

LAHORE HIGH COURT B U L L E T I N



Fortnightly Case Law Update *Online Edition*

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FORTNIGHTLY CASE LAW BULLETIN

(16-07-2022 to 31-07-2022)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Supreme Court of Pakistan**
Faraz Ahmed v. Federation of Pakistan through Secretary, Ministry of Communications, Government of Pakistan, Islamabad and others.
Civil Petition No. 4282 of 2018
Mr. Justice Umar Ata Bandial H CJ, Mr. Justice Sajjad Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 4282 2018.pdf

Facts: The petitioner was working on contract basis however his services were dispensed with. The petitioner assailed the termination before the learned Federal Service Tribunal which was abated in view of a judgment. The petitioner with some other persons had filed a joint Grievance Petition in the learned Labour Court which was disposed of with some observation and he filed a Writ Petition in the learned High Court for implementation of learned Labour Court judgment which was dismissed. Feeling aggrieved, the petitioner filed this Civil Petition for leave to Appeal.

Issues:

- i) Whether judgment passed by the subordinate Courts can be implemented by the High Court under Article 199 of the Constitution of 1973?
- ii) Whether the Labour Court can prosecute any person who has not complied with its order?
- iii) Whether any contractual employee has any vested right for regularization or absorption in any other cell?
- iv) What is remedy available for contractual employee against wrongful termination?
- v) Whether any Court or Service Tribunal can issue any direction for regularization, absorption or permanent continuance of a temporary, contract or project employee?

Analysis:

- i) No such provision is available under Article 199 of the Constitution of 1973 whereby the execution or implementation of Judgment passed by the subordinate Courts may be implemented by the High Court. It was not the case within the premise or confines of Sub-Article (2) of Article 187 of the Constitution in which any decision, order or decree passed by the Supreme Court may be executed by a High Court as if it had been issued by the High Court.
- ii) Under Sub-section 6 of Section 46, the Labour Court had jurisdiction to prosecute any person against which decision or order is passed but who had not complied with the same within one month, or within the period specified in such order.
- iii) On the contrary, in the various dictums laid down by this Court it was repeatedly held that contractual employees have no vested right to regularization, but their regularization may be considered subject to the fitness, suitability and the applicable laws, rules and regulations of the Department.
- iv) They have to serve till the pleasure of their master and, in case of any wrongful termination, they cannot seek the reinstatement. At the best, they can

only have the compensation for the wrongful termination by applying to the competent court of law.

v) This Court in a number of cases has held that temporary/contract/project employees have no vested right to claim regularization. The direction for regularization, absorption or permanent continuance cannot be issued unless the employee claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant posts.

- Conclusion:**
- i) Judgment passed by the subordinate Courts cannot be implemented by the High Court under Article 199 of the Constitution of 1973.
 - ii) Labour Court can prosecute any person who has not complied with its order under Sub-section 6 of Section 46 Industrial Ordinance 2002.
 - iii) Any contractual employee has not any vested right for regularization or absorption in any other cell.
 - iv) Contractual employee can only have the compensation for the wrongful termination by applying to the competent court of law.
 - v) Any Court or Service Tribunal cannot issue any direction for regularization, absorption or permanent continuance of a temporary, contract or project employee unless the employee was appointed in pursuance of a regular recruitment in accordance with relevant rules and against the sanctioned vacant post.

- 2. Supreme Court of Pakistan**
Misbah Khanum v. Kamran Yasin Khan and another
Civil Petition No.1193/2020
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1193_2020.pdf

- Facts:** The Respondent No.1 filed a suit against the Petitioner for specific performance of an agreement to sell regarding a residential house. The Respondent No.2 appearing as a special attorney in the said case recorded a conceding statement before the Trial Court and the Court passed a Decree in favour of Respondent No.1 subject to payment of balance amount within a month. The Respondent No.1, despite decretal of his suit, filed an Appeal. The Appellate Court allowed the Appeal on the basis of another conceding statement made by Respondent No.2 as attorney by confirming the receipt of balance amount. The Petitioner initially filed a suit for declaration, challenging agreement to sell, special power of attorney in favour of Respondent No.2. The suit of the Petitioner was rejected being barred by law. The petitioner filed application under Section 12(2) C.P.C. before Additional District Judge wherein the Decree of the Appellate Court was challenged which was dismissed. The Petitioner filed a Civil Revision before the Learned High Court which was also dismissed. The Petitioner still not satisfied, filed instant Petition for grant of Leave to Appeal.

- Issues:**
- i) Whether a party can avail two or more available remedies under the law simultaneously?
 - ii) Whether a document under contest can be looked by the court even the same is not tendered in evidence, exhibited and proved?
 - iii) Whether one ground mentioned under Section 12(2) C.P.C is sufficient for setting aside any Order, Judgment and Decree etc?
 - iv) What is fate of conditional decree when suit stands dismissed?
- Analysis:**
- i) It is also settled law of the land that there is no legal bar for a party to avail two or more available remedies under the law simultaneously and a decision in any one of such remedies availed would render the others as infructuous.
 - ii) The document which is denied and under the contest, even if available on the file/record cannot be looked into by the Court unless the same is tendered in evidence, exhibited and proved in accordance with law.
 - iii) Even one of the ground of the three (under Section 12(2) C.P.C), if established on the record, would be sufficient for setting aside such an Order, Judgment and Decree etc.
 - iv) Once the suit stands dismissed, the conditional Decree also gets buried with the suit.
- Conclusion:**
- i) A party can avail two or more available remedies under the law simultaneously.
 - ii) A document under contest cannot be looked by the court when the same is not tendered in evidence, exhibited and proved in accordance with law.
 - iii) One ground mentioned under Section 12(2) C.P.C is sufficient for setting aside any Order, Judgment and Decree etc.
 - iv) Once the suit stands dismissed, the conditional Decree also gets buried with the suit.

3. Supreme Court of Pakistan
Qaiser etc. v. The State
Jail Petition No. 587 of 2016 A/W Crl. S.M.R.P No. 14 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan
Miankhel, Mr. justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/j.p._587_2016.pdf

Facts: The petitioner along with another accused was indicted in FIR for offence u/s 9© of CNSA, 1997 and both were convicted and sentenced by trial court. Both filed appeals before High Court which were dismissed, hence this petition for leave to appeal by the petitioner through jail. Suo moto review petition was taken up regarding matter of other accused.

Issues:

- i) What is effect of failure of prosecution to establish the safe custody and the safe administration of sample parcels to the concerned laboratory?
- ii) Whether decision of bench of certain number of judges of Supreme Court is binding on the subsequent bench of same strength?

Analysis:

i) This court had laid down in many judgments that the representative samples of the alleged drug must be kept in safe custody and undergo safe transmission from the stage of recovery till its submission to the office of the Government analyst. Non-establishing the said facts would cast doubt and would impair and vitiate the conclusiveness and reliability of the report of the Government analyst, thus rendering it incapable of sustaining conviction.

ii) It is now established that the decision of a bench of certain member of judges is binding on the subsequent bench of the same strength and if a subsequent bench of the same" strength wants to take a different view the only possibility is to refer the matter to the Chief Justice of Pakistan for the constitution of a larger bench, even a decision of a bench of equal strength is not brought into the notice of a subsequent bench of same strength and it expresses 'a contrary view, then the later decision is a judgment per incuriam. . Thus judgments passed by the 3-Members Benches have binding effect upon equal or less Member Benches of Supreme Court, unless contrary is declared by a larger Bench of Supreme Court.

Conclusion:

i) Failure of prosecution to establish the safe custody and the safe administration of sample parcels to the concerned laboratory cast doubt and would impair and vitiate the conclusiveness and reliability of the report of the Government analyst, thus rendering it incapable of sustaining conviction.

ii) Decision of bench of certain number of judges of Supreme Court have binding effect upon equal or less Member Benches of Supreme Court, unless contrary is declared by a larger Bench of Supreme Court.

4. Supreme Court of Pakistan
Abdul Khaliq (decd) thr. LRs v. Fazal ur Rehman and others.
Civil Appeals No. 53 & 54 of 2015
Mr. Justice Mr. Justice Sajjad Ali Shah, Mr. Justice Amin ud Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 53_2015.pdf

Facts:

The respondents filed a suit for possession asserting that full sister was a limited owner and could not alienate the whole property through the registered gift deed and they are entitled to their share being collaterals. The trial Court dismissed the suit on merits whereas the appeal was accepted. The judgment of the appellate Court was challenged by both the parties before the Peshawar High Court by filing two separate revision petitions and the High Court, dismissed the revision filed by the appellants and partially allowed the revision filed by the respondents by modifying the judgment of the appellate Court, giving rise to the instant appeals. These appeals were earlier decided by this Court vide its judgment modifying the judgment of the High Court. The appellants sought a review against such judgment which was allowed by this Court and the suit of the respondents was dismissed. The record further reflects that some of the legal heirs/collaterals filed an application under Section 12(2) CPC which was ultimately allowed and while setting aside all the orders, the review petitions were directed to be heard afresh. The review petitions were allowed by setting aside the

judgment directing the re-hearing of the petitioner which ultimately were converted into appeals by this Court and are being decided through this judgment.

- Issues:**
- i) Whether upon the death of a last full owner; the female heir will continue to hold the estate as a “limited owner” under the customary law or will be entitled to the estate as would have been entitled under Muslim Personal Law (Shariah)?
 - ii) Whether the residuary (distant kindred) placed below serial No. 6 of Residuary Table can inherit anything in the presence of full sister?

- Analysis:**
- i) The NWFP Act of 1935 did not terminate the limited estates of Muslim females; thereafter, sub-section (2) of Section 7 of the West Pakistan Muslim Personal Law (Shariat) Act, 1962 was repealed meaning thereby that even if the last full owner had died before the commencement of the Act of 1962, the Act of 1962 would still apply to such cases. In such view of the matter and through the cumulative effect of sections 3 and 5 of the Act of 1962, even where the last full owner had died prior to the commencement of the Act of 1962, the limited estate held by a Muslim female in relation to the said estate would now be terminated and upon such termination, those persons would be entitled to the estate as would have been entitled under Muslim Personal Law (Shariah) upon the death of the last full owner and if any such heir had died in the meantime, his/her share would devolve in accordance with Shariah on such persons who would have succeeded him/her if he/she had died immediately after the termination of the life estate. It was further stipulated in the proviso to section 5 of the Act of 1962 that the Muslim female holding the limited estate under customary law shall be deemed to be entitled to her share under Muslim Personal Law (Shariah) in the estate of the last full owner and the same shall devolve on her.
 - ii) The Table of Residuary at serial No.6 provides that in default of a brother and the other residuary detailed in serial No .1 to serial No.5, the full sister placed higher in the table takes the residuary if any ...'. The words above named' are of great significance and entitles a full sister to inherit as a residuary in absence of the residuary detailed in serial No .1 to serial No.5, meaning thereby, that the residuary placed below serial No. 6 would not inherit anything after being excluded by the full sister placed higher to them.

- Conclusion:**
- i) After the amendment in sub-section (2) of Section 7 of the West Pakistan Muslim Personal Law (Shariat) Act, 1962, upon the death of a last full owner the female heir shall be entitled to the estate as would have been entitled under Muslim Personal Law (Shariah).
 - ii) The residuary (distant kindred) placed below serial No. 6 of Residuary Table cannot inherit anything after being excluded by the full sister placed higher to them.

5. Supreme Court of Pakistan
Qausain Faisal v. Federation of Pakistan through Secretary M/o Interior, etc
C.M. Appeal No.87 of 2022 in Const. Petition No. Nil of 2022

Mr. Justice Syed Mansoor Ali Shah

https://www.supremecourt.gov.pk/downloads_judgements/c.m.a. 87_2122.pdf

- Facts:** Through this appeal under Order V, Rule 3 of the Supreme Court Rules, 1980 (“Rules”), the appellant has challenged the order of the Registrar of this Court whereby the constitution petition filed by the appellant under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 has not been entertained and registered by the Registrar.
- Issues:**
- i) What functions Registrar of Supreme Court performs under Supreme Court Rules, 1980?
 - ii) Whether the Registrar of Supreme Court while exercising administrative powers under Supreme Court Rules, 1980 can decide maintainability of petitions?
- Analysis:**
- i) Under the Supreme Court Rules, 1980, the Registrar is to perform certain functions that are mostly administrative and ministerial in nature. In performing the administrative function of “registration of petitions, appeals, suits and other matters” under Rule 1(6) of Order V of the Rules, the Registrar has been conferred: (i) the power under Rule 10(a) of Order III “to require any plaint, petition of appeal, petition for leave to appeal or other matters” presented to the Court, to be amended in accordance with the practice and procedure of the Court, and (ii) the power under Rule 7 of Order VII to “decline to receive any document” which is presented otherwise than in accordance with the Rules. The powers of the Registrar under Rule 10 of Order III along with Rule 7 of Order VII of the Rules are purely administrative in character, which allow the Registrar to enforce the practice and procedure of the Court in relation to presentation of cases and ensure that the form of the pleadings and the documents filed therewith is as per the Rules.
 - ii) The justiciability of the legal and factual questions raised in the petitions is a matter for the Court to deal with and decide upon. Registrar enjoying administrative powers under the Rules cannot assume the core adjudicatory role of the Court under the Constitution of the Islamic Republic of Pakistan, 1973. There is no provision in the Rules that empowers the Registrar to touch upon the maintainability of a petition, other than ensuring its proper form and presentation as per the practice and procedure of the Court provided in the Rules. The maintainability and the merits of a petition are justiciable issues, and fall within the domain of the Court. Certain miscellaneous matters, that are also essentially procedural in character, regarding which the Registrar can exercise the powers of the Court are listed in Rule 1 of Order V of the Rules, but the matters listed there (sub-rules 1 to 31) do not authorize the Registrar to decide upon the maintainability of a constitution petition filed under Article 184(3) of the Constitution.
- Conclusion:**
- i) Under the Supreme Court Rules, 1980, the Registrar is to perform certain functions that are mostly administrative and ministerial in nature.

ii) Registrar of Supreme Court while exercising administrative powers under Supreme Court Rules, 1980 cannot decide maintainability of petitions.

6. Lahore High Court
Muhammad Younis. v. The State
Crl. Appeal No.151447-J of 2018
The State v. Muhammad Younis
Murder Reference No.02 of 2018
Abid Hussain Shah v. The State, etc.
Crl. Appeal No.151450 of 2018
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Asjad Javaid Ghural
<https://sys.lhc.gov.pk/appjudgments/2022LHC5776.pdf>

Facts: The complainant has filed appeal against acquittal of one of accused whereas one of accused filed appeal against conviction and sentence for offences u/s 302/34 of PPC. The learned trial court sent murder reference for confirmation or otherwise of the death sentence awarded to accused/appellant.

Issues:

- i) What is effect of delay in conducted the post mortem examination?
- ii) What inference can be drawn from the fact that eyes of deceased remained open when eye witnesses of incident are close relative to deceased?
- iii) What is effect of failure of chance witness to prove the reason of his presence at spot?
- iv) Whether a single doubt regarding prosecution case is sufficient to give benefit to accused?

Analysis:

- i) In the case of „Muhammad Ilyas Vs Muhammad Abid alias Billa and others“ (2017 SCMR 54), the Apex Court of the country was pleased to observe that delay of 09 hours in conducting the postmortem examination suggests that prosecution eye witnesses were not present at the spot at the time of occurrence therefore, the said delay was used in procuring the attendance of fake eye witnesses.
- ii) If as per report of post mortem examination, the eyes of deceased were open whereas witnesses are close relatives of deceased, the court can draw the inference that had the said witnesses been present at the spot at the time of occurrence then they would have closed the eyes of the deceased.
- iii) It is by now well settled that if a chance witness is unable to establish the reason of his presence at the spot at the time of occurrence then his evidence is not worthy of reliance.
- iv) It is by now well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

Conclusion:

- i) Delay in conducting post mortem examination suggest the absence of witnesses at the spot and delay was used in procuring the attendance of witnesses.
- ii) If the eyes of deceased are opened whereas the eyewitnesses are close relatives,

then court can draw inference that had the said witnesses been present at the spot at the time of occurrence then they would have closed the eyes of the deceased.

iii) If chance witness failed to establish his reason of presence at spot then his evidence is not worthy of reliance.

iv) A single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

7. Lahore High Court
Muhammad Ramzan v. The State and 07 others
Writ Petition No.32866 of 2022
Mr. Justice Malik Shahzad Ahmad Khan
<https://sys.lhc.gov.pk/appjudgments/2022LHC5760.pdf>

Facts: The petitioner filed writ petition for the recovery of his alleged son while claiming his alleged abduction. The petitioner wanted to withdraw his petition to avoid legal consequences consequent to an inquiry conducted by DPO Jhang which held the said claim as false and frivolous.

Issues: Whether a prayer to withdraw a writ petition can be declined if the petition was made for perpetuating a fraud or injustice?

Analysis: Once the law has been set into motion and cognizance has been taken by the Court then appropriate order has to be issued and if the prayer to withdraw the petition would amount to defeat the ends of justice then the said prayer may be declined... when detailed inquiry is conducted, precious time of the Court and general public has been consumed and appropriate order in case has to be passed, at that point allowing the withdrawal of petition would amount to subvert the cause of justice...Where a writ petition has been made for perpetuating a fraud or injustice then the Court may decline withdrawal of the writ petition.

Conclusion: A prayer to withdraw a writ petition can be declined if the petition was made for perpetuating a fraud or injustice.

8. Lahore High Court
Custom Reference No.44631 of 2022
Director (ASO) Customs Intelligence and Investigation v. Taimur Tariq Butt, etc.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2022LHC5735.pdf>

Facts: Through these References under Section 196 of the Customs Act, 1969, the applicant-department has called in question judgment passed by Customs Appellate Tribunal, whereby while allowing the appeal filed by the respondents etc., the impugned order-in-original Nos. 273 to 276/2020 in four connected cases all dated 27.10.2020 have been set-aside.

Issues:

- i) What are the powers of the High Court under Custom Reference?
- ii) Whether the question of fact could be converted into a question of law?
- iii) Whether High Court in its advisory jurisdiction under Custom Reference is bound to answer every question of law proposed for its decision?

Analysis:

- i) It is pertinent to note here that this Court in its jurisdiction under Reference is only to confine itself to the questions of law and does not decide the controversy of fact to interfere in the orders passed by the Appellate Tribunal unless any illegality or jurisdictional defect going to the root of the matter is pointed out in the same, which may have resulted in miscarriage of justice or perverse decision by the Appellate Tribunal, which without deeper appreciation of disputed facts on the face of record appears in the given circumstances of the case as not sustainable, and the view taken by the Appellate Tribunal is not possible under any circumstances.
- ii) Moreover, another aspect of the matter is that in the present case, the petitioner by use of phraseology has tried to convert question of fact into a question of law, which is not permissible as it is settled by now that a question of fact could not be converted into one of law merely by use of phraseology as usual to frame question of law and High Court could decline to answer the same if the question referred does not raise substantial legal controversy.
- iii) This Court in its advisory jurisdiction under Reference was not bound to answer each and every question of law proposed for its decision and inter alia could refuse to answer the same if it reached the conclusion that a substantial question of law did not arise from the decision of the Appellate Tribunal or decision of the same would be not necessary in the given circumstances of the case or would have no bearing on the end result of the case and amounts to an academic discussion only.

Conclusion:

- i) High Court in its jurisdiction under custom Reference is only to confine itself to the questions of law and does not decide the controversy of fact to interfere in the orders passed by the Appellate Tribunal unless any illegality or jurisdictional defect going to the root of the matter is pointed out.
- ii) A question of fact could not be converted into one of law merely by the use of phraseology as usual to frame question of law and High Court could decline to answer the same if the question referred does not raise substantial legal controversy.
- iii) High Court in its advisory jurisdiction in custom Reference is not bound to answer each and every question of law proposed for its decision.

9. Lahore High Court
Custom Reference No.44622 of 2022
Director (ASO) Customs Intelligence and Investigation v. Awais Khalid
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muzamil Akhtar Shabir.
<https://sys.lhc.gov.pk/appjudgments/2022LHC5741.pdf>

Facts: Through these References under Section 196 of the Customs Act, 1969, the applicant-department has called in question judgment passed by Customs Appellate Tribunal, whereby while allowing the appeal filed by the respondent etc., the impugned order-in-original Nos. 273 to 276/2020 in four connected cases all dated 27.10.2020 have been set-aside.

Issues:

- i) What are the powers of the High Court under Custom Reference?
- ii) Whether the question of fact could be converted into a question of law?
- iii) Whether High Court in its advisory jurisdiction under Custom Reference is bound to answer every question of law proposed for its decision?

Analysis:

- i) It is pertinent to note here that this Court in its jurisdiction under Reference is only to confine itself to the questions of law and does not decide the controversy of fact to interfere in the orders passed by the Appellate Tribunal unless any illegality or jurisdictional defect going to the root of the matter is pointed out in the same, which may have resulted in miscarriage of justice or perverse decision by the Appellate Tribunal, which without deeper appreciation of disputed facts on the face of record appears in the given circumstances of the case as not sustainable, and the view taken by the Appellate Tribunal is not possible under any circumstances.
- ii) Moreover, another aspect of the matter is that in the present case, the petitioner by use of phraseology has tried to convert question of fact into a question of law, which is not permissible as it is settled by now that a question of fact could not be converted into one of law merely by use of phraseology as usual to frame question of law and High Court could decline to answer the same if the question referred does not raise substantial legal controversy.
- iii) This Court in its advisory jurisdiction under Reference was not bound to answer each and every question of law proposed for its decision and inter alia could refuse to answer the same if it reached the conclusion that a substantial question of law did not arise from the decision of the Appellate Tribunal or decision of the same would be not necessary in the given circumstances of the case or would have no bearing on the end result of the case and amounts to an academic discussion only.

Conclusion:

- i) High Court in its jurisdiction under custom Reference is only to confine itself to the questions of law and does not decide the controversy of fact to interfere in the orders passed by the Appellate Tribunal unless any illegality or jurisdictional defect going to the root of the matter is pointed out.
- ii) A question of fact could not be converted into one of law merely by the use of phraseology as usual to frame question of law and High Court could decline to answer the same if the question referred does not raise substantial legal controversy.
- iii) High Court in its advisory jurisdiction in custom Reference is not bound to answer each and every question of law proposed for its decision.

10. Lahore High Court
Doctor Yasmin Rashid v. Election Commission of Pakistan, etc.
W. P. No. 44479 of 2022.
Mr. Justice Shahid Jamil Khan
<https://sys.lhc.gov.pk/appjudgments/2022LHC5661.pdf>

Facts: Through this petition, the petitioner challenged the order of Election Commission of Pakistan through which it dismissed the petitioner's application against a verbal instruction from Election Commission to Polling Officers that a Polling Agent to be appointed by a candidate under Section 77 of Elections Act, 2017 has to be a voter of the constituency.

Issues: i) Whether verbal instructions, being detrimental to fair and transparent process can be issued or acted upon by the Polling Officers, staff and all the agencies deputed at the polling stations?
 ii) Whether the Election Commission can issue any kind of instructions under Section 4(3) of the Act of 2017 for the performance of its functions and duties?

Analysis: i) The Court has already declared in the earlier decision that verbal instructions, being detrimental to fair and transparent process can neither be issued nor be acted upon by the Polling Officers, staff and all the agencies deputed at the polling stations. Such instructions even having force of law would lead to uncertainty and chaos, which shall certainly defy the Constitutional command of conducting fair and free election under Article 218 of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution").
 ii) The direction under Section 4(3) of the Act of 2017 cannot be taken as an exception. Besides having comprehensive powers under the Constitution and dominant duty of conducting free, fair and transparent election, the Election Commission has to act under the law. The instructions under Section 4(3) should be issued, if circumstances so require, at the time of Election Schedule or well before the date of election so that none of the parties is taken by surprise while making its preparations for the polling day.

Conclusion: i) Verbal instructions, being detrimental to fair and transparent process can neither be issued nor be acted upon by the Polling Officers, staff and all the agencies deputed at the polling stations.
 ii) The Election Commission cannot issue any kind of instructions under Section 4(3) of the Act of 2017 and The Election Commission has to act under the law.

11. Lahore High Court
Hassan Naimatullah Khan and another v. Mumtaz City through its CEO and 5 others.
RFA No.31/2021
Mr. Justice Mirza Viqas Rauf, Mr. Justice Asim Hafeez
<https://sys.lhc.gov.pk/appjudgments/2021LHC9859.pdf>

- Facts:** This Regular First Appeal ('appeal') is directed against decree, whereby plaint in a suit, instituted by appellants No.1 & 2 seeking specific performance, declaration, recovery of amounts and permanent injunction ('Civil Suit'), was rejected, in exercise of powers under clause (d) of Order VII rule 11 of Civil Procedure Code, 1908 ('CPC') with the reasons that Civil Suit is barred by law in terms of section 441 of the Companies Act, 2017 ("Act of 2017").
- Issues:**
- i) Under what law the companies incorporated / registered outside Pakistan can claim eligibility for invoking the remedies provided under the special Act of 2017?
 - ii) Whether all the Companies incorporated outside Pakistan would be eligible to invoke remedies under the Act of 2017?
 - iii) Whether a Court should call for a better/further statement or proceed under Order VII rule 11 C.P.C. in a case when some deficiency otherwise found is a curable defect?
 - iv) Whether Civil Court is required to establish existence of jurisdiction before establishing the ouster of jurisdiction in terms of sub-section (2) of section 5 of the Act of 2017?
- Analysis:**
- i) Section 441 of the Act of 2017 provides remedy to the companies incorporated / registered outside Pakistan, subject to the fulfillment of the conditions / requirements under the Part XII, whereupon such companies are classified as foreign companies and claim eligibility for invoking the remedies provided under the special enactment – the Act of 2017.
 - ii) Relevant provisions of law suggest that every company, incorporated outside Pakistan, is not per se a foreign company in terms of the Act of 2017, but companies which fulfill the legal requirements under Part XII are classified as foreign companies. Section 434 of the Act of 2017 caters for the situations, before and after the commencement of the Act, 2017. Legislative intent is evident, whereby the Act of 2017 was made retrospectively applicable to such foreign companies, which have, before the commencement of the Act, established a place of business in Pakistan and continue to have established either a place of business within Pakistan or conduct business in Pakistan through an agent or any other means, at the commencement of the Act of 2017. Evidently, to attract Part XII of the Act of 2017, it is essential to bring case within the ambit of section 434 of the Act of 2017, failing which neither Part XII nor section 441 of the Act of 2017 would be attracted for the purposes of invoking legal disability in the context of the Act of 2017. A company incorporated outside Pakistan would not be eligible to invoke remedies under the Act of 2017, unless requirements under Part XII are met.
 - iii) Civil Court is required to call for further / better statement, in exercise of powers under Order VI rule 5 of the C.P.C, if at all some clarity is required, and any deficiency otherwise found is a curable defect – which situation does not warrant exercise of jurisdiction under Order VII rule 11 C.P.C.

iv) The existence of jurisdiction and exercise thereof are distinct concepts. Conferment of jurisdiction is legislative attribute and exercise thereof is embodiment of or expression of exercise of jurisdiction conferred by law. As far as the issue of jurisdiction of the Civil Court is concerned, the Act of 2017 manifest clear departure from its descendant enactment - erstwhile Companies Ordinance, 1984. In terms of section 7 of the Companies Ordinance 1984, jurisdiction of the Civil Court was recognized / acknowledged subject to the requirements and conditions prescribed. Whereas in terms of sub-section (2) of section 5 of the Act of 2017 jurisdiction of the Civil Court is expressly barred, with respect to those matters where respective High Court(s), in terms of subsection (1) of the Act of 2017, are empowered to determine the matters, by or under the Act of 2017. In wake of noticeable departure, the question of existence of jurisdiction of the Civil Court under section 9 of C.P.C. has had to be ascertained and determined before exercising it. There is no cavil that Civil Court, being the court of plenary jurisdiction, is vested with the authority / jurisdiction to determine jurisdictional fact, concerning its own jurisdiction, upon considering the averments made in the plaint – and the party pleading the ouster of jurisdiction have had to establish it.

- Conclusion:**
- i) Section 441 of the Act of 2017 provides remedy to the companies incorporated / registered outside Pakistan subject to the fulfillment of the conditions / requirements under the Part XII, for invoking remedies provided under the special Act of 2017.
 - ii) The Companies incorporated outside Pakistan which fulfill the legal requirements under Part XII are classified as foreign companies and foreign companies which fall within the ambit of section 434 of the Act of 2017 would be eligible to invoke remedies under the Act of 2017.
 - iii) A Court should call for a better/further statement in a case when some deficiency otherwise found is a curable defect.
 - iv) Yes, Civil Court is required to establish existence of jurisdiction before establishing the ouster of jurisdiction in terms of sub-section (2) of section 5 of the Act of 2017.

- 12. Lahore High Court**
Salma Karamat v. District Education Officer (M-EE), Narowal, etc.
Writ Petition No. 20794/2021.
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2022LHC5922.pdf>

Facts: The petitioner was hired by provincial government as Elementary School Educator on contractual basis for five years. The case of the petitioner for regularization under the Punjab Regularization of Service Act 2018 was refused on account of lacking prescribed academic qualification and her contract was also terminated. Her appeal was also dismissed by department.

- Issues:**
- (i) Whether a contractual employee can invoke constitutional jurisdiction to seek his/her regularization of service under Punjab Regularization of Service Act 2018?
 - (ii) Whether a recruitment policy stipulating ineligibility of a candidate having third division in his/her academic career to apply for a particular post infringes fundamental rights?
 - (iii) Whether courts can interfere in a policy formulated by an administrative department of government?
 - (iv) Whether a contractual recruitment of a person can be declared illegal who was hired despite his/her ineligibility but without any fraud or misrepresentation on his/her part?

- Analysis:**
- (i) It is true that a contractual employee has no right to invoke the constitutional jurisdiction of the High Court but the present case has another limb. The Petitioner has been declined regularization in terms of the Punjab Regularization of Service Act, 2018, which gives her an independent cause of action. This Court is competent to examine whether this has been rightly done.
 - (ii) The courts in our country strongly disapprove the condition in the Recruitment Policy which stipulates that the candidates having any third division in their academic career are not eligible to apply for a particular post... such condition is not only unreasonable but also harsh and irrational and violative of Articles 9 & 18 of the Constitution.
 - (iii) The court could lawfully intervene if a policy formulated by an administrative department of government violated the fundamental rights guaranteed by the Constitution or was otherwise in conflict with any provision of law.
 - (iv) Admittedly, the Petitioner did not fulfil the eligibility criterion but it is also a fact that she neither played fraud nor made any misrepresentation while applying for the aforesaid job. The District Recruitment Committee scrutinized the record, called her for interview and finally recommended her appointment...The Petitioner's Letter of Appointment expressly stated that the selected candidates who did not possess the requisite qualification must acquire it within three years from GCET otherwise their contract would be terminated. This constitutes an acknowledgment on the part of the Respondents that she was being hired despite her ineligibility – albeit subject to certain condition. They are now estopped from claiming that her recruitment was illegal. If there is any deviation from the Recruitment Policy 2014, it will not impact the Petitioner though the officers responsible therefor would be liable to disciplinary action.

- Conclusion:**
- (i) A contractual employee can invoke constitutional jurisdiction to seek his/her regularization of service under Punjab Regularization of Service Act 2018.
 - (ii) A recruitment policy stipulating ineligibility of a candidate having third division in his/her academic career to apply for a particular post infringes fundamental rights.

(iii) Courts can interfere in a policy formulated by an administrative department of government if it violates fundamental rights guaranteed by the Constitution.

(iv) A contractual recruitment of a person cannot be declared illegal who was hired despite his/her ineligibility but without any fraud or misrepresentation on his/her part.

13. Lahore High Court
Afzal Ahmad v. City Police Officer, Faisalabad, etc.
Writ Petition No. 21663 of 2021
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2022LHC5942.pdf>

Facts: The petitioner lodged an FIR for offences under sections 302 & 452 PPC against the respondent no.4, accusing him of the murder of his brother. The case was investigated and report under section 173 Cr.PC was submitted. The said respondent was indicted by trial court and examination-in-chief of one PW was also recorded. Meanwhile the investigation of the case was transferred to another police officer and subsequently to two other police officer one after the other, all on account of transfers of the said police officers. The petitioner has challenged that last of said change of investigation.

Issues: (i) Whether a case cannot be reinvestigated or further investigated after the commencement of trial?
(ii) Whether section 18A of the Police Order 2002 is applicable to cases in which the change is necessitated by the transfer of an investigation officer?

Analysis: (i) Fair investigation is concomitant to the right to fair trial guaranteed under Article 10A of the Constitution.... Rule 25.2(3) of the Police Rules, 1934, enjoins that it is the duty of the Investigating Officer to dig out the truth and bring it before the court of justice... Section 173 Cr.P.C. mandates that every investigation should be completed without unnecessary delay....If the investigation is not finalized within 14 days from the date of registration of the FIR, the officer in-charge of the police station shall, within three days of the expiration of the said period, forward an interim report (through the Public Prosecutor) to the magistrate in the prescribed form stating the result of the investigation made until then. Immediately thereafter the court should commence the trial unless there are reasons to postpone it.... There are two streams of decisions of the Hon’ble Supreme Court on the point of reinvestigation or further investigation. It is trite that in such eventuality the one rendered by the Larger Bench prevails. Therefore, this Court is obligated to follow the dictum laid down in *Muhammad Akbar v. The State* (1972 SCMR 335) wherein the Court held that “there is nothing in the Code of Criminal Procedure to prevent the Investigating Officer from submitting a subsequent report in supersession of his earlier one, either on his own initiative or on the direction of the superior police officer.” It is true that at times reinvestigation or further investigation may

bring on record conflicting evidence and contradictory opinions of the police officers. In such eventuality it is the duty of the court to evaluate them in accordance with the established principles of criminal jurisprudence and rules of evidence to reach a correct decision....

(ii) It is important to note that Article 18A only prescribes three forums before which an application for transfer of investigation may be made. It is a separate matter whether the authority accepts or rejects it. Article 18A does not talk of “first”, “second” and “third” change of investigation as we generally hear. It is a misnomer which must be avoided.....Article 18A(1) of the Police Order 2002 stipulates that the first application for transfer of investigation should be made to the Head of District Police. He shall seek opinion of the DSB thereon within seven working days and then pass an appropriate order giving reasons therefor. Article 18A(2) provides that if the Head of District Police has decided an application for transfer of investigation, the Regional Police Officer may, within seven working days of the filing of an application, after obtaining opinion of the Regional Standing Board (RSB) and for reasons to be recorded in writing, transfer the investigation of a case to another officer or a team of officers who are equal to or higher than the rank of the previous officers. Article 18A(3) states that when the Regional Police Officer has decided an application as aforesaid, the Provincial Police Officer would be the final authority.... The High Court does not sit in appeal over the decision of the authorities under Article 18A. As such, it cannot substitute its opinion for their holding though in appropriate cases it can exercise power of judicial review in accordance with the settled legal principles..... the repeated use of the words “filing of an application” in the said Article clearly suggests that it provides a remedy to the parties who are not satisfied with the investigation for any reason. It does not apply to the cases in which the change is necessitated by the transfer of the Investigating Officer. They are to be dealt with under section 551 Cr.P.C.

- Conclusion:** (i) A case can be reinvestigated or further investigated after the commencement of trial.
(ii) Section 18A of the Police Order 2002 is not applicable to cases in which the change is necessitated by the transfer of an investigation officer.

14. Lahore High Court
Abdul Razzaq etc v. Muhammad Ajmal Khan
CR No. 658 of 2018
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2018LHC4004.pdf>

Facts: An appeal filed by the respondent was initially dismissed and subsequently restored. Through the instant revision petition, the order of the Court in which the court directed the respondent to subsequently makeup the deficiency of the court fee is called in question.

- Issues:** Whether revision petition is maintainable against the interim/interlocutory?
- Analysis:** When the order challenged is interim/interlocutory in nature and nothing has been decided that comes within the ambit of “a case decided” as envisaged in Section 115 of the CPC; revision petition is not maintainable.
- Conclusion:** Revision petition is not maintainable against the interim/interlocutory.
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15. Lahore High Court
Muhammad Rashid Khan v. Muhammad Wajahat Ameer Khan, etc.
Civil Revision No. 211857 of 2018
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2022LHC5935.pdf>

Facts: The respondent nos. 1 to 4 filed an execution petition regarding a decree for recovery of maintenance allowance against judgment debtor/ respondent no.5. The said respondent transferred his property through gift to her mother/ respondent no.7 prior to the date of decree. The respondent no.7 further transferred the said property to her son/the petitioner who is also brother of the judgment debtor. The respondent nos. 1 to 4 filed an application for cancellation of said gift which application was allowed in appeal by Additional District Judge.

Issues:

- (i) Whether a court can declare a transfer of a property by judgment debtor as sham transaction where the same was made to the close relatives to avoid a decree of maintenance allowance?
- (ii) Where a basic transaction is declared as sham transaction, whether any superstructure built on the same can be sustainable?
- (iii) Whether the sole ground of being not impleaded as party is sufficient for acceptance of an application under section 12(2) CPC?

Analysis:

(i) The transfer of property in favour of respondent No. 7, who was real mother of judgment debtor appears to have been made with intention to avoid execution of decree in favour of respondent No. 1 to 4 and its further transfer to the petitioner who is real brother of the judgment debtor by the mother vide gift has been made apparently for the same reason of depriving the respondent No. 1 to 4 from the fruits of decree passed in their favour.....transaction whereby property is sold or transferred by judgment debtor to his close relatives in order to avoid payment of maintenance allowance against decree passed in favour of his wife and children, is a sham transaction and the said transaction and any superstructure built on the same cannot be sustained.

(ii) Where any transfer of property is declared as sham transaction, a subsequent transferee of the said property is not entitled to any relief as he has stepped into the shoes of his transferor.....the transferee would not have any better title than

the person from whom title was transferred in his favour and any defence taken by such transferee would not cure the defect in the title of his predecessor in interest....where basic transaction is declared as sham superstructure, built on the same is also not sustainable and shall collapse.

(iii) For the purpose of an application under 12(2) CPC, the applicant in addition to ground of not being impleaded as a party was also required to establish that he was not impleaded fraudulently, by misrepresentation or Court lacked jurisdiction in the matter as provided under Section 12(2) C.P.C., which has not been done..... A decree could be set aside under Section 12(2) C.P.C. only on the grounds stated in the said Section and where no case of fraud or misrepresentation or lack of jurisdiction was made out, the application under the said Section was not maintainable and merited to be dismissed.

- Conclusion:**
- (i) A court can declare a transfer of a property by judgment debtor as sham transaction where the same was made to the close relatives to avoid a decree of maintenance allowance.
 - (ii) Where a basic transaction is declared as sham transaction, any superstructure built on the same cannot be held sustainable.
 - (iii) The sole ground of being not impleaded as party is not sufficient for acceptance of an application under section 12(2) CPC.

16. Lahore High Court
Hafiz Muhammad Owais v. Addl. District Judge, etc.
Diary No. 106921 of 2022 in W.P. No. 2022
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2022LHC5931.pdf>

Facts: It has been objected by the office that writ is not maintainable when alternate remedy was available against the interlocutory order of application of setting aside the ex-parte decree.

Issues:

- i) Whether the interlocutory order for suspension of the decree can be treated as a final order?
- ii) Whether the appeal or civil revision can be filed against the interlocutory order?

Analysis:

- i) When with an application filed under Order XXXVII Rule 4 C.P.C; an application for suspension of decree was also filed which was still pending with the Court on which notices have been issued, and the order for submission of bank guarantee or surety bond has been passed for suspension of said decree in the meanwhile, therefore, afore-referred order cannot be treated as a final order on application under Order XXXVII Rule 4 C.P.C.
- ii) When neither the finality is attached to the interlocutory order nor the application for suspension of decree has been decided and the Court has not observed that said application shall be deemed to be dismissed if the afore referred condition is not met with. Consequently, neither afore-referred order was

appealable nor civil revision against the said order would be available as finality is not yet attached to the said order and such an order has not been made appealable either under Section 104 C.P.C. or under Order XLIII Rule 1 C.P.C.

- Conclusion:** i) An interlocutory order for suspension of the decree cannot be treated as a final order.
ii) An appeal or civil revision cannot be filed against the interlocutory order as finality is not yet attached to the said order.

17. Lahore High Court
Muhammad Sibtain Khan v. Deputy Speaker, Provincial Assembly for the Province of Punjab, through Secretary Punjab Assembly and others.
W.P. No. 45456 of 2022
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2022LHC5787.pdf>

Facts: Through single order three writ petitions raising the same contention are decided. The main contention is that Deputy Speaker has been appointed only for one day as Presiding Officer for the purpose of conducting elections to the post of Chief Minister, Punjab under specific directions issued by Hon'ble Supreme Court of Pakistan, therefore, he had no authority to pass any orders beyond the scope of framework provided by Hon'ble Supreme Court of Pakistan, hence order of Deputy Speaker appointing Assistant Secretary (when the Secretary is existing and functioning under the law) for conducting elections is not sustainable.

Issues: Whether the Speaker/Presiding Officer may seek help of any other authority to assist the Sergeant at Arms in carrying out the orders?

Analysis: Provision of Rule 210(5) authorizes the Speaker/Presiding Officer to be assisted by the Sergeant at Arms in conducting of proceedings of Assembly as the Assembly has its own internal security system and the said sub-Rule further authorizes the concerned authority to seek help of any other authority to assist the Sergeant at Arms in carrying out the orders of the Speaker for the purpose of maintaining the law and order situation and Rule 212 thereof authorizes the authority to remove any stranger who misconducts himself in the Assembly or infringes the directions of the Speaker. However, the help of police may be requisitioned to control the law and order situation, but, the said help shall not be called unnecessarily so that the apprehension in the mind of any member that election is not being conducted in a fair manner, is avoided.

Conclusion: Assembly has its own internal security system assisted by the Sergeant at Arms, however the Speaker/Presiding Officer may seek help of any other authority to assist the Sergeant at Arms in carrying out the orders for the purpose of maintaining the law and order situation only.

18. Lahore High Court
Usman Ghani v. Rawalpindi Metropolitan and 7 others
Writ Petition No.2046 of 2022
Mr. Justice Sohail Nasir
<https://sys.lhc.gov.pk/appjudgments/2022LHC5908.pdf>

Facts: The instant Writ Petition is filed with regard to illegal actions of respondents No.5 to 7 (private respondents) for fixation of hydrants. In purview of the public importance litigation; an important question about illegal business of water hydrants within the District Rawalpindi has also been taken up.

Issues: i) How Punjab Water Resources Commission should determine the allocation of water for domestic, agricultural, industrial, ecological and other purpose?
 ii) How electronic media can educate the citizens on sensitive public issue?

Analysis: i) Under Section 3 of the Punjab Water Act (Act XXI of 2019), Punjab Water Resources Commission was directed to be established, not later than six months of the commencement of the Act and the needful was done later on, whose duty is on yearly basis to determine the allocation of water for domestic, agricultural, industrial, ecological and other purpose. The Commission has to formulate the policies, which are to be enforced by all the agencies at District level.
 ii) Rule 9(2) of the Pakistan Electronic Media Regulatory Authority Rules, 2009 (Rules) is also significant which encapsulates that every licensee shall follow the general terms and conditions as set out in Schedule C. At serial No.9 of the Schedule-C, it has been specifically provided that: - “The licensee shall broadcast public service programs, which may be provided by the Authority or by the Government.” The Director General PEMRA, with a positive gesture, maintains that the moment on behalf of District Administration, in particular M.D WASA any content is received, PEMRA shall immediately ask the broadcasters to broadcast such public service programs and messages to educate citizens on this sensitive issue.

Conclusion: i) Under Section 3 of the Punjab Water Act (Act XXI of 2019), Punjab Water Resources Commission should determine the allocation of water for domestic, agricultural, industrial, ecological and other purpose on yearly basis.
 ii) Electronic media can educate the citizens on sensitive public issues by broadcasting public service programs and messages provided by the Authority or by the Government.

19. Lahore High Court
Aftab Hussain & 3 others v. The State & another
Criminal Revision No.84 of 2022
Mr. Justice Sohail Nasir
<https://sys.lhc.gov.pk/appjudgments/2022LHC5747.pdf>

Facts: The petitioners were tried under Sections 324/337- A(i)/337-A(iii)/ 337-L(ii)/

337-F(i)/ 337-F(iii)/337- H(ii)/336/452/34 PPC and convicted by the learned Judicial Magistrate with powers Section 30. Petitioners assailed their convictions by filing two Criminal Appeals, whereas complainant instituted a Criminal Revision for enhancement of sentences and the learned Additional Sessions Judge modified the decision of learned trial court to extent of two petitioners. Being aggrieved, the petitioners filed instant Criminal Revision.

Issues:

- i) Whether injured witness can be given a stamp of truth?
- ii) Whether benefit of contradiction between medical and ocular account goes in favour of the accused?
- iii) What is evidentiary value of a witness who improves his version during the trial to bring his evidence in line with the other declarations?

Analysis:

- i) The presumption about an injured witness is a settled proposition that his/her presence at place of occurrence cannot be disputed or doubted because of injuries on his body but it does not mean that he is to be given a stamp of truth.
- ii) In view of above it is a clear case of contradiction between medical and ocular account and when it is so the benefit thereof shall go in favor of accused.
- iii) The settled principles on this subject cannot be ignored that an important witness of the case if improves his version during the trial to bring his evidence in line with the other declarations, his testimony remains of no worth for the prosecution.

Conclusion:

- i) The injured witness cannot be given a stamp of truth.
- ii) Benefit of contradiction between medical and ocular account goes in favour of the accused.
- iii) Witness who improves his version during the trial to bring his evidence in line with the other declarations, has no worth for the prosecution.

20. Lahore High Court
Usman Ali v. The State & another
Criminal Appeal No. 395 of 2022.
Mr. Justice Sohail Nasir
<https://sys.lhc.gov.pk/appjudgments/2022LHC5670.pdf>

Facts: In a trial for offences under section 367-A/377/292-A/292-B/ 506/342 PPC, the trial court convicted the appellant under sections 292-A/ 292-C PPC and sentenced him with imprisonment and fine while the co-accused was acquitted.

Issues:

- (i) How the provision of section 265-C Cr.PC is to be construed?
- (ii) Whether non-compliance of section 265-C vitiates the whole trial?
- (iii) Whether the documents mentioned in section 265-C is a minimum standard therefore other documents available against an accused must be supplied to an accused?

- (iv) Whether it is the statutory duty of a court to supply the copies of any document which has become available under article 164 QSO 1984?
- (v) Whether every piece of evidence which can be used against an accused for the purposes of conviction is required to be put to an accused under section 342 Cr.PC?
- (vi) What are the settled principles governing for examination of an accused under section 342 Cr.PC?

Analysis:

- (i) Right of an accused to know the case against him is based on the principles of natural justice therefore the wisdom behind the provision is obvious that before commencement of trial the accused must know that what the evidence against him prosecution intends to produce so he has to be in a position to defend him properly therefore the provision of Section 265-C, Cr.P.C has to be construed liberally that the copies of every evidence oral or documentary should be made available to him. Only the complete and fair disclosure of entire evidence to be used against accused can ensure a free and transparent trial.
- (ii) Coming to the effect of non-compliance of section 265-C, it goes without saying that as it jeopardizes the right of fair and impartial trial therefore it vitiates the whole trial.
- (iii) The provisions of 265-C, Cr.P.C, in cases upon police report, states only about first information report, police report, statements of all witnesses recorded under Sections 161 and 164 Cr.P.C, and the inspection notes recorded by the investigating officer and as it does not cover any other document therefore the learned trial court was under no obligation to supply the copy of DVD/CD to appellant. This argument has no force at all for the simple reason that the documents mentioned in the provisions is a minimum standard so if in addition thereto, there is any other evidence to be produced by the prosecution against an accused copy thereof must be supplied and disclosed to him also.
- (iv) Article 164 after insertion of its proviso in the Qanoon-e-Shahadat Order, 1984 (P.O No. X of 1984), empowers the court to allow any evidence to be produced that becomes available because of modern devices and techniques and conviction on the basis thereof is lawful. Therefore provisions of Section 265-C, Cr.P.C cannot be read in isolation and now the courts are under a statutory duty to supply the copies of any such document at the relevant stage...As mentioned earlier that the supply of copies in terms of Section 265-C, Cr.P.C is not mere a formality so prosecution cannot be allowed to give a surprise to accused by producing an evidence for which he had no earlier notice. The court seized with the trial is also under obligation to ensure that none of such provisions be compromised and no right is to be denied to accused.
- (v) A careful perusal of the section 342 Cr.PC makes it clear that examination of an accused is not mere a formality by the court but a mandate to enable him/accused to explain any circumstances appearing against him in evidence therefore every piece of evidence which can be used against him for the purpose of conviction is required to be put to him.

(vi) The settled principles governing for examination of accused under Section 342 Cr.P.C are as under:

- i. The failure of the trial court to question the accused about incriminating material will amount to an infringement of the provisions of Section 342 Cr.P.C.
- ii. Where the circumstances appearing in evidence against accused are not put and his explanation is not taken thereupon, it cannot be said that the purpose of Section 342 Cr.P.C has been fulfilled.
- iii. It is not a mere formality, but is an essential part of the trial that the accused should be given notice of the point or points which he must meet in order to exonerate him.
- iv. The court should not only point out to the accused the circumstances appearing in the evidence which require explanation but it must out of fairness to the accused exercise that power in such a way that the accused may know what points in the opinion of the court require explanation and failure or refusal on the part of the accused to give the explanation will entitle the court to draw an inference against him.
- v. The word 'generally' does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the questions should relate to the whole case generally, and should not be limited to any particular part or parts of it.
- vi. The word 'generally' does not mean that the accused cannot be subjected to a detailed examination by the court.
- vii. The real object of Section 342 Cr.P.C is not to subject the accused to a detailed cross examination. It is, as a matter of fact, inviting his attention to the point or points in the evidence which is likely to influence the mind of the Judge in arriving at a conclusions adverse to the accused, and before such an adverse inference can be drawn, the accused should be afforded an opportunity to offer an explanation, if he has any.
- viii. Section 342 Cr.P.C is absolutely essential in accordance with its terms, and where this is not done, the conviction might be quashed, or the trial might be set aside.
- ix. It is wholly against the provisions of the Criminal Procedure Code or the demands of natural justice that a person should be convicted on the basis of something, of which he was not given any notice, and to which he was never required to give his own reply.

- Conclusion:**
- (i) The provision of section 265-C is to be construed liberally so copies of every evidence oral or documentary should be made available to an accused to ensure fair trial.
 - (ii) Non-compliance of section 265-C vitiates the whole trial.
 - (iii) The documents mentioned in section 265-C is a minimum standard therefore other documents available against an accused must be supplied to an accused.

(iv) It is the statutory duty of a court to supply the copies of any document which has become available under article 164 QSO 1984.

(v) Every piece of evidence which can be used against an accused for the purposes of conviction is required to be put to an accused under section 342 Cr.PC.

(vi) Above mentioned are the settled principles governing for examination of an accused under section 342 Cr.PC.

- 21. Lahore High Court**
Shamim Haider & 6 others v. Additional Chief Secretary (Home) & 5 others
Writ Petition No.1915 of 2022
Mr. Justice Sohail Nasir
<https://sys.lhc.gov.pk/appjudgments/2022LHC5709.pdf>
- Facts:** The petitioners Shia Muslims intended to take out “Traditional Procession” in the month of ‘Muharram’ without seeking permission through an application and the concerned SHO was adamant to make interference. Through this writ petition, the petitioner prayed for issuance of directions to the respondents to not to restrain them from taking out the “Traditional Procession”.
- Issues:**
- i) To whom authority/powers are vested to consider the request for any public meeting, procession, assembly or gathering?
 - ii) Whether filing of an application to seek permission for taking out the “Traditional Procession” is mere a formality?
- Analysis:**
- i) After promulgation of The Punjab Civil Administration Act, 2017 (XXX of 2017) ‘PCAA’ the ultimate powers are vested with the Deputy Commissioner who while considering the request for any public meeting, procession, assembly or gathering has to consult with head of the District Police and the heads of the respective local government. The rationale behind it is obvious that it will not only facilitate the participants to perform their religious obligations in a protected environment but it will also ensure that no untoward incident takes place or there may not be disturbance of peace and public tranquility and that the law and order must not be compromised. By adopting this lawful procedure, the district administration will too be in a position to make proper security arrangements.
 - ii) In case of discharge of religious obligations, as there is a constitutional guarantee under Article 20 of ‘the Constitution’ moving an application undoubtedly appears to be a formality therefore the Authority concerned must give it positive consideration unless there are compelling circumstances to hold otherwise.
- Conclusion:**
- i) After promulgation of the ‘PCAA’ the ultimate powers are vested with the Deputy Commissioner to consider the request for any public meeting, procession, assembly or gathering after consultation with head of the District Police and the heads of the respective local government.
 - ii) Filing of an application to seek permission for taking out the “Traditional

Procession” undoubtedly appears to be a formality and the Authority concerned must give it a positive consideration unless there are compelling circumstances to hold otherwise.

22. Lahore High Court
Mistary Shahid Karim v. Additional District Judge etc.
Writ Petition No.10461 of 2022
Mr. Justice Ahmad Nadeem Arshad
<https://sys.lhc.gov.pk/appjudgments/2022LHC5686.pdf>

Facts: Through this writ petition, the petitioner has called in question the validity and legality of concurrent findings of learned Special Judge Rent and appellate court, whereby the ejection petition of respondents No.3 to 5 was allowed and the petitioner was directed to vacate the disputed rented premises.

Issues: Whether a tenant after becoming a co-sharer in the rented premises can question the title of his landlord?

Analysis: Where a person enters upon the premises as a tenant under one of the co-sharer of the property, he continues to be a tenant till such time either the tenancy is terminated by an expressed agreement between the landlord and tenant or he surrenders the possession. However, if during the subsistence of tenancy, a tenant purchases a share from a co-owner, his status as a tenant does not cease to exist. Tenant during subsistence of tenancy, cannot question title of landlord as it stood at commencement of tenancy. If he desires to question, he must first surrender possession to landlord and then may dispute his title.

Conclusion: A tenant after becoming a co-sharer in the rented premises cannot question the title of his landlord.

23. Lahore High Court
Muhammad Ashraf (deceased) through L.Rs., Muhammad Afzal etc. v. Muhammad Yousaf, etc.
Civil Revision 225-D of 2002
Mr. Justice Ahmad Nadeem Arshad
<https://sys.lhc.gov.pk/appjudgments/2022LHC5863.pdf>

Facts: Through this Civil Revision, petitioners assailed the judgments and decrees whereby suit for specific performance of agreement to sell instituted by respondent No.1/plaintiff was decreed, concurrently, by the learned Courts below.

Issues:

- i) What is evidentiary value of a portion of statement of a witness which is not cross examined by other party?
- ii) Whether general power of attorney has all implied powers including transfer of property?
- iii) When certified copy of a disputed document can be admitted in evidence?
- iv) When revisional jurisdiction of the High Court under section 115, C.P.C. can

be invoked?

- Analysis:**
- i) It is settled proposition of law that where a portion of statement of a witness was not cross examined then failure to cross examine would amount to admission of said facts.
 - ii) It is settled principal of law that there must not be any uncertainty or vagueness in the power of attorney. Power of attorney should be construed strictly and only such powers qua the explicit object which were expressly and specifically mentioned in the power of attorney should be exercised by the agent as conceded to have been dedicated to him.
 - iii) It is settled principle of law that when existence or validity of the document is disputed then its certified copy is admissible in evidence only, if non-availability of the original document is proved, sought and obtained permission for production of secondary evidence.
 - iv) There is no cavil to the proposition that the revisional jurisdiction of the High Court under section 115, C.P.C. is invoked only in the cases of exercise of jurisdiction by the lower Courts not vested in them by law or the Court had failed to exercise the Jurisdiction so vested or jurisdiction was exercised in an illegal manner or that some material irregularity was committed but this is the settled law that in case in which it is found that the findings of the subordinate Courts were suffering from misreading, non-reading of evidence or that the inference drawn was in utter disregard, to the law and facts of the case, this Court must interfere in the matter in its revisional jurisdiction and correct the illegality committed by the subordinate Courts.

- Conclusion:**
- i) A portion of statement of a witness which is not cross examined then it amounts to admission of said facts.
 - ii) General power of attorney has not all implied powers such as transfer of property.
 - iii) Certified copy of a disputed document is admissible in evidence only, if non-availability of the original document is proved, sought and obtained permission for production of secondary evidence.
 - iv) The revisional jurisdiction of the High Court under section 115, C.P.C. can be invoked only in the cases of exercise of jurisdiction by the lower Courts not vested in them by law or the Court had failed to exercise the Jurisdiction so vested or jurisdiction was exercised in an illegal manner or that some material irregularity was committed.

24. Lahore High Court
Allah Ditta v. Zulfiqar
Civil Revision No. 82-D of 2022.
Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2022LHC5719.pdf>

Facts: Respondent filed a suit for recovery on the basis of promissory note which was

decreed by the trial court while appeal of the petitioner was also dismissed.

- Issues:**
- (i) Whether the execution of a promissory note is required to be proved by attestation of witnesses as per provisions of articles 17 and 79 of Qanoon-e-Shahadat Order 1984?
 - (ii) Whether the bearer of a promissory note is required to prove its consideration?

- Analysis:**
- (i) Article 79 of Q.S.O., 1984 provides that a document cannot be used as evidence until two witnesses at least are called to prove execution; however, this requirement applies only if that particular document is required by law to be attested. Article 17(2) specifies that such requirement of attestation does not apply when contrary is provided in any special law. Section 4 of the *N.I.A., 1881* provides that *promissory note*, which is an unconditional undertaking, is only required to be signed by maker....The *N.I.A., 1881*, which is a special law, does not require attestation by witnesses or provides for any bearing of attestation or non-attestation on the instrument. The combined reading of the above articles of *Q.S.O., 1984* and *N.I.A., 1881* makes it amply clear that neither any attestation is required on the *promissory note* nor there is any requirement of calling the witnesses to prove its execution.
 - (ii) Section 118 of the Negotiable Instruments Act 1881 clearly raises the presumption that negotiable instruments, when made or drawn, are for consideration. Section 118 above, starts with “*until contrary is proved*”, which indicates that once a negotiable instrument is successfully brought on record and its execution is proved, presumption as to valid consideration arises in favour of the instrument and it remains attached to the instrument until contrary is proved by the one who is disputing the consideration. In view of the above presumption and in the absence of rebuttal of the presumption, it is quite unnecessary to bring on record or to prove an independent document to establish consideration. There is no necessity in law that this instrument must be backed up by separate receipt.

- Conclusion:**
- (i) The execution of a promissory note is not required to be proved by attestation of witnesses as per provisions of articles 17 and 79 of Qanoon-e-Shahadat Order 1984.
 - (ii) The bearer of a promissory note is not required to prove its consideration.

LATEST LEGISLATION/AMENDMENTS

1. In the Punjab Government Rules of Business 2011, item no. (v) is inserted in 1st Schedule at serial no. 30, column no. 04 & item no. (iv) is inserted in 2nd schedule at serial no. 21.
2. In the Punjab Forestry and Wildlife (Wildlife Executive) service Rules, 1978, amendments are made at serial no. 05, column no. 5 to 7 and at serial no. 13 in columns no. 1 to 10.

SELECTED ARTICLES

1. MANUPATRA

<https://articles.manupatra.com/article-details/The-Misuse-of-Money-and-Power-A-Tale-of-the-1999-Delhi-BMW-Hit-and-Run-Case>

The Misuse of Money and Power - A Tale of the 1999 Delhi BMW Hit and Run Case by Sarthak Aswal and Lipika Ray

The morning of 10 January 1999 will remain as one of the most infamously famous mornings in the history of Delhi. On this day Sanjeev Nanda Grandson of Naval Chief and son of famous arms dealer Suresh Nanda was involved in a high profile hit and run case which is known as the 1999 Delhi Hit and Run case. Hit and run cases are one of the most prevalent road accidents in India. According to a report by Ministry of Road Transport and Highways Transport2 research wing in 2019 road accidents in India kill almost 1.5 lakh people annually which accounts for almost 11 percent of accident-related deaths in the world. Section 161(b) of the Motor Vehicle Act says that a "hit and run motor accident" means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained despite reasonable efforts for the purpose. Section 279, 338 and 304A are imposed in a hit and run incidents.

- *Section 279-Rash driving or riding on a public way.-Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*
- *Section 338-Causing grievous hurt by act endangering life or personal safety of others.-Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.*
- *Section 304A-Causing death by negligence.-Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

2. MANUPATRA

<https://articles.manupatra.com/article-details/Women-s-Property-Rights-Hindu-Succession-Act>

Women's Property Rights- Hindu Succession Act by Tanisha Maheshwari

The status of women's right to inherit property has always been bleak. There has been constant struggle and agitation on their part to acquire equal rights to inherit their father's ancestral property. Initially, women were devoid of the right to be "coparcener"- an individual who has an equal share in the inheritance of an estate. The evolution of women's property rights has been gradual. Women were not delved with coparcenary rights owing to the belief of them being part of another family. According to the Mitakshara School of Hindu school, women weren't accorded the status of coparceners;

thus, they could not claim ancestral property, which was delved on to the male heirs. They had absolute ownership of Streedhan- whatever limited jewellery, or clothes she received at the time of marriage, this led to inequity and discrepancy. The Indian constitution had always fostered a culture and concept of equality even though it requires exercising positive discrimination. Under article 141 everyone is equal before the law and subjected to equality. Article 152 further strengthens the provision of equality by authorizing the government to take affirmative action and preserve and protect the interest of women and other oppressed sections. These provisions are further extended under article 213 with guarantees the right to life with dignity.

3. **MANUPATRA**

<https://articles.manupatra.com/article-details/Womens-Movements-and-Anti-Dowry-Agitations-in-India>

Women's Movements and Anti-Dowry Agitations in India by Navjot Chhabra

In India, the colonial rule and the freedom struggles marked the beginning of an awakening among the women of the nation (Indu Agnihotri, 1995). Necessity is the mother of all inventions and the necessity to mobilize women at large scales was felt during the freedom struggles where the struggle against colonization overshadowed caste, creed, sex, religion, and race. Women in India owing to the social and cultural set up were missing in public participation in almost every domain until the freedom struggle movements gave them a platform. The public participation of women during the freedom struggle could have been a spark for a new social order wherein women could have taken leadership roles and could have moved up in the socio-economic hierarchy. However, this spark was doused before it became fire, owing to longstanding, unchallenged, and powerful clutches of patriarchy. Progress in terms of mobilization of women into women's movement groups lost its momentum despite the adoption of a constitution that advocated notions of equality. A male-dominated political structure and a patriarchal society pushed women back into their veils. However this does not imply that there was a vacuum in the domain of women's movements, but it would not be improper to conclude that due to the aforementioned conditions these movements could not form the basis of spurring agitations (Indu Agnihotri, 1995) in the immediate post-independence era. The resurgence of women's movements that caught public attention was seen in the late '60s and '70s (Indu Agnihotri, 1995). One of all the agitations focusing on the violence against women was the anti-dowry agitation. These agitations caught public attention and were covered throughout by the media. This paper focuses on the women's movements and anti-dowry agitations in India. The fundamental question answered is "how" were the tensions in regards to the dowry system addressed by the women's movements. The paper is majorly divided into three parts. The first part is majorly historical and deals with the strategies which were taken up by the women groups to raise the concern of the dowry system. The second segment deals with the indicators and the extent of the success of the movement with special emphasis on the law reform achieved after the anti-dowry agitations. The third segment deals with the present scenario of dowry-related violence.

4. MANUPATRA

<https://articles.manupatra.com/article-details/PATENT-LAWS-AND-THEIR-SERVICE-FOR-IP-RIGHTS>

Patent Laws And Their Service For IP Rights by Saumya Kumar Singh And Prashant Shivam

Scientific inventions are going on from the very beginning of human existence. Whether it was the invention of the wheel that changed human life completely or it was the invention of the telescope by Galileo which made his life sorrowful. All the big and revolutionary changes which had taken place in this world and made changes in the lifestyle of a human involves scientific inventions. Nature flourishes us with many blessings. It gives us water, sunlight, air, food, and all the necessities of life but human has basic social deeds, human has a desire to earn, desire to create change. Psychologist Simon Baron-Cohen says that "We humans have a unique ability to invent tools. This is an ability which differentiates us from other living species"¹. Now as per this behaviour sometimes there arises a conflict among inventors of their original inventions. Also, there have been cases of copying inventions for the sake of popularity, prestige, or money. Due to which there is a great requirement of patent laws. A Patent is simply the right of an inventor over his or her invention. This right is granted by the authority. A Patent, when granted, gives the right to the patentee to prevent others to use that particular invention in the territory to which the patent applies. It can never be understood that a patent gives a positive right to use an invention². The question before us is from where the patents came into account.

5. MANUPATRA

<https://articles.manupatra.com/article-details/Matter-of-Jurisprudence-Determined-An-Analysis>

Decoding the Gig Economy from a Contemporary Perspective by Aditya Mehrotra

The "gig economy" has been scrutinised for circumventing international labour regulations. A gig economy is characterised by the prevalence of temporary and mobile employment, as well as organisations that prefer to hire independent contractors and freelancers over full-time employees. This economic structure is undermined by the outdated concept of full-time workers who seldom switch occupations and instead focus on a lifetime vocation. This system is mostly managed by mobile phone apps, which serve as a conduit for the services provided by "gig-workers." For example, on online platforms such as Swiggy, Uber, or Amazon, the driver or delivery man, who are at the end of the production line, are often referred to as gig workers. In India, the Code on Social Security, 2020 ["Code"] recognises the notion of "gig workers" and defines them as those who work or participate in a work arrangement and receive income via non-traditional employer-employee interactions. In addition, the Code acknowledges the concept of 'platform employees' for those who work for an online platform. The Code has categorised platform employees as a subset of gig workers. The Code on Social Security, 2020 included for the first time the terms gig workers and platform employees, therefore

extending social security to them. In addition, Section 6 of the legislation mandates that the Central Government create a National Social Security Board, which will assist in enacting laws pertaining to gig workers. In addition, Section 114 of the Code states that aggregators that hire gig workers are required to pay 1% to 2% of their yearly gross revenue to social security for the gig workers; however, there is a cap of 5% of the total amount given to gig workers that no aggregator may exceed. According to section 2.35 of chapter I, a "gig worker" is a person who performs, works, or participates in a work arrangement and receives money from such activities outside of the typical employer-employee relationship. There are no formal qualifications required of Gig employees; anybody, educated or illiterate, may participate. Even part-time engineers, physicians, professors, and students might be referred to as gig workers. Independent contractors and freelancers are sometimes referred to as gig workers since they do not meet the definition of an employee due to the lack of organisational control over their working hours and methods. While the status of these workers, i.e., whether they are independent contractors or employees, has been a topic of controversy across the world, the changing employee-customer relationship seems to have been largely overlooked. The 'over-subordination' of employees is a significant transformation that has occurred in the labour system. It must be understood that the consumers are now responsible for this excessive subordination, rather than the employers.

6. **SPRINGER LINK**

<https://link.springer.com/article/10.1007/s11196-021-09839-5>

Person and Disability: Legal Fiction and Living Independently by Paolo Heritier

Without extending the historical analysis, this article analyzes the relationship between the legal concept of person with regard to the notion of living independently. The concept is normatively established in Article 19 of the CRPD and is presented as a legal fiction. The legal technique of fictio iuris is the premise for analyzing contemporary problems, for example, the attribution of responsibilities to non-human personalities, such as robots. The article, however, develops the problem of attributing rights to persons with disabilities. The contraposition of robots and disabled people, understood as opposing visions of anthropological and human models, is part of the philosophical dispute between humanism and post- or transhumanism. The conception of man appears different if created in the image and likeness of God, or as the fruit of evolution from primates, or as a transhumanist entity that can be replaced by the robot. The latter vision is rooted in the mechanization of the mind triggered by cybernetics and cognitive sciences and referable to problems of justice theory and political philosophy concerning the inclusion in society of disabled people. In this article I will limit myself to analyzing, against the background of this complex problem, the link between person, legal fiction and the right to disability starting from the criticism addressed by Nussbaum to Rawls based on the convention and following the methodology developed by Marchisio and Curto in order to clarify the legal connection between thirdness, disability, and person. However, I go one step further by including the issue of disability as justice within the evolution of the notion of the legal person, through the inclusion of fictio iuris and rhetorical methodology in positive law, as a criterion for the interpretation of art. 19 CRPD.

7. SPRINGER LINK

<https://link.springer.com/article/10.1007/s10982-021-09432-8>

On Normative Redundancies and Conflicts: A Material Approach by Federico Szczeranski

The challenges that normative redundancies and normative conflicts pose to legal theory have been traditionally addressed by either altering the rules that trigger them, or by including preference rules that deactivate them. As an alternative to these routes, this paper argues that the problems with both redundancies and conflicts only arise as a consequence of a mistaken understanding of legal reasoning that ignores the material relations between the rules at issue. By resorting to inferential semantics, this material dimension is taken into account and the challenges met without having to introduce new rules nor altering the original ones.

8. THE NATIONAL LAW REVIEW

<https://www.natlawreview.com/article/online-safety-digital-markets-needs-joined-approach-competition-law-uk>

Online Safety in Digital Markets Needs a Joined Up Approach with Competition Law in the UK by Francesco Liberatore

There is increasing public pressure on internet companies to intervene with content moderation, particularly to tackle disinformation, harmful speech, copyright infringement, sexual abuse, automation and bias, terrorism and violent extremism. The new UK Online Safety Bill (as introduced in the UK Parliament on 17 March 2022) is the British response to such public demand. While there are undeniably legitimate policy objectives for state intervention in online content moderation, some argued that there is the risk of an adverse effect on competition. For example, government regulation could unwittingly serve to benefit large incumbents by raising the industries' cost of doing business, with these companies being better positioned to bear the costs. Not so for the UK's Competition and Markets Authority (CMA) and Ofcom, the sector regulator in charge of enforcing the Online Safety Bill. The CMA and Ofcom have issued a joint statement, which explores the potential synergies and obstacles arising from the increasing interactions between competition and online safety.

