LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-04-2021 to 15-04-2021)

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

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01. **Lahore High Court**
Abwa Knowledge Village (Pvt.) Ltd. V. Federation of Pakistan
Intra-Court Appeal No.5251 of 2021
Mr. Justice Shahid Jamil Khan, Mr. Justice Asim Hafeez.
https://sys.lhc.gov.pk/appjudgments/2021LHC796.pdf

Fact: The appellant seeks enforcement of various provisions of Pakistan Medical Commission Act, 2020 and declaration of invalidity against certain regulations of the Admissions Regulations (Amended) 2020-2021 ("Regulations 2021"), labeling them, being ultra-vires the provisions of Act of 2020.

Issue. i) Whether requirement of passing MDCAT examination is applicable for admissions for the year 2021 and thereafter?

ii) Whether the Regulations 13 and 14 of Regulations 2021, on the premise of being contrary to the scope and mandate of Act of 2020?

iii) Whether the independence of private colleges to settle, claim and charge tuition fees has been curtailed through Regulations 24 and 27 of Regulation 2021?

iv) Whether settlement and terms thereof, even if endorsed by this Court, would assume or acquire the status of a legislative instrument?

Analysis i) No exemption can be claimed from compliance of mandatory requirement of a single admission test for all the students seeking admission to medical and dental under-graduate programs anywhere in Pakistan under section 18 (1) of Act of 2020 and there is no exception created by way of any proviso thereto.

ii) The authority of the Council qua framing of Regulations 2021, under section 8 of Act of 2020 is neither disputed nor under challenge. Regulations 13 and 14 of Regulations 2021 are in accordance with the powers extended in terms of I.C.A. # 5251/2021 14 section 8 of Act of 2020. The objection of discriminatory treatment is misconceived, when the factum of availability of admission criteria in the colleges specified in Regulation 13 of the Regulations 2021, is undisputedly available, to the exclusion of other private medical and dental colleges. The rational of Regulation 14 of Regulations 2021 is to bring uniformity in the admission for session 2020-2021.

iii) The purpose is to curb financial exploitation, rationalize disproportionate fee claimed in the context of available infrastructural facilities, to check and regiment, otherwise an unconscionable bargaining position and to ensure equal academic opportunities, despite acute financial disparities in the society.

iv) Courts, even as a consequence of settlement between the stakeholders, cannot legislate, indirectly upon passing orders to that effect, potentially discharging legislative functions. The notion that settlement order is precursor to the amendments in the Regulations 2021 would set a dangerous precedent, suggesting conferment of legislative powers unto the Courts exercising constitutional jurisdiction.

Conclusion. i) The requirement of passing MDCAT examination was held to be applicable for admissions for the year 2021 and thereafter.

ii) The Regulations 13 and 14 of Regulations 2021 is not contrary to the scope and mandate of the Pakistan Medical Commission Act, 2020

iii) The independence of the private colleges to settle, claim and charge tuition fees has not been curtailed through Regulations 24 and 27 of Regulation 2021?

iv) The settlement and terms thereof, even if endorsed by this Court, will not assume or acquire the status of a legislative instrument.

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02. **Lahore High Court**
M.C.R (Pvt) Ltd. franchisee of Pizza Hutt v
Multan Development Authority & others
Writ Petition No. 2761 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC731.pdf

Facts: The petitioner, a franchisee of foreign Restaurant Chain Company impugned the notice of auction through writ petition, issued by the respondent government authority about the land given to the petitioner on 20 years lease term. A civil suit was already pending in the civil court regarding a dispute about the term of that lease.

Issue: i) Whether petition under Article 199 of the Constitution is competent during pendency of civil suit?

ii) Considering the commercial nature of dispute, whether the pending civil case should have been expeditiously decided as a commercial case?

Analysis: If the Civil Court being the court of first instance is vested with definite jurisdiction regarding the *lis* of the parties and is also competent to grant adequate and ultimate relief, available under the law, then in such a case, passing round such forum with the aim and goal to take grasp of the extra-ordinary jurisdiction of this court under Article 199 of the Constitution must be discouraged.

It is, however, in no manner to suggest that in every case where civil suit is pending, writ petition under Article 199 must always be failed because the most essential ingredient to determine the question of maintainability of such petition is not only the availability of '*alternate remedy'* but the most vital and determining factor is that such alternate remedy must also be '*adequate and efficacious*'. The Commercial Courts, which are established by the Lahore High Court in Lahore, Multan and Faisalabad for the time being, are meant to secure expeditious disposal of cases of commercial nature within the scope of Article 202 and 203 of the Constitution with the object to establish orderly, honorable, upright and impartial and legally correct administration of justice. Therefore, the Commercial Court, which is seized with the matter in hand is required to seek guidance from Rule 10 & 11, Chapter 1-K, Volume I of the Lahore High Court Rules and Order which provides for expeditious disposal of cases of commercial nature.

Conclusion: i) During pendency of civil suit before a court of competent jurisdiction to adjudicate and to grant ultimate relief, a writ petition is not maintainable but if the Court lacks jurisdictional competence to hear or grant adequate and efficacious ultimate relief and and such failure tantamount to infringement of fundamental rights, then the High Court can interfere in the matter under Article 199 of the Constitution.

ii) Commercial Court seized with the matter is required to follow Rule 10 & 11, Chapter 1-K, Volume I of Lahore High Court Rules & Orders to decide cases of commercial nature with preferential expeditiousness on day to day basis.

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03. **Supreme Court of the United States**
Google LLC v. Oracle America, Inc, 593 U.S. ___
https://www.supremecourt.gov/opinions/20pdf/18-956_d18f.pdf

Facts: It is a case related to the nature of computer code and copyright law. The dispute centered on the use of parts of the Java programming language's application programming interfaces (APIs), which are owned by Oracle (through subsidiary, Oracle America, Inc., originating from Sun Microsystems), within early versions of the Android operating system by Google. Google has admitted to using the APIs, and has since transitioned Android to a copyright-unburdened engine, but argued their original use of the APIs was within fair use. Oracle filed suit against Google for copyright and patent infringement. The case was brought to the United States District Court for the Northern District of California twice and appealed to the United States Court of Appeals for the Federal Circuit twice. In the first trial and appeal, the district court jury found that Google infringed on Oracle's copyrights and was deadlocked on the question of fair use. After the verdict, the district court dismissed Oracle's claim. The appellate court reversed the district court's determination and remanded with instructions to reinstate the jury's verdict. In the second trial and appeal, the district court denied Oracle's motions for judgment as a matter of law and entered final judgment in favor of Google. The appellate court reversed the district court's decisions, remanded the case back to the district court for a trial on damages, and dismissed Google's cross-appeal filing asserting fair use.

Issue: i) Whether copyright protection extends to a software interface?
ii) Whether, as the jury found, petitioner’s use of a software interface in the context of creating a new computer program constitutes fair use?

Analysis: The case has been of significant interest within the tech and software industries, as numerous computer programs and software libraries, particularly in open source, are developed by recreating the functionality of APIs from commercial or competing products to aid developers in interoperability between different systems or platforms**.** In a 6-2 opinion, the court reversed the United States Court of Appeals for the Federal Circuit's ruling and remanded the case for further proceedings, holding that Google's use of the Java SE Application Programming Interface's (API) lines of code in order to allow programmers to work in a

transformative program constituted a fair use of that material under copyright law. Justice Stephen Breyer delivered the majority opinion of the court and concluded by opining that "*we hold that the copying here at issue nonetheless constituted a fair use. Hence, Google's copying did not violate the copyright law*." Justice Clarence Thomas filed a dissenting opinion, joined by Justice Samuel Alito.

Conclusion: The U.S. Supreme court reversed the U.S. Court of Appeals for the Federal Circuit's ruling and remanded the case for further proceedings by holding that Google's use of the Java SE Application Programming Interface's (API) lines of code in order to allow programmers to work in a transformative program constituted a fair use of that material under copyright law.

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04. **Supreme Court of India**
Civil Appeal Nos. 1517-1518 OF 2021
M/S Utkal Suppliers. v. M/S Maa Kanak Durga Enterprises & Ors.
https://main.sci.gov.in/supremecourt/2021/6309/6309_2021_33_1501_27427_Judgement_09-Apr-2021.pdf

Facts: Tenders were invited from eligible registered diet preparation and catering firms/suppliers etc. Respondent no.1 was disqualified for not submitting requisite valid contract labour license and non-completion of three years of required experience and tender/contract was awarded to appellant. High Court set aside this contract and ordered to grant it to Respondent no.1.

Issue: To what extent judicial review of decision of authority granting the tender is permissible and how the terms of a tender notice are to be interpreted?

Analysis: Court reiterated following principles that:

i. Court should exercise restraint and caution in such matters unless there is need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities.
ii. The courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority.
iii. Authority's interpretation of its own TCN cannot be second-guessed unless it is arbitrary, perverse or mala fide because judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes.
iv. The writ court does not have the expertise to correct such decisions by substituting its own decision for the decision of the authority. What is reviewed is not the decision itself but the manner in which it was made.
v. The decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

Conclusion: Judicial review in these matters is equivalent to judicial restraint because only manner of decision is under review and not the decision itself and the Court does not sit like court of appeal over the appropriate authority. Authority having authored these documents is better placed to appreciate their requirements and interpret them and if two interpretations are possible then the interpretation of the author must be accepted.

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05. **Supreme Court of Pakistan**
Atif Zareef, etc v The State
Criminal Appeal No.251/2020 & Criminal Petition No.667/2020
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._251_2020.pdf

Facts: The defence by asking question regarding two finger test in cross examination tried to build a case that the complainant/victim was a woman of immoral character for having illicit relations.

Issue: Whether recording sexual history of the victim by carrying out "two-finger test" (TFT) or the "virginity test" has any scientific justification or evidentiary relevance to determine the commission of the sexual assault of rape?

Analysis: The hymen has no biological function; it has been made into a symbol of virginity around the world. These inaccuracies are largely rooted in misogyny. Medical jurisprudence textbooks had previously prescribed certain tests of medical evaluation to determine prior virginity of an alleged rape victim … Today modern forensic science shuns the virginity test as being totally irrelevant to the sexual assault… "Virginity testing, also referred to as hymen, two-finger or pre vaginal examination has no scientific merit or clinical indication" and "the appearance of a hymen is not a reliable indication of intercourse and there is no known examination that can prove a history of vaginal intercourse."… Modern forensic science thus shows that the two finger test must not be conducted for establishing rape-sexual violence, and the size of the vaginal introitus has no bearing on a case of sexual violence. The status of hymen is also irrelevant because hymen can be torn due to several reasons such as cycling, riding among other things. An intact hymen does not rule out sexual violence and a torn hymen does not prove previous sexual intercourse… The only statement that can be made by the medical officer is whether there is evidence of recent sexual activity and about injuries noticed in and around the private parts…

Reporting sexual history of a rape survivor amounts to discrediting her independence, identity, autonomy and free choice thereby degrading her human worth and offending her right to dignity guaranteed under Article 14 of the Constitution which Right to dignity under Article 14 of the Constitution is an absolute right and not subject to law… If the victim of rape is accustomed to sexual intercourse, it is not determinative in a rape case; the real fact-in-issue is whether or not the accused committed rape on her. If the victim had lost her virginity earlier, it does not give to anyone the right to rape her. In a criminal trial

relating to rape, it is the accused who is on trial and not the victim… The omission of Article 151(4) of the QSO implies prohibition on putting questions to a rape victim in cross-examination, and leading any other evidence, about her alleged "general immoral character" for the purpose of impeaching her credibility.

Conclusion: Recording sexual history of the victim by carrying out "two-finger test" (TFT) or the "virginity test" has no scientific justification or evidentiary relevance to determine the commission of sexual assault for rape.

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06. **Supreme Court of Pakistan**
Naveed Asghar etc v The State
Jail Petition No. 147 of 2016
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/j.p._147_2016.pdf

Facts: Five persons were mercilessly murdered in their house by slitting their throats. Case of the prosecution rests on circumstantial evidence. Trial court convicted the accused persons and High Court maintained their convictions. Petitioners alleged insufficiency of evidence to connect them with the commission of offence.

Issue: i) What is the nature, scope and extent of reappraisal of evidence by the High Court while hearing an appeal and a reference sent by the trial court for confirmation of the death sentence?

ii) What is standard of care required for relying on circumstantial evidence?

iii) Whether recovery of the alleged weapons of offence, viz, bloodstained knives, without a positive forensic report as to matching the bloodstains found thereon with the blood of any of the deceased persons could connect the accused with the commission?

iv) What is the nature of medical evidence?

v) What is the standard of proof required in criminal case?

Analysis: i) It is incumbent upon the High Courts, in discharge of their statutory duty under sections 375 and 376 of the Code of Criminal Procedure, 1898 ("CrPC"), to read and appraise each and every piece of evidence, and to examine also whether any evidence has been improperly admitted or excluded, or has been misread or non-read by the trial court. Even non-filing of appeal or withdrawal of appeal by the convicted person, or any concessional statement by the state counsel does not relieve the High Court from performing its duty of reappraising the whole evidence available on record…. The proceedings are a reappraisal and reassessment of the entire facts of the case and of the law applicable. This extensive power actually casts an onerous duty on the High Court to ensure safe administration of criminal justice by considering in the reference proceedings all aspects of the case and coming to an independent conclusion, apart from the view expressed by the Court of Session. The High Court has to decide on reappraisal of the whole evidence whether the conviction is justified and, having regard to the circumstances of the case, whether the sentence of death is appropriate.

ii) In cases which rest entirely on circumstantial evidence, it is of the utmost importance that the circumstances should be ascertained with minute care and caution, before any conclusion or inference adverse to the accused person is drawn. The process of inference and deduction involved in such cases is of a delicate and perplexing character, liable to numerous causes of fallacy. This danger points the need for great caution in accepting proof of the facts and circumstances, before they are held to be established for the purpose of drawing inferences therefrom. A mere concurrence of circumstances, some or all of which are supported by defective or inadequate evidence, can create a specious appearance, leading to fallacious inferences. Hence, it is necessary that only such circumstances should be accepted as the basis of inferences that are, on careful examination of the evidence, found to be well-established. A high quality of evidence is, therefore, required to prove the facts and circumstances from which the inference of the guilt of the accused person is to be drawn.

iii) As in absence of a positive report of Forensic Science Laboratory as to matching of crime empty with the allegedly recovered firearm from an accused person, the recovery of alleged weapon of offence cannot be considered as the corroborative piece of evidence against that accused person, so is the legal position regarding recovery of a bloodstained alleged weapon of offence without a positive forensic report matching the blood found thereon with that of the deceased. It can also be not used as a substantive or corroborative piece of evidence against an accused person to connect him with the commission of offence.

iv) Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not "corroborative evidence" in the sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with the commission of offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.

v) It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or nonexistence of a fact to prove the guilt of a person, the golden rule

of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability standard applied in civil cases. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession.

Conclusion: i) It is incumbent upon the High Court to read and appraise each and every piece of evidence, and to examine also whether any evidence has been improperly admitted or excluded, or has been misread or non-read by the trial court. The High Court has to decide on reappraisal of the whole evidence whether the conviction is justified and, having regard to the circumstances of the case, whether the sentence of death is appropriate.

ii) It is necessary that only such circumstances should be accepted as the basis of inferences that are, on careful examination of the evidence, found to be well-established. A high quality of evidence is, therefore, required to prove the facts and circumstances from which the inference of the guilt of the accused is to be drawn.

iii) A positive forensic report without matching the blood found on the weapon with that of the deceased cannot be used as a substantive or corroborative piece of evidence against an accused to connect him with the commission of offence.

iv) Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not “corroborative evidence”.

v) The finding as regards guilt of accused should restsurely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot substitute the proof.

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07. **Supreme Court of Pakistan**
Shahzada Qaiser Arfat v The State
Crl. Petition No.801-L of 2020
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._801_l_2020.pdf

Facts: Petitioner is nominated in the F.I.R as an abettor in a murder case. His pre-arrest bail was dismissed by Sessions Court as well as High Court.

Issue: Whether the traditional view that pre-arrest bail can only be granted on three recognized grounds is correct after insertion of Article 10-A in the Constitution?

Analysis: Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing malafide on part of the complainant or the Police for granting pre-arrest bail does not appear to be correct, especially after recognition of the right to fair trial as a fundamental right under Article 10-A of Constitution of Pakistan, 1973….. The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail, and vice versa. … Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the circumstances which by themselves indicate the malafide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove malafide on their part.

Conclusion: The non-availability of incriminating material against the accused or non-existence of a sufficient ground or a valid purpose for making arrest of the accused are also grounds for admitting him to pre-arrest bail.

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08. **Lahore High Court**
Abdul Ghafoor v The State
Criminal Appeal No.814/2019
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC789.pdf

Facts: Appellant was arrested by C.I.A Police and convicted for an offence u/s 9(c) of CNSA.

Issue: Whether the C.I.A Police may arrest a person involved in commission of cognizable offence?

Analysis: Section 54 Cr.P.C empowers a police officer to arrest a person in following circumstances:- a) The person is involved in a cognizable offence; b) There is a reasonable complaint that he is concerned in a cognizable offence; c) The police officer has received a credible information he is involved in a cognizable offence; and d) There is a reasonable suspicion that the said person is involved in a cognizable offence.

Conclusion: The C.I.A Police may arrest a person in afore-referred circumstances.

09. **Lahore High Court**
Muhammad Abbas v The State
Cr. Appeal No.328 of 2018/BWP
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC770.pdf

Facts: Husband/appellant was alleged to have killed his wife by strangulation; however, he asserted that victim committed suicide.

Issue: How to differentiate between a case of suicide and strangulation?

Analysis: If a ligature has been used a mark will, save in very exceptional cases, be found on the neck. This usually, but not invariably, differs from a hanging mark, in being truly transverse in direction, low on the neck, and continuous, i.e. completely encircling the neck. In exceptional cases of strangulation, especially if the body has been dragged by the ligature, the mark may be found high on the neck, and oblique in direction, like a hanging mark. Again, in exceptional cases of hanging, the mark may be found low down on the neck, and, if the cord has been tightly applied, the mark left by it may be more or less transverse in direction, but unlike the mark of strangulation, the sides tend to run upwards to the mark of the knot which is on a higher level. The hard, brown, parchmentised appearance of the skin in the course of the mark is more seldom met with. Whether the mark will be parchmentised or - not depends entirely on the nature of the ligature. If this is hard and rough such a mark will result. In strangulation, more frequently than in hanging, the ligature employed is a soft one, such as a handkerchief or other piece of cloth, this is the reason for the frequent absence of the parchmentised mark.

Conclusion: The court while discussing "a ligature mark on the neck", "suicidal cases by ligature", "homicidal cases", "strangulation by ligature" and "strangulation by manual pressure" as elaborated in Medical Jurisprudence coupled with the opinion of the doctor came to the conclusion that victim committed suicide.

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10. **Lahore High Court**
Muhammad Khalid vs. Magistrate Ist Class & 2 others
W.P. No. 13208/2019
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2019LHC4763.pdf

Facts: Mehvish Bibi contracted marriage with the Petitioner without the blessings of her family. Respondent contended that Mehvish Bibi is a minor so her marriage is invalid in view of the restrictions imposed by the Child Marriage Restraint Act, 1929. F I R was lodged. Mehvish moved an application for sending her to Dar-ul-Aman which was accepted. A week later, she moved another application for her release from Dar-ul-Aman. The Magistrate directed the Superintendent, Dar-ul Aman, to hand over the girl's custody to the natural guardian or the guardian appointed by the Court and, if she refused to go with him, keep her in Dar-ul-Aman.

Issue: i) Whether marriage of a minor girl is invalid in view of the restrictions imposed by the Child Marriage Restraint Act, 1929?

ii) Whether a girl could be kept in Dar-ul-Aman against her will?

Analysis: i) The marriage between the Petitioner and Mehvish Bibi is not disputed. The contention that the marriage between the Petitioner and Mehvish Bibi being in violation of the Child Marriage Restraint Act, 1929, has no force because Mst.Mehvish has attained the age of puberty and she had married with her own free will. Such a marriage is valid under the Muhammadan Law.

ii) Mehvish Bibi cannot be kept in Dar-ul-Aman against her will. She is ordered to be released and is allowed to go wherever she likes.

Conclusion: i) Such marriage is not invalid because Muhammadan Law recognize such marriage

ii) A girl could be kept in Dar-ul-Aman against her will.

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11. **Lahore High Court**
Muhammad Shakir v The State
Crl. Misc. No.3742/B/2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC271.pdf

Facts: Petitioner sought post arrest bail in case wherein he was alleged to have desecrated the Holy Quran by burying it in his house.

Issue: i) Whether an F.I.R under section 295-B PPC can be registered without authorization of competent authority?

ii) Whether burial is one of the modes to dispose of old and unusable copies of the Quran?

Analysis: i) Section 196 Cr.P.C. does not bar registration of FIR. It only restrains the Court from taking cognizance of the offence unless there is a complaint by the Federal or the Provincial Government. Registration of FIR and taking cognizance of a case are two distinct concepts in criminal law.

ii) There is a consensus among lawyers and religious scholars that subject to certain conditions Shariah recognizes burial as one of the modes to dispose of old and unusable copies of the Quran.

Conclusion: i) An F.I.R under section 295-B PPC may be registered without authorization of competent authority.

ii) Subject to certain conditions Shariah recognizes burial as one of the modes to dispose of old and unusable copies of the Quran.

12. **Lahore High Court**
Dr. Muhammad Yousaf v The State
Writ Petition No. 8936 of 2019/BWP
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC815.pdf

Facts: The Petitioner, a doctor assailed the order of Justice of Peace in which direction for registration of F.I.R was issued against him despite of the fact that earlier matter was referred by police to Healthcare Commission, which imposed a fine of fifty thousand rupees on the petitioner for allegedly not being able to satisfy the Commission that death of newborn niece of the complainant was not caused by the petitioner while administering her a drip.

Issue: Whether Justice of Peace can pass an order for registration of F.I.R against a healthcare practitioner?

Analysis: The Punjab Healthcare Commission Act, 2010 has been brought for improvement of quality of healthcare services and to ban quackery in all its forms and manifestations. Section 4 of the Act deals with the functions and powers of the Commission and Section 2(e) of the Act provides that the Commission shall enquire and investigate into maladministration, malpractice and failures in the provision of healthcare services and issue consequential advice and orders, so there is no denial of the proposition that all the complaints against the medical practitioners exclusively come within the domain of the Commission. Section 19 highlights the medical negligence and procedure of investigation has been given in Section 23 and 26 of the Act. Section 29 of the Act provides immunity clause and barred any other form of prosecution or legal proceeding against the healthcare service provider except under this Act.

Conclusion: Local police has got no authority to lodge a criminal case against a healthcare provider and Justice of Peace also could not issue such directions on the application of aggrieved party; however, Healthcare Commission under Section 26 of the Act is empowered to refer the matter to any law enforcement agencies for appropriate action under relevant laws.

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13. **Lahore High Court**
Faqeer Muhammad v. The State
W.P No. 7529/2020
Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC829.pdf

Facts: Through this writ petition, the petitioner has sought the quashment of the FIR registered against him under section 420, 468, 471, 109 PPC & 5(2) 47 of PCA on the ground that civil litigation between the parties has culminated into an amicable settlement.

Issue: Whether the FIR against the petitioner is liable to be quashed particularly when the report u/s 173 Cr.PC had already been submitted while declaring him as ‘guilty’?

Analysis: The question of guilt and innocence of the accused persons nominated in the FIR could not be decided by the High Court in exercise of constitutional jurisdiction as such functions fell within the jurisdictional domain of the court concerned, by whom the entire evidence was to be scrutinized, which could not be done in the exercise of constitutional jurisdiction. The petitioner is nominated in the FIR and has been found involved in the alleged occurrence by the investigation agency as per report submitted u/s 173 Cr.PC and it is the concerned court to decide the guilt or innocence of the petitioner. Moreover, the alternate remedy in the form of application under section 249 Cr.PC is also available to the petitioner.

Conclusion: The FIR against the petitioner is not liable to be quashed when the report u/s 173 Cr.PC has already been submitted by the police in court with the findings as to petitioner's involvement in the alleged occurrence.

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14. **Lahore High Court**
Muhammad Umar v The State
Criminal Misc No. 4603/B/2020
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC600.pdf

Facts: The Case concerned a post arrest bail of a juvenile on the basis of section 6(5) of the Juvenile Act 2018 (statutory right to bail on basis of delay for offences under sections 302, 324, 337-F(iii), 34 PPC).

Issue: Whether the time spent by the accused in obtaining a declaration that he was a juvenile could be termed as delay caused in the trial by the accused?

Analysis: It was opined that the time spent by the accused in obtaining a declaration that he was a juvenile could not be counted to his disadvantage. Hence the Petitioner's case squarely fell within the ambit of section 6(5) of the Juvenile Act. He has been detained for a continuous period exceeding six months, the trial has not been concluded and the delay is not attributable to him. His Lordship referred to California's Supreme Court case of Re William M to quote, "It is difficult for an adult who has not been through the experience to realize the terror that engulfs a youngster the first time he loses his liberty and has to spend the night or several days or weeks in a cold, impersonal cell or room away from home or family". It was opined that some countries impose blanket limit on the time for which the children may be kept in pre-trial detention. On the other hand, there are States that prescribe crime-based limits depending on the type or gravity of the offence or the sentence likely to be handed down. Section 6 of the Juvenile Act follows the latter model. However, the policy that—pre-trial detention is only permitted as a measure of last resort and for the shortest appropriate period of time permeates the section. His Lordship extensively discussed international literature on the rights of Children for instance the UN Convention on the Rights of the Child, UN Guidelines for the Prevention of Juvenile Delinquency and International Covenant on Civil and Political Rights ICCPR (1966).

Conclusion: Time spent by the juvenile accused in obtaining a declaration that he was a juvenile could not be termed as delay caused in the trial by the accused.

15. **Supreme Court of India**
Criminal Appeal No. 407 of 2021
State of Rajasthan. v. Ashok Kumar Kashyap.
https://main.sci.gov.in/supremecourt/2020/8524/8524_2020_36_1501_27516_Judgement_13-Apr-2021.pdf

Facts: Charge was framed against the accused/respondent under Anti-Corruption law but revisional court, after exhaustively discussing the material on record, discharged the accused by holding that from bare reading of the transcript offence under Prevention of Corruption Act would not be made out against the accused. State preferred appeal against that order.

.**Issue:** Whether HC, while exercising the revisional jurisdiction, was justified to evaluate the transcript/evidence on merits at the stage of considering the application for discharge?

Analysis: Court reiterated the following principles:

i. The High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.

ii. At the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

iii. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused.

iv. While exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

Conclusion: The High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. by evaluating the transcript/evidence on merits and in virtually holding a mini trial at the stage of discharge application.

16. **Supreme Court of Pakistan**
Province of Punjab v Dr. Javed Iqbal etc
C.P.2210-L/2020 to C.P.2239-L/2020 and CMA 489-L/2021
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2210_l_2020.pdf

Facts: Respondents were appointed on contract basis during the years 2004 to 2009. Their services were subsequently regularized by the Government with immediate effect in 2011. The grievance of the respondents was that they ought to have been regularized from the date of their initial appointment on contractual basis rather than the date of regularization of their service.

Issue: Whether the date of regularization of contract employees is the date of their initial appointment on contract basis or the date of their regularization under the Regularization Policy?

Analysis: Regularization of a contract employee is a fresh appointment into the stream of regular appointment. A contractual employee for the first time becomes a civil servant. Contractual employees enjoy no vested right to regularization much less to be regularized from any particular date. The benefit of regularization extended to them under the Regularization Policy is prospective in nature and there is no legal justification to give it a retrospective application. Any such step would totally negate the purpose and significance of Contract Appointment Policy and leave no distinction between a contractual and a regular employee.

Conclusion: Date of regularization of contract employees is the date of their initial appointment and not the date of appointment on contract basis.

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17. **Supreme Court of Pakistan**
Chief Executive Officer v Muhammad Ilyas, etc
Crl. P. 713-L/2020
Mr. Justice Manzoor Ahmad Malik, Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._713_l_2020.pdf

Facts: Respondent No.1 challenged MEPCO's failure to select and appoint him to the post when he secured 50 marks in written examination while the last candidate who was selected for interview had a score of 66 marks. High Court directed for issuance of appointment letter.

Issue: Whether the High Court could direct for issuance of appointment letter?

Analysis: Judicial review is the power of the court to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the Constitution and the law. Actions judged inconsistent are declared unconstitutional or unlawful and, therefore, rendered null and void. The court entrusted with the power to judicially review an executive action can only declare it to be right or wrong but cannot take over the

functions that belong to another organ of the State. Under the Constitution, the Legislature, Executive, and Judiciary all have their own broad spheres of operation. It is not permissible for any one of these three organs to encroach upon the domain of another….by assuming the role of the Executive the judge disregarded his core function of adjudication, in accordance with law. Ignoring the constitutional boundaries of separation of powers can easily equip a judge with a false sense of power and authority. This is a dangerous tendency and must be guarded against to ensure that the judicial role continues to remain within its constitutional limits…When judiciary encroaches upon the domain of the Executive it is said to commit judicial overreach – which occurs when a court acts beyond its jurisdiction and interferes in areas which fall within the Executive and/or the Legislature's mandate. Through such interference the court violates the doctrine of separation of powers by taking on the executive functions upon itself.

Conclusion: The High Court cannot direct for issuance of appointment letter by disregarding the eligibility criteria and the recruitment policy of the Executive Authority.

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18. **Sindh High Court**
Anjum Badar v Province of Sindh and 2 others
Constitutional Petition No. D – 6241 of 2016 and connected matters
Mr. Justice Nadeem Akhtar, Mr. Justice Adnan-ul-Karim Memon
http://43.245.130.98:8056/caselaw/view-file/MTUwNzQ3Y2Ztcy1kYzgz

Facts: Petitioners the contractual employees appointed under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 have contended that by virtue of Section 3 of said Act, they have acquired vested right for being regularized as a regular / permanent employee and they should be deemed to have been validly appointed on regular basis.

Issues: i) Whether temporary employees appointed on contract can be deemed to have been validly appointed on regular basis, without going through the competitive process of selection through the Sindh Public Service Commission, merely in view of Section 3 of the Act of 2013?

ii) Whether the mandatory requirement of competitive process of selection to the posts in BS 16 to 22 only through the Sindh Public Service Commission can be waived, relaxed, done away with, exempted and or bypassed in view of Section 3 of the Act of 2013?

iii) Whether the petitioners have any vested right to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of their grievance relating to regularization?

Analysis: i) The petitioners had voluntarily applied for appointment on contract and after fully understanding the implications and consequences of a contractual appointment, had voluntarily accepted the same. Now their contention that it would be discriminatory if they are not regularized after serving for a considerable period or they will not be able to get another job at this stage if they are relieved, has no force. They cannot turn around at this stage and claim regularization of their contractual appointments which was neither part and parcel

of the terms and conditions of their contracts nor is permissible in law. In fact, it would be discriminatory against the serving civil servants if contractual employees are granted the status of a civil servant without having gone through the mandatory competitive process prescribed for the selection and appointment of a civil servant. As far as the contractual period of service of the petitioners is concerned, suffice it to say the entire such period will be added to their resume as their experience which will certainly help them in seeking fresh employment, if they so desire. In any event, mere continuance of employment of a temporary employee for two years or more in service does not ipso facto convert the appointment into a permanent one.

ii) The mandatory requirement of initial appointments to the posts in BS 16 to 22 only through the Commission, being the command of the Constitution and direction of the Hon'ble Supreme Court (2015 SCMR 456), cannot be ignored, waived, relaxed, done away with, exempted and or bypassed on any ground whatsoever. There is no cavil to the proposition that contractual employees are not civil servants and the above mandatory requirement of appointment through the Commission does not apply to them.

iii) Admittedly petitioners are contractual employees and thus their status and relationship is regulated and governed by the principle of "master and servant". Such employees do not acquire any vested right for regular appointment, or to claim regularization, or to approach this Court in its constitutional jurisdiction to seek redressal of their grievance relating to regularization.

Conclusion: i) Mere continuance of employment of a temporary employee for two years or more in service does not ipso facto convert the appointment into a permanent one; hence without going through the process of competitive examination, they can't be held entitled to be regularized in their respective posts.

ii) Mandatory requirement of initial appointments to the posts in BS 16 to 22 only through the Commission, being the command of the Constitution and direction of the Hon'ble Supreme Court cannot be ignored, waived, relaxed, done away with, exempted and or bypassed on any ground whatsoever. Any violation of this mandate will be ultra vires to the constitution.

iii) No corresponding legal duty was/is cast on the Government of Sindh to appoint them on regular basis, and thus writ of mandamus, as prayed for by the petitioners, cannot be granted.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
   SC: A Power-of-Attorney Holder Can Depose before the Courts in Civil and Criminal Cases. The evidentiary value of the deposition is dependent on the facts and circumstances by Jayanth Balakrishna

   > *Until the Supreme Court settled the law, various High Courts had passed conflicting judgments regarding the validity of permitting a power-of-attorney (POA) holder to depose on behalf of his or her party principal. The Supreme Court has drawn a distinction between a POA holder deposing for acts done by him or her under the authority of the POA, and personal knowledge of facts known to the party-principal for whom the instrument holder may not be entitled to depose. Nevertheless, the Apex Court and the High Courts have carved out exceptions, by permitting a POA holder to depose on behalf of his or her party-principal, leaving the opposing lawyer to cull out the evidentiary value of the testimony provided by a POA holder claiming to have personal knowledge of facts pertaining to the principal.*

2. **Harvard Environmental Law Review**
   https://harvardelr.com/
   Nature's Personhood and Property's Virtues by Laura Spitz* and Eduardo M. Pe ˜nalver

   > *This Article evaluates the strategy of claiming personhood for natural objects as a way to advance environmental goals in the United States. Using the Colorado River Ecosystem v. Colorado litigation as the focus, we explore the normative foundation of the claim—elements of nature are legal persons…*

3. **COURTING THE LAW**
   https://courtingthelaw.com/2021/01/30/commentary/law-of-enforced-disappearances-in-pakistan-discrepancies-and-comparison-with-international-law/
   Law of Enforced Disappearances in Pakistan: Discrepancies and Comparison with International Law by Ahrar Jawaid

   > *This article aims to highlight the obscurities in the law of enforced disappearances in Pakistan along with the statutory ambiguity in the regulation of affairs by the Commission of Inquiry on Enforced Disappearances (CIED). In the prologue, a distinction will be drawn between the various types of disappearances including abduction, kidnapping and forced disappearance. Following that, the broadness of the definition of "enforced disappearance" given by the CIED will be juxtaposed with the definition laid down in the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)*

4. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12423
   Constitutional Directives: Morally-Committed Political Constitutionalism by Tarunabh Khaitan

About 37 state constitutions around the world feature non-justiciable thick moral commitments ('constitutional directives'). These directives typically oblige the state to redistribute income and wealth, guarantee social minimums, or forge a religious or secular identity for the state. They have largely been ignored in a constitutional scholarship defined by its obsession with the legitimacy of judicial review and hostility to constitutionalising thick moral commitments other than basic rights. This article presents constitutional directives as obligatory telic norms, addressed primarily to the political state, which constitutionalise thick moral objectives.