat Jail, Lahore) through her attorney Jawad Javaid Khan v. Election Appellate Tribunal, Punjab and others
Election Appellate Tribunal, Punjab and others
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._184_2024_21032024.pdf

Facts: The petitioner was proposed as a candidate for election and on scrutiny, her nomination papers were rejected by Returning Officer being not complaint with provisions of Elections Act, 2017. On appeal, this order was maintained by Election Tribunal. After that High Court, within its Constitutional Jurisdiction, upheld the rejection. The petitioner who is a prisoner has filed an appeal against order of the High Court upholding orders rejecting her nomination papers.

Issues: i) What is status of Rule 51 amended by Election Commission of Pakistan by virtue of delegated power u/s 230 of Elections Act?
ii) What will be effect of any discrepancy in nomination papers?
iii) Whether the relevant column of declaration in nomination papers provides for requirement of joint account to be opened by candidate for election expenses?
iv) Whether scope of summary inquiry by retuning officer u/s 62(9) of Elections Act, 2017, permits the Returning Officer to get the signatures of the candidate (who is a prisoner) verified by jail authorities?

Analysis: i) Rule 51 states that the bank account so opened for the purpose to document election expenditure should not be a joint signatory account. At this stage, it is apposite to state that the Election Commission of Pakistan exercising its delegated power under section 239 of the Act, has made the above rule. It is deeply rooted that if a rule goes beyond the rule-making power conferred by the statute or if a rule supplants any provision for which power has not been conferred, it becomes invalid. A delegated power to legislate by making rules cannot be exercised to bring into existence substantive rights, obligations or disabilities not contemplated by the provisions of the statute. The Commission, as a rule making body has no inherent power of its own to make rules but derives such power only from the Act, and so, it necessarily has to function within the purview of the Act. In light of above, it appears, the stipulation in Rule 51 that the bank account so opened or dedicated should not be a joint signatory account is inconsistent with the express provision of section 60(2)(b) of the Act. Since this rule travels beyond the ambit of the Act, it is ultra vires and cannot be given any effect, and resultantly, based on it the nomination papers could not be rejected.
ii) The nomination papers were printed by the Commission under section 60(2) of the Act and if there is any discrepancy in it, the candidate will benefit from it.
iii) The tenor of column No.3 of the declaration provides two options for a candidate. First, the candidate has to declare that he/she has opened an exclusive single signatory account, which means that before filing nomination papers, the candidate has opened an exclusive single signatory account for the purpose of documentary evidence of election expenses. If, for any reason, the candidate cannot open an exclusive single signatory account before filing the nomination papers, the other option for him/her is to declare that he/she will use his/her existing account for the purpose of election expenses. This implies two things: firstly, the existing account may be single or joint, and secondly, a candidate is given the opportunity, if their account is joint, to have it converted into a single signatory account for the purpose of election expenses later on. This option seems to be for those candidates who, due to some exigencies including illness, imprisonment, etc., cannot open their exclusive single signatory bank account or convert their existing joint account to a single signatory account before filing nomination papers. The purpose of providing such a facility can only be to ensure that the citizens are not deprived of their fundamental right, that is, to contest election freely. So viewed the objection, if any, with regard to the joint bank

account declared by the petitioner, it could not be held to be a defect which was substantial in nature as the petitioner had the option, as stated above, to rectify it under proviso (ii) to sub-section (9) of section 62 of the Act, and convert it into single signatory account.
iv) Sub-section (9) of section 62 of the Act provides for inquiry by RO to reject the nomination papers. According to it, the RO may conduct a summary inquiry and may reject the nomination papers if he is satisfied that (a) the candidate is not qualified to be elected as a Member; (b) the proposer or the seconder is not qualified to subscribe to the nomination paper; (c) any provision of section 60 or section 61 has not been complied with or the candidate has submitted a declaration or statement which is false or incorrect in any material particular; or (d) the signature of the proposer or the seconder is not genuine. This scope of inquiry does not permit the RO to get the signature of the petitioner verified from the jail authorities, nor the non-verification or attestation of the nomination papers by the jail authorities is a condition precedent nor was the difference in the candidate's signature a valid reason for rejecting the nomination papers, particularly when the petitioner/candidate filed an appeal admitting her signature, and then a constitutional petition. Thus, this ground could not be used as a basis to draw the inference that signatures were not genuine and to reject the nomination papers.

Conclusion: i) Since rule 51 travels beyond the ambit of the Elections Act, 2017, it is ultra vires and cannot be given any effect, and resultantly, based on it the nomination papers could not be rejected.
ii) The nomination papers were printed by the Commission under section 60(2) of the Act and if there is any discrepancy in it, the candidate will benefit from it.
iii) See under analysis no. 03.
iv) Scope of summary inquiry by retuning officer u/s 62(9) of Elections Act, 2017, does not permit the Returning Officer to get the signatures of the candidate (who is a prisoner) verified by jail authorities.

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8. **Supreme Court of Pakistan**
Ali Raza v. Regional Police Officer & another
C.P.L.A.No. 1593-L of 2020
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1593_l_2020.pdf

Facts: The petitioner was working as a constable in the police department when disciplinary proceedings were initiated against him on the charge of inefficiency and misconduct, under the Punjab Police (Efficiency & Discipline) Rules, 1975. Allegation against the petitioner was of grave misconduct and being involved in two criminal cases of delinquent nature. He was held to be guilty, and a major penalty of dismissal from the service was imposed upon him. Aggrieved, he availed himself of a departmental appeal. It was found out of time, and thus, was rejected. He then filed his service appeal before the Punjab Service Tribunal, and

the Tribunal relying on the precedents of this Court, dismissed it, with the observation that when an appeal of an employee is time barred before the appellate authority then appeal before the Tribunal will also not be competent.

Issue: When the period for filing a departmental appeal is not provided in the efficiency and discipline rules for the employees of the Punjab Police, can it then be dismissed on the ground of time- lapse?

Analysis: It has been submitted on behalf of the petitioner that the proceedings against him were initiated under the Punjab Police (Efficiency & Discipline) Rules, 1975, which do not prescribe any period for filing a departmental appeal against the order of punishment. Therefore, it could not be dismissed on the ground of limitation, and consequently, the Punjab Service Tribunal also erred in dismissing the service appeal. The strength of this argument was sought from an unreported judgment of this Court, in the case of Tahira Paras. (…) Mr. Baleegh-Uz-Zaman, learned Additional Advocate General has eloquently answered the above contention by referring to the provisions of section 21 of the Punjab Civil Servants Act, 1974. He submitted that notwithstanding Rule 14 of the Punjab Police (Efficiency and Discipline) Rules, 1975, where no time period for filing an appeal has been provided, the time frame specified under section 21 of the Punjab Civil Servants Act, 1974, is to be followed, which is sixty days. We agree with this.

Conclusion: Departmental appeal can be dismissed being time barred, as in Rule 14 of the Punjab Police (Efficiency and Discipline) Rules, 1975 no time period for filing an appeal has been provided, then the time frame specified under section 21 of the Punjab Civil Servants Act, 1974, is to be followed, which is sixty days.

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9. **Supreme Court of Pakistan**
Ibrahim Khan v. Mst. Saima Khan and others
Civil Petitions No.4657 To 4659 of 2022
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4657_2022.pdf

Facts: These Civil Petitions directed against judgment passed by the Peshawar High Court, Abbottabad Bench whereby writ petition filed by the Petitioner was dismissed whereas writ petitions filed by Respondent No.1 were allowed.

Issues: i) Whether the court can convert a prayer for dissolution of marriage on the ground of cruelty to a prayer for seeking dissolution of marriage by way of khula, where the khula is not sought for by a woman?
ii) What are the procedural distinctions, in suits filed by woman for dissolution of marriage under the grounds of Dissolution of Muslim Marriages Act, 1939 (DMMA) or through khula?
iii) Whether khula is a basic right of a woman?

Analysis: i) Now the question is whether, in a prayer for dissolution of marriage on the ground of cruelty or any ground under the DMMA, the Court of its own motion can convert that prayer into a dissolution by way of khula. This question was raised before this Court in Muhammad Siddiq 16 wherein leave was granted to consider whether the High Court could decree the suit on a ground not raised in the plaint as the plaint did not seek dissolution on the ground of khula but merely dissolution of marriage on the ground of cruelty and non- payment of maintenance. This Court concluded that the High Court could not change the prayer by granting khula as the prayer of khula has to be a specific prayer sought for by the wife. (…) the right to seek khula is the exclusive and absolute right of the woman. She must in unambiguous and unequivocal terms express her intention to exercise such right before the court, that is to say, she must put her offer before the court that she seeks release from the marriage by waiving her dower and only then the court can grant her khula. Fundamentally, as stated above, the principle is that khula cannot be granted, if it has not been explicitly sought for by the woman because she has to give up her right to dower as per Section 10(5) of the FCA. Hence, a court cannot on its own pass the decree of khula if it has not been sought for by the woman. Therefore, her consent is vital.

ii) Where a woman files suit for dissolution of marriage under the grounds of DMMA or through khula, there are procedural distinctions. Firstly, under Section 2 of the DMMA, various grounds (cruelty, assault, ill-treatment, etc.) are provided for judicial pronouncement of dissolving the marital relationship, which is also called fuskh. Hence, there must be some cause as per the DMMA to get a decree of dissolution of marriage under the DMMA. However, khula can be granted to a woman without establishing any ground or proving the cause to the court. Secondly, if the grounds under the DMMA are established by a woman, then Section 5 of the said law protects her right of dower as the same shall not be affected. Whereas in khula, she has to waive or forgo her right of dower. Lastly, in terms of procedure in the case of khula , once the pre-trial reconciliation fails under Section 10 of the Family Courts Act, 1964 (FCA), the court is bound to immediately pass a decree for the dissolution of marriage. Whereas the decree for dissolution of marriage under the DMMA can only be passed after the recording of evidence under Section 11 of the FCA. Therefore, termination of marriage under the DMMA or by way of khula exists in distinct and different legal domains with separate consequences.

iii) As per Principles of Mahomedan Law ,1 Paragraph No. 319(2) provides that a divorce by khula is a divorce with the consent, and at the instance of the wife, in which she gives or agrees to give consideration to the husband for release from the marriage. It is a bargain or arrangement between the husband and wife whereby she may, as a consideration, release her dower and other rights for grant of khula .The said Paragraph continues to state that khula is affected by an offer from the wife to compensate the husband if he releases her from the marriage. Once the offer is accepted, it operates as a single irrevocable divorce (talak -i-

bain) and its operation is not postponed until the execution of the deed of khula. Paragraph No. 320 of the Principles of Mahomedan Law provides that a divorce effected by khula operates as a release by the wife of her dower, but it does not affect the liability of the husband to maintain her during her iddat, or to maintain his children by her. Therefore, in terms of the Principles of Mahomedan Law, a khula is essentially the release from the marriage that a woman can seek by agreeing to waive her dower. This Court in Khurshid Bibi while examining the concept of khula held that khula is provided to a woman as a right that she may seek from the court if she seeks release from the marriage for which she must be willing to offer compensation or release of dower. Khula is an irrevocable divorce that the wife can seek in case of extreme incompatibility. It is the right of a woman for which she does not have to level any allegation; she simply has to say that she does not want to live with her husband. In other words, khula can be granted to a woman without any fault of a husband. As khula is a special and exclusive right given to a woman, which is not available to a man, she can seek dissolution on the basis of khula in which one of the consequences is that she can re-marry the same man, without entering into intervening or intermediary marriage i.e. halala. In Haji Saif -ur-Rahman, the Federal Shariat Court held that the right of khula granted to a woman by the Holy Quran and Sunnah is an absolute and unique right whereby a marriage can be dissolved through a court at her will and this right of a woman cannot be denied by the court of law. Therefore, khula is a basic right of a woman under Muslim family law.

Conclusions: i) Khula is the exclusive and absolute right of the woman and the same cannot be granted, if it has not been explicitly sought for by the woman because she has to give up her right to dower as per Section 10(5) of the FCA. Hence, a court cannot on its own pass the decree of khula if it has not been sought for by the woman and her consent is vital.
ii) See above in analysis clause No. ii.
iii) Khula is a basic right of a woman under Muslim family law whereby a marriage can be dissolved through a court at her will and this right of a woman cannot be denied by the court of law.

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10. **Supreme Court of Pakistan**
B.P. Pakistan Exploration and Production, Inc. v. Ashique Hussain Halepoto and others, Muhammad Halepoto and others, Zulfiqar Ali Shah and others
Civil Appeals No.1653 to 1655/2007
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1653_2007.pdf

Facts: Appellant company invoked the jurisdiction of the Supreme Court under Section 54 of the Land Acquisition Act, 1894 read with Article 185(2) of the Constitution of Islamic Republic of Pakistan, 1973, and challenged the impugned judgment of

the High Court wherein the compensation awarded by the Referee Court to the respondents for acquisition of their property was maintained.

Issues: i) Whether the appellant company can file an appeal against the judgment of the Referee Court?
ii) What is the criterion for determination of compensation to be awarded for acquisition of the acquired-property?
iii) What is the determining factor, for the determination of the rate of compulsory charges?
iv) When the appellant-company is liable to pay interest on the compensation awarded?

Analysis: i) As far as the appeal of the appellant-company against the judgment of the Referee Court is concerned, the challenge could be made under Section 54 of the Act…The said provision clearly vests an aggrieved person to challenge the judgment of the Referee Court before the High Court, as was done by the appellant-company in the present case. Hence, the appeals of the appellant-company before the High Court were maintainable.
ii) It is by now settled that the compensation for the property being acquired must not only be based on its market value but also the potential value thereof.
iii) The determining factor, for the determination of the rate of compulsory charges would be the declaration made by the acquiring government in the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894.
iv) The appellant-company is only liable to pay interest on the compensation awarded to the private respondents/landowners from the time they stopped paying rent until the full compensation for the acquired property was paid.

Conclusion: i) As far as the appeal of the appellant-company against the judgment of the Referee Court is concerned, the challenge could be made under Section 54 of the Land Acquisition Act, 1894.
ii) The compensation for the property being acquired must not only be based on its market value but also the potential value thereof.
iii) The determining factor, for the determination of the rate of compulsory charges would be the declaration made by the acquiring government in the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894.
iv) See above in analysis part (iv)

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11. **Supreme Court of Pakistan**
Federation of Pakistan through the Secretary, Ministry of Law and Justice, Islamabad & Afiya Shehrbano Zia and others v. Supreme Judicial Council through its Secretary, Supreme Court Building, Islamabad and others
ICA No.1 and 2/2024 in Constitutional Petition No.19/2020
Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Irfan Saadat Khan

https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._1_2024_15032024.pdf

Facts: Appeals were filed under section 5 of the Supreme Court (Practice & Procedure) Act, 2023 read with Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution'), whereby appellants challenged the judgment passed by the learned two member bench of this Court in Constitution Petition No. 19 of 2020 filed under Article 184(3) of the Constitution by the appellants of ICA No. 2 of 2024 which was dismissed *in limine*.

Issue: Whether Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will automatically come to end or it is the prerogative of the SJC to proceed with the matter?

Analysis: At the time of hearing of petition filed by the appellants of ICA No. 2 of 2024, the Judge had already been retired against whom complaints filed by the said appellants were pressed, though the complaint was filed against the Judge when he was a Chief Justice but unfortunately the complaint could not be placed before the SJC and after the retirement of said Judge when it was placed before the SJC same was dismissed as having become infructuous. The main consideration before the learned two member Bench of this Court while hearing the Constitution Petition was that the SJC has declared the complaint as having become infructuous, therefore, mainly the emphasis of the Court was upon the said point whereas it was not a case before the Court that after considering the complaint some steps were taken in the complaint i.e. issuance of notice to the Judge against whom complaint was filed or any reply or the response to the complaint, not it was the question before the Court that during the pendency of the complaint after issuance of notice by the SJC the effect of retirement of a Judge or resignation but the effect of the impugned judgment is that even if the complaint is pending after taking cognizance by the SJC, it abates on retirement of a Judge or resignation, therefore, Federal Government was aggrieved and filed the instant appeal, on which point we agree with the appellant…. it is the prerogative of the SJC to proceed with the matter and the proceedings pending before the SJC which are initiated after issuance of notice to a Judge do not automatically drop or become infructuous on superannuation or resignation of a Judge.

Conclusion: Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will not automatically come to end and it is the prerogative of the SJC to proceed with the matter.

Additional Note by Mr. Justice Jamal Khan Mandokhail

Issues: i) Whether limitation can be condoned where a question of public importance relating to interpretation of Constitution is involved specially when no notice was given to the Attorney General for Pakistan as required by Order XXVII-A Rule 1 CPC?

ii) Whether the Council can inquire into the capacity or conduct of a judge, who has retired or has resigned from his office?

iii) Whether the Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office?

Analysis: i) It is a fact that the petition under Article 184(3) of the Constitution was filed by the private appellants, but the Federal Government was not arrayed as party to the proceedings. Through the said petition, interpretation of Article 209 of the Constitution was required, therefore, it was mandatory for the Court to have had issued a notice to the Attorney General for Pakistan ("**AG**") as required by Order XXVII-A Rule 1 CPC….Since neither the Federal Government was arrayed as party to the proceedings nor mandatory notice required under Order XXVII-A Rule 1 CPC was issued to the AG, therefore, there is no reason to disbelieve his contention regarding his unawareness of the date of the pronouncement of the impugned judgment. Even otherwise, a Ten Member Bench of this Court through the referred judgment [Federal Govt. of Pakistan vs. M.D.Tahir Adovcate] has condoned the delay of 257 days in filing of petition solely on the ground of public importance…

ii) A plain reading of the said provision [Article 209(5)] of the Constitution makes it clear that the Constitution has mandated the President that on information from any source, he shall direct the Council to inquire into the matter. The phrase, '*the President Shall direct the Council'* used in this provision of the Constitution makes it mandatory upon the Council that it has no option, but to initiate inquiry against the judge accordingly in a case the reference is received from the president. Similarly, if the Council deems it appropriate, may on its own motion inquire into the matter. After a preliminary inquiry, the Council may dismiss the complaint for lack of evidence or untrue information. In both circumstances, once the Council invokes its Constitutional jurisdiction by initiating inquiry into the matter against a judge, it has to take the proceedings to its logical conclusion…. In any case, it was necessary for the Council to have decided the fate of the complaint before retirement of the former HCJ, but the needful was not done, therefore, after his retirement, the Council cannot proceed.

iii) As a general rule, the Authority inquiring into the conduct of a judge loses its jurisdiction to initiate proceedings against a person who retires or resigns from his office, before initiation of inquiry proceedings. Whereas, when an inquiry about the conduct of a judge in office is initiated by the Council, it is the Constitutional obligation of the Council to conclude the proceedings, form its opinion and report to the President with recommendations. In this provision of the Constitution, the

word 'inquiry' has been used. The primary purpose of inquiry is to gather information in order to address a specific issue of public interest and to make recommendations for improvement and prevention of future occurrences. It is not to focus on enforcing laws or prosecuting individuals as is mandated in investigation, rather to inquire into the ethical violations and misconduct of a judge. It promotes accountability and trust in the process by the public….When an inquiry into conduct of a judge initiated by the Council is terminated without an opinion, on account of retirement or resignation of a judge from his office, it would render Article 209 (5) & (6) of the Constitution redundant and would also give an authority to the judge to make the Constitutional body abandoned….Termination of inquiry proceedings upon retirement of a judge would otherwise give an impression that the Council is dependent on the will of the judge, who can overpower the control of the Constitutional body. It may create a perception that the judges are above the law. After his retirement or resignation, prior to inquiry initiated, a judge enjoys a status of a retired judge, with lucrative post-retirement benefits from public ex- chequer. He is also eligible for his re-appointment against some important Constitutional, quasi-judicial and administrative posts, for which evaluation of his conduct and reputation is essential. The jurisdiction of the Council to inquire into the matter pertaining to misconduct of a judge is a Constitutional mandate. In absence of express words or an enactment, preventing the Council from inquiring into the matter upon resignation or retirement of a judge, jurisdiction of the Council cannot be abolished, ousted or terminated. Since there is no express provision in the Constitution, nor is there any enactment, preventing the Council from continuing its proceedings of inquiry in a situation where a judge is retired or resigns before conclusion of the inquiry, it is the Constitutional obligation of the Council to conclude the inquiry initiated against a judge and form an opinion regarding his conduct. If after inquiring into the matter, the Council is of the opinion that the judge has been guilty of misconduct, under such circumstances, he shall not be eligible for post-retirement benefits…If the proceedings are made dependent upon the will of the judge on account of his resignation, at any stage before conclusion of inquiry, it would let the judge, who is guilty of misconduct, to go Scott free by defeating the process of accountability. This would damage rule of law norms and public trust in the role of judges and the judiciary…For these reasons, it is imperative that once the Council in exercise of its Constitutional authority, initiates inquiry into conduct of a judge, it cannot terminate or abate upon retirement or resignation of the judge from his office. The citizens have a right to know about the outcome of the complaints.

Conclusion: i) Limitation can be condoned where a question of public importance relating to interpretation of Constitution is involved specially when no notice was given to the Attorney General for Pakistan as required by Order XXVII-A Rule 1 CPC.
ii) The Council cannot inquire into the capacity or conduct of a judge, who has retired or has resigned from his office.

iii) The Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office.

Dissenting Note by Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._1_2024_dn_20032024.pdf

Issues: i) Whether limitation can be regarded as a mere technicality?
ii) Whether the Council can proceed against a Judge on a pending complaint after his retirement or resignation?

Analysis: i) The law of limitation is a law that is designed to impose *quietus* on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence. Therefore, the limitation cannot be regarded as a mere technicality. With the expiration of the limitation period, valuable rights accrue to the other party, as observed in numerous judgments by this Court.
ii) The majority judgment unnecessarily split the issue into two different categories**:** Judges of this Court or High Courts against whom a complaint under Article 209 is pending, where (a) no further steps have been taken by the Council, and (b) the Council has initiated the proceeding by issuing notices, etc…. Article 209 of the Constitution does not recognize any such classification, despite having been amended twice since 1973.Clause 5 thereof categorically stipulates that "*if, on information from any source, the Council or the President is of the opinion that a Judge of the Supreme Court or a High Court--(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or (b) may have been guilty of misconduct", the President shall direct the Council to, or the Council may, on its own motion, inquire into the matter.*' The above clause clearly suggests that the President or the Council is competent to inquire into a matter under Article 209 against 'a judge of the Supreme Court or a High Court,' which may result in their removal. Articles 179 and 195 of the Constitution provide that a Judge of the Supreme Court and the High Court shall hold office until he attains the age of sixty-five years and sixty-two years respectively, unless he sooner resigns or is removed from office in accordance with the Constitution. The combined effect of the above articles is that a judge, after retirement or resignation, cannot be termed as 'a judge of the Supreme Court or a High Court,' within the purview of Article 209 (5) of the Constitution and as such, the Council lacks authority to conduct an inquiry against them. Being so, any complaint pending against a judge, whether proceedings have been initiated or not, shall abate after his retirement or resignation, accordingly.

Conclusion: i) Limitation cannot be regarded as a mere technicality.
ii) The Council cannot proceed against a Judge on a pending complaint after his retirement or resignation.

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12. **Supreme Court of Pakistan**
Abdullah Jumani & others v. Province of Sindh & others.
Civil Appeals No.26 -K to 38 -K of 2021
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._26_k_2021.pdf

Facts: These Civil Appeals directed against the common judgment passed by the Sindh High Court, Karachi, in Constitutional Petitions, which were dismissed with certain directions.

Issues: i) What is the responsibility of lawgivers when they promulgate any law, especially a beneficial law?
ii) What is the scope of Article 199 of the Constitution?
iii) Whether High Court can exercise suo motu jurisdiction under Article 199 as compared to Article 184(3) of the Constitution?
iv) Whether the High Court can strike down any law?
v) What principles guide the judiciary's role in interpreting statutes, and what factors might prompt them to deviate from a strict adherence to the grammatical meaning of statutory language?
vi) On whom the burden of proof lies in cases where the validity of a law is contested, and what criteria must be met by him?
vii) What approach does the court take when faced with statutory interpretation involving multiple possible meanings?
viii) What is meant by phrase “forum prorogatum?
ix) What is the legal definition and significance of the term "jurisdiction" and concept of judicial overreach?

Analysis: i) When the lawgivers declare or promulgate any law, especially a beneficial law, then it is their strenuous and arduous responsibility to implement it across the board benevolently, with an open heart, and without any conservative, rigid, or discriminatory approach.
ii) Under Article 199 of the Constitution, subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law then on the application of any aggrieved party, can direct a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do. The High Court can also declare that any act done or proceeding taken within the territorial jurisdiction by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or on the application of any person, can issue directions that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful

manner; and can also require a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; and on the application of any aggrieved person, can issue directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within its jurisdiction as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II. However, subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged. The term 'Person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and prescribed law officer means in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and, in any other case, the Advocate -General for the Province in which the application is made**.**

iii) It is a settled exposition and ratification of law that the High Court does not possess any suo motu jurisdiction under Article 199 of the Constitution as compared to this Court which has been bestowed exclusive jurisdiction by virtue of Article 184(3) of the Constitution which is not interchangeable, switchable or transposable to the High Court while excercsing jurisdiction under the sphere and dominion of Article 199.

iv) No doubt, if the constitutionality of any law is challenged in the High Court, the Court can scrutinize and survey such law and also strike it down if it is found to be offending the Constitution for absenteeism of law-making and jurisdictive competence or is in violation of fundamental rights.

v) The function of the judiciary is not to legislate or question the wisdom of the legislature in making a particular law, nor can the judiciary refuse to enforce a law. The intention of the legislature is primarily to be gathered from the language used. The words of a statute are first understood in their natural, ordinary, or popular sense, and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or the object of the statute that suggests the contrary or that lacks legislative power.

vi) If the vires of a law are challenged, the burden always rests upon the person making such challenge to show that the same was violative of any of the fundamental rights or the provisions of the Constitution

vii) Where more than one interpretation is possible, the Court must prefer the interpretation which favours the validity without attributing mala fide to the legislature.

viii) The phrase “forum prorogatum” originated in Roman law, which literally means “prorogated jurisdiction” i.e., extension of the jurisdiction of a court by

agreement of the parties in a case which would otherwise be outside its jurisdiction.

ix) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties. The jurisdiction of every Court is delineated and established to adhere to and pass legal orders. Transgressing or overriding the boundary of its jurisdiction and authority annuls and invalidates the judgments and orders. The Courts commit judicial overreach when they exercise powers beyond the compass of powers and jurisdiction entrusted to the courts through the law and the Constitution.

Conclusions: i) When lawgivers declare or promulgate any law, especially a beneficial law, then it is their strenuous and arduous responsibility to implement it across the board benevolently, with an open heart, and without any conservative, rigid, or discriminatory approach.

ii) See above in analysis clause No. ii.

iii) High Court cannot exercise suo motu jurisdiction under Article 199 as compared to Article 184(3) of the Constitution.

iv) If the constitutionality of any law is challenged in the High Court, the Court can scrutinize and survey such law and also strike it down.

v) See above in analysis clause No. v.

vi) If the vires of a law are challenged, the burden always rests upon the person making such challenge to show that the same was violative of any of the fundamental rights or the provisions of the Constitution.

vii) Where more than one interpretation is possible, the Court must prefer the interpretation which favours the validity without attributing mala fide to the legislature.

viii) The phrase "forum prorogatum" means "prorogated jurisdiction" i.e., extension of the jurisdiction of a court by agreement of the parties in a case which would otherwise be outside its jurisdiction.

ix) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties and the courts commit judicial overreach when they exercise powers beyond the compass of jurisdiction.

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13. **Supreme Court of Pakistan**
Mst. Farzana Zia and others v. Mst. Saadia Andaleeb and others
Civil Appeal No.1012 of 2018
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1012_2018.pdf

Facts: The Civil suit of appellants was instituted with the prayer that the Release Deed, based for transfer of suit property in favour of respondent No.2, may be declared null and void. The said suit was decreed and relevant appeals were dismissed. However, consequent revision application filed by the Respondent No.2 before High Court was allowed and concurrent findings recorded by the courts below

were set aside. Hence, instant Civil Appeal.

Issues: i) What would be the legal status of a Release Deed which was executed by sisters when they were not available with independent advice to understand its nature and later, it was made basis for transfer of their shares in property in favour of their brother?
ii) What the Deed of Release or relinquishment must encapsulate and what outcome it has?
iii) Whether the Deed of Release or relinquishment and the indenture of gift can be deemed to be inter-changeable or substitutable?
iv) Whether the High Court can substitute its own findings with concurrent conclusions of the lower courts whilst exercising powers under Section 100 or under revisional jurisdiction under Section 115 of C.P.C.?

Analysis: i) If everything was done with free will and consent or there was a conscious abandonment of rights, then the best marginal witnesses to the Release Deed executed by sisters would be their husbands, the absence of whom would transpire that the sisters had no independent advice to understand the nature of the document to safe guard their interest.
ii) The substratum of the indenture of the Release Deed or the Relinquishment Deed encompasses the conveyance of right, title, or interest in the immovable property by the legal heirs in the joint property by which a co-owner renounces his rights in favour of another legal heir with consideration or even without consideration or on account of some family settlement discernible from the record, which would in future operate as an *estoppel* to lodge any future claim on account of the doctrine of *spessuccessionis*.
iii) Under the Muslim Law, the constituents of a valid gift are tender, acceptance and possession of property. A Muslim can devolve his property under Muslim Law by means of *inter vivos* i.e. gift or through testamentary dispositions i.e. will. However, the Transfer of Property Act, 1882, has no application to the gift envisioned and encapsulated under the Muslim Law. For the foregoing reason, Sections 123 and 129 of the Transfer of Property Act can neither surpass nor outweigh or preponderate the matters of gifts contemplated under the Muslim Law.
iv) The High Court has the powers to re-evaluate the concurrent findings of fact arrived at by the lower courts in appropriate cases, but cannot upset such crystalized findings if the same are based on relevant evidence or without any misreading or non-reading of evidence. If the facts have been justly tried by two courts and the same conclusion has been reached by both the courts concurrently then it would not be judicious to revisit it for drawing some other conclusion or interpretation of evidence in a second appeal under Section 100 or under revisional jurisdiction under Section 115, C.P.C., because any such attempt would also be against the doctrine of finality.

Conclusion: i) If the sisters were not available with independent advice to understand nature of Release Deed executed by them, later on, the same was made basis for transfer of their shares in property in favour of their brother, then the execution of such Release Deed and subsequent transfer would be liable to be declared *void ab-initio* and ineffective.

ii) The Deed of Release or relinquishment must encapsulate, the date when the right to the property was given up; purpose of giving up the right; consideration, if any; consent of the party giving up the right in the property etc. As an outcome, one of the co-sharers/legal heirs separates himself or herself from the joint or inherited property, with the aspiration to put an end to any unresolved or unsettled issue or differences between the parties to prevent future litigation.

iii) It is a well-settled elucidation of law that the Deed of Release or relinquishment and the indenture of gift both have distinctive paraphernalia, characteristics and corollaries and cannot deemed to be inter changeable or substitutable.

iv) The High Court cannot substitute its own findings unless it is found that the conclusions drawn by the lower courts were flawed or deviant to the erroneous proposition of law or caused serious miscarriage of justice and must also avoid independent re-assessment of the evidence to supplant its own conclusion.

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14. **Supreme Court of Pakistan**
Muhammad Shafique v. Muhammad Imran and another
Criminal Appeal No.558 of 2019
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Mussarat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._558_2019.pdf

Facts: Through this appeal, by leave of the Court, the appellant has impugned the judgment passed by the Lahore High Court, Rawalpindi Bench, whereby criminal appeal was dismissed confirming his death sentence and answering Murder Reference in the affirmative.

Issue: Whether solitary firearm injury on the body of deceased serves as a mitigating circumstance in favour of an accused entitling him lesser punishment?

Analysis: However, as far as the quantum of punishment is concerned, it is prosecution's own case that the appellant hit Ata Muhammad deceased with his pistol (P -9) on the left side of his body below armpit. He is also not attributed any injury to the injured witnesses. Noor Muhammad, co -accused, who was attributed fatal injuries to Muhammad Kamran deceased was, however, acquitted by the trial court. Despite having ample opportunity to cause more injuries to the deceased, the appellant fired only once causing single injury to the deceased. The medical officer (PW -5), who conducted post-mortem examination, observed a solitary firearm injury with its corresponding exit on the dead body of the deceased. Certainly, this fact serves as a mitigating circumstance where penalty of death was unjustified rather a legal sentence i.e. life imprisonment was apt, which

aspect of the matter was overlooked by the High Court. Therefore, the death sentence awarded to the appellant by the trial Court and upheld by the High Court, in our candid view, is not sustainable in the eyes of law.

Conclusion: Solitary firearm injury on the dead body of the deceased, serves as a mitigating circumstance in favour of accused entitling him lesser punishment.

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15. **Supreme Court of Pakistan**
Sagheer Ahmed v. The State and another
Criminal Petition No.1241-L of 2023.
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1241_l_2023.pdf

Facts: The petitioner has invoked the jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, calling in question the order of the Lahore High Court, Lahore, whereby his application for bail after arrest in case FIR for the offense under Section 9(1)(3)(c) of the Control of Narcotic Substances Act, 1997 was dismissed.

Issues: i) What are the provisions relating to the sending of samples of narcotics substance to the forensic Science Laboratory and reflecting time limitation for dispatching the same?
ii) When the precious right of liberty can be denied?

Analysis: i) The provisions relating to the sending of samples to the forensic Science Laboratory are provided in Rule 4(2) of Control of Narcotic Substances (Government Analysts) Rules, 2001, which provides that the samples may be dispatched for analysis under cover of Test Memorandum specified in Form-I at the earliest, but not later than seventy-two hours of the seizure.
ii) The liberty of a person is a precious right guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. The denial of this right should only occur when guilt is established without a second thought.

Conclusion: i) See above in analysis portion.
ii) The precious right of liberty of a person can only be denied when guilt is established without a second thought.

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16. **Supreme Court of Pakistan**
Shaukat Hussain v. The State thr. PG Punjab & another.
Cr. Appeal No.425/2019 & Cr. Petition No.632/2020
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._425_2019.pdf

Facts: Through this appeal, by leave of the Court, the appellant called in question the

judgment passed by the Lahore High Court, Rawalpindi Bench, whereby criminal appeal filed by him was dismissed, however, his death sentence was altered into imprisonment for life..

Issues: i) Whether delayed report of occurrence to the Police by the eye witnesses evolves the chances of deliberations and consultations?
ii) Whether upon same set of evidence the co-accused persons can be awarded with different treatments of conviction or acquittal?
iii) Whether withholding the best evidence/star witness can cause dent to the prosecution story?

Analysis: i) If there is a delay of about four hours in reporting the crime to the Police whereas Police Station was situated at a distance of about 20 kilometers from the place of occurrence. No explanation at all was furnished for causing delay in reporting the crime to the Police. The contention that approximately four hours delay in lodging FIR is a normal thing does not appeal to the mind. Had the matter been reported within reasonable time, the police would have easily reached at the place of occurrence within about an hour. Why the matter has not been reported immediately by the eye-witnesses is a question which could not be satisfactorily explained by the witnesses during their evidence. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out (…)
ii) On the same set of evidence, the accused persons have been acquitted of the charges, whereas the appellant has been convicted and sentenced, benefit whereof should have also been extended to the appellant (…)
iii) The injured shown as a witness in the calendar of witnesses in the charge sheet has not been produced by the prosecution for evidence in support of its case without any cogent and plausible reason, thus has withheld the best evidence. The case of the prosecution is on weak footings and for the reasons aforementioned, the benefit of doubt arises in favour of the appellant (…)

Conclusion: i) Delay in report of occurrence to the Police by the eye witnesses evolves the chances of deliberations and consultations.
ii) Upon same set of evidence the co-accused persons cannot be awarded with different treatments of conviction or acquittal.
iii) Withholding the best evidence/star witness can cause dent to the prosecution story.

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17. **Lahore High Court**
Municipal Committee etc. v. Jam Brothers
C.R No.326 of 2022/BWP
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC1152.pdf

Facts: The respondent-contractor filed application before the learned Trial Court to make

the award of the Arbitrator as rule of Court. Trial Court remitted the matter back to the Arbitrator in terms of section 16 of the Act, 1940. The Arbitrator resubmitted the award before the learned Trial Court. After considering objections of the Committee and hearing the arguments of both sides, the learned Trial Court, accepted the application of the respondent-contractor and made the award as rule of the court. Being dissatisfied with the decision of the learned Trial Court, the Committee filed an appeal but without any success as the same was dismissed by the learned Additional District Judge, hence this petition.

Issues: i) When a party takes any step, towards satisfaction of the decree, whether it can challenge the validity of the said decree?
ii) What is role of the Civil Courts under the Arbitration Act, 1940?
iii) What is duty of the Court under the provisions of the Act, 1940 while dealing with the award?
iv) When the High Court in exercise of its revisional jurisdiction could interfere with the concurrent findings of the Courts below?

Analysis: i) It is well established by now that when a decree holder takes any step, even partial, towards satisfaction of the decree, it cannot challenge the validity of the said decree. (…) Undeniably, appellants freely and explicitly acknowledged the claim of respondent No.1, payment of partial claim to respondent and also showed readiness to settle the outstanding amount, which is tantamount to admission of its liability regarding the decretal amount. Needless to say that an admission/statement/undertaking, by a party, during the judicial proceedings has to be given sanctity while applying the principle of legal estoppel and estoppel by conduct as well as to respect moral and ethical rules. Hence, at any subsequent stage, a party cannot turn around to wriggle out from the consequence of such admission. If disclaimer therefrom is allowed as a matter of right, then it will definitely result into distrust of the public litigants over the judicial proceedings.
ii) It is well settled by now that civil court cannot sit as court of appeal on the decision of an Arbitrator as the Arbitrator is considered best Judge of the factual controversy between the parties. (…) The role of the courts under the Arbitration Act, 1940 principally is of supervisory nature and not that of appellate power under C.P.C
iii) It is well entrenched by now that while dealing with a matter under the provisions of the Act, 1940, the prime duty of the Court is to uphold the award instead of setting it aside for trivial reasons. (…) Reliance in this regard is placed on the cases reported as Durga Prosad Chamria and another v. Sewkishendas Bhattar and others (PLD 1949 Privy Council 187) and Ashfaq Ali Qureshi v. Municipal Corporation Multan and another (1984 SCMR 597). In the former case, the Privy Council while dealing with the powers of the court to set aside an award has inter-alia held as under:- However, that may be, their Lordship are satisfied that the two points of law as to which it is said that the Arbitrator's error vitiates the award would be contrary to the well-established principles such as are laid

down in In re King and Duveen (1) and F R Absalom Ltd. V. Greet West (London) Garden Village Society (2) for a Court of law to interfere with the Award even if the Court itself would have taken a different view of either of the points of law had they been before it.
iv) Concurrent findings of facts recorded by the courts below cannot be upset by this Court in exercise of its revisional jurisdiction in a casual manner until and unless the same are proved to be perverse or arbitrary or the same are based on misreading or non-reading of evidence which is not the position in the case in hand.

Conclusions: i) When a party takes any step, even partial, towards satisfaction of the decree, it cannot challenge the validity of the said decree.
ii) The role of the courts under the Arbitration Act, 1940 principally is of supervisory nature and not that of appellate power under C.P.C.
iii) While dealing with a matter under the provisions of the Act, 1940, the prime duty of the Court is to uphold the award instead of setting it aside for trivial reasons.
iv) Concurrent findings of facts recorded by the courts below cannot be upset by High Court in exercise of its revisional jurisdiction in a casual manner until and unless the same are proved to be perverse or arbitrary or the same are based on misreading or non-reading of evidence.

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18. **Lahore High Court**
Sanam Javaid Khan through attorney Rubina Javaid v. Returning Officer for Senate Election 2024 & another
Election Appeal No.18381 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1092.pdf

Facts: The appellant, for the purpose of contesting elections of Senate-2024 for the Women Reserve Seat from Province of Punjab, submitted her nomination papers through proposer and seconder in the office of Returning Officer. The scrutiny of the nomination papers was conducted and the same were rejected; hence, the instant appeal.

Issues: i) Whether nomination papers can be rejected on the ground that candidate could not produce legible copy of CNIC?
ii) Whether nomination papers of a candidate can be rejected on ground that candidate has not submitted assets and liabilities of husband when both candidate and her husband are in jail?
iii) Whether to contest election is a fundamental right?

Analysis: i) The second ground making basis of rejection of nomination papers is that the appellant could not produce the legible copy of CNIC; the same is not tangible defect and on such ground the nomination papers, in presence of observations of the Supreme Court of Pakistan order dated 26.01.2024 passed in

C.P.L.A.No.184/2024, cannot be rejected.
ii) The 'emphasized' line that "I am in jail since last more than 10 months "is sufficient to extend discretionary relief to the appellant, because in exigencies including illness, imprisonment and unavoidable circumstances, one cannot be knocked out and cannot be deprived of his/her fundamental right, in the present case, to contest the election. Even, it is also an admitted fact that husband of the appellant was also imprisoned in 9th May incident and he could not submit his Returns for the year 2023. In such scenario, when, statedly, the statements of accounts, Assets and Liabilities was presented before the Returning Officer at the time of scrutiny, the same should have been considered, because non-submission of Returns by the husband of the appellant with regards to preceding year i.e. 2023 was due to inevitable circumstance, not in control either of the appellant or of her husband
iii) To contest election is a fundamental right as guaranteed by Article 17(2) of the Constitution of Islamic Republic of Pakistan and the same has been upheld by the Supreme Court of Pakistan in its judgments…

Conclusion: i) Nomination papers cannot be rejected on the ground that candidate could not produce legible copy of CNIC as this is not a tangible defect.
ii) See under analysis no. ii.
iii) To contest election is a fundamental right as guaranteed by Article 17(2) of the Constitution of Islamic Republic of Pakistan.

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19. **Lahore High Court**
Muhammad Hanif Tayyab v. Insha Ullah, etc.
Crl. Appeal No.10214/2022
Mohib Ullah v. The State, etc.
Crl. Appeal No.12109/2022
Miss. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC1076.pdf

Facts: This single judgment will dispose of Crl. Appeals filed by appellants against their "convictions & sentences" as both the matters have arisen out of one and the same judgment passed by learned Judge Anti-Terrorism Court-I, Lahore/trial court.

Issues: i) Whether conviction on the basis of broken chain of safe custody of allegedly recovered case property and parcel of sample is possible?
ii) Where safe custody of allegedly recovered case property is not proved, whether conclusiveness and reliability of report of Bomb Disposal Technician would be vitiated?
iii) Whether police officials are as good witnesses unless it has been proved that they are having ill will or animosity against the accused/convict?
iv) Whether non-appearance of accused under section 340(2) Cr.P.C., for disproving allegation against him, does create any inference against him yet when he has taken plea of false implication?
v) Whether merely producing/getting exhibited document in the court and proving the same are one and the same thing?

Analysis: i) Now it is crystal clear that two parcels said to contain defused hand grenade and detonating assembly were deposited by PW-3 on 07.04.2021 but PW-1 issued report Ex.PA qua parcels which were deposited on 06.04.2021 and not on 07.04.2021. Therefore, safe custody as well as transmission of two parcels said to contain defused grenade and detonating assembly from police station to the office of Bomb Disposal Squad, has not been proved in this case. Now law is well settled on the point that unbroken chain of "safe custody of allegedly recovered case property and parcel of sample" is to be proved otherwise, conviction is not possible and it is rightly so because recovery of explosive substance is not a mere corroboratory piece of evidence rather it constitutes the offence itself and entails punishment.

ii) Since safe custody of two parcels of samples said to contain defused hand grenade and detonating assembly allegedly recovered from the possession of appellant has not been proved, therefore, conclusiveness and reliability of the report of Bomb Disposal Technician (Ex.PA) has been vitiated and said report is not capable of sustaining conviction to the extent of appellant; hence, now there is no need to discuss other merits of the case to his extent.

iii) Now coming to the case of Mohib Ullah (appellant in Crl. Appeal No.12109/2022, hereinafter to be referred as "appellant"), in order to prove aforementioned recovery of I.E.D. (P-3) and pistol .30 bore (P-4), taken into possession vide recovery memo (Ex.PD), prosecution produced complainant/PW-4 and PW-3, who categorically deposed and supported case of the prosecution against the appellant through their statements recorded during trial of the case, their testimony remained un-shattered in spite of searching cross-examination and its credibility could not be shaken; any enmity or animosity of said witnesses against the appellant also could not come on record. Needless to observe that police officials are as good witnesses unless it has been proved that they are having ill will or animosity against the accused/convict.

iv) Although, non-appearance of accused under Section: 340(2) Cr.P.C. for disproving allegation levelled against him, does not create any inference against him yet when he has taken plea of false implication and his abduction as well as detention for a long period, then regarding the same, he is the best witness to prove his said version by appearing so and his non-appearance amounts to withhold the best evidence.

v) DW-3 produced aforementioned rapt (Ex.DE) yet it is relevant to mention here that he is not scribe of said rapt rather brother of the appellant got recorded the same through application and Akhlaq Ahmad A.S.I./Duty Officer of Police Post: City Fateh Jang was scribe of said rapt but neither Aman Ullah (mentioned above) nor scribe of said rapt i.e. Akhlaq Ahmad A.S.I. was produced to prove contents of said rapt; merely producing/getting exhibited document in the court and proving the same are not one and the same thing rather different phenomena.

Conclusion: i) Conviction on the basis of unbroken chain of safe custody of allegedly

recovered case property and parcel of sample is not possible.
ii) Where safe custody of allegedly recovered case property is not proved, conclusiveness and reliability of report of Bomb Disposal Technician would be vitiated.
iii) Police officials are as good witnesses unless it has been proved that they are having ill will or animosity against the accused/convict.
iv) See above analysis clause no. iv.
v) Merely producing/getting exhibited document in the court and proving the same are not one and the same thing rather different phenomena.

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20. **Lahore High Court**
Aqeel alias Kaka, etc. v. The State, etc.
Crl. Revision No.24470/2023
Miss. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC1224.pdf

Facts: Through instant revision petition, the petitioners assailed the order of trial court, whereby, the application under Section 23 of the Anti-Terrorism Act, 1997 filed by present petitioners, was dismissed vide impugned order.

Issues: i) Whether merely due to magnitude of the effects of the crime, it can be termed as "terrorism" falling in the ambit of Section 6 of the Anti-Terrorism Act, 1997 and punishable under Section 7 of the Act ibid, if it has been committed due to personal enmity/vendetta?
ii) Whether firing near or around i.e. in the surrounding of the court is mentioned in Clause 4 (iii) of 3rd Schedule of Anti-Terrorism Act, 1997 and if it is not mentioned whether the same can be added therein by the court?
iii) Whether in special law, dealing with particular subject, courts are required to depart from its literal construction?

Analysis: i) Almost every crime spreads feelings of insecurity, harassment and fear however quantum of said effect i.e. feelings varies from person to person and area to area e.g. sometime even pallet fired from air gun hitting bird or animal resulting into oozing of the blood, can cause fear to the person who has never seen such episode earlier in his life and not acquainted with firearm weapons as well as their use whereas the person familiar with such events will not take any serious note of it even if assault rifle like Kalashnikov has been used for committing the occurrence, therefore, merely due to magnitude of the effects of the crime, it cannot be termed as "terrorism" falling in the ambit of Section: 6 of the Anti-Terrorism Act, 1997 and punishable under Section: 7 of the Act ibid, if it has been committed due to personal enmity/vendetta.
ii) However, if prima-facie, intention to have firing in or at the court premises is not reflecting from the act constituting crime rather it appears that occurrence was orchestrated to target opponents due to personal enmity outside the court and as a bye product incidentally some bullets hit the outer wall of the court premises or outer wall of court room from distance, then there is absolutely no intention to have firing in the court and in such state of affairs, act constituting the

offence/crime irrespective of the huge loss of lives or other things, would not be triable by Anti-Terrorism Court under its 3rd schedule. It is relevant to mention here that firing in the court has been mention in 3rd schedule of AntiTerrorism Act, 1997 for making the case triable by Anti-Terrorism Court whereas "firing near or around i.e. in the surrounding of the court" is not mentioned in Clause 4 (iii) of 3rd Schedule of Anti-Terrorism Act, 1997 and same cannot be added therein by the court;

iii) It goes without saying that in special law, dealing with particular subject, courts are required not to depart from its literal construction and it will be narrowly interpreted.

Conclusion: i) Merely due to magnitude of the effects of the crime, it cannot be termed as "terrorism" falling in the ambit of Section 6 of the Anti-Terrorism Act, 1997 and punishable under Section 7 of the Act ibid, if it has been committed due to personal enmity/vendetta?

ii) Firing near or around i.e. in the surrounding of the court is not mentioned in Clause 4 (iii) of 3rd Schedule of Anti-Terrorism Act, 1997 and the same can be added therein by the court.

iii) In special law, dealing with particular subject, courts are required not to depart from its literal construction and it will be narrowly interpreted.

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21. **Lahore High Court**
Muhammad Musharaf Hassan v. The State, etc.
Crl. Rev. No.16003 of 2024
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC1058.pdf

Facts: Through instant Criminal Revision, the petitioner prayed for setting aside the order passed by the Additional Sessions Judge whereby the respondent No.2 was not summoned by the court to face trial in a private complaint filed by the petitioner under sections 500, 501, 34 PPC against the respondents Nos.2 & 3.

Issues: i) Whether an advocate can be held responsible for the derogatory remarks levelled in the plaint?

ii) Whether the high court can interfere in the order of trial court in exercise of its revisional jurisdiction under sections 435, 439 Cr.P.C?

Analysis: i) An Advocate cannot be held responsible for any derogatory allegations levelled in the plaint.

ii) The order, containing valid reasons, cannot be interfered with by the High Court in the exercise of limited revisional jurisdiction under sections 435, 439 Cr.P.C., unless and until the same is illegal, perverse, and without jurisdiction.

Conclusion: i) An Advocate cannot be held responsible for any derogatory allegations levelled in the plaint.

ii) The order, containing valid reasons, cannot be interfered with by the High Court in the exercise of limited revisional jurisdiction under sections 435, 439 Cr.P.C., unless and until the same is illegal, perverse, and without jurisdiction.

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22. **Lahore High Court**
Ghzanfar Ali alias Manzoor, etc. v. The State, etc.
Crl. Appeal No.67578 of 2019
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC1202.pdf

Facts: Appellants were involved in case F.I.R. registered under Sections 302, 353, 186, 148, 149 PPC and section 7 of the Anti-Terrorism Act, 1997 and were tried by the Judge, Anti-Terrorism Court. The trial court seized with the matter in terms of the judgment convicted each of the appellants, and sentenced them. Feeling aggrieved by the trial court's judgment, the appellants has assailed their convictions by filing instant Criminal Appeal.

Issue: What will be the effect if the witnesses nominate the unknown accused before the identification parade?

Analysis: It cannot be disputed that in cases relating to unknown accused/robbers, the prosecution witnesses' identification of the accused is the main evidence. The prosecution has to satisfy itself that the witnesses were in a position to identify the culprits, and before the identification parade, they were not known to them. If the witnesses nominated the unknown accused before the identification parade, the identification of the unknown accused during identification proceedings by the witnesses should not be accepted. In the cases of unknown accused, any claim that the witnesses identified the culprits for the offence has to be examined by the Court carefully and diligently concerning the circumstances of the particular case.

Conclusion: If the witnesses nominated the unknown accused before the identification parade, the identification of the unknown accused during identification proceedings by the witnesses should not be accepted.

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23. **Lahore High Court**
Muhammad Asif v. The State
Crl. Appeal No.6732-J of 2019
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC1184.pdf

Facts: The appellant was tried by the learned Additional Sessions Judge. The trial court convicted the appellant under section 302(b) PPC, and sentenced him to undergo imprisonment for life as Tazir with the direction to pay compensation to the legal heirs of the deceased and in case of default in payment thereof, to undergo six months S.I further. The appellant has assailed his conviction by filing instant criminal appeal.

Issues: i) Whether statement given on oath with the help of notes prepared by the witness is against the law on the subject and a witness is entitled to refresh his memory before or during his examination through notes he prepared for the purpose?
ii) Whether positive report of Punjab Forensic Science Agency has any value when safe custody of same weapon of the offence is not proved?
iii) Whether mere absconsion is sufficient to prove the guilt of an accused?

Analysis: i) PW-13 gave his deposition during his examination-in-chief, with the help of notes he prepared for the purpose. Now, the question is whether his testimony can be treated as testimony by the provisions contained in Article 71 of the Qanun-e-Shahadat Order, 1984. The tenor of the language used in the first proviso to Article 71 of the Qanun-e-Shahadat Order, 1984 leads this court to the conclusion that evidence contemplated under Article 71 of the Qanun-e-Shahadat Order, 1984 envisages personal testimony based on the memory of the person who has seen, heard, or perceived a fact. The statement given on oath with the help of notes prepared by PW13 appears to be against the law on the subject…To consider whether a witness is entitled to refresh his memory before or during his examination. Provisions contained in Article 155 of the Qanun-e-Shahadat Order, 1984… In the instant case, no evidence has been given that this witness made entries in the Register No.19 kept for the purpose of the malkhana. PW-13 deposed that his statement under section 161 of Cr.P.C. was recorded by the investigating officer. PW-8 the investigating officer deposed during examination-in-chief… So, from the above deposition of PW-8 the investigating officer, it reveals he did not depose a single word that he recorded statement under section 161 of Cr.P.C. of PW-13 on 17.12.2014 to the effect that PW-4 returned from PFSA and handed over the parcels to PW-13 who kept the same in safe custody, nor he deposed that on 22.12.2014 he recorded statements PW-4 and PW-13 revealing that PW-13 handed over parcels to PW-4 and PW-4 deposited the same with PFSA. It is also necessary that when case property is redeposited in the Mallkhana, entry in the Malkhana Register is required to be made, and a dire necessity has been cast upon the prosecution to produce in Court the abstract of the Malkhana Register for ensuring, dispelling of, any aura of skepticism seeping into the prosecution case, especially vis-a-vis safe custody of the case property (P-7), "being," re-deposited in the Malkhana. Therefore, in the present case, provisions of Article 155 of the Qanun-e-Shahadat Order, 1984 would have no application…
ii) Pointing out the above deposition of prosecution witnesses it reveals that the prosecution did not prove that the parcel of the crime empty (P-7) was kept in safe custody. Due to the lack of this evidence, it cannot be held that the alleged parcel of crime empty (P-7) was re-deposited in Malkhana, and its benefit will go to the accused. This creates doubt about the genuineness and safe custody of the crime empty (P-7) recovered from the place of occurrence…The prosecution has to establish by convincing evidence that the alleged parcels of pistol (P-5), alongwith three live bullets (P-6/1-3) and crime empty (P-7), were kept in safe

custody. There is no explanation for this failure to establish safe custody of the parcels pistol (P-5), alongwith three live bullets (P-6/1-3) from the time of seizer on 27-05-2016 till its deposit with the Moharrar and after that its production before court. It is not clear where the parcels of pistol (P-5), alongwith three live bullets (P-6/1-3), were kept. The prosecution has to establish by convincing evidence that the alleged parcels of pistol (P-5), alongwith three live bullets (P-6/1-3), were the same, recovered at the pointing of the appellant and were kept in safe custody. There is no explanation for this failure to establish safe custody of the pistol (P-5), alongwith three live bullets (P-6/1-3) from the time of the seizer on 27-05-2016 till its production in the court. Mere oral evidence of the prosecution witnesses, i.e., PW-17 the investigating officer, PW-14), and PW-15 as to the recovery of pistol (P-5), alongwith three live bullets (P-6/1-3) does not discharge the heavy burden of responsibility, which lies on the prosecution. It is the considered opinion of the court that the inconsistencies described above and contradictions considered cumulatively do lead to irresistible influence that the prosecution has not been able to prove safe custody of the parcels of pistol (P-5), alongwith three live bullets (P-6/1-3) recovered from the possession of the accused-appellant through material and cogent evidence. This contradiction went to the root of the case. Thus, there is no evidence to connect the Firearms & Toolmarks Examination Report (Ex. PZ) with the substance seized from the possession of the appellant. I am, therefore, of the view that the recovery of 30-bore pistol P-5 and three live bullets (P6/1-3) and the positive report of Punjab Forensic Science Agency, Lahore (Exh. P2) are of no avail to the prosecution.

iii) However, the factum of absconding, even if established, could only be used as corroborative evidence and was not a substantive piece of evidence. It is an established principle of law that mere absconsion is not proof of the guilt of an accused. Reliance is placed on "Rasool Muhammad v. Asal Muhammad and another" (PLJ 1995 SC 477). From the above, it can be ascertained that the prosecution failed to bring the appellant's guilt through straightforward, confidence-inspiring, and corroborative evidence.

Conclusion: i) Statement given on oath with the help of notes prepared by the witness is against the law on the subject and a witness is entitled to refresh his memory before or during his examination but not from notes he prepared for the purpose.

ii) Positive report of Punjab Forensic Science Agency has no value when safe custody of same weapon of the offence is not proved.

iii) It is an established principle of law that mere absconsion is not proof of the guilt of an accused.

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24. **Lahore High Court**
The State v. Imtiaz Ullah
Murder Reference No.130 of 2021
Imtiaz Ullah v. The State
Criminal Appeal No.60592 of 2021
Mr. Justice Sadaqat Ali Khan, Mr. Justice Asjad Javaid Ghural

https://sys.lhc.gov.pk/appjudgments/2024LHC1053.pdf

Facts: Appellant filed Criminal Appeal against his convictions and the trial Court has sent Murder Reference for confirmation of his death sentence or otherwise, which are being decided through this single judgment.

Issues: i) Whether there could be any chance of substitution of an accused in case got registered by complainant, regarding night time murder of his son, against his son in law?
ii) Whether the minor discrepancies occurring in statements of prosecution witnesses may be deemed fatal to prosecution case?
iii) What would be impact upon prosecution case of recovery of crime weapon, which is effected on pointation of accused, but report of Punjab Forensic Science Agency qua matching of the crime empties is in negative?

Analysis: i) If an accused has close relationship of being son in law of complainant, there is no question of his misidentification despite the fact that occurrence took place at nighttime, because the complainant cannot take risk to falsely involve such accused in the murder case of his son to ruin the matrimonial life of his daughter, leaving actual culprit scot free.
ii) The minor and general discrepancies occur in every case when witnesses are cross-examined after a long time of the occurrence.
iii) If recovery of crime weapon is effected on pointation of the accused, but report of Punjab Forensic Science Agency qua matching of the crime empties is in negative, then such recovery of crime weapon is inconsequential.

Conclusion: i) If accused is son in law of complainant having been implicated in night time murder of complainant's son, then substitution of such an accused is a rare phenomenon in these circumstances and in such like cases.
ii) The minor discrepancies occurring in statements of prosecution witnesses cannot be deemed fatal to prosecution case.
iii) If the recovery of crime weapon is effected on pointation of the accused, but report of Punjab Forensic Science Agency qua matching of the crime empties is in negative, then such recovery of crime weapon is not fatal to the prosecution case.

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25. **Lahore High Court**
The State v. Ghaffar Abbas alias Ghaffar Ahmed, Muhammad Suleman alias Mani
Murder Reference No.35 of 2022
Ghaffar Abbas alias Ghaffar Ahmed etc. v. The State etc.
Criminal Appeal No.435 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC1060.pdf

Facts: The learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the two

of the convicts in case FIR registered under sections 302, 34 P.P.C. and feeling aggrieved, appellants lodged the Criminal appeal assailing their convictions and sentences.

Issues: i) What can be inferred if in column "Brief Summary of Facts" of Inquest Report neither names of assailants nor names of eye witnesses have been mentioned?

ii) What inference can be drawn if rough and scaled site plans of place of occurrence do not show the houses of eye-witnesses?

iii) What is legal value of recovery of pistols on pointing out of the accused in presence of negative report?

Analysis: i) The Inquest Report carries immense significance which is considered an integral part of method/system in every murder case to keep an eye on the subsequent possible fabrication in record, it gives some reflection of the witnesses in attendance, the weapon used in commission of crime, the detail of injuries on the body of the deceased, presence of crime empties etc. at the crime scene, if the dead body is lying at the spot, the nature of weapon and summary of the facts. Such information can easily be gathered from perusal of its relevant columns. If in column "Brief Summary of Facts" of Inquest Report neither names of assailants nor names of eye witnesses have been mentioned nor reason for such lapses is available, then an inference can be drawn that till then, names of the complainant, eye-witnesses and accused were unknown and it was an unseen occurrence.

ii) If rough and scaled site plans of place of occurrence do not show the houses of eye-witnesses around the place of occurrence then it can be inferred that the witnesses are chance witnesses and they have to establish their presence at the time and place of occurrence with their stated reasons.

iii) Recovery of pistols on pointing out of the accused in presence of negative report is not only inconsequential rather draws adverse inference.

Conclusion: i) If in column "Brief Summary of Facts" of Inquest Report regarding facts of the case neither names of assailants nor names of eye witnesses have been mentioned nor reason for such lapses is available, then an inference can be drawn that till then, names of the complainant, eye-witnesses and accused were unknown and it was an unseen occurrence.

ii) If rough and scaled site plans of place of occurrence do not show the houses of eye-witnesses around the place of occurrence then it can be inferred that the witnesses are chance witnesses.

iii) Recovery of pistols on pointing out of the accused in presence of negative report is not only inconsequential rather draws adverse inference.

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26. **Lahore High Court**
Commissioner Inland Revenue v. Security General Insurance Company Limited.
I.T.R No.186/2016
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2017LHC5807.pdf

Facts: The respondents in different Income Tax References filed an appeal to the Appellate Tribunal Inland Revenue which engaged the same questions of law. The Members of the Tribunal had a difference of opinion and the matter was thereafter referred to a Full Bench of the Appellate Tribunal which rendered the judgment on the question of law in the favour of respondents. Now, the appellant have assailed the judgment of the Full Bench of the Appellate Tribunal.

Issues: i) Whether section 99 of the Income Tax Ordinance 2001 is a special provision relating to insurance business?
ii) Whether section 26(a) of Income Tax Ordinance 1979 is in pari materia of section 99 of the Income Tax Ordinance 2001?
iii) Whether the Fourth Schedule of Income Tax Ordinance 2001 refers to the computation of profits and gains but does not make any reference to the computation of tax payable?

Analysis: i) Section 99 of Income Tax Ordinance is a special provision relating to insurance business and the taxpayers in these cases are undoubtedly carrying on insurance businesses and there is no cavil that the profits and gains of these taxpayers shall be computed in accordance with the rules in Fourth Schedule which too provides for special provisions regarding computation of profits and gains of insurance businesses.
ii) Section 26(a) of Income Tax Ordinance 1979 is in pari materia to Section 99 with the only difference that the words “and the tax payable thereon” have been deleted from Section 99.It may be stated that according to the taxpayers/insurance businesses in these cases, since there are no provisions regarding payment of tax and its determination in the Fourth Schedule, general provisions in the First Schedule would be applicable and the taxpayers would be entitled to the benefit regarding dividend income given in the First Schedule.
iii) The Fourth Schedule refers to the computation of profits and gains but does not make any reference to the computation of tax payable. The computation of tax liability will have to be made on the basis of the general provision of First Schedule. First Schedule provides a different rate of tax in respect of dividend income and if the First Schedule is to be applicable, the appellant cannot be heard to argue that in respect of insurance businesses they will not be entitled to the benefit in the rate of tax provided by the First Schedule while that benefit would be applicable and extended to other similarly placed companies and taxpayers. The provisions of First Schedule would be engaged and the benefit prescribed therein would be applicable to the case of insurance businesses as well. Therefore,

although the current Section 99 does not contain the words "and the tax payable thereon", this would not make any difference, in that, at the relevant time to which these tax references relate there were no provisions regarding the tax payable on the business of insurance in the Fourth Schedule.

Conclusion: i) Section 99 of Income Tax Ordinance is a special provision relating to insurance business and the taxpayers in these cases are undoubtedly carrying on insurance businesses.
ii) Section 26(a) of Income Tax Ordinance 1979 is in pari materia to Section 99 with the only difference that the words "and the tax payable thereon" have been deleted from Section 99.
iii) The Fourth Schedule refers to the computation of profits and gains but does not make any reference to the computation of tax payable. The computation of tax liability will have to be made on the basis of the general provision of First Schedule.

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27. **Lahore High Court**
Muhammad Azram v. Muhammad Altaf and another
Civil Revision No.573-D of 2014
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC1120.pdf

Facts: The petitioner instituted a declaratory suit seeking cancellation of sale and gift mutations alienating suit property by his mother in favour of respondents No.1 and 2 respectively. The said suit was ultimately decreed, however, the consequent appeal preferred by the respondent was allowed. Hence, the judgment of learned Appellate Court is impugned in this petition under Section 115 of the Code of Civil Procedure, 1908.

Issues: i) What is the limitation to file a suit for declaration and when it commences?
ii) What is the scope of Section 42 of the Specific Relief Act, 1877?
iii) While analyzing the contrary conclusions of the courts below in exercise of revisional jurisdiction, what would be the touchstone for extending the preference?

Analysis: i) Right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his right. The limitation of a suit under the above mentioned provision is to be regulated and governed by Article 120 of the Limitation Act, 1908.
ii) Section 42 of the Specific Relief Act, 1877 ordains that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled.
iii) In case where the divergent views of the courts below exist as their conclusion are contrary to each other, then High Court, while exercising revisional

jurisdiction, is supposed to make comparative analysis of both the judgments in order to determine their validity on the touchstones of Section 115 of C.P.C. It is cardinal principle of law that in the matter of giving preference to the judgments of lower courts, while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity.

Conclusion: i) Article 120 of the Limitation Act, 1908 provides six years period for filing suit for declaration, which commences from the time of accrual of such right.
ii) Under Section 42 of the Specific Relief Act, 1877, the right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his right.
iii) It is cardinal principle of law that in the matter of giving preference to the judgments of lower courts, while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity.

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28. **Lahore High Court**
Muhammad Tariq Khan v. The National Bank of Pakistan through President/CEO, etc.
W.P.No.2832 of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC1165.pdf

Facts: This single judgment shall govern two writ petitions raising similar questions of fact and law as well as arising out of common orders. Both the petitioners respectively were joint custodian/ Manager (Operations) and Cashier in the bank, where an incident of robbery took place. Initially, the petitioners were suspended from service and subsequently they were also arrayed as accused in the aforementioned criminal case. Moreover, they were eventually dismissed from service on culmination of second departmental inquiry. In the meanwhile, the petitioners were tried and convicted in the said criminal case; however they were acquitted from the criminal charges in appeals. Thereafter, the fresh representations/appeals filed by the petitioners could not be decided, whereupon they approached the Federal Service Tribunal, Islamabad, where their appeals were dismissed being not maintainable, which orders were challenged before the Supreme Court of Pakistan but relevant civil petitions were dismissed. The petitioners then filed their respective constitutional petitions before this Court, which were allowed with the observation that the Bank shall hold a fresh inquiry. On completion of inquiry, the petitioners were found guilty and they were again dismissed from service. The petitioners submitted their representations/appeals before the departmental authority, which remained unattended and ultimately they filed constitutional petitions before this Court, which were initially disposed of

and ultimately dismissed, hence these writ petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) Whether the order of Government, body or authority is amenable to the writ jurisdiction under Article 199 of the Constitution, 1973, of the High Court in territorial jurisdiction of whom relevant order/action has affected a party?
ii) Whether National Bank of Pakistan Rules, 1980 are statutory in nature?
iii) What is effect of the National Bank of Pakistan Rules, 1980 qua the National Bank of Pakistan Staff Service Rules, 1973?
iv) Does there exist any legal impediment in conducting criminal and departmental/disciplinary proceedings side by side?

Analysis: i) If Government, body or authority passes any order or initiates an action at Federal capital but it affects the "aggrieved party" at the place other than the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.
ii) The National Bank of Pakistan Rules, 1980 are neither made by the Federal Government nor published in the official gazette, rather, these have been framed by the Board of the Bank pursuant to its executive authority in the nature of management or superintendence of the affairs of the bank and the policy making power.
iii) The National Bank of Pakistan Staff Service Rules, 1973 were serving as the conclusive terms and conditions of service of the employment for the National Bank of Pakistan. officers etc., when the Banks (Nationalization) Act, 1974 was enforced and said Rules of 1973 were specifically saved by virtue of the section 13(1) of the Act ibid. However, the Rules of 1973, have been repealed and section 6 of the General Clauses Act, 1897, clearly manifests that a change in the substantive law amounting to divest and adversely affect the vested rights of the parties shall always have prospective implication unless by express intention of the legislature such law has been made applicable retrospectively. National Bank of Pakistan Rules, 1980 do not in any manner contravene the National Bank of Pakistan Staff Service Rules, 1973, however; the expression "Notwithstanding" in section 13(2) of the Banks (Nationalization) Act, 1974 shall operate as a non obstante provision/ clause.
iv) The fate of departmental proceedings is always to be adjudged from the incriminating material placed in support of the charges against the delinquent employee. In departmental proceedings, standard of proof of the allegations cannot be equated with the standard of evidence against an accused in a criminal trial, but one cannot ignore the principle of natural justice while inflicting even meagre penalty upon a person as it amounts to deprive him from the right of earning guaranteed by the “Constitution”.

Conclusion: i) The order of Government, body or authority is amenable to the writ jurisdiction under Article 199 of the Constitution, 1973, of the High Court in territorial jurisdiction of whom relevant order/action has affected a party.
ii) The National Bank of Pakistan Rules 1980, do not enjoy the status of a statutory instrument.
iii) Even though National Bank of Pakistan Rules, 1980 are non-statutory, yet they have the overriding effect qua the National Bank of Pakistan Staff Service Rules, 1973.
iv) There is no legal impediment in conducting criminal and departmental/disciplinary proceedings side by side.

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29. Lahore High Court
Kousar Bibi v. The State and another
Criminal Misc. No.5175/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC1103.pdf

Facts: Through this application, the Petitioner seeks post-arrest bail in case FIR for an offence under section 9(1)-3(c) of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether bail of an accused can be declined on the basis of criminal record of his family?
ii) Whether videography is a powerful tool in the fight against false implication in narcotics cases?
iii) What are the guidelines for leaders of every police team during operation?
iv) What is the dictate of combined reading of sections 27 and 33(4) of the Control of Narcotic Substances Act, 1997?

Analysis: i) If the accused does not have a criminal record and the list of cases pertains to his family members then he cannot be penalized for the wrongdoing of relatives. So, bail cannot be dismissed on this score.
ii) Videography is a powerful tool in the fight against false implication in narcotics cases, providing objective documentation of police encounters, supporting criminal investigations, and fostering transparency and accountability within law enforcement agencies. By capturing audio and video footage of interactions between officers and individuals suspected of drug-related offences, video recordings offer a reliable record of events that can help prevent wrongful arrests, unjust prosecutions, and violations of individuals' rights.
iii) Given the significant technological advancements, most police officers carry smartphones, which they can use to videograph their raids/operations. It is, therefore, directed as follows: (i) Henceforth, leaders of every police team shall ensure that all operations are videographed without exception. Specifically, in cases involving recovery of narcotics, they shall record a video of the entire operation unless circumstances beyond their control prevent them from doing so. (ii) Reasons for failing to record the recovery proceedings on video must be

specifically documented in the case diary.

iv) A combined reading of sections 27 and 33(4) of the CNSA reveals that the legislative scheme dictates that recovered narcotics should be produced before the Special Court at the time of remand. It has been observed that these provisions are often overlooked or disregarded in practice. All the Special Courts are directed to ensure strict compliance with them.

Conclusion: i) Bail of an accused cannot be declined on the basis of criminal record of his family.

ii) Videography is a powerful tool in the fight against false implication in narcotics cases.

iii) Leaders of every police team shall ensure that all operations are videographed without exception.

iv) A combined reading of sections 27 and 33(4) of the CNSA reveals that the legislative scheme dictates that recovered narcotics should be produced before the Special Court at the time of remand.

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30. **Lahore High Court**
Mehmood Ali v. Chairman Evacuee Trust Property Board and others
Writ Petition No.1479 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1129.pdf

Facts: By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner has challenged order passed by the Additional Secretary Incharge, Ministry of Religious Affairs and Interfaith Harmony, Islamabad, whereby revision petition filed by him against the order of Deputy Administrator was dismissed. The Petitioner has also prayed to set aside orders passed by the Deputy Administrator.

Issue: Whether the Court can determine issue of change of tenancy, while interpreting Clause 3(III)(B)(b) of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977, without first determining status of legal heirs of deceased tenant by authorities concerned?

Analysis: Bare reading of Clause III of the Management and Disposal of Urban Evacuee Trust Properties, 1977 reveals that District Officer, an Administrator or the Chairman concerned are empowered to change the tenancy with the conditions mentioned under said clause. While Clause (III)(B) of the Scheme ibid demonstrates that the tenancy of unit/sub-unit shall be alienable in favour of the legal heirs indicated in the schedule of tenancy deed subject to conditions incorporated under Clause (III)(B)(a) and (b) of the Scheme ibid.

Conclusion: The Court cannot determine issue of change of tenancy, while interpreting the Clause 3(III)(B)(b) of the Scheme for the Management and Disposal of Urban

Evacuee Trust Properties, 1977, without prior determination of status of legal heirs of deceased tenant by authorities concerned.

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31. **Lahore High Court**
M/s Bilawal Gull Builders v. Government of Punjab, etc.
Writ Petition No. 2009/2024
Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC1028.pdf

Facts: Present and other petitioners, claimed to be the bidders, hereby invoked Constitutional jurisdiction inter alia for seeking declarations against alleged actions/directions of the procuring agency(ies), issued in the course of tendering process initiated for awarding of civil works in various districts of southern part of province of Punjab. Fundamentally, and in common, the grievance is directed against demand made by the procuring agency, directing the petitioners – [a distinct class of bidders] -, to furnish "Quality Assurance Security" ('QAS') or "Quality Control Guarantee" („QCG‟) – nomenclature of the security(ies) demanded vary from case to case but raison d`être thereof indicates commonality. And likewise, quantum of security(ies) demanded in each case varies, depending upon the financial outlay of the tendered work(s).

Issues: i) Whether the procuring agency can demand additional performance security, in addition to the requirement of performance guarantee?
ii) Whether discretion or option of the bidder to pick security of its choice and convenience is permitted under Punjab Procurement Regulatory Authority Act, 2009 and Punjab Procurement Rules, 2014?
iii) Whether Punjab Government, Authority and procuring agency can frame policy guidelines, issue instructions and orders for making procurement efficient, economical and transparent?

Analysis: i) Securities demand, in lieu of occurrence of difference in quoted price and estimated cost, manifest a distinct class of security, different from the scope and requirement of performance guarantee. Not every bidder is asked to furnish additional securities - QAS or QCG - but only those bidders whose quoted bid prices are lower than declared estimated cost. This odd situation raises a red flag. In fact, additional security is in the nature of contingency security, requirement whereof triggers in case of differential. Additional security is solicited to hedge the exposure of the procuring agency and risks. This position is explained with an illustration. A contract is advertised, wherein estimated cost of the works was assessed at Rs.10.00 Million. A, a bidder, quotes bid of Rs.11.00 Million – no occasion for submission of additional security arises and if A‟s bid is found lowest evaluated bid, contract would be awarded and then A was required to furnish performance guarantee. B, another bidder, quotes bid price of Rs.7.00 Million against estimated cost of Rs.10.00 Million. B‟s bid is apparently the lowest bid but lower than estimated cost – exposure encountered was the differential of Rs.3.00 Million. B is required to submit additional security to the

extent of the exposure of the procuring agency to the extent of Rs.3.00 Million. B cannot lay claim to the contract on account of being the lowest bidder unless additional security is submitted. And till additional security is not submitted bid offered cannot be classified as responsive – under Rule 2 (aa) of the Rules, 2014 "responsive, means qualified for consideration on the basis of declared evaluation criteria and specified in the bid document or in the request for proposal". Once additional security is provided then the bid would be available for consideration. Acceptance of bid is next stage. An adjective, „successful", is added to the status of lowest bidder, provided the occasion arises and additional security demanded is submitted, upon acceptance of bid. Once bid was accepted and contract awarded, then the contractor was required to furnish performance guarantee – which for all intent and purposes is an independent security. Bidder B is a distinct class of bidders, in the context of contingency of the differential in quoted price and estimated cost. Submission that lowest quoted bid would per se make bidder successful and eligible for the award of contract is fallacious. In the context of present controversy, bid, whereby quoted price was lower than the estimated cost, is not responsive in the first place. Bidder with lowest quote is directed to provide the security for covering the differential – at that point of time there is no relevance of performance guarantee. If bidder meets the contingency and furnish requisite security, in the kind as directed, only then the bid would be classified as "lowest evaluated bid". And unless contingency is met, no occasion for acceptance of bid arises, notwithstanding howsoever lowest the quote was. Once condition is fulfilled, the bid is accepted and contract awarded, when status of the bidder elevates to the contractor, who is then obligated to provide performance guarantee. Bid will be accepted only once it is found responsive, and it cannot be treated as responsive unless the security demanded, for the difference between quoted price and estimated cost, is provided. Only upon acceptance of lowest evaluated bid an adjective "successful" is added to the credit of bidder. This is the reasoning of decision in the case of "Messers GHULAM MUHAMMAD & SONS v. WATER AND SANITATION AGENCY (WASA) FAISALABAD through Director General and others" (2022 MLD 1216) and affirmed by Division Bench is the case of A.M. Construction Company (Private) Limited (supra). Reasoning extended in the case of A.M. Construction Company (Private) Limited need to be construed in the context of aforesaid illustration, for understanding rational, plausibility and commercial prudence of demanding additional security. Mere use of the expression „additional performance security" in the operative part of the decision of A.M. Construction Company (Private) Limited would not obliterate or diminish the ratio decidendi of the decision. Judgment has to be interpreted in the context of its reasoning. We opine that takeaway from the decision in case of A.M. Construction Company (Private) Limited (supra) was the declaration contained in clause (i) of the operative part of the decision. Observations in rest of the paragraphs, from (ii) to (iv), are specific to the facts of the cases decided, which have had no precedential value and treated as mere obiter. It is reiterated that Rule 56 of the Rules, 2014 will not be construed or read

to obliterate the option of calling for additional security, whenever the difference in the quoted price and estimated cost occurs. And furnishing of quality assurance security will not absolve the bidder-cum-contractor from furnishing performance guarantee to the maximum of 10% of the contract price, envisaged under Rule 56 of the Rules, 2014. Rule 34 of the Rules, 2014 is not attracted. No element of discrimination is pointed. In fact, absolving bidders from the obligation of providing additional security, where quoted bid is found lower than estimated cost, would tantamount to inverse discrimination with other category of bidders.

ii) Now we take up the issue relating limiting the acceptability of security by the Banks, for the purposes of QAS or QCG security(ies) and / or performance guarantee. We confronted learned counsels to refer to any provision in the Act, 2009 and Rules, 2014 which extends discretion or option to the bidder to pick security of its choice and convenience, and instead learned counsels, referred to clause 10.1 of Standard Bidding Document, drafted by Pakistan Engineering Council (PEC). Clause 10.1 had no application in wake of prevalent procurement regime in province of Punjab. There is no cavil that preference to a particular kind of security depends on various factors, which factors have had to be considered by the procuring agency and any decision taken calls for showing deference. There is no cavil that picking a form of security is a policy decision, which exercise of discretion is not amenable to constitutional jurisdiction, otherwise. Be that as it may, provisioning of security from Insurance companies is not permissible anymore. Question requiring consideration is whether act of limiting choice of security conflicts with prevalent procurement regime. No particular clause is referred to show any conflict or violation for limiting choice of acceptability of a specific kind of security. Judgments in cases of Constructors Association of Pakistan through Secretary General and 4 others and M/s Saad Ullah Khan & brothers had no application in the context of procurement regime, operative in the Province of Punjab. Under the present procurement regime, an Authority has been constituted through section 3 of the Punjab Procurement Regulatory Authority Act, 2009, which Authority is entrusted with the functions of preparing standard document to be used in connection with public procurement - [Section 5-(h)]. Authority, in exercise of powers under section 29 of the Act, 2009 and Rule 25(5) of Rules, 2014 framed Standard Bidding Documents for Procurement of Civil Works, wherein acceptable security was identified in shape of Bank guarantee/ CDR/ Demand Draft, etc. and not the securities from the Insurance Companies. Accordingly, changes were made in standard contract form.

iii) Argument that instructions of ECNEC for extending preference to standard bidding documents drafted by PEC is biding and claim superiority vis-à-vis the prevalent procurement regime is misconceived. Instructions, though notified, does not restrict or impede the enforcement of public procurement regime envisaged under the auspicious of Act, 2009 and Rules, 2014. Instructions, having advisory status cannot be construed to undermine the provincial autonomy and effective enforcement of procurement regime in Punjab. No jurisdictional objection is pleaded qua the powers of the Authority to draft sample bidding documents and

tasks assigned to the procuring agency. Government of Punjab had introduced contract form for the guidance of the bidders and for regulating procurement matters. Violation recorded of any provision of the Act, 2009, Rules, 2014, regulations, orders or instructions made there-under, attracts mis-procurement. Notably, no facial challenge has been thrown qua the constitutionality of Act, 2009 and Rules, 2014 – no issue of legislative competence of the Province of Punjab to legislate is raised. And as-applied challenge to the application of various provisions of Act, 2009 and Rules, 2014 also fails. The instructions of ECNEC cannot be elevated to the standard of a legislative enactment for the purposes of conferring preferability under Article 143 of the Constitution. Scope of Article 143 of the Constitution has been misconstrued in the judgments referred. Petitioners" side failed to refer any entry in the Federal Legislative Schedule to disqualify the provinces from legislating on the subject of procurement matters. There is another aspect regarding applicability of standard bidding documents framed by PEC. Regulation 3 of the Public Procurement Regulations, 2008 – framed in exercise of powers under section 27 of the Public Procurement Regulatory Authority Ordinance, 2002 – directs the procuring agency to use standard form of bidding documents prescribed by PEC. Regulation 3, ibid, has no relevance and applicability in the context of Act, 2009 or the Rules, 2014, wherein no provision parallel to Regulation 3 is pointed. There is nothing in the Act or the Rules that circumvents the power of the Government, Authority and procuring agency to frame policy guidelines, issue instructions and orders for making procurement efficient, economical and transparent. The judgments referred are not attracted in the context of provisions of Act of 2009 and Rules of 2014.

Conclusion: i) The procuring agency can demand additional performance security, in addition to the requirement of performance guarantee.
ii) Discretion or option of the bidder to pick security of its choice and convenience is not permitted under Punjab Procurement Regulatory Authority Act, 2009 and Punjab Procurement Rules, 2014.
iii) Punjab Government, Authority and procuring agency can frame policy guidelines, issue instructions and orders for making procurement efficient, economical and transparent.

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32. **Lahore High Court**
Syed Ali Raza Rizvi and 33 others v. Commissioner, D.G. Khan and 10 others.
W.P. No. 1355/2024
Ms. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC1042.pdf

Facts: This and connected Constitutional petitions assails land acquisition process, initiated pursuant to the decision of Federal Government for the development of

600 - Megawatt Peak Capacity Soler PV Project, in District Kot Addu / Muzaffargarh, Punjab.

Issue: What would be effect of exercising judicial review jurisdiction when once land is acquired for public purpose?

Analysis: No significant procedural defect, misuse or abdication of authority and illegality in exercise of powers is established – no question of violation of section 230 of the Act 2017 arises when Notification under section 4 and Notification under section 17(4) of the Act, 1894 were issued before assumption of control by Caretaker Government at Federal level. Land is acquired for the Company, which is tasked to undertake a project having benefits and advantages for the public… Once land is required for public purpose, interference by exercising judicial review jurisdiction tantamount to throw spanner in the works…

Conclusion: Once land is acquired for public purpose, interference by exercising judicial review jurisdiction tantamount to throw spanner in the works.

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33. Lahore High Court
Syed Faheem ul Hassan v. I.G. Punjab Police, etc.
W.P. No.1075 of 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1111.pdf

Facts: This petition was filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for the recovery of brother of the petitioner allegedly from illegal confinement of respondents No.4 & 5 serving at Organized Crime Unit Civil Line Division Lahore, with consequent relief of legal action against the said respondents.

Issues: i) Whether, once an accused is lodged in judicial custody, his further physical remand in that case or some other FIR(s) can be granted?
ii) Whether physical remand of an accused can be granted when he directly surrenders before the Magistrate in response to a warrant and has been sent to judicial custody?
iii) Whether an accused is deemed to have been arrested in all cases within the knowledge of the investigating agency?

Analysis: i) Out of referred Judgments, some speak that though there exist no provision in Cr.P.C. which could authorize subsequent physical remand in the same case once accused is lodged to judicial custody but concerned Magistrate can grant physical remand of such accused in different FIRs if there exist exceptional and convincing circumstances. The logic behind such decision is being highlighted while referring relevant case laws… On the basis of similar provisions of Cr.P.C., a Division Bench Judgment of RAJASTHAN HIGH COURT from Indian Jurisdiction is also available in support of successive remands which was reported

as “State Versus Sukhsingh and others” [1954 AIR (Raj) 290: 1955 RLW 46: 1954 CriLJ 79: 1955 RLW 46: 1954(4) ILR (Rajasthan) 413]. It questions that whether where an accused is kept in jail by orders of adjournment or remand under Section 344 of Cr.P.C, can he be handed over to the police in some other case for purposes of investigation. In view of the powers of the Magistrate under Section 167(2), the Court saw no prohibition in the Criminal Procedure Code against such a course… Even as per Rule-6 (1) (b) of Part-B, Chapter-11 of High Court Rules & Orders, Volume-III, Magistrate can remand the accused to Police custody (if empowered to do so) or to magisterial custody as he may think fit, for a term not exceeding 15 days, which term if less than 15 days, may subsequently be extended up to the limit of 15 days in all, but it does not mean that if before exhausting 15 days’ physical remand accused is lodged to judicial custody, police can retake his physical custody in the same case to claim remaining period out of 15 days. In Rule-10 of same Chapter of High Court Rules & Orders as cited above, it is mentioned that if the limit of 15 days has elapsed, and there is still need for further investigation by the Police, the procedure to be adopted is laid down in section 344, Criminal Procedure Code. The case is brought on to the Magistrate's file and the accused, if detention is necessary, will remain in magisterial custody. The case may be postponed or adjourned from time to time for periods of not more than 15 days each, and as each adjournment expires the accused must be produced before the Magistrate, and the order of adjournment must show good reasons for making the order. Same procedure is highlighted in APPENDIX No. 25.56(1) of Police Rules, 1934… if he has been lodged to judicial custody in a case, his subsequent physical remand can be obtained by the police in other FIRs registered at different police stations or districts or province with the permission of concerned Magistrate/Court.

ii) As per facts of a case reported as “STATE versus FATEH MOHAMMAD” (1972 S C M R 182), in response to a warrant of arrest issued by the Magistrate, the offender directly surrendered before him who lodged the accused to judicial custody; later police sought physical remand of accused which was granted. Such order of Magistrate was overturned by the High Court but Supreme Court of Pakistan held that the Magistrate was legally competent to do… On information about presence of accused in judicial custody in a case in another district or province, Police can follow the procedure laid down in Rule 26.20 of Police Rules, 1934 for subsequent remand…

iii) In the celebrated judgment of this Court reported as “Mst. Razia Pervaiz and another versus The Senior Superintendent of Police, Multan and 5 others” (1992 P Cr. L J 131), it was declared that an accused required in more than one criminal cases when arrested will be deemed to have been arrested in all the cases registered against him, and warned that law does not authorize the police to arrest an accused required in more than one cases, in one case and to wait for his arrest in the other case till the expiry of the period of remand under Section 167, Cr.P.C. or till he is released on bail in the first case, and this Court, therefore, held in a case reported as “PARVEZ ELAHI versus CARE TAKER GOVERNMENT OF

PUNJAB etc." (PLJ 2024 Lahore 43)… In Indian jurisdiction, ANDHRA PRADESH HIGH COURT while dealing with a case reported as "M/s. Jagathi Publications Ltd., rep., by Y. Eshwara Prasad Reddy Versus Central Bureau of Investigation, Hyderabad" [2012(2) ALT (Crl.) 285 : 2013 CriLJ 118 : 2013(2) CCR 98 : 2014(10) R.C.R.(Criminal) 84 : 2012(2) Andh LD (Criminal) 762] directed the authorities that "All political parties should have equal opportunities to participate in election campaigns and propaganda and no one should be unnecessarily arrested and harassed, except, wherein, his arrest is bona fidely required for the purpose of investigation"… On the strength of above judgments and legal provisions, it can safely be held that when an accused is arrested in a case, his arrest must be shown in all cases registered against him so far within the knowledge of investigating agency…

Conclusion: i) There is no provision in Cr.P.C. which authorize subsequent physical remand in the same case once the accused is lodged in judicial custody, but the concerned Magistrate can grant physical remand to such accused in different FIRs if there are exceptional and convincing circumstances.
ii) Physical remand of an accused can be granted when he directly surrenders before the magistrate in response to a warrant and has been sent to judicial custody.
iii) When an accused is arrested in a case, his arrest must be shown in all cases registered against him so far within the knowledge of investigating agency.

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34. **Lahore High Court**
Malik Muhammad Ashraf v. Muhammad Asif, etc.
R.F.A. No.258 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC998.pdf

Facts: This regular first appeal is filed against consolidated judgment and decree through which the suit for recovery on the basis of cheque, under order XXXVII Rules 1 and 2 of the Code of Civil Procedure, 1908 instituted by respondent No.1was decreed and the suit instituted by the appellant, for cancellation of the said cheque was dismissed.

Issues: i) Whether standard of evidence to prove a civil case is different from the evidence required to convict an accused in a criminal case?
ii) Whether the statement of a witness must be consistent with the circumstances of the case before the same is believed and relied upon?

Analysis: i) There is no doubt that standard of evidence to prove a civil case is different from the evidence required to convict an accused in a criminal case. In civil cases, it is preponderance of evidence on the basis of which a dispute is to be decided, however, it does not mean that the conclusion in civil cases based on same set of facts is drawn mechanically, ignoring the crucial piece of evidence available on record such as statement of the plaintiff during the criminal trial, having direct

nexus with the dispute.

ii) It is settled principle of appraising evidence that the statement of a witness must be consistent with the circumstances of the case before the same is believed and relied upon. The preceding discussion makes it amply clear that as on 05.12.2016 there was only one transaction, entered into between the appellant and Manager of the respondent, in respect of which the respondent claims that the impugned cheque was issued, however, the respondent side could not refute that the payment in respect of the said transaction was cleared through voucher dated 05.12.2016, which propels to conclude that the impugned cheque was lying with the respondent side as guarantee on account of the admitted business relationship of purchase of wheat to secure any balance due and despite receiving payment in respect of the disputed transaction, the impugned cheque has been misused.

Conclusion: i) Standard of evidence to prove a civil case is different from the evidence required to convict an accused in a criminal case.

ii) The statement of a witness must be consistent with the circumstances of the case before the same is believed and relied upon.

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35. **Lahore High Court**
Sultan Mehmood Rana v. Naeem Ahmad, etc.
Civil Revision No.931-D of 2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC989.pdf

Facts: Revision has been filed impugning the judgments of the Courts below which are at variance pertaining to making the award rendered by the Arbitrator as Rule of the Court.

Issues: (i) Whether the limitation period envisaged under Article 178 of the Act 1908, for filing an application to make the award a Rule of the Court commences from the date of issuance of formal notice in writing by the Arbitrator(s) to the parties or the general knowledge of the parties about making and signing of the award?

(ii) What is the obligation of the court regarding the limitation in case of award when it is before the court?

Analysis: (i) Article 178 of the Act 1908 clearly depicts that the limitation starts from "the date of service of the notice of the making of the award". Section 14(1) of the Act 1940 makes it clear that the Arbitrators after making and signing of the award have to give a notice, in writing, of the making and signing of the award to the parties. The requirement of a notice in writing is important as the service of notice is the point from which the limitation for making an application to the Court for filing the award commences per Article 178 of Act 1908. This Section is to be also read with Section 42 of the Act 1940, which provides that any notice that is required to be served by an Arbitrator shall be served in the manner provided in the arbitration agreement or if there is no such provision then by delivering it to the person on whom it is to be served or by sending it by post at the usual address

of such person. There is no room of implied notice under the law in respect of making and signing of the award. The above quoted provisions of law have technical meanings and can only be construed as requiring of issuance of a separate notice in writing by the Arbitrator(s) notwithstanding the fact that a party has knowledge of the passing of the award through receipt of any instrument (cheque in the instant case) handed over to him for satisfaction of amount awarded by the Arbitrator(s). A question also arises as to how the limitation is to be governed, if no notice is given by the Arbitrator(s) to the party. This Court is of the opinion that in such eventuality it is Article 181 of the Act 1908, which is residuary clause that will be applicable and the same contemplates a period of three years.

(ii) It is pertinent to mention that once an award is before the Court, either through the Arbitrator(s) or any party then in terms of Section 17 of the Act 1940, it is the duty of Court to examine the same and see whether it suffers from any patent illegality or if there is any cause to remit the award to the Arbitrator(s) irrespective of the fact that opposite party has not approached the Court within time. Once the award is before the Court, it is the duty of the Court to scrutinize the award, which is independent of the fact whether any side has objected to the same or not or the application of one of the parties to arbitration proceedings is time barred.

Conclusion: (i) The requirement of a notice in writing is important as the service of notice is the point from which the limitation for making an application to the Court for filing the award commences per Article 178 of Act 1908. This Section is to be also read with Section 42 of the Act 1940. There is no room of implied notice under the law in respect of making and signing of the award. If no notice is given by the Arbitrator(s) to the party in such eventuality Article 181 of the Act 1908 will be applicable.

(ii) It is the duty of Court to examine the award and see whether it suffers from any patent illegality or if there is any cause to remit the award to the Arbitrator(s) irrespective of the fact that opposite party has not approached the Court within time.

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36. **Lahore High Court**
Muhammad Iftikhar v. Government of Punjab, etc.
Writ Petition No.9661 of 2009
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC1004.pdf

Facts: Through this Writ Petition along with connected petition the petitioners have challenged the vires of sub-rule (3) of Rule 13 of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 for being in violation of Section 142 of the Punjab Local Government Ordinance, 2001.

Issues: i) What are the rules and procedure of auctioning of the collection rights of

various fees and/or taxes of the Local Government?
ii) What is the object behind deposit of earnest/security money in order to participate in the public auction?
iii) Whether law does envisage that a separate notice of consequence of failure to deposit the amount is required to be given in a bid?
iv) What is the purpose of sub-rule (3) of the Rule 13 of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003?
v) Which date of issuance of the notice will be presumed to be its date of receipt in the absence of any date of receipt?
vi) Whether High court in exercise of constitutional jurisdiction can venture in to factual controversy, which require recording of evidence and whether liquidated damages if settled in the contract are required to be proved?
vii) What is the definition of the term "deposits"?
viii) Whether the forfeiture of deposits envisaged in sub-rule (3) of Rule 13 relates to pre-contracts stage and the forfeiture of additional deposit was to be regulated by the provisions of a contract, which constituted between the parties after first deposit?
ix) Whether an uncertain term of the contract can be enforced under the law?

Analysis: i) A Local Government under Rule 3 may collect income through contractor(s) by awarding contract(s) of collection rights. Rule 5 lays down the auction procedure by providing that the public notice for the conduct of auction shall be given through two national daily newspapers, which shall, inter alia, include the minimum reserve price, period of contract with rates and details. Sub-rule (3) of Rule 11 empowers the Council to accept or reject the bid by setting out the reasons for rejection. Rule 13 provides that as soon as the confirmation of offer of the bid is received from the Council, the same shall be intimated through special messenger to the contractor with the direction to the contractor to enter into written agreement and fulfil his obligations in accordance with the terms and conditions of the contract within stipulated time and the failure of the contractor to deposit the dues recoverable from him and/or does not enter into written agreement would raise adverse presumption that the contractor is no more interested in the contract. Sub-rule (3) of Rule 13 further states that in such an eventuality, the offer shall automatically stand cancelled and the deposits made by the contractor shall stand forfeited. The income shall also be put to re-auction...
ii) The deposit of earnest/security money in order to participate in the public auction, purposively speaking, ensures that serious contenders participate in the process of auction. However, if a contractor participates in the auction process and subsequently retracts from it after confirmation of the bid by the Council, it would constrain the Local Government to re-auction involving not only the time and resources of the Local Government but also loss of time and finance in the collection of fees. Therefore, the forfeiture of earnest/security money of such a contractor ensures that serious contender(s) participates in the process of auction and if someone fails to deposit the outstanding/balance amount of the bid, the

earnest/security amount stands forfeited in favour of the Local Government… The object of such forfeiture has been spelled out in sub-rule (3) of the Rules by the legislature by contemplating that "The income shall also be put to re-auction in such a case"… bare reading of Rule 13 makes it clear that the legislature has made a correlation between the earnest/security money and the object of forfeiture, which is to meet the cost of reauction on account of failure of the successful bidder to deposit the balance amount and/or non-adherence to terms and conditions.

iii) The law does not envisage that a separate notice of consequence of failure to deposit the amount is required to be given. The only thing that is required to be ascertained is whether the notice was given and received by the successful bidder and within time stipulated therein the requisite amount was not deposited.

iv) Sub-rule (3) of Rule 13 of the Rule 13 of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 merely provides the consequences of non-adherence to the terms and conditions of the bid (...)

v) In the absence of any date of receipt, the date of issuance of the notice will be presumed to be its date of receipt as the same was to be communicated immediately through special messenger in terms of sub-rule (1) of Rule 13 (…)

vi) It is settled law that this Court, in exercise of its constitutional jurisdiction, cannot venture into such factual controversy which requires recording of evidence. It is worth observing that Section 74 of the Contract Act, 1872 also provides that where the liquidated damages are settled in the contract, the party aggrieved of the breach of contract is not bound to prove the same…

vii) Though the term "deposits" has been used to be forfeited in terms of sub-rule (3) of Rule 13, it is settled principle of interpretation that the words have no constant meanings rather they imbibe colour from their context. Therefore, the term "deposits" is required to be construed in the context in which it has been used in Rule 13, which deals with the intimation of acceptance of the bid requiring the contractor/successful bidder to enter into formal contract.

viii) Once the first deposit was made, the contract came into existence between the parties and the forfeiture of additional deposit was to be regulated by the provisions of said contract executed between the parties and not the terms of the auction… The forfeiture of deposits envisaged in sub-rule (3) of Rule 13 relates to pre-contracts stage as the relations between the respondent and the petitioner were to be regulated by the terms and conditions of the auction whereas the relations between the parties transform into contractual relations subsequent to the execution of the contract. Therefore, while the forfeiture of the earnest/security amount deposited prior to holding of auction is justifiable in terms of sub-rule (3) of Rule 13, however, Any contractual violation subsequent to the execution of the contract is to be resolved as per the mechanism provided under the contract (including arbitration clause) and not by the terms of the auction.

ix) An uncertain term of the contract cannot be enforced under the law.

Conclusion: i) See above in analysis portion.

ii) See above in analysis portion.
iii) Law does not envisage that a separate notice of consequence of failure to deposit the amount is required to be given in a bid.
iv) The purpose of sub-rule (3) of the Rule 13 of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 is merely provides the consequences of non-adherence to the terms and conditions of the bid.
v) In the absence of any date of receipt, the date of issuance of the notice will be presumed to be its date of receipt.
vi) High court in exercise of constitutional jurisdiction cannot venture in to factual controversy, which require recording of evidence and liquidated damages if settled in the contract are required to be proved by the party aggrieved of the breach of such contract.
vii) See above in analysis portion.
viii) Yes, the forfeiture of deposits envisaged in sub-rule (3) of Rule 13 relates to pre-contracts stage and the forfeiture of additional deposit was to be regulated by the provisions contract, which constituted between the parties after first deposit.
ix) An uncertain term of the contract cannot be enforced under the law.

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37. **Lahore High Court**
Sheikh Khalid Javaid v. Shamas ud Din Chishti
Civil Revision No.323/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC1015.pdf

Facts: This civil revision is directed against the judgment and decree whereby the appeal of the respondent was accepted, order and decree passed by the Trial Court was set aside and the suit of the respondent instituted for specific performance of the contract, based on an agreement to sell, was decreed. An application was also filed by one applicant who purchased the suit property from the petitioner, when the suit of the respondent was dismissed and the appeal was not preferred, however, the limitation period for preferring appeal was yet to expire. Through this judgment, the said application is also decided.

Issues: i) What are the key factors to be kept in sight while determining the willingness and readiness of a plaintiff in a suit for specific performance of the contract?
ii) Whether an offer made by a party (the defendant) before the Trial Court to decree the suit for specific performance of the contract, which was not accepted by the other party (the plaintiff) remains valid at the appellate stage?

Analysis: i) Equity mandates that in a suit for specific performance, it is the duty of the Court to find out, which party has not performed and is trying to wriggle out of his contractual obligations. In exercise of such discretion, the Court may consider the conduct of the parties which becomes relevant in granting and/or refusing decree for specific performance being discretionary and based on principles of equity. In cases involving specific performance, the primary part of the contract is the consideration to be paid by the vendee for which he must exhibit his

willingness and readiness, at all times. In this regard, he must unconditionally seek permission of the Court, on the first date of hearing, to deposit the remaining sale consideration…While willingness and readiness of a plaintiff in a suit for specific performance of the contract is crucial and relevant, there are certain aspects which may be relevant viz-a-viz the conduct of the plaintiff/vendee entitling and/or disentitling him from the decree for specific performance…However, the vendee, as part of natural human conduct, is expected to immediately file a suit for specific performance of contract on refusal of the vendor to adhere to his contractual obligations which would exhibit that the vendee is willing and ready to perform his part of the contract in terms of deposit of the balance consideration. Any delay in this regard may indicate his intention that the plaintiff/vendee himself is not ready and willing to perform his part of the contract and the Court may refuse to grant specific performance on account of such conduct….this Court is of the opinion that the respondent entered into the agreement with the petitioner and thereafter, entangled the latter into litigation and avoided the payment of the balance consideration amount on one pretext or the other, which propels to opine that the respondent was neither willing nor ready to pay the balance amount of consideration and the Appellate Court below was not justified in relying on the admission of execution of the agreement by the petitioner before the Trial Court to decree the suit of the respondent. …. Suffice to observe that the performance of the contract is not to be seen from the date when it is suitable to the plaintiff. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior as well as subsequent to the institution of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available.

ii) This Court is of the opinion that in peculiar facts and circumstances of the case, a conditional offer made by a party (the defendant) before the Trial Court to decree the suit for specific performance of the contract, which was not accepted by the other party (the plaintiff) does not remain valid at the appellate stage.

Conclusion: i) The key factors to determine willingness and readiness of plaintiff in a suit for specific performance of a contract are that;

- The plaintiff (or vendee) must demonstrate their readiness and willingness to perform their part of the contract. This involves unconditionally seeking permission from the Court, on the first date of hearing, to deposit the remaining sale consideration.
- The plaintiff is expected to promptly file a suit for specific performance if the vendor refuses to adhere to their contractual obligations. Any delay in initiating legal action may indicate a lack of readiness and willingness on the part of the plaintiff.
- Entangling the other party in un-necessary litigation to avoid payment of remaining sale consideration.
- Conduct of the plaintiff prior as well as subsequent to the institution of the suit alongwith other attending circumstances.

- The amount of consideration which he has to pay to the defendant must of necessity be proved to be available.

ii) A conditional offer made by a party (the defendant) before the Trial Court to decree the suit for specific performance of the contract, which was not accepted by the other party (the plaintiff) does not remain valid at the appellate stage.

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38. **Lahore High Court**
Muhammad Ramzan etc. v. Haleema Bibi etc.
Civil Revision No.346/2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC1139.pdf

Facts: Suit for declaration was filed in respect of the disputed property, against the respondents, on the basis of registered sale deed in which Issues were framed and after recording evidence of the parties pro and contra, the suit of the petitioners was dismissed by the Trial Court, which was subsequently upheld by the Additional District Judge. Hence, this revision petition.

Issues: i) Whether the Courts below were justified in giving preference to prior unregistered document over a subsequent registered document pertaining to the same immovable property?
ii) Whether civil cases are to be decided on preponderance of evidence by reading the evidence as a whole rather cherry-picking certain aspects of the pleadings and/or evidence?
iii) What is the scope and extent of revisional powers of a High Court?

Analysis: i) Sub-section (1) of Section 50 of the Act 1908 lays down general principle that a registered document, even if falling under Section 18, regarding the immovable property shall take effect as regards the property therein against every unregistered document relating to the same property irrespective of the nature of the unregistered document. (…) First proviso to Section 50(1) creates an exception by providing that where the person is in possession of the property under an unregistered document, prior in time, he would be entitled to the protection under Section 53-A of the Act 1882 provided further if the conditions of Section 53-A are fulfilled. (…) Therefore, in peculiar facts and circumstances of the case, this Court is of the view that an unregistered document even if prior in time cannot be given preference to registered document more particularly when the latter document is holding the field and no challenge has been laid to the same by the respondents.
ii) The contradictions in the pleadings and the evidence reproduced above in the ordinary course might have been highly detrimental to the case of the petitioners, however, it is settled proposition of law that civil cases are to be decided on preponderance of evidence by reading the evidence as a whole rather cherry-picking certain aspects of the pleadings and/or evidence. This helps in achieving a predictable standard pattern in reaching a just decision. (…) At this juncture, it is

imperative to observe that neither the pleadings can be treated as evidence nor documentary evidence can be brushed aside on account of the weak oral testimony of the plaintiffs, more particularly, when the case is that of inheritance and based on a registered document, which is more than 58 years old and holding the field.

iii) The scope of the revisional powers of the High Court though circumscribed by conditions of excess of jurisdiction, failure to exercise jurisdiction, illegal exercise of jurisdiction, is nevertheless very vast and corresponds to a remedy of certiorari and in fact goes beyond that at least in two respects inasmuch as: Firstly, its discretionary jurisdiction may be invoked by the Court suo motu, and Secondly, the Court "may make such order in the case as it thinks fit. (…) Thus, it is obvious that while the revisional powers may be circumscribed and cordoned off by conditions of excess of jurisdiction, failure to exercise jurisdiction, illegal exercise of jurisdiction, it is very vast being in the nature of certiorari and rather travels beyond the same. (…) High Court in exercise of its revisional and visitorial jurisdiction can undertake the exercise of analysis of the evidence for the first time regarding a piece of evidence not analysed and/or overlooked by the Courts below.

Conclusions: i) An unregistered document even if prior in time cannot be given preference to registered document more particularly when the latter document is holding the field and no challenge has been laid to the same.

ii) Civil cases are to be decided on preponderance of evidence by reading the evidence as a whole rather cherry-picking certain aspects of the pleadings and/or evidence. Neither the pleadings can be treated as evidence nor documentary evidence can be brushed aside on account of the weak oral testimony of the plaintiffs.

iii) See the above analysis clause no.iii

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39. **Lahore High Court**
Muhammad Imran v. Inspector General of Police, etc.
W.P. No. 8709/2024
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC1065.pdf

Facts: Through the instant constitutional petition the petitioner sought recovery of the detenu, his real brother, who was allegedly in illegal detention of respondents No. 2 and 3, i.e. Station House Officers.

Issues: i) Whether scope of Article 10-A of the Constitution of Pakistan is merely confined to the courtroom?

ii) Why it is necessary to report the arrest?

iii) What is the purpose of legal requirement of producing accused before magistrate when investigation cannot be completed in 24 hours as per section 167 Cr.P.C?

iv) What is the significance of supervisory role of magistrate in investigation process of a criminal case?
v) For what purpose a Magistrate's role in remand proceedings is critical?
vi) Why speaking order in judicial proceedings is essential?
vii) What is crucial responsibility of magistrate while dealing with the question of sending an accused to prison for identification parade?
viii) What is the rationale behind principle of producing accused before the Magistrate within official court hours and whether such request of remand can be dealt with at any other place than the open court room?
ix) What are the fundamental rights of an individual arrested and investigated by the police?

Analysis: i) The insertion of Article 10-A within the constitutional framework heralds a pivotal extension of the right to a fair trial and due process, not merely confining its scope to the courtroom but expansively integrating it into the pretrial proceedings, including the investigation phase. This provision, illustrative of the jurisprudential evolution towards safeguarding individual liberties, mandates that the fundamental rights of an accused are zealously guarded from the moment of accusation through to the final adjudication.
ii) The legal framework mandates that police authorities must report arrests and detentions to higher authorities promptly under Section 62 of the Code. This requirement serves as a critical check against arbitrary detention, ensuring that each case is subject to oversight and that the rights of the arrestees are protected. The necessity to report arrest/detention helps to prevent abuse of power, ensuring that the detention of individuals is always justified, documented, and subject to legal scrutiny.
iii) Section 167 of the Code further addresses the situation where the investigation cannot be completed within twenty-four hours, granting the investigating officer the authority to seek an extension of the detention period. This provision of law lays down the procedure for such an extension to be granted by the Magistrate. The provision that mandates the transfer of custody of an accused to a Magistrate within twenty-four hours of arrest is a significant safeguard designed to minimize the risk of illegal detention by the police. This legal requirement ensures a critical layer of judicial control, preventing the prolonged, unauthorized holding of accused without formal charges or legal justification. By involving the judiciary at this early stage, it reinforces the principle that detention must always be subject to legal review and approval.
iv) The Area Magistrate acts as a pivotal character in our criminal justice system, therefore, his supervisory role ensures that police investigations adhere to the principles of justice, transparency, and fairness, which are fundamental to maintaining public trust in the criminal justice system. He plays a crucial role in safeguarding the rights of the accused and the complainant, ensuring that investigating agencies do not infringe upon fundamental rights and investigations are conducted in a manner that upholds lawfulness. This involves ensuring that investigations are conducted fairly, transparently, and within the legal framework.

v) It requires a thorough and thoughtful examination of all aspects of the case to ensure that any decision to grant remand is justified, lawful, and in accordance with settled principles governing the subject. A perfunctory approach, in contrast, implies a superficial or automatic decision-making process that neglects the careful consideration required in such matters. Such an approach might lead to unjust outcomes, including the unwarranted deprivation of liberty, the potential for abuse in custody, and the undermining of the public trust in the legal system. Therefore, a Magistrate's role in remand proceedings is critical in safeguarding against arbitrary detention and ensuring that the rights of the accused are protected. By acting judiciously and an open-minded assessment of the evidence and legal arguments, Magistrates uphold the principles of justice and fairness that are foundational to any criminal justice system.

vi) A speaking order in judicial proceedings is essential and refers to a judgment or decision delivered by a court that comprehensively outlines the reasons behind the court's conclusions. Speaking orders provide a clear and detailed explanation of the reasoning behind a decision. An order being a 'speaking one' is also essential for the parties involved in the case to understand the basis of the findings of the court. This is also crucial if a party wishes to challenge the decision, as it provides a clear framework for the grounds of appeal. Without a reasoned judgment, it would be difficult to identify any potential errors in law or fact to challenge the same.

vii) Moreover, while dealing with the question of sending an accused to prison for TIP, a Magistrate has a crucial responsibility to thoroughly review the case diaries to determine the necessity of acceding to the request of the investigating agency. This process is not a mere formality, but a substantive judicial duty aimed at safeguarding the rights of the accused while balancing the requirements of the investigation.

viii) The practice of presenting the accused before a Magistrate outside of regular court hours has been deprecated by the Courts. The principle here is that the accused should be produced before the Magistrate within official court hours to ensure the proceedings are conducted transparently and within the formal legal framework. Presenting an accused after court hours could necessitate conducting these proceedings at the Magistrate's residence or another unofficial location, a practice that constitutional Courts have explicitly criticized for lacking transparency and formal procedural safeguards. The request of the investigating agency regarding remand should be entertained in open court during court hours unless there are extraordinary compelling reasons and circumstances for doing so in any other place than the open courtroom.

ix) Before drawing the curtain on this judgment, it would be prudent to outline the fundamental rights of an individual arrested and investigated by the police.

I. Upon apprehension and during subsequent detention, it is incumbent upon the detaining authority to promptly apprise the accused of the grounds for such arrest, in accordance with the principles of due process and legal transparency. Communicating the grounds for arrest and the details of accusations allows the

accused to understand the allegations he is facing and offer an adequate defense. Such practice ensures that arrests are not made without sufficient cause or used as a tool of oppression, thereby safeguarding the liberty of citizens and the rule of law.

II. An accused should be allowed to contact his family after his arrest. The ability to communicate with family ensures that the accused can alert others about his situation, potentially mobilizing support and advocacy on his behalf. This can be crucial for safeguarding their rights, especially in jurisdictions or situations where the risk of violation of the law is high. In essence, the right of an accused to contact his family immediately after arrest is a crucial safeguard against arbitrary and illegal arrest.

III. An accused has an undeniable right to have legal advice instantly after his arrest. Police authorities have a crucial obligation to facilitate an accused to contact his lawyer following arrest. This duty is rooted in the principles of due process and the right to a fair trial, as recognized by Articles 10 and 10-A of the Constitution. Providing an accused individual with access to legal representation is a cornerstone of a fair, just, and humane legal system. This access is not merely a procedural right but a foundational element that ensures the integrity of the criminal justice system.

IV. The arrest report concerning an accused must be dispatched following Section 62 of the Code, together with Rule 26.8 of the Police Rules, to avoid instances of illegal detention. If the investigation extends beyond twenty-four hours, it is mandatory to bring the accused before a Magistrate to seek authorization for any further extension of custody under Section 167 of the Code.

V. Upon the presentation of an arrested individual before the concerned Magistrate, it becomes the Magistrate's solemn duty to safeguard the accused's fundamental rights, a custodianship that forms the foundation of judicial integrity and fairness. In our criminal justice system, the role of the Magistrate is both significant and pivotal.

VI. An accused must not be subjected to torture to elicit evidence or confession as prohibited under Article 14 of the Constitution, which advocates for fairness, equality, and dignity in the treatment of an accused. Ensuring compliance with this provision safeguards the accused from inhumane treatment and upholds the fundamental principles of justice and human dignity.

VII. The safeguarding of the aforecited rights of an accused in custody must not only be ensured by the police officials but also be properly documented in the police record to reflect such efforts.

Conclusion: i) The right to a fair trial and due process under article 10-A of the Constitution, not merely confining its scope to the courtroom but expansively integrating it into the pretrial proceedings, including the investigation phase.

ii) The necessity to report arrest/detention helps to prevent abuse of power, ensuring that the detention of individuals is always justified, documented, and subject to legal scrutiny.

iii) This legal requirement ensures a critical layer of judicial control, preventing the prolonged, unauthorized holding of accused without formal charges or legal justification.
iv) See above in analysis portion.
v) Magistrate's role in remand proceedings is critical in safeguarding against arbitrary detention and ensuring that the rights of the accused are protected. By acting judiciously and an open-minded assessment of the evidence and legal arguments, Magistrates uphold the principles of justice and fairness that are foundational to any criminal justice system.
vi) See analysis portion.
vii) While dealing with the question of sending an accused to prison for identification parade, a Magistrate has a crucial responsibility to thoroughly review the case diaries to determine the necessity of acceding to the request of the investigating agency.
viii) The principle here is that the accused should be produced before the Magistrate within official court hours to ensure the proceedings are conducted transparently and within the formal legal framework. The request of the investigating agency regarding remand should be entertained in open court during court hours unless there are extraordinary compelling reasons and circumstances for doing so in any other place than the open courtroom.
ix) See analysis portion.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification No.28 of 2024 dated 29.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "The Punjab Environmental Protection and Climate Change Department (Environment Monitoring Center) Employees Service Rules, 2024".
2. Vide Notification No.29 of 2024 dated 29.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "The Punjab Environmental Protection and Climate Change Department (Environment Policy Center) Employees Service Rules, 2024".
3. Amendments in "The Punjab Environment Protection Department Service Rules,1997" vide Notification No. SOR-III(S&GAD)1-24/2007(P-II) published in the official Punjab Gazette through Notification No.30 of 2024 dated 29.02.2024.
4. Vide Notification No. SO(REV)IRR/12-70/23(AII CEs)-992/507 dated 28-02-2024 published in the official Punjab Gazette, through Notification No.31 of 2024 dated 04.03.2024 the Secretary, Government of the Punjab, Irrigation Department has Delegated his powers under section 154(5)(a) & (b) of the Punjab Irrigation, Drainage and Rivers Act 2023, to the Chief Engineer of the concerned Irrigation Zone.

5. Vide Notification No.32 of 2024 dated 08.03.2024 published in the official Punjab Gazette, the Governor of the Punjab has published Draft of Rules under the title of "The Punjab Motor Vehicle Rules,1969 (Draft Rules)" following public notice seeking objections and suggestions.
6. Vide Notification No. SO(REV)IRR/12-70/23(AII CEs)-992 dated 21-12-2023 published in the official Punjab Gazette, through Notification No.33 of 2024 dated 13.03.2024 the Secretary, Government of the Punjab, Irrigation Department has Delegated his powers under section 53(4) of the Punjab Irrigation, Drainage and Rivers Act 2023, to the Chief Engineer of the concerned Irrigation Zone.
7. Amendment in "The Punjab Specialized Healthcare and Medical Education Department (Medical and Dental Teaching Posts Service Rules 1979" in the 2nd Schedule vide Notification No. SOR-III(S&GAD)1-9/2016(P-III) dated 11-03-2024 published in the official Punjab Gazette through Notification No.34 of 2024 dated 13.03.2024.
8. Amendments in "The Punjab Specialized Healthcare and Medical Education Department (Medical and Dental Teaching Posts Service Rules, 1979" in the 2nd Schedule vide Notification No. SOR-III(S&GAD)1-9/2016(P-III) dated 11-03-2024 published in the official Punjab Gazette through Notification No.35 of 2024 dated 13.03.2024.
9. Vide Order No. SOP(WL)12-2/2007(A)(PF) dated 21-09-2023 published in the official Punjab Gazette through Notification No.36 of 2024 dated 21.032024, "The Community Based Conservancy zones" are hereby declared by the Government of Punjab, Forestry, wildlife & Fisheries Department.
10. Amendments in "The Directorate General Protocol, Punjab, Service Rules, 2005" in the 2nd and 6th Schedules vide Notification No. SOR-III(S&GAD)1-12/2004(P) dated 19-03-2024 published in the official Punjab Gazette through Notification No.37 of 2024 dated 21.03.2024.

SELECTED ARTICLES

1. ACADEMIC.OUP

https://academic.oup.com/arbitration/advance-article-abstract/doi/10.1093/arbint/aiae009/7634165?redirectedFrom=fulltext

To Reason or Not to Reason: Arbitral Awards—The Conflict Between Conciseness and The Duty to Provide Reasons Under National Laws and International Rules by Noam Zamir & Neil Kaplan

Abstract:

The duty to give reasons in arbitral awards has a mixed history. While it can be traced back to the second part of the 20th century in England, it has been part of accepted practice in civil law countries for a long period. It has become the norm in international arbitration, both in commercial disputes and in investment disputes. While the duty to

give reasons is, in general, positive, this article suggests that many international awards tend to be too long. This prolongs the arbitration proceedings and increases costs—both in terms of the arbitrators' fees and the costs that the parties to dispute must bear while waiting for the award to be issued. To tackle this problem, the article examines the required scope of reasoning in international awards; it then discusses why many international awards tend to be too long. Finally, it suggests ways in which awards can and should be shorter.

2. **LATEST LAW.COM**
https://www.latestlaws.com/category/articles/

Recent Regulatory Developments in The Indian Competition Law Regime by Ketan Mukhija

Introduction:

*In the dynamic landscape of competition law in India, the year 2023 marked a series of pivotal developments that shaped the country's approach towards anti-trust and fair market practices. On April 11, 2023, the Competition (Amendment) Act, 2023 ("**Amendment Act**"), was enacted, laying the groundwork for substantial changes including and not limited to implementation of a deal value threshold, establishment of a settlement and commitment mechanism, widening the scope of the definition of 'control', inclusion of facilitators of anti-competitive agreements or cartels under the purview of persons liable for entering into anti-competitive agreements, revised timelines, and penalties.*

3. **HARVARD LAW REVIEW**
https://harvardlawreview.org/print/vol-137/non-extraterritoriality/

Non-extraterritoriality by Carlos M. Vázquez

ABSTRACT:

The extraterritorial application of statutes has received a great deal of scholarly attention in recent years, but very little attention has been paid to the non-extraterritoriality of statutes, by which I mean their effect on cases beyond their specified territorial reach. The question matters when a choice-of-law rule or a contractual choice-of-law clause directs application of a state's law and the state has a statute that, because of a provision limiting its external reach, does not reach the case. On one view, the state has no law for cases beyond the reach of the statute. The territorial limitation is a choice-of-law rule; it instructs courts to adjudicate the case under the law of another state. Because one state's choice-of-law rules are not binding on the courts of other states, the provision may be disregarded by such courts, which may apply the statute's substantive provisions to cases beyond the statute's specified scope. On another view, cases beyond the reach of the statute are subject to another law of that state, such as its more general common law rules. A third view agrees with the first view that the enacting

state has no law for excluded cases but insists that the provision limiting the law's scope is not a choice-of-law rule. The provision is written as a limit on the law's reach, and this substantive limitation must be respected by all courts. The statute may not be applied to cases beyond its specified scope. Each of the competing understandings of non-extraterritoriality has prominent judicial and scholarly defenders, and each finds support in successive iterations of the Restatement of Conflict of Laws. This Article considers the judicial and scholarly support for each of the three positions and defends the view that external scope limitations are choice-of-law rules. Limitations on external scope ordinarily reflect the lawmaker's deference to the legislative authority of other states. They do not reflect a legislative preference that a statute's substantive provisions not be applied to cases beyond its specified scope. If the legislature did intend to establish a different rule for cases involving out-of-state persons or events, the provision limiting the statute's scope would in most cases be unconstitutional. In function and intended effect, a statutory provision limiting a statute's external scope is a choice-of-law rule and, as such, may be disregarded by the courts of other states. But this position poses a conundrum: If a state has no law for cases beyond a statute's territorial scope, do courts violate their duty to decide cases according to law when they apply the statute to a set of facts that the statute does not purport to reach? Resolving this puzzle yields valuable insights into the nature of choice-of-law rules and the choice-of-law enterprise.

4. COURTING THE LAW

https://courtingthelaw.com/2024/02/02/commentary/should-consumer-courts-be-digitalized-and-have-jurisdiction-in-essential-services-and-criminal-matters/

Should Consumer Courts be Digitalized and Have Jurisdiction in Essential Services and Criminal Matters? By Waseem Abbas

In Pakistan, consumers are among the most vulnerable groups, largely due to a lack of awareness about their rights and the ineffective implementation of existing consumer protection laws. It is of utmost importance to address the plight of consumers who fall victim to unscrupulous sellers, manufacturers and dealers selling faulty goods and providing substandard services. Consumer protection laws are designed in this regard to:

- *promote fair competition;*
- *ensure transparency in information dissemination;*
- *enhance access to quality goods and services; and*
- *establish regulations for swift and fair justice.*

The safeguarding of consumer rights is integral to any educated and stable society, as consumers are the backbone of the economy. Even in Islam, emphasis is placed on fair dealing, fulfilling contractual obligations, avoiding misrepresentation in sales and maintaining ethical business practices. The concept of consumer protection encompasses various aspects, including:

- *product liability;*
- *privacy rights;*
- *prevention of unfair business practices;*
- *prevention of fraud; and*
- *addressing misrepresentation in consumer-business interactions.*

The United Nations also recognized the significance of consumer protection by issuing guidelines on the matter in 1985.

Regrettably, Pakistani consumers have long been neglected, either intentionally or unintentionally, by both government and manufacturers, as existing laws have not been fully enforced. Consumer protection and consumer rights aim to shield buyers from fraudulent practices employed by sellers in selling goods and services. Additional regulations have also been imposed on businesses to disclose more details regarding their products, ensuring that consumers are well-informed and protected before making a purchase…

5. <u>COURTING THE LAW</u>

https://courtingthelaw.com/2024/01/28/commentary/smart-contracts-and-crypto-assets-in-pakistan-a-legal-perspective/

Smart Contracts and Crypto-Assets in Pakistan: A Legal Perspective by Rana Mahad Meraj

What are Smart Contracts?

A smart contract is just like a traditional contract. However, in effect, it is a computer program that exists on a blockchain, carrying the terms of a transaction to which the parties agree. These automate the process of contract management and execution and are used largely today in the trade of crypto-assets. The aim of smart contracts relates to the elimination of avoidable third parties which played intermediary roles in transactions in traditional contracts. The effect of this is to minimize the chances of maliciousness and fraud.

Legal Hackers Lahore (a US based network of legal professionals working at the intersection of law and technology) describes smart contracts in the following words:

"Smart contracts are contracts stored in blockchains which allows them to be executed without intervention of brokers, notaries, agents and the like to make transactions. The powerful encryption of blockchains prevents anyone from being able to interfere with the code thus essentially making smart contracts efficient, neutral, mistake-free, safe, tamper-free, ensuring that the data is not lost or stolen. Time to do away with the tedious patwari system in Pakistan and shift land registration and transfer mechanisms onto blockchains?"…