LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-05-2021 to 15-05-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues
Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

SELECTED ARTICLES

1. **Peshawar High Court**
Maqbool Islam etc. v. Assistant Commissioner Banda Daud Shah
Review Petition No. 514-B of 2017 in WP No.826-B of 2017
Mr. Justice Muhammad Naeem Anwar
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Review-Petition-514-B-2017-in-WP-826-B-2017-judgment-.dt-21.4.2021.pdf

Facts: The petitioner sought review of the judgment rendered by High Court in its writ jurisdiction, wherein his petition against the order of Tribunal constituted under KPK Public Property (Removal of Encroachment) Act, 1977 was dismissed.

Issue: Whether High Court can review its judgment on the alleged ground of its being perverse, fanciful and against the law and fact?

Analysis: It is settled proposition of law that the review is not meant for re-hearing of the matter. Scope of the review is always very limited and confined to the basic aspect of the case, which was considered in judgment but if the grounds taken in support of the petition were considered in the judgment and decided on merits, the same would not be available for review in the form of re-examination of the case on merits under Section 114 and Order XLVII of CPC.

The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and absence of any such error, finality is attached to the judgment/order, which cannot be disturbed. It is beyond any doubt or dispute that the review court does not sit as a court of appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. In nutshell, the power of review can be exercised for correction of a mistake and not to substitute a view.

There is no cavil with the proposition that if the Court has taken a conscious and deliberate decision on a point of law or fact and disposed of the matter pending before it, review of such order cannot be obtained on the premise that the Court took an erroneous view or that another view on reconsideration is possible. More-so, review also cannot be allowed on the ground of discovery of some new material, if such material was available at the time of hearing but not produced.

Conclusion: High Court has the power to review its judgment/order provided the same suffers from arithmetical/clerical errors but this scope cannot be enlarged to declare the order as illegal or against the law.

2. **Lahore High Court**
Aqib Javed & another v. Higher Education Commission of Pakistan
W.P.No.14339 of 2020
Mr. Jusice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC987.pdf

Facts: The examination paper of "Law GAT" conducted by "HEC" contained 05-marks portion relating to Private International Law. The petitioners contended that this was neither prescribed in course outline nor taught in LL.B classes; hence the same being beyond the scope of studies could not form part of the afore-referred examination of Law GAT.

Issue: i) Whether the questions can be asked in Law GAT from a subject not taught in LLB Course?
ii) Whether the petitioners are entitled for grace or compensatory marks for beyond syllabus questions asked in examination?

Analysis: ii) The purpose of prescribing courses and curriculum is that candidates are to be taught from the course and curriculum which is prescribed and by implication candidates can be subjected to examination only from within and not beyond of curriculum/syllabus prescribed.
ii) The grace marks are always awarded to an individual while compensatory marks are awarded to class of individuals with a view to offset the effect of a paper which admittedly was not from within the course.

Conclusion: i) The questions cannot be asked in Law GAT from a subject not taught in LLB Course.
ii) The petitioners are entitled for compensatory marks for beyond syllabus questions asked in examination.

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3. **Supreme Court of the United States**
Kahler v. Kansas, **589 U.S. ___ (2020)**
https://supreme.justia.com/cases/federal/us/589/18-6135/case.pdf

Facts: James Kahler was convicted of capital murder and sentenced to death. On appeal, Kahler argued the prosecution violated his right to a fair trial. The Kansas Supreme Court rejected Kahler's argument, affirming his conviction and sentence. Kahler appealed to the U.S. Supreme Court, arguing Kansas law violates his constitutional rights under the Eighth and 14th Amendments.

Issue: Do the Eighth (14) and the Fourteenth (14^{th}) Amendments permit a state to abolish the insanity defense?

Analysis: Kahler's argument is that the M'Naghten rule represents the codification of a legal concept that goes back all the way to Medieval common law and should be considered part of the due process of law. His argument asserts that, for centuries,

defendants were held culpable only when they were able to distinguish between right and wrong and that people who were legally insane did not have the capacity to do so. The State's argument emphasized the importance of federalism, allowing states the autonomy to make their own laws within the framework of the state and federal constitutions. The state also noted that the definition of insanity has varied in different ways throughout history and that one version (the M'Naghten rule) should not be viewed as an inherent aspect of due process. Justice Elena Kagan wrote the majority opinion which upheld Kansas's state law. In the opinion, Kagan wrote that the Kansas law did not violate Kahler's fundamental right to due process, noting that definitions of legal culpability and mental illness have been traditionally reserved for the states. Kagan noted that, contrary to Kahler's argument before the court, Kansas had not in fact abolished the insanity defense but had instead simply modified it, which the Constitution has generally permitted. The opinion points out that Kahler could have still presented a mental illness defense at trial and could also have presented evidence during his sentencing hearing. Justice Stephen Breyer dissented from the majority opinion, joined by Justices Ruth Bader Ginsburg and Sonia Sotomayor. Breyer conceded that states do have broad leeway to define state crimes and criminal procedures, including the definitions and standards of the insanity defense. However, he argued that Kansas's law did not simply modify the insanity defense but had removed the core requirement of whether or not the defendant could distinguish from right and wrong. Breyer's dissent was rooted in the centuries of tradition behind the original M'naghten Rule and noted that only a handful of states had modified it in the way that Kansas had.

Conclusion: The court affirmed the decision of the Kansas Supreme Court in a 6-3 ruling, holding that due process does not require Kansas to adopt an insanity test that is dependent on a defendant's ability to recognize that their crime was morally wrong. Justice Elena Kagan delivered the opinion of the court. It was observed that the Eighth and Fourteenth Amendments of the United States Constitution do not require that states adopt the insanity defense in criminal cases that are based on the defendant's ability to recognize right from wrong.

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4. **Supreme Court of India**
Civil Appeal No. 1767 of 2021
The Chief Election Commissioner of India v. M.R Vijayabhaskar & Ors.
https://main.sci.gov.in/supremecourt/2021/11474/11474_2021_35_1502_27915_Judgement_06-May-2021.pdf

Facts: The Madras High Court entertained a writ petition to ensure that COVID-related protocols are followed in the polling booths and during the course of the hearing, orally observed that the Election Commission (EC) is "the institution that is singularly responsible for the second wave of COVID-19" and that the EC "should be put up for murder charges". These remarks, though not part of the order of the High Court, were reported in the print, electronic and tele media and

EC has prayed to expunge these oral remarks and to restrain the media from printing the oral observations of Courts.

Issue: Whether HC was justified while making such harsh remarks about EC and whether such oral remarks can be expunged and what is nature of oral observation/remarks by the courts?

Analysis: Prayer of the EC strikes at two fundamental principles guaranteed under the Constitution, open court proceedings; and the fundamental right to the freedom of speech and expression.

Courts must be open both in the physical and metaphorical sense except in exceptional cases like child abuse etc. Cases before the courts are vital sources of public information about the activities of the legislature and the executive. The court becomes a platform for citizens to know how the practical application of the law impacts upon their rights.

The Constitution guarantees the media the freedom to inform, to distill and convey information and to express ideas and opinions on all matters of interest. Freedom of speech and expression extends to reporting the proceedings of judicial institutions as well.

It would do us no good to prevent the new forms of media from reporting on our work. Acceptance of a new reality is the surest way of adapting to it. Our public constitutional institutions must find better responses than to complain.

Observations during the course of a hearing do not constitute a judgment or binding decision. They are at best tentative points of view, on which rival perspectives of parties in conflict enable the judge to decide on an ultimate outcome.

The duty to preserve the independence of the judiciary and to allow freedom of expression of the judges in court is one end of the spectrum. The other end of the spectrum, which is equally important, is that the power of judges must not be unbridled and judicial restraint must be exercised, before using strong and scathing language to criticize any individual or institution.

Language, both on the Bench and in judgments, must comport with judicial propriety. Language is an important instrument of a judicial process which is sensitive to constitutional values. Judicial language is a window to a conscience sensitive to constitutional ethos.

It is trite to say that a formal opinion of a judicial institution is reflected through its judgments and orders, and not its oral observations during the hearing. Hence, in view of the above discussion, we find no substance in the prayer of the EC for restraining the media from reporting on court proceedings.

Conclusion: The remarks of the High Court were harsh and we must emphasize the need for judges to exercise caution in off-the-cuff remarks in open court, which may be susceptible to misinterpretation. These oral remarks are not a part of the official judicial record, and therefore, the question of expunging them does not arise.

Observations during the course of a hearing do not constitute a judgment or binding decision. They are at best tentative points of view.

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5. **Sindh High Court**
Abdul Ghaffar vs. The State & Habib ur Rehman Sub-Inspector, FIA/ACC/Karachi
Cr. Misc. Appn. No. 263 of 2021
Mr. Justice Arshad Hussain Khan
http://43.245.130.98:8056/caselaw/view-file/MTUxMjk1Y2Ztcy1kYzgz

Facts: Allegedly in the capacity of Deputy Director/Forensics Expert the accused/applicant misused his position and extended undue benefit in an enquiry against receipt of illegal remuneration/bribe amounting to Rs.14 million. FIR was registered at FIA Anti-Corruption Circle, against the accused under Sections 161/165/165-A/109 PPC read with Section 5(2) PCA-II Act, 1947 and 04 days' physical remand was allowed. During investigation it transpired that amount Rs.4 million received in person by the applicant, while Rs. 10 million was transferred through a contact person at Lahore. Order for grant of physical remand was impugned before the High Court. According to the applicant the remand order could not be passed as he was already granted bail before arrest by High Court in another FIR under Sections 161,165, 165-A, 109 PPC read with Section 5(2) PCA-II, 1947, PS FIA ACC, therefore, on the same subject no second FIR under Sections 3&4 of Anti Money laundering Act (AMLA) could not be registered.

Issue: Whether arrest and grant of physical remand of the applicant in second case on the same subject is against the law and procedure?

Analysis: After registration of a criminal case, the Investigating Agency has a statutory duty and obligation to investigate a cognizable offence and any order, at this stage, would amount to throttling the investigation process, which is not permissible under the law and if such process is scrutinized under 561-A Cr.P.C, then it would amount to interference in the investigation of a criminal case. In the present case, a proper FIR has been registered against the applicant regarding a cognizable offence, therefore, he cannot be allowed, at this stage, to avoid ordinary course of investigation. Since the question urged before this Court being contentious, therefore, at this stage, this Court would not like to interfere with the investigation of the case and that, too, when the Applicant has available adequate remedies under the law.

Conclusion: See above.

6. **Supreme Court of Pakistan**
Secretary Elementary & Secondary Education Department, Government of KPK, Peshawar and others v. Noor-ul-Amin
Civil Appeal No. 985 of 2020
Mr. Justice Gulzar Ahmed, C.J. Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._985_2020.pdf

Facts: The respondent did not report to duty on expiry of his ex-Pakistan leave; he was issued show-cause notice but he did not report for duty; so he was removed from service. He filed service appeal before the KPK Service Tribunal which was partly allowed by converting the major penalty of removal from service into a major penalty of compulsory retirement with effect from the date of his absence and the absence period was treated as unauthorized absence.

Issue: Whether the decision of KPK Service Tribunal converting the major penalty of removal from service into a major penalty of compulsory retirement on the ground that respondent had ten year service, is in accordance with law?

Analysis: The status of being an employee for ten years did not give any authority to the respondent on the basis of which he could stay away from job continuously for years altogether and thus such ground could not have been pressed for modifying the penalty imposed by the department upon the respondent giving premium to him on this misconduct.

Conclusion: The modification of penalty by the Tribunal on the basis that respondent had ten years service was not in accordance with law.

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7. **Supreme Court of Pakistan**
Muhammad Sharif etc v. Inspector General of Police, Punjab, Lahore, etc.
C.P. Nos.517-L, 1019-L, 1062-L & 1232-L of 2016 and 1929-L/2017
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._517_l_2016.pdf

Facts: These are a few petitions having questions concerning scope of entitlement of a civil servant to the back benefits on his reinstatement in service after his wrongful removal or dismissal has been set-aside and he being restored to his post. The treatment of the period spent by a civil servant away from duty (due to dismissal from service or absence from duty, etc.) and the purpose and meaning of the terms leave without pay or leave of the kind due granted to a civil servant were also considered in these petitions.

Issue: i) What is scope of entitlement of a civil servant to back benefits on his reinstatement in service?
ii) What is scope of leave without pay or leave of the kind due?

Analysis: i) A civil servant on unconditional reinstatement in service is to be given all back benefits and the only exception justifying part withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period. In case, the dismissal/removal of a civil servant is declared illegal for a defect in disciplinary proceedings without attending to the merits of the case, the entitlement to back benefits may be put off till the inquiry is conducted in the matter finally determining the fault of the civil servant. In case, where there is some fault of the civil servant, including a situation where concession of reinstatement is extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty is modified but not wiped off in a way that the civil servant is restored to his position, the back benefits will be paid as determined by the authority/court in the manner discussed above.

ii) In case back benefits as of right are not awarded to the civil servant and he is served with any other penalty after reinstatement in service, the intervening period has to be counted for, otherwise the interruption in the service of a civil servant may entail forfeiture of his service, therefore, the intervening period has to be regularized by treating it as an extra ordinary leave without pay or leave of the kind due or leave without pay, as the case may be.

Conclusion: See above.

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8. **Supreme Court of Pakistan**
Member (Administration), Federal Board of Revenue etc. v. Mian Khan
Civil Petition No. 1033 of 2020
Mr. Justice Gulzar Ahmed, CJ Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1033_2020.pdf

Facts: Respondent was dismissed from service while dispensing with regular inquiry when he was caught through camera/CCTV while taking bribe.

Issue: Whether CCTV footage can be considered a legal basis for proceeding against a person?

Analysis: CCTV footage was never sent to the office of Forensic Science Laboratory for its authenticity. In the absence of any forensic report qua the authenticity of the CCTV footage, the same cannot be considered a legal basis for proceeding against a person. In the case of Ishtiaq Ahmed Mirza Vs. Federation of Pakistan (PLD 2019 SC 675) the Court has held that with the advancement of science and technology, it is now possible to get a forensic examination, audit or test conducted through an appropriate laboratory so as to get it ascertained that whether an audio tape or a video is genuine or not and as such examination, audit or test can also reasonably establish if such audio tape or video has been edited, doctored or tampered with or not because advancement of science and technology

has also made it very convenient and easy to edit, doctor, superimpose or photoshop a voice or picture in an audio tape or video, therefore, without a forensic examination, audit or test, it is becoming more and more unsafe to rely upon the same as a piece of evidence in a court of law.

Conclusion: In the absence of any forensic report qua the authenticity of the CCTV footage, the same cannot be considered a legal basis for proceeding against a person. Mere producing of CCTV footage as a piece of evidence without any forensic test is not sufficient to be relied upon unless and until corroborated and proved to be genuine.

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9. **Lahore High Court**
Qari Muhammad Arif v. Secretary Home Department etc
Writ Petition No. 1735 of 2020
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Anwaarul Haq Pannun,
https://sys.lhc.gov.pk/appjudgments/2020LHC3741.pdf

Facts: The Secretary, Home Department, Punjab notified name of petitioner for inclusion in the list maintained under the Fourth Schedule of the Anti-Terrorism Act, 1997 for three years. The Petitioner's case is that Home Department has no jurisdiction to notify anybody's name for the purposes of the Fourth Schedule as that power vests exclusively in the Federal Government. He also contended that his name is included in the list without any reasonable ground?

Issue: i) Whether the Provincial Home Department has jurisdiction to notify name of the petitioner in the list maintained under the Fourth Schedule of the Anti-Terrorism Act, 1997?
ii) Whether the writ petition is maintainable during pendency of review petition before Proscription Review Committee?
iii) Whether the decision of authority to proscribe a person is purely administrative or quasi judicial order?
iv) What is distinction between "reasonable suspicion" and "reasonable ground"

Analysis: i) Section 33 of Anti-Terrorism Act, 1997 authorizes Federal Government to delegate the power to such authority as it may deem fit. In exercise of the above-mentioned powers, vide SRO dated 29th October 2014, the Federal Government delegated the powers and functions under section 11-EE of the Act to respective Provincial Home Secretaries and the Chief Commissioner, Islamabad. Through another notification dated 24th August 2020 it authorized these functionaries, inter alia, to constitute Proscription Review Committees contemplated in the Act within their respective jurisdictions.
ii) The petitioner filed an application before the Proscription Review Committee but it did not decide it. He could not be left without a remedy and was competent to approach this Court. Further, in cases involving enforcement of

fundamental rights courts do not insist on strict adherence to the principle of alternate statutory remedy.

iii) Where the statute itself requires the administrative authority to act judicially, there would be no doubt that its function is quasi-judicial. The decision to proscribe a person depends on determination of the facts mentioned in sub-section (1) of section 11-EE and imposes obligations affecting his fundamental rights. The provision for review against a proscription order by sub-section (3) of section 11-EE fortifies the aforesaid view. The mere fact that there is no lis or two contending parties would not take this case out of the realm of quasi-judicial functions as he had the duty to act judicially.

iv) In "reasonable suspicion", it suffices if the concerned person thinks that there is a possibility, which is, more than fanciful, that the relevant facts exist. While the standards applicable to reasonable grounds to believe has both an objective and subjective facet. The person concerned must not only subjectively believe that the standard has been met, but the grounds must be objectively justifiable in the sense that an ordinary prudent person in his place would conclude that there were indeed reasonable grounds.

Conclusion: i) The Provincial Home Department has jurisdiction to notify name of petitioner in the list maintained under the Fourth Schedule of the Anti-Terrorism Act, 1997.

ii) The writ petition is maintainable during pendency of review petition before Proscription Review Committee if not decided within a reasonable time.

iii) The decision of authority to proscribe a person is quasi-judicial order.

iv) In "reasonable suspicion", it suffices if the concerned person thinks that there is a possibility, which is, more than fanciful, that the relevant facts exist. While the standards applicable to reasonable grounds to believe has both an objective and subjective facet. The person concerned must not only subjectively believe that the standard has been met, but the grounds must be objectively justifiable in the sense that an ordinary prudent person in his place would conclude that there were indeed reasonable grounds.

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10. **Supreme Court of Pakistan**
Shamona Badshah Qaisarani v. Election Tribunal, Multan
Civil Appeal No.1399 OF 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Qazi Muhammad Amin Ahmed, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1399_2019.pdf

Facts: On failure of the appellant to disclose her assets, her election victory for a provincial assembly seat was de-notified by the Election Tribunal Bahawalpur. During the by-elections, Election Tribunal Multan, while relying upon the decision of Election Tribunal Bahawalpur permanently disqualified her from contesting elections.

Issue: Whether mere non-disclosure of assets by a candidate in his/her nomination papers is sufficient enough to disqualify him/her permanently from contesting election?

Analysis: It is now a well settled principle that every non-disclosure or mis-declaration would not be sufficient enough to permanently disqualify a member of the Parliament or a candidate. The purpose and intention needs to be seen behind the non-disclosure or mis-declaration. The returned candidate would be disqualified only when if he/she has dishonestly acquired assets and is hiding them to derive certain benefits. If the non-disclosure or mis-declaration is such that it gives an illegal advantage to a candidate, it would lead to termination of his candidature.

Conclusion: Mere non-disclosure or mis-declaration of assets by a candidate is not sufficient to disqualify him/her from contesting elections. Such a disqualification can only be made if he/she had dishonestly acquired the assets and had concealed them to derive an illegal advantage.

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11. **Lahore High Court**
Adnan v. Superintendent Jail, Gujrat
W.P.No.22688/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC995.pdf

Facts: In family execution petition, the petitioner was sent to civil prison due to his refusal to pay maintenance. He filed constitutional petition submitting that under section 13(3) of the Family Courts Act, 1964 (Act), the amount could only be recovered as arrears of land revenue and under section 82(5) of the Land Revenue Act, 1967 the civil imprisonment could not exceed 30 days.

Issue: Whether under section 13 of the Act ibid, the Family Court for the payment of decretal amount is bound to follow the procedure prescribed under the Land Revenue Act or it may follow the procedure of CPC for execution of decree?

Analysis: Under section 13(3) of the Act, the special procedure prescribed under Land Revenue Act can be followed by the family Court through a specific order and in absence of such order, the ordinary mode for execution prescribed under CPC shall be applicable. Perusal of impugned order and subsequent orders passed by learned Executing Court show that no specific order was passed by the learned Executing Court to follow the procedure provided under the Land Revenue Act, therefore, term of civil imprisonment of petitioner will not be governed under section 82 of the Land Revenue Act rather under section 55 read with Order XXI of CPC, under which, civil imprisonment for failure to pay the decretal amount may be up to one year.

Conclusion: The special procedure for recovery of maintenance as arrears of land revenue can be followed by the Family Court through a specific order and in absence of such order, the ordinary mode for execution prescribed under CPC shall be applicable.

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12. **Lahore High Court**
Nusrat Bibi etc v. Zeeshan Ahmad etc.
W.P. No 964 of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC4767.pdf

Facts: The petitioner filed the suit for the recovery of maintenance allowance for herself and her minor son along with delivery expenses and dowery articles. The suit was contested by the defendant who denied the paternity of the minor. The learned trial court without fixing the interim allowance of the minor adjourned the matter for pretrial reconciliation proceedings. The petitioner filed separate application for the fixation of interim allowance which was dismissed by the trial court. The said order was assailed through the instant petition.

Issue: Whether the impugned order is of the nature of interlocutory order or amounts to 'decision given' in terms of section 14 of the Act making the same amenable to the jurisdiction of appellate court by way of filing an appeal?

Analysis: Appeal under section 14 of the Act is not barred against every interlocutory order and remedy of appeal, if not specifically precluded, would be available against a decision relating to a right or remedy provided under the law subject to the condition that finality is attached to such an order and nothing remain to be further decided between the parties on said issue. In this case, it is observed that dismissal of application filed by the petitioner for fixing interim maintenance allowance under section 17-A of the Act tantamounts to decline the relief of interim allowance permissible to minor during the pendency of suit, which amounts to final determination of claim to that extent and hence cannot be treated as merely an interlocutory order. Thus, the said order would amount to 'decision given' in terms of section 14 of the Act. Consequently, an appeal would be available before the appellate court in case minor is aggrieved of the same on any available ground.

Conclusion: The dismissal of petitioner's application for fixation of maintenance allowance of the minor by the trial court would amount to 'decision given' in terms of section 14 of the Act. Consequently, the filing of an appeal would be the proper remedy instead of constitutional petition under Article 199.

13. **Lahore High Court**
Muhammad Ashraf v. Addl. District Judge
W.P.No. 1395 of 2021
Mr. Justice Muzamil Akhtar Shabir,
https://sys.lhc.gov.pk/appjudgments/2021LHC992.pdf

Facts: The appellate court reversed the decision of the family court and fixed interim maintenance for the wife.

Issue: Whether the order for dismissal of the application for fixation of interim maintenance allowance can be challenged in appeal?

Analysis: When application for fixing interim maintenance allowance is dismissed/declined, the same attains finality at least to the extent of the claim of interim maintenance allowance during the pendency of the suit. Consequently, the affected party, may in appropriate circumstances where impugned order is not based on any sound reasoning, agitate the matter before the appellate authority by filing an appeal against the decision given on his/her application in terms of Section 14 of the Family Courts Act, 1964 which appeal was rightly entertained by the learned Addl. District Judge and the order passed by him could not be stated to be without lawful authority in the given circumstances of the case on the ground of non-availability of the appeal.

Conclusion: Yes, it can be challenged in appeal.

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14. **Lahore High Court**
Dilawar Khan v. SHO, Police Station FIA/CC, Multan Circle, and others
Writ Petition No. 3102 of 2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2020LHC3721.pdf

Facts: FIR was registered against the petitioner at Police Station FIA/CC for offences under sections 60, 66A, 67C of the Copyright Ordinance, 1962, read with sections 109, 420, 468, 471 PPC accusing of infringing the registered copyright 'Triple Five (555)' and selling counterfeit tobacco snuff (Naswar). The Federal Investigating Agency (FIA) after obtaining search warrants from the Senior Civil Judge, raided at Petitioner 's factory and seized a huge quantity of the counterfeit product, raw materials, packaging and some machines. Some of the accused persons arrested from the spot were admitted to post arrest bail by the learned Presiding Officer, Intellectual Property Tribunal, Lahore, while the others were granted pre-arrest bail. While challenging the jurisdiction of FIA to register FIR under the Copyright Ordinance, 1962 the petitioner sought quashment of FIR.

Issue: i) Whether all matters and complaints related to offences under the Copyright Ordinance are to be dealt with under the Intellectual Property

Organization of Pakistan Act, 2012 (IPO-Pakistan Act), as being the special law and eventually FIR in question was liable to be quashed?

ii) Whether local police and the FIA have concurrent power to investigate copyright offences and the IPO Pakistan may refer the complaint to either of them?

iii) Whether infringement of copyrights of private parties is beyond the sway of FIA and it can only entertain cases in which there is violation of some copyright of the government?

Analysis: i) Intellectual Property Organization Pakistan (IPO-Pakistan) is a specialized body having expertise and the requisite data to verify whether there is actually a case of infringement of intellectual property rights under the applicable law. IPO-Pakistan Act is a special law and Section 13 (xix) read with section 39 confers exclusive jurisdiction on the Organization to initiate and conduct inquiries, investigations and proceedings related to offences under the laws specified in the Schedule. The organization is a bulwark against frivolous complaints and undue harassment. Thus, any person alleging infringement of his copyright must approach the Organization. FIA cannot entertain any complaint directly and register FIR. If respondents had any complaint against the Petitioner regarding infringement of copyright, it was incumbent on them to approach the Organization in the first instance.

ii) For two reasons local police and the FIA have not concurrent power to investigate copyright offences: (i) Section 13(xviii) of the IPO-Pakistan Act ordains that the Organization shall initiate and monitor the enforcement and protection of intellectual property rights through designated law enforcement agencies of the federal or provincial government. The inclusion of the Copyright Ordinance in the Schedule of the FIA Act has the effect of designating the FIA for enforcement in terms of the aforesaid clause. (ii) It cannot be left to an officer of the Organization to choose between two agencies.

iii) Copyright is a matter concerning the Federal Government; hence no distinction can be drawn on the basis whether it is owned by the government or an individual. While distinguishing the judgment cited as 2016 SCMR 447, the Hon'ble held that FIA's jurisdiction is attracted if two conditions are satisfied: first, the offence is included in the Schedule of the FIA Act, and secondly, the offence must be in connection with matters concerning the Federal Government. The offences under the Copyright Ordinance fulfil both of them. While arriving to the conclusion about second condition, the Hon'ble Court laid as many as five six (iv) reasons, which are worth reading through detailed judgment.

According to preamble of FIA Act, FIA was constituted for the investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith. In any matter which is of some interest or importance to the Federal Government falls within its ambit. FIA is empowered to inquire into or investigate the offences specified in the Schedule of the FIA Act. Even in absence of direct property interest, statutory and

administrative control of the Federal Government over an institution or an organization may be sufficient to bring the matter in the amplitude of the provision. Importantly, during the last five decades what consensuses has been developed about the jurisdiction of FIA Act, is summarized by the Hon'ble Court in five points.

While concluding the judgment, the Hon'ble Court directed the Organization to frame rules within six months positively in terms of section 34 of the IPO-Pakistan Act for exercise of powers and functions under section 13 thereof, particularly clauses (xix) and (xx) and till framing of the Organization shall ensure that proper orders are passed on every complaint made to it within minimal time which shall not in any case exceed seven days. The Hon'ble Court also directed the Organization to develop an online portal for filing of complaints and provide unique identification numbers to them. Similarly, the complaints that are filed manually be also assigned such number. Moreover, **s**tatus of all the complaints, on-line as well as manual, be accessible through the said portal and their record be maintained from the date of filing till the time the matter is resolved or closed.

Conclusion: i) All matters and complaints related to the offences under the Copyright Ordinance are to be dealt with under the IPO-Pakistan Act. Consequently, the FIR in question being filed beyond due process of law was quashed.

ii) Local police and FIA do not have concurrent power to investigate copyright offences.

iii) Copyright is a matter concerning the Federal Government; hence no distinction can be drawn based on its ownership by the government or an individual.

LIST OF ARTICLES: -

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=&subject=Constitution

   MAINTAINABILITY OF WRIT JURISDICTION UNDER ARTICLE 226/227 OF THE INDIAN CONSTITUTION WHEN THERE IS AN ARBITRATION CLAUSE by Harita Kansara

   The High Court, as one of the most important pillars in upholding the rule of law, must have the authority to determine whether or not to exercise writ jurisdiction. As a result, since writ jurisdiction is the last resort for obtaining justice and maintaining the rule of law, it cannot be refused based on a private arrangement between the parties. Furthermore, the court considers the essence of the injustice and a holistic view of the facts of each case to determine that the writ should be maintainable or not. Since this has been the legal situation in several past precedents, the Court has affirmed and preserved the essence of writ jurisdiction. However, the courts can exercise their writ jurisdiction only in certain exceptional circumstances in order to keep the spirit of alternate dispute resolution mechanism.

2. **STANFORD LAW REVIEW**
https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/04/Coglianese-et-al.-73-Stan.-L.-Rev.-885.pdf

UNRULES by Cary Coglianese, Gabriel Scheffler & Daniel E. Walters

At the center of contemporary debates over public law lies administrative agencies' discretion to impose rules. Yet for every one of these rules, there are also unrules nearby. Often overlooked and sometimes barely visible, unrules are the decisions that regulators make to lift or limit the scope of a regulatory obligation through, for instance, waivers, exemptions, or exceptions. In some cases, unrules enable regulators to reduce burdens on regulated entities or to conserve valuable government resources in ways that make law more efficient. However, too much discretion to create unrules can facilitate undue business influence over the law, weaken regulatory schemes, and even undermine the rule of law.

3. **YALE LAW REVIEW**
https://www.yalelawjournal.org/pdf/Wurman_d4111w2k.pdf

NONDELEGATION AT THE FOUNDING by Ilan Wurman

In recent articles, a number of scholars have cast doubt on the originalist enterprise of reviving the non-delegation doctrine. In the most provocative of these, Julian Mortenson and Nicholas Bagley challenge the conventional wisdom that, as an originalist matter, Congress cannot delegate its legislative power. The question, they say, is not even close. The Founding generation recognized that power is nonexclusive, and so long as Congress did not "alienate" its power by giving up the ability to reclaim any exercise of power, it could delegate as broadly as it wanted to the Executive. In an article focusing on the direct-tax legislation of 1798, Nicholas Parrillo argues in this volume of the Yale Law Journal that although there may have been a non-delegation doctrine at the Founding, it appears to have allowed for broad discretion to regulate even private rights. And in a third article, Christine Kexel Chabot argues that early borrowing and patent legislation demonstrates that Congress routinely delegated important policy questions to the Executive.

4. **BANGLADESH JOURNAL OF LAW**
http://www.biliabd.org/article%20law/Vol15/M.%20Mustakimur%20Rahman.pdf

'MARITAL RAPE' IN MARRIAGE: THE NEED FOR REFORM IN BANGLADESH by Md Mustakimur Rahman

The notion of marital rape is not new and came from Hale's theory. Although it is an old concept, but still some of the state parties of the United Nations are using this option as immunity. However, there are quite a few modern justifications that can actually defeat the Hale's theory. Hence, the notion of Hale's theory is not valid anymore in the 21st century. Currently, more than 100 countries have incorporated 'marital rape' as a criminal offence and punishing the offenders. Unfortunately, marital rape is not an offence under the Penal Law of Bangladesh unless the wife is under 13 years old. This article analysed the current Bangladeshi laws regarding

rape, which is substandard to protect the marital rape victims. In addition, it also argues how current law is violating several international laws and the rights guaranteed under the Constitution of Bangladesh. The existing laws of rape under the Penal Law of Bangladesh are outdated and therefore, reform is the demand of time.

5. **COURTING THE LAW**
https://courtingthelaw.com/2021/04/29/laws-judgments-2/punjab-commercial-courts-ordinance-2021-a-new-frontier/

PUNJAB COMMERCIAL COURTS ORDINANCE 2021: A NEW FRONTIER
by Nudra B Majeed Mian

Whatever their shape and structure, commercial courts are now an indispensable feature of commercial dispute resolution. They have the ability, by virtue of public jurisprudence and precedent, to direct the content and evolution of commercial law. They provide an effective route for the capacity building of the legal community and also have an ability to utilise and optimise modern technology as seen in the development of artificial intelligence applications in international arbitration.