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FORTNIGHTLY CASE LAW BULLETIN
(01-01-2025 to 15-01-2025)
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**
Kausar Rana Resources (Private) Limited, etc. v. Qatar Lubricants Company W.L.L. (QALCO), etc.
C.P.L.A. 4468/2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Irfan Saadat Khan & Mr. Justice Aqeel Ahmed Abbasi.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4468_2024.pdf

Facts: The respondents filed a petition before the Lahore High Court, invoking its jurisdiction as a Company Bench under the Companies Act 2017 ("Companies Act"). The petitioners filed an application under Section 34 of the Arbitration Act 1940 ("Arbitration Act"), seeking for referring the matter to arbitration but the Company Bench dismissed the petitioners' application. Consequently, the petitioners have filed a petition for leave to appeal.

Issues: i) What are the purposes of Arbitration and how it is vital for our country and our judicial system?
ii) Whether right to arbitrate cannot be enforced by a person who is not a party to the agreement?
iii) Whether the award is to be filed in Civil Court or the Company Bench of the High Court?
iv) What is difference between civil courts of general jurisdiction and civil courts of special jurisdiction, whether a court established under the Companies Act qualifies as a Civil Court?
v) What does term "pro-arbitration bias" reflects?

Analysis: i) By prioritizing arbitration, courts uphold the principle of party autonomy and reinforce the parties' choice to resolve their disputes outside traditional litigation. This approach not only respects their agreement but also addresses the inefficiencies inherent in conventional judicial proceedings. Courts should adopt a resolute stance of non- interference, encouraging arbitration and other forms of alternative dispute resolution (ADR), such as mediation, as the preferred modes of resolving disputes. This judicial mindset is particularly vital for our country, where an overburdened judicial system and burgeoning case backlogs impose immense economic costs on both the judiciary and society. By respecting arbitration agreements and fostering an environment conducive to swift dispute resolution, courts can play a pivotal role in alleviating this crisis. Courts in Pakistan must therefore embrace this ethos, recognizing that promoting arbitration is not merely a legal necessity but also an economic and commercial imperative for ensuring the country's progress and prosperity.
ii) Clause (1) of the agreement explicitly provides that "QALCO shall relinquish all its rights in KRR and transfer all of its existing shares in Kausar Rana Resources (Pvt.) Ltd. [KRR], including shares of nominee director, to Mr. Atif Naeem Rana – CEO or a nominee of the same". Pursuant to this clause, the shares were transferred to the petitioner Sameen Naeem Rana, who acted as the nominee of the petitioner Atif Naeem Rana — a party and signatory to the agreement containing the arbitration clause. Thus, Sameen Naeem Rana derives his rights

and title in the transferred shares under and through Atif Naeem Rana. Accordingly, he is subject to all rights and obligations arising from the agreement signed by Atif Naeem Rana, including the right to enforce the arbitration clause contained therein.

iii) As per Section 14(2) of the Arbitration Act,4 the award made by an arbitrator is to be filed in Court and the "Court", as defined in Section 2(c) of the Arbitration Act, means a Civil Court having jurisdiction to decide the question forming the subject-matter of the reference [to arbitration] if the same had been the subject-matter of a suit. The question of law before us, therefore, is: Whether the Court, i.e., a Company Bench of the High Court, established by the Companies Act qualifies as a Civil Court having jurisdiction to decide the question forming the subject matter of the reference to arbitration if the same had been the subject matter of a suit. Generally, a civil court is a court that has jurisdiction to adjudicate disputes between individuals or entities concerning their civil rights and obligations.--- Accordingly, the Civil Courts established under the Civil Courts Ordinance 1962 are referred to as general courts of civil jurisdiction or general civil courts, as they have been conferred jurisdiction under Section 9 of the Code of Civil Procedure 1908 to try all suits of a civil nature except those whose cognizance is expressly or impliedly barred. Conversely, courts such as Banking Courts, Consumer Courts and Labour Courts, etc., established under different statutes and conferred jurisdiction by those statutes to deal with specific matters, are referred to as civil courts of special jurisdiction or special civil courts.--- The dispute in the present case, as well as the subject matter of the reference to arbitration, pertains to the alleged fraudulent transfer of shares and the rectification of the register of members (shareholders),15 which falls exclusively within the jurisdiction of the Court established under the Companies Act.16 Accordingly, we accept the request of learned counsel for the parties and direct that the Award made by the Arbitrator be filed before the Company Bench for further proceedings in accordance with the Arbitration Act.

iv) The latter view also aligns with the provisions of Section 20 of the Arbitration Act, which permits an application to file an arbitration agreement in a court having jurisdiction over the matter to which the arbitration agreement relates. Such a court may either be a civil court of general jurisdiction or a civil court with special jurisdiction over the relevant matter. It is quite common that the legislature, from time to time, carves out specific matters from the general jurisdiction of Civil Courts established under the Civil Courts Ordinance 1962, either to ensure their expeditious resolution or to address the need for specialized expertise. Jurisdiction over such matters is conferred upon Special Courts established for this purpose. However, the fact that these matters are adjudicated by special civil courts established under special laws, rather than by general civil courts established under the general law, does not alter their classification as civil matters nor does it change the nature of the civil rights or obligations involved.--- If the term "Civil Court" in Section 2(c) of the Arbitration Act were interpreted to refer exclusively to civil courts of general jurisdiction, all civil matters

adjudicable by special courts under specific laws would fall outside the scope of the Arbitration Act. Such an interpretation would preclude applications for filing award or arbitration agreements in courts having special jurisdiction over the relevant matters, thereby frustrating the legislative intent and purpose of the Arbitration Act, which is to provide an alternative dispute resolution mechanism in civil matters. Section 2(c) of the Arbitration Act excludes from the definition of "Court" only one civil court of special jurisdiction, namely, the Small Cause Court, and no other civil court. Courts exercising civil jurisdiction in relation to specific matters, such as the Court established under the Companies Act, cannot be read into the exception clause of Section 2(c) of the Arbitration Act. Therefore, it is our considered view that the term "Civil Court" mentioned in Section 2(c) of the Arbitration Act does not refer exclusively to civil courts of general jurisdiction but also encompasses civil courts of special jurisdiction.

v) This conclusion aligns with the pro-arbitration bias firmly established in the enforcement of international arbitral awards, which, in our considered view, is equally applicable to domestic disputes. Where parties agree to take their disputes to arbitration, they expect the court to hold them to their bargain. It is underlined that the word "bias" used in the work "pro-arbitration bias" is not used in the negative or prejudicial sense. Instead, it reflects a judicial and a policy inclination towards supporting arbitration as a preferred method for resolving disputes. This tendency arises from recognizing arbitration's benefits, such as efficiency, flexibility and the ability to deliver tailored outcomes. Applying this pro-arbitration bias to domestic arbitration advances the overarching objectives of arbitration law, including efficiency, party autonomy and minimising judicial interference. Requiring a party to an arbitration agreement to first approach a civil court of general jurisdiction for enforcement of the arbitration agreement and then, if the arbitral proceedings fail, to revert to a civil court of special jurisdiction, introduces unnecessary delay, inconvenience and expense. Such a convoluted process undermines the purpose of arbitration as an expeditious and cost-effective mechanism for dispute resolution. Adopting a pro-arbitration bias in domestic disputes is also essential to addressing the challenges posed by the overwhelming backlog of cases in our judicial system, particularly at the level of courts of original jurisdiction (trial courts).

Conclusion:

i) See above analysis No. i

ii) A right to arbitrate can be enforced by a person who is not a party to the agreement but he/she derives the rights and title from the agreement.

iii) The award is to be filed in Company Bench of the High Court.

iv) See above analysis No. iv

v) See above analysis No. v

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2. **Supreme Court of Pakistan**
Noor Muhammad etc. v. The State
Jail Petition Nos.603/2017, 442/2019, 443/2019 & 444/2019
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah, Mr. Justice Malik Shahzad Ahmad Khan.
https://www.supremecourt.gov.pk/downloads_judgements/j.p._603_2017.pdf

Facts: Petitioner was tried in three separate FIRs. On conclusion of each trial, he was convicted and sentenced to imprisonments for several terms including life imprisonment. Feeling aggrieved, he filed appeals before High Court, which were dismissed by means of the impugned judgments, hence, these petitions for leave to appeal.

Issues: i) Whether sentences awarded to a convict can be directed to have run concurrently?
ii) In whose favor Courts are required to exercise discretion?

Analysis: i) Under Section 397 Cr.P.C., the Court has power to direct that the sentences awarded to the petitioner in the other FIRs shall run concurrently. In Mst. Shahista Bibi, this Court has held that the sentences of imprisonment or that of life imprisonment awarded at the same trial or in two different trials have to run concurrently.
ii) It is always expected that the Courts are required to exercise its discretion in favour of accused, especially in the cases of minors, unless the circumstances demand otherwise.

Conclusion: i) Court has power to direct that sentences awarded to a convict to have run concurrently.
ii) Courts are required to exercise discretion in favour of accused.

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3. **Supreme Court of Pakistan**
Mst. Anita Anam v. General Public and another
Civil Petition No. 256-Q of 2020
Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._256_q_2020.pdf

Facts: The facts of the case are that petitioner being unmarried eldest daughter of a deceased Government officer prayed for her share in the family pension. The petitioner challenged the dismissal of her application for lower fora, asserting her entitlement as per amended rules.

Issues: i) What is the purpose of the summary procedure under section 373 of the Succession Act,1925?
ii) Does the issuance of a succession certificate under the Succession Act,1925 constitute a final and conclusive determination of rights?
iii) When can a Court refuse to grant a succession certificate?
iv) Can successive applications for a succession certificate be filed under the

Succession Act, 1925?.

v) Whether the provisions of the code of Civil Procedure 1908 apply to matters governed by the Succession Act,1925?

vi) Does the eldest unmarried daughter of a deceased Government Officer have a right to draw family pension under the amended Blochistan civil services pension rules,1999?

Analysis: i) Section 373 of the Act provides a simplified procedure for the Trial Court to be followed, while granting or refusing to grant a certificate. The procedure is summary in nature, only to determine a prima facie entitlement of an applicant, to receive the property of a deceased and to distribute the same amongst all those, who are legally entitled to receive their respective share. The object of summary trial provided by the Act, is to shorten the course of trial in order to ensure that justice is delivered swiftly, so as to facilitate an applicant, in order to get a certificate at the earliest, without compromising on the principles of natural justice and fair trial.

(ii) The certificate is granted for a limited purpose and for a limited sphere, therefore, it is not a final and conclusive decision between the parties or those who are entitled to get their share from the left-over property of a deceased. The court is bound to decide the application by adopting a procedure provided by section 323 of the Act while granting a certificate to an applicant, provided he makes out a prima facie title to the subject matter of the certificate.

(iii) Where the Court considers that a question of title is involved which cannot be disposed summarily, on the basis of available material, it may refuse to grant a certificate and allow the parties to establish their right by filing a regular suit before a competent court of law.

(iv) A Judge is empowered to issue more than one certificates, as provided by sub-section (3) of section 372 and sub-sections (3) and (4) of section 373 of the Act. The Act place no limitation upon the right of the parties in filing more than one application, therefore, any decision made under Part-X upon any question of right between the parties, shall not bar the trial of the same or related question in any subsequent proceedings under this Act or in any suit or other proceedings between the same parties. The Act does not restrict a person from filing application in respect of a portion of claim which he omits while filing earlier application.

(v) What is to be underlined is that the provisions of CPC cannot be applied to the matters falling under the Act, in view of the fact that being a special law, a specific procedure is provided, therefore, the provisions of Order II, Rule 2 CPC do not attract in the matters under the Act. However, where the Act is silent on matters relating to procedure for the trial of the case, the procedure provided by the CPC may be adopted to regulate the proceedings.

(vi) After amendment in the Rules in the year 1999, an eldest unmarried daughter of a deceased Govt. Officer is made entitled to draw her share in a monthly family pension, till her marriage. The Rules further provide that, in case, the eldest

daughter marries or dies, the next eldest unmarried daughter of the deceased will become entitled to draw her share out of the family pension, till her marriage.

Conclusion: i) The object of summary trial provided by the Act, is to shorten the course of trial in order to ensure that justice is delivered swiftly, so as to facilitate an applicant.
ii) It is not a final and conclusive decision between the parties or those who are entitled to get their share from the left-over property of a deceased.
iii) Where the Court considers that a question of title is involved which cannot be disposed summarily, it may refuse to grant a certificate.
Iv) See Analysis No.(iv).
v) Provisions of CPC cannot be applied to the matters falling under the Act.
vi) An eldest unmarried daughter of a deceased Govt. Officer is made entitled to draw her share in a monthly family pension, till her marriage.

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4. **Supreme Court of Pakistan**
Secretary to Government of the Punjab Law & Parliamentary Affairs Department, Lahore and another v. Ali Ahmad Khan
Civil Petition No.2330-L of 2019
Mr. Justice Amin-ud-Din Khan Mr. Justice Muhammad Ali Mazhar Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2330_l_2019.pdf

Facts: Disciplinary proceedings were initiated against a civil servant for willful absence, unauthorized foreign travel, and submission of a fabricated medical certificate. The department-imposed penalty of reduction to a lower post, from Deputy District Attorney (BS-18) to Assistant District Attorney (BS-17), for a period of four years. This penalty was overturned by the Service Tribunal on appeal, which was challenged in the Supreme Court.

Issues: i) Does the regularization of absence as extraordinary leave without pay nullify the misconduct charges and penalty imposed?
ii) Was the tribunal justified in deciding the matter without addressing the merits of the case?
iii) What is the standard for proving misconduct in departmental inquiries under service laws?
iv) What is the scope of a Service Tribunal's authority in altering penalties imposed by the competent authority?

Analysis: i) If the act of willful absence or leave without sanction or travelling without the approval of ex-Pakistan leave is treated lightly, it will become a hobby for willful absentees rather than an act of misconduct. Thus, merely treating the period of absence without pay in cases where punishments are imposed by the competent authority other than dismissal/removal from service neither exonerate the respondent from the charge of misconduct nor the act of misconduct is vanished on this count alone.
ii) No doubt, a lawsuit is bound to collapse when there is no rational basis on

which the claim could succeed. A case deems to have been decided on the merits when the decision or order is founded on fundamental issues, with due consideration of the defence, and the probability and preponderance of evidence, both oral and documentary… We are at loss to understand how the learned Tribunal decided the matter without touching upon the merits of the case and why it did not, after considering the merits, decide the appeal, which was its prime duty under the law.
iii) In service appeals challenging minor or major penalties imposed upon the civil servants, the core issue is to evaluate the gravity of charges and the proof of the guilt of the delinquent during the inquiry, but without adverting to the inquiry proceedings and report, it would not be possible for the learned Tribunal to reach a just and proper conclusion.
iv) A meticulous and assiduous reading of the Service Tribunal Acts, both Federal and Provincial, unequivocally shows that the Service Tribunal is empowered to confirm, set aside, vary, or modify the order appealed against, and for the purpose of deciding any appeal, it is also deemed to be a Civil Court with the same powers as those vested in the Code of Civil Procedure, 1908. However, the award of appropriate punishment under the law is primarily the function of the concerned administrative authority and the role of the Tribunal/Court is secondary.

Conclusion: i) The regularization of absence does not nullify the misconduct charges or penalty imposed.
ii) The tribunal was not justified in deciding the matter without addressing the merits of the case.
iii) The tribunal must evaluate the inquiry proceedings and report to reach a just and proper conclusion in service appeals.
iv) The primary function of awarding punishment lies with the administrative authority, while the tribunal's role is secondary.

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5. **Supreme Court of Pakistan**
Gul Zarif Khan and others v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others.
Civil Petitions No.1925 to 2006 of 2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1925_2024.pdf

Facts: The petitioners, working under the provincial Special Education Department, claimed Health Allowance parity with devolved employees, transferred under the 18th Amendment. Despite the allowance being reinstated for devolved employees through judicial directives and subsequent notification, the petitioners appeals for similar benefits were dismissed by the Service Tribunal.

Issues: i) What was the purpose of enacting the Health Personnel Scheme Ordinance, 2011?
ii) What is the definition of "health personnel" under Section 2(b) of the Health Personnel Scheme Ordinance, 2011 and who is excluded from such definition?

iii) What is the objective of the Health Personnel Scheme as outlined in Section 4 of the Ordinance?
iv) What were the legal consequences of stopping the payment of Health Allowance to health service institutions?
v) What conditions must be met for classification of persons to satisfy the standards of intelligible differentia and fairness?
vi) What are the limits and grounds for judicial review of decisions or actions taken by a public body?

Analysis: i) Health Personnel Scheme Ordinance, 2011 ("Ordinance"), was enacted to regulate the appointment to and the terms and conditions of the services of health personnel and was made applicable to all health personnel, serving in the Federal health institutions and related organizations under the Federal Government of Pakistan.
ii) According to Section 2 (Definitions Clause) (b) of the Ordinance, "health personnel" means a person who holds a post in any institute or organization delivering services in the health sector and is included in Schedule-I, but does not include (i) a person who is on deputation to the Federal Government from any Province or other authority; (ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies.
iii) Section 4 of the Ordinance delineates the objective of the Scheme according to which career growth of health professionals has been linked with enhancement in professional education and skills through trainings, continuing education, higher qualifications, professional experience, research papers and performance, as per prescribed criteria, laid down by the relevant regulatory bodies from time to time, where applicable.
iv) The Prime Minister of Pakistan had approved the payment of Health Allowance to the institutions providing Health Services equal to one basic pay of salary. However, when this payment was stopped for certain reasons, litigation ensued, which was ultimately resolved vide judgment dated 17.01.2018 passed by the Supreme Court of Pakistan in the case of Federation of Pakistan through Secretary Capital Administration and Development Division, Islamabad and others Vs. Nusrat Tahir and others (2018 PLC (CS) 669).
v) Persons may be classified into groups and such groups may be treated differently if there is a reasonable basis for such difference. At the same time, the principle of equality does not imply or connote that every law must have universal application to all class of persons. In fact, the oscillating or wavering needs of dissimilar sets of persons, which may have little in common, can be treated differently on logical perspicacity. However, for such classification to meet the standards of fairness, the self-actualization of two vital constituents must be fulfilled. First, the classification must be founded on an intelligible differentia which may judiciously distinguish persons or things that are grouped together from others left out of the group, and second, the differentia must have a logical and sensible nexus with the object sought to be achieved.

vi) Under the sphere of judicial review, the Court may review the lawfulness of a decision or action made by a public body. The Court may invalidate laws, acts, and governmental actions that are incompatible with a higher authority. Though the power of judicial review of a governmental policy is now well-settled, in which neither the court can act or represent as an appellate authority with the aim of scrutinizing the rightness or aptness of a policy nor may it act as an advisor to the executives on matters of policy which they are entitled to formulate, but this can be sought when a decision-maker fails to observe statutory procedures, misdirects itself in law, exercises a power wrongly, improperly purports to exercise a power that it does not have, or the policy decision was so unreasonable that no reasonable authority could ever have come to it.

Conclusion: i) Health Personnel Scheme Ordinance, 2011 ("Ordinance"), was enacted to regulate the appointment to and the terms and conditions of the services of health personnel.
ii) See above analysis No ii.
iii) See above analysis No iii.
iv)The matter was resolved vide judgment reported as 2018 PLC (CS) 669**.**
v) See above analysis No v.
vi) See above analysis No vi.

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6. Supreme Court of Pakistan
Sui Northern Gas Pipelines Ltd (SNGPL), Islamabad v. Ms S.K. Pvt. Limited and others Etc.
Civil Petitions No. 3589, 3590 & 3602/2022
Mr. Justice Muhammad Ali Mazhar & Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3589_2022.pdf

Facts: The respondents, being the consumer of SNGPL, filed suits before the Gas Utility Court alleging the bills issued to them were in sheer violation of the contract for supply of gas. Trial court rejected the plaint under Order VII Rule 11 of CPC observing that an alternate remedy is available to them. The appeals of respondents were allowed by the High Court, and matter was remanded to trial court to decide the suits on merits. Hence, two Civil Petitions for leave to appeal filed before the Hon'ble Supreme Court of Pakistan.

Issues: i) Whether under the Gas (Theft, Control & Recovery) Act, 2016 ("2016 Act") only the Gas Utility Companies can seek remedy for resolving the disputes regarding billing or metering?
ii) What kind of issues exclusively fall within the jurisdiction of the Gas Utility Court?
iii) Whether a provision in any law can be controlled, restricted or limited by a preamble?
iv) Whether the preamble can be relied upon solely to override the express provisions of the law without considering its pith and substance?

v) Whether Section 6 of "2016 Act" debars the consumer from directly invoking the jurisdiction of the Gas Utility Court?
vi) When two interpretations are plausible or achievable, which interpretation is to be preferred by the court?

Analysis: i) It is clear beyond any shadow of doubt that Section 6 of the 2016 Act provides both Gas Utility Companies and consumers with an equitable and expeditious remedy for filing a complaint or suit, as the case may be, for resolving disputes regarding billing or metering.
ii) Learned High Court, after a comprehensive discussion, rightly held that issues of overbilling, including overcharging of Gas Calorific Value (GCV), penalties, and estimated bills due to meter stoppage, fall within the scope of Section 6 of the 2016 Act. Therefore, the lawsuit was within the exclusive jurisdiction of the Gas Utility Court.
iii) A straightforward and uncomplicated provision in any law cannot be controlled, restrained, or limited by a narrow preamble.
iv) The preamble cannot be relied upon solely to expurgate or override the express provisions of the law without considering its pith and substance.
v) Section 6 of the 2016 Act neither imposes such an embargo nor debars the consumer from directly invoking the jurisdiction of the Gas Utility Court.
vi) Whenever two interpretations are plausible or achievable, the Court ought to prefer the interpretation that expands the remedy and represses the mischief.

Conclusion: i) No. The remedy for filing a complaint or suit is available for both Gas Utility Companies and consumers.
ii) See above analysis No.ii.
iii) No. It cannot be controlled.
iv) See above analysis No.iv.
v) No. It does not bar.
vi) See above analysis No.vi

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7. **Supreme Court of Pakistan**
Ghous Baksh v. The State
Criminal Appeal No. 294 of 2020
Mr. Justice Jamal Khan Mandokhail, Ms. Justice Musarrat Hilali, Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._294_2020.pdf

Facts: The appellant was tried by trial court on the charge of committing murders and was convicted under Section 302(b) PPC. He preferred appeal, High Court upheld the conviction and sentence awarded by the Trial Court. Hence, this appeal. petition.

Issues: i)Whether mere retraction of an earlier statement by a witness automatically render him/her hostile?
ii)Whether Hostility and Retraction are two different concepts?

iii)Can conviction be sustained when report is obtained on sending the crime empties together with the weapon of offence?
iv) What is the legal principle/rule with regard to chain of circumstantial evidence not proved?

Analysis: i) It is well-established that mere retraction of an earlier statement by a witness does not automatically render him/her hostile.
ii) Hostility and Retraction are two different concepts. Hostility, in legal terms, refers to a deliberate intent to deviate from the truth or act against the interests of the party calling the witness whereas 'Retraction' refers to the act of withdrawing or taking back a statement, testimony, or accusation^ often due to its inaccuracy, falsity, or unreliability.
iii) In the case titled Sarfraz and another v. The State (2023 SCMR 670) wherein it was held that "sending the crime empties together with the weapon of offence is not a safe way to sustain conviction of the accused and it smacks of foul play on the part of the Investigating Officer simply for the reason that till recovery of weapon, he kept the empties with him for no justifiable reason".
iv) It is a well-established principle that circumstantial evidence must form a complete chain. excluding every hypothesis other than the guilt of the accused.

Conclusion: i) Mere retraction of an earlier statement by a witness does not automatically render him/ her hostile.
ii) See above analysis No.ii
iii) Conviction cannot be sustained when report is obtained on sending the crime empties together with weapon.
iv) See above analysis No. vi

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8. **Supreme Court of Pakistan.**
Ali Madad Jattak v. Mir Muhammad Usman Pirkani and others
Civil Appeal NO.1349 OF 2024
Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1349_2024.pdf

Facts: The appellant preferred this appeal against the judgment of the learned Election Tribunal Balochistan, whereby, the petition filed by the Respondent No.1 is allowed and notification declaring the appellant as Returned Candidate is set aside.

Issues: i) What are the requirements of filing Election Petition under section 139/142 of the Election Act, 2017?
ii) What are the powers and procedure to be adopted by the Election Tribunals?
iii) Whether the adherence to procedure provided under CPC as well as under the QSO could be relaxed?
iv) Whether compliance of legal procedure of 'Formal Exhibition' is absolute?

v) Whether absence of formal exhibit marking upon a document makes it irrelevant?

Analysis: i) Within the prescribed time alongwith requisite receipt of amount paid as security for the costs of the petition…Perusal of the memo of petition further reveals that specific allegations and detail of rigging of election, manipulation and tampering in Form45 have been made by the Respondent No.1 while filing the subject election petition before the Election Tribunal, in the memo of petition which is duly verified on Oath before the Oath Commissioner whereas, all the evidence and documents including duly sworn affidavits of Respondent No.1 alongwith fourteen (14) witnesses were also attached, whereas, list of witnesses and list of documents was also provided.

ii) The Election Act, 2017, empowers Election Tribunals with the same powers as of a civil court under the Civil Procedure Code (CPC). Sections 139-144 of the Act specifically deal with the Tribunal's powers regarding taking of evidence, the manner in which the proceedings are to be conducted by the Election Tribunal and the necessity of compliance with the procedural norms.

iii) The Election Tribunal, while exercising the powers of a Civil Court, has to adopt the procedure as provided under CPC as well as under the Qanun-e-Shahadat Order, 1984 when recording evidence, however, in appropriate cases, stricto sensu adherence or compliance can be relaxed, provided the purpose is served, and fair opportunity is provided to the parties to the litigation while confronting with the material and the documents being relied upon by either party. The Qanun-e-Shahadat Order governs the admissibility of evidence in Pakistan.

iv) It may be observed that in case of substantial compliance of legal procedure, the formal exhibition requirement is not absolute and can be relaxed under certain circumstances, particularly, in election matter pending before the Election Tribunal, which can adopt any course of action to regulate its proceeding instead of following the technicalities of CPC, except such provisions specifically made applicable for limited purposes.

v) When the question of admissibility of document arises in a court, the court focuses solely on the relevance of the document and if it has met the legal requirements laid down in Qanun-e-Shahadat Order or it follows the evidentiary law of Pakistan. The formal exhibition of a document solely doesn't' guarantee its proof or admissibility. Similarly, the absence of a formal exhibit marking doesn't necessarily mean that the document cannot be considered as evidence, provided other evidentiary requirements are met.

Conclusion: i) Election petition u/s 139/142 of the Election Act, 2017 must be within prescribed time, receipt of amount paid as security for costs of petition must be accompanied. It should also contain specific allegations and details of rigging, verification on oath before the Oath Commissioner and affidavits of witnesses' alongwith list of witnesses and documents attached.

ii) Election Tribunals are invested with the same powers as of a civil court under the CPC.
iii) See above analysis (iii).
iv) The compliance of legal procedure of 'Formal Exhibition' is not absolute and can be relaxed under certain circumstances.
v) The absence of a formal exhibit marking doesn't necessarily mean that the document cannot be considered as evidence.

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9. **Supreme Court of Pakistan**
Abdul khaliq v. The state
Jail Petition No.441 of 2019
Mr. Justice Sardar Tariq Masood, Mr. justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/j.p._441_2019.pdf

Facts: Petitioner was convicted by Additional District Magistrate / Assistant Political Agent under section 121-A of the PPC and Regultion 11/40 of the FCR. The petitioner being aggrieved assailed his conviction through writ petition before High Court which was disposed of with permission to file appeal. Petitioner filed appeal under section 408 of Cr.P.C. which got dismissed. Hence, leave to appeal before Supreme Court of Pakistan.

Issues: i). Whether constitutional jurisdiction of High Court can be invoked against conviction under Regulation 11/40 of the FCR without availing remedies provided under the statute?
ii) Can High Court assume appellate jurisdiction when right of appeal is not provided by the statute?
iii) Whether High Courts and Supreme Court of Pakistan have jurisdiction to examine orders passed by authorities, under FCR, prior to omission of Article 247 of the Constitution?

Analysis: i) It is by now well settled that where a particular statute/law provides a self-contained mechanism and well defined forum of redressal for the determination of questions of law or facts by way of an appeal or revision to another authority or Tribunal as the case may be, the same has to be followed being the remedy provided under the law. The petitioner without exhausting such remedies cannot be allowed to invoke the constitutional jurisdiction of the High Court. Furthermore, the writ jurisdiction of the High Court cannot be exploited as the sole solution when there are equally effective and adequate alternate remedies provided under the law, these cannot be bypassed to invoke the writ jurisdiction. Even otherwise, the extraordinary jurisdiction of the High Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court…It is, however, true that in certain cases, resort to the Constitutional jurisdiction of the High Court instead of availing the remedy provided under the statute may be justified, but no such material is available on record of this case for ignoring the remedy provided under the FCR.

ii) The right of appeal has always been held to be a statutory right. The judgment in Reference No.l-P/2019, as argued, is not before us nor, it has been argued and established that the law point involved in the Reference was similar to the one involved in this case. When the law has not provided any right of appeal before the High Court then the High Court itself cannot assume the said jurisdiction. If such a jurisdiction is exercised, then that would be nothing but nullity in the eye of law and coram non judice. Hence, no basis for interfering with the impugned judgment of the High Court arises.
iii) Coming to the other important plea of the petitioner that this Court as well as the High Court now has the jurisdiction to examine the vires or legality of the order passed by the authorities under the FCR on the grounds that Article 247, which bars their jurisdiction, had been omitted through the Constitution (Twenty-fifth Amendment) Act, 2018 (the Constitution Amendment). This stance of the petitioner is not legally tenable. This is because the order against the petitioner was passed by the FATA Tribunal on 05.04.2017, whereas the Amendment Act received the assent of the President on 31.05.2018 and was published in the Gazette of Pakistan on 05.06.2018, approximately more than a year after the order dated 24.08.2017 of the Additional District Magistrate/Assistant Political Agent, Central Kurram, Sadda. A retrospective effect cannot be given to this Constitutional Amendment, nor was there any such intention by the legislature. Otherwise, matters decided prior to this Constitutional Amendment would also need to be reviewed by the Constitutional Courts, which would open floodgate to any case, at the time when the order against the petitioner was made. The Article 247 was very much in the field and the jurisdiction of the High Court was barred in matters exclusively dealt with by the FATA hierarchy, which had attained finality and were correctly upheld by the High Court in the impugned judgment.

Conclusion: i) See above analysis (i)
ii) High Court itself cannot assume appellate jurisdiction when not provided by statute.
iii) Orders passed by FATA hierarchy, prior to omission of Article 247 of the Constitution, have attained finality and cannot be reviewed by constitutional courts.

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10. **Supreme Court of Pakistan**
Usman Ghani @ Ghani Mula Sangeen v. The State.
Jail Petition No. 375 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/j.p._375_2019.pdf

Facts: The petitioner, convicted and sentenced under the Frontier Crimes Regulations (FCR) for involvement in anti-state activities. The petitioner exhausted all remedies provided under the FCR framework up to the FATA Tribunal. The High Court dismissed the subsequent writ petition under Article 199, leading to the instant jail petition before the Supreme Court.

Issues: i) Does Article 247(7) of the Constitution bar the jurisdiction of the High Court or Supreme Court over disputes arising from tribal areas?
ii) Under what circumstances can the jurisdiction of the High Court or Supreme Court be invoked despite the bar under Article 247(7) of the Constitution?

Analysis: i) The combined effect of the above provisions of the Constitution is that in relation to the matters through Tribal Areas, the jurisdiction of both the High Court and this Court is excluded, regardless of the fact that, whether the grievance brought before this Court pertains to violation of the fundamental rights or any other law. The bar of jurisdiction of this Court in terms of Article 247(7) of the Constitution will be applicable where cause of action and subject matter of dispute is in the Tribal Area and the parties to the dispute are also residents of the Tribal Area.
ii) From the above law, as laid down by this Court, the following inter alia, are circumstances under which the jurisdiction of this Court and that of the High Court will not be barred under Article 247(7) of the Constitution rather the same will be available to be exercised under Article 184 and Article 199 of the Constitution.
(i) Where the location of the corpus in dispute is situated in the territory outside the Tribal Area;
(ii) Where the parties to the dispute have their residence outside the Tribal Area;
(iii) Where the cause of action has arisen outside the Tribal Area;
(iv) Where the offence has taken place outside the Tribal Area;
(v) Where the arrest is made or sought to be made outside the Tribal Area;
(vi) Where effective action or step is taken or performed outside the Tribal Area"

Conclusion: i) The jurisdiction of both the High Court and this Court is excluded in relation to matters through Tribal Areas, regardless of the nature of the grievance, under Article 247(7) of the Constitution
ii) The jurisdiction of Supreme Court and that of the High Court will not be barred under Article 247(7) of the Constitution where the dispute or its elements arise outside the Tribal Areas, as outlined in the enumerated exceptions.

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11. **Lahore High Court Lahore**
Muhammad Rizwan Ahmed alias Bablo v. The State
Criminal Appeal No. 631 of 2022
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2024LHC6145.pdf

Facts: By way of filing criminal appeal, appellant challenged the judgment passed by the learned Additional Sessions Judge in connection with case FIR registered for offence under Section 9(c) of Control of Narcotic Substances Act, (CNSA) 1997, whereby he was convicted under Section 9(c) of the Act ibid.

Issue: i) Whether a conviction under section 9(c) of CNSA, 1997 can be sustained if the

charge fails to specify the kind and quantity of the alleged recovered narcotic?
ii) What would be the impact of failure to medically examine the accused or gather evidence to substantiate the allegations made in the FIR regarding the use of narcotics and its selling/ buying?
iii) Whether the proper protocols should be followed in the chain of custody and documentation of the recovered narcotics?
iv) What level of scrutiny is required in evaluating evidence in cases carrying harsh sentences under CNSA, 1997?
v) What standard of proof must be met by the prosecution, and how does the principle of benefit of doubt apply?

Analysis: i) The Control of Narcotic Substances Act, 1997, is a special law that per the kind and quantity of narcotic provides the quantum of sentence separately. Hence, this law requires that the charge must carry specific kind and quantity of narcotic recovered and if it is bereft of the same, conviction and sentence of the accused against the quantity given by the witnesses in their statements would not be justified at all.
ii) The appellant as per contents of the crime report disclosed that he uses 'charas' and also supplies the same to the big dealers in different districts of the Punjab but surprisingly neither the appellant was got medico legally examined nor his blood test was got conducted. It is also relevant to mention here that no intended buyer at the place of recovery, the appellant allegedly was waiting for, could be arrested and even it was not attempted by the complainant and no disclosure regarding dealers in other districts of the Punjab could be obtained from the appellant during his physical custody. It is also to be noticed that without further investigation, the Investigation Officer got him sent to the judicial custody on 26.08.2021 i.e. very next day of his arrest. He even did not bother to know about and to associate the dealer to whom the appellant had already supplied the contraband against the "Wattak" amount of Rs.120,000/- recovered from him during body search.
iii) It has straightaway been observed that the case against the appellant as alleged in the charge is that he was nabbed by the raiding party headed by the complainant when sitting in a car in possession of 94-packets of 'charas' besides ''Wattak'' amount of Rs.120,000/- but weight of the contraband even separation of narcotic for samples, their weight or preparation of parcels thereof and details of the car are not mentioned therein.(…) complainant (PW.4) as well as the recovery witness Muhammad Irfan Nazir, SI (PW.6) during cross examination concedes that complainant (PW.4) Rehan Nadeem, ASI convened a press conference at the police station on the day of recovery wherein none from the police party who captured the contraband and the accused/appellant except the complainant was visible in the photograph of press conference. In the said picture admittedly parcels of contraband are visible lying on the table in large number. The recovery witnesses in this regard are discrepant as according to PW.4 & PW.6 press conference took place at police station on 25.08.2021 but PW.5 denies the press conference on 25.08.2021. He and PW.6 however, stated that

immediately on return to the police station, the Investigation Officer (PW.7) deposited the case property with the Moharrar Muhammad Sadique (PW.3) and it was placed in 'Malkhana' thereafter. How and when the complainant received back the case property in absence of other members of the raiding party and how and when he deposited the same back to 'Malkhana' is a fact that has not been explained by any of the witnesses as the prosecution case is silent in this regard. The Investigation Officer (PW.7) during his cross examination has categorically stated that he never returned the parcels to the complainant after receiving the same from him. He also stated voluntarily that soon after bringing the parcels of contraband he got them deposited in Malkhana of Police Station and never produced before the DPO or any court.

iv) Harsh sentences carried by the relevant penal provisions of Control of Narcotic Substances Act, 1997, require strict scrutiny of evidence produced against the accused

v) It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him.(…) utmost care should be taken by the Court in convicting an accused.

Conclusion: i) Charges must specify narcotics' type and quantity; otherwise conviction is invalid.

ii) See above analysis No.ii.

iii) Procedural lapses and conflicting witness accounts cast doubt on the case.

iv) Severe penalties require strict evidence scrutiny.

v) Doubt entitles the accused to acquittal as a right.

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12. Lahore High Court
Awais Qarni v. The State and another
Criminal Appeal No.531/2020
Mr. Justcie Muhammad Amjad Rafiq, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC6320.pdf

Facts: The facts of the case that an individual was apprehended at a police checkpoint following the discovery of a large quantity of contraband concealed in a vehicle. The prosecution alleged recovery of the contraband from the vehicle's compartments, while the accused denied ownership, claiming to be an unaware passenger. The trial court convicted the accused. Hence; this criminal appeal.

Issues: i) What is the significance of maintaining the chain of custody and obtaining a positive forensic report in narcotics cases?

ii) What are the key factors for the admissibility of photographs as evidence in criminal trial?

iii) How does the Qanun-e-Shahadat Order, (QSO) 1984 define photographs as documentary evidence and what are the requirements for their authentication?
iv) What are the requirements for proving documents under QSO, 1984 and how are primary and secondary evidence distinguished?
v) What are the conditions and legal provisions under the QSO, 1984 for the admissibility and use of photographs as evidence in court?
vi) What are the limitations on using inadmissible photographs and derivative testimony under the QSO, 1984?
vii) What is the burden of proof required for the prosecution in criminal cases, particularly under the Control of Narcotic Substances Act (CNSA)?
viii) Can the prosecution rely on weaknesses in the defence to secure a conviction?

Analysis: i) In narcotics cases, the prosecution must corroborate the recovery witnesses' evidence with a positive forensic report from the government analyst, prepared in accordance with legal standards. It is also essential to ensure and demonstrate the safe custody of the case property and the secure transmission of sample parcels to the laboratory for chemical analysis. Any break in the chain of custody of sample parcels renders the forensic report inconsequential and wrings the prosecution's case.
ii) The admissibility of photographs as evidence depends on two key factors: relevance and authenticity. Relevance refers to the logical connection between the evidence and the facts at issue in the case.(…) Authentication can be established through various means, including circumstantial proof.(…) Authentication and relevance are intertwined.3 A document that cannot be authenticated lacks relevance (unless adduced as bogus). (…)if the photograph presented in court is an original print or created through a uniform process (e.g., digital copies from a camera), it qualifies as primary evidence and can be directly admitted.
iii) In Pakistan, the Qanun-e-Shahadat 1984 (QSO) is the primary law on evidence, which mirrors many of the principles found in common law jurisdictions. According to Article (2)(1)(b) of the QSO, "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, to record that matter. The illustrations in Article 2(1)(b) explain that words printed, lithographed, or photographed are considered as documents. Thus, a photograph falls within the aforesaid definition of "document". 7 Photographs are treated as documentary evidence under Article 2(c). Article 78 requires that documentary evidence, including photographs, be authenticated.
iv) Article 72 of the QSO stipulates that the contents of documents may be proved by primary or secondary evidence. Article 73 explains that primary evidence means the document itself produced for the court's inspection. Explanation 2 to Article 73 reads: "Where a number of documents are all made by one uniform process as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest, but where they are all copies of a common

original, they are not primary evidence of the contents of the original." Article 74 explains "secondary evidence". Article 75 mandates that documents must be proved by primary evidence, while Article 76 outlines the situations in which court may allow secondary evidence relating to a document. Article 78 of the QSO requires that documentary evidence, including photographs, be authenticated.

v) Article 164 of the QSO provides that the court may allow the production of any evidence that becomes available through modern devices or techniques. Digital photographs and electronic evidence are admissible under this provision if their authenticity is established through witness testimony or expert evidence. (…)Articles 70 and 71 permit a witness to testify about matters within their knowledge or perception. If the witness identifies the scene depicted in the photograph and their testimony aligns with their observations, their statements are admissible as direct evidence. Article 139 further allows the defence counsel to use the photograph to challenge the credibility of witnesses by comparing their statements during cross-examination with the scene shown in the photograph. If admitted, the photograph serves as substantive evidence, and Article 140 becomes relevant if it is used to refresh the witnesses' memory. Article 151(3) further allows scrutiny of the witnesses' credibility if inconsistencies or contradictions arise concerning the photograph. In short, when the photograph is authenticated and meets the admissibility requirements, subsequent statements of the witnesses, reflecting their personal knowledge, are valid and admissible.

vi) Conversely, a different analysis applies if the photograph is inadmissible because it fails to qualify as primary evidence or lacks proper authentication as secondary evidence. Article 70 of the QSO mandates that all facts, except the contents of documents, may be proved by oral evidence, while Article 71 requires that oral evidence must be direct. This restricts a witness to testifying only about facts they have directly perceived. Observations made after being shown an inadmissible photograph do not meet this standard. In such a scenario, the application of Article 139 is limited, as a party cannot contradict a witness using inadmissible material. Similarly, Article 140 becomes irrelevant because an inadmissible photograph cannot serve to refresh memory. While Article 151(3) allows for impeaching the credibility of a witness, the defence cannot rely on inadmissible evidence for this purpose. Accordingly, the court must disregard the photograph and any derivative testimony based on it because admitting such statements would violate the principles of evidentiary integrity.

vii) It is a fundamental principle of law that the prosecution must establish its case beyond a reasonable doubt, and any doubt must benefit the accused.9 This high standard upholds the presumption of innocence and guards against wrongful convictions. (…)The guiding principle for the safe administration of criminal justice is that the more severe the punishment, the higher the standard of proof required for conviction.

viii) It is a cardinal principle of law that the prosecution must stand on its own legs and cannot rely on weaknesses in the defence case to secure a conviction.

Conclusion: i) Chain of custody and a positive forensic report are crucial in narcotics cases.
ii) Photographs must be relevant and authenticated to be admissible.
iii) Photographs are documents requiring authentication under QSO.
iv) Primary evidence is preferred; secondary evidence requires justification.
v) See analysis No.v.
vi) See analysis No.vi.
vii) Prosecution must prove its case beyond reasonable doubt.
viii) Prosecution cannot rely on weaknesses of defence for conviction.

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13. **Lahore High Court, Lahore**
Hamna Fahad vs. CCPO, Lahore etc.
Writ Petition No. 89 of 2025
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2025LHC1.pdf

Facts: Through this constitutional petition, the petitioner seeks recovery of her daughter and son Ismail Fahad from alleged illegal and improper custody of father and paternal uncle of the detenues.

Issues: i) Does the High Court have jurisdiction to alter the interim custody of the minors when the matter is already pending before the Guardian Court?
ii)Are habeas corpus proceedings appropriate for determining complex disputes about the custody of minors?

Analysis: i)…..this Court is in constitutional jurisdiction although has jurisdiction to handover temporary custody to anyone of the parent by directing the other to seek remedy before the Guardian Court, yet as matter is already pending before the Guardian Court, this Court is not inclined to declare that the minors had been snatched forcibly by anyone of the parent from the other or custody of said parent as illegal and improper which requires determination of disputed facts not permissible in the Constitutional jurisdiction of this Court, lest it may prejudice rights of the parties before the Guardian Court where proceedings for custody of minors are pending,…
ii)….habeas corpus proceedings by the very nature and purport are summary in character and neither controversies are tried nor entire evidence is recorded under ordinary substantive and procedural laws under civil and criminal jurisdiction and such a jurisdiction being extraordinary in its very nature should be sparingly used because the plenary jurisdiction in the matter rests under other laws in other forums of special jurisdiction who should normally be allowed to exercise it in accordance with law. Reliance in this behalf may be placed on the judgments reported as Muhammad Rafique v. Muhammad Ghafoor (PLD 1972 S.C. 06) and PLD 1997 S.C. 852 (Supra)….

Conclusion: i) In case of pendency of matter before guardian court, the High Court does not inclined to interfere into proceedings of the Guardian Court.

ii) The habeas corpus proceedings are summary in nature and neither controversies are tried nor evidence is recorded.

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14. **Lahore High Court**
Muhammad Qaswar Hussain v. Judicial Magistrate Section, 30, Multan and others
ICA No. 292 of 2024
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC6109.pdf

Facts: This Intra Court Appeal (ICA) is against the dismissal of a constitutional petition challenging a magistrate's decision to discharge an accused based on a report by an Investigating Officer from whom investigation has been transferred. The appellant also contested the initiation of proceedings against him under section 182 Pakistan Penal Code (PPC) while his private complaint on the same matter is pending.

Issues: i) Can proceedings under Section 182 PPC initiated during a pending complaint on the same subject matter?
ii) Can police reinvestigate after a discharge order?

Analysis: i) in judgments reported "M.J.A. Gazdar Vs. The State" (1989 MLD 1694), "Ashfaq Ali Vs. The State" (PLD 1975 Karachi 87) and "Muhammad Murad Vs. The State" (1983 P.Cr.L.J. 1097) wherein it is provided that during pendency of complaint case, proceedings under Section 182 P.P.C. in a criminal case relating to same subject matter cannot be initiated,
ii) It is important to note here that in view of the principles laid down in judgments reported as "Mian Muhammad Asif Vs. S.S.P. Operation, Lahore and 02 others" (2010 YLR 944), "Habib Ur Rehman and others Vs. The State" (1999 MLD 860), "Ashiq Hussain Vs. Sessions Judge, Lodhran and 3 others" (PLD 2001 Lahore 271) and "Muzafar Ahmad Vs. The State and 02 others" (2021 P.Cr.L.J. 1393) despite discharge order police authorities may reinvestigate the matter.

Conclusion: i) Section 182 PPC proceedings cannot be during pending complaints.
ii) Police authorities may reinvestigate a matter even after a discharge order.

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15. **Lahore High Court**
Miraj Zubair. v. RPO, etc.
W.P. No. 485 of 2025
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2025LHC29.pdf

Facts: This Writ Petition of Habeas Corpus is filed for the recovery of detenue statedly in illegal and unlawful confinement of SHO.

Issues: i) Whether the High Court is competent to convert one Habeas Corpus petition proceedings into a bail petition?

Analysis: i) Needless to mention that this Court is competent to convert one type of proceedings into another type of proceedings which power also includes conversion of habeas corpus petition into bail application where court while dealing the habeas corpus petition came to the conclusion that detention of a person required justification and/or such detention was found to be illegal and unauthorized or had been effected on the ground of suspicion only.

Conclusion: i) Court is competent to convert one type of proceedings into another type of proceedings which power also includes conversion of habeas corpus petition into bail application.

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16. **Lahore High Court**
M/s. Gulistan Power Generation Limited & 3 others v. The Bank of Punjab & 2 others
RFA No.872/2016
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5250.pdf

Facts: The case pertains to a dispute over principal borrower and guarantor. The respondent/bank contended that guarantee is a continuing guarantee and same is enforceable. The appellants contested their liability as a guarantor on the ground that subsequent finance renewal agreements did not mention their guarantees.

Issues: i) Does the non-mentioning of personal guarantee in subsequent finance renewal agreements discharge the guarantors from their obligations?
ii) When an application for leave to defend under section 10 of Financial Institutions (Recovery of Finances) Ordinance, 2001 be dismissed as not raising substantial questions of law or fact?

Analysis: i) Although learned Single Judge in Chambers has referred to the continuing guarantees of appellant Nos. 3 and 4 issued between 14.07.2003 to 01.07.2008 against renewals of finance facility but the said judgment is silent as to the effect of renewal agreements dated 01.07.2009 onwards, which only refer to continuing guarantee of appellant No.2 but not to the guarantees issued by appellant Nos. 3 and 4. Even the Plaint is silent to that effect, which only refers to personal guarantees of the appellant Nos. 3 and 4 up to the renewal of agreement for the years 2007-08. The effect of the afore-referred non- mentioning of the personal guarantees of the appellant Nos. 3 and 4 was required to be determined while passing the impugned judgment, which is not forthcoming on the record, therefore, the said appellants were at least entitled for granting leave to defend to establish that their guarantees had been discharged.
ii) So far as contentions of other appellants are concerned, learned Single Judge in Chambers has properly appreciated the controversy and rightly dismissed their

applications for leave to defend as no substantial question of law and facts requiring recording of evidence has been raised and application for leave to defend was not in consonance with the provisions of Section 10 (3, 4 and 5) of the Ordinance and was rightly refused.

Conclusion: i) See analysis No.i.
ii) 'See analysis No.ii.

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17. **Lahore High Court**
Muhammad Imran v. The State and another
Criminal Appeal No.628 of 2022
Mr. Justice Ch. Abdul Aziz, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC6112.pdf

Facts: Appellant challenged his conviction and sentence passed by learned Sessions Judge/Judge Special Court (CNS), under Section 9(c) of CNS Act 1997 to suffer rigorous imprisonment for life along with fine of Rs.50,00,000/- and in default whereof to further undergo simple imprisonment for 01-year, through this appeal.

Issues: i) What is the legal impact of dishonest improvements made by witnesses, upon the case of prosecution?
ii) What is the scope of contradictions in prosecution evidence?
iii) Whether incriminating articles recovered from the accused can be read in evidence if not produced and tendered in accordance with Rules & Orders of the Lahore High Court Lahore Volume-III, Chapter-24 Part-B?
iv) Whether Section 29 CNSA is a deviation from the general law wherein throughout a criminal trial, the burden of proving a case is upon the shoulders of prosecution?

Analysis: i) In a wrestle with the proposition, we came across observation of the Supreme Court of Pakistan given in case reported as Muhammad Arif v. The State (2019 SCMR 631) wherein it is held that the portion of deposition of a witness which is brought on record through dishonest improvement is destined to be discarded from consideration.
ii) The expression "contradiction" is wide in scope and brings within its compass all the legal omissions, shortcomings and lacunas, besides that is applicable in situations when the acceptance of deposition of one witness necessitates the rejection of another.
iii) For tendering in evidence, the articles having incriminating worth, guidelines are provided in the Rules & Orders of the Lahore High Court Lahore Volume-III, Chapter-24 Part-B. In the referred chapter the procedure is provided for bringing on record the articles and documents having nexus with the case.
iv) According to Section 29 though in the wake of recovery of some contraband substance a presumption adverse to the accused facing trial is to be marked but still prosecution cannot be absolved from obligation of proving its case beyond shadow of any doubt. The burden of Section 29 will tilt towards accused only if

the recovery of narcotics, its nexus with the accused along with origin as contraband substance is proved by the prosecution beyond shred of any ambiguity. The language of Section 29 is akin to the wordings of Section 8 of The Suppression of Terrorist Activities (Special Court) Act 1975, Section 9 of the Offences In Respect of Banks (Special Courts) Ordinance 1984 and Section 14 of the National Accountability Ordinance, 1999. All the afore-mentioned provisions came under judicial scrutiny and it was resolved by the courts that prosecution cannot be given leverage of not proving its case against the accused beyond any doubt and failure to discharge such obligation will culminate in judgment of acquittal.

Conclusion: i) See above analysis No.1.
ii) See above analysis No.2.
iii) The incriminating articles recovered from the accused if not produced and tendered in accordance with Rule 14-F & 14-H (ibid), thus cannot be read in evidence.
iv) Section 29 of CNSA is not a deviation from the general law throughout a criminal trial as the burden of proving a case is upon the shoulders of prosecution.

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18. **Lahore High Court**
Kousar Abbas alias v. The State
Criminal Revision No. 136 of 2021
Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2024LHC6266.pdf

Facts: The petitioner was convicted for stabbing and injuring the victim due to a dispute. The trial and appellate courts upheld the convictions, prompting this revision petition.

Issues: i) What is the definition of hypochondrium and its anatomical boundaries?
ii) What is the definition of a body cavity and its role in enclosing vital organs?
iii) What constitutes a Jaifah injury, and how does it relate to penetration into the body cavity and damage to internal organs?
iv) Does the non-examination of doctor as a witness and the admission of a photocopy of the Surgical Notes as evidence adversely affect the prosecution's case?

Analysis: i) It may be observed that in the Merriam- Webster Medical Dictionary, the hypochondrium is defined as "Either hypochondriac region of the body, located beneath the lower ribs and above the abdomen." whereas in Dorland's Medical Dictionary, "One of the two regions of the abdomen that lie on either side of the epigastrium and below the ribs." Generally the term hypochondrium has the following dictionary meanings: (1) Anatomical Context: Either of the two regions of the upper abdomen situated on each side of the epigastrium and beneath the lower ribs. (2) Etymological Context: Derived from the Greek words "hypo-"

(under) and "chondros" [cartilage, referring to the cartilage of the ribs]. The hypochondrium refers to an anatomical region of the human abdomen, located on either side of the upper abdomen, beneath the ribcage. It is divided into two parts i.e. the right hypochondrium which contains the liver [especially the right lobe], gallbladder, and part of the kidney and the left hypochondrium, contains the stomach, spleen, tail of the pancreas, part of the kidney, and parts of the colon respectively

ii) The body cavity, on the other hand has been defined in the Oxford English Dictionary as "A hollow space within the body that contains organs or other structures, such as the thoracic cavity or abdominal cavity." In Merriam-Webster Medical Dictionary:- "A cavity in an animal body, specifically the coelom, which is the main body cavity housing organs." And in Cambridge Dictionary:- "An opening into the human body, such as the mouth, anus, or similar spaces that house internal structures." Thus, the body cavity means a part of the body under which vital organs are located.

iii) An injury penetrating into the body cavity wherein the vital organs are located is treated as Jaifah. Further collateral damage or injury to the internal organs referred hereinabove inside the abdomen is sufficient to bring the case within the purview of Jaifah… injury No.2 i.e. “a stab wound 2 x 2 x deep going left side of abdomen in left hypochondrium”, clearly falls within the definition of Jaifah.

iv) The The non-examination of Dr. Omer Balouch as PW as well as non-production of the original Surgical Notes in evidence, therefore, have no adverse bearing upon the prosecution’s case, and the learned counsel for the petitioner can yield no fruit and draw any benefit on the strength of his argument that photocopy of the Surgical Notes has illegally been placed on record as Exh:PH. The reliance of the learned counsel for the petitioner on the case reported as “Pervaiz Khan versus The State”(PLD 1998 Lahore 84), being inapt in the facts and circumstances of instant case, does not advance the cause of the petitioner rather it affirms view of this court as discussed above.

Conclusion: i) The hypochondrium is a specific anatomical region located beneath the lower ribs and above the abdomen, with defined boundaries including organs like the liver, spleen, and stomach.

ii) A body cavity is a hollow space within the body that houses vital organs such as the thoracic or abdominal cavity.

iii) A Jaifah injury is characterised by penetration into the body cavity and causing damage to internal organs

iv) The unavailability of the operating doctor’s testimony and reliance on photocopied Surgical Notes do not adversely affect the prosecution’s case.

19. **Lahore High Court**
Muhammad Waqas Gill v. Rifat Awan, etc.
Mr. Justice Muhammad Waheed Khan
Cr.Revision No.1601 of 2022
https://sys.lhc.gov.pk/appjudgments/2024LHC6139.pdf

Facts: Judicial Magistrate Sec.30 convicted petitioner in complaint filed under Section 6(5)(b) of the Muslim Family Laws Ordinance, 1961 with allegation of contracting second marriage without permission from first wife and Arbitration Council. Criminal Appeal preferred by the convict and criminal Revision filed by the complainant were dismissed from Sessions Court and the judgment has been challenged by convict through Revision petition before Hon'ble High Court.

Issues: Whether Judicial Magistrate has jurisdiction for trial of complaint filed under section 6(5)(b) of the Muslim Family Laws Ordinance, 1961.

Analysis: Now, adverting to the moot point raised by learned counsel for the petitioner qua the jurisdiction of the learned Magistrate Sec-30, to entertain and decide the criminal complaint under the Ordinance. So, it would be in the fitness of things to reproduce the relevant provisions of section *5* of the West Pakistan Family Courts Act, 1964, which are as under**…** And through amendment in the_Punjab Family Court (Amendment)Act, 2015 (XI of 2015) dated 18.3.2015 a Family Court was given the power of the Judicial Magistrate 1st Class under the Cr.P.C.,1898 for the purpose of taking cognizance and trial of any offence under The Muslim Family Laws. The relevant amendments are reproduced as under…on going through sub-section (3)of the section 20 of the Act, there is hardly any cavil with the proposition that only a Family Court can take cognizance of the offence on the complaint of the Union Council, Arbitration Council or aggrieved party and obviously the respondent was the aggrieved party, however, I have to see whether the learned Judicial Magistrate was additionally given the powers of Judge Family Court or not…. Since on going through the above referred provision of Muslim Family Law, there is no cavil with the proposition that only the Family Courts have given the exclusive jurisdiction to entertain the issue and adjudicate upon the matters specified in [Part-1 of the schedule], so, the conducting of the trial by the learned Judicial Magistrate was certainly *corum non-Judice,* and a nullity, meaning thereby that very inception of the trial was not in accordance with law and it is trite that if a base of action was wrong, all superstructure raised thereon would have no sanctity under the law…In a recent pronouncement rendered by this Court in case of *"Muzaffar Nawaz v. Ishrat Rasool and others*" (2022 YLR 1920), this Court had set-aside that judgments of both the Courts below on the same point, that the learned Judicial Magistrate was not empowered to hold the trial under the "Ordinance".

Conclusion: Judicial Magistrate Section-30 has no jurisdiction to entertain complaint filed under the Muslim Family Laws ordinance, 1961.

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20. **Lahore High Court.**
Muhammad Arif and another v. Haji Khalid Mahmood (deceased) through L.Rs
C.R. No.45106 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC6286.pdf

Facts: A civil revision petition was filed challenging concurrent judgments by the trial and appellate courts decreeing specific performance of a sale agreement for immovable property. The petitioners contested the agreement's authenticity contending it was a security arrangement, not a sale agreement.

Issues: i) Can a party contest a sale agreement based on an unsubstantiated claim under the Qanun-e-Shahadat Order, 1984?
ii) Are oral statements admissible to contradict, vary, add or substract the terms of a written agreement?
iii) Under what circumstances can concurrent findings of fact by lower courts be interfered with in revisional jurisdiction?

Analysis: i) The case of the respondents was that petitioners entered into an agreement of sale in favour of deceased... The stance of petitioners was that in fact there was no sale agreement rather it was an agreement for investment in the business of the petitioners. The petitioners were unable to prove their counter-version in regard to document Ex.P1. Plea raised in the written statement about the nature of document as security appears to be afterthought and, as such, inadmissible and also impermissible as per Articles 102, 103 and 104 of the Qanun-e-Shahadat Order 1984.
ii) Article 102 contemplates that when the terms of a contract... have been reduced to the form of a document no evidence shall be given in proof of the terms... except the document itself or secondary evidence of its contents... Article 103... provides that the terms of any such contract... shall not be admitted as between the parties... for the purpose of contradicting, varying, adding, or subtracting from its terms.
iii) No misreading or non-reading of evidence or any material discrepancy therein could be highlighted in the course of hearing of the petition which could vitiate the findings of the courts below. No ground for interference could be made out in the concurrent findings of fact in the circumstances. Revision petition is devoid of substance and is dismissed.

Conclusion: i) A sale agreement cannot be contested based on an unsubstantiated claim under Articles 102, 103, and 104 of the Qanun-e-Shahadat Order, 1984.
ii) Oral statements cannot vary, add to, or contradict the terms of a written agreement.
iii) Concurrent findings by lower courts can only be interfered with if there is misreading, non-reading, or material discrepancy in the evidence.

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21. **Lahore High Court**
Sui Northern Gas Pipelines Limited v. Fazal Hussain (deceased) through L.Rs.
C.R. No.1169 of 2013
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC6297.pdf

Facts: Petitioner brought his suit with the stance that he was a consumer of petitioner utility company. While calculating bills, some error was detected and the suit amount was concluded to be due against the respondent. On failure to pay the said amount, gas supply was disconnected, which fact brought about accrual of cause of action and the instant suit was filed. After going through the procedural formalities, suit was dismissed which was affirmed in appeal, hence, the instant Civil Revision.

Issues: i) What is the legal fate of the judgment which is recorded without considering the evidence?
ii) What is the mandate of first appellate court while hearing appeal?
iii) What are the legal components of the "judgment" of the appellate Court?

Analysis: i) The judgment recorded without considering the evidence cannot be approved as it violates the provision of Rule 31 of Order XLI, C.P.C. which contemplates that the appellate court shall deliver the judgment in writing and shall state points for determination, the decision thereof and the reasons for the decision.
ii) The appellate court in first appeal is duty-bound to consider the case de novo for reaching a conclusion (…) In Punjab Industrial Development Board v. United Sugar Mills Limited (2007 SCMR 1394) it was observed to the effect that it is duty of the appellate court to decide the controversy between the parties after application of independent judicial mind and that mere reproduction of the judgment of trial court and thereafter dismissing the appeal could not be in consonance with the law and that after the insertion of section 24-A in the General Clauses Act, 1894, even the public functionaries are duty bound to decide the applications of citizens while exercising statutory powers with reasons after judicial application of mind
iii) In Abdul Hameed and 7 others v. Abdul Razzaq and 3 others (PLD 2008 Lah. 1) it was observed to the effect that the judgment of appellate court shall be error free, concise, consistent, coherent and comprehensible irrespective of the stylistic differences and that the principles, parameters and requirements of a judgment are that judgment should contain a concise statement of case, points for determination, decision thereon and reasons for such decision manifesting application of mind to resolve the issue involved which ought to be self-contained, unambiguous, easily intelligible, lucid, open only to one interpretation and thus leaving nothing to guesswork or probabilities on matters under determination and should also be self-speaking, well-reasoned and

analytical reflecting due consideration of facts, law and contentions of the parties founded on legal grounds and the evidence on record.

Conclusion: i) A judgment without having the attributes of Rule 31 of Order XLI, C.P.C., cannot be approved as judgment.
ii) The appellate court is invested with the legal duty firstly to consider the case de novo and secondly to decide the controversy after application of independent judicial mind.
iii) See above analysis No. iii

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22. **Lahore High Court**
Dost Muhammad (deceased) through L.Rs and others v. Muhammad Sarwar and others
Writ Petition No.48544/2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC6272.pdf

Facts: Respondents filed a suit for declaration claiming their Islamic share from the inheritance of their predecessor. In that suit an application for appointment of receiver under Order XL, Rule 1, C.P.C. was filed which was accepted by the trial Court and the same order was upheld by the Learned Appellate Court. The petitioners filed a constitutional petition challenging the same orders.

Issues: i) Under what provisions of law a receiver is appointed?
ii)What parameters should be kept in mind while exercising discretion for appointing a receiver?
iii) What principles protect the rights of a bona fide purchaser and co-sharer in property disputes while appointing a receiver?

Analysis: i) Rule 1 of Order XL, Code of Civil Procedure provides that where it appears to the court that it is just and convenient to appoint a receiver for preservation of property, the court can appoint a receiver.
ii) In the case of Sardar Wali Muhammad v. Sardar Muhammad Iqbal Khan Mokal and 7 others (PLD 1975 Lah.492) it was observed that appointment of Receiver was not a matter of course and that such discretion was to be exercised in accordance with principles enunciated by the superior courts which included the consideration that this power should be sparingly used, to safeguard the interest of all the parties as well as the property which is subject matter of the litigation and that possession of persons in bona fide occupation of the property should not be disturbed unless there are allegations of wastage or dissipation of property or apprehension of irreparable loss and injury.
iii) In (Shahzadi) Sharif Sultana v. (Brig. Shahzada) Sher Muhammad Jan and another [PLD 1958 (W.P.) Lah. 288] it was observed one of the principles to be kept in view while considering the application for appointment of Receiver was that bona fide occupant of property cannot be disturbed in the garb of

appointment of Receiver and that co-sharer in undivided property is entitled to retain the possession till such time the property is partitioned and specific share is allocated.

Conclusion: i) See above analysis No i.
ii) The discretion to appoint a receiver should be sparingly used, to safeguard the interest of all the parties as well as the property.
iii) See above analysis No iii.

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23. **Lahore High Court**
Muhammad Sarfraz etc. v. The State etc.
Crl. Misc. No.6425-M of 2024
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC6200.pdf

Facts: The facts of the case that petitioners are accused in a criminal case and subsequently acquitted by the trial court on their application. The complainant challenged this acquittal through a criminal revision petition, which was allowed by the appellate court, directing a retrial of the petitioners. Hence; this petition.

Issues: i) What remedy is provided under section 417 Criminal Procedure Code (Cr.P.C.) against an order of acquittal?
ii) Can revision proceedings be entertained under section 439(5) Cr.P.C. if an appeal lies?
iii) Is revision under section 439 Cr.P.C. allowed if appeal lies under section 417 Cr.P.C.?
iv) Does section 417(2-A) Cr.P.C. bar revision when appeal is available?

Analysis: i) It has been provided under section 417 Cr.P.C., that if an accused is acquitted in a case, a person aggrieved by the order of acquittal passed by any court other than a High Court may within 30 days file an appeal against such order and the Public Prosecutor may also present an appeal to the High Court from the order of acquittal passed by any court other than a High Court.
ii) It is also a fact that under section 439 sub-section (5) Cr.P.C., it has been expressly provided by law that where under the Cr.P.C., an appeal lies then no proceedings by way of revision shall be entertained at the instance of the party who could have appealed
iii) It does not matter whether the acquittal of an accused in a case has been ordered after the recording of evidence or without recording of evidence and as it is an acquittal in a case therefore an appeal has to be filed under section 417 Cr.P.C. . No proceedings by way of criminal revision petition under section 439 Cr.P.C. are envisaged in a case where accused has been acquitted by any court other than a High Court.
iv) After introduction of subsection (2-A) in section 417 of the Cr.P.C. any person aggrieved by an order of acquittal has been conferred a right to file an appeal against the acquittal. In presence of remedy by way of appeal, the revision is not

competent under section 439(5) of the Cr.P.C."

Conclusion: i) Section 417 Cr.P.C. allows an aggrieved person or Public Prosecutor to appeal an acquittal within 30 days, except for orders by the High Court.
ii) Section 439(5) Cr.P.C. prohibits revision proceedings when an appeal is available under the Code.
iii) Appeal under Section 417 Cr.P.C. are mandatory for acquittal, regardless of whether evidence was recorded, barring revision under Section 439 Cr.P.C.
iv) Section 417(2-A) Cr.P.C. ensures appeal rights, barring revision where appeal lies.

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24. **Lahore High Court**
Mst. Nadia alias Nadu Mai v. The State
Criminal Appeal No. 10-J of 2021
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC6207.pdf

Facts: The appellant was convicted by the trial court under Section 302(b) PPC for committing Qatl-i-Amd of her sister-in-law. The conviction was based on allegations that she manually strangled the deceased. This decision was challenged, claiming evidentiary inconsistencies and lack of independent corroboration.

Issues: i) Whether delayed recording of a witness statement under Section 161 Cr.P.C. diminishes its evidentiary value?
ii) Can chance witnesses be relied upon without independent corroboration of their presence at the scene of the crime?
iii) What is the impact of inconsistency between ocular testimony and medical evidence on the prosecution's case in a murder involving throttling?
iv) Whether the evidence of prosecution witnesses, disbelieved for the acquitted co-accused, can be accepted as credible against the other co-accused?
v) Whether the burden of proof shifts to the accused, and the onus lies on them to explain the circumstances of an unnatural death occurring in their house?

Analysis: i) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is a plausible explanation for such delay
ii) In this manner, both the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) can be validly termed as "*chance witnesses*" and therefore were under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same
iii) I have noted with serious anxiety that the ocular account of the occurrence as furnished by the prosecution witnesses namely Muhammad Bukhsh (PW-4) ,

Nasrullah (PW-5) and Muhammad Jalal (PW-12) is inconsistent with the medical evidence as furnished by Dr. Afroze Gul (PW-8) and flawed beyond mending, resulting in disfiguring the complexion of the whole prosecution case beyond reparation and recognition(…) Dr. Afroze Gul (PW-8), on examining the dead body of Kalsoom Mai (deceased) did not observe any marks of violence on the neck of the dead body of the deceased(…)As narrated above, had the deceased been throttled in the manner as stated by Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) and Muhammad Jalal (PW-12) then Dr. Afroze Gul (PW-8) must have observed the evidence of marks of pressure by the thumb and the fingertips, fingertip bruises, linear or crescentic marks produced by the fingernails, abrasions and bruises on the mouth, nose, cheeks forehead, lower jaw or any other part of the body, however she did not. The oral account of the occurrence, as given by Muhammad Bukhsh (PW-4) , Nasrullah (PW- 5) and Muhammad Jalal (PW-12), cannot be said to be in accordance with the medical evidence, rather is proved to be contrary to it.

iv) The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. I have noted that the view should be that "*the testimony of one detected in a lie was wholly worthless and must of necessity be rejected."* If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting the accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim *falsus in uno falsus in omnibus*.

v) The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts the presence of some eye-witnesses and such claim of the prosecution is not established by it, there the accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in her house, therefore, it must be she and none else who would have committed that murder(…) The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged(…)It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused that the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction(…) It has

to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the accused by producing sufficient evidence, except the facts referred to in Article 122 Qanun-e-Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove her innocence, but only to produce evidence enough to create doubts in the prosecution's case(…) Throughout the web of the Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the accused's guilt subject to any statutory exception. No matter what the charge, the principle that the prosecution must prove the guilt of the accused is the law and no attempt to whittle it down can be entertained.

Conclusion: i) The delayed recording of statements under Section 161 Cr.P.C. diminishes their evidentiary value.
ii) The testimony of chance witnesses without corroboration is insufficient for conviction.
iii) Contradictions between medical and ocular evidence negate the prosecution's case.
iv) The doctrine of *falsus in uno, falsus in omnibus* applies to discredit unreliable witness testimony.
v) See above analysis No.v.

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25. **Lahore High Court**
Ahsan Allahi Zaheer and another v. Government of Punjab through Secretary, Primary and Secondary Healthcare Department Punjab Lahore and three others.
Review Application No.07 of 2024 in Intra Court Appeal No. 57 of 2024
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC6179.pdf

Facts: Respondent No.2 advertised the posts of BS04 in pursuance of Recruitment Policy 2022. Applicants qualified for the said posts and Job Offer Letters were issued in their names. Upon the completion of the initial contract, the contract periods of the applicants were not extended and they were terminated. Applicants challenged their termination through Constitutional Petition which was dismissed. Same was the fate of Intra-Court Appeal, resultantly, the instant Review Application.

Issues: i) What is the law relating to the power of review?
ii) In what situation, review application is maintainable?
iii) In what circumstance, power of review can be exercised?
iv) Whether the points already raised and considered can furnish the ground of review jurisdiction?
v) When a judgment can be reviewed?
vi) When, review is not legally permissible?

Analysis: i) Power of review is provided under section 114 and Order XLVII, Rule 1 of the Code of Civil Procedure, 1908.
ii) Under section 114, C.P.C. a review application is maintainable for enabling the Court to correct the errors.
iii) Power of review can only be exercised when an error or mistake is manifestly shown to float on the surface of the record, which is so patent that if allowed to remain intact, would perpetuate illegality and gross injustice.
iv)It is a settled proposition of law that the points already raised and considered cannot be re-agitated in review jurisdiction.
v) A judgment can be reviewed only when the error is apparent on the face of the record and that it must be so manifest, so clear, that no Court could permit such an error to remain on record.
vi) It is also a settled question of law that review also cannot be allowed on the discovery of some new material if such material was available at the time of trial, the appeal or the revision as the case may be. Review cannot be made a pretext for re-arguing the whole case and the matter cannot be revived under the garb of a review application.

Conclusion: i) See above analysis No.i
ii) A review application lies before the Court in order to rectify the errors.
iii) Court can exercise the power of review in case of apparent error leading to injustice
iv) See above analysis No. iv
v) See above analysis No. v
vi) Legally, review is not allowed if new material is discovered and the it was available at the time of trial, appeal or revision. In review, neither the matter is re-argued nor revived.

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26. **Lahore High Court, Bahawalpur Bench, Bahawalpur,**
Sajjad Ahmad v. The State, etc
Criminal Appeal No.124-J of 2023
Mr. Justice Sadiq Mahmud Khurram.
https://sys.lhc.gov.pk/appjudgments/2024LHC6159.pdf

Facts: Appellant was convicted by the trial court for raping a minor under Section 376(3) PPC and sentenced to life imprisonment. His co-accused were acquitted. The appellant challenged his conviction and sentence through this appeal.

Issues: i) Who is competent to testify?
ii) How the competency of a child witness is tested, and when a child is considered as a competent witness?
iii) Whether evidence of a child witness is worthy of reliance and if so, whether a conviction be awarded relying upon sole testimony of a child witness?

iv) Whether delay in reporting the crime involving person's honour and reputation can be resolved in favor of accused?
v) Whether DNA testing is a requirement of the law?
vi) Which kind of contradictions, improvements cannot be relied upon?
vii) Which kind of contradictions are ignorable?

Analysis: i). Article 3 of the Qanun-e-Shahadat Order, 1984 contemplates that all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender or extreme old age, disease, whether of body or mind or any other cause of the same nature.
ii) For a child witness, normally the courts conduct "*vior dire test*" under which the court before examination puts certain preliminary questions to the child, which bear no connection with the case so as to judge the child's competency and understanding. If the child is capable of answering those questions properly and deposes in a smart manner, then the child is considered as a competent witness.
iii) A child who also happens to be a victim of an offence is competent to testify as a witness, and the deposition would be worthy of reliance provided the Court is satisfied that he or she, as the case may be, is intelligent and understands the significance of entering the witness box. A conviction can also be handed down placing reliance on the sole testimony of a child witness.
iv) Delay in reporting the crime to the police in respect of an offence involving a person's honour and reputation and which society may view unsympathetically could play on the minds of a victim and her family and deter them from going to the police. Therefore, in such a situation it is very obvious that even if the report has been lodged with a delay, it will not bring complications and otherwise not beneficial for an accused who has been charged with the offence the punishment of which would entail to the death penalty or imprisonment for life.
v) DNA testing is not a requirement of the law.
vi) Where the omissions amount to a contradiction, creating serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon.
vii) Minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

Conclusion: i) See above analysis No.i.
ii) Competency of a child witness is tested through *voir dire test* and child giving rational answers of questions is considered as a competent witness.
iii) Evidence of child witness is worthy of reliance and conviction can be awarded relying upon sole testimony of a child witness.
iv) Such delay is not beneficial for an accused.
v) See above analysis No.v.

vi) See above analysis No.vi.
vii) See above analysis No.vii.

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27. **Lahore High Court**
Muhammad Ammar Shafi & 02 others v. The State & another
Wajid Hussain Vs Muhammad Ammar Shafi & 03 others
Criminal Appeal No. 26878 of 2024.
Criminal Revision No. 32182 of 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC6125.pdf

Facts: Accused/appellants faced trial before learned Additional Sessions Judge, Lahore in case under sections 302/34 PPC (offence under Sections 337-F(i)/420/468 and 471 PPC were added during investigation) and on conclusion of trial accused/appellants were convicted under section 316 PPC read with Section 34 PPC and sentenced to diyat of Rs.19,35,594/-, to be paid by all the accused/appellants jointly and in lump-sum to the legal heirs of , deceased and simple imprisonment for five years each. Criminal Appeal has been filed by accused/appellants against their above conviction and sentence, whereas, Criminal Revision has been brought by the complainant seeking enhancement of sentence of accused/ appellants; both these matters are being decided by this single judgment.

Issues: i) What are the requirements for using CCTV footage in evidence?
ii)Whether the electronic data in the form of video/audio/pictures obtained from the Punjab Safe City Authority under the Punjab Safe City Authority Act, 2016, is admissible as evidence?
iii)What is the effect of conflict in ocular and medical account?
iv)Whether medical evidence can be useful to establish the identity of the accused person?

Analysis: i) Thus, trial Court has not met the requirement of Article 71 & 139 of Qanun-e-Shahadat Order, 1984 because CCTV footage can be used either as the documentary evidence or the real evidence. When it is being used as documentary evidence it must be shown to the witness while recording his statement and when it is used as real evidence then court must inspect it with some observations and mere marking it as “P” does not fulfill the requirement. Thus, prosecution has failed to prove the contents of CD in accordance with the principles of evidence. Reliance in this respect is placed on case reported as “NUMAN alias NOMI and others Versus The STATE” (2023 PCr.LJ 1394) & a case approved for reporting, Crl. Appeal No.592- 23“FAKHAR IQBAL SHAH VS STATE ETC.” (2024 LHC 4364).
ii)Regulation-9 makes such data as an admissible piece of evidence and explains its presentation in proper form before the Court, format of report with protocols, rearrangement of evidence in consultation with prosecutor; understanding of electronic evidence by the Court; clarity and re-examination by Chief operating

officer. Here it is for reference;........ The cumulative effect of above provisions explains that data in the form of video/audio/pictures obtained from IC3 under Punjab Safe City Authority Act 2016 and regulations made thereunder in due course of process shall be deemed genuine and admissible in evidence without sending such video/audio/pictures to Punjab Forensic Science Agency. However, such electronic data shall be read in evidence in conjunction with other explanation like photogrammetry test etc. of accused visible therein. In the instant case prosecution has failed to prove the due process adopted for obtaining the data from Safe City Authority nor Electronic Data Certificate was produced about genuineness of such data. Thus, CD or the pictures, the sole alleged impactful evidence of the prosecution, are not helpful to be read in the evidence.

iii) Under the aforementioned circumstances, medical evidence is not supporting the ocular account rather it is in conflict with the same. In such circumstances, conflict in ocular and medical account is damaging for prosecution. Reliance is placed on case reported as "MUHAMMAD IDREES and another Vs. The STATE and others" (2021 SCMR 612)

iv) Moreover, medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.

Conclusion: i) When it is being used as documentary evidence it must be shown to the witness while recording his statement and when it is used as real evidence then court must inspect it with some observations and mere marking it as "P" does not fulfill the requirement.

ii) Such data if obtained from IC3 in due course of process shall be deemed genuine and admissible in evidence without sending such video/audio/pictures to Punjab Forensic Science Agency, however, there should be photogrammetry test etc. of accused visible therein.

iii) conflict in ocular and medical account is damaging for prosecution.

iv) It does not establish the identity of the accused person.

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28. **Lahore High Court, Lahore**
Maqbool Ahmad vs. Addl. District Judge and others
Writ Petition No. 4183 of 2022
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC6308.pdf

Facts: The respondents had filed an application under Order VI Rule 17 of the Code of Civil Procedure,1908, during the proceedings of the civil suit after recording of

the evidence of the parties, with the prayer that they may be permitted to insert the word "declaration" in the heading as well as to allow them to make amendment to the effect that order passed by the District Collector and the subsequent actions of the revenue authorities are beyond jurisdiction. The application was accepted by the trial court and revision against the order was dismissed by the District Court. The concurrent findings have been assailed through writ petition before High Court.

Issues i) What are the legal parameters for deciding application for amendment in pleadings under Order VI Rule 17 of the Code of Civil Procedure?

Analysis: i) Order VI Rule 17 of the Code provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The Supreme Court in case titled "Mst. Ghulam Bibi and others versus Sarsa Khan and others" (PLD 1985 Supreme Court 345) observed that this rule can be divided into two parts. In the cases falling under the first part, the Court has discretion but under the second part i.e. when the amendment is necessary for the purpose of determining the real question, it becomes the duty of the Court to permit the amendment, however, subject to an important condition that the nature of the suit is not changed by amendment.… A learned Division Bench of the Peshawar High Court in case titled "Muhammad Zaman versus Siraj-ul-Islam and 11 others" (2013 YLR 1548) has observed that the word "alter" used in the above rule gives a bit wider power than the word "amendment", if Court comes to the conclusion that the same is necessary to do the complete and substantial justice.… This Court in Iftikhar Ahmad case (supra) has recently considered the aspect of delay in applying for amendment while keeping in view the wording of the rule which provides that amendment can be made "at any stage of the proceedings". This Court has reached to the decision that the amendment can be permitted even in appeal or revisional jurisdiction, when it is just. … The Supreme Court of Pakistan has also discussed and concluded that amendment should be liberally allowed provided that the same does not cause injury to the other side… The question of limitation can also be an important factor, when necessitated by facts of the case, while dealing with the application of amendment.… some important factors, which are only illustrative and not exhaustive, that can be kept in my mind while dealing with the application for amendment are (i) the intention of the applicant seeking to amend pleadings; (ii) the question of limitation if applicable; (iii) refusal or acceptance of amendment should not lead to injustice or injury to opponent side; (iv) efforts should be made to avoid multiplicity of litigation; (v) the nature of the suit and cause of action originally set-up and (vi) if the amendment is necessary for the purpose of determination of the real question in controversy between the parties provided subject matter of suit remains unchanged.

Conclusion: i) See above analysis No. i

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification in official Gazette of Pakistan dated 28-12-2024, The National Forensics Agency Act, 2024 was promulgated.
2. Vide The Societies Registration (Amendment) Act, 2024 dated 29-12-2024, a new section 21 was added in the Societies Registration Act, 1860.
3. Vide notification No.SO(E-I)4-5/2021 (TEVTA) (Rules) dated 25-11-2024, The Punjab Apprenticeship Rules, 2024 are made.
4. Vide notification No.SO(H-II)3-3/2021(P-I) dated 25-11-2024, the first schedule of the Punjab Central Business District Development Authority Act, 2021 was amended with insertion of word 'Lahore Knowledge Park (Nawaz Sharif I.T City).'
5. Vide notification No.SOR-III(S&GAD) 2-17/83(P-I) dated 27-11-2024, amendments are made in the Punjab Judicial Service Rules, 1994.
6. Vide notification No.SO(H-I) Misc-6/20(P-IV) dated 06-12-2024, amendments are made in the Punjab Housing & Town-Planning Agency (Affordable Private Housing Schemes Rules) 2020.
7. Vide notification No.SOR-III(S&GAD)1-3/2002(PI) dated 17-12-2024, amendments are made in the Punjab Forestry and Wildlife (Wildlife Executive) Service Rules, 1978.
8. Vide notification No.SC(CAB-I)2-25/12(ROB) dated 20-12-2024, amendments are made in the Punjab Government Rules of Business, 2011.
9. Vide notification No.SOG/EP&CCD/5-1/2023 dated 20-12-2024, the description of uniform for the authorized officer is notified in the Punjab Environmental Protection (Motor Vehicles) Rules, 2013.

SELECTED ARTICLES

1. **ASIAN JOURNAL OF LAW AND SOCIETY**
   https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/abs/in-response-to-constitutional-crisis-the-latent-carl-schmitt-in-zhang-junmais-political-thought/B5F983F1D0C97841023B42AA61F7E068

   In Response to Constitutional Crisis: The Latent Carl Schmitt in Zhang Junmai's Political Thought by Dandan Chen

   This paper examines two responses to the global constitutional crises in the twentieth century, with a focus on a comparison between Carl Schmitt, a notorious German political theorist and critic of liberal constitutionalism and Zhang Junmai, a constitutionalist in Republican China. After the First World War, both Germany and China experienced constitutional crises, which prompted critical reflections among

intellectuals. My paper is the first to discover and examine the latent element of Carl Schmitt in Zhang Junmai's acceptance of the Weimar Constitution. My research shows that Zhang's 1930 article, "Hugo Preuss (Author of the New German Constitution), His Concept of the State and His Position in the History of German Political Theory" (德國新憲起草者柏呂斯之國家觀念及其在德國政治學說史上之地位) is his Chinese translation of Carl Schmitt's 1930 article, "Hugo Preuss: His Concept of the State and His Position in German State Theory" ("Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre"). Instead of simply regarding Zhang's writing as plagiarism, my paper interrogates the gaps between Carl Schmitt's original text and Zhang's translation. By examining the intertextual relation between Carl Schmitt and Zhang Junmai, this paper reveals a latent aspect of the spectrum of Constitutionalism in the twentieth century and shows a special dialogue between a German critic of constitutionalism and a Chinese constitutionalist.

2. **ASIAN JOURNAL OF LAW AND SOCIETY**
   https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/paper-in-the-age-of-the-digital-the-curious-case-of-65b-certificates-in-india/B4CFA2448482C029AB59B10EBC2A0730

   Paper in the Age of the Digital: The Curious Case of 65-B Certificates in India by Shikhar Goel

   Law enforcement institutions in India are undergoing fundamental media technological transformations, integrating digital media technologies into crime investigation, documentation, and presentation methods. This article seeks to understand these transformations by examining the curious case of 65-B certificates, a mandatory paper document that gatekeeps and governs the life of new media objects as evidence in the Indian legal system. In exploring the tensions that arise when bureaucratic institutions change their means of information production, the article reflects on the continued stubborn presence of paper at this transformative juncture in the life of legal institutions. By studying the role of paper in bureaucratic practices, analyzing jurisprudential debates and case law surrounding 65-B certificates, and thinking through some scattered ethnographic encounters around these certificates involving police officers, forensic scientists, and practicing lawyers, this article argues that despite ongoing digital transformations, law essentially remains a technology of paper.

3. **MANUPATRA**
   https://articles.manupatra.com/article-details/SECTION-377-IPC-A-COMPREHENSIVE-ANALYSIS-OF-THE-CRIMINALIZATION-OF-HOMOSEXUALITY-ITS-LEGAL-EVOLUTION-JUDICIAL-RULINGS-AND-THE-NEED-FOR-INCLUSION-IN-THE-BNS

   Section 377 IPC: A Comprehensive Analysis of The Criminalization of Homosexuality, Its Legal Evolution, Judicial Rulings, And the Need for Inclusion in The Bns. By Akhil Kumar K.S.

Homosexuality or same-sex relationships are not new to the world, from ancient times, it has been an accepted practice in various civilizations and cultures. The term "unnatural" which was associated with homosexuality by the Indian Penal Code was flawed by the logic that it has always existed in different societies and was not considered against nature. Same-sex relationships were common in ancient Greece; various artworks and stories depicted it. Indian text Kamasutra also mentions that lesbians were called "Swarinis," who often married each other and raised children together.1 One of the visual examples is carved on the walls of Khajuraho Temple in Madhya Pradesh,known for its overt erotic sculptures showcasing the existence of sexual fluidity between homosexuals.2 Prominent rulers of history such as Alexander, Babur, and Alauddin Khilji were known to have engaged in homosexual relationships and the fact that they did not face any disapproval highlights that it was not considered unnatural.

4. **LAWYERS CLUB INDIA**
   https://www.lawyersclubindia.com/articles/what-are-the-laws-that-govern-stock-markets-in-india--17315.asp

   What are the laws that govern stock markets in India? By Sankalp Tiwari

   For any business looking to grow and have easy access to public funds, an initial public offering is a big financial event. An IPO procedure makes it possible to issue shares to the general public for the first time, giving investors the opportunity to invest in a previously private firm. In India, the process of an IPO has become very popular since companies seek growth capital in financing expansion, product development, and market penetration. The growth in the Indian economy and increasing middle class are the factors behind the spurt in IPOs. The routes through which Indian technology, pharmaceutical, and manufacturing companies now regularly take to the IPO market are highly regulated in India due to the presence of the regulator, SEBI, or the Securities and Exchange Board of India. It controls such activities in the best interest of fairness, transparency, and protection for the investors. Thus, through this process, a company raises funds and promotes the visibility of companies by providing recognition and credibility to a company. There are multiple stages in the process of the IPO in India: regulatory approval, price determination, public offering, and listing at stock exchanges. It is subject to a very strict legal framework requiring full disclosure of financial and operational details of the offering company. The initiation stage of an IPO is quite critical where the companies and advisors evaluate the conditions of the market and decide upon the best possible time to issue shares. Even the price quoted and numbers of shares offered are very judiciously selected in order to increase the chance of the IPO.

5. **LAWYERS CLUB INDIA**
   https://www.lawyersclubindia.com/articles/tom-cruise-receives-usa-navy-award-10-most-coveted-awards-of-the-us-and-the-rules-and-laws-that-govern-them-17299.asp

   Tom Cruise Receives USA Navy Award: 10 Most Coveted Awards of the US and the Rules and Laws That Govern Them by Navaneeth E M

Awards, whether in the arts, sciences, public service, or even national security, are vital because they honour those who've made exceptional contributions to society. These are more than just accolades; they act as reminders of the values a nation holds dear and symbolize appreciation. In the United States, for example, awards like the Medal of Honor and the Presidential Medal of Freedom highlight acts of bravery or service that inspire others and bring a sense of unity to society. To ensure fairness, there are rules and regulations—laws, really—that govern how these awards are given, especially when it comes to distinguishing between civilian and military honors. Military awards, such as the Medal of Honor, require a rigorous review process to confirm the merit of nominees. Civilian awards, on the other hand, have their own set of criteria for nominations and eligibility. This all ensures transparency and equity. Beyond the symbolism of achievement, these awards set a standard, a kind of bar for excellence, that pushes others to aspire for greatness too. The recent recognition of actor 'Tom Cruise' with the 'U.S. Navy's Distinguished Public Service Award' highlights the importance of these honours. Tom Cruise, who acted as a naval aviator in Top Gun, has improved the public awareness of the Navy and its core values. This award not only acknowledges Cruise's impact but also shows how such recognitions can strengthen the bond between the citizens and the military. In an era where public trust is important, awards which are governed by clear guidelines ensure that they remain symbols of integrity.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-01-2025 to 31-01-2025)

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.**
Matter regarding non fixation of case as per court-order 16.01.2025
Crl. O. P.1/2025 in CPLA 836-K of 2020, etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/crl.o.p._1_2025_27120 25.pdf

Facts: A three-member Bench of Supreme Court adjourned a case for further arguments upon objection to jurisdiction. On date fixed the Bench stood reconstituted and case was fixed before the new Bench. However, the reconstituted Bench directed the office, to fix these cases before the earlier Bench. But the cases were not so fixed and reallocated to a 08-member Constitutional Bench through the two committees constituted under Section 2 of the Supreme Court (Practice and Procedure) Act, 2023 and the Article 191A of the Constitution. Hence, the instant proceedings initiated.

Issues: i) Whether the Committees constituted under Section 2 of the Act and Article 191A of the Constitution have the authority to withdraw a case [from a Bench], in which cognisance has already been taken by a regular Bench and serious questions of constitutional law relating to the jurisdiction of the regular Bench have been framed?
ii) Whether the powers of committee established under the Section 2 of the Supreme Court (Practice and Procedure) Act, 2023 are similar to that of the Chief Justice or otherwise?
iii) Whether the said Committees can, by an administrative order, undo the effect of a judicial order, whereby next date of hearing a specific case has been fixed before a regular Bench to hear arguments on the jurisdiction of the regular Bench?
iv) Whether every court has inherent power to decide its own jurisdictional question?

Analysis: i) If any of the parties to the cases in which the said orders were passed, or any other person, was aggrieved by the same, he could have availed of the legal remedy of seeking a review of the order through the judicial process provided under the Constitution and the law. But, no one is entitled to disobey or decline compliance with the court order merely because he believes it to be inconsistent with the Constitution and the law…The practice of hearing part-heard cases by the same Bench is so well-established in our jurisdiction that neither the learned counsel assisting this Court on the above question nor our research assistants could find and cite any case from our jurisdiction in which a dispute arose and was adjudicated regarding the withdrawal of a part-heard case from one Bench and its reassignment to another, without a request being made by the original Bench hearing the case in its judicial order…once a case is assigned to a Bench and that Bench has taken seisin (assumed jurisdiction) of the matter and partly heard it, the Chief Justice cannot unilaterally withdraw it and reassign it to another Bench except under specific, judicially recognised circumstances. This practice is

firmly rooted in the high constitutional value of judicial independence whereby a Bench enjoys the freedom and independence to adjudicate upon a lis it has taken cognisance of. When a Bench is seized of a case and has partly heard it, the matter becomes part of judicial proceedings, and the Bench hearing the case assumes exclusive jurisdiction over it. Any interference—whether through withdrawal or reassignment—without judicial justification undermines the principle of judicial independence...The said practice imposes a significant limitation on the administrative powers of the Chief Justice. While the Chief Justice has the authority to regulate the formation of Benches and allocate cases as an administrative function, these powers do not extend to withdrawing or transferring a part-heard case from a Bench that has already assumed jurisdiction. Such withdrawal or reassignment is not merely an administrative act but a judicial one. Consequently, any such action must either stem from a judicial order passed by the Bench seized of the matter or be supported by express statutory authority if carried out by another court or authority.

ii) We may mention here that it was argued before us that the cases concerning the powers of the Chief Justice, decided prior to the promulgation of the Act, have become irrelevant following the establishment of the Bench Constitution Committee under Section 2 of the Act, which has been endorsed by the Full Court of the Supreme Court on the judicial side in the case of Raja Amer. We, however, are not persuaded by this argument for the simple reason that it was categorically held in Raja Amer that the powers of the Committee under Section 2 of the Act are the same as those previously exercised by the Chief Justice. The relevant observation is as follows:

> Both the powers of suo motu invoking original jurisdiction and constituting benches were earlier being exercised by one person, the Chief Justice; it is these administrative powers that have now been conferred on the Committee comprising three persons, i.e., the Chief Justice and the two most senior Judges - nothing more nothing less.

Therefore, whatever was stated in the referred cases regarding the powers of the Chief Justice to assign or withdraw cases from Benches fully applies to the Committees as well.

iii) This question need not detain us long, as a similar issue was addressed and decided by a Full Court of this Court in the case of Malik Asad Ali. It was held in the said case that an administrative order passed by the Hon'ble Chief Justice (acting under restraint) passed in derogation of a judicial order would be without lawful authority and of no legal effect. In that case, the Chief Justice's administrative declaration, which sought to invalidate the convening of a Full Court under a judicial order of a Bench for hearing cases listed in Supplementary Cause List No. 405 of 1997, was declared illegal…The above cited observations of a seven-member Bench of this Court in the contempt case against Syed Yousaf Raza Gillani are equally relevant. It was observed therein that "the executive authority may question a Court's decision through the judicial process provided

for in the Constitution and the law but is not entitled to flout it because it believes it to be inconsistent with the law or the Constitution." This principle applies with equal force to the executive authority of the Chief Justice or the Committees, as the case may be...Therefore, it can be held unequivocally that no administrative authority, including the Committees constituted under Section 2 of the Act and 191A of the Constitution, can, by an administrative order, undo the effect of a judicial order.

iv) Every court inherently has the power to adjudicate. The Bench, which had previously referred such cases to the Constitutional Bench, was confronted with the principles governing a court's inherent power to decide jurisdictional questions. When the argument was prima facie supported by the referred precedents of the cases of Pir Sabir Shah, Fazlul Quader Chowdhry and Marbury, the Bench decided to adjudicate the jurisdictional matter after obtaining full assistance from the learned counsel for the parties, and the cases were adjourned to allow for further preparation and assistance on the jurisdictional issue.

Conclusion: i) The Committees constituted under Section 2 of the Act and Article 191A of the Constitution have no authority to withdraw a case from a Bench, in which cognisance has already been taken by a regular Bench and serious questions of constitutional law relating to the jurisdiction of the regular Bench have been framed.

ii) Powers of the Chief Justice to assign or withdraw cases from Benches fully applies to the Committees as well.

iii) The Committees cannot, by an administrative order, undo the effect of a judicial order, whereby next date of hearing a specific case has been fixed before a regular Bench to hear arguments on the jurisdiction of the regular Bench

iv) Every court inherently has the power to adjudicate upon its jurisdictional question

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2. **Supreme Court of Pakistan**
Adil Khan Bazai. v. Election Commission of Pakistan and another.
Civil Appeal No. 1507 of 2024
Civil Appeal No. 1508 of 2024
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1507_2024_20012025.pdf

Facts: The two appeals have been filed under clause (5) of Article 63A of the Constitution of the Islamic Republic of Pakistan to challenge the orders passed by the Election Commission of Pakistan regarding the declarations made by the Party Head, which were referred to the Commission by the Speaker of the National Assembly under clause (3) of Article 63A of the Constitution. In the declarations, the Party Head declared that the appellant had intentionally defected from the Parliamentary Party, on the grounds of his sitting on the opposition benches in the

National Assembly with another Parliamentary Party and his abstaining from voting on the Finance Bill 2024 and the Constitution (26th Amendment) Bill, in contravention of the directions issued by the Parliamentary Party. By the impugned orders, the Commission confirmed these declarations under clause (4) of Article 63A of the Constitution. Consequently, the appellant was de-seated from his membership in the National Assembly, and his seat was declared vacant.

Issues: i) Does a Civil Court or the Commission have the jurisdiction to determine whether the member concerned is a member of the Parliamentary Party of a political party in proceedings under clauses (3) and (4) of Article 63A of the Constitution, for the purpose of determining his alleged defection from that political party?
ii) How the doctrine of jurisdictional fact has been expounded in various judicial pronouncements?
iii) What would be the effect if a tribunal or authority with jurisdiction limited to a particular matter assumes jurisdiction over a matter not conferred upon it by erroneously deciding the jurisdictional fact?
iv) What is the constitutional role of the Election Commission of Pakistan while hearing the matter of defection under Article 63A of the Constitution of the Islamic Republic of Pakistan, 1973?

Analysis: i) The original jurisdiction conferred upon the Commission, as well as the appellate jurisdiction of this Court, to confirm or otherwise the declaration made by the Party Head, extends to examining whether the Party Head has exercised this power justly, fairly and reasonably. Article 63A of the Constitution does not explicitly entrust the Commission with the power to determine the preliminary state of facts— jurisdictional facts—on which its jurisdiction to confirm the declaration depends. Its finding on a jurisdictional fact, such as whether the member concerned belongs to the Parliamentary Party of a political party, is not conclusive; rather, it is subject to correction by this Court, as its appellate forum, and ultimately to final determination by a Civil Court of plenary jurisdiction.
ii) The doctrine of jurisdictional fact connotes that if a certain state of facts must exist before a tribunal or authority can exercise the jurisdiction vested in it, such tribunal or authority may inquire into those facts to determine whether it has jurisdiction but cannot confer jurisdiction upon itself by making an erroneous decision regarding them. As per this doctrine, when a tribunal or authority is vested with jurisdiction limited to decide on a particular matter, it generally has the ancillary power to inquire into and ascertain the existence of facts collateral to that matter when their existence is disputed before it. This power to ascertain collateral facts—referred to as jurisdictional facts— forms the foundation for the exercise of its jurisdiction. A jurisdictional fact is, thus, one upon whose existence the assumption and exercise of jurisdiction by a tribunal or authority depend. It is a prerequisite fact whose existence must be ascertained before jurisdiction over a particular matter can be properly assumed and exercised. Its existence is a sine

qua non or condition precedent to the assumption and exercise of jurisdiction.

iii) When a tribunal or authority is established by law to exercise jurisdiction over a particular matter, the legislature defines the scope of its powers. It may, either expressly or by necessary implication, stipulate that jurisdiction can only be assumed and exercised if a particular state of facts exists or is shown to exist. In such cases, though the tribunal or authority is obligated to objectively ascertain, in the event of a dispute, whether that state of facts exists before exercising jurisdiction over the matter, its decision on the existence of that state of facts—the jurisdictional fact—is not conclusive. Instead, the decision is subject to challenge before and final determination by the civil courts of plenary jurisdiction or is subject to correction by the constitutional courts through judicial review.

iv) The constitutional duty of the ECP was discussed in the *Muhammad Sibtain Khan* case wherein this Court differentiated between the legal concept of power and duty and concluded that a constitutional duty is not the same as a constitutional power and that the ECP had failed to maintain the distinction between these two distinct legal concepts. The Court explained that Article 218 (3) of the Constitution imposed a constitutional duty on the ECP and that Articles 220 and 224 were in furtherance of that duty and cannot be read as a constitutional power which would make the ECP the master of all electoral matters. The reason given was simple, that on a constitutional plane, the ECP is not the master rather the forum or organ that must perform the task which lies at the heart of the constitutional democracy.

Conclusion: i) See Analysis i above.

ii) Decision on jurisdictional facts stands on the same footing as a decision on the fact in issue or the adjudicatory fact regarding the substantive matter, and is likewise final, subject to any right of appeal to a higher forum; it cannot be challenged before a Civil Court of plenary jurisdiction.

iii) An error in determining a jurisdictional fact constitutes a jurisdictional error, rendering the order passed without jurisdiction.

iv) The constitutional duty of the ECP cannot be considered as an overarching constitutional power vis-à-vis other constitutional provisions and institutions. The ECP is, as per the constitutional mandate, an independent body, duty bound to conduct free and fair elections and duty bound to ensure that those elected by the people remain in government.

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3. **Supreme Court of Pakistan**
Federation of Pakistan through Revenue Division & others etc v. Dewan Motors (Pvt) Ltd.etc.
Civil Petitions No.836-k to 887-k, 951-k,1056-k,1296-k of 2020 and Civil Petitions No.741-k to 743-k, of 2021 and Civil Petition No.165-k of 2022 and Civil Petitions No.1143-k to 1173-k of 2024.
Mr. Justice Amin-ud-Din Khan, Senior Judge, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Justice Musarrat Hilali, Justice Naeem Akhter Afghan, Mr. Justice Shahid Bilal Hassan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._836_k_2020_2812025.pdf

Facts: The appellants have challenged orders of Regular Bench with contention that CPLAs were mistakenly/inadvertently fixed before the regular Bench and the regular Bench had assumed the jurisdiction without lawful authority.

Issues: i) Which fora has jurisdiction to determine the fixation of matters before Benches?
ii) Whether functions performed by Committees impinge upon the judicial functions of any Bench?

Analysis: i) The Committees constituted under Article 191A(4) of the Constitution and under Section 2(1) of the Supreme Court (Practice and Procedure) Act, 2023 are the legal and Constitutional *fora* to determine which Bench shall hear what matters.
ii) The exercise of powers and performance of legal and Constitutional functions by both the Committees do not impinge upon the judicial functions of any Bench.

Conclusions: i) See above analysis No.i).
ii) See above analysis No.ii).

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4. **Supreme Court of Pakistan**
Secretary to the Government of Pakistan, Establishment Division, Islamabad and another v. Muhammad Ahmed Khan and others.
Civil Appeal No. 1671 of 2021
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1671_2021.pdf

Facts: Case of the respondents was forwarded to their department for up-gradation/re-designation of their posts, which was accorded with vide Office Memorandum and the respondents were upgraded from BS-12 to BS-14 and BS-14 to BS-15 respectively. However, the Employer Department requested the concerned Wing to re-examine the case of posts of BS-12 and BS-14 as BS-16. Respondents impugned the said administrative decision by way of Constitutional Petition, which was allowed and the said order was challenged in shape of leave to appeal which was granted to consider the plea of Additional Attorney General that grant

of upgradation and re-designation of the posts is a matter of policy, and unless there exists a policy, the relief regarding grant of upgradation and re-designation of the posts cannot be allowed by the High Court.

Issues:
i) What is the essence of up-gradation policy?
ii) In what circumstances, up-gradation of posts come into play?
iii) Whether up-gradation of a post is a vested right?
iv) What are the consequences of up-gradation of the posts?
v) What is the responsibility of Govt. on announcement of a policy?
vi) To what extent, the Court can interfere in the matter of policy?
vii) What is the connotation of the word "discrimination" and when does it occur?
viii) What is the significance of equal treatment in an egalitarian society?
ix) What is the benchmark of Article 25 of the Constitution of Islamic Republic of Pakistan?
x) Which role of the state is articulated in the above said Article?
xi) Which sort of interpretation of Article 25 is required to be made?

Analysis:
i) The essence of the upgradation policy is to upgrade certain posts to rationalize the administrative structure of a Ministry/Division or a Department, making it more effective or bringing uniformity to the pay scales of similar posts across different organizations.
ii) This applies where the duties and responsibilities attached to a post have considerably increased, and the pay scale of a post is considered grossly incommensurate.
iii) The upgradation of a post is not a vested right, rather it stems from a policy decision intended to benefit a particular set of employees under the scheme embedded in the policy.
iv) In the case of upgradation, the employee continues to hold the same post without any change in his duties, but he is accorded a higher pay scale in order to mitigate the distress associated with stagnation due to a lack of progression or promotional avenues.
v) Once the Government announces a policy, it is also responsible for enforcing such policy across the board to accord the benefit of the policy to all those who are eligible under it and may be benefited because of it.
vi) No doubt, the Court cannot interfere in the policymaking domain of the Government, but when a widespread and comprehensive policy is announced to benefit employees, it should be implemented bigheartedly and generously, without adding any ifs and buts or discrimination that can stifle the main objective of the policy.
vii) The literal connotation of the word "discrimination" essentially refers to different treatment of the same kind or class of persons or behaving less favourably towards them. During the course of employment, discrimination occurs when an employer treats an employee less favourably or disadvantageously than others without any intelligible differentia.

viii) Equal treatment with equal opportunity is a cornerstone for an egalitarian society, while acts of discrimination in the workplace seriously undermine a harmonious working environment and create unrest among employees discriminated who are deprived of perks and privileges..
ix) Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, establishes a tremendous benchmark for maintaining equality amongst the citizens, stating that all citizens are equal before the law, and are entitled to equal protection of the law, and there shall be no discrimination on the basis of sex.
x) However, the same article also provides a further clause which articulates that nothing in this Article shall prevent the State from making any special provision for the protection of women and children.
xi) This article cannot be interpreted with a narrow-minded, pedantic, or lexicographic approach to restrict or diminish its wideranging scope. Therefore, similar laws, rules, and policies should apply uniformly to all in similar situations, without any discrimination or distinction between one employee and another, within the sphere of legislation or policy, provided that their status is substantially equivalent and indistinguishable.

Conclusion: i) See above analysis No. i
ii) See above analysis No. ii
iii) The upgradation of a post is not a vested right rather a matter of policy.
iv)The employee, on up-gradation of a post, holds the post without any change in his duties, but he obtains higher pay scale.
v) Government is responsible for implementing the policy to accord the benefit of to all eligible.
vi) See above analysis No. vi
vii) The word "discrimination" refers to different treatment of the same kind or class of persons or behaving less favorably towards them.
viii) Equal treatment is the foundational principle for promoting harmony in the society, while discrimination brings about undermining a harmonious working environment.
ix) Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, postulates the fundamental right of equality amongst the citizens.
x) See above analysis No. x
xi) Article 25 cannot be interpreted in a restricted sense. Application of the similar laws, rules, and policies should apply uniformly to all in similar situations, without any discrimination or distinction between one employee and another,

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5. **Supreme Court of Pakistan**
Syed Masood Ali (both cases) v. Mst. Feroza Begum and another, Jamal Uddin Siyal, IIIrd Senior Civil Judge Karachi and another
Civil Petition No.552-K of 2021 & 1108-K of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._552_k_2021.pdf

Facts: Through this petition, the validity of a gift of immovable property made through an oral declaration later confirmed by a registered deed has been questioned. The petitioner challenged the gift, alleging non-fulfilment of essential legal requirements, including delivery of possession and the validity of signatures due to the donor's alleged illness. The courts upheld the validity of the gift, finding no infirmity in its execution.

Issues: i) What are the essential conditions for the validity of a gift (Hiba) under Muslim law?
ii) What is required for delivery of possession under Muslim law?
iii) Is physical departure by the donor required if both donor and donee reside in the gifted property?
iv) What constitutes a valid overt act for delivery of possession in a gift?
v) Is formal delivery of possession required when a husband gifts property to his wife and they reside together?
vi) Does a husband living in a gifted house or collecting rent invalidate the gift to his wife?
vii) Is the concept of *spes successionis* recognised under Mohammedan Law?
viii) Is writing or registration mandatory for a valid gift under the law?
ix) Can constitutional jurisdiction override existing legal remedies?
x) Does questioning a trial judge's decision undermine judicial independence?

Analysis: i) A gift, or Hiba, is defined in Hedaya as the donation of a thing from which the donee may derive a benefit. In legal terms, it refers to the immediate and unconditional transfer of property without any consideration or exchange(…)The Principles of Mohammedan Law by D.F Mulla outlines three essential conditions for the validity of a gift under Section 149 thereof which reads as under:- (i) A clear and unequivocal declaration of the gift by the donor, (ii) Acceptance of the gift, either express or implied, by or on behalf of the donee, and (iii) Delivery of possession of the subject matter of the gift by the donor to the donee, as further explained in Section 150.
ii) As far as delivery of possession is concerned, Section 150 of Principles of Mohammadan Law stipulates that the donor must deliver such possession as the subject matter of the gift is capable of being possessed.
iii) ection (3) of Section 152 specifically addresses situations where both the donor and the donee are residing in the subject property at the time the gift is made. It clarifies that in such circumstances, physical departure by the donor or formal entry by the donee is not required. Instead, the gift is considered complete upon an overt act by the donor indicating an intention to transfer possession and divest control over the property.
iv) A relevant example of such an overt act is found in the Indian case titled Syed Md. Saleem Hashmi vs. Syed Abdul Fateh and ors [AIR 1972 Patna 279] where the donor and donee resided together in a house, the court held that the donor's act of handing over the property papers to the donee was a valid overt act,

satisfying the requisite condition for delivery of possession, thereby fulfilling the necessary requirement for completing the gift.

v) A conjoint reading of Sections 152(3) and 153 clearly establishes that formal delivery of possession is not required when the donor is the husband and the donee is his wife, and both were residing together in the property at the time of the gift's declaration and creation. In such instances, the existing shared possession satisfies the requirement of delivery of possession, provided the donor has clearly divested himself of ownership and control over the property.

vi) It is also well settled that in the case of a gift of immovable property by the husband to the wife, the fact that the husband continues to live in the house gifted or to receive the rents after the date of gift, will not invalidate the gift, the presumption being that the rents are collected by the husband as a rent collector on behalf of the wife and not on his own accord.

vii) Furthermore, under Mohammadan Law, the concept of spes successionis (the mere hope or expectation of inheriting) is not recognized, meaning a presumptive heir has no rights in the property of the deceased until his death occurs.

viii) suffice is to state that neither the writing nor the registration of a Deed of Declaration and Confirmation of Oral Gift is an essential requirement for the validity of a lawful gift under the law

ix) It is a well-settled principle of law that where an alternative and efficacious remedy is available under the ordinary legal framework, constitutional jurisdiction cannot be invoked to bypass the statutory mechanisms in place. Constitutional jurisdiction is not intended to substitute the ordinary remedies provided under the law.

x) The independence of the judiciary is a cornerstone of the legal system, ensuring that judicial officers are safeguarded by law for decisions made in the exercise of their judicial functions. Furthermore, the issue of whether a decision in the said suit may or may not have been rendered during the pendency of a similar matter before the Supreme Court is a legal question that can be adequately addressed by the appellate court. Therefore, directly raising allegations against the learned presiding Judge of the trial court is entirely unwarranted. Allowing constitutional petitions of this nature would undermine the autonomy of the judiciary and erode public confidence in the judicial process.

Conclusion: i) A valid gift requires declaration, acceptance and delivery of possession.

ii) See analysis No.ii.

iii) Shared residence needs no transfer of physical possession.

iv) Handing over property papers is a valid overt act for delivering possession in a gift.

v) Shared possession between spouses satisfies gift requirements.

vi) A husband’s residence or rent collection doesn’t invalidate a gift.

vii) *Spes successionis* is not recognised in Muslim law and gives no right to heirs until the donor’s death.

viii) Writing or registering a deed is not mandatory for a valid gift.

ix) Constitutional jurisdiction can't replace statutory remedies.

x) Judicial independence is vital, and allegations against judges undermine confidence in the judiciary; legal questions should be addressed through appellate mechanisms.

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6. **Supreme Court of Pakistan**
Mr. Abdul Aziz & others v. All Pakistan Clerks Association through its Zilai President Manzoor Ahmad and others -
CPLA NO.251-Q of 2024
Mr. Justice Irfan Saadat Khan, Mr. Justice Shahid Bilal Hassan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._251_q_2024.pdf

Facts: An application for impleading the respondent No.1 as a proper and necessary party under order I Rule 10 CPC was accepted by the trial court, against which an appeal was allowed by the Appellate Court. Thereafter a petition was filed before the High Court, the court up held the order of the trial Court and set aside the order of the appellate court by observing that "admittedly both the Mouza Tegh and Sunni are lying adjacent to each other and the description mentioned in the suit is admittedly of the petitioner/intervener allotted land"; after finding the respondent No.1 to be a proper and necessary party to be impleaded in the said suit.

Issue: i) whether allottee of an adjacent land/Mouza can be impleaded as a proper and necessary party?
ii) What is settled position of law to decide application under Order I Rule 10?

Analysis: i) The present respondent No.1 is a proper and necessary party as their land is lying adjacent to the land of the petitioner and the outcome of the suit, if decided in favour of the present petitioner without hearing them, could adversely effect their rights in respect of the properties claimed by them.
ii) It is a settled preposition of law that while dealing with the applications under order I Rule 10 the Court has to exercise its discretion in a liberal manner rather than adopting a narrow or pedantic approach, especially when any party is likely to be affected by any judgment in a proceeding and whose presence would enable the Court to effectively adjudicate the matter in accordance with the law.

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

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7. **Supreme Court of Pakistan**
Mst. Sidra Hameed etc. v. Syed Abdul Mateen
Mr Justice Yahya Afridi, Mr Justice Irfan Saadat Khan
Civil Miscellaneous Application No. 100 of 2024
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._100_2024.pdf

Facts: Respondent filed a guardianship petition in the Family Court, Islamabad (East), which was dismissed in 2023. His appeal against the dismissal was pending before the District Court, Islamabad (East). Meanwhile, the applicant also filed a guardianship petition before the same court. The petitioner seeks transfer of both her guardianship petition and the respondent's pending appeal to the Family Court and District Court in Karachi (East).

Issues: i) Can the Apex Supreme Court transfer family cases to a court of another Province?
ii) Whether custody and guardianship matters fall under the jurisdiction of family courts and whether Hon'ble Higher courts can exercise transfer powers despite any restrictions?
iii) What constitutes "proceedings" in the context of judicial business before a court?
iv) Are guardianship and custody cases considered proceedings under family law and eligible for transfer between provinces?
v) Can the Supreme Court transfer guardianship and custody cases from the Islamabad Capital Territory to another province under Section 25A(2-B) of the Family Courts Act, 1964?

Analysis: i) The application has been filed under subsection (2b) of section 25A of the Family Courts Act, 1964… Under the foregoing subsection (2b), any party before a Court in proceedings under the Family Court Act can apply to the Supreme Court for transfer of such proceedings to a Court of another Province.
ii) It would be clear that the matters of custody and guardianship both would also be governed under the FCA. Though section 25 of the FCA binds only the Family Court to follow the procedure of the GWA during the trial of guardian and custody matters; however, in our view the High Court's and this Court's power could not be curtailed via section 4A of the GWA.
iii) This court has carried out a similar exercise in Naeemullah Khan (2001 SCMR 1461) wherein the word "proceedings", not having been defined in the relevant act, was considered to have its ordinary dictionary meaning. The Court concluded with respect to the import of the term "proceedings", "we are of the opinion that the word 'proceedings' is a comprehensive expression which includes every step taken towards further progress of a cause in Court or Tribunal, from its commencement till its disposal. In legal terminology the word 'proceedings' means the instituting or carrying on of an action of law. Generally, a 'proceeding' is the form and manner of conducting judicial business before a Court or judicial officer, including all possible steps in an action from its commencement to the execution of a judgment and in a more particular sense it is any application to a Court of justice for aid in enforcement of rights, for relief: for redress of injuries, or damages or for any remedial object. It in its general use comprehends every step taken or measure adopted in prosecution or defence of an action."

iv) Guardianship and custody cases, which are instituted in the Family Courts, would be treated as proceedings under the FCA. Hence, in the absence of any specific provision in GWA regarding transfer of matters from one Province to another, guardianship and custody cases could be transferred according to subsection (2b) of section 25 of the FCA.
v) This aspect too has been comprehensively dealt with by this Court in Rabia Ahmad (2022 SCMR 733) …Thus, for the convenience of the parties, particularly females and minors, as in the present case, this Court has the power and authority to transfer GWA cases to other Provinces of the Country or to the Islamabad Capital Territory ("ICT") or vice versa in deserving cases.

Conclusion: i) Any party before a Court in proceedings under the Family Court Act can apply to the Supreme Court for transfer of such proceedings to a Court of another Province.
ii) It would be clear that the matters of custody and guardianship both would also be governed under the FCA.
iii) See above analysis No iii.
iv) Guardianship and custody cases, which are instituted in the Family Courts, would be treated as proceedings under the FCA. Hence, in the absence of any specific provision in GWA guardianship and custody cases could be transferred according to subsection (2b) of section 25 of the FCA.
v) Apex Supreme Court has the power to transfer GWA cases to other Provinces of the Country or to the Islamabad Capital Territory or vice versa.

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8. Supreme Court of Pakistan
Umar Gul v. Dr. Hafiza Akhtar and others
Mr. Justice Irfan Saadat Khan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p.4389_2023.pdf

Facts: Petitioner through the petition had challenged order of Peshawar High Court through which findings of first appellate court regarding setting aside of order of Rent Controller was upheld. The first appellate court had set aside order of Rent Controller regarding dismissal of eviction petition.

Issues: i) Whether utility bills in the name of a person regarding some property are proof of his ownership?
ii) What is the recourse available when tenant disputes ownership of landlord?

Analysis: i) Apropos the aspect of utility bills is concerned, suffice it to say that the utility bills in the name of a person only denote possession of the property, but they do not prove ownership of the same.
ii) It is also a settled proposition of law that when a tenant disputes the very ownership of the landlord, the only recourse available with him is to file a civil suit. In the instant matter both the appellate Court and the High Court have

correctly opined that the contention with regards to the ownership of the property, if any, could only be resolved through a Civil Court.

Conclusion: i) Utility bills denote possession of the property not the ownership
ii) The remedy available is to file civil suit.

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9. **Supreme Court of Pakistan**
Sikandar Ali alias Bhola v. The State
Jail Petition No.29 of 2021
Mr. Justice Yahya Afridi, CJ, Mr. Justice Malik Shahzad Ahmad khan
www.supremecourt.gov.pk/downloads_judgements/j.p._29_2021.pdf

Facts: The petitioner was convicted under Section 302(b) PPC and sentenced to life imprisonment by the Trial Court, which was upheld by the High Court. On appeal, the Supreme Court reviewed the case and acquitted the petitioner, granting the benefit of the doubt.

Issues: i) Whether circumstantial evidence must form an unbroken chain to sustain a conviction.
ii) Whether an unexplained delay in lodging the FIR affects the prosecution's case.
iii) Whether the prosecution must establish a motive beyond a reasonable doubt for conviction.
iv) Whether a judicial confession by a co-accused, if exculpatory, can be used against the petitioner.
v) Whether forensic evidence is necessary to corroborate recovery of alleged crime tools.
vi) Whether the benefit of the doubt should be extended to the accused in case of inconsistencies in the prosecution's case.

Analysis: i) It is settled by now that in such like cases every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused. But if any link in the chain is missing then its benefit must go to the accused.
ii) We have noted that the occurrence in this case took place on 12.10.2012 but the FIR was lodged on 16.10.2012 and as such there is delay of about four (04) days in lodging the FIR."
iii) The motive of illicit relationship of the petitioner with the Wife of the deceased namely Mst. Shazia Kausar (co-accused since died), was not mentioned in the FIR, which was lodged with the abovementioned motive… The prosecution story *qua* the motive is result of an afterthought and the same has not been proved in this case.
iv). The judicial confession of Mst. Shazia Kausar (co-accused since died), is exculpatory in nature... She had not stated that she also committed the murder of her husband or she participated in the occurrence... therefore, the above-

mentioned judicial confession of Mst. Shazia Kausar (co-accused since died), which is exculpatory in nature, cannot be used against the petitioner.
v) Although a pillow was also recovered in this case from the room of the deceased on the pointing out of Mst. Shazia Kausar (co-accused since died)... however, according to the postmortem report, blood was coming out from the nostrils and ears of Muhammad Asif (deceased) but there is no report of PFSA, qua the presence of blood on the abovementioned pillow. We are, therefore, of the view that the abovementioned recovery of rope and pillow are inconsequential for the prosecution case.
vi) Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the petitioner beyond the shadow of doubt... If there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with a number of circumstances, which have created serious doubts in the prosecution story.

Conclusion: i) If any link in circumstantial evidence is missing, the accused must be given the benefit of the doubt.
ii) A significant delay in lodging the FIR without justification creates doubts about the prosecution's case.
iii) If motive is introduced later without evidence, it cannot be relied upon for conviction.
iv) An exculpatory confession by a co-accused cannot be used as evidence against the petitioner.
v) Absence of forensic evidence on recovered crime tools weakens the prosecution’s case.
vi) If the prosecution's case has inconsistencies, the benefit of the doubt must be given to the accused.

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10. **Supreme Court of Pakistan**
Muhammad Ejaz v. Judge Family Court, Hafizabad and others
C.P.L.A.No.2759-L of 2023
Mr. Justice Irfan Saadat Khan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2759_l_2023.pdf

Facts: The petitioner withdrew an application to set aside an ex parte decree but later sought to recall this withdrawal, on the plea that no instructions for withdrawal of the application were conveyed to the counsel, which was dismissed. The petitioner then appealed and filed a suit regarding the Nikahnama (said suit was instituted by same counsel who withdrew the application), which is still pending. After the appellate Court's consolidated judgment, the petitioner filed a writ petition with the High Court, which was dismissed, leading to the current petition challenging that order.

Issues: i) Whether withdrawal of the application to set aside the ex parte decree constitutes acquiescence to the decree, thereby waiving his right to further challenge it?
ii) Whether a party is bound by the statements made by their counsel in court?

Analysis: i) Though the petitioner sought setting aside of ex parte decree by filing an application under sub-section (6) of Section 9, Family Courts Act, 1964 but later on, he withdrew the same 02.04.2022, meaning thereby he acquiesced of the decree and waived off his right to further agitate it.
ii) A party is always bound by the statement of his counsel unless there is anything contrary in the power of attorney placing restriction(s) on the authority, delegated upon the counsel, to compromise or abandon the claim on behalf of his client(s).

Conclusion: i) Withdrawal of application to set aside the ex parte decree construed that party acquiesced of the decree and waived off his right to further agitate it.
ii) See above analysis No.ii.

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11. **Supreme Court of Pakistan**
Matloob and others v.Taj din(deceased) through legal heirs and others
Mr. Justice Irfan Saadat Khan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2095_l_2016.pdf

Facts: Petitioner through the petition under article 185(3) of the constitution of Islamic Republic of Pakistan had challenged judgment of High Court and first appellate court through which suit for declaration filed by the respondents was decreed and judgment of trial court was set aside.

Issues: Can a nominee appointed under the Cooperative Socities Act, 1925 substitute legal heir(s) after death of member of society?

Analysis: The said question has been answered by the Act in section 27, which reads ... Bare perusal of the above provision of law makes it vivid that share or interest of the deceased member is to be transferred to a person or persons who has/have been nominated in accordance with the byelaws of the society ... it is a settled principle of law that nomination is merely made to confer a right to collect the money or to receive the money and it does not operate either as a gift or as a will; therefore, it cannot deprive the other heirs of the nominator who may be entitled thereto under the law of succession applicable to the deceased. The said ratio was further adopted and reiterated in judgment by this Court, wherein it was held that nomination by a member of a cooperative society does not operate as a gift or will and it was further held that membership of the Society is a matter altogether different from succeeding to the estate of the deceased. Further, the said view was continuously upheld by this Court in judgments.

Conclusion: Nominee cannot substitute legal heir(s) of the deceased.

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12. **Lahore High Court, Lahore**
Ali Haider & another v. Muhammad Boota & another
Civil Revision No.77789 of 2023
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2025LHC75.pdf

Facts: The petitioners filed suit seeking cancellation of Sale Deed and permanent injunction against the respondents, the trial court dismissed suit of petitioners and they filed an appeal, which was also dismissed by the learned Additional District Judge vide the impugned judgment and decree. The concurrent findings have been assailed through Civil Revision before the High Court.

Issues i) Whether the attorney is bound to get permission of principle to transfer the property in his name or to his kin?
ii) Whether a plea having not been taken in written statement can be introduced during evidence?
iii) What are the consequences of withholding of best available evidence?
iv) Whether cancellation of criminal case precludes to file civil suit and dismissal of application for initiation of proceedings under section 476 Cr.P.C operate as estoppel or res-judicata?
v) What is status of concurrent findings of facts?

Analysis: i) It is well established by now that when an attorney opts to transfer land on the basis of General Power of Attorney in favour of his kith and kin, he is bound to get written permission from the principal simply for the reason that no prejudice is caused to the principal due to *inter-se* relation between the attorney and prospective vendee. The Apex Court of the country in the case of <u>*Mst. Naila Kausar and another*</u> (supra) while dilating upon a question relating to the powers of an attorney to transfer the property, subject matter of General Power of Attorney, in his own name or to his kith and kin without written permission of the principal has *inter-alia* held under: -

> *"7. It is an admitted fact that Mst. Fatima Jan was the original owner of the property, who was an aged woman. It appears from the record that she executed a power of attorney in favour of Appellant No.2 Sardar Muhammad Aslam, who was an official in the Revenue Department and not related to Mst. Fatima Jan. It is settled law that an attorney cannot utilize the powers conferred upon him to transfer the property to himself or to his kith and kin without special and specific consent and permission of the principal……"*

ii)...during evidence, with a view to improve their case, respondent No.1 (DW-1) for the first time introduced a novel story by stating that as a matter of fact he purchased the land from father of the petitioners through an Agreement to Sell and due to said fact father of the petitioners executed General Power of Attorney in his favour. The said plea having not been taken in the Written Statement could not be allowed to be introduced during evidence and said portion from the

statement of respondent No.1(DW-1) could not be read to decide the fate of the suit filed by the petitioners….
iii)… it is crystal clear that he failed to produce the most crucial document. It is trite law that when a party withholds the best available evidence, it is bound to face its consequences. The Apex Court of the country in the cases of *Muhammad Boota through L.Rs. v. Mst. Bano Begum and others* (**2005 SCMR 1885**) has held that when a party withholds best available evidence he is bound to face its consequences…. there leaves no doubt that the said document had important bearing upon the outcome of the *lis* between the parties and there was no valid justification to withhold the same….
iv) even if the criminal case, registered against the respondents, was cancelled, the said fact did not preclude the petitioners to bring civil suit against the respondents. Similarly, dismissal of the application of the petitioners for initiation of proceedings under section 476 Cr.P.C. against the respondents on account of filing unauthorized suit on behalf of their father did not operate as estoppel or *res-judicata* as prior to the year 2019 the petitioners did not seek cancellation of sale deed executed in favour of respondent No.2.
v) There is no cavil with the preposition that ordinarily concurrent findings of facts recorded by the courts below cannot be interfered, however, the same cannot be considered as sacrosanct especially when they are found arbitrary or perverse. Reliance in this regard is placed on the case reported as *Hajid Wajdad v. Provincial Government through Secretary, Board of Revenue Government of Balochistan, Quetta and others* (**2020 SCMR 2046**) and *Subedar (Retd.) Jamil Khan (deceased) through legal heirs v. Salim Khan (deceased) through legal heirs and 06 others* (**2017 SCMR 860**).

Conclusion: i) The attorney is bound to get permission of principle to transfer the property in his name or to his kin.
ii) The plea having not been taken in the Written Statement could not be allowed to be introduced during evidence.
iii) when a party withholds the best available evidence, it is bound to face its consequences.
iv) See above analysis No.iv
v) See above analysis No.v

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13. **Lahore High Court**
Amir Khan etc. v. Addl. Collector of Customs etc.
Writ Petition No.44573/2024
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC6286.pdf

Facts: The petitioner challenged a corrigendum issued by the respondent, which modified an earlier adjudicatory order by substantially increasing the imposed personal penalties. The petitioner contended that the respondent lacked jurisdiction to unilaterally amend the order without following the prescribed appellate procedure.

Issues: i) Whether an adjudicating authority has the power to modify its final order without following the statutory appellate process?

ii) Whether the doctrine of functus officio applies to quasi-judicial authorities after passing a final order?
iii) Whether the corrigendum issued by the respondent was legally valid under the Customs Act, 1969?

Analysis: i) The foregoing facts incontrovertibly demonstrate that the order-in-original was passed by the respondent acting as an Adjudicating Authority under Section 179 of the Act and the sole and exclusive remedy available to any party aggrieved by said order was an Appeal under Section 193 of the Act before the Collector Customs (Appeal). Critically, the respondent had no Suo-moto power to modify the order-in-original, enhancing the personal penalties from Rs.10,000/- each to an aggregate amount of Rs.7,922,048/-, particularly in absence of any application from the aggrieved party requesting such modification.
ii) It is settled law that 'judicial' or 'quasi-judicial authorities' cannot change its determination in an adjudication after signing 'judgment', 'order' and 'decree' as then the doctrine of 'functus officio' comes in the way. The expression 'functus officio' means that having fulfilled the functions, discharged the duties, discharged the office, or the purpose got accomplished, there remains no further force or authority with the 'judicial' or 'quasi-judicial Authorities.
iii) A plain reading of Section 179 of the Act reveals no provision for conferring upon the respondent even the power to rectify order-in-original, rather such power vests exclusively in the Customs Appellate Tribunal under Section 194-B (2) of the Act and same is also exercisable only upon a mistake apparent on record being duly brought before the Tribunal by a party to an appeal. Consequently, the impugned Corrigendum is manifestly ultra vires the relevant provision of the Act.

Conclusion: i) An adjudicating authority cannot unilaterally modify its final order once passed.
ii) The doctrine of functus officio applies to quasi-judicial authorities, preventing post-adjudication modifications.
iii) The corrigendum issued by the respondent was ultra vires and lacked legal effect.

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14. **Lahore High Court**
Allah Ditta v. Noor Ahmad
Regular First Appeal No. 25617 of 2023
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC6368.pdf

Facts: The plaintiff filed a suit for the recovery of amount based on a promissory note. The defendant contested the claim, arguing that no valid consideration was given for the execution of the document. The trial court dismissed the suit with costs. Hence; this appeal.

Issues: i) What is the legal effect of the statutory presumption under Section 118 of the Negotiable Instruments Act, 1881, regarding consideration in negotiable instruments?
ii) What is the effect of lack of valid consideration on a negotiable instrument under Section 43 of the Negotiable Instruments Act, 1881?
iii) What is the legal effect of an agreement that involves consideration for compounding a non-compoundable criminal offence?
iv) Why is a private settlement in cases involving non-compoundable criminal offences contrary to public policy?
v) What is the consequence of a pronote executed under coercion or blackmail related to criminal charges?

Analysis: i) It is well settled law that under section 118 of the Negotiable Instruments Act, 1881, there is an initial statutory presumption that the negotiable instrument is made, drawn, accepted or endorsed for consideration and in a case to contrary, the onus is on the person who is denying the consideration to prove the same. However, if the plaintiff presents facts contrary to the stated consideration in the pronote or which militate against the presumption then the presumption is lost/destroyed and the burden of proving the validity shifts to the plaintiff to prove that the pronote was executed by the defendant for consideration.
ii) Hence, the alleged negotiable instrument is made or transferred without valid consideration and the negotiable instrument without consideration creates no obligation for the payment between the parties, according to Section 43 of the Negotiable Instruments Act 1881.
iii) Section 23 of the Contract Act, 1872 also invalidates agreements if their considerations, objects or purposes are illegal, including those that violate public policy. Non-compoundable offenses are regarded as matters of public concern and permitting private agreements to settle such offences would compromise public interest and proper administration of justice. No court of law can countenance or give effect to an agreement which attempts to take administration of law out of hands of the judges and put it in the hands of private individuals.
iv) This policy is based on the principle that criminal prosecution in non-compounding offenses cannot be compounded at the free will and choice of the parties which is not a private dispute between them but is one in which society at large is interested and any private agreement by the person ostensibly aggrieved, in return for a reward, to forbear from or withdraw or abandon the prosecution knocks at the root of criminal justice. If such agreements are allowed to be enforced by the courts, the doors will be opened to blackmailing on large scale.
v) For instance, a man who loses or believes that he has lost something may frighten another by starting or threatening to start a case for theft against him or somebody in whom he is interested, then the later will often come around and in his anxiety to safe himself from harassment of trial, make an offer or execute a pronote or actually pay money. Therefore, the agreement to pay consideration for the pronote in the present case being the compounding of non-compoundable

criminal charges is void in law.

Conclusion: i) The statutory presumption of consideration in negotiable instruments stands unless contradicted by the plaintiff, shifting the burden of proof onto the plaintiff.
ii) A negotiable instrument without valid consideration is unenforceable.
iii) Agreements with unlawful consideration violating public policy are void.
iv) Private settlements of non-compoundable offences violate public policy.
v) Coercive agreements based on criminal threats are legally void.

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15. **Lahore High Court, Lahore,**
M/s Mumtaz Ghani Textile (Pvt.) Ltd. & others v. Federation of Pakistan & others
Writ Petition No.79375 of 2023
Mr. Justice Shahid Karim.
https://sys.lhc.gov.pk/appjudgments/2025LHC115.pdf

Facts: This petition is among multiple writ petitions addressing similar issues related to the show cause notices issued by the State Bank of Pakistan, alleging a failure to fully realize export proceeds in violation of S.12(1) of the Foreign Exchange Regulations Act, 1947 (the Act). The petitioner was required to respond within 21 days; failure to do so may result in legal action being initiated under Section 23B of the Act.

Issues: i) What authority does Sub-section (3) of Section 20 of the Act give to the State Bank of Pakistan regarding directions to authorized dealers**?**
ii) What does the Act provide for when export proceeds are not realized within 120 days?
iii) What does Sub-section (4) of Section 23B of the Act allow the Adjudicating Officer to do in cases of contravention, including violations of Section 12(1) and Section 20(3)?

Analysis: i). Sub-section (3) of Section 20 of the Act grants the State Bank of Pakistan (SBP) the authority to issue directions concerning payments and actions by authorized dealers, aimed at ensuring compliance with the Act's provisions.
ii) The provisions of the Act merely state that in case the export proceeds are not realized within 120 days, which is an admitted position, then the matter shall be referred to the Adjudicating Officers under Section 23B.
iii) Sub-section (4) of section 23B provides that in case of any contravention including that of sub-section (1) of section 12 of the Act or sub-section (3) of section 20 of the Act, cognizance shall be taken by the Adjudicating Officer of such contravention who may impose a penalty at the conclusion of that adjudication.

Conclusion: i) See above analysis No.i).
ii) The Act stipulates that if export proceeds are not realized within 120 days, the matter must be referred to the Adjudicating Officers under Section 23B.
iii) See above analysis No.iii)

16. **Lahore High Court**
Ameer Abdullah v. Member, Federal Land Commission, Islamabad etc
Writ Petition Nos.12078 of 2014 & 32541 of 2013
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Safdar Saleem Shahid.
https://sys.lhc.gov.pk/appjudgments/2022LHC9808.pdf

Facts: The legal heirs of Respondent No. 2, whose excess land was resumed under the Land Reforms Regulation, 1972 (MLR 115), filed a revision petition in 2011 before the Federal Land Commission, challenging orders passed in 1972 and 1973. The Federal Land Commission accepted the revision, setting aside previous orders and restoring the resumed land to the legal heirs of the declarant. The petitioners, landless tenants who were allotted the resumed land, challenged this decision through these writ petitions.

Issues: i) What was the purpose of promulgating the Land Reforms Regulation 1972 (MLR 115), and how did it aim to address the economic well-being of peasantry?
ii) What is the remedy available under the Land Reforms Regulation 1972 for an aggrieved person, and what is the time limit for filing a revision before the Federal Government?
iii) Does the Land Reforms Act, 1977 has a prospective or retrospective application?
iv) Does the proviso to Section 27 of the Land Reforms Act, 1977 impose any conditions on the exercise of revisional jurisdiction?

Analysis: i) The Government of Pakistan in order to improve the economic well-being of peasantry and making agriculture a profitable vocation, promulgated the Land Reforms Regulation 1972 (MLR 115) on 11.03.1972 (to be referred hereafter as 'Regulation') whereby maximum ceiling of the own land was fixed for the declarants and the excess land was made allotable to the landless tenants as per policy/law.
ii) As per structured scheme of law, any person if aggrieved of any order passed by the authority established under the Regulation has a remedy of Revision before the Federal Government to be filed within a period of 60 days.
iii) Furthermore, Section 3 of the Land Reforms Act, 1977 describes that the said enactment shall have prospective effect only.
iv) Even otherwise, Proviso to Section 27 lays an embargo on the unbridled exercise of Revisional jurisdiction that it shall not affect the right of the adverse party unless a fair reasonable hearing is afforded to it but in the case in hand no document has been produced to show that any hearing was granted to the petitioners, which flaw is fatal that dismantled the legality of the impugned order.

Conclusion: i) See above analysis No.i.

ii) An aggrieved person has a remedy to file a revision within 60 days of the order being passed.
iii) The Land Reforms Act, 1977 has a prospective application.
iv) Proviso of Section 27 ensures no adverse order without a fair hearing.

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17. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Muhammad Afzal Zahid, Ex-Additional District & Sessions Judge v. Lahore High Court, Lahore through its Registrar.
Service Appeal No.26 of 2013
Mr. Justice Muhammad Sajid Mehmood Sethi Chairman, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Husain Chattha.
https://sys.lhc.gov.pk/appjudgments/2024LHC6286.pdf

Facts: The appellant, a former judicial officer, was dismissed from service following allegations of misconduct and corruption. He challenged the dismissal, arguing procedural irregularities and lack of substantial evidence The Punjab Subordinate Judiciary Service Tribunal partially allowed the appeal, modifying the penalty to compulsory retirement.

Issues: i) What are the legal principles governing the exercise of compulsory retirement in service matters?
ii) How should the proportionality of a penalty be determined in disciplinary proceedings?

Analysis: i) The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption arid incompetence. The officer would live by reputation built around him and where his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest, he should be compulsorily retired from service.
ii) It is evidently clear that the Courts have consistently emphasized the importance of considering the employee's length of service, the nature of the offense, and the context surrounding the misconduct. The precedents illustrate that a fair and just approach to disciplinary actions is essential in maintaining morale and ensuring that penalties are proportionate to the offenses committed. In these circumstances, we are of the considered view that the impugned penalty of removal from service is not proportionate to the gravity of the misconduct proved against the appellant. Therefore, we are inclined to convert the major penalty of removal from service into compulsory retirement.

Conclusion: i) Compulsory retirement ensures service integrity by removing officials harmful to public interest.
ii) Disciplinary penalties must be fair and proportionate to the misconduct.

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18. **Lahore High Court**
Dr. Nakshab Chaudhry Vs. Province of the Punjab and others
Writ Petition No. 46054/2024
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2025LHC54.pdf

Facts: The petitioner, a senior academic at a medical university established under King Edward Medical University Lahore Act,2005 (the "KEMU Act"), challenges the government's interference in appointing teaching faculty. It is alleged that such appointments, made by the government without the approval of the university's Syndicate, contravene the statutory autonomy granted to the King Edward Medical University under the KEMU Act. Whereas the government defends its actions based on transitional provisions in the statute and the necessity of fulfilling accreditation standards.

Issues: i) Does the Syndicate hold exclusive authority under the King Edward Medical University Act to create teaching posts and appoint individuals to positions equivalent to BPS-19 or above?
ii) Does the proviso to Section 20(2) of the KEMU Act grant the government authority to make ongoing appointments or transfers of teaching staff beyond the transitional period?
iii) Does Section 5 of the KEMU Act limit the government's administrative control over attached hospitals while granting the university exclusive teaching jurisdiction?
iv) What is the distinction between an "aggrieved party" and an "aggrieved person" under Article 199 of the Constitution, and how does this affect the High Court's jurisdiction?
v) Who are the key members and authorities responsible for the governance and administration of the university?
vi) What is the legal status and capacity of the university as a corporate entity?
vii) What authority does the university has to create and fill academic posts?
viii) What are the responsibilities and appointment powers of the Vice-Chancellor?
ix) What is the role of the Senate in the university's administration?
x) What are the powers of the Syndicate regarding appointments and the creation or abolition of posts?
xi) How should a proviso in a statute be interpreted?
xii) When does the High Court exercise its discretionary jurisdiction under Article 199 of the Constitution?

Analysis: i) Direct transfers or appointments by the Government to teaching posts in KEMU, without requisition or approval by the Syndicate, contravene section 25(xv) of the KEMU Act. Such actions constitute unlawful interference in the University's affairs, compromise its autonomy, and violate the objective and structure of the Act.

ii) By its plain language of proviso to section 20(2) of the KEMU Act, the proviso allows the Government to transfer employees who opted to remain with the Government back to the University, subject to terms determined by the Government. This mechanism was intended to address transitional exigencies and does not grant the Government perpetual or unrestricted power to make appointments or transfers beyond the scope of the initial transition.
iii) Section 5 further grants KEMU exclusive jurisdiction over teaching in its attached hospitals. However, the administrative control of these hospitals remains with the Government.
iv) The High Court must be moved by an aggrieved party in respect of the matters mentioned in clauses (i) & (ii) of Article 199(1)(a), while any person may approach it for an order under clauses (i) & (ii) of Article 199(1)(b). As for the matters falling within the ambit of Article 199(1)(c), it can exercise jurisdiction only on the application of an aggrieved person. It is important to note that Article 199 has used two expressions: “aggrieved party” and “aggrieved person”.
v) Section 3(2) of the KEMU Act stipulates that KEMU shall consist of the Chancellor, the Pro-Chancellor, the Vice Chancellor, the Pro-Vice Chancellor and members of the Senate, the Syndicate, the Academic Council, and other authorities.
vi) Section 3(3) of the Act states that the University shall be a body corporate and shall have perpetual succession and a common seal. It may sue and be sued by the said name.
vii) Section 4 of the Act outlines the University’s functions. Clause (j) of section 4 empowers it to create jobs of Professors, Associate Professors, Assistant Professors, and Demonstrators and other posts for research, publication, extension, administration, and other related purposes and to appoint persons thereto.
viii) Section 14(1) of the KEMU Act designates the Vice-Chancellor as the chief executive of KEMU, responsible for controlling all offices, teachers, and employees and enforcing the provisions of the Act, Rules, and Regulations. Clause ix) of section 14(4) grants the Vice-Chancellor the authority to make appointments to posts in BPS-1 to BPS-18.
ix) Section 23 declares the Senate as the highest administrative and executive body of the University and describes its functions.
x) Section 25 defines the Syndicate’s powers, including appointing honorary visiting faculty (clause xiv), creating or abolishing posts for teaching, administrative, and research positions (clauses xv and xvi), and appointing teachers and officers for posts equivalent to BPS-19 or above (on the recommendations of the Selection Board), determining their terms and conditions, including pay (clause xvii). Clause (xviii) empowers the Syndicate to appoint a Professor Emeritus under prescribed terms.
xi) Craies on Statute Law has enumerated the following principles: “The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso

cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing it to that effect."

xii) It is well settled that the jurisdiction of the High Court under Article 199 of the Constitution, except in habeas corpus cases, is discretionary. In exercising this discretion, the court must consider a range of factors, including the facts of the case, the urgency for exercising its discretion, the potential consequences of granting the writ, and the nature and extent of the wrong or injury resulting from a refusal of the writ.

Conclusion: i) Such actions constitute unlawful interference in the University's affairs, compromise its autonomy, and violate the objective and structure of the Act.

ii) This mechanism does not grant the Government perpetual or unrestricted power to make appointments or transfers beyond the scope of the initial transition.

iii) See above analysis no iii.

iv) See above analysis no iv.

v) See above analysis no v.

vi) University shall be a body corporate and shall have perpetual succession and a common seal.

vii) See above analysis no vii.

viii) See above analysis no viii.

ix) Senate is the highest administrative and executive body of the University

x) See above analysis no x.

xi) See above analysis no xi.

xii) See above analysis no xii.

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19. **Lahore High Court**

Sadiq Hussain and another v. Deputy Director, Federal Investigation Agency, and others

Writ Petition No.12935/2024

Mr. Justice Tariq Saleem Sheikh

https://sys.lhc.gov.pk/appjudgments/2024LHC6351.pdf

Facts: The petitioners challenged the registration of an FIR under the Prevention of Trafficking in Persons Act, 2018, the Emigration Ordinance, 1979, and the Pakistan Penal Code, alleging that the charges were misapplied and violated their constitutional rights to travel and practice religion. The petitioners filed a writ petition under Article 199 of the Constitution seeking quashing of the FIR.

Issues: i) Whether sections 3 and 4 of the Prevention of Trafficking in Persons Act, 2018, apply in cases of suspected organized begging?

ii) Whether an immigration authority can restrict travel under domestic and international legal obligations?

iii) Whether the High Court can interfere in the investigative process under its constitutional jurisdiction?

Analysis: i) Under the PTPA, beggary does not inherently constitute trafficking unless it involves elements meeting the legal threshold of trafficking as stipulated in section 3(1), i.e., coercion, fraud, manipulation, or other forms of exploitation by a third party. Even when beggary is limited in duration – such as cases bound by visa restrictions – it can still be classified as trafficking under the PTPA if exploitative elements are present.

ii) Pakistan has a comprehensive legal framework to regulate the entry and exit of individuals, including both citizens and foreigners, at its borders. Standing Order No. 31/2005 empowers the Special Checking Officer to scrutinize passengers whose profiles appear inconsistent with their stated purpose of travel. In the context of human trafficking, the FIA must adhere to the PTP Rules. Recently, the FIA Risk Analysis Unit developed a standardized set of interview questions to assist immigration staff in identifying individuals suspected of travelling abroad for organized beggary.

iii) The Supreme Court has consistently held that the High Court should not interrupt or divert the ordinary course of criminal procedure as prescribed by the procedural statute by invoking Article 199 of the Constitution or section 561-A Cr.P.C. The grounds ordinarily considered for quashing an FIR are: (a) a jurisdictional defect evident on record, (b) a patent violation of some provision of law, or (c) the allegations contained in the FIR do not constitute an offence… The Supreme Court has underscored that determining the guilt or innocence of an accused person is a rigorous judicial process… The Court cautioned against invoking section 561-A Cr.P.C. to prematurely decide criminal cases, as such a deviation risks undermining the purpose of a fair trial. It held that extraordinary circumstances must exist to justify departing from the prescribed procedural path.

Conclusion: i) The determination of trafficking requires a factual inquiry into coercion, fraud, or economic exploitation.

ii) Immigration authorities have the legal authority to impose travel restrictions to prevent exploitation and uphold international commitments.

iii) The High Court should not interfere in ongoing investigations unless there is clear abuse of legal authority.

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20. **Lahore High Court**
Criminal Appeal No.180 of 2021
Sadaqat & another v. The State & another
Criminal Appeal No.247 of 2021
Habib Ullah v. The State & 2 others
Murder Reference No.07 of 2021
The State v. Sadaqat & another
Mr. Justice Ch. Abdul Aziz, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC6372.pdf

Facts: The appellants were sentenced to death by the trial court for murder; whereas, acquitted one co-accused.

Issues: i) How the promptness of FIR is to be evaluated in murder cases?
ii) What information must be given in 'Inquest Report'; and why to submit before Medical Officer prior to postmortem?
iii) When one accused acquitted, then how the conviction of co-accused could sustain on the same?
iv) What is worth of evidence of a witness, who makes dishonest improvements?
v) What is the importance of medical evidence?
vi) How the site plan attains evidentiary value and when it could be contradicted?
vii) What is the effect of non-mentioning of crime empties in column no. 22 and 23 of the Inquest Report?
viii) How and under what circumstances a party is allowed to re-examine its witness?
ix) What is 'Hostile Witness'; how to declare a witness hostile and what is the extent of cross-examination by the party calling him?
x) What is difference between hostile witness and cross-examination?

Analysis: i) Being cognizant of the fact that the purity of criminal administration of justice including the police working has plummeted to a noticeable extent due to which the police station record is always prone to tampering, thus we pondered upon the acclaimed prompt registration of FIR with utmost circumspection. Unfortunately, it has become trend of police investigation to facilitate the complainant of a murder case by putting at halt Registers No.1 & 2 more commonly known as First Information Report Register and Station Diary respectively, so as to show a crime report though lodged with delay as having been promptly registered…It is further noticed that the complaint (Exh.PA) was drafted at the crime scene and was dispatched to police station through Muhammad Nadeem 1443/C for the registration of formal FIR but neither he was cited as witness in the prosecution case nor was produced during trial as such. The claim of registration of FIR without delay is a factor which is not to be projected through rhetoric but is to be substantiated through impeccable evidence.
ii) According to Chapter-XXV Rule 35 of the Police Rules, 1934 the inquest report is drafted by the Investigating Officer after recording the statement of complainant and collection of relevant material from the crime scene. The inquest report comprises upon four pages and contains twenty four columns, besides that its last page is meant for mentioning the brief facts of the case emerging from the accusation set out by the complainant. Twenty four columns of the inquest report provide information about the place of occurrence, the time of incident, the names of witnesses, particulars of the deceased along with condition of the corpse, the nature as well as locales of injuries, the description of weapon used in the crime and above all the articles recovered from the spot. It is equally important to mention here that since the statement of at least the complainant is to be recorded before drafting of inquest report, thus the police officer gains knowledge about the identity of the culprits and the weapons used by them. The inquest report is to

be prepared in duplicate by the carbon copying process in a prescribed format and is essentially required to be provided to the Medical Officer before the autopsy as is evident from the provisions of **Chapter-XXV of the Police Rules, 1934** and the **Instructions Regarding The Conduct Of Medco Legal And Postmortem Examination 2015** issued by the Surgeon Medico Legal Punjab, Lahore. As token of acknowledgement upon receipt of inquest report before the autopsy with all the columns filled properly, the medical officer is required to sign its each and every page. If the needful towards drafting of inquest report is done in accordance with afore-mentioned requirements, it excludes the possibility of tampering with record.

iii) Reverting back to the query that when the eyewitnesses have been disbelieved to the extent of Mewa and that too for cogent reasons, then what will be the fate of their depositions with regard to the appellants. Unambiguously, the acquittal of Mewa has polluted the purity of the evidence given by both the eyewitnesses, thus conviction of the appellants can only be sustained on the same ocular account if it receives independent strong corroboration from some other source of irreproachable nature.

iv) We are constrained to hold that through such dishonest improvement he compromised his integrity which left a question mark upon the intrinsic worth of his deposition. The approach of the Supreme Court of Pakistan regarding material dishonest improvement is consistently against the maker of such statement, whereby the fresh facts introduced during trial are discarded from consideration.

v) The acceptance of the depositions of eyewitnesses even in the presence of a noticeable glitch between medical and ocular evidence amounts to discarding the statement of a medical expert without assigning any reasoning which perhaps will be nothing more than an injustice and besides that it will give leverage to false witnesses for securing conviction against innocent even after being contradicted by the medical evidence. Beyond everything, such practice on the part of the courts will give vent to frustrating the very purpose of collecting medical evidence in a charge pertaining to offences against human body. The medical evidence, needless to mention, is furnished by an expert and is aimed at enabling the court to adjudge the veracity of the accusations set out by the eyewitnesses in murder or hurt cases. This will not be an overstatement that medical evidence sheds light upon the depositions of eyewitnesses and draws a distinguishing line between the truthful and false narration about the incident. The deposition of an honest medical practitioner abridges the gap between the accusations of the witnesses and the flawless administration of justice by the court. For the same reason, on account of a noticeable variation between medical and ocular evidence a consistent judicial view is formed to acquit the accused.

vi) We are not oblivious of the fact that unless it is proved that the site plan was prepared on the pointation of eyewitnesses it cannot be used to contradict them or for any other legal purpose. On the contrary, if the site plan is duly proved to have been drafted on the pointing out of the eyewitnesses, it provides an insight about the nature of crime scene, the location of witnesses, the distance between victim

and assailants, besides that it enables the Court to draw a vision about the actual genesis of the occurrence. Habib Ullah (PW.4) unequivocally admitted that the site plan was prepared on the pointation provided by him and the other eyewitnesses. In these circumstances the site plan (Exh.PH) does not remain a simple piece of paper rather gains evidentiary value so as to be legally and legitimately used by this Court.

vii) The afore-mentioned positive report (Exh.PR) lost its significance when seen in the context of column No.22 & 23 of inquest report (Exh.PG) according to which no crime empty was recovered from the place of occurrence. Possibly, the crime empties were planted by the police so as to knit an evidence for corroborating the statements of eyewitnesses.

viii) During examination-in-chief, the party calling the witness is restrained from putting leading questions, if objected by the other side as is evident from Article 137 (1). On the contrary, in accordance with Article 133 (2) the scope of cross-examination is wide in nature and besides queries relating to the point in issue a witness can be questioned beyond it. So far as re-examination under Article 132(3) of QSO is concerned, it can be carried out by the party who had called the witness, almost as a matter of right but its scope is limited to the extent of providing an opportunity to the prosecution for reconciling the discrepancies, if any, between examination-in-chief and cross-examination or for removing some ambiguity in any statement inadvertently made by a witness during cross-examination. The re-examination under Article 132(3) of QSO must be restricted for explaining inadvertent omissions or out of context issues arising in cross-examination. In the absence of some ambiguity or a fact needing explanation, re-examination under 132(3) of QSO cannot be carried out to counter the effect of some benefit having been accrued to the defence during cross-examination. We have to keep in mind that through cross-examination a defence lawyer endeavours to structure the case of his client by establishing some facts contradicting the witness with his previous statement, exposing the credibility of a witness by confronting him with other attending circumstances and thereby knits a defence. The very purpose of cross-examination would be frustrated if a witness is permitted to overcome the effect of shortcomings through the tool of re-examination. According to Article 133(3) of QSO the re-examination must be directed to the explanation of the matters referred to in cross-examination and the foregoing provision places a restriction that a new fact can only be introduced with the permission of the Court which for obvious reason is to be granted in writing.

ix) The language of Article 150 is free from any ambiguity and leaves no room for discussion that cross-examination of a witness by a party calling him in the dock is entirely dependent upon the discretion of the Court which can only be accorded if there exists a compelling circumstance. For demonstrating that the discretion was lawfully exercised by the Court in terms of Article 150 of QSO, there must be an order backed by the reasoning and that too upon the application moved by the party mentioning therein attending circumstances. If such

permission is granted by the Court, then in consonance with Article 141 of QSO a witness can be asked any question which tend to test his veracity, to discover who he is and what is his position in life or to shake his credit by injuring his character although answer to such question may tend directly or indirectly to criminate him or even may expose him to a penalty or forfeiture. The power under Article 150 of QSO is exercised by the Court in reference to a witness who becomes antagonist to the party on whose behalf he appears before the Court. Such witness ordinarily is labelled as hostile, a term which though is not used in the Qanoon-e-Shahdat Order, 1984 as well as erstwhile Evidence Act, 1872 but is developed through common law.

x) Through re-examination an ambiguity stemming out of cross-examination can be removed whereas Article 150 is a provision which enables the prosecution to extract truth from a witness who turns hostile during his examination-in-chief or even during cross-examination and takes a stance different from his version earlier put forth. It is essentially required for the Court to have a look upon the previous statement/stance of the witness before declaring him hostile. If such witness is a police officer who had given an opinion favourable to accused during investigative phase of the case and he reiterates the same in his examination-in-chief, declaring him hostile will be a fallacious approach.

Conclusion: i) The claim of registration of FIR without delay is a factor which is not to be projected through rhetoric but is to be substantiated through impeccable evidence.

ii) See above analysis (ii).

iii) Conviction of co-accused can only be sustained on the same evidence if it receives independent strong corroboration from some other source of irreproachable nature.

iv) The fresh facts introduced during trial are discarded from consideration.

v) The medical evidence, needless to mention, is furnished by an expert and is aimed at enabling the court to adjudge the veracity of the accusations set out by the eyewitnesses in murder or hurt cases.

vi) When it is proved that site plan is prepared at the pointation of eye witnesses, it could be contradicted only if so established and attains evidentiary value.

vii) Failure to mention crime empties in Inquest Report would amount that recover of empties, if any is planted.

viii) See above analysis (viii).

ix) See above analysis (ix).

x) See above analysis (x).

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21. **Lahore High Court**
Maqbool Ahmad v. The State etc.
Crl. Misc. No.8741-B of 2022
Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2023LHC7781.pdf

Facts: The case involves the alleged sale of substandard fertilizer, where a sample taken from a shop was found unfit upon chemical analysis. The petitioner, a sales officer, was booked along with the shop and factory owners, despite no allegation of tampering or adulteration against him. The court also noted the department' failure to take action against the manufacturer and to seal the godown.

Issues: i) What are the fundamental legal and ethical principles that police must follow to maintain public confidence and legitimacy?

Analysis i) It may be observed that good policing is the policing which is both effective and fair as well as with legitimacy on the basis of public consensus rather than repression. If the policing is ineffective, illegitimate or unfair in protecting the public against crime, it will lose the public's confidence. Therefore, it is expected that the police should have a high degree of professionalism and independence from any influences and should act in conformity with the law and established policies as well as on the basis of public consent (within the framework of the law) as evidenced by levels of public confidence. With this model in mind, an analysis of the current police investigation system can be made, identifying gaps and weaknesses and developing suggestions for its improvement.

Conclusion: i) Policing must be fair, effective, and legitimate to maintain public confidence.

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22. **Lahore High Court, Multan Bench, Multan,**
Nasim Hakim, etc. v. Province of Punjab, etc.
Writ Petition No.1987/ 2022
Mr. Justice Asim Hafeez.
https://sys.lhc.gov.pk/appjudgments/2025LHC38.pdf

Facts: Petitioners through instant constitutional petition have disputed the acquisition of their lands under Land Acquisition Act, 1894 ("the Act") alleging that they were stripped of their constitutionally protected rights i.e. right to own, enjoy and unitize the property, in arbitrary manner and without adhering to the statutory safeguards provided under the Constitution of Islamic republic of Pakistan 1973.

Issues: i) Whether question of adequacy of compensation can be determined under constitutional jurisdiction?
ii) How the objections regarding inadequacy of quantum of compensation and nature can be raised and remedied?
iii) What is purpose of notice under S.9 of the Act?
iv) Whether the constitutionality of the acquisition or legality of notifications under section 4 and section 17 of the Act can be challenged under Section 9 of the Act?
v) Whether non-appearance of interested persons, pursuant to notice under S.9 of the Act would render the Award ineffective or void?

Analysis: i) Question of adequacy of compensation was neither raised and nor such determination would likely be carried out under constitutional jurisdiction.

ii) Objections regarding inadequacy of quantum of compensation and nature / extent of the interest of the petitioners – context being the ownership claims – could be raised upon invoking the remedies provided under the Act, subject to the conditionalities prescribed.
iii) Purpose of section 9 notice, appearing from textual reading of said provision, is to categorically convey the intent of taking possession and to invite claims to compensation against acquisition.
iv) Section 9 of the Act is not an all-encompassing provision, and certainly not extending the option of filing objections to challenge the constitutionality of the acquisition or legality of notifications under section 4 and section 17 of the Act.
v) Simplicitor non-appearance of the interested persons, pursuant to notice under section 9 of the Act would not render the Award ineffective or void.

Conclusion: i) Adequacy of compensation cannot be determined under constitutional jurisdiction.
ii) See above analysis No.ii).
iii) Purpose of notice under S.9 of the Act is to convey the intent of taking possession and to invite claims to compensation against acquisition.
iv) See above analysis No.iv).
v) Non-appearance of interested person would not render the Award ineffective or void.

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23. **Lahore High Court**
Sahib Bibi & another. v. Khushi Muhammad (deceased) through LRs.
Civil Revision No.2116 of 2011
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2025LHC104.pdf

Facts: The case involves a dispute over the inheritance of a deceased individual, where the petitioners claimed succession based on a particular religious sect. The respondents contested the inheritance mutation, asserting that the deceased belonged to a different sect, which would alter the distribution of the estate. The courts determined the sect of the deceased based on the preponderance of evidence and upheld the respondents' claim. Hence; this Revision.

Issues: i) What is the legal standard for determining the religious sect of a deceased individual in inheritance matters?
ii) What is the evidentiary burden in proving the religious sect of a deceased individual in inheritance disputes?
iii) Is there a presumption regarding the sect of a Muslim individual in the Indo-Pak Subcontinent?
iv) How does the burden of proof apply in cases where a party claims a different religious sect for inheritance purposes?
v) What is the difference between Ushar and Khums in Islamic financial obligations?
vi) What is the role of Revenue Officers in inheritance disputes involving religious sect determination?

vii) Can concurrent findings of fact be disturbed in revisional jurisdiction under Section 115 of the CPC?

Analysis: i) No strict criteria can be set to determine the faith of a person, and thus, to pass any finding thereon, the Courts are to consider the surrounding circumstances; way of life, parental faith and faith of other close relatives.

ii) In civil dispensation of justice, Courts are to adjudge the lis on the standard of preponderance of probability of evidence produced by the parties and the decision of the court would tilt in favour of the party having preponderance of evidence. As for the burden of proving a fact is concerned, it gains importance and relevance, only when no evidence is led by the concerned party or the Court is unable to take a decision, one way or the other, on the basis of evidence available on record of the case.

iii) In a case titled "Pathana V. Mst. Wasai and another." (PLD 1965 SC 134), a five-member Bench of the Hon‟ble Supreme Court of Pakistan, held that every Muslim in the Sub-continent is presumed to belong to Sunni sect, unless "good evidence" to the contrary is produced by the party contesting the same. The Court ruled that: "In the Indo Pak Sub-continent there is the initial presumption that a Muslim is governed by Hanafi Law, unless the contrary is established by good evidence (vide Mulla's Muhammadan Law, section 28)"

iv) In the case titled "Abdul Rehman and others V. Mst. Allah Wasai and others" (2022 SCMR 399), Hon‟ble Supreme Court of Pakistan observed as under: "As per Article 117 of the Qanun-e-Shahadat 1984, the burden of proof lies on a person, who desires a Court to give judgment, as to a legal right or liability dependent on the existence of facts, which he asserts; while under Article 118 (supra), burden of proof in any suit or proceeding lies on a person, who would fail, if no evidence at all were given on either side. Hence, when a plaintiff comes to a Court, and seeks relief on the basis of certain facts, asserted by him in his plaint, the burden of proving those facts is on him; for the relief prayed for cannot be granted, unless the Court holds the existence of those facts proved.

v) In the Shia sect, the practice of paying Ushar (or Ushur) is not observed. Ushar refers to a tithe, typically a 10% tax on agricultural produce, which is more commonly associated with traditional Islamic practices and laws in some Sunni communities. However, in the context of Shia Islam, the concept that closely resembles this kind of financial obligation is Khums. Khums is an important obligation for Shia Muslims and is a religious tax that is paid annually, amounting to 1/5 of one's surplus income, which is divided into two parts. 50% goes to the descendants of the Prophet Muhammad (اسدات(, particularly to those who are eligible for this portion. Remaining 50% is used for religious leaders/scholars and for the upkeep of religious institutions.

vi) Undoubtedly, the proceedings before the Revenue Officer are "summary" in nature, this does not absolve the officer from ensuring that the proper procedure is followed when faced with a legal dispute. Sanctioning an inheritance mutation based solely on oral testimonies, especially when there is a clear sectarian dispute,

is problematic.(…) In cases where the sect of the deceased is in dispute, the appropriate course of action would be for the Revenue Officer to refer the matter to a court of competent jurisdiction. This referral would ensure that the dispute is adjudicated by a judicial authority with the expertise and authority to examine the evidence, including testimonies, documents, and make a determination regarding the deceased‟s sect.

vi) Even otherwise, concurrent findings on facts cannot be disturbed when the same do not suffer from misreading and non-reading of evidence, howsoever erroneous in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908.

Conclusion: i) Faith is determined by surrounding circumstances, way of life, and family beliefs.

ii) Decisions rely on preponderance of evidence; burden arises when no clear proof exists.

iii) Muslims in Indo-Pak Sub-continent are presumed Sunni unless proven otherwise with good evidence.

iv) The party asserting a fact must prove it to obtain relief.

v) Ushar is a Sunni tithe on crops; Khums is a Shia tax on surplus income.

vi) Revenue Officers must refer sectarian inheritance disputes to courts of competent jurisdiction

vii) Concurrent findings stand unless based on misreading or non-reading of evidence.

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24. **Lahore High Court, Lahore**
Asif Atta vs. The State, etc.
Criminal Appeal No.40068/2020
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2025LHC33.pdf

Facts: Appellant assailed the order whereby he was convicted under section 174 of Pakistan Penal Code 1860 (PPC) and sentenced to undergo seven days' imprisonment by learned Additional Sessions Judge.

Issues: i) What is the special procedure to regulate the proceedings of offences of contempt of lawful authority, false evidence and public justice?

ii) What is the procedure for trial of offences mentioned U/S 195, sub section 1, clause (a) of Cr.P.C?

iii) Whether complaint is necessary to be forwarded to authorize magistrate when offences U/S 172-188 PPC are committed before a judge or in contempt of his lawful authority, or is brought under his notice but other than High court?

iv) Whether Learned Additional Sessions Judge was authorized to pass sentence U/S 174 PPC?

Analysis: i) Contempt of lawful authority of a public servant & false evidence and offences

against public justice are regulated under Chapters X & XI of PPC which consist of sections 172 to 190 & 191 to 229. In order to initiate proceedings in certain offences mentioned in above chapters, section 195 Cr.P.C prescribes special procedure.
ii) Offences mentioned under section 195, subsection (1), clause (a) of Cr.P.C., (Sections 172 to 188 PPC) are variously regulated for trial. Procedure for offences under sections 175, 178, 179, 180, as well as section 228 PPC (though section 228 PPC can also be dealt with under section 476 Cr.P.C) has been given in section 480 of Cr.P.C.
iii) All offences in bracket of section 172-188 PPC shall ordinarily be tried under chapter XX of Cr.P.C., on a complaint, if the Judge or Magistrate does not attend offences under sections 175, 178, 179 & 180 of PPC within the purview of procedure prescribed under section 480 of Cr.P.C; but when such offences are committed before himself or in contempt of his lawful authority, or is brought under his notice, as such Judge or Magistrate (except Judge of High Court) in the course of a judicial proceeding, he shall not try it himself. This command of law is incorporated in section 487 of Cr.P.C.
iv) Learned Additional Sessions Judge has sentenced the appellant under section 174 of PPC for his failure to produce the accused against whom notice was issued on petition for cancellation of his bail. Section 174 falls in category of offences mentioned in section 195, sub-section (1), clause (a), therefore, learned Additional Sessions Judge was not authorized to sentence the appellant by himself, rather complaint should have been forwarded to the Magistrate having jurisdiction in the matter, and on receiving such complaint concerned Magistrate is not required to record statement of Judge as mentioned in section 200 of Cr.P.C., rather follow the process contained in section 200 to 204 Cr.P.C., and provisions relating to trial as the case may be.

Conclusion: i) See above analysis No.i.
ii) See above analysis No.ii.
iii) Complaint is necessary to be forwarded to authorize magistrate when offences U/S 172-188 PPC are committed before a judge other than High court or in contempt of his lawful authority, or is brought under his notice
iv) see above analysis No iv.

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25. **Lahore High Court, Lahore**
Cargo United Goods Transport Company, etc. v. Province of Punjab, etc.
Writ Petitions No. 51697of 2023 and 66220 of 2024
Mr. Justice Abid Hussain Chatha
https://sys.lhc.gov.pk/appjudgments/2025LHC69.pdf

Facts: The vehicles of the petitioners loaded with goods were confiscated by police to block roads against the protests. The vehicles were put fire which caused huge loss to the petitioners. Through two writ petitions the Petitioners claim compensation of losses suffered by them and seek declaration to the effect that the

arbitrary act of impounding, confiscating and detaining vehicles is unlawful and unconstitutional.

Issues: i) Whether power of judicial review can be exercised in the last resort?

Analysis: i) This Court is mindful of the fact that in the last resort in terms of constitutional dispensation, it may have to answer the foresaid questions itself in exercise of its powers of judicial review.

Conclusion: i) In the last resort the court has power of judicial review.

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26. **Lahore High Court.**
Mansoor Ali vs. Mst. Anam Hussain, etc.
Writ Petition No.819 of 2020
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC6335.pdf

Facts: A dispute arose regarding the maintenance claims for a minor, the depreciation of dowry articles, and related issues following the dissolution of a marriage. The trial court awarded maintenance to the minor and alternate compensation for dowry articles while dismissing some claims. Both parties appealed; the appellate court dismissed the appeals, leading to the present writ petitions before the Lahore High Court.

Issues: i) Can depreciation in the value of dowry articles during litigation be imposed on the female plaintiff?
ii) Can a father be obligated to pay child maintenance beyond his financial means?
iii) Can child maintenance, once fixed, be reduced if the father's financial circumstances adversely change?

Analysis: i) If depreciation of the dowry articles for such a period is forced upon a female while calculating the alternate value of dowry articles, this would amount to putting a premium on the conduct of the husband who withheld the dowry articles, depriving the female of her belongings for the period during which the suit remained pending, on account of not admitting the claim of the female straightaway.
ii) The father's responsibility to maintain his children is a religious, moral, and legal obligation, while at the same time, the right of the children to be maintained by their father is a legal, religious, and natural right… The object of the law, no doubt, is to provide financial security to children and to ensure that a father does not avoid his legal, moral and religious obligation to maintain his children, however, the purpose is certainly not to penalize the father or to place a burden on him, greater than he can actually bear.
iii) Maintenance, as also the financial resources, is not a static rather changing phenomenon. The financial means of father as well as financial needs of the minor may undergo change positively, adversely and/or inversely as well. The Court, in determining the quantum of maintenance, cannot act in an arbitrary manner but should in fact carry out an evidence-based exercise to determine the

needs of the minor and the financial capacity of the father in terms of his earnings and assets etc. It is equally clear that fixation of an oppressive or over burdensome quantum of maintenance, without regard to the father's sources of income, is also improper and cannot be allowed. In this regard, the Supreme Court of Pakistan held as under:

> '... the Family Court is under an obligation while granting the maintenance allowance, to keep in mind the financial condition and status of the father. It has to make an inquiry in this regard. It cannot act arbitrarily or whimsically. Furthermore, at the same time, the unjust enrichment of the minors cannot be permitted at the cost of the father.'

In application of the principles emanating out of the above discussion, it may be stated that while the maintenance can be enhanced and is enhanced statutorily and/or by decree of the Court, the same can be reduced as well with the changed financial circumstances of the father.

Conclusion: i) Depreciation during litigation cannot be imposed on the female plaintiff if it results from the husband's non-admission of claims.
ii) A father cannot be burdened with maintenance obligations beyond his financial means.
iii) Child maintenance can be reduced if the father's financial circumstances change adversely.

LATEST LEGISLATION/AMENDMENTS

1. Vide Income Tax (Amendment) Ordinance, 2024 dated 29-12-2024, amendments in first and seventh schedule are made in the Income Tax Ordinance, 2001.
2. Vide Notification No.AD-E-II/4536/VI dated 11-11-2024, amendments in rule 7 & 8 are made in Sub-Inspectors and Inspectors (Appointment and Conditions of Service) Rules 2013.
3. Vide Notification No.SOT(M&M)1-5/2001(Part File) dated 25-11-2024, Terms & Conditions of competitive bidding for prospecting licenses under Small Scale Mining are published.
4. Vide notification No. No.SOT(M&M)1-5/2001(Part File) dated 25-11-2024, Terms & Conditions of competitive bidding for mining lease under Small Scale Mining are published.
5. Vide notification No. No.SOR(LG)38-3/2017 dated 16-12-2024, amendments are made in Punjab Local Government (Works) Rules 2017.
6. Vide notification No. No.SO(TRG)1-35/2024 dated 13-01-2025, Foundational Learning Policy Punjab (FLPP), 2024 are notified.
7. Vide notification No. NO.SO(A-I)3-1/2024 dated 20-01-2025, Punjab School Management Councils Policy, 2024 is published.
8. Vide notification No.SO(DIS)1-3/2022(P-I) dated 21-01-2025, Punjab Empowerment of Persons with Disabilities Rules, 2024 are published.
9. Vide notification No.SOT(M&M)3-1/2015(VOL-II)/89 dated 03-01-2025, amendments are made in Punjab Mining Concession Rules, 2002.

10. Vide notification No.SOR-III(S&GAD)1-13/2024 dated 03-01-2025, Higher Education Department (Planning, Information and Reform Unit) Service Rules 2024 are published.
11. Vide notification No.HP-II/9-11/2018(P) dated 06-01-2025, amendments are made in Punjab Border Military Police and Baluch Levy Service Rules, 2009.
12. Vide notification No.SO(CAB-I)2-28/2012(P) dated 08-01-2025, amendments are made in first & second schedule of Punjab Government Rules of Business 2011.
13. Vide notification No.SOR-III(S&GAD)1-14/2022 dated 08-01-2025, amendments at serial No.7B of schedule are made in Punjab Directorate General of Archaeology Rules, 1988.

SELECTED ARTICLES

1. **MANUPATRA**
   https://articles.manupatra.com/article-details/INTERNATIONAL-TRADE-LAW-UNDER-TRUMP-20

   INTERNATIONAL TRADE LAW UNDER TRUMP by Alaknanda Mishra, Vikash Kumar

   After The US's 2024 historical presidential contest is won by Donald Trump will take the oath and start his second term from the 20 Jan. This victory of Trump gives hints for his upcoming trade policies, glimpses of which can be seen throughout his election campaign. This article analyzes Donald J. Trump's ideas on his upcoming trade policies. Many economists comment that Trump's statement on foreign trade policy is based on two main objectives. The first is based On the principle of 'fair trade' and the second on stopping delocalization of productive activities from the USA and creating jobs to boost the US economy. In order to increase tariffs which aimed to reshape US Foreign trade policy? According to sec 201, 301 of trade act, 1974, IEEPA, Sec 232 of Trade expansion act, 1962, Trump increased tariffs on China, Mexico and universal tariff respectively. In his second term as president post, they tried to repeat his previous economic policies. Author analysis the Trump statements in different election campaigns on different types of tariff policy and section agenda.

2. **MANUPATRA**
   https://articles.manupatra.com/article-details/Reconciliation-Realised-A-Dive-into-Restorative-Justice-Paradigm

   RESTORATIVE JUSTICE: A VIABLE ALTERNATIVE IN CRIMINAL LAW? by Hemant Singh

   Restorative justice is a concept that predates modern legal systems, finding its roots in traditional and community-based justice mechanisms. Indigenous cultures, including several tribal communities in India, historically used methods of reconciliation and

community involvement to address crimes and disputes. For instance, in many tribal societies in Northeast India, restorative principles are embedded in customary practices that prioritize collective wellbeing over punitive action.2 The Gandhian philosophy of Sarvodaya (universal upliftment) and Ahimsa (non-violence) also reflects restorative values, emphasizing forgiveness, dialogue, and reconciliation. These principles resonate with restorative justice's goal to repair harm and restore social harmony rather than focusing solely on punishment.3

3. **MANUPATRA**
   https://articles.manupatra.com/article-details/BEYOND-THE-VISIBLE-MENTAL-CRUELTY-AND-THE-LAW-OF-DIVORCE

   BEYOND THE VISIBLE: MENTAL CRUELTY AND THE LAW OF DIVORCE by Dhyey Jani and Zarana Acharya

   Cruelty, a significant issue in matrimonial law, extends beyond physical violence to include emotional and psychological abuse. Its definition has evolved in Indian divorce law, acknowledging that mental harm can make marriage unbearable. Black's Law Dictionary defines mental cruelty as conduct causing anguish that endangers a spouse's physical or mental health. However, mental cruelty cannot be confined to a fixed definition, as it varies with changing societal norms. Indian law, particularly through the Hindu Marriage Act Amendment Act 1976, recognizes mental cruelty as a valid ground for divorce under Section 13(1)(ia). The Special Marriage Act, 1954, similarly emphasizes mental health in marriage. Mental cruelty encompasses more than mere quarrels or frustrations, including emotional assault, demeaning behaviour, abandonment, and degradation. Unlike physical abuse, it is often subtle and embedded in daily interactions, making it challenging to prove. Judges must carefully analyze behavioural patterns and psychological trauma to deliver justice in such cases.

4. **Lawyers Club India**
   https://www.lawyersclubindia.com/articles/usa-exits-who-what-is-the-process-and-implication-for-the-usa--17356.asp

   USA Exits WHO: What is the process and implication for the USA? By Sankalp Tiwari

   The WHO is the global health flagship agency coordinating collaborative responses to public health emergencies, guiding health policies, and working towards universal healthcare for all. The WHO was established in the aftermath of World War II, which was a significant step toward global cooperation that emphasized the principle that health transcends national boundaries and is a fundamental human right. The operations of WHO are based on a solid universal membership and cooperation. However, the framework through which countries affiliate with WHO does not seem entirely immune to trouble. While many member states enjoy cooperative relations, tensions have on occasion resulted in withdrawal threats and funding rows, as demonstrated by the

attempt by the United States to pull out of WHO in 2020. The occurrence of these events raises urgent questions about the stability and the governance of the WHO in the increasingly politicized global landscape.

5. **Lawyers Club India**
https://www.lawyersclubindia.com/articles/how-to-add-auto-captions-to-instagram-reels-17329.asp

How to Add Auto-Captions to Instagram Reels by Yaksh Sharma

Imagine scrolling through Instagram and stumbling upon a video that grabs your attention, but you're in a noisy environment or don't have your headphones handy. What keeps you engaged? Captions. They not only attract viewers but also enhance the accessibility of your content for a broader audience, including those who prefer or need to watch videos without sound. Incorporating captions into your Instagram Reels can increase engagement, retention, and reach, ensuring your message is communicated effectively to everyone. In this guide, we'll walk you through one of the free video editing software to add captions to your videos. CapCut desktop video editor is a more flexible tool that offers greater control over style, accuracy, and customization.