LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-08-2022 to 15-08-2022)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Haseen Ullah v. Mst. Naheed Begum, etc
Civil Petition No.1289 of 2020
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1289_2020.pdf

Facts: Through this petition for leave to appeal, the petitioner assailed the judgment of the High Court, whereby, the High Court allowed the constitutional petition of respondent and reversed the judgments of courts below and decreed her claims of dower and maintenance.

Issues: i) Whether the contents of Nikahnama's clauses/columns, like clauses of other contracts, are to be construed and interpreted in the light of intention of parties?
ii) Whether a wife who is willing to, but cannot, discharge her marital obligations for no fault of her own, rather is prevented to do so by any act or omission of her husband is legally entitled to receive her due maintenance from her husband?

Analysis: i) It is a matter of common knowledge that the persons who solemnize Nikah or the Nikah Registrars are mostly laymen, not well-versed of legal complications that may arise from mentioning certain terms agreed to between the parties in any particular column of the Nikahnama. Therefore, it becomes the foremost duty of courts dealing with disputes arising out of the terms entered in the Nikahnama, to ascertain the true intent of the parties and give effect thereto accordingly, and not be limited and restricted by the form of the heading of the particular columns wherein those terms are mentioned.
ii) A wife who is willing to, but cannot, discharge her marital obligations for no fault of her own, rather is prevented to do so by any act or omission of her husband is legally entitled to receive her due maintenance from her husband, and the latter cannot benefit from his own wrong. A Muslim husband is bound to maintain his wife even if no term in this regard is agreed to between them at the time of marriage or she can maintain herself out of her own resources. The Holy Quran enunciates that men are the protectors and maintainers of women because the God Almighty has given the one more strength than the other and because they support them from their money. And the Holy Prophet of Islam (pbuh) has instructed Muslim men to provide their wives with maintenance in a fitting manner and declared it to be the right of the women.

Conclusion: i) Yes, the contents of Nikahnama's clauses/columns, like clauses of other contracts, are to be construed and interpreted in the light of intention of parties.
ii) A wife who is willing to, but cannot, discharge her marital obligations for no fault of her own, rather is prevented to do so by any act or omission of her husband is legally entitled to receive her due maintenance from her husband.

2. **Supreme Court of Pakistan**
Faraz Naveed v. District Police Officer Gujrat and another
Civil Petition No. 3122 OF 2020
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3122_2020.pdf

Facts: The petitioner civil servant after his conviction from trial court filed appeal wherein he was acquitted as a result of extending benefit of doubt. Meanwhile departmental inquiry was initiated against him and he was dismissed from service. His departmental appeal and Service Appeal in the Punjab Service Tribunal were dismissed, hence this petition.

Issues: i) Whether there is any bar for initiation of departmental enquiry if the acquittal is found as a result of extending benefit of doubt or some other technical reasons?
ii) What is the rationale and astuteness of initiating disciplinary proceedings by the employer?
iii) Whether the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently?
iv) What is the object of criminal and disciplinary proceedings?
v) What is the standard of proof in departmental proceedings and criminal proceedings?
vi) What is the meaning of "the expression 'honorably acquitted'?

Analysis: i) If the acquittal is found as a result of extending benefit of doubt or some other technical reasons, there is no bar for initiation of departmental enquiry and it is the prerogative rather an onerous responsibility of the employer to consider nature of offence for an appropriate action interdepartmentally.
ii) The rationale and astuteness of initiating disciplinary proceedings by the employer is to unmask whether the charges of misconduct leveled against the delinquent are proved or not.
iii) It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect.
iv) The object of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is inaugurated to enquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence.
v) In the departmental inquiry, the standard of proof is that of “balance of probabilities or preponderance of evidence” but not “proof beyond reasonable doubt”, which strict proof is required in criminal trial because the potential penalties are severe.
vi) The expression 'honorably acquitted' is not defined in the rules or anywhere

else, Under Rule 7.3 (a) of the Rules the acquittal should be an `honorable' one, which implied that the acquittal must follow a finding of the Tribunal concerned that the allegations were false and not merely proved.

Conclusion: i) If the acquittal is found as a result of extending benefit of doubt or some other technical reasons, there is no bar for initiation of departmental enquiry.
ii) The rationale of initiating disciplinary proceedings by the employer is to unmask whether the charges of misconduct leveled against the delinquent are proved or not.
iii) The criminal case and the departmental inquiry on the same allegations can be conducted and continued concurrently.
iv) The object of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is inaugurated to enquire into the allegations of misconduct.
v) In the departmental inquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but in criminal case it is the "proof beyond reasonable doubt.
vi) The honorable acquittal must follow a finding of the Tribunal concerned that the allegations were false and not merely proved.

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3. **Supreme Court of Pakistan**
Farrukhk Raza Sheikh v. The Appellate Tribunal Inland Revenue, etc
Civil Petition No.1417 of 2022
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1417_2022.pdf

Facts: The petitioner's appeal before Tribunal against order of CIR (Appeals) was dismissed for non-prosecution and thereafter his application for restoration of the same was also dismissed for non-prosecution. The petitioner challenged both the orders through a constitutional petition challenging the vires of Rule 22(1) of the Appellate Tribunal Inland Revenue Rules, 2010 ("Rules") before the High Court.

Issues: i) Whether Rule 22(1) of the Appellate Tribunal Inland Revenue Rules, 2010 ("Rules") are subservient to the primary legislation and what is their legal status if they contradict the parent statute?
ii) Whether Rule 22 (1) is ultra vires Section 132(2) of the Income Tax Ordinance, 2001 (Ordinance)?
iii) What is the rationale behind section 132(2) of the Ordinance?
iv) What is the effect of the order of dismissal in default?

Analysis: i) Rules being subordinate or delegated legislation, are framed under the authority of the parent statute, and are therefore subservient to the primary legislation. Rules cannot contradict or add to the clear provisions of the parent statute… It is trite law that Rules cannot override the specific provisions of the parent statute. The Rules are to carry out the purposes of the Ordinance and cannot offend, oppose or be inconsistent with the provisions of the parent statute (Ordinance in

this case).

ii) Section 132(2) of the Ordinance provides that the Tribunal shall provide an opportunity of being heard to the parties to the appeal, however, in case any one of the parties is in default on the date of hearing, the Tribunal may proceed ex-parte and decide the appeal on the basis of available record. Section 132(2) no more provides for dismissal in default as was the case prior to the amendment brought about in Section 132(2) in the year 2011 (supra). Rule 22(1) of the Rules, inter alia, provides that if the parties fail to appear before the Tribunal on the date of hearing, the appeal can also be dismissed in default. This part of Rule 22(1) clearly contradicts the parent statute. Section 132(2) of the Ordinance.

iii) Section 132(2) of the Ordinance is far more detailed, explicit, direct and clear compared to Section 33(4) of the Income Tax Act, 1922. It is therefore underlined that the logic and rationale behind Section 132(2) of the Ordinance and the consistent jurisprudence evolved over the years around Section 33(4) of the erstwhile tax law is to promote and support an efficient tax administration and encourage smart tax governance in the country… Section 132(2) avoids this double exercise and mandates that the appeal be decided on merits so that any further proceedings before a higher forum lead to a decision on merits. These unnecessary delays in tax dispute resolution seriously impair the overall tax governance in the country, which rests on efficient tax management and speedy tax collection.

iv) The order of dismissal of appeal on the ground of default, gives rise to a new set of litigation on a technical issue totally unrelated to the tax controversy in hand. Any further proceedings against the order of dismissal is a futile exercise for a tax collector, as well as, the tax payer, as the real tax dispute goes unattended till such time that the parties settle the issue of dismissal in default from the highest court in the land. The parties if successful have to start all over again before the Tribunal on merits.

Conclusion: i) Rules are subservient to the primary legislation and what is their legal status if they contradict the parent statute and any rule, to the extent of any inconsistency with the parent statute is, therefore, ultra vires of the parent statute.

ii) Rule 22(1) of the Rules to the extent whereby it allows the Tribunal to dismiss an appeal in default is ultra vires Section 132(2) of the Ordinance.

iii) The rationale behind Section 132(2) of the Ordinance is that it has no appetite for delays and penalizes the indolent party by empowering the Tribunal to proceed ex-parte on the basis of the available record.

iv) The order of dismissal of appeal on the ground of default, gives rise to a new set of litigation on a technical issue.

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4. **Supreme Court of Pakistan**
The Postmaster General, Karachi and another v. Arshad Ali
Civil Appeal No.18 -K of 202 1
Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._18_k_2021.pdf

Facts: This Civil Appeal, is directed against the judgment passed by the learned Federal Service Tribunal in Appeal, whereby the appeal filed by the respondent was allowed with the directions of his reinstatement in service with all back benefits.

Issues: i) What does the definition of "misconduct" includes as per clause (b) of Section 2 of the RSO 2000?
ii) What is the concept of deterrent punishment?
iii) Whether a civil servant can escape departmental proceedings thereof on account of his acquittal from a criminal charge?

Analysis: i) According to clause (b) of Section 2 of the RSO 2000, the definition of "misconduct" includes conduct prejudicial to good order or service discipline or conduct unbecoming of an officer and a gentleman or involvement or participation for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or persons such as may cause embarrassment in the performance of official duties or functions.
ii) The foresight of deterrent punishment is not only to maintain balance with the seriousness of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society. The respondent was found guilty in discharge of his duties, hence he could not be let free or exonerated.
iii) The underlying principle of initiating disciplinary proceedings is to ascertain whether the charges of misconduct against the delinquent are proved or not, whereas prosecution under the penal statutes is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. The common sense or realism of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is started off for making inquiry into the allegations of misconduct in order to maintain and uphold discipline and decorum in the institution and efficiency of the department to strengthen and preserve public confidence.(…) A civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge. While facing expulsive proceedings on departmental side on account of his indictment on criminal charge, he may not save his job in the event of acquittal as the department may still have reasons to conscionably consider his stay in the service as inexpedient. The department can assess the suitability of a civil servant, confronted with a charge through a fact finding method, which somewhat inquisitorial in nature, but without the heavier procedural riders otherwise required in criminal jurisdiction to eliminate any potential risk of error.

Conclusion: i) According to clause (b) of Section 2 of the RSO 2000, the definition of "misconduct" includes conduct prejudicial to good order or service discipline or conduct unbecoming of an officer and a gentleman or involvement or participation for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or persons such

as may cause embarrassment in the performance of official duties or functions.
ii) The foresight of deterrent punishment is not only to maintain balance with the seriousness of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society.
iii) A civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge.

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5. **Lahore High Court**
Zubair Saleem and another v. Zaheer Ahmad Rashid etc
Writ Petition No. 78266 of 2021
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC5958.pdf

Facts: The respondents No.1 & 2 were transferred leasehold rights of land in dispute under Temporary Cultivation Scheme vide orders passed by the respondent no. 6, the Deputy Administrator, Evacuee Trust Property Board (ETPB), Lahore. The said lease was being extended by the relevant authority till the year 2018. Later on, respondent No.6 awarded leasehold rights of the land in question to the petitioners. Upon coming to know about the same, respondents No.1 & 2 challenged lease granted in favour of the petitioners which was ultimately set-aside by the Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad in civil revision.

Issues: i) What is the status of a party which possesses State land without allotment/renewal/extension of lease in its favor?
ii) To what extent the Khasra Girdawri caries presumption of correctness?
iii) Whether stranger to auction proceedings has locus standi to challenge auction proceedings?
iv) Whether any minor deviation of Rules or Regulation would furnish a valid ground for interference in judicial review?

Analysis: i) The Apex Court in its decision cited as 2021 YLR 349 observed that "Further as per revenue record petitioners are illegal occupant upon the state land and they have no valid enforceable right under constitutional jurisdiction of this Court. The Hon'ble Supreme Court of Pakistan in a case titled as "Shazia Gillani and others v. Board of Revenue, Punjab, Lahore through Member Colonies and others" (in C.P. No.732-L of 2016) has held that there is no protection to possession of usurpers of state property. In the light of afore-referred judgments, there remains not a shred of doubt that in absence of renewal/extension of lease in their favour they, at the most, could be dubbed as illegal occupants.
ii) Khasra Girdawari being a public document carries presumption of correctness and can be relied upon while deciding a matter until and unless its entries are disputed before relevant forum in appropriate proceedings…In case PLD 1966 wherein the question relating to the authenticity of the entries in Khasra Girdawari has been dealt in the following manner:- "Khasra Girdawaris are public documents and are, therefore, admissible in evidence under section 35 of the

Evidence Act. They are prepared in regular course of business after inspection on the spot….."
iii) The Apex Court held in case cited as 2005 SCMR 1361 that "a stranger to the bid who also was unregistered, had no locus standi to make interference and should not have even been heard, muchless ordering fresh auction at his instance."
iv) Any procedural flaw on the part of the departmental authorities without any element of mala-fide cannot be used to upset an order of the executive which otherwise fulfills the requirement of relevant law. The Apex Court in case cited as 2012 SCMR 455 held that "A minor deviation of Rules or Regulation, if any, in absence of any credible allegation of mala fides or corruption would not furnish a valid ground for interference in judicial review."

Conclusion: i) The status of party in absence of renewal/extension of lease in their favour, at the most, could be dubbed as illegal occupants.
ii) Khasra Girdawari carries presumption of correctness until and unless its entries are disputed before relevant forum in appropriate proceedings.
iii) The stranger to auction proceedings has no locus standi to challenge auction proceedings.
iv) Any minor deviation of Rules or Regulation would not furnish a valid ground for interference in judicial review.

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6. **Lahore High Court**
Muhammad Ahmad Zaheer etc. v. Federation of Pakistan etc.
Writ Petition No. 62575/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC6041.pdf

Facts: Through this writ petition, the Petitioners seek quashing of FIR registered at Police Station FIA, Faisalabad, for offences under sections 161, 420, 468, 471, 109 PPC, section 5(2) of the Prevention of Corruption Act, 1947, and sections 8 & 23 of the Foreign Exchange Regulation Act, 1947 (the "Impugned FIR").

Issues: i) Whether the FIA is a police force for all legal and practical purposes?
ii) Whether the scope of immunity under section 217(1) of the Customs Act is limited?
iii) Whether the FIA must seek sanction of the Board initially to undertake the inquiry and then to register criminal case against the officers of the customs?

Analysis: i) It may be appreciated that section 5(1) of the FIA Act invests the members of the Agency with all the powers that the provincial police have in relation to search, arrest of person and seizure of property and investigation of offences which may, subject to any order of the Federal Government, be exercised throughout the country. Section 5(2) empowers a member of the Agency, who is not below the rank of a Sub-Inspector to exercise any of the powers of an officer incharge of a police station for the purposes of any inquiry or investigation under the Act. In this view of the matter, the FIA is a police force for all legal and practical purposes.

ii) The scope of immunity under section 217(1) of the Customs Act is limited. It is conditional upon the existence of "good faith" and to the "acts done in official capacity" which are questions of fact that cannot be decided without recording evidence. The public functionaries are obligated to discharge their duties honestly. The protection of the first part of section 217(1) of the Customs Act is not available where fraud, colourable exercise of power or bad faith is demonstrated. The phrase "in pursuance of this Act or the Rules" is also significant. Inasmuch as it is well settled that the legislature cannot permit any wrongdoing, a dishonest or fraudulent act cannot be covered by that expression.
iii) The second part of section 217(1) of the Customs Act is regulatory. It ordains that prior approval of the Board is required for initiation of inquiry or investigation by any governmental agency against an officer or official for anything which he has done in official capacity. This would obviously include the FIA but the above provision has to be harnessed with the FIA Rules of 2002 which envisage "inquiry" and "investigation" as two separate regimes. Hence, in my opinion, the FIA must seek sanction of the Board at two stages – initially to undertake the inquiry and then to register criminal case against the officers of the customs. In both the instances the request would be forwarded through the authority specified in Rules 5(1) and 5(2) respectively.

Conclusion: i) Yes, the FIA is a police force for all legal and practical purposes.
ii) Yes, the scope of immunity under section 217(1) of the Customs Act is limited.
iii) Yes, the FIA must seek sanction of the Board initially to undertake the inquiry and then to register criminal case against the officers of the customs.

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7. **Lahore High Court**
Humair Yousaf v. Station House Officer etc.
Writ Petition No. 46941of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC6110.pdf

Facts: This petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), is directed against order passed by the Ex-officio Justice of Peace, Lahore, whereby, a direction was given to SHO for registration of a criminal case against the petitioners.

Issues: i) Whether the Justice of Peace has the absolute duty to hear the accused while deciding an application under section 22-A(6) Cr.P.C.?
ii) Whether a direct application under section 22-A(6) Cr.P.C. can be made before Justice of Peace when the SHO refuses to register the FIR?
iii) Whether provision under section 22-A(6) Cr.P.C. is independent of section 154 Cr.P.C.?

Analysis: i) The legal jurisprudence in our country is well settled that registration of FIR is not an adverse order. In this view of the matter, the Full Bench in Khizer Hayat's case held that it is neither obligatory for the Officer In-charge of police station nor the JOP to afford an opportunity of hearing to the accused party before the

registration of a criminal case or issuing a direction in that regard. The Hon'ble Supreme Court's holding in Younas Abbas case that the JOP exercises quasi-judicial functions does not overrule the said principle. In a nub, the JOP does not have the absolute duty to hear the accused while deciding an application under section 22-A(6) Cr.P.C. He may afford him audience only if the circumstances demand. No hard and fast rule can be laid down in that respect.

ii) The Petitioner's foremost contention is that the Impugned Order is without jurisdiction inasmuch as Respondent No.3 could not move a direct application under section 22-A(6) Cr.P.C. before Respondent No.4 when the SHO refused to register the FIR. According to him, it was incumbent on it to make a complaint to the higher police officers (i.e. DPO, RPO etc.) in the first instance. Admittedly, there is no such stipulation in section 22-A Cr.P.C. or any other part of the Code. Justice Malik's additional note in Younas Abbas case is in plain and simple language. It says that the JOP should not issue a direction for registration of criminal case mechanically. He should examine all the material placed before him carefully and make an order only when it is warranted. There is nothing in the said note which may suggest that his Lordship wanted to make complaint to senior police officers a condition precedent for invoking the JOP's jurisdiction under section 22-A(6) Cr.P.C.

iii) The Hon'ble Supreme Court's declaration that the JOP exercises quasi-judicial functions under section 22-A(6) Cr.P.C. clears up that this provision is not only independent of section 154 Cr.P.C. but radically different from it. The powers of the JOP are discretionary. He is not bound to issue a direction for registration of FIR in every case that is brought to him. On the other hand, section 154 Cr.P.C. is couched in mandatory terms and the obligation of the Officer In-charge of a police station to record FIR is absolute where the alleged offence is cognizable.

Conclusion: i) Justice of Peace does not have the absolute duty to hear the accused while deciding an application under section 22-A(6) Cr.P.C. He may afford him audience only if the circumstances demand. No hard and fast rule can be laid down in that respect.

ii) A direct application under section 22-A(6) Cr.P.C. can be made before Justice of Peace when the SHO refuses to register the FIR without making a complaint to senior police officers.

iii) The provision under section 22-A(6) Cr.P.C. clears up that this provision is not only independent of section 154 Cr.P.C. but radically different from it.

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8. **Lahore High Court**
Amjad Shahzad v. Deputy Commissioner, etc.
W.P. No. 48397 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC6091.pdf

Facts: Through the connected petitions, the petitioners made more or less a similar prayer that Pakistan Tahreek-e-Insaf („PTI") be restrained from holding public political gathering/Jalsa on 13th August, 2022 in the historical National Hockey

Stadium, Lahore, reserved for purpose of games only, by directing the official respondents to revoke the permission granted by the District Administration/ Deputy Commissioner, Lahore to PTI to hold the said Public Gathering and in the alternate to direct PTI to hold the said gathering at some other place.

Issues: i) Whether the Court can undertake to decide venue for political gathering in its constitutional jurisdiction?

ii) Whether executive functionaries have to be given autonomy of discretion with enough space to carry out their job without let or hindrance?
iii) Whether constitutional jurisdiction of High Court can be resorted if alternate remedy is available?
iv) When there are connected petitions and in one of them Province of Punjab is not impleaded as party. Whether such non-impleading is fatal to that particular case?

Analysis: i) It is for the District Administration/government Authorities to decide that whether the venues are suitable for holding public gathering in the public interest or not and this Court in its Constitutional jurisdiction cannot undertake the said exercise as the same requires deeper probe into disputed facts not permissible to be undertaken in constitutional jurisdiction of this Court in ordinarily circumstances.
ii) It is settled by now that executive functionaries had to be given autonomy of discretion with enough space to carry out their job without let or hindrance as it was essential as well as expedient that exercise of freedom was to be reasonably regulated on administrative considerations on the paramountcy of larger public interest because the public functionaries and executive authorities were the best judges to evaluate the nature and scope of their work and magnitude of threats so as to take all appropriate remedial measures/steps required to obviate impending disasters and these were not justiciable issues.
iii) Where alternate remedy in available or has been availed, this Court does not ordinarily interfere in its constitutional jurisdiction is such matter lest the same may prejudice the decision of the authorities.
iii) Although non-impleading of Province of Punjab may be fatal in ordinary circumstances where Province of Punjab is not impleaded and represented in any of the cases, however, said principle is subject to exception that in connected cases where all the necessary parties despite not being impleaded in some cases are represented and are parties in other connected cases and had an opportunity to present their case, the objection of not impleading them in all the connected cases does not result in abatement of said cases and the same cannot be dismissed on the said ground as not maintainable because the defect, if any, of non-impleading the parties in some of the cases stands cured in the said circumstances and would not be fatal due to the parties being represented in other connected cases and also had been provided reasonable opportunity to present their case.

Conclusion: i) The Court can not undertake to decide venue for political gathering in its

constitutional jurisdiction.
ii) Executive functionaries have to be given autonomy of discretion with enough space to carry out their job without let or hindrance.
iii) Constitutional jurisdiction of High Court cannot be resorted if alternate remedy is available.
iv) Where the proceedings are consolidated and appeals are heard together, the defect of non-impleadment of a party is cured because of the reason of its being present before the Court in the connected matter. The objection of not impleading them in all the connected cases does not result in abatement of said cases and the same cannot be dismissed on the said ground as not maintainable because the defect.

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9. **Lahore High Court**
Ayesha Nazir v. Election Commission of Pakistan, etc.
Election Petition No.01/2018
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2020LHC4363.pdf

Facts: The petitioner, being the runner-up candidate presented election petition, under section 139 of the Elections Act, 2017 ('Act, 2017'), against returned candidate (respondent No.3). Election petition was found non-compliant in terms of sub-section (4) of section 144 of the Act, 2017, and was dismissed. Notwithstanding dismissal of the election petition, proceedings were initiated in exercise of powers under section 165 of the Act, 2017 and respondent No.3 was show-caused in the context of the allegations, apparently, falling within the scope of section 165, ibid.

Issues: i) Whether every omission, deficiency or non-disclosure made in the statement of assets and liabilities, submitted in terms of section 60 of the Elections Act, 2017, incurs penalty of disqualification or charge of corrupt practice?
ii) Whether mere non-disclosure or incorrect assertion in the statement of assets and liabilities be declared as false declaration, without adverting to the explanations offered?

Analysis: i) Not every omission, deficiency or non-disclosure made in the statement of assets and liabilities, submitted in terms of section 60 of the Elections Act, 2017, incurs penalty of disqualification or charge of corrupt practice, under clause (a) of section 167 of the Act, 2017.
ii) Before making an adverse declaration, explanation provided, if any, needs consideration and analysis. It is essential to satisfy that whether non-disclosure or alleged failure to disclose assets was deliberate and designed to gain intended potential benefit or not.

Conclusion: i) Not every omission, deficiency or non-disclosure made in the statement of assets and liabilities, submitted in terms of section 60 of the Elections Act, 2017, incurs penalty of disqualification or charge of corrupt practice.
ii) Mere non-disclosure or incorrect assertion in the statement of assets and

liabilities cannot be declared as false declaration, without adverting to the explanations offered.

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10. **Lahore High Court**
Khurram Shahzad v. Province of Punjab and others.
Civil Revision No.43146/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC6033.pdf

Facts: Through the instant Civil Revision, the petitioner, who was a serving police official in the rank of Superintendent of Police, has assailed concurrent findings of the learned Courts below by virtue of which his suit for declaration as well as permanent and mandatory injunction in consequence of unlawfully withdrawn allotment of official house was dismissed.

Issue: i) Whether Government can place residences at the disposal of other institutions such as City District Government, by creating a Pool?
ii) Whether an authority vested with the jurisdiction to pass an order can also rescind or recall the same?
iii) Whether it is obligation of the Government to provide residential accommodation to its employees?
iv) Whether in the absence of any vested right to Government residence, the suit for declaration along with mandatory and permanent injunction can be instituted?
v) Whether the allotment of official accommodation can be terminable at will of the Government?
vi) Whether constitutional petition can be converted into a revision?

Analysis: i) The Allotment Policy not only contemplates the eligibility requirements but also specifies classification of accommodations, entitlement of Government Servants to various categories of the accommodations, fixation of rent, eviction of unauthorized occupants as well as other ancillary purposes. Under the Allotment Policy, Government can place residences at the disposal of other institutions such as City District Government, by creating a Pool. Such Government residences, which form part of Pool of the City District Government, are to be dealt with by the City District Government at district level in terms of the Allotment Policy at District Level, 2002 ("District Level Policy").
ii) In terms of Section 20 of the General Clauses Act, 1956, it is settled principle that an authority vested with the jurisdiction to pass an order can also rescind or recall the same, in accordance with law.
iii)There is neither an obligation of the Government to provide residential accommodation to its employees nor a Government Servant has any vested legal right or claim to the allotment of the Government owned residences and allotment of the Government accommodation remains a discretion, which is guided and structured by way of the Allotment Policy at provincial level and the District Level Policy for accommodation falling in the Pool allocated at the disposal of the Deputy Commissioner.

iv) This is well evident from the language of Section 42 of the Act of 1877, which confers discretion upon a Court to grant declaration of status or right and said relief can be granted only when the plaintiff in a suit is able to establish his or her entitlement to any legal character or to any right in property.

v) Occupation by a Government Servant of Government-owned premises allotted to him, i.e., ear-marked for his occupation, can be no more than a tenancy-at-will, which may be terminated by the State at any time without cause shown. Despite the fact that the allotment was valid, the Hon'ble Apex Court held it to be terminable at will of the Government.

vi)It is well settled that constitutional petition can be converted into a revision or vice versa if it does not prejudice the right of any party and advances cause of justice instead of frustrating the same.

Conclusion: i) Yes, Government can place residences at the disposal of other institutions such as City District Government, by creating a Pool.

ii) Yes, an authority vested with the jurisdiction to pass an order can also rescind or recall the same.

iii) It is not obligation of the Government to provide residential accommodation to its employees.

iv) In the absence of any vested right to Government residence, the suit for declaration along with mandatory and permanent injunction cannot be instituted.

v) Yes, the allotment of official accommodation can be terminable at will of the Government.

vi) Yes, constitutional petition can be converted into a revision or vice versa.

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11. **Lahore High Court**
Kashif Iqbal v. Asghar Ali Ghumman
FAO No.39089/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC6070.pdf

Facts: The present appeal arises from order whereby application of the appellant, under Order XXXIX, Rules 1 and 2, Code of Civil Procedure, 1908 ("CPC"), in a suit instituted by him for specific performance of the contract, based on a written agreement to sell ("the agreement") was dismissed on the ground that the appellant failed to establish a prima facie arguable case in his favour.

Issues: i) What is meant by the term 'Prima Facie'?

ii) What procedure is adopted by the courts to ascertain either prima facie case is made out or not?

iii) Whether the agreement to sell create any right in respect of immovable property?

iv) Whether the agreement to sell without proof of payment of huge sum is sufficient to establish the prima facie case?

Analysis: i) The words 'prima facie' means at first sight or on the first impression. Therefore, the existence of the right of the plaintiff is to be adjudicated on the first sight on comparative consideration of pleadings of the parties.

ii) The Court has to form its opinion as to who has a better case after tentatively analyzing from the rival contention of the parties as contained in their pleadings. If the Court is satisfied that the case of plaintiff is on a better footing, and on conclusion of the trial relief may be granted to him in all likelihoods, then the Court can infer that the plaintiff has a prima facie case. To ascertain whether a plaintiff has a prima facie case, the Court tentatively examines not only the pleadings of the parties but their affidavits, counter-affidavits and the documents appended with the plaint and the written statement.

iii) It is trite law that an agreement to sell does not create any right in respect of the immovable property and its importance while deciding an application for grant of the interim injunction has to be measured up and weighed in by tentative examination of the attending circumstances.

iv) When the only supporting document is agreement to sell which have specifically been denied by the other party. But there is complete absence of proof of payment of huge sum. In this day and age it is not possible to believe that such a substantial amount was paid either in cash or through a mode of which documentary evidence is not available. The fact that nothing has been appended with the plaint to support the contention that the entire sale consideration was paid is a factor that goes against the petitioner"s attempt to plead existence of a prima facie case at this stage.

Conclusion: i) The words 'prima facie' means at first sight or on the first impression.

ii) To ascertain whether a plaintiff has a prima facie case, the Court tentatively examines not only the pleadings of the parties but their affidavits, counter-affidavits and the documents appended with the plaint and the written statement.

iii) An agreement to sell does not create any right in respect of the immovable property.

iv) The agreement to sell without proof of payment of huge sum is not sufficient to establish the prima facie case.

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12. **Lahore High Court**
Muhammad Siddique (deceased) through L.Rs., etc. v. Mukhtar Ahmad
C.R. No.595-D of 2016
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC6020.pdf

Facts: The petitioner filed suit for declaration as well as cancellation wherein he challenged the legality of the mutation in dispute on the ground that he never sold the suit property to the respondent and only intended to alienate in favour of Jamia Siraj-ul-Uloom, which is supervised by the respondent as Mohatamim (ممد تہہم ;) but his suit was dismissed. He preferred appeal but that was also dismissed. Hence this civil revision.

Issues: i) Whether the proceedings of effecting mutation are judicial proceedings and upon whom the burden to prove mutation lies?
ii) What are essential ingredients of a valid sale?
iii) Whether it is necessary to mention details of oral sale and its terms and conditions in the pleadings?
iv) Whether evidence beyond pleadings could be read and relied upon by the Court?
v) Whether adverse presumption can be drawn by Court against party personally knowing the circumstances but does not appear in person before court?
vi) Whether possession along with title documents is sufficient to prove the genuineness of the transaction?

Analysis: i) The proceedings effecting a mutation are not judicial proceedings and do not confer any title and therefore, whenever genuineness of any mutation is challenged, the burden lies upon the party relying upon the mutation, to prove the actual transaction.
ii) Under Section 54 of the Act 1882 read with Article 17 and 79 of the Order 1984, the essential ingredients of a valid sale required to be proved, inter alia, include fixation of sale consideration between the parties concerned as well as receipt thereof and the presence of marginal witness. Case of Ali Muhammad supra is referred in this regard.
iii) In terms of Order VI of the Code of Civil Procedure, 1908, pleadings of a party must contain a statement in concise form of material facts on which the party relies for his claim or defence, therefore, it is obligatory to mention in pleading the date, month, time and name of persons before whom the oral agreement stood concluded and the details of the terms and conditions settled between the parties.
iv) The evidence cannot be led beyond pleading and, therefore, it could not be read and relied upon. If any authority is required in this regard, case titled "Saddaruddin (since deceased) through LRs v. Sultan Khan (since deceased) through LRs. and others" (2021 SCMR 642) is referred.
v) It is pertinent to note that a party personally knowing the circumstances of the case was bound to appear as its own witness and submit to cross-examination failing which adverse presumption can be drawn.
vi) In this regard the case of Saddaruddin supra is referred, wherein it has been held by Hon'ble Supreme Court that even prolonged possession alongwith title documents are not sufficient to prove the genuineness of the transaction.

Conclusion: i) The proceedings of effecting mutation are not judicial proceedings and the burden to prove lies upon the party relying upon the mutation.
ii) The essential ingredients of a valid sale include fixation of sale consideration between the parties concerned as well as receipt thereof and the presence of marginal witness.

iii) It is necessary to mention details of oral sale and its terms and conditions in the pleadings.
iv) Evidence beyond pleadings can not be read and relied upon by the Court.
v) Adverse presumption can drawn by Court against party personally knowing the circumstances but does not appear in person before court.
vi) Possession along with title documents is not sufficient to prove the genuineness of the transaction.

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13. **Lahore High Court**
Ahmed Mahmood alias Mahmood v. Addl. District Judge, etc.
Writ Petition No.4232 of 2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC6028.pdf

Facts: The petitioner's wife claimed dower on the basis of a separate deed (Kabeennama) which was decreed by learned appellate court. Hence this petition.

Issues: i) Whether the kabeennama has presumption of truth?
ii) Whether the Court should compare the disputed signature or thumb impression with the admitted signature or thumb impression without the assistance of any expert?

Analysis: i) If the Kabeennama is purportedly executed between the parties but not registered under any law and unlike the Nikahnama, does not carry presumption of truth unless such Kabeenama is referred in the Nikahnama itself.
ii) While there is no doubt that the Court can compare the disputed signature or thumb impression with the admitted signature or thumb impression, such comparison by the Court without the assistance of any expert, has always been considered to be hazardous and risky and as a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature or thumb impression with that of the admitted signature or thumb impression to find out whether the two are identical. The prudent course is to obtain the opinion and assistance of an expert and leave the matter to the wisdom of experts. The comparison of the two thumb impressions cannot or rather should not be carried in a casual manner or by a mere glance… Unless enough details correlate the disputed thumb impression with the admitted thumb impression, the fingerprints cannot be determined to be from the same person merely by comparison of pattern through naked eye.

Conclusion: i) The kabeenama does not carry presumption of truth unless such Kabeenama is referred in the Nikahnama itself.
ii) The Courts in the appropriate cases should prefer to get assistance from the experts of relevant fields which not only helps the Court to reach a fair conclusion but also to avoid complications and agony to the litigants arising out of a wrong decision.

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14. **Lahore High Court**
Mah Noor Azhar, etc v. Lieutenant Colonel Muhammad Sohail Khan, etc.
Writ Petition No.23991/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC6063.pdf

Facts: Through the instant writ petition, challenge has been laid to the order of the learned Executing Court as well as the order of the learned Appellate Court below by virtue of which the objection petition of respondent (judgment-debtor) was accepted and it was held that the 10% annual increase in the monthly maintenance amount awarded to decree holders is to be effective from the date of the decree and not from the date of institution of the suit by the petitioners.

Issue: i) Whether 10% annual increase in maintenance allowance is to be effective from the date of passing of the decree that attained finality or from the date of institution of the suit?
ii) What is the object of West Pakistan Family Courts Act, 1964?
iii) Whether Family Court is vested with the power to fix an amount of maintenance higher than the amount prayed for in the plaint?

Analysis: i) It would be against the interest and welfare of the minor to grant annual increase from the date of decree particularly in cases like the one where there is a gap of almost 6 years in the date of institution of the suit and date of final decree passed therein. The term "date of institution" qualifies both "the maintenance" as well as term "the annual increase" as its underlying object has the inflationary trend as well as the growing needs of the minor with the growing age. It is pertinent to observe that any ambiguity in the decree as to grant of annual increase from the date of institution or from the date of decree would be so construed as to be not incongruous to the object and purpose of law being beneficial legislation, cannot be construed and interpreted in a manner detrimental to the minor or female.
ii) The West Pakistan Family Courts Act, 1964 is a beneficial legislation with its object and purpose being to protect the minors and females who are considered vulnerable segment of the society. The aim is to protect them from lengthy and protracted litigation and without being subjected to the strict niceties and technicalities of Qanun- e-Shahdat Order, 1984 and Code of Civil Procedure, 1908.
iii) Perusal of Section 17A, as it stands after the amendment, reveals that in a suit for maintenance, the Court can transcend the legal and procedural limitation of civil law of being confined to the relief sought as sub-section (2)(a) thereof provides that the Family Court is vested with the power to fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances.

Conclusion: i) Yes, 10% annual increase in maintenance allowance is to be effective from the date of institution of the suit.

ii) The West Pakistan Family Courts Act, 1964 is a beneficial legislation with its object to protect the minors and females who are considered vulnerable segment of the society.
iii) Yes, Family Court is vested with the power to fix an amount of maintenance higher than the amount prayed for in the plaint.

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15. **Lahore High Court**
Abdul Malik alias Badshah Khan v. Addl. District Judge & 5 others
Writ Petition No.5651 of 2022/BWP
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC6079.pdf

Facts: The present petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is filed against the consolidated judgment passed by learned Additional District Judge, Bahawalpur, whereby rent appeal of the petitioner has been dismissed and order passed by learned Rent Tribunal / Senior Civil Judge, Bahawalpur has been upheld.

Issues: Whether the Rent Tribunals are required to pass final order as to question of ejectment if the leave is rejected or there is no leave filed,?

Analysis: Sub-section 6 of section 22 of the Punjab Rented Premises Act, 2009 provides that if leave to contest is refused, the Rent Tribunal shall pass the final order that shows that rejection of leave and passing a final order are envisaged by the legislature as two independent eventualities. The leave rejection order itself is not envisioned as the only order in section 22(6) rather the final order is to follow such leave rejection. Further, the word "shall" is leading the words "pass the final order" in section 22(6) of Act, which is a command of law, leaving no option with the Rent Tribunals but to pass final order with respect to the matter of ejectment. The words used in the above provisions and the requirement, imposed on the parties, of appending "all relevant documents in their possession" are meaningful and it has direct nexus with the subject in hand. The purposes of requiring the parties to give disclosure on affidavits and providing all the documents in their possession is not merely to decide leave application but also to enable the Rent Tribunal to reach to the conclusion as to the matter of ejectment upon refusal of leave. If the leave is rejected or there is no leave filed, the Rent Tribunals are required to pass final order as to question of ejectment after applying judicious mind and keeping in view the pleadings supported by affidavit(s) and all the documents on record.

Conclusion: If the leave is rejected or there is no leave filed, the Rent Tribunals are required to pass final order as to question of ejectment after applying judicious mind and keeping in view the pleadings supported by affidavit(s) and all the documents on record.

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16. **Lahore High Court**
Kalsoom Mai v. DPO, etc.
Crl. Misc. No.5159 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC5949.pdf

Facts: The petitioner has filed this criminal miscellaneous, in the nature of habeas corpus and prayed for the recovery and production of detenues from the alleged illegal and improper custody of private respondents.

Issue: i) Whether in Pakistan safety valves available in the form of penal provisions to curb and arrest trafficking in women?
ii) Whether perpetuation of gender bias accentuates the role of the Executive Law Enforcement Agencies as proactive and anticipatory rather than a reactionary?
iii) Whether Constitution of Pakistan provide protection against women trafficking being unislamic?

Analysis: i) The Pakistan Penal Code in its original form ensured protection against atrocities against any human being through Sections 362, 365 and 370 P.P.C., the ever increasing rate of women and children trafficking compelled the state to enact further provisions, Hence new offences were added in the Pakistan Penal Code,1860 as well with the clear intention to ensure social protection and inviolability of dignity of women in Pakistan through the introduction of the Protection of Women (Criminal Laws Amendment), Act, 2006. By means of this holistic amendment Sections 365-B, 371-A and 371-B etc. were added to the Pakistan Penal Code, 1860. This was done also to compliment and reinforce the commitments undertaken by the State of Pakistan while signing the Convention for Eradication for Discrimination against Women (CEDAW).
ii) The social construction and perpetuation of gender bias establishes male authority and power over women. Some forms of violence against women, especially domestic and customary violence, are so deep rooted in cultural norms that these are hardly recognized as violence and hence largely, albeit wrongly, condoned by the society. This environment heightens and accentuates the role of the Executive Law Enforcement Agencies and saddles them with a proactive and anticipatory rather than a reactionary role.
iii) Trafficking in women, amongst other such notorious practices to be unislamic. Viewed in the context of Articles 9, 14, 25 and 37 of the Constitution dignified existence, the protection from degradation and the accessibility to a decent social and cultural environment.

Conclusion: i) Yes, in Pakistan various safety valves available in the form of penal provisions to curb and arrest trafficking in women.
ii) Yes, perpetuation of gender bias accentuates the role of the Executive Law Enforcement Agencies as proactive and anticipatory rather than a reactionary.

iii)Yes, Constitution of Pakistan provide protection against women trafficking being unislamic.

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17. **Lahore High Court**
Mst. Aneeqa Shoail, etc. v. Lahore Development Authority, etc.
W.P. No.47140 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC5987.pdf

Facts: Through this writ petition, the petitioners seek to invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") for issuance of direction to respondents to transfer the Plot in favour of the vendee.

Issues: i) Whether questions regarding title of a person in a property fall outside the ambit of constitutional jurisdiction of High Court?
ii) Whether presence of an actual decision jeopardizing the right of a litigant is required before a constitutional petition could be entertained?
iii) Whether in the presence of an alternative statutory remedy High Court can encroach upon the jurisdiction of the Commission?

Analysis: i) Questions regarding title of a person in a property fall outside the ambit of constitutional jurisdiction, hence, cannot be decided in the exercise of powers under Article 199 of the Constitution. In addition to the widely accepted and repeatedly endorsed principle that evaluation of evidence necessary to decide such questions cannot be undertaken by the constitutional courts; the invocation of such jurisdiction can only be made when there is no stigma or defect alleged on the title of the litigant. Such defect can only be adjudicated by the courts of plenary jurisdiction and existence of or even undetermined allegation of such facts precludes the petitioners from seeking issuance of a writ.
ii) The Hon'ble Supreme Court and High Court have repeatedly emphasized upon the requirement of there being the presence of an actual decision jeopardizing the right of a litigant before his constitutional petition could be entertained.
iii) In the presence of an alternative statutory remedy High Court cannot encroach upon the jurisdiction of the Commission. An action brought prematurely prior to the determination of alleged rights of the petitioners by the competent statutory forum, presence of an alternative statutory remedy and inability of this Court to decide vital factual questions involved; all divest this Court of the jurisdiction and judicial power to adjudicate upon the issues raised by the petitioners.

Conclusion: i) Questions regarding title of a person in a property fall outside the ambit of constitutional jurisdiction of High Court. In addition to the widely accepted and repeatedly endorsed principle that evaluation of evidence necessary to decide such questions cannot be undertaken by the constitutional courts.

ii) Presence of an actual decision jeopardizing the right of a litigant is required before a constitutional petition could be entertained.
iii) In the presence of an alternative statutory remedy High Court cannot encroach upon the jurisdiction of the Commission.

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18. **Lahore High Court**
Uzair Azmat v. Judge Family Court etc
Writ Petition No.46842 of 2022
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC6005.pdf

Facts: The question raised in the present petition is that a husband has stepped forward to volunteer the return of dowry articles to his ex-wife after separation. This unconventional approach has been discarded by a judge family court upon a suit filed by the petitioner and which denial has brought the petitioner before this Court.

Issues: i) Whether a suit for the return of dowry articles could be entertained by the family court at the instance of a husband?
ii) Whether the family court has power to regulate its procedure unless expressly barred?
iii) Whether the Family Courts have the freedom to assume powers not expressly given in the Act, 1964?
iv) What is the purposive and inclusive interpretation of provisions conferring jurisdiction?
v) What is the purpose of enactment of the Act, 1964?

Analysis: i) Family Courts draw their jurisdiction from Section 5 of the Family Courts Act, 1964 and, therefore, employ Section 5 as a qualifying criteria while deciding whether a suit such as the present one is maintainable or not. Serial No.8 of Part-I of the Schedule to the Act, 1964 makes all matters pertaining to dowry triable exclusively by the family courts. Section 7 relating to the institution of suits refers to the terms plaintiff without specifying the gender of the plaintiff.
ii) An analysis of precedent cases on the procedure to be adopted by family courts reveals a consistent consensus on the principle that family courts operating under the Act, 1964, are left to decide the course to be taken by them in most cases and are free to govern and adjust the procedure to be adopted but are expected to presume that every course is permissible to take unless the specified course is expressly barred or prohibited.
iii) The Family Courts, as special forums are minimally regulated and are flexible in terms of what course of action they adopt during proceedings and such relative freedom is geared to ensure that all family disputes are expeditiously decided. Assumption of powers not expressly conferred, though not excluded either, has been approved as long as the purpose of administration of justice is served.

iv) The provisions conferring jurisdiction on any court or tribunal have been interpreted in a way to make allowance for resorting to powers and for assumption of jurisdiction in matters which are not expressly provided but are not expressly excluded either.

v) The purpose of enactment of the Act, 1964 as discernible from its preamble i.e. it is expedient to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith; It would additionally disentitle a husband from brining in a cause which falls in exclusive jurisdiction of Family Courts even when no such person specific distinction is made in the Act.

Conclusion: i) A suit for the return of dowry articles could be entertained by the family court at the instance of a husband.

ii) Family court has power to adopt the any course/ procedure unless expressly barred or prohibited .

iii) The Family Courts have the freedom to assume powers not expressly given in the Act, 1964 for the purpose of administration of justice is served.

iv) Purposive and inclusive interpretation of provisions conferring jurisdiction is that the assumption of jurisdiction in matters which are not expressly provided but are not expressly excluded either.

v) Purpose of enactment of the Act, 1964 purpose is the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith.

SELECTED ARTICLES

1. **THE NATIONAL LAW REVIEW**
   https://www.natlawreview.com/article/offences-under-copyright-act-are-cognizable-and-non-bailable-supreme-court-confirmsl

   Offences Under The Copyright Act Are Cognizable And Non-bailable: Supreme Court Confirms! by Shweta Sahu

   The categorization of offences under a statute as cognizable/non-cognizable and bailable/non-bailable as per the Code of Criminal Procedure 1973 ("CrPC") gains significance in ascertaining the procedure for arrest, bail, trial etc. In case of bailable offences - bail can be claimed as a matter of right while in case of non-bailable offences which are considered graver and more heinous in nature, the discretion to grant bail rests with the courts. In cases of cognizable offences, a police officer can arrest an accused without a warrant. Part II of Schedule I of the CrPC classifies offences under laws other than the Indian Penal Code 1860 such as the Copyright Act 1957 ("Copyright Act"). Under Part II of Schedule I of the CrPC - offences punishable with "imprisonment for three years and upwards but not more than seven years", are non-bailable and cognizable. However, offences punishable with imprisonment for less than three years or with fine only, are bailable and non-cognizable. Section 63 of the Copyright Act prescribes for a

punishment "with imprisonment for a term which shall not be less than six months but which may extend to three years" for certain offences committed thereunder. The issue for consideration before the Supreme Court ("SC") was whether the clause "may extend to three years" as used in the Copyright Act would have the same effect as "three years and upwards" used in the CrPC.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Lease-and-Licenses-A-comparative-analysis

Lease and Licenses- A comparative analysis by Charvi Devprakash

Leasing and licensing a property entail a temporary transfer of ownership or a temporary transfer of enjoyment for a set period, depending on the type of arrangement. The paper discusses the provisions of several Indian legislations governing leasing and licensing, as well as a detailed examination of the significant distinctions and commonalities between the two. The study was based on a thorough examination of the various precedents which principally addresses this distinction and its repercussions. Furthermore, the book discusses the applicability of such distinctions in other circumstances, and the decisions reached by the courts in such cases are contrasted to identify crucial characteristics that may help distinguish the two clauses. The case under consideration is an example of how a lack of clear differentiation among the many means of transferring rights available led to a conflict in the agreement, resulting in violations of not only the TOPA and Easement Act, but also the Indian Stamps Act.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/EMERGENCY-ARBITRATION-A-HANDY-TOOL-NOT-HANDLED-PROPERLY

Emergency arbitration, a handy tool, not handled properly by Poorna Dixit

Arbitration has been prevalent for centuries. From Plato examining the Greek Arbitration to it becoming the most accepted medium of resolution in industry-specific cross border conflict, Arbitration has grown multi-folds over time.1 Although Arbitration is recognised to be the most expeditious procedure for relief, this mechanism remains incomplete without a crucial tool, i.e. Emergency Arbitration. Originally, there was no provision of instant interim relief or 'emergency arbitration' in international arbitration. A vacuum existed in situations where the parties sought adjudication on an urgent basis, prior to the Arbitral Tribunal's formation. However, various institutions across the world have now acknowledged the necessity of such a relief instrument and incorporated the same in their Rules and Procedures.

4. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11196-022-09887-5

The Syntactic Features of Islamic Legal Texts and Their Syntactic Implications for Translation by Rafat Y. Alwazna

Certain religious texts are deemed part of legal texts that are characterised by high sensitivity and sacredness. Amongst such religious texts are Islamic legal texts that are replete with Islamic legal terms that designate particular legal concepts peculiar to Islamic legal system and legal culture. However, from the syntactic perspective, Islamic legal texts prove lengthy and condensed, with an extensive use of coordinated, subordinate and relative clauses, which separate the main verb from the subject, and which, of course, carry a heavy load of legal detail. The present paper seeks to examine the syntactic features of Islamic legal texts and the syntactic translation implications involved through studying three Islamic legal Arabic excerpts and their English translations. The paper argues that amongst the syntactic features of Islamic legal texts are nominalisation, participles, modals and complex structures. It also claims that the syntactic translation implications are indeed syntactic features of legal English, which are sentence combining versus sentence break, nominalisation, wh-deletion, passivisation, modals and multiple negations. Moreover, nominalisation, modality and complex structures are features of both Islamic legal texts and legal English, albeit with varying degrees.

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11196-022-09916-3

Legislative Basics of Legal Interpretation by Valeriya K. Antoshkina, Oleksandr Loshchykhin, Oksana Topchii, Dmytro Shevchenko & Myroslav V. Hryhorchuk

Law and its components by clarifying their true content, which eliminates any doubts and ambiguities. The purpose of this article is: first, to analyze the provisions of current Ukrainian legislation for identifying the general approaches embodied in it and the principles for the implementation of legal interpretation activities by state power bodies; secondly: presentation on the basis of modern achievements and developments of legal science of the system of measures for standardization of such activity, bringing it in line with the needs of law enforcement practice. The solution of the set tasks was carried out using the method of philosophical dialectics, a system of general scientific and special scientific methods of cognition, which are based on the principles of objectivity, comprehensiveness, complexity. Based on the analysis of the normative material, it is concluded that there is no single harmonized approach in the Ukrainian legislation on the procedure for providing clarifications of the content of normative-legal acts. The authors give arguments on the need to clarify and streamline the legal interpretation activity by state bodies and propose a number of measures to achieve this goal. Based on the conducted analysis of the normative material, the authors outline the main problematic issues of the legislative definition of the basics of legal interpretation and provide specific proposals for improving the current legislation in this area.