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FORTNIGHTLY CASE LAW BULLETIN

(16-10-2024 to 31-10-2024)

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

Prepared & Published by the Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Ayaz and others v. Mustafa Saeed and others
Civil Petition Nos.231 and 183-K/2022 and Civil Petition No.827 of 2023
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Muhammad Ali Mazhar,
Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._231_2022_25102024.pdf

Facts: The case involves a dispute regarding the recruitment process for the role of Assistant Conservator Forests (BPS-17) by the Sindh Public Service Commission (SPSC). Initially, two positions were advertised under the urban quota. However, the SPSC later changed one position to a rural quota and increased the total number of positions to seven, without issuing a new advertisement or opening the application process to new candidates. The petitioners allege that the recruitment process was flawed, inter alia, on the grounds of favouritism, a lack of transparency, and unauthorized age relaxation.

Issues: i. Whether an increase in the number of advertised vacancies without re-advertising is legally permissible?
ii. Can a general age relaxation of up to 15 years be granted without specific justification?
iii. Is a selection process lacking transparency and giving preferential treatment to undeserving candidates legally acceptable?
iv. How far can the courts intervene in the administrative exercise of discretion, particularly when it involves excessive or unreasonable decision-making?
v. What are the transparency obligations of the SPSC regarding the publication of written and interview results?

Analysis: i. The niceties of the aforesaid regulations made it obligatory that upon the acceptance of additional vacancies or increase in the number of posts, the said posts should have been re-advertised for inviting fresh applications, and the change of the closing date for the receipt of applications could not be altered unless notified, which again implies that the extension in the closing date should also be advertised for the general public who could not apply within the original timeline, but the SPSC failed to follow its own Regulations diligently.
ii. Now the maximum upper age relaxation of 10 years mentioned in the aforesaid Rule has been modified and extended up to 15 years with retrospective effect pursuant to the Notification dated 27.07.2020… which was by itself highly unjustified and excessive, and rather than curtailing this period by setting a well thought-out benchmark and being mindful of the norms of reasonableness and proportionality, the Government of Sindh, without any justifiable rhyme or reason, extended the age relaxation up to 15 years.
iii. A lack of transparency or preferential treatment of undeserving candidates in the appointment process amounts to a brutal murder of merit and excellence. The appointment process must be transparent, ensuring that only competent

individuals are allowed to serve, rather than those who are incompetent and unskilled.
iv. The courts may overturn the exercise of discretionary powers if no judicious nexus is shown between the objective sought to be achieved and the means used to that end… If the court considers it imbalanced or out of all proportion, then it may interfere and set aside the action.
v. The marks of the written tests should be publicly displayed on the Commission's website, on the notice board in its premises, and in Urdu, English, and Sindhi newspapers; disclosure should be made of the marks obtained in each subject as well as the cumulative total against the candidates' roll numbers; the results of the interview should be displayed in the same manner as mentioned with respect to written tests.

Conclusion: i. Upon the acceptance of additional vacancies or increase in the number of posts, the said posts should have been re-advertised for inviting fresh applications
ii. No the age relaxation cannot be granted without any justification and the Government of Sindh, without any justifiable rhyme or reason, extended the age relaxation up to 15 years.
iii. A lack of transparency or preferential treatment of undeserving candidates in the appointment process amounts to a brutal murder of merit and excellence.
iv. If the court considers the administrative discretion imbalanced or out of all proportion, then it may interfere and set aside the action.
v. The marks of the written tests should be publicly displayed on the Commission's website, on the notice board in its premises, and in Urdu, English, and Sindhi newspapers.

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2. **Supreme Court of Pakistan**
Bilal Haque v. Kamran Afzal, secretary Cabinet Division, Islamabad and others
Criminal original Petitions No.19 and 20 of 2024
Mr. Justice Qazi Faez Isa , Mr. Justice Naeem Akhtar afghan , Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/crl.o.p._19_2024_25102024.pdf

Facts: Through this single judgment the August Court decided matter regarding submission of reports pertaining to demolition and removal of structure of restaurants that were running under the name and style of *Monal*, *La Montana* and *Gloria Jeans*, the restaurants were constructed in the protected area of Margala Hills National park which was dedicated for conservation of nature and wild life.The Wildlife Management Board brought on record a suit filed in the court of Senior Civil Judge (West) Islamabad. The suit was not only entertained but an injunctive order was also passed to restrain the defendants from demolishing the vacated buildings till further orders.

Issue: i) What is the importance of the Supreme Court's decisions for lower courts in

Pakistan under the constitutional mandate of Articles 189 and 190?
ii) Whether Article 203 of the Constitution empowers the High Court to supervise and control subordinate courts in Pakistan?
iii) What restrictions does Section 44 of the Khyber Pakhtunkhwa Forest Ordinance, 2002 impose?
iv) Is the GDA authorized to approve construction in prohibited areas such as guzara forests and National Parks, and what are its responsibilities regarding forest conservation and wildlife preservation?

Analysis: i) Decisions of the Supreme Court are 'binding on all other courts in Pakistan' under Article 189 of the Constitution of Islamic Republic of Pakistan, and that, under Article 190, 'All Executive and Judicial Authorities throughout the Pakistan shall act in aid of the Supreme Court.'
ii) Article 203 of the Constitution stipulates that 'the High Court shall supervise and control all courts subordinate to it.
iii) Guzara forest is defined in section 2(23) of the Khyber Pakhtunkhwa Forest Ordinance, 2002 and its section 44 stipulates that 'No person shall, in a guzara forest or wasteland' shall do the following: '(a) break up or cultivate or occupy or construct any building or enclosure, or make any other kind of encroachment, or being the owner of the land or a joint owner thereof, permit the breaking up, or cultivation or occupation, or construction of the shed, building or enclosure or any other kind of encroachment in any wasteland'
iv) GDA cannot approve construction in lands which prohibit it, including in guzara forest nor in the National Park. GDA is also required to undertake forest conservation and the preservation of wildlife. GDA must also serve and protect the National Park. GDA must withdraw any permission which had already been granted pursuant to which construction has not been completed and should stop issuance of permissions/approvals in respect of the said lands.

Conclusion: i) Decisions of the Supreme Court are binding on all other courts in Pakistan
ii) See above analysis No. ii.
iii) See above analysis No. iii.
iv) GDA cannot approve construction in lands which prohibit it, including in guzara forest nor in the National Park.

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3. **Supreme Court of Pakistan**
Mehar Badshah v. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others.
Civil Petition No. 524-P of 2015
Mr. Justice Qazi Faez Isa, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._524_p_2015.pdf

Facts: During hearing of the Civil Petition, which pertained to the illegal cutting of 218 Shisham trees, a larger question of deforestation came up, which is a serious

issue, because the forest cover in Pakistan has been rapidly decreasing, suggesting complicity and/or negligence of the Forest Department.

Issue: Whether the environment has been placed as a Fundamental Right in the Constitution?

Analysis: Before the insertion of the Article 9A into the Constitution, the superior courts of Pakistan had been interpreting Article 9 (right to life) expansively and that life worth living is one having a sustainable environment. Through the Constitution (Twenty-sixth Amendment) Act, 2024 the Constitution of the Islamic Republic of Pakistan was amended on 21 October 2024 and a new Article 9A has been inserted therein. It is commendable that the right to a clean, healthy and sustainable environment has now been specifically incorporated into the Constitution which undoubtedly will help to preserve flora and fauna and the natural environment.

Conclusion: The environment has been placed as a Fundamental Right in the Constitution and its significance and importance must be brought to bear on everyone and effective preservation measures be taken.

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4. **Supreme Court of Pakistan**
Advertisement by UBL and HBL regarding raising of Funds for Diamer Bhasha and Mohmand Dam by the Government of Pakistan and connected matters
Civil Misc. Application No. 6155/18 in CP. No.57/2016 and other civil miscellaneous petitions
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Naeem Akhtar Afghan Justice and Mr. Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._6155_2018.pdf

Facts: The case involves the management of funds collected in the name of the "Supreme Court of Pakistan and Prime Minister of Pakistan Diamer-Bhasha and Mohmand Dams Fund." The issue revolves around whether the Supreme Court had the constitutional authority to oversee the construction of the dams and retain the collected funds, as well as the appropriate transfer of those funds to the Public Account of the Federation.

Issues: i) Whether the Supreme Court possessed the requisite ability to fully comprehend the technical information contained in WAPDA's progress reports regarding the construction of the dams?
ii) Whether WAPDA should continue submitting progress reports to the Implementation Bench, considering the Bench's inactivity and the retirement of its members?
iii) Whether the Supreme Court should have taken up the matter of whether the said dams should be constructed, and whether this Court could constitutionally do so, and to have passed the orders that it did?

Analysis: i**)** Learned Mr. Khalid Javed Khan was asked whether this Court possessed requisite ability to fully comprehend the mostly technical information contained in such reports, and he responded by stating that such progress reports were probably called for to monitor the progress which had been made with regard to the construction of the said dams.

ii) The filing of the progress reports without the same being examined by the Implementation Bench served no purpose. And, now there is also no Implementation Bench as four of its members have retired/resigned. Therefore, unless specifically directed, WAPDA need not submit further progress reports in this Court."

iii) However, we made it clear that this Bench was not hearing a review petition, therefore, these questions/objections cannot be agitated before it.

Conclusion: i) see above analysis No.i.
ii) see above analysis No.ii.
iii) see above analysis No.iii.

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5. **Supreme Court of Pakistan**
All Public Universities BPS Teachers Association (APUBTA) through its President v. The Federation of Pakistan through Secretary Federal Education and Professional Training, Islamabad and others
Constitution Petition No. 7 of 2024
Mr. Justice Qazi Faez Isa Chief Justice, Mr. Justice Naeem Akhtar Afghan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._7_2024_24102024.pdf

Facts: The petitioner, on behalf of a teachers' association at public sector universities, filed a petition seeking enforcement of compliance with relevant laws governing these institutions. The petition highlights several issues: numerous universities lack appointed Vice-Chancellors, while key tenured roles, such as Registrars, Directors-General, Deans, Chairpersons, Controllers of Examinations, and Treasurers remain unfilled and are frequently occupied by individuals in acting capacities. Moreover, university decision-making bodies reportedly do not meet regularly, leaving paid employees with unchecked control over university operations. The petitioner argues that these conditions detrimentally affect the universities' academic standards and the students' potential.

Issues: i) Can an institution be classified as a public university if it receives public funding and follows public sector regulations?

ii) Are public university governing bodies required to meet periodically for oversight?

iii) Can Vice-Chancellor and other tenured administrative positions in public universities remain vacant or be held on an acting basis for extended periods?

iv) Should vacant tenured positions be filled within six months with acting charges assigned by seniority?

v) Should ministries regularly ensure university compliance and publish it online?
vi) Should universities adhere to HEC's staff ratio and limit non-academic hiring?
vii) Should student unions be inclusive and free from division?
viii) Should HEC and HEDs annually rank universities by global standards?
ix) Should universities ensure safety, drug-free campuses, and strict action on violations?
x) Should university hostels be reserved only for enrolled students?
xi) Should universities encourage community service, sustainability, sports, and research culture?
xii) Should universities demarcate, secure, and record their land ownership, removing any encroachments?

Analysis:

i) This assertion is irreconcilable with the Ordinance and also with the fact that the University receives the largest amount from the public exchequer and much more than any other university.
ii) Governing bodies of the universities, respectively referred to in their respective laws whether as board of governors, board of trustees, syndicates, senates and academic councils, must meet (at least) the minimum prescribed times.
iii) Appointments be made to all tenured positions in the universities as prescribed in their respective laws, including those of Vice-Chancellors, Registrars, Directors-General, Deans, Treasurers/Directors of Finance, Controllers of Examinations, Chairpersons and others specified therein, and this must be done transparently and on merit, by stipulating their respective criteria and inviting appointments through their respective websites and advertisements.
iv) Vacant tenured positions must not be held for more than six months on acting-charge-basis and such temporary charge be given to that person who is specified in the applicable law and, in the absence thereof to a person of equivalent seniority, failing which to the person next in seniority.
v) The Federal Ministries of Education, Science and Technology and Defence, the Provincial Ministries of Education, the HEC and the HEDs of the Provinces must collate requisite information about the universities under their respective jurisdictions, and periodically check if they are compliant with their respective laws. Such information should be made publicly accessible on their websites.
vi) The universities should not exceed the academic to nonacademic staff ratio prescribed by HEC, and those universities which have exceeded the same must not hire further nonacademic staff, unless absolutely necessary after specific permission is granted by their respective governing bodies.
vii) Student unions be revived in universities but it must be ensured that they are inclusive and not divisive, ethnic or sectarian.
viii) HEC and HEDs should annually rank the universities in their respective jurisdictions pursuant to internationally recognized criteria.
ix) A safe and harassment free environment, free of psychotropic drugs and weapons must be ensured in the universities. Transgressors and those who destroy universities' properties must be dealt with strictly.

x) Hostels meant for the students enrolled in the universities must not be allowed to be occupied by those who have completed their studies and by outsiders.
xi) Community service, sustainable living, good environmental practices, inter-university competitions, sports, games and debates should be encouraged. (…) Research culture and research based publications should be promoted.
xii) The lands of the universities must be demarcated, if not already demarcated, and if their land or any part thereof is encroached upon, encroachments therefrom be removed. Universities must also secure their lands. Iron grills and steel mesh boundaries can be installed quickly and cheaply and do not require much maintenance and also do not block vision, however, if a solid brick or block wall is required it would be best not to plaster and paint it to avoid periodical and perpetual drain of resources. The universities' ownership of land must be recorded in the record of rights.

Conclusions: i) This assertion contradicts Ordinance and funding.
ii) Ensure university governing bodies meet as prescribed.
iii) Ensure transparent, merit-based university appointments.
iv) Fill vacant positions by seniority.
v) Regularly publish university compliance data online.
vi) Adhere to HEC staff ratio limits.
vii) Revive inclusive, non-divisive student unions.
viii) Annually rank universities by global standards.
ix) Ensure safe, drug-free campuses with strict enforcement.
x) Reserve university hostels for enrolled students only.
xi) Promote community service, sustainability, and research culture.
xii) Secure and record university land ownership.

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6. **Supreme Court of Pakistan**
General Post Office, Islamabad & others v. Muhammad Jalal
Civil Petition No.3390 of 2021
Mr. Justice Justice Qazi Faez Isa, CJ, Justice Naeem Akhtar Afghan, Justice Shahid Bilal Hassan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3390_2021.pdf

Facts: The respondent sought appointment under a policy that provided preferential employment to the children of retired civil servants who had taken retirement on medical grounds. His father retired in 1996, and respondent invoked an Office Memorandum (OM) from 2005, which allowed such appointments. The General Post Office, Islamabad, contested the case, arguing that the policy could not be applied retrospectively to appointments predating the OM. The Peshawar High Court ruled in respondent's favor, which led to this appeal in the Supreme Court.

Issues: i) Whether the policy of employment preference to the widow/widower, wife/husband, or children of civil servants who die during service or become permanently disabled and take retirement from service conforms with Article 25

and 27 of the Constitution of Islamic Republic of Pakistan?
ii) Whether the Prime Minister of Pakistan has the power to relax rules and/or to issue the Policy?
iii) Whether government employment can be transferred to the heirs of civil servants?
iv) Can good governance be achieved without adhering to the Constitution and principles of justness, fairness, and openness?
v) Does the rule, policy, or law that grants appointments without open advertisement, competition and merit violate Articles 3, 4, 5(2), 18, 25(1), and 27 of the Constitution?
vi) Whether the applicability of this judgment extends to the legal heirs of martyred personnel or victims of terrorism?
vii) Whether this judgment shall affect the appointments already made of the widow/widower, wife/husband or child of deceased or retired civil servants?

Analysis:

i) The widow/widower, the wife/husband and the dependent children of a civil servant who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service get pensionary and other benefits from the public exchequer, to which they are entitled. However, the above mentioned rules, policies, OMs, etc. which secure or provide appointments in different grades, without open advertisements and competition, to the widow/widower, wife/husband or a child of a civil servant of the Federal and Provincial Governments, who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service, is ex facie discriminatory against the other or ordinary citizens of Pakistan and the same cannot be termed as a reasonable classification as their object is to give an advantage by excluding others, which is not permissible under Article 25 of the Constitution. Article 27 of the Constitution which specifically attends to the service of Pakistan prohibits discrimination in services.
ii) Sub-section (1) of section 25 of the Civil Servants Act, 1973 ('the Civil Servants Act') empowers the President of Pakistan ('the President') or any person authorized by him in this behalf, to make necessary rules for carrying out the purposes of the Civil Servants Act. The President authorized the Prime Minister of Pakistan ('PM') vide SRO No.S.R.O.120(1/98) dated 27 February 1998 to make necessary rules. There are similar provisions in the provincial laws.
iii) The Government and public sector employment cannot be allowed to be parceled out to the functionaries of the State. These jobs neither are nor can be made hereditary. The Constitution stipulates that equal employment and economic opportunities must be provided to all citizens.
iv) Good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily. This objective can be achieved by following the Constitution and the rules of justness, fairness and openness as enshrined in the above referred Articles of the Constitution.

v) Policies, office memorandums, employment under the Package of the Prime Minister, the Financial Assistance Package, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, Rule 10 (4) of the Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989, Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 or any other rule, policy, memorandum, etc. whereunder appointments without open advertisement, competition and merit, of the widow/widower, wife/husband or child of civil servants in different grades, who die during service or become permanently disabled/invalidated/incapacitated for further service and take retirement from service, are declared to be discriminatory and *ultra vires* Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution.

vi) It is further clarified that this judgment shall not affect the policies, rules or compensation packages of the Federal and Provincial Governments for the benefit of the legal heirs of martyred personnel of the law enforcement agencies and of civil servants who die on account of terrorist activities.

vii) It is clarified that the instant judgment shall not affect the appointments already made of the widow/widower, wife/husband or child of deceased or retired civil servants.

Conclusion: i) The policy of employment preference to children of retired or died during service or taking retirement due to permanent disability is not permissible under Article 25 of the Constitution. Article 27 of the Constitution which specifically attends to the service of Pakistan prohibits discrimination in services.

ii) Prime Minister of Pakistan has the power to relax rules and/or to issue the Policy.

iii) The government jobs are not hereditary and cannot be assigned to the children of government servants retired, died or permanently disabled by excluding the others.

iv) Good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily.

v) The rule, policy, or law that grants appointments without open advertisement, competition and merit violate Articles 3, 4, 5(2), 18, 25(1), and 27 of the Constitution.

vi) As per analysis at (vi).

vii) As per analysis at (vii).

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7. **Supreme Court of Pakistan**

The State through Prosecutor General Punjab, Lahore v. Chaudhry Mohammad Khan etc and Ameer Ahmed Shah

Civil Petition No.671-L-672-L of 2017

Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice ShahidWaheed

https://www.supremecourt.gov.pk/downloads_judgements/c.p._671_l_2017.pdf

Facts: An FIR was registered against the respondents for fraudulent transfer of state land

to private individuals through forged orders purportedly issued by the Deputy Settlement Commissioner; records (fard-e-Badars) with fake signatures were prepared, leading to fraudulent entries in the Register Haqdaran-e-Zameen. After an inquiry which confirmed the fraud, Fir was registered against the respondents on the recommendations of the Anti-Corruption Establishment. The respondents filed a writ petition challenging the registration of the FIR,; resultantly the FIR was quashed by the Hon'ble High Court, which order was assailed by the petitioner.

Issues:

i) Under what circumstances can a court exercise extraordinary jurisdiction under Article 199 of the Constitution to quash an FIR?

ii) Can a court quash an FIR solely on the grounds of an existing civil dispute between the parties?

iii) What is the significance of registration of an FIR in the criminal justice system and what are the legal implications of prematurely staying the registration of an FIR?

iv) The stage when the probability of conviction or acquittal can be determined by the trial court.

v) Whether the High Court, in exercising its constitutional jurisdiction under Article 199, can adjudicate factual controversies?

Analysis:

i) The jurisdiction in terms of Article 199 of the Constitution for quashing an FIR can only be exercised in exceptional cases…Exercise of extra-ordinary jurisdiction for quashing an FIR under Article 199 is permissible only in cases when the facts on record unequivocally indicate that no offence can be established against the accused; or if registration of FIR reflects a misuse of legal authority or lacks any sound legal justification because allowing the prosecution to continue under such conditions would constitute an abuse of the process of law, justifying the quashing of the FIR; cases registered without proper authority or in clear violation of established laws must also be quashed to maintain the integrity of the judicial system. However, the court should not invoke this provision if the allegations made by the prosecution establish a prima facie case against the accused.

ii) FIR cannot be straightaway quashed based on the civil dispute between the parties. It is settled law that criminal proceedings are not barred in presence of civil proceedings and that civil and criminal proceedings can proceed simultaneously.

iii) Registration of an FIR is a fundamental step in the criminal justice process. The duty to register an FIR arises under Section 154 of the Code of Criminal Procedure, 1898 (Cr.P.C), which mandates law enforcement agencies to record any information that discloses a cognizable offence. This statutory obligation is not discretionary therefore courts should not intervene prematurely to stay the registration of an FIR. An FIR serves as the starting point for any investigation, enabling the police to ascertain the veracity of the allegations and collect

necessary evidence. The act of staying the registration of an FIR effectively halts this significant process, thereby preventing law enforcement from fulfilling its mandated duty under the law to investigate.

iv) In this regard, suffice is to state, that without delving in the facts and circumstances, it cannot be ruled out as to whether there is any probability of conviction/acquittal. Even otherwise, the question as to whether there is a probability of conviction or not may be properly addressed by the trial court under Sections 249-A or 265-K of Cr.P.C.

v) High Court, in exercise of its constitutional jurisdiction under Article 199, cannot resolve factual controversies…. Criminal cases are decided on the basis of material so collected by the prosecution during the course of investigation, and the evidence recorded in the trial Court, and that too, after appraisal of evidence by it in accordance with the law applicable thereto. High Court cannot assume the role of an investigation agency or of a trial Court without recording evidence to deliberate upon the factual controversies involved in the cases in exercise of its constitutional jurisdiction.

Conclusion: i) See above analysis No i.

ii) FIR cannot be straightaway quashed based on the civil dispute between the parties.

iii) See above analysis No iii.

iv) The probability of conviction or not may be properly addressed by the trial court under Sections 249-A or 265-K of Cr.P.C.

v) High Court, in exercise of its constitutional jurisdiction under Article 199, cannot resolve factual controversies.

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8. **Supreme Court of Pakistan**
Faqir Syed Anwar ud Din decd. thr. LRs Muhammad Azeem Sheikh v. Syed Raza Haider and others
Civil Petition No.3210-L of 2023 and Civil Petition No.5181 of 2023
Mr. Justice Athar Minallah, Ms. Justice Musarrat Hilali, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3210_l_2023.pdf

Facts: The petitioners have appealed a High Court decision upholding lower court rulings in favor of a woman/the plaintiff whose son filed suit claiming she was mentally unfit to manage her inherited properties. After her father's death, her share of valuable properties was transferred under disputed transactions led by a sibling holding public office. The son alleged fraud upon discovering these transactions, seeking restoration of her share. The trial court ruled in the plaintiff's favor, a decision confirmed by the High Court, which the petitioners now challenge.

Issues: i) What must a subsequent vendee prove to establish themselves as a bona fide purchaser under Section 27(b) of the Specific Relief Act 1877?

ii) Under what circumstances may a higher court intervene in concurrent findings under Section 100 of the CPC?
iii) Is reappraisal of evidence allowed by a second appellate court under Section 100 of the CPC?

Analysis: i) This Court, in Hafiz Tassadaq Hussain's case, has held that in cases involving protection under section 27(b) of the Specific Relief Act 1877 ('Act of 1877') the subsequent vendee who asserts that he is a bona fide purchaser i.e a transferee for value has to discharge the initial onus. The latter has to discharge the initial onus to the effect that; he had acquired the property for due consideration and thus is a transferee for value; he or she, as the case may be, has to show that the sale was for a price paid to the vendor and not otherwise; there was no dishonesty of purpose of tainted intention to enter into the transaction thereby meaning that the latter had acted in good faith or bonafidely and, lastly, that he/she had taken reasonable care to inquire i.e had acted as a person of ordinary prudence in making inquiries expected of a purchaser who intends to acquire a good title for the value being paid for.
ii) It is settled law that concurrent findings are not interfered with under section 100 of the CPC unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on record through perverse appreciation of evidence.
iii) It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the CPC.

Conclusions: i) A bona fide purchaser under Section 27(b) must show they bought the property for fair value, acted in good faith, and conducted reasonable inquiries to ensure the transaction's legitimacy.
ii) If there is misreading or disregard of material evidence by the lower courts.
iii) Reappraisal of evidence is not permitted.

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9. **Supreme Court of Pakistan**
Subha Sadiq v. The State
Mr. Justice Athar Minallah, Ms. Justice Musarrat Hilali,
Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._786_l_2016.pdf

Facts: The petitioner through petition filed under Article 185 (3) of the Constitution of Islamic Republic of Pakistan, 1973 sought leave to appeal against the judgment of High Court through which conviction of the petitioner by Anti-Terrorism Court had been upheld. The august Supreme Court of Pakistan converted the petition into an appeal and acquitted the accused extending benefit of doubt.

Issues: i) What is the object of identification parade?
ii) What is the evidentiary value of identification parade and whether it is essential in every case?

iii) What guidelines were highlighted in the case of Kanwar Anwar Ali (PLD 2019 SC 488)?

iv) Whether it is essential to verify the credibility of eye witness before relying upon the identification parade?

Analysis: i) The identification parade is one of the methods of proof contemplated under section 22 of the Qanun-e- Shahadat Order, 1984. It must be carefully conducted in order to achieve its main object i.e to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection and impression. The process has to be carried out having regard to the exigencies of each case in a manner that is fair and does not indicate any collusiveness.

ii) It is merely a corroborative piece of evidence and holding of test identification parade is not mandatory. If the testimony of thewitness qua the identity of the accused inspires confidence and the witnesses are consistent in all material particulars and there is nothing in the evidence to suggest that the latter had deposed falsely then in such an eventuality not conducting a test identification parade is not fatal to the prosecution's case. The omission of salient features in a crime report is not necessarily a ground to discard a test identification parade. The test identification parade is, therefore, not required when the victim had identified the accused and his statement has been found reliable.

iii) In the case of Kanwar Anwar Ali, this Court has highlighted he necessary guidelines set out in the form of executive instructions and judicial pronouncements and they are as follows;

(a)Memories fade and visions get blurred with passage of time. Thus, an identification test, where an unexplained and unreasonably long period has intervened between the occurrence and the identification proceedings, should be viewed with suspicion. Therefore, an identification parade, to inspire confidence, must be held at the earliest possible opportunity after the occurrence;

(b) a test identification, where the possibility of the witness having seen the accused persons after their arrest cannot be ruled out, is worth nothing at all. It is, therefore, imperative to eliminate all such possibilities. It should be ensured that, after their arrest, the suspects are put to identification tests as early as possible. Such suspects should preferably, not be remanded to police custody in the first instance and should be kept in judicial custody till the identification proceedings are held. This is to avoid the possibility of overzealous I.Os. showing the suspects to the witnesses while they are in police custody. Even when these accused persons are, of necessity, to be taken to Courts for remand etc. they must be warned to cover their faces if they so choose so that no witness could see them;

(c) identification parades should never be held at police stations;

(d) the Magistrate, supervising the identification proceedings, must verify the period, if any, for which the accused persons have remained in police custody after their arrest and before the test identification and must incorporate this fact in his report about the proceedings;

(e) in order to guard against the possibility of a witness identifying an accused person by chance, the number of persons (dummies) to be intermingled with the accused persons should be as much as possible. But then there is also the need to ensure that the number of such persons is not increased to an extent which could have the effect of
confusing the identifying witness. The superior Courts have, through their wisdom and long experience, prescribed that ordinarily the ratio between the accused persons and the dummies should be 1 to 9 or 10. This ratio must be followed unless there are some special justifiable circumstances warranting a deviation from it;
(f) if there are more accused persons than one who have to be subjected to test identification, then the rule of prudence laid down by the superior Courts is that separate identification parades should ordinarily be held in respect of each accused person;
(g) it must be ensured that before a witness has participated in the identification proceedings, he is stationed at a place from where he cannot observe the proceedings and that after his participation he is lodged at a place from where it is not possible for him to communicate with those who have yet to take their turn. It also has to be ensured that
no one who is witnessing the proceedings, such as the members of the jail staff etc., is able to communicate with the identifying witnesses;
(h)the Magistrate conducting the proceedings must take an intelligent interest in the proceedings and not be just a silent spectator of the same bearing in mind at all times that the life and liberty of someone depends only upon his vigilance and caution;
(i) the Magistrate is obliged to prepare a list of all the persons (dummies) who form part of the line-up at the parade along with their parentage, occupation and addresses;
(j) the Magistrate must faithfully record all the objections and statements, if any, made either by the accused persons or by the identifying witnesses before, during or after the proceedings;
(k) where a witness correctly identifies an accused person, the Magistrate must ask the witness about the connection in which the witness has identified that person i.e. as a friend, as a foe or as a culprit of an offence etc. and then incorporate this statement in his report;
(l) and where a witness identifies a person wrongly, the Magistrate must so record in his report and should also state the number of persons wrongly picked by the witness;
(m) the Magistrate is required to record in his report all the precautions taken by him for a fair conduct of the proceedings and
(n) the Magistrate has to give a certificate at the end of his report in the form prescribed by CH.II.C. of Vol. III of Lahore High Court Rules and Orders.
(iv) in the case of Mian Sohail Ahmed, this Court has highlighted the importance of assessing the ability and capacity of the eye witnesses, separately, to identify

the accused in the circumstances of each case. It has been observed that this assessment also forms part of the identification evidence along with the test identification parade. It has been stressed that for the safe administration of justice, after the test identification parade the court must verify the credibility of the eye witness by assessing the evidence on the basis of the factors or 'estimator variables' eloquently described and highlighted by this Court in the aforementioned judgment. This Court has drawn a distinction between the 'system variables' and 'estimator variables'. The former includes the test identification parade while the latter refers to factors attributed to the witness e.g. the distance from which the crime was witnessed, the level of stress likely to have suffered, the nature of weapon used, duration of the incident and characteristics of the witness etc. The process of identification of an accused has been held to involve two steps i.e. the test identification parade and assessing the creditability of the eyewitness on the basis of the 'estimator variables'.

Conclusion: i) Identification parade is a method of proof contemplated under Article 22 of the Qanun-e-Shahadat Order, 1984.
ii) It is corroborative piece of evidence and not mandatory in every case.
iii) See Analysis (iii)
iv) See Analysis (iv)

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10. **Supreme Court of Pakistan**
Akhtar Nasir Ahmad v. Province of Punjab
through District Collector Gujrat & others
Mr. Justice Yahya Afridi, Mr. Justice Syed Hassan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1182_l_2018.pdf

Facts: Petitioner through the petition had challenged order of Hon'ble Lahore High Court, Lahore through which findings of trial court and first appellate court regarding dismissal of suit for declaration, challenging the validity of mutation of inheritance, was dismissed being barred by time**.**

Issues: Whether Law of Limitation is applicable in inheritance matters?

Analysis: The law of limitation is founded on the principle of "Vigilantibus non dormientibus jura subveniunt," meaning "the law assists the vigilant, not those who sleep on their rights." This principle forms a cornerstone of justice, reinforcing that the law favors those who act promptly and diligently. It emphasizes that individuals must be active in asserting their rights and those who fail to do so within a reasonable time should not expect the courts to intervene in their favour.

Law of limitation is not just a technical formality but a crucial component of a well-functioning legal system. It provides a framework that ensures legal matters are addressed promptly, preventing evidence from being lost, memories from fading, and facts from becoming distorted over time. Furthermore, it protects potential defendants from being subjected to claims long after they could

reasonably expect such challenges, fostering certainty and finality in legal matters. By requiring claimants to act within a specific period, the law promotes diligence and responsibility in the pursuit of legal remedies. Those who neglect to assert their rights, as in this case, effectively forfeit their ability to challenge matters that could have been addressed much earlier

Conclusion: Law of Limitation is applicable in inheritance matters.

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11. **Supreme Court of Pakistan**
Khurshid Ali & others. v. Miangul Adnan Aurangzeb (decd.) through LRs and others
CA No.493 & 494 of 2023
Mr. Justice Amin Ud Din Khan, Mr. Justice Shahid Waheed.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._493_2023.pdf

Facts: Plaintiffs instituted a suit for possession of immovable property and recovery of *mesne profit* on the strength of title. The suit was dismissed by trial court. Plaintiffs preferred an appeal, which was allowed, and the suit was decreed. Defendants filed a revision petition in Hon'ble High Court which was partially allowed by which the decree to the extent of recovery of possession was maintained, and decree to the extent of *mesne profit* was set aside. Defendants brought this Civil Appeal to challenge the decree for possession while plaintiffs preferred their Civil Appeal to assail the refusal to grant a decree to recover *mesne profit*.

Issues: i) Whether it is rested on plaintiffs, who sued to oust the defendants, to prove their title for seeking such ouster?
ii) Can in a suit for possession brought under section 8 of Specific Relief Act, 1877, plaintiff on failure to establish his title, call upon defendant to establish title or seek a decree for possession based on claims that the defendant lacks title?
iii) Whether the Court in suit for possession on the basis of title is precluded from examining the validity of the defendants' title?
iv) When should a plaintiff sue for a declaration and injunctive relief?
v) When should a plaintiff file a suit for a declaration, possession and injunction?
vi)Where title of the property is under doubt / cloud, is simple suit for possession maintainable?

Analysis: i) It is clear that the suit was brought under Section 8 of the Specific Relief Act, 1877, and, as such, it rested upon the plaintiffs who sued to oust the defendants to prove their title for seeking such ouster1. It laid upon them to establish the reason why the defendants should be ousted and why the *mesne profit* claimed should be awarded.
ii) In light of the above-stated circumstances that surround this case, it is clear that the plaintiffs failed to establish their ownership or title to the property in question. As a result, the plaintiffs could not call upon the defendants to establish the

legitimacy of their property title, nor could they seek a decree for possession based on claims that the defendants either lacked a title or possessed a flawed one.
iii) Its underlying rationale is quite straightforward: the plaintiffs must succeed based solely on the strength and validity of their own title rather than capitalising on any potential shortcomings of the defendants' situation. Along the line of this legal doctrine, the court was also precluded from examining the validity of the defendants' title, particularly since the plaintiffs did not formally challenge it.
iv) If the plaintiff is in possession but his title to the property is disputed or clouded, or if the defendant claims title and poses a threat of dispossession, the plaintiff must sue for a declaration of title and seek injunctive relief.
v) If the plaintiff's title is clouded or disputed, and he is not in possession or not able to establish possession, he must file suit for a declaration, possession, and injunction.
vi) In this case, the plaintiffs sued for possession based on their title. However, an intervening sale regarding the property in question cast doubt on their title; therefore, they should have sought a declaration of their rights before claiming relief for possession. Their simple suit for possession was not maintainable.

Conclusion: i) It is upon the plaintiffs to prove their title for seeking ouster of defendants.
ii) Plaintiff failing to establish his title cannot call upon defendants to establish their title.
iii) The Court in suit for possession is precluded from examining the validity of the defendants' title.
iv) See above analysis No.iv
v) See above analysis No.v.
vi) See above analysis No.vi.

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12. **Lahore High Court**
Jamil Tariq v. New Jubilee Insurance Company Limited etc.
Insurance Appeal No.195930 of 2018.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Ch. Muhammad Iqbal,
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC4594.pdf

Facts: During the course of hearing of the captioned Insurance Appeal, the learned counsel for the appellant presented photocopy of judgment passed in RFA No.1064 of 2011 titled as *PremierInsurance Limited through Authorized Officer Vs Messrs Ihsan Yousaf Textile Private Limited through Director & 3 Others* **(2023 CLD 135)** and requested for decision of the instant appeal in terms of the said judgment. After perusing the said judgment, the court referred the matter to the Hon'ble Chief Justice for constitution of a Larger Bench to settle the issue:- "Whether the Tribunals established under sub-section (1) of Section 121 of the Insurance Ordinance, 2000, are constituted as per mandate of law or otherwise?"

Issues: i) Whether an earlier judgment of equal Bench of the High Court on the same point is binding on the subsequent Bench, and if the subsequent Bench tends to take a different view, what procedure has to adopt?

ii) Whether the Tribunals (consisting of Addl. District and Sessions Judge) established under sub-section (1) of Section 121 of the Insurance Ordinance, 2000, are constituted as per mandate of law or otherwise?

Analysis: i) The judgment rendered in RFA No.1064-2011 (2023 CLD 135) has been handed down by a learned Division Bench whereas admittedly earlier decision of a Bench comprising equal strength/Benches of coordinate jurisdiction of the same Court, would be binding and if any different view is to be taken then the matter may be referred for the constitution of the Larger Bench. Reliance is placed on the judgments titled as *Multiline Associates Vs. Ardeshir Cowasjee and 2 others* **(PLD 1995 SC 423)**, *Qaiser & Another Vs The State* **(2022 SCMR 1641)** and *Muhammad Jawad Hamid Vs Mian Muhammad Nawaz Sharif & Others* **(PLD 2018 Lahore 836)**.

ii) Earlier the validity of constitution of Insurance Tribunal or conferment of power of the Insurance Tribunal to District or Additional District & Sessions Judge under Section 121 came under judicial consideration and this Court in a judgment titled as *Haji Muhammad Hanif Vs State Life Insurance Corporation of Pakistan through Chairman* **(2007 CLD 490)** has held as under:-

> **"***Admittedly the learned District Judge, Lahore has been constituted as an Insurance Tribunal by the Federal Government vide notification dated 20-6-2006 and conveyed to the learned District Judge Lahore by the Registrar of this Court on 7-7-2006."*

In another case cited as *State Life Insurance Corporation of Pakistan through Chairman and another Vs Mst. Naseem Begum* **(2009 CLD 1413)** the issue of the constitution of Insurance Tribunal through notification under proviso to subsection (1) of Section 121 of the Insurance Ordinance, 2000 was raised and the learned Division Bench of this Court validated the said notification regarding conferment of power of the Tribunals upon the District or Addl. District Sessions Judge respectively.

In many other Insurance Appeals similar kind of objections were raised which were answered by the learned Division Bench of this Court in a case titled as *State Life Insurance Corporation Vs Razi-ur-Rehman* **(2011 CLD 746)** declaring therein that when no Insurance Tribunal was constituted under Section 121(2) of the Ordinance ibid, the Federal Government has the powers to confer all or any power of the Tribunal to the District or Addl. District & Sessions Judge.------The Legislature has consciously inserted the proviso of sub-section (1) of Section 121 of the Insurance Ordinance, 2000, whereby the Federal Government has been empowered to confer all or any of the powers of Insurance Tribunal upon the District or Additional District & Sessions Judge with the consultation of the Hon'ble Chief Justice of High Court but while rendering judgment titled as *Premier Insurance Limited through Authorized Officer Vs Messrs Ihsan Yousaf Textile Private Limited through Director & 3 Others* **(2023 CLD 135**) the proviso of sub-section 1 of Section 121 of the Ordinance ibid as well as the notifications mentioned bove were escaped from consideration of the said learned Division Bench.

Conclusion: i). earlier decision of a Bench comprising equal strength/Benches of coordinate jurisdiction of the same Court, would be binding and if any different view is to be taken then the matter may be referred for the constitution of the Larger Bench.
ii). Tribunal (consisting of Addl. District and Sessions Judge) established under sub-section (1) of Section 121 of the Insurance Ordinance, 2000, was constituted as per mandate of law.

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13. Lahore High Court
M/s Fatima Sugar Mills Ltd. v. Appellate Tribunal and 3 others
I.T.R. No. 112167 of 2017
Mr. Justice Abid Aziz Sheikh, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4394.pdf

Facts: The applicant in this reference-application under Income Tax Ordinance, 2001 (ITO) disputes a tax tribunal's ruling that only authorized agents qualify as "wholesalers" and that unregistered bulk buyers must be classified as "retailers." The applicant argues that the tribunal's interpretation was selective, overlooking parts of the definition allowing bulk buyers to be considered "wholesalers" regardless of registration.

Issues: i) What are the registration requirements for "wholesaler" and "retailer" based on their specific activities?
ii) What distinguishes "wholesaler" from "retailer" based on business characteristics and quantity of goods sold?
iii) What are the consequences of failing to register as a "wholesaler" or "retailer"?

Analysis: i) The requirement to register as "wholesaler" or "retailer" depending upon their particular activity was separately given in Chapter I of the Rules. We would like to reproduce the relevant rule applicable during the material time period:-
"4. Requirement of registration. The following persons engaged in making of taxable supplies in Pakistan including zero-rated supplies in the course or furtherance of any table activity carried on by them, if not already registered, are required to be registered in the manner specified in this chapter, namely:-
(a) xxx
(b) a retailer whose value of supplies, in any period during the last twelve months exceeds five million rupees:
(c) xxx
(d) a wholesaler (including dealer) and distributor
(e) xxx
(f) xxx
ii) This Court in case titled "Olympia Industries (Pvt.) Ltd., Lahore versus Assistant Collector, Central Excise & Sales Tax, Sheikhupura Division, Lahore and 2 others" (2002 PTD 776) while interpreting word "wholesale" reached to the conclusion that the same has specific commercial meaning of buying goods and selling them in large quantities to traders who then sell the goods in smaller quantities. Even otherwise, a plain reading of above reproduced provisions of law

reflects that legislature envisaged "wholesalers" and "retailers" as two distinct persons depending on their characteristics of business and quantity of the commodities they deal with as well as the category of the recipients of such supplies. "Retailer" as per the then section 2(28) of the Act was a person supplying goods to general public for consumption purposes or end-consumers. The proviso to the same further clarified the position even if someone combines the business of retail with some other nature of business.

iii) The consequences, if any person fails to register himself as "wholesaler" or "retailer", as the case may be, were given in the Ordinance at the relevant time, which are also ignored by the assessing officer. Supplies to a person having "wholesaler" status when failed to register had result of collection at higher rate of 0.2% as provided in Division XIV, Pt. IV of Schedule I of the Ordinance. Treating a person as "retailer" merely on account of non-registration as "wholesaler", without first assuming an exercise of ascertaining his actual status is unsafe.

Conclusion: i) See above analysis No.i.

ii) "wholesaler" sell in bulk to traders, while "retailer" sell directly to end consumers.

iii) Failure to register can lead to higher taxes and misclassification.

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14. **Lahore High Court**
RFA No.44 of 2023/BWP
National Highway Authority, etc. v. Mehmood ul Hassan, etc.
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2024LHC4456.pdf

Facts: Appellants have moved an application for signing the written statement as it remained unsigned inadvertently.

Issues: i) Whether the signing of written statement by the engaged counsel meets the requirements of Order VI rule 14 CPC?

ii) Whether the signing of written statement by the authorized person dispensed with the requirement of signing by all the defendants?

iii) Whether non signing of pleadings is a curable defect?

Analysis: i) Perusal of written statement shows that it was signed and filed on behalf of respondents No.5 to 7 by their learned counsel who had been engaged to represent them, therefore, the same appears sufficient compliance of provision of Order VI rule 14 CPC.

ii) Furthermore, signing of written statement by any person with authority on behalf of department would be treated as signing by all the defendants relating to said department which is in accordance with law.

iii) Furthermore, non-signing of pleadings was not an illegality rather a mere technicality/ irregularity which could always be cured as the same is a curable defect.

Conclusion: i) Signing of written statement by the appointed counsel is as mandate of Order VI rule 14 CPC..
ii)See above analysis No.ii
iii) If pleadings remain unsigned, it is a curable defect.

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15. **Lahore High Court**
M/s. Wazir Cotton Ginners & Oil Mills, etc. v. Bank of Punjab.
F.A.O. No. 41 of 2024/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2024LHC4477.pdf

Facts: The appellants initially challenged the decree by filing R.F.A. No. 41 of 2019/BWP before this Court; however, this appeal was withdrawn to pursue a remedy through an application under Order IX Rule 13 of the C.P.C. This application was also treated as one under Section 12 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, seeking to set aside the ex-parte judgment and decree pending before the Banking Court. Unbeknownst to the appellants, this application had already been dismissed for non-prosecution by the Banking Court, which necessitated the filing of an application for its restoration. This restoration application was filed within the time limit from the date of knowledge but was ultimately dismissed. Hence, The appellants, through this First Appeal Against Order have called in question order dated 10.5.2024 passed by learned Judge Banking Court, Bahawalpur.

Issues: i) Whether the learned Banking Court erred in dismissing the application for restoration on technical grounds without considering the merits of the case?
ii) Whether the order dated 10.05.2024, which dismissed the application for restoration of an earlier application, is maintainable as an interlocutory order or a final order?
iii) Whether the appellants were entitled to pursue two concurrent remedies (an application under Order IX Rule 13 of C.P.C. and a Regular First Appeal) simultaneously?
iv) Whether such circumstances warrant the application of the principle that an act of court should not prejudice a party's right to seek available remedies under the law?
v) Whether the application for restoration of the earlier application, which was dismissed for non-prosecution, was filed within the limitation period as prescribed by law?

Analysis: i) Order does not show that proper consideration has been given to the facts of the case while dismissing application on technical grounds solely for the reasons that

the appellants had sought to pursue remedy by filing application for setting-aside ex parte decree before the Banking Court, which application already stood dismissed for non-prosecution on 07.02.2019 and subsequent application filed on 15.07.2021 for its restoration was held to be not maintainable, which reason is not sustainable in view of facts of the instant case for the reason that the appellants had filed the second application for restoration of the first application, which has been dismissed through the impugned order without discussing its merits.

ii) Perusal of the record also shows that application for restoration of earlier application has been dismissed by the learned Banking court on technical grounds, which had finally disposed of the matter agitated through the said application, therefore, finality is attached to the said order and the same cannot be treated as interlocutory order. The Appeal in terms of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, is available against all final orders and if it be a decree in the shape of Regular First Appeal before this Court and against all final orders in shape of an Appeal against Order, therefore, objection of the learned counsel for the respondent is not sustainable as no other remedy against the said order except through filing of appeal against said order is available to the appellants.

iii) Yet there was no bar under the law for availing the said two remedies simultaneously in view of the principles laid down by the Supreme Court in judgment reported as PLD 2018 Supreme Court 828 (Trading Corporation of Pakistan versus Devan Sugar Mills Limited and others), however, the conclusion of one remedy would have resulted in the other remedy as having become infructuous.

iv) The remedy of filing application for settingaside ex-parte decree initiated on 13.12.2017 resulted in dismissal of the said application for non-prosecution on 07.02.2019.... On the other hand in the R.F.A.No. 41 of 2019/BWP, which was pending before this Court it had not been pointed out by either of the parties or their counsel, despite their availability before this Court that the afore-referred application had already been dismissed and on being confronted with the question of availability of remedy before the Banking Court, the Appeal was withdrawn to further pursue the said remedy. Hence, withdrawal of RFA with permission to pursue other remedy could not be treated to have rendered the remedy of pursuing his application for setting-aside ex-parte decree as infructuous, however, it appears that on the said date none of the parties was aware of dismissal of the application before the Banking Court and when the appellants approached the said court for availing the said remedy in terms of permission sought from this Court, it transpired that the said application had been dismissed. Had it been pointed out by the counsel for the respondent or was within the knowledge of the appellants that the said application had already been dismissed, they may have asked for this Court to decide the Appeal on its own merits instead of permitting them to pursue the remedy before the Banking Court for the reason that withdrawal of Appeal from this Court had also deprived them of seeking further remedy against the order passed in R.F.A. No 41 of 2019/BWP before any higher forum and in such a

situation, such an order may cause prejudice to the rights of the appellants to seek remedy available to them under the law and an act of court cannot be allowed to stand in the way of remedy available to a person for the reason that act of court should prejudice no one. Reliance is placed on 2023 SCMR 334 (Abdul Quddous versus Commandant Frontier Constabulary, Khyber Pakhtun Khawa, Peshawar and another). In this view of the matter, when both parties were ignorant of fact of dismissal of application for non-prosecution, the conduct of the appellants seeking withdrawal of appeal to seek remedy though application for setting aside ex-parte decree could not be treated as contumacious to disentitle the appellants for pursuing the remedy for its restoration.

v) Generally, when both the parties had not appeared in the court when a petition/application is dismissed for nonprosecution, the courts liberally allow application for restoration, for which reliance may be placed on 2023 CLC 963 (KHALID IQBAL and others Versus Mst. YASEEN and others), PLD 2019 Lahore 723 (SAEED AHMAD Versus Mst. GHULAM FATIMA), 2020 CLC 1318 (SARDAR TABARIK ALI and another Versus ADMINISTRATOR MUNICIPAL CORPORATION, MUZAFFARABAD and 6 others), 2012 MLD 812 (JAN Versus. ABDUL RAZZAQ) and PLD 2008 Karachi 103 (Messrs FATEH TEXTILE MILLS LTD Versus. WEST PAKISTAN INDUSTRIAL DEVELOPMENT CORPORATION). Furthermore, limitation for filing application for restoration of an earlier application, which has been dismissed for non-prosecution is governed by Article 181 of the Limitation Act, 1908, providing for limitation of 3-years and the application for restoration had been filed prior to its expiry, therefore, the same was within time, hence, we have refrained ourselves to comment upon the merits of application for condonation of delay filed by the appellants along with the application for restoration.

Conclusion: i)Yes, learned Banking Court erred in dismissing the application for restoration on technical grounds without considering the merits of the case.

ii) The order dated 10.05.2024, which dismissed the application for restoration of an earlier application, is maintainable as a final order.

iii) See above analysis no. 3

iv)An act of court cannot be allowed to stand in the way of remedy available to a person for the reason that act of court should prejudice no one.

v) Limitation for filing application for restoration of an earlier application, which has been dismissed for non-prosecution is governed by Article 181 of the Limitation Act, 1908, providing for limitation of 3-years, hence, application is within time.

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16. **Lahore High Court**
Rukhsar Ahmad v. The State and others
Crl. Misc. No.45595-B/2024
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC4549.pdf

Facts: The petitioner is in custody in connection with an FIR for alleged violations of the Drugs Act, 1976, and the Drug Regulatory Authority of Pakistan Act, 2012. It is alleged that the petitioner, along with a co-accused, operated a pharmacy engaged in the unlawful sale of unregistered and spurious drugs. Acting on credible information, a team led by the District Drug Controller conducted an inspection, seizing unregistered therapeutic items and subsequently sealing both the pharmacy and an adjacent storage facility. Following a review of the evidence, the District Quality Control Board unanimously authorized the registration of the FIR. The petitioner is seeking post-arrest bail.

Issues: i) What is the role of the Provincial Quality Control Board (PQCB) as per Section 11(5) of the Act?

ii) What is required of the Provincial Inspector when a contravention of the Act is identified according to Section 19(6) of the Act?

iii) Is the procedural requirement of issuing a show-cause notice under Rule 5(3) of the Punjab Drugs Rules, 2007, before prosecuting an individual for drug-related offences, mandatory or directory?

iv) How should courts address inconsistencies between statutory headings and substantive provisions within the Drugs Act and DRAP Act?

v) What is the ultimate test for determining whether a provision is directory or mandatory?

vi) Under what conditions can the High Court exercise its constitutional jurisdiction to quash an FIR or investigative proceedings deemed unlawful?

vii) What constitutes the "taking of cognizance" in the context of a criminal trial, and how does it differ from the commencement of a trial?

viii) Does the issuance of a show-cause notice fulfill the requirements of due process and fair trial under Articles 4 and 10A of the Constitution of Pakistan?

Analysis: i) As Section 11(5) outlines the PQCB's powers and functions, which include inspecting drug manufacturing or sale premises, recommending licence suspensions or cancellations for violations, reviewing reports of the Provincial Inspectors regarding contraventions of the Act and analyzing reports of the Government Analysts on drugs submitted for testing, and subsequently issuing instructions to the Inspectors as to the action to be taken on such reports.

ii) Notably, Section 19(6) requires that, upon identifying any contravention of the Act, the Provincial Inspector must always refer the case to the PQCB, unless directed otherwise, and seek instructions regarding the action to be taken for such violations.

iii) In Rule 5(3) of the Drugs Rules, the use of the word 'shall' in phrases like 'shall examine' and 'shall issue a show cause notice' clearly suggests that the provision is mandatory, requiring strict adherence… its primary purpose is to protect individual rights by ensuring procedural fairness through the issuance of a show cause notice and the opportunity to be heard. As such, it must be treated as mandatory, and failure to comply with this Rule could render any

actions taken invalid.

iv) The headings of Section 30 of the Drugs Act, Section 29 of the DRAP Act, and Schedule IV of the DRAP Act appear inconsistent with the substantive provisions of these sections and the schedule… According to Bennion, the court must prioritize the legislative intent in such a situation; it should not allow the heading to control the substantive provisions and override their plain meaning… Where a heading differs from the material it describes, this puts the court on inquiry. However, it is most unlikely to be right to allow the plain literal meaning of the words to be overridden purely by reason of a heading.

v) The ultimate test for determining whether a provision is directory or mandatory lies in uncovering the legislative intent rather than merely focusing on the language used in the statute. The purpose and objective behind enacting the provision are strong indicators for understanding this intent.

vi) In FIA through Director General, FIA, and others v. Syed Hamid Ali Shah and others (PLD 2023 SC 265), the Supreme Court held that Article 199(1)(a)(ii) of the Constitution empowers the High Courts to judicially review the actions and proceedings of persons performing functions related to the affairs of the Federation, a Province, or a local authority… The High Courts can declare such acts of the police officers to have been made without lawful authority and of no legal effect if found so, and can also issue any appropriate incidental or consequential orders to effectuate their decision, such as quashing the FIR and investigation proceedings.

vii) In Haq Nawaz and others v. The State and others (2000 SCMR 785), the Supreme Court discussed the term 'cognizance of a case' and clarified that it is distinguishable from the 'commencement of a trial.' The Court held that taking cognizance of a case by a court is the first step in the criminal process, but it is not equivalent to the beginning of the trial. Cognizance is an early procedural step that may or may not lead to a trial.

viii) The language of the above provision [Rule 5(3) of the Drugs Rules] is unambiguous and requires that before prosecuting the person, the Board shall give a show cause notice to the concerned person and after granting a hearing to the said person, if required, the proposed action of prosecution will be adopted. The requirement of issuing a show cause notice is, therefore, mandatory under the said Rule. The above Rule meets the requirements of due process and fair trial under Articles 4 and 10A of the Constitution.

Conclusion: i) The PQCB holds comprehensive role to oversee drug manufacturing and sales, enforce compliance, and act on inspection and testing reports.

ii) The Provincial Inspector must refer any identified contravention of the Act to the PQCB for further instructions on the appropriate actions to take.

iii) Failure to comply with Rule 5(3) renders any actions taken invalid, as it is mandatory to ensure procedural fairness through the issuance of a show cause notice and the opportunity to be heard.

iv) The court should prioritize legislative intent over inconsistent headings, as

allowing a heading to override the plain meaning of substantive provisions is unlikely to be correct.

v) The legislative intent, revealed through the purpose and objective of a provision, is the ultimate test for determining whether it is directory or mandatory.

vi) High Courts can judicially review unlawful actions of public officials and declare them unlawful, issuing orders like quashing FIRs and investigations as necessary.

vii) Taking cognizance of a case is an initial procedural step in the criminal process, distinct from the commencement of a trial.

viii) The requirement to issue a show cause notice under Rule 5(3) is mandatory and aligns with the due process and fair trial standards of Articles 4 and 10A of the Constitution.

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17. **Lahore High Court**
Abdul Basit v. The State etc.
Criminal Appeal No.812 of 2022.
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC4466.pdf

Facts: In *Abdul Basit v. The State*, the accused Abdul Basit was charged with abduction and rape of the victim, Nadia Shaheen, under sections 365-B and 376 of the Pakistan Penal Code. Nadia alleged that Basit, with the help of an accomplice, Mst. Haseena Bibi, lured her into a car, drugged her, and subsequently raped her, taking nude photographs to blackmail her into silence. Basit was convicted and appealed, challenging the evidentiary sufficiency and procedural delays in the case.

Issues: i) Can a conviction be upheld based solely on the testimony of a single witness in cases of sexual assault or rape?

ii) How does the court address the delay in filing an FIR in cases related to offences against modesty and honour?

iii) What is the evidentiary status of photographs depicting criminal or compromising situations, and are they admissible?

iv) Can an accused's "bad character" be introduced as evidence in criminal proceedings?

v) How does the court view the psychological and emotional impact on a rape victim in comparison to physical injury?

Analysis: i) "Since the statement of the victim, direct evidence, has been found to be worthy of credence, confidence inspiring, credible and irrefutable, therefore, even if there is a sole witness, her statement can safely be made basis to record conviction. As to the number of witnesses required to establish a charge, the Supreme Court of Pakistan in the case reported as 'MUHAMMAD MANSHA versus THE STATE' (2001 SCMR 199) with reference to Article 17(1)(b) of Qanun-e-Shahadat, 1984 held that:- '7. A bare perusal would reveal that the language as employed in the said Article 17(1) (b) is free from any ambiguity and no scholarly interpretation is

required. The provisions as reproduced hereinabove of the said Article would make it abundant clear that particular number of witnesses shall not be required for the proof of any fact…". Thus, the well-recognized maxim remains that 'evidence has to be weighed and not counted' and here in this case as discussed above the ocular testimony though coming through one witness i.e. victim, yet the same is consistent, unimpeachable and confidence inspiring, therefore, is held to be sufficient to establish the charge.

ii) Here in this case, undoubtedly, the FIR was registered after almost one and half month of the crime having been committed but such delay in reporting the matter to the police is immaterial in the sense that throughout it has been stance of the victim that her nude pictures were taken by the accused/appellant, she was blackmailed and she fell victim number of times during her captivity under such pressure and fear, therefore, she kept mum in order to save her and the family honour but when her nude pictures were thrown in her house and the matter stood disclosed to family members, she narrated the whole occurrence

iii) It is trite that an audio/video clip including snaps/photographs as evidence maintains a dual character in the law of evidence; it is termed as document as well as a material thing (physical evidence), also known as real evidence. It does carry information that includes expression, gestures, voice and video; therefore, such clips/snaps are sought to be produced before the Court to prove the 'information' contained in it as evidence of facts recorded therein and oral account of which is to be spoken by a witness and not the document alone…. Principles of evidence relating to admissibility of documents are fully applicable on such type of evidence…."

iv) Learned counsel for the complainant tried to show the Bench some FIRs registered against the appellant for his involvement in offences of murder and dacoity to assert his bad character. We are afraid such course is not permissible under the law, and even otherwise bad character of accused in criminal cases is not relevant under Article 68 of the Order

v) It has been held by Supreme Court in case reported as 'ATIF ZAREEF and other v. THE STATE' (PLD 2021 Supreme Court 550) that rape victim stands on a high pedestal than an injured witness, because an injured witness gets the injury on physical form while rape victim suffers psychologically and emotionally, and single testimony is sufficient to uphold the conviction

Conclusion: i) The well-recognized maxim remains that 'evidence has to be weighed and not counted' and here in this case as discussed above the ocular testimony though coming through one witness i.e. victim, yet the same is consistent, unimpeachable and confidence inspiring, therefore, is held to be sufficient to establish the charge.

ii) Delay in reporting the matter to the police in offences against modesty and honour is immaterial.

iii) Audio/video clip including snaps/photographs are admissible in evidence.

iv) Bad character of accused in criminal cases is not relevant u/A. 68 of the Order.

v) Rape victim stands on a high pedestal than an injured witness…single

testimony is sufficient to uphold the conviction.

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18. **Lahore High Court**
Muhammad Iqbal Nasir v. The State & another
Crl. Appeal No.51928/2024
Mr. Justice Farooq Haider, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC4445.pdf

Facts: This appeal challenges an order denying the appellant's request for supply of a copy of a USB containing video footage of the raid leading to his arrest. The appellant, facing trial under the Control of Narcotics Substances Act, 1997, sought the video as evidence, but the trial court rejected the request.

Issues: i) What are the uses of a USB flash device, and why is it immune to electromagnetic interference?
ii) How word ‘document is defined in Pakistan Penal Code, 1860 (PPC)?
iii) How word ‘document’ defined in Qanun-e-Shahadat Order, 1984 (QSO)?
iv) How word ‘document’ defined in General Clauses Act, 1897?
v) Whether USB is a document?
vi) How word ‘evidence’ is defined in QSO, 1984?
vii) What does Article 164 of QSO 1984 allow?
viii) What is the purpose of providing the accused with copies of the challan report and related documents under Section 173 Cr.P.C.?
ix) What is the purpose of Section 265-C Cr.P.C., and how should it be interpreted to ensure the accused's right to a fair trial?
x) What does Section 265-C(1)(d) Cr.P.C. require to be supplied to the accused, and how can it include modern evidence like video recordings?
xi) What rights does an accused have under Section 548 Cr.P.C. and Article 87 of the QSO, 1984 regarding access to case records and documents?
xii) What must the prosecution submit to the court when a USB with video recording is part of the police report?

Analysis: i) U.S.B. (Universal Serial Bus) flash device is oftenly used for recording of digital information, audio as well as visual data, storage, data back-up and transfer of computer files. It is immune to electromagnetic interference.
ii) Section: 29 of Pakistan Penal Code defines “document” and same is hereby produced:-
"Document". The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.
Explanation 1. It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.
Illustrations A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document. A cheque upon a banker is a document. A

Power-of-Attorney is a document. A map or plan which is intended to be used or which may be used as evidence, is a document. A writing containing direction or instruction is a document.

Explanation 2. Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration A writes his name on back of a bill of exchange payable to his order. The meaning of the endorsement, as explain mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature."

iii) Similarly, Article: 2(1)(b) of Qanun-e-Shahadat Order, 1984 also defines "document", which is hereby reproduced:-

"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;"

iv) Section: 3 (16) of the General Clauses Act, 1897 has also defined the "document", which is reproduced:- "Document". "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter:"

v) Perusal of Section: 29 of Pakistan Penal Code, 1860, Article 2(1)(b) of Qanun-e-Shahadat Order, 1984 and Section: 3 (16) of the General Clauses Act, 1897 reveals that U.S.B. can be safely termed as "document".

vi) Evidence has been defined by Article: 2(1)(c) of Qanun-e-Shahadat Order, 1984, which is hereby reproduced:- "evidence" includes-- (i) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; and (ii) all documents produced for the inspection of the Court: such documents are called documentary evidence;" (…) So, U.S.B is a document which can be produced for inspection of the court and is documentary evidence as defined under Article: 2 (1)(c) of Qanun-e-Shahadat Order, 1984.

vii) Article 164 of Qanun-e-Shahadat Order, 1984 allows production of the evidence which has become available through modern devices or techniques.

viii) Copy of challan report under Section: 173 Cr.P.C. along with statements of witnesses and documents is to be provided to the accused for enabling him to have an all round picture of the case against him for answering the charge, preparing his defence as well as cross-examining the witnesses; intention of legislature behind providing of aforementioned documents to accused is to afford him the opportunity to defend himself and it has become much broadened through Article: 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Providing of copies of the documents/record in the criminal case to be tried by Sessions

Court is not only governed by Section: 265-C Cr.P.C. rather Section: 548 of Cr.P.C. and Article 87 of Qanun-e-Shahadat Order, 1984 are also relevant,

ix) Perusal of Section: 265-C Cr.P.C. reveals that copies of first information report, police report, statements of witnesses recorded under Section: 161 Cr.P.C. and Section: 164 Cr.P.C., inspection note recorded by Investigating Officer on his first visit to the place of occurrence and also the note recorded by him on recovery made will be provided to the accused. It appears that object of Section: 265-C Cr.P.C. is to fill/meet the vacuum created by the abolition of commitment proceedings and to make all prosecution evidence available to the accused. Section: 265-C Cr.P.C. is mandatory and inclusive as well as beneficial provision for accused but not the conclusive because it is not mentioned therein that except documents mentioned in said section, any other document which is also of more or less of same kind/category/nature cannot be supplied/given to the accused, hence it will not be narrowly interpreted rather when question of providing copy of evidence including document to the accused facing trial will arise then liberal, broad, wide and spacious interpretation will be made of Section: 265-C Cr.P.C. in order to enable the accused for having full/complete knowledge of the evidence which the prosecution possesses for the unfolding of its case before the court and even the copy of the evidence which has become available through modern devices or techniques; furthermore, under Section: 265-C (1)(b), copy of the police report is also supplied to the accused and while adopting liberal, wide and beneficial interpretation of Section: 265-C (1)(b) Cr.P.C., particularly in the light of spirit of Article: 10-A of the Constitution of Islamic Republic of Pakistan, 1973, police report would also include documents mentioned in it as well as annexed with the same. Because if case of prosecution mentioned in police report contains some important fact around which entire charge would revolve, and detail of said fact is mentioned in the document collected during investigation and the document is appended with the police report but its (document's) copy is not provided to the accused then how he would come to know about exact picture of allegation i.e. case of prosecution against him, how he would prepare his defence for replying the charge and negating the same through cross-examination during trial of the case which would ultimately negate the constitutionally guaranteed right of provision of fair trial to the accused.

x) Under Section: 265-C (1)(d), the inspection note recorded by an Investigating Officer on his first visit to the place of occurrence and the note recorded by him on recoveries made shall also be supplied to the accused. Meaning thereby that detail of occurrence at the time and place of occurrence will be noted by the Investigating Officer during first visit at the place of occurrence and copy of said notes will also be supplied to the accused in order to enable him to know about the detail of occurrence alleged against him through police report, for facing the trial. (…)Hence, liberal/wide and purposeful interpretation of Section: 265-C(1)(d) Cr.P.C. will include supply of copy of U.S.B. containing video recording of the occurrence as well as place of occurrence also with the copy of inspection

notes as "a document qua occurrence and place of occurrence" in more accurate form/shape of inspection notes of the place of occurrence.

xi) Besides, accused affected by the order of trial court qua taking cognizance of the case in hand, can apply under Section: 548 Cr.P.C. (which is mandatory provision) for furnishing copy of any part of the record of the case and same will be furnished to him. Any person who has right to inspect the public document can have copy of the same under Article: 87 of Qanun-e-Shahadat Order, 1984. Accused has every right to inspect the police report and documents annexed with the same except police diaries prepared under Section: 172 Cr.P.C., therefore, accused can obtain copy of the document mentioned in and appended with the police report except police diary.

xii) Before parting with the judgment, it goes without saying that case in which U.S.B. qua video recording of the raid conducted at the time of occurrence will be submitted with police report by the prosecution in the court, copies of the U.S.B. according to number of accused to face trial will also be submitted in the court for providing to the accused.

Conclusion: i) Reliable data storage.

ii) See analysis No.ii.

iii) See analysis No.iii.

iv) See analysis No.iv.

v) Yes, USB is a document.

vi) See analysis No.vi.

vii) Modern evidence admissible.

viii) Ensures fair defense.

ix) This provision ensures the accused receives all relevant evidence, requiring a broad interpretation to guarantee a fair trial and comprehensive defense preparation.

x) This provision includes inspection notes and modern evidence like video recordings for accurate case details.

xi) The accused can access case records, excluding police diaries, under section 548 and Article 87.

xii) The prosecution must submit enough copies of the USB with the video recording for all accused to receive one.

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19. **Lahore High Court**
The Commissioner Inland Revenue, Legal Zone, LTO Multan v **M/s AN Textile Mills Ltd. Sheikhupura road, Faisalabad.**
S.T.R. No.34/2023.
Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC4539.pdf

Facts: Case of applicant department in instant Sale Tax Reference application is that benefit in terms of sub-section (4) of section 73 of The Sale Tax Act 1990 (the Act 1990) was only extended to the registered person, in the context of taxable

supplies made to the person not registered within prescribed monetary limits, and proviso to section 2(25) of the Act 1990 is not available to respondent for claiming benefits, outside the scope of sub-section (4) of section 73 of the Act 1990.

Issues: i) Whether sub-section (4) of section 73 of the Act 1990 extends benefit only to registered person, and such benefits cannot be extended to person liable to be registered by banking upon section 25(2) of the Act 1990?

ii) In case of inconsistency between section 2(25) of the Act 1990 and sub-section (4) of section 73 of the Act 1990 which provision of the law would prevail?

Analysis: i) Sub-section (4) of section 73 of the Act, 1990 contemplates and extends specific / exclusive benefit to the registered person, upon allowing claim of input tax qua taxable supplies when made within the limits prescribed, which benefit, by any stretch of imagination, cannot be doled out to non-registered recipient by banking upon section 2(25) of the Act, 1990, which section cannot be construed contrary to the subject and context of sub-section (4) of section 73 of the Act, 1990.
ii) We have no ambiguity that in case of inconsistency between section 2(25) of the Act and sub-section (4) of section 73 of the Act, 1990, latter provision of the law would prevail – definition clause starts with qualification that '*In this Act, unless there is anything repugnant in the subject or context"*. Sub-section (4) of section 73 of the Act, 1990 cannot be rendered repugnant by extending preference to the definition / interpretation clause.

Conclusion: i) Sub-section (4) of section 73 of the Act 1990 extends benefit only to registered person, and such benefits cannot be extended to person liable to be registered by banking upon section 25(2) of the Act 1990.
ii) In case of inconsistency between section 2(25) of the Act and sub-section (4) of section 73 of the Act 1990, latter provision of the law would prevail.

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20. **Lahore High Court**
M/s Rafhan Maize Products Co. Ltd. v. The Appellate Tribunal Inland Revenue, etc.
STR No.43/2023
Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC4532.pdf

Facts: Through this reference application, the petitioner has challenged the order of the Appellate Tribunal; therein, the Tribunal confirmed the levy of Further Tax under section 3(1A) of the Sales Tax Act.

Issues: i) What is impact and effect of acquisition of registration number by a person?
ii)What is implication of expression "has obtained registration number"?
iii)What is effect of registration upon imposition of tax?

iv) What is use of expression "registration number"?
v)What is the treatment of registered persons, who are non-filers or blacklisted in relation to the Further Tax regime?

Analysis: i) It is evident and conspicuously so, that acquisition of registration number by a person, to whom taxable supplies are made, is mandatory condition before claiming exclusion from further tax regime. Appellate Tribunal correctly decided the issue that taxable supplies made to the persons, whose registration(s) were either suspended or consequently declared blacklisted, attracts application of further tax regime. Submissions by learned counsel of the applicant that once registration number has been obtained, then irrespective of the suspension or blacklisting of recipient's registration, registered person is not obligated to charge, levy or pay further tax, are fallacious.

ii)The expression '……has obtained registration number' does not imply exemption, simplicitor, upon seeking registration number but it essentially mandates that registration, at relevant time of reckoning of taxable supplies, must be effective, operative and must not suffer from any legal disability, otherwise.

iii)Extending endorsement qua submissions by learned counsel for the applicant would suggest that notwithstanding an ineffective, inoperative or dysfunctional registration, be it upon suspension or blacklisting of registration, liability to pay further tax could not be attributed to the application defeats the very objective of Hypothetically, imposition if of simplicitor further tax. procuring of registration number would presumably provide alleged protection from the charge / levy of further tax, then how was it justiciable to deny benefit of input tax adjustment(s), against taxable supplies made to such recipients, whose registration(s) was either suspended, declared blacklisted or otherwise suffering from any disability, under the Act, 1990.

iv)Use of expression "registration number" implies a valid and enforceable registration, and not otherwise. Any construction contrary thereto would be illogical and undermines apparent legislative intent. Hence, taxable supplies to the persons who had not obtained registration number and to those, who though had the registration number but otherwise registration was suspended or blacklisted must be treated alike and need to be painted with the same brush. In view of the above, mere acquisition / obtaining of registration number is not enough for claiming exemption from further tax regime, and benefit could be claimed provided registration of the recipient, at the time of reckoning of taxable supplies, is effective, operative and functional for the purposes of Section 3(1A) of the Act, 1990.

v) Now we take up the situation where the recipient of supplies had obtained registration number but had notably failed to file tax return(s) – attracting status of a non-filer. This situation is slightly different from the scenario discussed in preceding paragraph. There is no cavil that failure to submit tax return for relevant tax period would not per se attract legal disability qua the registration, unless alleged failure matures into an event of statutory default, default being

determinable in the context of the punitive action(s)/ consequences provided in the Act, 1990……..without ascertaining the effect and consequence of non-filing of tax return, enforced further tax regime, which manifestly is an improper construction of Section 3(1A) of the Act, 1990, in the context of allegation of default in non-filling of tax return by the recipient of alleged supplies. It is pertinent to mention that non-filing of tax return may lead to suspension / blacklisting, as per Rule 12 of the Sales Tax Rules 2006 subject to the requirements prescribed.

Conclusion: i) Acquisition/obtaining of registration number is mandatory condition before claiming exclusion from further tax regime.
ii) The expression does not imply exemption from tax.
iii) It provides protection from the charge / levy of further tax, then how was it justiciable to deny benefit of input tax adjustment(s).
iv) It implies a valid and enforceable registration, and not otherwise.
v) Non-filing of tax return may lead to suspension / blacklisting, as per Rule 12 of the Sales Tax Rules 2006 subject to the requirements prescribed.

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21. **Lahore High Court**
The Commisioner Inland Revenue Legal Zone, Large Taxpayers Office Multan v. M/s Usman Trade Linkers Multan
STR No.69/2022
Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC4527.pdf

Facts: The Appellate Tribunal Inland Revenue annulled order from lower authorities, ruling that an audit covering the period from July 2016 to December 2017 exceeded the Inland Revenue Officer's jurisdiction. The Tribunal interpreted Section 25(2) of the Sales Tax Act, 1990, which limits audits to once per year, and determined that an audit spanning eighteen months was unauthorized and contrary to this mandate. The case raises the question of whether conducting an audit for a period longer than one year is permissible under the law.

Issues: i) What is section 25 of the Sales Tax Act, 1990 before amendment through the Finance Act, 2024?
ii) Can records be demanded without a time limit under Section 25(1) of the ibid Act?
iii) Is an audit allowed only once per year under Section 25(2) of ibid Act?
iv) Can the term 'year' in the Sales Tax Act, 1990, be interpreted using the Income Tax Ordinance, 2001?
v) Does an authorized officer have the authority to request records for any period but conduct only one audit within a 12-month timeframe, defined by either the financial or calendar year?

Analysis: i) Section 25 of the Act 1990, before being amended through the Finance Act

2024, reads as,

"25. Access to record, documents, etc.– [(1) A person who is required to maintain any record or documents under this Act [or any other law] shall, as and when required by [Commissioner], produce record or documents which are in his possession or control or in the possession or control of his agent; and where such record or documents have been kept on electronic data, he shall allow access to [the officer of Inland Revenue authorized by the Commissioner] and use of any machine on which such data is kept.

(2) The officer of Inland Revenue authorized by the Commissioner, on the basis of the record, obtained under sub-section (1), may, once in a year, conduct audit"

ii) In terms of sub-section (1) of section 25 of the Act, 1990, a person, subject to the conditionalities prescribed, or its agent may be required to produce such record / documents; and no limitation / restriction regarding the period of time, for which the record / documents could be demanded, was provided, but obviously demand would be subject to the directions prescribed under section 24 of the Act, 1990.

iii) In terms of sub-section (2) of section 25 of the Act, 1990, audit may be conducted but once in a year.

iv) There is another aspect of the matter. Under Sales tax regime tax period means a period of one month, or such period as notified accordingly. Expression 'year' was not defined in the Act, 1990. Obvivously, the definition or scope of tax period under Income Tax Ordinnace, 2001 cannot be imported to interpret the expression 'year'. - [Tax year for the purposes of Income Tax Ordinance, 2001 is different]. Ratio settled in the case of Faisalabad Electric Supply Company Ltd. (FESCO) vs. Federation of Pakistan through Secretary, Finance, Islamabad and others (2019 PTD 1780), is not attracted, which interprets and explains the scope of third proviso added to subsection (2) of section 25 of the Act, 1990, inserted though Finance Act 2018 and omitted through Finance Act 2019.

v) "An authorized officer may call for the documents / record under subsection (1) of section 25 for such period as considered appropriate, within the time period prescribed in law for retention of the record, but same is required to conduct audit once in a year, which expression suggests period covering 12 months – either construed as Financial year or Calendar year, depending upon the intent of the department, evident from the record, and / or practice conventionally followed by the department".

Conclusion: i) See analysis No.i.

ii) Section 25(1) permits record demands without a time limit, subject to Section 24 directives.

iii) Section 25(2) limits audits to once per year.

iv) The term 'year' in the Sales Tax Act, 1990, cannot be interpreted using definitions from the Income Tax Ordinance, 2001.

v) An authorized officer may request records for any period but is limited to conducting one audit per 12-month period.

22. **Lahore High Court**
Allah Rakha etc v. The State etc.
Criminal Appeal No.17661 of 2019
Muhammad Afzal v. Muhammad Javed etc.
Criminal Revision No.18883 of 2019
Chief Justice, Justice MS Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC4419.pdf

Facts: The trial court convicted the appellants under section 302(b) PPC and sentenced them to undergo imprisonment for life as Tazir with the direction to pay Rs.5,00,000/- each as compensation under section 544-A Cr.P.C. to the legal heirs of the deceased; it was further held that in case of default in payment thereof, each of them would further undergo six months S.I. The benefit of section 382-B Cr.P.C. was also extended in favour of the appellants. Feeling aggrieved by the trial court's judgment the appellants assailed their convictions whereas the complainant also filed criminal Revision qua enhancement of sentence.

Issues: i) Whether non mentioning the name of the person who drafted the complaint, in the complaint, thereby cast doubt on the credibility of the complainant's statement?
ii) What is the legal value given to the testimony of an injured witness and under what circumstances, if any, can such testimony be disregarded?
iii) What are the consequences of delay in recording the statements of prosecution witnesses by the police?
iv) What is the evidentiary value of a site plan under Article 22 of the Qanun-e-Shahadat Order 1984, and how can it be used to contradict an eye witness?
v) What is the importance of Motive in an occurrence and in what circumstances it could lead to false implication in criminal cases?
vi) What is the legal standard for granting the benefit of doubt to an accused?

Analysis: i) Non-mentioning this fact in the application/complaint (Ex. PA) indicates that the complainant (PW-1) had not stated the complete truth and that the F.I.R. came into existence after due deliberations and consultations. When and where was the complaint (Ex. PA) prepared? The complaint's author should have stated that he prepared the complaint under the instructions of the complainant. It is also not a case of the prosecution that the complainant (PW-1) asked "Safdar" to prepare a complaint. Accordingly, the complaint was prepared by "Safdar," which was shown to the complainant and read over to him, which was thumb marked by him. Even the complainant had not explained the preparation of the complaint in the complaint and his statement before the trial court; therefore, in these circumstances, the chance of consultations and deliberations on the part of the complainant cannot be ruled out.
ii) The legal position is well settled, and the evidence of an injured witness must be given due weightage of being a stamped witness. Thus, his presence cannot be

doubted. The statement of the injured PW is generally considered to be very reliable, and it is unlikely that he would spare the actual assailant to implicate someone else falsely. Testimony of an injured witness has its relevancy and efficacy as he has sustained injuries at the time and place of occurrence. This lends support to his testimony that he was present during the occurrence. Testimony of an injured witness is accorded a special status in law, and such a witness would not let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness must be relied upon unless there are convincing grounds for the rejection of his evidence.

iii) The statement of the prosecution witness should be recorded as promptly as possible, without giving him any opportunity to improve upon and subtract from what he saw. Since the delay is likely to give an opportunity to a witness to concoct a different version.

iv) Although the site plan is not a substantive piece of evidence in Article 22 of the Qanune-e-Shahdat Order 1984 as held in the case of Mst. Shamim Akhtar v. Fiaz Akhter and two others (PLD 1992 SC 211), but it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses.

v) Now, it is trite law that enmity is a double-edged weapon. The existence of a motive on the part of the accused may be a reason for committing the crime, yet the Court has to be cognizant of the fact that this may, in a given case, lead to the false implication of the appellants. Motive is a double-edged weapon for the occurrence and false implications. There are always different motives in the person's mind for making false accusations.

vi) Reliance has been placed on the case reported as “Muhammad Akram v. The State” (2009 SCMR 230), wherein the Hon’ble Supreme Court of Pakistan has held that even a single circumstance creating reasonable doubts in a prudent mind about the guilt of the accused makes him entitled to the benefit, not as a matter of grace and concession but as a matter of right.

Conclusion: i) Non mentioning the name of the person who drafted the complaint creates chance of consultations and deliberations on the part of the complainant.

ii) See above analysis No ii

iii) The delay is likely to give an opportunity to a witness to concoct a different version.

iv) See above analysis No iv.

v) Motive is a double-edged weapon for the occurrence and false implications.

vi) See above analysis No vi.

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23. **Lahore High Court**
Habib ur Rehman v. The State etc.
Crl. Misc. No.56879/B/2024
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2024LHC4453.pdf

Facts: This is a pre-arrest bail petition of a case FIR registered for the offence under section 506(ii) & 34 of Pakistan Penal Code, 1860.

Issues: i) Whether the interception to complainant with abuse on gunpoint and extending life threats constitute the offence of Criminal Intimidation?
ii) Does any provision of PPC as section 506(ii) or 506B exist in the law?
iii) What is the distinguishing line between the two parts of section 506 PPC?

Analysis: i) Though petitioner threatened the complainant and the other witness yet it is nowhere mentioned therein that the same was done with an intent to cause alarm to the witness or to cause them to do any act which they are not legally bound to do, or not to do any act which they are legally entitled to do, as the means of avoiding the execution of such threat.
ii) While reading of Chapter XXII of the Code ibid reveals that Section 506(ii) or 506(B) is non-existent. However, with regard to the quantum of sentence and the nature of threat, Section 506 of Pakistan Penal Code, 1860, without mentioning any first or second part explains to the effect that if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, the offender would be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.
iii) The latter part of the subject provision is the continuity of the earlier part, and it is not to be read separately. Both parts are distinguishable with regard to the nature, gravity of threat and the quantum of sentence only but the second part neither is an independent provision nor it makes a threat simplicitor, criminal intimidation.

Conclusion: i) Mere interception and extending life threats on gun point do not constitute the criminal intimidation unless the intention is to cause alarm or to cause them to do any act which they are not legally bound to do, or not to do any act which they are legally entitled to do, as the means of avoiding the execution of such threat.
ii) Chapter XXII of the Code ibid reveals that Section 506(ii) or 506(B) is non-existent.
iii) Both parts are distinguishable with regard to the nature, gravity of threat and the quantum of sentence only.

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24. **Lahore High Court**
Dr. Shahida Mansoor v. Federation of Pakistan and others
Writ Petition No. 98 of 2014.
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC4661.pdf

Facts: The petitioner, a lessee of a property in Rawalpindi Cantt, applied for conversion of her residential lease to a commercial lease, initially submitting applications

from 1983 onward, which were repeatedly rejected or left unanswered. Upon reapplying in 2011, the respondents granted conversion approval but demanded a premium based on current rates. The petitioner challenged this demand, asserting that the premium should reflect rates from her initial applications in the 1980s.

Issues: i. What rate of premium is applicable when a petitioner's application for lease conversion remains unaddressed over an extended period?
ii. Can a petitioner claim the benefit of a previous policy when a fresh application for lease conversion is made following the rejection of earlier applications?
iii. Does a petitioner have a vested right to claim lease conversion under an outdated policy that no longer exists?
iv. Is a petitioner entitled to relief if the petition is based on concealment or withholding of material facts?
v. Under what circumstances can a petitioner be barred from benefiting from the consequences of their own delay or inaction?

Analysis: i. "The moot point involved herein is confined and restricted to the applicability of rates for premium chargeable from the petitioner. The claim of the petitioner is that as her case for conversion is pending since 1983 so the respondents are precluded to claim the premium at the rates prevailing in the year 2011… when the petitioner instead of challenging the orders of rejection opted to apply afresh in the year 2011, so her case would clearly fall under the policy 2007. The petitioner is thus precluded to claim the benefits of previous policy.
ii. "In the wake of above discussion it can safely be held that after rejection of previous applications when the petitioner instead of challenging the orders of rejection opted to apply afresh in the year 2011, so her case would clearly fall under the policy 2007. The petitioner is thus precluded to claim the benefits of previous policy. In other words, petitioner cannot be benefited for her own wrongs. Reference to this effect can be made to Mst. Saeeda Bano Siddiqui versus Cantonment Executive Officer. Cantonment Board Malir, Karachi (2018 SCMR 1616)."
iii. "Even otherwise there is no vested right of the petitioner to bring her cause under a policy favourable to her, which is even not in existence."
iv. "The nutshell of above discussion is that though the petitioner is claiming equitable relief but her petition is founded on concealment/withholding of material facts as narrated in preceding para 9."
v. "In the wake of above discussion it can safely be held that after rejection of previous applications when the petitioner instead of challenging the orders of rejection opted to apply afresh in the year 2011, so her case would clearly fall under the policy 2007. The petitioner is thus precluded to claim the benefits of previous policy. In other words, petitioner cannot be benefited for her own wrongs."

Conclusion: i. The petitioner shall be charged conversion as per current fee rate.
ii. The petitioner is thus precluded to claim the benefits of previous policy.

iii. Petitioner has no vested right to bring her cause under a policy favourable to her, which is even not in existence.
iv. Though the petitioner is claiming equitable relief but her petition is founded on concealment/withholding of material facts.
v. Petitioner cannot benefit from her own wrongs.

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25. **Lahore High court**
Zeeshan Asghar v. Province of the Punjab and others
Writ Petition No.1465 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC4436.pdf

Facts: The petitioner was appointed as Junior Clerk in a Cadet College, Hasanabdal, being the son of ex-employee, who died during service. The petitioner after completion of probation period was regularized as permanent employee. The petitioner on account of enhanced qualification was later-on posted as Junior Accountant. To dismay of the petitioner, he was served with a show cause notice and was finally confronted with a penalty of "compulsory retirement from service". Feeling aggrieved, the petitioner preferred a departmental appeal but it was dismissed. This followed a review petition but that too was dismissed, which is now impugned in this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issue: i) Whether issuance of show cause notice and holding of regular inquiry under Cadet College, Hasanabdal Employees, Efficiency and Discipline Regulations can be dispensed with, if so what should be its legal course?
ii) What should be the legal format of a show cause notice in departmental proceedings?
iii) Whether major penalty can be awarded without holding any regular inquiry?

Analysis: i) Respondents were bound to adhere the procedure envisaged in Regulation 5 (e) of the "E & D Regulations". Though Clause (ii) of Regulation 5(f) authorizes the authority competent to dismiss or remove a person or reduce him in rank to dispense with the opportunity of showing cause to accused if it is not reasonably practicable but for the said purpose, the authority has to record its reasons.
ii) The term "Show Cause Notice" in the departmental proceedings can be equated with First Information Report (F.L.R.) in a criminal case. "Show Cause Notice" is meant to state the grounds for launching departmental proceedings against the employee. It is thus necessary that a show cause notice must be worded properly and unambiguous manner, stating the nature of the allegation(s) charge(s) to which the accused/employee has to respond.
iii) The petitioner was awarded major penalty but without holding any regular inquiry. It is an oft-repeated principle of law that though it is discretionary with the department to dispense with the regular inquiry in the facts and circumstances of the case but such dispensation would be backed by some compelling justifiable

reasons, assigned in writing, which are clearly lacking in the present case. The petitioner has thus been deprived of his vested right of fair trial as guaranteed under Articles 4 and 10A of the Constitution of the Islamic Republic of Pakistan, 1973

Conclusion: i) See above analysis No. i
ii) See above analysis No. ii
iii) it is principle of law that though it is discretionary with the department to dispense with the regular inquiry in the facts and circumstances of the case but such dispensation would be backed by some compelling justifiable reasons.

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26. **Lahore High Court**
Abdul Rehman etc. v. Nazir Ahmad etc.
Civil Revision No.59188 of 2024
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC4411.pdf

Facts: Respondents No. 1 to 31 (plaintiffs) preferred a suit for declaration against the petitioners and proforma respondents No.32 to 37 pleading that their predecessor-in-interests, being the local residents, were the owners in possession of suit land and had been cultivating the same. In consolidation (Bandobast), Khasra numbers were changed and the petitioners (defendants) got incorporated their names in column of cultivation as Dhakeelkar after being in league with revenue officials. Suit was dismissed but the appellate court overturned the decision of the trial court, which decision brought about the instant civil revision.

Issues: i) What is the criteria for the right of occupancy under section 6 of the Punjab Tenancy Act, 1887?
ii) What are the conditions for a "tenant" to have the right of occupancy as per section 5 of the Act *ibid* ?
iii) What is the effect of omission to challenge the adverse findings or cross-objections?
iv) To which judgment, preference will be given in case of conflict of judgment?

Analysis: i) Under Section 6 of the Punjab Tenancy Act, 1887, a person should hold tenancy before 21st day of October, 1868.
ii) Section 5 of the Punjab Tenancy Act, 1887 requires that a tenant should have been in possession over the land at the time of commencement of said Act ibid or since more than two generations in the male line descendants for a period not less than 20 years without paying rent.
iii) The trial court decided issue No.4 in favour of the respondents /plaintiffs but the petitioners neither challenged the findings on said issue nor filed any cross objections under Order XLI Rule 22 CPC, as such the said issue had attained the status of finality against the petitioners/defendants and had become past and closed transaction.

iv) It is well settled law that in the event of conflict of judgments, findings of appellate Court are to be preferred, unless it is proved from the record that such findings are not supported by evidence.

Conclusion: i) See analysis No.i
ii) There two conditions for a tenant to have a right of occupancy.
iii) Non filing of cross-objection and omission to challenge the adverse findings have made the findings final.
iv) Where there is a conflict of judgments, findings of the appellate court will be preferred unless the evidence suggests otherwise.

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27. **Lahore High Court**
Muhammad Aamir Karim v. The State etc.
Crl. Appeal No.200-2022/BWP
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2024LHC4485.pdf

Facts: On 18.07.2019, brother of the complainant, was fatally shot during a scuffle with three unknown assailants. FIR was registered against the appellant under section 302 PPC. After the investigation and trial, the appellant was convicted and sentenced to life imprisonment with fine Rs.300,000 compensation payment to the deceased's legal heirs, as per section 544-A Cr.P.C., with an additional six months of simple imprisonment in case of default. The appellant received the benefit of section 382-B Cr.P.C.

Issues: i) Who is a chance witness, and how credible is the testimony of chance witnesses?
ii) What are the requirements for the credibility of an identification parade?
iii) How does a delay in the post-mortem examination affect the prosecution's case?
iv) What is unnatural conduct of eye witnesses and what inference can be drawn from unnatural conduct of eye witnesses?
v) What inference can be drawn from withholding evidence of best independent witnesses?
vi) What is the standard of proof required for the prosecution to establish guilt against the accused and how does the presence of a single loophole or lacuna in the prosecution's case affect the accused's entitlement to the benefit of doubt?

Analysis: i) As per relevant column of FIR, the occurrence was taken place four furlong west of Chacha Basti Chowk, which means that there was considerable distance of between the place of occurrence and school where the complainant is serving as Chowkidar, as such his presence at the place of occurrence particularly at midnight is not natural, hence he was a chance witness… The august Supreme Court of Pakistan in recent pronouncement in case titled as "Muhammad Hassan and another v. The State" has held as under:-

> "In light of the aforementioned facts, we are of the considered view that the above-mentioned eye-witnesses could not justify their reasons for being at the place of occurrence at the relevant time. Therefore, they are chance witnesses, and their evidence is not free from doubt".

In this regard, reference can also be made to case titled as "Mst. Sughra Begum and another v. Qaiser Pervez and others"; "Muhammad Irshad v. Allah Ditta and others" and "Sufyan Nawaz and another v. The State and others"

ii) The identification parade has been held after a considerable delay from the arrest of appellant. Furthermore, there is no denial to the fact that neither in complaint, nor in FIR, the complainant has not mentioned the features of unknown accused persons. Even during the course of cross-examination, both the eye witnesses have admitted this fact. The investigating officer Ijaz Ahmad S.I (PW.11) also admitted during the cross-examination that none told him about the features, height, age, colour of accused or as to whether they were having beard or not. Therefore, the evidentiary value of same has a little value in the eyes of law more particularly when the lineaments and physiognomy of the accused were not mentioned anywhere by the complainant or the eye-witnesses. Reliance is placed upon recent case laws titled as "Muhammad Riaz v. Khurram Shehzad and another" and "Mehboob Hassan v. Akhtar Islam"… Apart from the above noted infirmities in identification parade there is another fact which creates heavy shadows of doubts on the veracity of identification parade i.e. interview of Station House Officer concerned which was taken on 25.07.2019 and published in daily "Khabrain" on 26.07.2019…However, said statement of I.O is not worthy of any credence as his snap was also present alongwith appellant and SHO, to whom he identified. Therefore, in view of above, the identification parade has lost its credibility and no reliance can be placed thereupon.

iii) Another fact of immense importance which further casts doubts on the prosecution story is that allegedly, the occurrence took place at about 11:15 p.m on 18.07.2019, however, it is an admitted fact that post mortem examination of the deceased was conducted at 06:30 a.m on 19.07.2019 with the delay of more than eight hours…Furthermore, at the time of external examination of the dead body, the PW.2/Dr.Muhammad Abid Aslam, observed that rigor mortis was developed and there was heavy clotted blood over the cloths of dead body, which further corroborates the fact that postmortem examination was conducted with considerable delay. Even otherwise, there is no explanation at all as to why the post mortem examination of the deceased was got conducted with such a delay. In similar circumstances, in case titled "Muhammad Ijaz alias BILLA and another v. The State and others"[5], the august Supreme Court of Pakistan has held as under:-

> "..In such circumstances, the most natural inference would be that the delay so caused was or preliminary investigation and prior consultation to nominatethe accused and plant eye-witnesses of the

> crime. Reference in this regard may be made to the case of Muhammad Rafique alias Feeqa v. The State (**2019 SCMR 1068**). In similarly circumstances, this Court, in the case of Irshad Ahmad v. The State (**2011 SCMR 1190**), observed that the noticeable delay in post-mortem examination of the dead body is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses before preparing police papers necessary for the same. This view has been followed by this court in Ulfat Hussain v. The State (**2018 SCMR 313**), Muhammad Yaseen v. Muhammad Afzal and another (**2018 SCMR 1549**), Muhammad Rafique v. The State (**2014 SCMR 1698**), Muhammad Ashraf v. The State (**2012 SCMR 419**) and Khalid alias Khalidi and 2 others v. The State (**2012 SCMR 327**)."
>
> (Emphasis added)

iv) Adverting to the next intriguing aspect of the matter i.e. conduct of witnesses. Admittedly, the complainant is real brother of deceased whereas PW.Muhammad Asghar is cousin and Salahuddin PW is nephew/Bhanja of complainant as well as of deceased. There are certain admitted facts that none of them tried to catch the accused persons or inform the police. They have not given any first aid to the deceased in injured condition even they did not try to take him to hospital in order to save his life and the deceased remained lying on the ground even in the presence of his real brother and close relatives. The mouth and eyes were found open by the medical officer (PW.2) as such, it is proved that they even did not try to close the mouth and eyes of the deceased. Such conduct of the prosecution eye-witnesses was highly unnatural and casts doubts about their presence at the place of occurrence at the relevant time. Reliance in this regard is humbly placed upon the recent pronouncements of august Supreme Court of Pakistan in case titled as "Mst. Saima Noreen v. The State"6 and "Riasat Ali v. The State"7 and "Maqsood Alam and another v. The State and others"8

v) Another important aspect of the matter is that prosecution witnesses could not establish their presence sufficiently at the place of occurrence as neither the complainant nor PWs reside there and their residences are at a considerable distance. The stance of the complainant was that he was came to see his relative Jam Moosa, who resides near the Ejaz Petrol Pump where other PWs also arrived after one hour of his arrival. However, quite astonishingly, the prosecution has not produced the said Jam Moosa in order to substantiate presence of complainant and PWs at the stated time. Hence, the best witness,

which could have independently supported the prosecution version has been withheld by the prosecution and non-producing of said witness tantamount to inference that had he been produced, he would have not supported the prosecution version. The august Supreme Court of Pakistan in recent pronouncement in case titled "Muhammad Ijaz alias BILLA and another v. The State and others" **9** has held as under: -

> "We believe that the prosecution withheld the best evidence, which undermines the credibility of its account. It is well established that whenever a party withholds the best evidence available, it is presumed under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that if such evidence had been produced, it would not have supported the stance of that party."

(Emphasis added)

vi) It is a known and settled principle of law that prosecution primarily is bound to establish guilt against the accused without shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges so imputed against the accused have not been proved beyond reasonable doubt, then the accused becomes entitled for his release on getting benefit of doubt in the prosecution case. In such situation the Court has no jurisdiction to abridge such right of the accused. After considering all the pros and cons of this case, this Court has come to this irresistible conclusion that the prosecution could not prove its case against the appellant beyond the shadow of doubt. In a recent pronouncement in case titled as "Muhammad Hassan and another v. The State and others"**14**, august Supreme Court of Pakistan has held:-

> "….once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused. Reference in this regard may be made to the cases of Daniel Boyd (Muslim Name Saifullah) and another v. The State **(1992 SCMR 196)**; Gul Dast Khan v. The State **(2009 SCMR 431)**; Muhammad Ashraf alias Acchu v. The State **(2019 SCMR 652)**; Abdul Jabbar and another v. The State **(2019 SCMR 129)**; Mst. Asia Bibi v. The State and others **(PLD 2019 SC 64)** and Muhammad Imran v. The State **(2020 SCMR 857)**".

(Emphasis supplied)

Conclusion: i) The eye-witnesses who could not justify their reasons for being at the place

of occurrence at the relevant time are chance witnesses, and their evidence is not free from doubt.
ii) See above analysis No.ii
iii) Delay in the post-mortem examination casts doubts on the prosecution story.
iv) See Above analysis No.iv
v)The non-production of the best witness, who could have independently supported the prosecution's case, leads to the inference that had he been produced, he would not have supported the prosecution's version.
vi)The prosecution must prove the accused's guilt beyond a reasonable doubt with credible evidence; if they fail, the accused is entitled to benefit from the doubt and be released.

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28. **Lahore High Court**
Muhammad Sibtain v. The State and another.
Criminal Appeal No.564 of 2018
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC4627.pdf

Facts: Through the instant appeal appellant called in question the vires of judgment, whereby he was convicted under Section 302(b) PPC and sentenced to suffer life imprisonment with direction to pay Rs.5,00,000/- as compensation to the legal heirs of deceased under Section 544-A, Cr.P.C. and in default thereof to further undergo six months S.I. Benefit of Section 382-B Cr.P.C., however, was extended to the appellant.

Issues: i) Whether unexplained delay in the registration of F.I.R. sheds doubt upon the truth of accusations set-out by the prosecution?
ii) Whether evidence of res gestae loses credibility if there is noticeable delay between the two events on account of their genesis?

Analysis: i) Without a speck of reluctance, it can be concluded that the enormous delay of 12- hours in the registration of F.I.R. remained unexplained, a fact which sheds doubt upon the truth of accusations set-out by the prosecution. Besides that, the delay of 12-hours further reflects upon the possibilities that PW.6 & PW.7 acquired knowledge about the incident much after its happening, thus, were clueless about the identity of the perpetrator. The fact that crime scene was situated at an isolated place and had no electricity connection, further gives vent to the possibility that occurrence remained unwitnessed and the complainant after acquiring knowledge about it consumed the duration of 12-hours in knitting a false story.
ii) In order to attain legal admissibility and credibility the event of res gestae must be so closely connected with the main occurrence so as to form one common transaction and there must not be any circumstance bisecting them from each other. The evidence of res gestae loses credibility if there is noticeable delay between the two events because the longer is the duration between them, greater is the possibility that these events are severed from each other on account of their

genesis. Besides that, the event of res gestae must have close nexus with the main occurrence in reference to the nature of offence, identity of the culprit, the place and the time where it occurred. The concept of res gestae was elaborated by this Court in a case reported as Zaka Ullah v. The State (2021 PCr.LJ 1). The relevant extract from the said judgment is reproduced below for ready reference: - "Bare look of Article 19 and the Illustration annexed therewith leads to the inference that an evidence/circumstance to attain the status of res gestae must be connected with the fact in issue in the manner so as to form same transaction. Such facts must be incidental and explanatory to the main occurrence and can even be arising out of acts or from words, performed or uttered by someone immediately after the event in question. The event of res gestae must also be closely connected with the fact in issue in term of proximity of time. The afflux of some delay between the fact in issue and the event canvassed as res gestae will separate them from each other giving rise to a possibility so as to be part of some other transaction." Above all, the event of res gestae must be brought on record spontaneously and without lapse of any unnecessary delay. Though in the instant case, the incident of homicide and event of res gestae occurred in close proximity of time with each other but the fact remains that the detail of these two episodes was reported to police with an unexplained delay of 12-hours. The standard of proof for accepting the res gestae involves stringency of appraisal so as to exclude all the hypotheses of fabrication through consultation. In the instant case, it is already mentioned above that the F.I.R, mainstay of which is event of res gestae, was registered with enormous delay of 12-hours for which not even a frail explanation was offered

Conclusion: i) The enormous delay of 12- hours in the registration of F.I.R. remained unexplained, a fact which sheds doubt upon the truth of accusations set-out by the prosecution.
ii) The evidence of res gestae loses credibility if there is noticeable delay between the two events because the longer is the duration between them, greater is the possibility that these events are severed from each other on account of their genesis.

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29. **Lahore High Court**
Muhammad Arif Zaman and another v. The State and another
Crl. Appeal No.909/2012
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC4401.pdf

Facts: The learned Special Judge Anti-Corruption convicted the appellants for preparing a forged agreement to sell and consequent upon two mutations sanctioned by official accused persons/convicted. Hence, this appeal against conviction.

Issues: i) Which approach must be adopted by courts while deciding criminal cases?
ii) Which type of evidence be given weightage while deciding matters of cheating

and forgery?
iii) What kind of details a Patwari must incorporate in Rapat Roznamcha for mutations?

Analysis: i) While deciding the criminal case, approach of the Court must be inquisitorial instead of adversarial.
ii) In the case of forgery, cheating and particularly by the accused who being official is also holder of the relevant record, it is not easy to find out the direct evidence because such officials when become cheater, they make planning, manage the atmosphere/material, try their level best to conceal the relevant incriminating material and usually said forgery comes to the knowledge of the affectee at belated stage and it is more difficult to find out evidence at said stage due to passage of time; therefore, in such offences, relevant material in the form of documents/transactions can be given due weight while appreciating the evidence in the light of maxim "Res ipsa loquitur" i.e. "the thing speaks itself" instead of emphasizing the oral/direct evidence.
iii) Perusal of said rapt reveals that it was incomplete, vague as well as dubious because neither parentage of Muhammad Akhtar nor amount of sale was mentioned in the same; similarly, measurement of the land i.e. how much land has been sold and handing over of the possession has also not been mentioned in the same.

Conclusion: i) The approach by the court must be inquisitorial instead of adversarial.
ii) In such offences, relevant material in the form of documents/transactions can be given due weight while appreciating the evidence in the light of maxim "Res ipsa loquitur" i.e. "the thing speaks itself" instead of emphasizing the oral/direct evidence.
iii) A Rapat must contain complete particulars of the parties, amount of sale consideration, measurement of the land and delivery of possession.

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30. **Lahore High Court, Lahore**
Zulqarnain v. The State.
Crl. Misc. No.43092-B/2024
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC4579.pdf

Facts: Through this single order two petitions for post arrest bail in offences under Sections: 302, 109, 34 PPC (offence under Section: 109 PPC was though deleted during investigation however same was again added).

Issues: i) Nature of Lalkara i.e. whether it is "commanding" or mere "proverbial" would be seen during trial of the case?
ii) Whether factor sharing common intention as well as vicarious liability requires further/inquiry and falls in the ambit of Section 497(2) Cr.P.C?
iii) Whether mere detention would serve useful purpose, if bail is withheld as advance punishment?

Analysis: i) In said state of affairs, whether lalkara was "commanding" or mere "proverbial" in nature would be determined during trial of the case.
ii) When all aforementioned factors are taken into consideration in totality, then question of sharing common intention as well as vicarious liability would be seen during trial of the case, however, case of prosecution, at present, against both petitioners requires further probe/inquiry within the purview of sub-section 2 of Section: 497 Cr.P.C.
iii) Mere detention of the petitioners in lock-up, in aforementioned circumstances, would serve no useful purpose to the case of prosecution. Bail cannot be withheld as advance punishment ……Liberty of a person is a precious right which has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. By now it is also well settled that it is better to err in granting bail than to err in refusal because ultimate conviction and sentence can repair the wrong resulted by a mistaken relief of bail; in this regard, case of "CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU through P.G., NAB versus NISAR AHMED PATHAN and others" (PLD 2022 Supreme Court 475) can be advantageously referred and its relevant portion from Page No(s).480-481 is reproduced: -

> "To err in granting bail is better than to err in declining; for the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail, but no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial."

Conclusion: i) The nature of Lalkara would be determined during trial of the case.
ii) The question of sharing common as well as vicarious liability would be seen during trial and requires further probe/inquiry within the purview of section 497(2) Cr.P.C.
iii) Mere detention in lock-up would not server useful purpose and bail cannot be withheld as advance punishment.

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31. **Lahore High Court Lahore**
Syed Noor-ul-Hadi Shah v. Government of Punjab, etc.
Writ Petition No.13444 of 2024
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC4331.pdf

Facts: By way of filing Writ petition, the petitioner questioned the legality of order dated 26.09.2024, whereby his right to be considered for appointment under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, Rules, 1974, claiming to have had arisen before omission of the rule, was declined on simple premise that Rule 17-A was no more part of the Rulebook.

Issue: i) Whether Rule17-A of the Rules, 1974 constitute a specie of concession by way of quota?

ii) Does Rule 17-A create a vested right?
iii) What would be the triggering event for the purposes of invoking Rule17- A of the Rules, 1974?

Analysis: i) Benefit extended under Rule 17-A of the Rules, 1974 does not constitute part of the terms or conditions of service, but privilege, since no entitlement can be claimed under Rule 17-A of the Rules, 1974, unless conditions prescribed therein are fully met. An alive or healthy civil servant cannot claim such appointment as a right for family, which privilege in fact accrues upon happening of specified event, whereby actually the services stand terminated, but continuity to service was extended by fiction in exercise of rule-making power, in favor of the family.
ii) There is a marked difference between a vested right to appointment and right to be considered for appointment. Rule 17-A of the Rules, 1974 offers an opportunity / permission to knock at the door, to be opened once limitations stated and conditions prescribed are fully met.
iii) If a civil servant had died on 23.07.2024, could right to be considered be denied without affording / extending reasonable time for demonstrating the intent of an heir to invoke Rule 17-A. Such denial would be unreasonable and otherwise not sustainable in the context of doctrine of *'locus poenitentiae'*.

Conclusion: i) Rule 17-A had the objective to ensure continuity of employment in the family, in wake of an unwarranted accident /mishap – intent being to provide compensation or financial security. It is more like a succession in terms of employment, but subject to the limitations and conditions. So Rule 17-A of the Rules, 1974 cannot be confused with the quota system.
ii) Rule 17-A does not create a vested right, since vested right is free from any and all contingencies but in fact Rule 17-A contained inbuilt limitations and conditions, which have had to be met before someone could claim a right to be considered for appointment.
iii) Triggering event is the occasion when civil servant dies during service or is declared invalidated / incapacitated before the Notification dated 24.07.2024, and any of his unemployed children or widow expresses willingness to invoke / seek benefit of Rule 17-A.

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32. **Lahore High Court, Lahore**
Muhammad Akhtar Shah V. Judge Family Court, Kot Addu & others
Writ Petition No. 3022 of 2023
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC4377.pdf

Facts: Through this writ petition, the petitioner has impugned the concurrent decisions, in terms whereof suit for jactitation of marriage, instituted by respondent No.3, was decreed by the Family Court and same was affirmed by the Appellate Court, consequently alleged Nikah between the petitioner and respondent No.3 was declared void for all intents and purposes.

Issues: i) Whether the burden of proof lies on the party asserting the existence of a valid marriage in case of jactitation of marriage?
ii)what is impact and evidentiary value of self-harming statements in case of jactitation of marriage?
iii)What is evidentiary value of statement made in criminal case, which does not undergo test of confrontation?

Analysis: i) Petitioner, who alleged existence of valid marriage, and sought decree of conjugal rights utterly failed to prove conduct of marriage, who was evasive regarding sharai nikah in the written statement, later pleaded conduct of sharai nikah, which obviously is an afterthought. No witnesses of Nikah Nama were produced. Advocate in whose chamber Nikah was allegedly solemnized was not produced…….Even otherwise voluntariness and truthfulness, essential ingredients of statement under section 164 of Criminal Procedure Code, 1898 were not proved. No lawyer was produced to prove that lady had signed petitions / affidavit and appeared in person before the court.
ii) Even otherwise self-harming statements carry more authenticity, high evidentiary value and deserve more credibility and weightage, as compared to the evidence of the petitioner, read in the context of the apparent motive, intending to avoid incriminating charges in criminal case – which manifest tendency of misrepresenting the facts.
iii) In the circumstances, statement, not confronted to the witness, had no evidentiary value, besides being otherwise attracting inadmissibility. Case-law cited by counsel for the petitioner, reported as "MST. FARHAT JABEEN. VS. MUHAMMAD SAFDAR and others." (2011 SCMR 1073) is distinguishable on facts. Conversely, ratio of the decision in the case of "MATLOOB HUSSAIN. VS.MST. SHAHIDA and 2 others." (PLD 2006 SC 489) is more proximate, illustrative and supports the case of respondent No.3.

Conclusion: i) In case of jactitation of marriage, the burden of poof lies upon the party, who asserts the existence of valid marriage.
ii) self-harming statements more authenticity, high evidentiary value and deserve more credibility and weightage and must be read in context of motive, intending to avoid incriminating charges in criminal case, which manifest tendency of misrepresentation of facts
iii)a statement made in criminal case, not confronted to witness, has no evidentiary value, besides being otherwise attracting inadmissibility.

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33. **Lahore High Court**
National Rural Support Program (NRSP), etc. v. National Industrial Relation Commission (NIRC), etc.
W.P No.2212 of 2024
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC4543.pdf

Facts: Grievance petition was submitted under section 46 of the Industrial Relations Ordinance, 2002, wherein claim of respondent No.3 was allowed by the Labour Court, which matter went to Labour Appellate Tribunal and in the meanwhile Industrial Relations Act, 2012 (Act, 2012) was promulgated; whereupon appeals were transferred to National Industrial Relation Commission (NIRC) Full-Bench, which set-aside the judgment of the Labour Court and remanded the matter to Member, NIRC. Question of non-application of Standing Order 1968 was raised but dismissed by Member NIRC and NIRC Full Bench. The subject matter was challenged through instant constitutional petition.

Issues: i) Whether petitioner is a non-profit organization registered under Section 42 of the Companies Ordinance, 1984, falls within the definition of "commercial establishment" or "industrial establishment" under the Industrial and Commercial Employment (Standing Order) Ordinance, 1968?
ii) Whether respondent No.3 qualifies as worker or workman, either under Industrial Relations Act, 2012 or in terms of Standing Order 1968. And if all these requirements are met then assumption and exercise of jurisdiction by NIRC under the provisions of the Act, 2012 tantamount to lawful exercise of authority / jurisdiction?

Analysis: i) Upon perusal of the quoted provisions of law, I find no difficulty in holding that petitioner qualifies as an 'establishment' in terms of section 2 (x) of the Act, 2012, which inter alia includes a company, that had employed a workman, i.e., respondent No.3 and for carrying on business, which nature of business is distinguishable from the industry.
ii) Respondent No.3 was dismissed, whose individual grievance comes within the ambit of an industrial dispute, in terms of section 2 (xvi) – inter alia a dispute between employer and workmen and connected with the employment or otherwise concerning the terms and conditions of employment. Further, respondent No.3 comes within the definition of workman under section 2 (xxxiii) of the Act, 2012, - [respondent No.3 was not employed to conduct managerial or administrative assignment], who was dismissed in relation to an industrial dispute, hence, entitled to bring his grievance within the ambit of Act, 2012. Designation of the petitioner was office attendant / Telephone Operator – which is covered under specification of skilled or unskilled workman – which comes within the definition of workman in terms of clause (i) of section 2 of the Standing Order 1968, as well. Any doubt or confusion, if any, stood settled in terms of the ratio settled in the case of "Messrs Pak Telecom Mobile Limited vs. Muhammad Atif Bilal and 2 others" (2024 PLC 130), which illustrates that for the purposes of seeking remedy under Standing Order or Act, 2012, grievance-raiser had to satisfy his qualification under definition of workmen under relevant statute. It is not disputed that respondent No.3 meets the definition of workman under the Act, 2012 and Standing Order 1968 and there appears no apparent conflict qua assumption and exercise of jurisdiction – petitioner being a trans-provincial establishment. Questions raised have been addressed by the forums competent to

exercise jurisdiction – reasoning may not be eloquently laid but sound enough to affirm it.

Conclusion: i) Petitioner may not qualify as a 'commercial establishment' for the purposes of Standing Order 1968, but comes within an ambit of establishment under the Industrial Relations Act, 2012.
ii) Respondent No.3 comes within the definition of workman under section 2 (xxxiii) of the Industrial Relations Act, 2012, assumption and exercise of jurisdiction by NIRC under the provisions of the Act, 2012 tantamount to lawful exercise of authority / jurisdiction.

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34. **Lahore High Court**
M/s Five Star Steel Industry (Pvt.) Ltd. etc. v. Federation of Pakistan, through Secretary Ministry of Law & Justice, etc.
Case No. Writ Petition No.67022 of 2024
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4642.pdf

Facts: Petitioners were aggrieved by decision of National Electric Power Regulatory Authority ("NEPRA") in pursuance whereof fixed charges were imposed in petitioners' electricity bills so they challenged the same order through Writ Petition.

Issues: i) Whether a party who suppresses material facts can seek relief under the discretionary and equitable jurisdiction of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973?
ii) What remedy is provided if a party is aggrieved by the decision of National Electric Power Regulatory Authority?
iii) Whether an aggrieved person can invoke the constitutional jurisdiction under Article 199 of the Constitution without first availing an alternate statutory remedy, what are the exceptions?

Analysis: i) There is no cavil with the proposition that extraordinary constitutional jurisdiction under the provisions of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is discretionary and equitable and while exercising this jurisdiction, the conduct of the party assumes vital significance and importance. He who seeks equity must come to the Court with clean hands. Where petitioners had attempted to suppress material facts, they would become disentitled to the grant of equitable and discretionary relief.
ii) Petitioners, if are aggrieved by the decision of the authority, they have the remedy of filing an appeal under section 12(G) of the Act before the Tribunal established under section 11 of the Act within a period of thirty days of the decision particularly in the backdrop of fact that the Tribunal is fully functional.
iii) It is by now settled principle of law that where an alternate, equally efficacious and statutory remedy is available to an aggrieved person, he ought to have availed of that remedy instead of invoking extraordinary constitutional

jurisdiction of this Court under Article 199 of the Constitution. It is correct that bar on the filing of petition under Article 199 of the Constitution without availing alternate remedy may be ignored in cases where any jurisidictional error, lack of authority is apparent or impugned action has been shown to be based on mala fide or in blatant disregard of law.

Conclusion: i) If a party suppress material facts, it would become disentitled to the grant of equitable and discretionary relief.
ii) See above analysis No ii.
iii) See above analysis No iii.

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35. **Lahore High Court Lahore**
Mst. Shamim Akhtar v. Additional District Judge Rawalpindi & others
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4494.pdf

Facts: Petitioner and respondent, through separate writ petitions, assailed the judgment of Additional District Judge through which appeal against the judgment and decree of Family Court was partly allowed.

Issues: What is the legal status of condition stipulated in column no.18 of Nikahnama mentioning compensation to be paid to wife in the event of divorce or second marriage of husband?

Analysis: It transpires that both the parties agreed upon the stipulation qua payment of Rs.300,000/- in the events of pronouncing divorce upon petitioner and contracting second marriage by the respondent. Narration given in Nikah Nama qua the amount can legitimately be counted as deferred dower that was to become payable on happening of any of the events so mentioned therein. In the instant case since respondent has contracted second marriage and also divorced the petitioner, therefore, the petitioner was entitled to the decree for the dower to the tune of Rs.300,000/-. Needless to observe that the stipulation agreed upon between the parties qua payment of certain amount by respondent to the petitioner on the event of divorce or contracting second marriage, in no way curtails the right of husband to pronounce divorce. Any stipulation or condition agreed between the parties mutually and with their free consent cannot be considered as an absolute bar to either pronounce divorce…, any penal sum that has to be paid by the husband on the event of some future happenings as agreed by him although penal in nature yet same may be considered as deferred dower in view of exposition given by late Syed Ameer Ali…, it can very conveniently be resolved that where no specific or definite period is settled for the payment of deferred dower, wife would become entitled to dower at the event of dissolution of marriage or on the death of any of the spouses. If any sum or property is agreed to be paid or given to the wife on the happening of some specified event, the same

would become payable on the occurrence of that specified event as a deferred dower

Conclusion: The amount so mentioned in Nikahnama is to be considered as deferred dower.

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36. **Lahore High Court**
Waseem v. The State and another
Crl. Misc. No.63668-B of 2024
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4648.pdf

Facts: The petitioner has filed a petition for post-arrest bail under Section 497 Cr.P.C. He is charged with attempting to commit sodomy with the complainant's 13-year-old son under Sections 376(iii)/511 of the Pakistan Penal Code, 1860. His previous application for bail was dismissed by the Additional Sessions Judge.

Issues: i) Is there any difference between sexual abuse and commission or consummation of rape or sodomy?
ii) What is the definition of sexual abuse and what does it include as outlined in Section 377A of the PPC??
iii) What is the purpose of Sections 377A and 377B PPC as introduced by the Criminal Law (Second Amendment) Act, 2016.
iv) Should offences related to attempted sodomy or rape of minors under 18 continue to cite Sections 377 or 376 PPC along with Section 511?

Analysis: i) As Plain reading of provisions of section 377A of PPC reflects that the term ‘sexual abuse’ does not explicitly contemplate commission or consummation of rape or sodomy with the victims below the age of 18 years. This distinction appears to be appropriate for the reason that the moment an act of rape is alleged to have been committed with a minor below the age of 16 years the matter would come out of the domain of section 377A of PPC and fall squarely under the provisions of section 376(3) of PPC entailing the more stringent punishment of death or imprisonment for life or fine.
ii)The term "sexual abuse," as outlined in section 377A of the PPC, has a broader and more comprehensive definition than simply referring to ‘an attempt to commit an act of sodomy or rape’ as it includes certain acts and behaviors leading to any obscene or sexually explicit conduct either independently or in conjunction with other acts with or without consent of a victim below the age of 18 years. As per provisions of section 377A of PPC, an act of employing, using, forcing, persuading, inducing, enticing or coercing any person to engage in fondling, stroking and caressing any obscene or sexual explicit conduct either independently or in conjunction with other acts with or without consent of a victim less than 18 years would be considered and counted as the crime of sexual abuse as punishable under section 377B of the PPC entailing minimum sentence of fourteen years that may extend up to twenty years with fine which shall not be less than one million rupees.

iii) In case "Mubeen Ahmed v. The State and another" (PLD 2021 Islamabad 431), it has been observed that the provisions of section 337A and 377B of PPC have been incorporated through Criminal Law (Second Amendment), Act 2016 in order to ensure that Pakistan fulfills its obligations under the United Nations' Convention on Rights of Child as ratified in the year 1990. It has further been observed in the case referred supra, as under:-

"8. Article 34 of the United Nations' Convention on Rights of Child that had inspired the creation of the offence of sexual abuse in Pakistan. The object of introducing section 377A of P.P.C. is to protect children who form a vulnerable segment of the society and are unable to guard against and comprehend the consequences of actions of others (and the consequences of even their own actions). It is for this purpose that through promulgation of section 377A, the State has assumed the obligation to protect children from any form of sexual abuse.

While elaborating the intent, scope and purpose of section 377A of PPC, it has been held as under:-

"13. In relation to section 377A the criminal justice system must make allowance for the child victim's inability to comprehend the inappropriateness of sexual abuse that he/she suffers and the fear factor that may lead to nondisclosure of the abuse suffered or delayed disclosure of such abuse or self-blame due to the fear of being disbelieved by parents or family members or out of fear of being hurt by molester. When it comes to children as victims of sexual abuse, the ordinary rules regarding the need for the victim of an offence reporting a crime to the police without delay cannot be applied in a straightjacket manner.

iv) Before parting with this order, it has been noticed with grave concern that despite introduction of sections 377A and 377B in PPC, FIRs regarding attempts to commit sodomy or rape against minors under the age of 18 still include references to sections 377 or 376 of PPC read with section 511 of PPC. Office is directed to transmit copy of this order to Inspector General of Police, Punjab for his information and compliance.

Conclusion: i) Sexual abuse under section 377A of the PPC does not require rape or sodomy, as offenses against minors under 16 fall under the harsher penalties of section 376(3).

ii) "Sexual abuse" under section 377A of the PPC includes various inappropriate acts with minors under 18 and is punishable under section 377B with a minimum sentence of fourteen years.

iii) The introduction of sections 377A and 377B of the PPC aims to protect vulnerable children from sexual abuse, acknowledging their inability to comprehend and disclose such offenses promptly.

iv) See Above Analysis iv

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37. **Lahore High Court**
Syed Shehanshah Raza Hussain Rizvi v. Tariq Nawaz Khan, etc.
Civil Revision No.3252 of 2016
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC4339.pdf

Facts: Petitioner (plaintiff) instituted a suit for possession through pre-emption against respondent No.1 (defendant No.1) and pre-empted the sale effected through sale deed No.7034 dated 3.7.2003 whereby one Akhtar Hussain Rizvi sold out land measuring 01 Kanal (suit property) for a consideration of Rs.9,00,000/- to respondent No.1 by maintaining that being Shafi Shrik, Shafi Khaleet and Shafi Jar he has a superior right of pre-emption over respondent No.1; suit property was further alienated through registered sale deed No.11378 dated 08.09.2003 to respondents No.2 to 4; the application under Order 1 Rule 10 CPC of petitioner was allowed by trial court and directed the petitioner to implead subsequent vendees; they filed their contesting written statement by raising objections that the suit is not maintainable in its present form as plaintiff did not make any demand of pre-emption to the answering defendants so he has no cause of action against them. The learned trial court decreed the suit vide judgment and decree dated 11.03.2014 whereas learned appellate court vide judgment and decree dated 24.05.2016 dismissed the petitioner's suit while setting aside the judgment and decree of the learned trial court. Being dissatisfied the petitioner has approached this Court through the instant civil revision.

Issues: i) Whether a registered document would take effect from the date of its execution or from the date of its registration?
ii) Whether the petitioner was required to pre-empt the sale effected through sale deed executed in favour of respondents No.2 to 4 or the said sale deed is hit by the principle of lis pendence?

Analysis: i) In order to appreciate the point involved in the instant case whether the sale deed was operative on the date of execution or from the date of registration it is necessary to see section 47 of the Registration Act, 1908 which is reproduced as under: - 47. Time from which registered document operates. ---A registered documents shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. The Hon'ble Supreme Court of Pakistan in the case titled Naseer Ahmed and another Vs Asghar Ali (1992 SCMR 2300) held as under: - "The High Court however, excluded from consideration the purchase of 4 Kanals land by the appellants for different reasons. There is no controversy that the sale deed in respect of this land was executed in appellants" favour on 8.9.1974 i.e. a day before the institution of the suit. It was presented for registration on 9.9.1974 but registered on 10.9.1974. In the opinion of the High Court as the document was registered after the institution of the suit, the transaction was of no avail to the appellants. The view taken by the High Court is untenable. Section 47 of the Registration Act seemingly escaped notice of the learned Judges of the High Court which provides that a document registered on a date subsequent to the date of its execution operates from the date of the execution. Obviously, therefore, the title to the land had passed on to the appellants on 8.9.1974 and could justifiably bank on it to oppose the suit filed by the respondents."

. ii) Section 47 of the Registration Act, 1908 postulates that a registered document would take effect from the date of its execution and not from the date of registration. Admittedly, the subsequent transfer deed was executed on 26.09.2003 and was registered on 08.10.2003. So, in view of the ratio of the referred cases, the subsequent transfer was made prior to making of talbs and institution of pre-emption suit.

. iii) No doubt once a pre-emption suit stands instituted, a vendee is prohibited from entering into sale or re-sale of the pre-empted property. It is obvious because the lis is pending adjudication. Even otherwise, it is a matter of common sense that the provision of section 52 of the Transfer of Property Act, 1882 would get attract only and only when the lis is pending. However, in the instant case further sale made by the vendee prior to the institution of pre-emption suit, could not be brought within the four corners of lis pendence and such further sale would be a new transaction altogether of the pre-emptor, if interested in pre-empting the said sale, would have instituted a suit against the latest sale but not against the previous one. For reference reliance has been placed on the cases titled Abdul Yameen Khan Vs Ashrat Ali Khan and others (2004 SCMR 1270) and Muhammad Rafique and 7 others Vs Noor Ahmed (2007 MLD 1557)."

Conclusion: i) Section 47 of the Registration Act, 1908 postulates that a registered document would take effect from the date of its execution and not from the date of registration.
ii) The petitioner is required to pre-empt the subsequent sale effected through sale deed executed in favour of respondents No.2 to 4 as the said sale is not hit by the principle of lis pendence.

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38. **Lahore High Court**
Muhammad Imran. v. Samina Kousar, etc.
Writ Petition No.62571 of 2024.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC

Facts: Through this Petition the petitioner has called into question the validity &legality of order dated 14.09.2024 passed by the learned Appellate Court, pursuant whereto while accepting the appeal of respondents No.1 to 5, application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure, 1908 for deletion of the names of respondents No.2 & 3 (major sons of the petitioner) from the array of plaintiffs, was dismissed.

Issues: i) What law will govern the matter of maintenance of a Muslim relative. What includes in maintenance?
ii) Whether the children attained their majority have lost their right of maintenance from their father?
iii) Whether the names of children attained majority should be struck out from the array of parties?

Analysis: i) There is no cavil with the proposition that the maintenance, in relation to Muslim relatives shall be governed and regulated by the principles/injunctions of Islam i.e as per the personal law of the parties. Although, according to Section 369 of the "Principles of Muhammadan Law" by D.F. Mulla, maintenance means and includes food, raiment and lodging and as per Section 370 it is described that a father is not bound to maintain adult sons unless they are disabled by infirmity or disease but Hon‟ble Supreme Court of Pakistan in a case titled "Alaf Din V. Mst. Parveen Akhtar" (PLD1970 SC 75) while elaborating the maintenance of children. The Hon‟ble Supreme Court of Pakistan, in a case titled "Humayun Hassan V. Arslan Humayun and another" (PLD 2013 Supreme Court 557) while keeping in view paras No.369 and 370 of the Muhammdan Law and opinion of other renowned jurists, has held that in the present days social, physical, mental growth, upbringing and well-being of the minor, keeping in mind the status of the family, the norms of the society and the educational requirement which has now attained utmost importance are also liability of the father.

ii) the learned Trial Court has to ascertain in the light of evidence of the parties as to which extent the father is bound to pay the educational expenses of an adult son. While doing so, following points must be taken into account by the learned Trial Court:-

i) First and the foremost consideration is the capacity and financial status of father.
ii) Age and conduct of the adult son.
iii) Whether the adult son has his own resources to sustain his studies.
iv) The nature and stage of studies.
v) Academic performance of adult and his passion & zeal towards the education.
vi) The extent of education which is essential to enable him to earn his livelihood. Obviously, this shall not include the higher studies, especially studies abroad without there being a promise by the father to support him.
vii) Whether the son gives due respect and show regard to his father and in any case is not disobedient or estranged man.

iii) It is observed that respondents No.2 & 3 (minor children) are proper and necessary party and their presence is necessary for the proper decision of the controversy involved in the suit. It shall also be determined by the learned Trial Court after recording evidence of the parties and analyzing status of the father as to whether the adult sons are entitled to receive maintenance allowance or not.

Conclusion: i) the matter will be governed and regulated by the principles/injunctions of Islam i.e as per the personal law of the parties. Maintenance includes food, raiment, lodging, education etc.

ii) It is general rule that a major child lost his right of maintenance but there is exception in certain cases i.e education etc.

iii) Children attained majority are the necessary party and their presence is

necessary for proper decision of the controversy involved.

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39. **Lahore High Court**
Tafazzal Abbas, etc. v. Saif-ur-Rehman, etc.
Civil Revision No.1525 of 2015
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC4564.pdf

Facts: Parties agreed to sale a house, seller receiving Rs. 5,000 as earnest money, but the sale price was left unsettled pending litigation over the property. When the parties couldn't agree on the price, they appointed arbitrators, who failed to decide. Subsequently, parties appointed an umpire who issued an award setting the price, which was later challenged in court. The courts below made the award as rule of court; the petitioner challenged the vires of judgement of lower court through this civil revision.

Issues: i) On what grounds can an arbitration award be set aside?
ii) What is the Court's role in reviewing an arbitration award?
iii) What authority do arbitrators have in deciding cases?
iv) What constitutes 'legal misconduct' by an arbitrator?
v) What standards of impartiality are required for an arbitrator?
vi) What is the time limit for delivering an arbitration award?

Analysis: i) An award can be set aside if: (a) the arbitrator or umpire has misconducted themselves or the proceedings; (b) the award was issued after the Court superseded the arbitration or after arbitration proceedings became invalid; or (c) the award was improperly procured or is otherwise invalid.
ii) The Court should not act as an appellate body, searching for latent errors. It cannot re-evaluate the evidence presented to the arbitrator unless an error appears on the face of the award and is clear from the award's own language.
iii) Arbitrators, chosen freely by the parties, are judges of both law and fact for the case, with full authority to resolve disputes based on their perception, expertise, and understanding of the case, so long as they do not misread or overlook the record.
iv) Legal misconduct includes an honest yet erroneous breach of duty that causes injustice, failure to perform essential duties, or any procedural action inconsistent with principles of fairness and consensus.
v) An arbitrator must act with utmost good faith, complete impartiality, and a commitment to justice, standing entirely neutral between the parties and ensuring no bias or favouritism influences the decision.
vi) Under the Arbitration Act, the award must be delivered within four months of entering the reference or the Court's notice, unless extended by the Court. The award in this case was delivered within the prescribed period.

Conclusion: i) The arbitration award could be set aside on the grounds of arbitrator's

misconduct, court superseded the arbitration or arbitration proceedings or award procured improperly.
ii) See above analysis at (ii).
iii) Arbitrator has full authority to resolve disputes based on their perception, expertise, and understanding of the case, so long as they do not misread or overlook the record.
iv) See above analysis at (iv).
v) See above analysis at (v).
vi) The award must be delivered within four months of entering the reference or the Court's notice

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40. **Lahore High Court**
Shahid Ali alias Makhi v. The State
Criminal Appeal No. 234893-J of 2018
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC4610.pdf

Facts: The appellant was convicted under Section 302(b) PPC for the murder of the deceased and sentenced to life imprisonment. The case arose from an FIR according to which the appellant assaulted the deceased with kicks and fists, leading to his death. The trial court convicted the appellant; feeling aggrieved the Criminal Appeal was filed.

Issues: i) Whether timely reporting of the incident to the police minimize the likelihood of fabrication or manipulation?
ii) Whether relationship of eyewitnesses to the deceased is a valid ground to disbelieve their evidence?
iii) Whether substitution of real culprits by eyewitnesses is generally regarded as a rare phenomenon under established legal principles?
iv) Whether in case of consistent testimony of the eye witnesses, delay in postmortem examination affects the credibility of the prosecution's case?
v) What are the primary causes of syncope leading to death?
vi) What is death due to Vasovagal or Vagal Inhibtion and whether such death is natural?
vii) What is 'reflex Vagal inhibtion' and 'shock'?
viii) Whether an accused can be convicted of qatl-i-amd under Section 302(b) PPC based on a non-fatal mode of assault (kicks and fists) causing death?
ix) Whether convict is required to pay the amount of Diyat on the rate prevailing at the time of the occurrence or at the rate when the case is decided?

Analysis: i) The matter in this case was reported to the police within reasonable time which hardly left any chance of consultation or deliberation in the intervening period.
ii) PW.1 was his paternal uncle whereas PW.2 was his paternal cousin. While appearing in the witness box before the trial court, they remained in comfortable unison with each other on all aspects of the case. They vigorously pointed their

accusing fingers towards the appellant with specific attribution of giving kicks and fists blows to the deceased and despite lengthy cross-examination by the defence counsel, nothing favourable to the appellant could be extracted from their mouths…With regard to the objection qua close relationship, it is settled proposition of law that mere relationship of eye witnesses with the deceased by itself is no ground to disbelieve their evidence.

iii) It is by now well settled law that substitution of real culprits especially in cases where the eye witnesses lost their kith and kin before their own eyes is rare phenomenon.

iv) Even otherwise, I am not inclined to discard the overwhelming eye witness account which is evenly supported by the medical evidence, merely because of a single circumstance that autopsy in this case was conducted about seventeen hours after the occurrence without there being any element of concoction or fabrication of prosecution's case against the appellant.

v) "Syncope: This is death from failure of function of the heart resulting in hypo-perfusion and hypoxia of the brain. It is due to (1) heart disease, (2) haemorrhage, (3) pathological states of blood, (4) exhausting disease, or (5) poisoning due to digitalis, potassium, aconite or oleander. At autopsy, the heart appears contracted. It contains very little blood, if death is due to haemorrhage. The viscera appear pale and the capillaries congested. A syncopal type of death may also result from reflex cardiac arrest due to: 1. Vagal stimulation, commonly known as vasovagal shock, vagal inhibition or neuro-genic shock 2. Rarely ventricular fibrillation due to cardiac problems or spontaneous sympathetic nervous discharge.

vi) In another Textbook of Forensic Medicine Principles and Practice (First Edition of 2001), authored by Krishan Vij, Professor and Head of the Department of Forensic Medicine, Government Medical College, Chandigarh, the term "Vagal Inhibition" has been defined as follows: - "Vagal Inhibition: -- Also variously known as Vasovagal attack, reflex cardiac arrest, nervous apoplexy, instantaneous physiological death or syncope with instantaneous exitus-or primary neurogenic shock. This state is characterised by sudden stoppage of heart following reflex stimulation of vagus nerve endings. There is a wide network of sensory nerve supply to the skin, pharynx, larynx, pleura, peritoneum covering the abdominal organs or extending to the sprermatic cord, uterine cervix, for the reflex action and pass through the lateral tracts of spinal cord, effect the local reflex connections over the spinal segments and then travel to the vagus nucleus in the brain. The vagus nucleus has connections with sensory cerebral cortex and thalamus, besides the spinal cord, as stated. The efferent then originate from there and affect the heart through the related branches…."… In Jaising P. Modi's Textbook of Medical Jurisprudence and Toxicology (Twenty Seventh Edition), vagal inhibition has been explained as infra: - " Vagal Inhibition Vagal inhibition causes sudden cardiac arrest from fright or terror, or it may be caused during a sudden and unexpected fall in the water, often the water striking against the chest and the pit of the stomach. The sudden impingement of unduly cold water on the nasopharyax, can result in vagal inhibition. The ability to swim in ice-cold water

(4.7°C) is much less than in warm water due to increased respiratory reflexes causing breathlessness in the thin man, and hypothermia in the fat person. This may explain sudden death in cold water… therefore, keeping in view the above legal and factual position of the case, death due to vasovagal inhibition/shock cannot be termed as natural.

vii) Dr. K.S. Narayan Reddy in his Book "Medical Jurisprudence and Toxicology (Law Practice & Procedure) has elucidated the "reflex vagal inhibition" in the following words: - "(2) Reflex Vagal Inhibition: In this, there may not be visible external injury. (3) SHOCK: Shock is a circulatory disturbance characterised by hypoperfusion of cells and tissues due to reduction in the volume of blood or cardiac output, or redistribution of blood resulting in a decrease of effective circulating volume…

viii) I am of the view that the mischief for which the appellant has been handed down a guilty verdict does not come within the purview of "qatl-i-amd" as defined in section 302 PPC rather keeping in view the mode and manner in which the appellant had committed the occurrence by giving kicks and fists blows to the deceased on the backdrop of a grudge of their previous altercation, I am convinced that his case falls within the scope of "qatl shibh-i-amd" as defined in section 315 PPC and made punishable under section 316 PPC…

ix) The appellant is held liable to pay an amount of Rs.81,03,955/- (Rupees eight million one hundred three thousand nine hundred and fifty five only) to the legal heirs of deceased as Diyat for the fiscal year 2024-25.

Conclusion: i) Promptly reporting FIR leaves chances of consultation or deliberation.

ii) Mere relationship of eye witnesses with the deceased by itself is no ground to disbelieve their evidence.

iii) Substitution of real culprits is rare phenomenon.

iv) Such testimony of eye witness which is evenly supported by medical evidence cannot be discarded, merely because of delay in postmortem.

v) See above analysis No v

vi) See above analysis No vi

vii) See above analysis No vii

viii) The case of giving kicks and fists blows to the deceased falls within the scope of "qatl shibh-i-amd" as defined in section 315 PPC and made punishable under section 316 PPC.

ix) The amount of Diyat shall be charged as determined by the Federal Government for the current fiscal year 2024-25.

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41. **Lahore High Court**
Fakhar Iqbal Shah. v The State, etc.
Criminal Appeal No.592/2023
Siffat ul Hassan Shah. v The State, etc.
Criminal Revision No.241/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC4364.pdf

Facts: Accused/appellant Fakhar Iqbal Shah was convicted and sentenced for imprisonment for life as *Ta'zir* under section 302 PPC, for committing murder of Qaim Ali deceased, alongwith compensation of Rs.400,000/- under section 544-A of Cr.P.C to the legal heirs of deceased and in default thereof to further undergo simple imprisonment for six months. Appellant filed criminal appeal for setting aside of his conviction & sentence whereas complainant filed criminal revision for enhancement of sentence.

Issues: i) What is effect of contradictions between oral account and site plan on prosecution case?
ii) Whether withholding of evidence of first responder has adverse bearing upon prosecution case?
iii) Whether columns of inquest report left blank and filled subsequently would constitute it as defective report, and such report is admissible in evidence?
iv) What is importance of inquest report?
v) Whether non-declaration of cause of death at the time of postmortem examination by doctor is lacuna?
vi) Whether marking an article as "P" on the recovery memo is mere a formality?
vii) Is benefit of doubt extended in favor of accused as grace?

Analysis: i) Prosecution claimed that accused received fire in the street and died there and then, but as per site plan his deadbody was found present in the nearby courtyard of baithak of one Muhammad Aslam Juggi (point No.1 in site plan) which is accessible from said street only on crossing a two-feet high wall on western side as highlighted above. It is near to impossibility that after receiving fire by the deceased in the street, his body tossed to nearby courtyard. Deadbody of deceased is also visible lying in the courtyard from the pictures produced by the prosecution and the defence. No splash of blood on western wall, nor even explanation how deadbody reached to that place which raises a question that had no answer.
ii) Prosecution has not opted to produce the first offender and most relevant witnesses i.e., employees of Ambulance Service 1122. Though prosecution obtained a written report and in pictures produced by prosecution and defence presence of officer with uniform of such service is visible yet his statement to any effect is not available on the record nor he entered appearance in the dock.
iii) Inquest report, consists of four pages, is not an original document, rather on carbon copy some of the columns left blank in original were filled with live writing which indicates that whole information was not added in such report at one point of time giving birth to suspicion of consultation and deliberation. In such report neither the distance of police station from where deadbody was found is mentioned nor articles carried by the deceased at the time of death. Age of deceased, and condition of mouth & face is also not mentioned in column No. 8 & 9 of the report. Column No. 12 relating to weapon of offence was also kept blank as well as column No. 22 & 23, and necessary information is also missing in

column No. 24. Despite these apparent flaws, interestingly challan was passed by the prosecution agency and prosecutor who conducted prosecution did not attend such facts too, so much so learned lower court also allowed to tender such defective report in the evidence which was not admissible at all.

v) This is the basic document which help to formalize the position of deadbody, its presence, condition and articles lying around it, which facts later speak out by the witness in support thereof. This document also provides a line of inquiry to police for detection of mode of crime and also identifying the offenders with ensued arrest.

vi) Another alarming fact gets notice of this court that PW-1 doctor did not declare cause of death at the time of postmortem examination rather on 22.09.2022 after about four months on the request of police this lacuna was filled out.

vii) Practice of marking an article like rifle as 'P' on the recovery memo is not mere a formality rather being real evidence it must be shown to the witnesses to identify or comment upon it so as to facilitate the inspection of Court that this was the weapon used by the accused for commission of offence. Proviso two to Article 71 of Qanun-e-Shahadat Order, 1984 says as under;

> "Provided further that, if oral evidence refers to the existence or ***condition of any material thing other than a document***, the Court may, if it thinks fit, require the production of such material thing for its inspection:
>
> (Emphasis supplied)

This proviso obviously creates an exception to direct evidence and requires that if oral evidence refers to the existence or condition of any material thing other than document which of course includes weapons, stolen articles, implements, instruments, substance, vehicles and depending upon the nature of offence committed some of the spot recoveries like cigarette butts, packets, pen, mobile, bottles, crockery, utensils, stoves, gas cylinders etc., must be produced for the inspection of court. The words "for its inspection" referred in above proviso has wide connotation which requires a detailed examination of such article/material thing by the court and while relying upon such recovery court should also give its findings about such article. Rule 14-F of Chapter 24-B, Volume III of the Lahore High Court Rules and Orders mandates as under:-

> "Clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses".

Thus, in the present case Court should have given finding with respect to description of weapon, its calibre and other necessary details so as to productively use this kind of evidence as corroboration to principal facts, which has not been done.

viii) Prosecution has failed to prove the charge against the accused/appellant beyond shadow of doubt and numerous doubts crept into the evidence, therefore, Benefit of which is extended to the appellant not as a matter of grace but as a matter of right.

Conclusion: i) Contradiction between oral account and site place makes the prosecution's case doubtful.
ii) Withholding evidence of first responder has adverse bearing upon prosecution case.
iii) Columns of inquest report left blank and filled subsequently gives birth to suspicion of consultation and deliberation and it would constitute it as defective report and such report is inadmissible in evidence.
iv) This is the basic document which helps to formalize the position of deadbody, its presence, condition and articles lying around it, which also provides a line of inquiry to police for detection of mode of crime and also identifying the offenders with ensued arrest.
v) Belated declaration of cause of death by doctor is rendered to fill lacuna.
vi) Practice of marking an article like rifle as 'P' on the recovery memo is not mere a formality rather being real evidence it must be shown to the witnesses to identify or comment upon it so as to facilitate the inspection of Court that this was the weapon used by the accused for commission of offence.
vii) Benefit of doubt is extended to accused not as a matter of grace but as a matter of right.

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42. **Lahore High Court**
Sibghat Elahi Chauhan v. The Defence Housing Authority and 02 others
W.P No. 8273 of 2024.
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC4519.pdf

Facts: The petitioner sold his land to respondents/ DHA on different dates. As part of sale consideration the petitioner received 36 exempted plots. Later, the petitioner attempted to sell the plots to private persons, but the NDCs withheld by DHA by marking a 'caution' thereon which constrained the petitioner to file the instant Petition, challenging the Order passed by Respondent No. 2 / Secretary of Defence Housing Authority (the "DHA"). The petitioner seeks a direction to DHA to issue "No Demand Certificates" (the "NDCs") regarding the plots of the Petitioner in order to enable him to sell the same.

Issues: i) Whether the respondents (DHA) have authority to mark 'caution' with respect to exempted plots received by the vendor as consideration against sale deed, If yes, under what provision of law?
ii) Whether the act of marking "caution" on the remaining exempted plots of the petitioner was in violation of Article 23 & 24 of The Constitution of Pakistan?

Analysis: **i)** The case titled, "Raja Haroon Rashid v. Defence Housing Authority through Secretary" **(2017 CLC 342)** is squarely relevant to address the query in hand. The paragraph Nos. 13 to 16 thereof are reproduced as under for ready reference:-

"13. In the case in hand, respondent marked caution on the plot of the petitioner on the pretext that he did not fulfill his obligation in furtherance of an agreement/conveyance deed arrived at between the parties. In case such an obligation was not fulfilled, respondent had alternate efficacious remedies available to them under the law, by way of approaching the Civil Court of competent jurisdiction for enforcement/ specific performance of the agreement/conveyance deed or else seek damages from the petitioner. For reference, reliance can be placed upon Messrs Malik and Haq and another v. Muhammad Shamsul Islam Choudhry and 2 others [PLD 1961 SC 531], Mst. Rasheeda Begum and others v. Muhammad Yousaf and others [2002 SCMR 1089], Muhammad Ibrahim and 44 others v. Fateh Ali and 30 others [2005 SCMR 1061] and Ghulam Hussain and others v. Muhammad Yousaf and another [PLD 1981 Lahore 11]. In addition to the above, respondent could have obtained an attachment or a stay order from the Court as contemplated in Orders XXXVIII and XXXIX, C.P.C. whereafter, petitioner could have been restrained from using his plot.

14. Non fulfillment of a contractual obligation by no means invest the respondent-authority to mark caution/place embargo on the

7 W. P. No. 8273 / 2024

rights of the petitioner from acquiring, using and holding a property. In the case in hand, instead of approaching the Court of Law for enforcement of their rights, respondent in a Kingly manner and without any authority of law placed a rider on the rights of the petitioner which is in utter violation of Articles 23 and 24 of the Constitution, therefore, is not sustainable.

15. Even otherwise, the marking of caution is also violative of Article 10-A of the Constitution as neither any adjudication was made by a court of law which would suggest that petitioner has not fulfilled his obligation as enshrined in the agreement/conveyance deed nor an opportunity of hearing was provided to him prior to taking such action which militate the principle of audi alteram partem.

16. It shall not be out of place to mention here that respondent is governed by Defence Housing Authority Lahore Order, 2002. A perusal of the said law would also suggest that respondent is not invested with any authority under the law to mark caution on the rights of a land owner."

It, therefore, follows that the act of marking "caution" on the remaining exempted plots of the Petitioner was in gross violation of Articles 23 & 24 of the Constitution which guarantee a fundamental right to every citizen to acquire, hold and dispose of property in any part of Pakistan subject to the Constitution and any reasonable restriction imposed

by law in public interest; and that no person shall be deprived of his property save in accordance with law.

ii) the act of marking "caution" on the remaining exempted plots of the Petitioner was in gross violation of Articles 23 & 24 of the Constitution which guarantee a fundamental right to every citizen to acquire, hold and dispose of property in any part of Pakistan subject to the Constitution and any reasonable restriction imposed by law in public interest; and that no person shall be deprived of his property save in accordance with law.

Conclusion: i) See above analysis No. (i).
ii) See above analysis No. (ii).

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43. **Lahore High Court**
Malik Pervaiz Majeed Shahzada v. Rizwan Malik
RSA No. 214 of 2015
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC4388.pdf

Facts: The respondent filed a suit for specific performance of an agreement to sell a plot of land. The agreement outlined a sale price, with part of the payment made upfront and the remaining amount to be paid by a specified cut-off date. The respondent claimed the appellant failed to meet their obligations. While the appellant admitted the agreement, they denied responsibility and questioned the respondent's readiness to complete the deal. The trial court ruled in favor of the respondent, requiring the remaining payment for the sale deed. The first appeal was dismissed, leading to this second appeal.

Issues: i) Which provision of the Specific Relief Act, 1977, govern judicial discretion in granting specific performance?
ii) How should a court exercise discretion in granting specific performance?
iii) What did the court conclude about the failure to summon the Sub-Registrar as a witness?
iv) Under what circumstances can a second appeal be filed in the High Court according to the law?

Analysis: i) Section 22 of the Specific Relief Act, 1977 (the 'Act') clearly provides that the jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principle and capable of correction by a Court of Appeal".

ii) The discretion is required to be exercised keeping in view the facts and circumstances of each case and the terms of the relevant agreement. Exercise must not be arbitrary and has to be based on sound and equitable reasons. It is also equally settled that stipulation of double payment of earnest money,

simultaneously, do no bar to exercise the discretion to grant specific performance and the agreement to sell does not cease to remain operative to have it enforced through the Court of law for obtaining transfer of the property.

iii) So far as the application instituted before Sub-Registrar is concerned, it is admitted position that no one from his office was produced in evidence as witness. A learned Division Bench, somewhat in the identical circumstances, in "Taj Deen" 5 case reached to the following conclusion:- "…The presence of vendors before the Sub-Registrar on the date fixed, the application which has been produced as mark 'C', was to be proved by summoning the SubRegistrar who allegedly reported on 4-7-2005 but no such procedure has been adopted. Furthermore, the plaintiff-appellant has filed the suit just one day after the expiry of date of maturity of agreement to sell…."

iv) The second appeal only lies in the High Court on the grounds that the decision is being contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law for the time being in force which may possibly have emanated an error or slip-up in the determination or decisiveness of the case on merits.

Conclusion: i) see analysis No.i.

ii) This discretion must be exercised fairly and reasonably, without being arbitrary, and is not hindered by provisions for double payment of earnest money.

iii) The court noted the failure to summon the Sub-Registrar, affecting the case.

iv) A second appeal to the High Court is allowed only for legal errors or procedural defects affecting the case outcome.

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44. **Lahore High Court**
W.P. No.50303 of 2024
Muhammad Zubair v. Federation of Pakistan, etc.
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC4560.pdf

Facts: This single order has decided three writ petitions as common question of law was involved therein. As per facts, recovery of impugned taxes was stayed by the Appellate Tribunal Inland Revenue for a certain period subject to payments of specified amounts of disputed tax demands. The validity of such orders, have been called in question in these writs petitions. .

Issues: i) Which is the 1st extra-departmental forum for deciding the disputes of tax liability?

ii) What is historical perspective of granting stay against recovery of tax demand by revenue authorities?

iii) Is the authority of Appellate Tribunal to grant stay during pendency of appeal before it conditioned upon payment of certain amount of tax determined by the forum below?

iv) In what sense, section 131 and section 133 (10) of the Income Tax Ordinance, 2001 are distinct from each other?

v) What is the nature of the authority of the Appellate Tribunal with regard to

grant of stay?

Analysis: i) Appellate Tribunal is the first extra-departmental/independent forum for deciding the disputes vis-à-vis tax liability under the Ordinance.
ii) Historically, in acknowledgment of the principle of unrestricted access to justice, this Court as well as other High Courts have been granting stay against recovery of any tax demanded by the concerned revenue authorities till decision of appeal before at least one extra-departmental forum.
iii) It is clearly noted that in the above provisions, authority of the Appellate Tribunal to grant stay during pendency of appeal before it is not conditioned by the requirement of deposit or payment of certain amount of tax determined by the forum below.
iv) The above provisions are quite distinct and distinguishable from sub-section (10) of section 133 of the Ordinance which restricts or limits authority of this Court to stay recovery of tax, while a Tax Reference is pending, subject to deposit with the assessing authority of not less than 30% of the tax determined by the Appellate Tribunal.
v) No doubt, in the scheme of section 131 of the Ordinance, authority of the Appellate Tribunal to stay recovery of tax during pendency of an appeal is discretionary.

Conclusion: i) See above analysis No.i
ii) As per historical perspective, the practice of granting stay by the High Courts in matters of tax demand has been followed as a principle of unrestricted access to justice.
iii) See above analysis No.iii.
iv) See above analysis No.iv
v) The authority of the Appellate Tribunal to stay recovery of tax, during pendency of an appeal, is discretionary

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45. **Lahore High Court**
Professor Dr. Sheikh Asrar Ahmad v. Government of Punjab through Secretary High Education, etc.
Writ Petition No.52354 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC4583.pdf

Facts: In this constitutional petition, a university professor is challenging the process of appointing Vice Chancellors (VCs) in Punjab. After applying for a VC position through an advertised process, the petitioner learned that search committees had recommended candidates for eleven VC roles, submitting these recommendations for the Chief Minister's final approval. The petitioner argues that the selection process is flawed and discriminatory, particularly in how scores are awarded for qualifications, and requests that authorities provide records of all VC applications to ensure transparency.

Issues: i) What legal limits are placed on the Chief Minister's discretion in appointing public university VCs?

ii) How has the Supreme Court earlier addressed the appointment of VCs?

iii) How does judicial power under Article 199(1)(c) of the Constitution of Pakistan, 1973 differ from mandamus or prohibition under clause (a)?

iv) Can the Court annul policy-based selection criteria in writ jurisdiction?

v) Does Article 25 of the Constitution of Pakistan, 1973 permit reasonable classification with a rational basis?

vi) Is a PhD mandatory for the Vice Chancellor role to ensure academic excellence?

vii) Does UNESCO focus on quality and inclusion in higher education?

viii) Does Higher Education Commission (HEC) uphold quality standards for the PhDs of VC applicants?

ix) Can QS World University Rankings guide VC appointments based on university excellence?

x) What hinders Pakistan's commitment to free, compulsory education for children aged 5-16?

xi) How does the presence of highly qualified VCs impact the quality of education in public universities?

Analysis: i) It is by now well settled that discretion of the Chief Minister with regard to appointments of VCs in the public sector universities is not altogether unfettered and the reasons which would prevail upon him or her for such appointments are justiciable. The Courts can examine the same on the touchstone of validity, fairness and compliance with the law, rules and departmental practice.

ii) The matter of appointments of VCs in the public sector universities was earlier dealt with by the Supreme Court of Pakistan in Human Rights Case No.13865-P of 2018 vide order dated 22.04.2018 emphasizing such appointments on the basis of recommendations of Search Committees for precluding any arbitrary and capricious exercise of discretion.

iii) There is no cavil that the scope of judicial power under clause (c) of Article 199(1) of the Constitution is wider than other provisions in the aforementioned Article inasmuch as under such exercise of jurisdiction this Court can issue any appropriate direction for enforcement of any of the fundamental rights guaranteed under Chapter I of Part II of the Constitution, however, issuance of such direction should be necessary for the enforcement of the fundamental right, appropriate in the facts and circumstances of the case, which must not be a disproportionate measure. In contradistinction to that, directions in the nature of mandamus or prohibition under clause (a) of Article 199(1) are confined to act as required by law or refrain from acting in a manner not permitted by law.

iv) It is equally well settled that the selection criteria generally reflects a policy decision of the provincial government. In the absence of any violation of constitutional guarantee or patent illegality, such policy decision cannot be annulled by this Court in the exercise of writ jurisdiction.

v) It is thus abundantly clear that Article 25 of the Constitution allows for reasonable classification based on intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and such differentia must have a rational nexus to the object sought to be achieved. (…) It is perhaps for this reason that the Supreme Court of Pakistan, in the case of I. A. Sherwani enunciated the principle that discrimination on the basis of reasonable classification was permissible under Article 25 of the Constitution and that different laws could validly be enacted for persons having different financial standings, etc. At best, what Judges of the constitutional Courts can do, while dispensing justice, is to mitigate harshness and miseries of the people to the extent permitted by the Constitution.

vi) Vice Chancellor is the principal executive and academic officer of the University who is required to promote teaching, research and publications besides ensuring excellent administration of the University. The requirement of having earned PhD degree from an HEC recognized or UNESCO listed institution has been made mandatory for position of the Vice Chancellor. It is one of the indicators revealing academic excellence of such applicants.

vii) UNESCO is the only United Nations agency with a mandate in higher education and works with countries to ensure high quality higher education opportunities are available to everyone and for that purpose, it claims to place a special focus on inclusion, the recognition of qualifications and quality assurance, particularly in developing countries.

viii) Higher Education Commission of Pakistan, on the other hand, is a statutory organization established by the Federal Government, inter alia, to fund, oversee regulate and accredit the higher education endeavours in Pakistan. Applicants for the positions of VCs have earned their PhDs from a wide range of universities all of which do not possess identical quality and standards of excellence.

ix) QS World University Rankings is one of the most widely recognized and used systems of rankings to compare excellence of universities on the basis of certain well-defined indicators such as academic reputation, employer reputation, faculty/student ratio, citations per faculty, international students' ratio, international faculty ratio. These indicators provide reasonable basis for classification of excellence amongst the institutions for the purpose of appointing VCs. It can be legitimately expected that the VCs who have earned their PhD degrees from the top ranked institutions of the world shall, while benefitting from their rich international exposure, endeavour to promote such excellence in the institutions headed by them.

x) Notwithstanding constitutional guarantee qua free and compulsory education for all children between the ages of 5 to 16 years, more than 22.8 million children are out of schools in this country, representing 44% of population in that age group. The state has fallen apart in fulfillment of her commitment to impart free and compulsory education to all such children. At systems level, inadequate financing, limited enforcement of policy commitments and challenges in equitable implementation impede reaching the most disadvantaged.

xi) Be that as it may, amidst meager resources allocated by the state for imparting higher education, availability of the VCs possessing extra-ordinary qualifications, experience and publications from well-reputed universities and centres of excellence in the world is nothing short of a blessing and the same is vital for the advancement of quality and standards of education in the public sector universities. Such measures can seriously contribute to overcome mediocrity so that ultimately the students and faculties may fully benefit therefrom.

Conclusion: i) Limited discretion of Chief Minister.
ii) Appointments on the basis of recommendations of search committee.
iii) Judicial power under this Article is broader for enforcing fundamental rights.
iv) Policy-based selection is upheld.
v) Permits rational classification.
vi) PhD is mandatory for VC role.
vii) UNESCO promotes inclusive, quality higher education.
viii) HEC enforces PhD quality standards for VCs.
ix) It supports excellence-based VC appointments.
x) Funding, enforcement, and equity issues hinder Pakistan's commitment to compulsory education.
xi) Highly qualified VCs boost education quality in public universities.

LATEST LEGISLATION/AMENDMENTS

1. The Hajj and Umrah (Regulation) Act, 2024 is enacted for regulating, monitoring of Hajj and Umrah activities.
2. Vide The Islamabad Capital Territory Local Government (Amendment) Act, 2024, amendments in sections 7, 12 & 17 and substitution of sections 11 & 15 are made in the Islamabad Capital Territory Local Government Act, 2015.
3. The Peaceful Assembly and Public Order Act, 2024, is enacted to regulate the holding of public assemblies at certain places in Islamabad.
4. Vide The Elections (Third Amendment) Act, 2024, amendments in sections 232 & Form A are made in the Election Act, 2017.
5. The Apostille Act, 2024 is enacted to give effect to the Convention on abolishing the requirement of legalization for the foreign public documents.
6. Vide The Privatization Commission (Amendment) Act, 2024, substitution of sections 28 & 29, omission of sections 30 & 33 and amendment in sections 31 & 32 are made in the Privatization Commission Ordinance, 2000.
7. Vide The Supreme Court (Practice and Procedure) (Amendment) Ordinance, 2024, amendments in sections 2, 3 & 5 and insertion of sections 7A & 7B are made in The Supreme Court (Practice and Procedure) Act, 2023.
8. The Cannabis Control and Regulatory Authority Act, 2024 is enacted for cultivation of cannabis plant, extracting, refining, manufacturing and sale for medical, industrial and other public uses.

9. Vide The National University of Technology (Amendment) Act, 2024, an amendment in preamble & section 4 is made in The National University of Technology Act, 2018.
10. Vide The Establishment of Telecommunication Appellate Tribunal Act, 2024, amendments in sections 2, 7, 22 & 37 and insertion of sections 7A & 7B are made in the Pakistan Telecommunication (Re-Organization) Act, 1996 and amendment in section 2 in The Prevention of Electronic Crimes Act, 2016 is made.
11. Vide notification No. 146 of 2024 published in Punjab Gazette dated 3rd October, an amendment is made at serial No.1 & 5 in the schedule of the Specialized Healthcare and Medical Education Department, ICT Cell (Performance Management System) Service Rules 2022.
12. Vide notification No. 147 of 2024 published in Punjab Gazette dated 8th October, amendment is made in the Punjab Government Rules of Business, 2011 at serial Nos. 1, 1A, 12, 20 & 31, re-numbering of serial Nos. 31A & 31B in the first schedule and serial No.6 & item Nos. ix and xxv at serial No.30 under heading of Agriculture Department and serial No.13, 14 and items Nos. xvii & xxi at serial No.23 under heading Industries, Commerce, Investment and Skills Development Department and insertion of Price Control and commodities Management Department under heading Population Welfare Department.
13. Vide notification No. 152 of 2024 published in the Punjab Gazette dated 17th October, an amendment is made at serial No.20 & 31A in First Schedule and serial No.14C is omitted & 14A is inserted in Second Schedule of the Punjab Government Rules of Business, 2011.
14. Vide notification No. 153 of 2024 published in Punjab Gazette dated 18th October, an amendment is made at serial No.22 in First Schedule under heading “Autonomous Bodies & Companies” in the Punjab Government Rules of Business, 2011.
15. The Punjab Saaf Pani Authority Act, 2024 is enacted in the Punjab Gazette dated 17th October, to provide establishment of the Punjab Saaf Pani Authority.
16. Vide the Code of Criminal Procedure (Punjab Amendment) Act, 2024, an amendment is made in section 144 of the Code of Criminal Procedure Code, 1898.
17. The Punjab Enforcement and Regulation Act, 2024 is enacted in the Punjab Gazette dated 17th October for establishment of the Punjab enforcement and regulatory authority and to prescribe procedures for efficient and effective implementation and enforcement of special laws throughout Punjab.
18. Vide notification No. 154 of 2024 published in Punjab Gazette dated 22nd October, the Punjab Local Government (Joint Authority) Rules, 2024 are promulgated.
19. Vide notification No. FD.SR-1/9-2/2023 of the Government of Punjab Finance Department, amendments are made at clause (vi) of serial No.19 &

clause (iii) of serial No.20 in appendix 'A' of the Punjab (Civil Services) Delegation of Powers Rules, 1983.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/Menstrual-Leave-Necessity-or-Controversy

Menstrual Leave: Necessity or Controversy? By Bhoomi Aggarwal

Menstruation is a vaginal bleeding that occurs as part of a woman's monthly cycle. The concept of menstrual leave has started gaining momentum on a global scale. The paid menstrual leave policy contributes to women empowerment and gender equality, along with a work inclusive environment. This article aims to show the necessity, implications, and global landscape of paid menstrual leave policy. There is also a violation of fundamental rights under Articles 14, 15, and 21, taking reference from case studies. The article also studies how many states and companies have incorporated this policy into the legal system. Unlike Japan, South Korea, Spain, Taiwan, Zambia, and Indonesia, India has no specific paid menstrual leave policy caused by menstruating individuals due to discomfort and pain caused by menstruation. Menstrual leave not only reflects the intention and principles of the Constitution but also depicts a huge and imperative leap towards gender equity and equality.

2. STATUTE LAW REVIEW
https://academic.oup.com/slr/article-abstract/45/3/hmae052/7828029?redirectedFrom=fulltext

Aligning Greece's Regulatory Governance with International Transformative Principles and Objectives: The Case of the UN 2030 Agenda for Sustainable Development By Alexandros Kailis

The article highlights the importance that the international dimension of the regulatory context of draft legislation acquires for the drafting of effective regulation. It attempts to demonstrate the added value that the integrated incorporation of fundamental regulatory principles and objectives derived from influential global regulatory texts enjoying full acceptance, like the UN Resolution on the 2030 Agenda for Sustainable Development, brings to a country's regulatory governance. From an empirical perspective, the article focuses on a thorough analysis of the degree to which Greece's law-making process is interconnected and aligned with core regulatory principles of the 2030 Agenda, such as the principle of policy coherence, the evidence-based principle, and the principle of inclusion. It examines the key instruments, procedures, and ways in which these principles are appropriately mainstreamed into the Greek legislative process and the institutional and policy framework of the Government on which its legislative interventions are founded. As a case study, the alignment and coherence of the provisions of a specific law pertaining to tourism development with the overarching regulatory principles of the UN 2030 Agenda are examined. The concluding part presents some

proposals that could contribute to improving the way the SDGs are effectively mainstreamed into Greece's legislative process.

3. THE YALE LAW JOURNEL

https://www.yalelawjournal.org/forum/against-ventriloquizing-children-how-students-rights-disguise-adult-culture-wars

Against Ventriloquizing Children: How Students' Rights Disguise Adult Culture Wars By Rita Koganzon

This Essay argues against the pursuit of students' rights, which function mainly as a smokescreen behind which adults have advanced their own partisan agendas in our culture wars. Independent rights for students are both theoretically untenable and politically damaging to our liberal democracy.

4. ASIAN JOURNAL OF LAW AND SOCIETY

https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/concretising-the-legal-professional-community-in-late-imperial-china-c-17001900/D739535067377152872F2AF9DE3288A1

Concretising the Legal Professional Community in Late Imperial China, c. 1700–1900 By Li Chen

This article examines the empire-wide legal professional community that emerged for the first time in Chinese history during the Qing period (1644–1911). By analyzing a wide range of archival records and primary sources, this study provides valuable insights into the dynamic configurations of late imperial China's legal culture and juridical field, as well as the thousands of legal specialists who shaped them. The findings challenge much of the received wisdom about late imperial China, which has too often been assumed as a Confucian society that discouraged the use of law and legal expertise and was therefore unlikely to have witnessed so many Confucian literati becoming legal specialists, both within and outside the judicial system.

5. STATUTE LAW REVIEW

https://academic.oup.com/slr/article-abstract/45/3/hmae049/7821132?redirectedFrom=fulltext

Modern Statutory Interpretation: framework, principles and practice By Jeffrey Barnes, Jacinda Dharmananda and Eamonn Moran

Modern Statutory Interpretation is a book of great promise. The authors are all prominent in their fields, and Eammon Moran is a guarantee of knowledge, successful practice, and lengthy experience in the field of legislative drafting. The book does not

disappoint. It is one of the most comprehensive analyses of statutory interpretation published internationally.

The book comprises 13 parts. Part 1 introduces the main concept of statutory interpretation, its development in the common law world, and its context within the rule of law and the separation of powers principles. Part 2 discusses the framework of statutory interpretation starting with legislative intent, judicial independence, and literal interpretation. Part 3 delves into the workings of legislation with an analysis on legislative drafting, the legislative process, commencement, structure of the Act, and problem analysis. Part 4 delves into the provision, and the Act as a whole. It discusses language, the effect of drafting styles, remedial, penal, and tax legislation, linguistic canons, and the scheme of the Act. Part 5 deals with legislative history, from legislative antecedents to background, pre-existing legislation, and parliamentary materials. Part 6 discusses Interpretation Acts. Part 7 introduces the wider context, including legality, comparative materials, international treaties, and considerations. Part 8 discusses special interpretative issues. They include drafting errors, provisions in conflict, statutory powers, statue of reasonableness, presumptions, and delegated legislation.
