LAHORE HIGH COURT

BULLETIN

Fortnightly Case Law Update ***Online Edition***

Volume - III, Issue - XVII

01 - 09 - 2022 to 15 - 09 - 2022

Published By: Research Centre, Lahore High Court, Lahore

Online Available at: https://researchcenter.lhc.gov.pk/Home/CaseLawBulletin

Disclaimer

Due care and caution has been taken in preparing and publishing this bulletin. Where required, text has been moderated, edited and re-arranged. The contents available in this Bulletin are just for Information. Users are advised to explore and consult original text before applying or referring to it. Research Centre shall not be responsible for any loss or damage in any manner arising out of applying or referring the contents of Bulletin.

FORTNIGHTLY CASE LAW BULLETIN

(01-09-2022 to 15-09-2022)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

10.	Lahore High Court	Dismissal of appeal in limini without sending notice to lower court	Civil Law	12
11.		Effect of delay in lodging FIR; Delay in post-mortem; dishonest improvement; obligation of prosecution to prove motive	Criminal Law	12
12.		Trial and conviction in absentia		14
13.		Steps taken by court when bond is violated		15
14.		Jurisdiction of high Court to quash criminal proceedings; Right of freedom of speech & Expression for journalists; Aim of PECA, 2016		16
15.		Invocation of constitutional jurisdiction in policy matters of Government	Constitutional law	19
16.		Plea of disability raised at belated stage	Service Law	20
17.		Extension of tenancy through oral agreement; oral assertion of payment of pagri	Tenancy Law	21
18.		Rectification of decree or judgment when there is contradiction in body of judgment and relief clause	Civil Law	21
19.		Jurisdiction for assessment and appraisal of evidence	Family Law	22
20.		Status of employees of Civil Aviation Authority; Regularization or extension of service beyond period of completion of project	Service Law	22
21.	Lahore High Court	Limitation for recovery of outstanding amount; Exemption from Limitation; Proving a fact not pleaded	Civil Law	23
22.		Attraction of section 182 & 211 PPC when FIR is not registered or complaint which were never investigated and rejected	Criminal Law	25
23.		Submission of additional document or add any qualification beyond time bound schedule for submission of application for recruitment	Service Law	26
24.		Scribe of agreement to sell as witness; marginal witness	Civil Law	27

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Civil Appeals No. 49 to 54 of 2022
Muhammad Tayyab Bukhari etc. v. Dr. Anees-ur-Rehman and others,
Mr. Justice Umer Ata Bandial , Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.a.49_2022.pdf

Facts: These civil appeals assail judgment passed in Intra Court Appeals, which were dismissed by a Division Bench of the Lahore High Court, Lahore and the judgment of the learned Single Judge was upheld.

Issues: i) Whether certain exceptions created under Article 27 (1) of the constitution of Pakistan regarding the posts for persons to any class or area in order to secure their adequate representation in the service of Pakistan, still exists?
ii) Whether notification issued under Rule 20 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 read with section 23 of the Punjab Civil Servants Act 1974, is in line with third proviso of Article 27 (1) of the Constitution of Pakistan?

Analysis i) Article 27(1) of the Constitution commences by safeguarding against discrimination in the service of Pakistan but then proceeds to create certain exceptions. Its first proviso permitted that for a period of forty years from the commencing day posts for persons belonging to any class or area may be reserved to secure their adequate representation in the service of Pakistan. The commencing day of the Constitution is 14 August 1973, therefore, forty years stood expired on 14 August 2013, making the first proviso inconsequential. The second proviso is not applicable as it is with regard to services which can only be provided by a member of a particular sex, which is not the case of the appellants. The third proviso uses language similar to the language of the first proviso in that if there is under-representation of any class or area in the service of Pakistan 'it may be determined by an act of Majlis-e- Shoora (Parliament).' It was debated whether the envisaged legislation could also be provincial but we need not concern ourselves with this since, admittedly, neither the Province of Punjab nor the Federation has legislated with regard thereto..
ii) The Government of Punjab took it upon itself to insert rule 20 in the Rules and issued the Notification by, wrongly, assuming that it could do so, and in doing did not act in accordance with the third proviso to Article 27(1) of the Constitution. (…)Neither the Notification nor rule 20 of the Rules accorded with the law or the Constitution.

Conclusion: i) The commencing day of the Constitution is 14 August 1973, therefore, forty years stood expired on 14 August 2013, making the first proviso of Article 27 (1) inconsequential.
ii) Neither the Notification nor the rule 20 of the Punjab Civil Servants

(Appointment and Conditions of Service) Rules, 1974 read with section 23 of the Punjab Civil Servants Act 1974 is accorded with the law or the Constitution.

---

2. **Supreme Court of Pakistan**
Pakistan Electronic Media Regulatory Authority, etc. v. ARY Communications Ltd, etc.
Civil Petition s No.1716 to 1724 of 2022.
Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1716_2022.pdf

Facts: Brief facts of the case are that a number of television broadcasting companies and a private citizen filed separate constitutional petitions in the High Court of Sindh for issuance of the writ of quo warranto against the individuals then holding the offices of the Chairperson and Members of the COC Sindh, PEMRA on the ground that they were not fit, eligible and qualified to hold said offices. The High Court dismissed the constitutional petitions and observed that the appointments in question did not seem to suffer from any inherent defect under the law. However, the High Court directed that "in the future, the appointment of Chairperson and Members of the COC PEMRA is required to be made after advertising the positions" and it is against this direction that present petitions for leave to appeal have been filed by PEMRA.

Issues: i) Whether the constitutional guarantee of equality and safeguard against discrimination is limited to paid services or jobs only?
ii) Whether headhunting can be a part of open selection process?

Analysis: i) Making appointment to a public office is a sacred trust which is to be discharged justly and fairly in the best interest of the public, based on a process that is fair, transparent and non - discriminatory. Highest standards of diligence, transparency and probity are to be observed so that a qualified, eligible and most deserving person is selected for a post. Article 25 of the Constitution guarantees equality of status to all citizens of Pakistan. Article 27 of the Constitution which is an instance of the application of 'equality' commanded by Article 25, in respect of appointments in the service of Pakistan, safeguards against discrimination in respect of such appointments. The constitutional guarantee of equality and safeguard against discrimination is not limited to paid services or jobs but extends to all appointments to public offices, honorary or otherwise.
ii) Rather, we point out that the Government is missing out on the fact that advertising doesn't preclude running a headhunting process in parallel. Alongside the process initiated with the advertisement of the places available on the COC, the Government may carry out its own search of finding the best possible candidates for the job. Any suitable candidates identified in this

executive search may be approached with the prospective offer of serving on the COC. Consent of such candidates to such offer may be treated as their application for the available positions. Such candidatures shall be added to the group of applications received in response to the public advertisement. All candidates, whether identified in Government search or those who themselves choose to apply in response to advertisement, shall be assessed against an objective criteria which may relate to conduct, reputation, credibility, integrity, professional excellence etc. The most eligible candidates shall be selected out of the consolidated pool.

Conclusion: i) The constitutional guarantee of equality and safeguard against discrimination is not limited to paid services or jobs but extends to all appointments to public offices, honorary or otherwise.
ii) Headhunting can be a part of open selection process.

---

3. **Supreme Court of Pakistan**
Salamat Mansha Masih v. The State and another.
Criminal Petition No. 883 -L of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._883_l_2022.pdf

Facts: Through this petition the petitioner seeks post-arrest bail in the case arising out of the FIR registered under sections 295-A, 295-B and 295-C of PPC.

Issues: i) What are the basic ingredients of the charge?
ii) What does the word "corroboration" mean and what is the object of corroborative evidence?
iii) Whether the conviction and execution of sentence by one who is so authorized squarely falls under right to fair trial?
iv) What is the standard of proof in Hadd offences?
v) What is duty of State in cases relating to religion?

Analysis: i) A charge must give a brief description of the offence and a statement of essential facts which constitute the offence. The charge (as framed) combined three distinct offences into one. Each offence has separate ingredients, but the charge does not state this. The charge must convey to the accused the case he has to answer, and he must be able to properly defend the offence he is accused of having committed.
ii) Corroboration means support or confirmation and corroborative evidence is some evidence other than the one it confirms. Corroboration minimizes errors in judicial proceedings and is dictated by prudence. The object of corroboration is to ensure the conviction of the guilty and to prevent that of innocents. However, corroboratory evidence does not convert an unreliable witness, or evidence, into a reliable one… Therefore, prudence requires that

their statements, which appear improbable, be corroborated by other evidence, which could be circumstantial, documentary and/or scientific. Islamic jurisprudence also considers the necessity of corroboration in certain cases.

iii) An accused person's Fundamental Right to a fair trial and due process must also be ensured, and all the more so in cases for which severe punishments are prescribed. There have been instances when tempers were provoked and enflamed by provocateurs, and a mob was collected and enraged to take the law into its own hands, to hurt and even kill the accused, before he was ever adjudged guilty. The law prohibits the taking of the law into one's hands, let alone to cause hurt or death, and this protection is also fully applicable to one who may be guilty. In Islamic jurisprudence even if a person has been found guilty and sentenced to death, the sentence cannot be executed by one who is not so authorized, and if he kills the convict, he is liable for the offence of iftiyat (wasting the right of the State) and is to be punished.

iv) Islamic jurisprudence considers offences relating to religion to be offences against God; they pertain to the rights of God in the terminology of Islamic jurists who categorize these offences as hadd offences. To establish the guilt of an accused in a hadd offence, as per Islamic jurisprudence, requires the highest, or best, form of evidence, and any doubt exonerates the accused. (…)This Court in a case under section 295 -C PPC recognized this principle by stating that 'It will not be out of place to mention here that this [benefit of doubt] rule occupies a pivotal place in Islamic law and is enforced rigorously in view of the saying of the Holy Prophet (p.b.u.h.) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent".

v) Abiding by Islamic jurisprudential principles, applying the constitutionally guaranteed right to fair trial and due process, and acting prudently to ensure that an innocent is not convicted wrongly in respect of offences relating to religion, when there is only the improbable oral testimony of witnesses, then there must be corroboration. Oftentimes righteous zeal, moral outrage, and/or indignation also steers the prosecution to a pre-determined destination by eclipsing the general standard of proof in criminal cases; that is, beyond reasonable doubt. Therefore, in all cases relating to religion, the State must also proceed with meticulosity and diligently investigate the alleged crime. This is also the clear intent of the Legislature which inserted section 156A into the Code. And, this is all the more necessary when the offence(s) are not self - evident (as in the present case).

Conclusion: i) A charge must give a brief description of the offence and a statement of essential facts which constitute the offence. The charge must convey to the accused the case he has to answer, and he must be able to properly defend the offence he is accused of having committed.

ii) Corroboration means support or confirmation and corroborative evidence is

some evidence other than the one it confirms. The object of corroboration is to ensure the conviction of the guilty and to prevent that of innocents.

iii) The conviction and execution of sentence by one who is so authorized squarely falls under right to fair trial.

iv) To establish the guilt of an accused in a hadd offence, as per Islamic jurisprudence, requires the highest, or best, form of evidence, and any doubt exonerates the accused.

v) In all cases relating to religion, the State must proceed with meticulosity and diligently investigate the alleged crime.

---

4. **Supreme Court of Pakistan**
Mst. Fursan v. The State
Crl. Petetion No. 994 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._994_2022.pdf

Facts: The petitioner who has been denied bail by the courts below seeks intervention of this Court for her release on bail pending conclusion of her trial in case FIR registered for the offence punishable under Section 11(c) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act 2019 ("Act").

Issue: i) Whether the **S**ections 497 and 498 Cr.P.C. apply to offences under the Khyber Pakhtunkhwa Control of Narcotic Substances Act 2019**?**

ii) How and under what circumstances the likelihood of repeating the offence of narcotics by the accused is determined while deciding the bail application?

Analysis: i) Although Section 20 of the Act provides that all the offences under the Act shall be cognizable and non-bailable, there is no other provision in the Act on the subject of bail nor is there any provision that bars application of the provisions of Cr.P.C in regard to bail in non-bailable offences. Therefore, the provisions of Sections 497 and 498 Cr.P.C that deal with grant of bail in non-bailable offences apply to the offences under the Act, by virtue of the general provisions of Section 26 of the Act, according to which the provisions of the Cr.P.C apply to trials and appeals under the Act, except as otherwise provided in the Act.

ii) This Court has described three circumstances in the Tahira Batool case (2022 SCP 247 - Citation from the SCP website) that may be considered for deciding, whether or not there is a likelihood of repeating the offence by the accused, which are: (i) his previous criminal record, (ii) nature of the offence, or (iii) manner of committing the offence… the offences relating to narcotic drugs are of such a nature that do indicate the likelihood of the repetition of the offence by the accused. Dealing in narcotic drugs is usually the business of the persons involved therein, and is not a spontaneous or one time act, and the women are often involved in it as carriers for the transportation, supply and

sale of narcotic drugs. The likelihood of such an offence being repeated by the petitioner cannot, therefore, be ruled out.

Conclusion: i) For deciding bail of accused, **s**ections 497 and 498 Cr.P.C. apply to offences under the Khyber Pakhtunkhwa Control of Narcotic Substances Act 2019**.**
ii) Likelihood of repeating the offence by the accused is determined in three circumstances which are: (i) his previous criminal record, (ii) nature of the offence, or (iii) manner of committing the offence.

---

5. **Supreme Court of Pakistan**
Commissioner Inland Revenue, (in all cases) Regional Tax Office, Faisalabad v. Mr. Abdul Hameed Labour Contractor
Civil Petitions No. 6309 to 6312 of 2021
Mr.Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._6309_2021.pdf

Facts: Through these petitions for leave to appeal, the petitioner seeks leave to appeal against consolidated order, whereby orders were passed in respect of four different tax years. In the consolidated order, the same question of law was raised, which is whether the contract for rendering labour and carriage services by the taxpayer fell under section 153(1) (c) of the Income Tax Ordinance, 2001, thereby treating the income of the taxpayer liable to the final tax regime as opposed to the normal tax regime under section 153(1) (b), (6) and (9) of the Income Tax Ordinance, 2001.

Issues: Whether labour and carriage services are covered by the definition of 'services' mentioned in section 153(9) of the Income Tax Ordinance, 2001?

Analysis: The definition of 'services' in subsection (9) of section 153 of the Income Tax Ordinance, 2001 is not exhaustive and uses the word 'includes' and then mentions a few services including labour and carriage services. Therefore, to exclude labour and carriage services it would be discriminated, which is not permissible.

Conclusion: The definition of 'services' in subsection (9) of section 153 of the Income Tax Ordinance, 2001 is not exhaustive and services include labour and carriage services.

---

6. **Supreme Court of Pakistan**
Ghulam Rasool v. The State
Jail Petition No.249 of 2018
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/j.p.249 2018.pdf

Facts: Through this jail petition, the petitioner challenged the order of the Lahore High Court whereby his appeal against conviction was dismissed. The trial court had convicted the petitioner under Section 302(b) PPC and sentenced him to imprisonment for life.

Issue: What is the scope of the discretionary jurisdiction of the Supreme Court under Article 185(3) of the Constitution?

Analysis: It is a well-settled principle in regard to the exercise of discretionary jurisdiction vested in this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973, that in the matter of granting leave to appeal, this Court does not function as an ordinary court of appeal, and in order to justify the grant of leave to appeal it must be shown that the case involves some important question of law or the impugned finding of fact is the result of gross misreading or non-reading of the material evidence or is so shocking or improbable that no reasonable person could have arrived at it on the basis of the evidence available on the record of the case.

Conclusion: The scope of discretionary jurisdiction of the Supreme Court as provided under Art. 185(3) is limited and primarily invoked in cases which involve the crucial question of law or gross misreading or non-reading of material evidence or where the findings on fact are manifestly against the evidence presented.

---

7. **Supreme Court of Pakistan**
Shahin Shah v. The Government of Khyber Pakhtunkhwa through Secretary Irrigation Department, Peshawar and others.
Civil Appeal No. 315 of 2022
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a.315 2022.pdf

Facts: The Appellants through the instant appeal challenged a judgment of the Peshawar High Court, passed in Regular First Appeal. Through their Regular First Appeal ("RFA"), the Respondents had challenged the judgment and decree of the Trial Court whereby, the Arbitration Award given in favor of the Appellants was made a Rule of Court. The learned High Court set aside the judgment and decree of the Trial Court and remanded the matter back to the Trial Court.

Issues: i) Whether the appellate court can itself assume the jurisdiction of appeal on any other ground which is not questioned by the party in its memo of appeal?
ii) Whether a party can raise the objection of extension of time of Arbitration Award at appellate stage without raising such objection before trial court?
iii) Whether non-issuance of formal notice under Section 14 of the Act, 1940

vitiates the proceedings of the Arbitration?
iv) Whether an appellate Court can disregard the properly exercised reasons of trial Court regarding delay of filing of the objection to an Award?

Analysis: i) Section 17 of the Arbitration Award Act, 1940 provides that an appeal under the said provision may only be filed against a decree on the grounds that (a) the decree is in excess of the award and (b) it is otherwise not in accordance with the award. Section 39 of the Act, 1940 provides five instances in which an aggrieved party may file an appeal against an order passed under the Act, 1940. The aforenoted provision of the Act, 1940 restricts and limits the instances in which an appeal may be filed. This is evident from the words "and from no others" provided in Section 39 which essentially means that except for an appeal that falls in the limited parameters provided in the aforenoted provision, no appeal would be competent. The High Court was required to proceed on the basis of record which clearly showed that the Respondents had nowhere taken the stance that the decree of the Trial Court was in excess of or against the Arbitration Award. As such, the High Court could not have assumed jurisdiction in the matter, especially when the Respondents did not question the decree on the grounds mentioned in Section 17 of the Act, 1940.
ii) The time limit of filing an Arbitration Award within four months is not absolute. Section 28 of the Act, 1940 clearly provides that said time limit can be enlarged. As such, the non-filing of an Award within four months does not ipso facto make the Award invalid. As such, when the party was present before the Trial Court and did not raise the objections to extension of time and voluntarily participated in the proceedings without raising any objection at any stage, they could not be allowed to change their stance at the appellate stage having practically waved their right to object to extension of time. If they were aggrieved of the conduct of the Arbitrators, they could have filed an application under Section 11 of the Act, 1940 which empowers the Court to remove an arbitrator if the conditions in Section 11 are fulfilled.
iii) Issuance of formal notice under Section 14 of the Act, 1940 is a mere technicality which could not vitiate the proceedings. The purpose of a notice is to inter alia make the parties aware of the proceedings before a Court so that they may participate or, as in the present case, may file objections, if any, within the prescribed time provided by law.
iv) The prescribed limitation period as provided in the Limitation Act, 1908 is 30 days from date of notice of filing of the award to object to an Award being made a rule of Court. A party must explain each day of delay and, the Court ought to adjudge whether each day of delay has been sufficiently explained to the satisfaction of the Court with evidence. If such discretion has been exercised properly, then, an appellate Court cannot arbitrarily disregard the reasons so given by the Trial Court while discounting the reasons provided by one party in an application for condonation of delay by the Trial Court unless there is misreading or nonreading of the record.

Conclusion: i) Appellate court cannot itself assume the jurisdiction of appeal on another ground of appeal which is not questioned by the party in its memo of appeal.
ii) A party cannot raise the objection of extension of time of Arbitration Award at appellate stage without raising such objection before trial court as the same is considered as practically being waved.
iii) Issuance of formal notice under Section 14 of the Act, 1940 is a mere technicality and non-issuance of the same does not vitiate the proceedings.
iv) An appellate Court cannot disregard the properly exercised reasons of trial Court regarding delay of filing of the objection to an Award.

---

8. **Lahore High Court**
Syed Sajid Hussain Abidi v. Iram Shehzadi Abidi etc.
W.P. No. 9471/2017
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2017LHC5545.pdf

Facts: Through this Constitutional petition, petitioner who follows Fiqa Jafria challenged the judgment and decree of Family Court whereby the marriage between the petitioner and respondent No.1 was dissolved on the basis of Khula in view of their statements recorded on the same date.

Issues: How the divorce takes effect under the personal law of Fiqa Jafria?

Analysis: Under the personal law of Fiqa Jafria the divorce takes effect when the Arabic sentences (Seeghajaat) are read in presence of two witnesses. A Shia male can always pronounce divorce in accordance with Shia Law which will be protected only by reading the "Seeghajaat" directly or through a representative/wakeel in the presence of female or her representative/wakeel where after divorce can become effective. This exercise can be undertaken, even with retrospective effect, if need be.

Conclusion: Under the personal law of Fiqa Jafria the divorce takes effect when the Arabic sentences (Seeghajaat) are read in presence of two witnesses directly or through a representative/wakeel in the presence of female or her representative/wakeel.

---

9. **Lahore High Court**
Abdul Saboor v. Federation of Pakistan etc.
W.P. No. 16567 of 2021
Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2022LHC6324.pdf

Facts: The petitioner through this writ petition as well as the connected writ petitions, call into question the action of the Directorate of Intelligence and Investigation, Inland Revenue [Directorate (I&I)] in initiating proceedings

against the petitioners under the provisions of Anti-Money Laundering Act, 2010 (the Act) by issuing call up notices and/or registering First Information Reports (FIR) against them.

Issue:

i) Whether the judgments of the Hon'ble Supreme Court of Pakistan operate retrospectively or prospectively?

ii) Whether the Directorate (I&I) can conduct investigation in cases prior to its inclusion in the definition of "investigating or prosecuting agency" in section 2(xviii) of the Act?

iii) Whether it is mandatory for the Directorate (I&I) to specify in the call up notice the precise allegation against the petitioners relating to the offence of money laundering?

iv) Whether the framing of Rules under section 43 of the Act regarding inquiry / investigation is necessary to give effect to the provisions of Anti-Money Laundering Act, 2010?

v) Whether the Directorate (I&I) can register an FIR against a person under the Act?

vi) Whether the Directorate (I&I) can inquire into and investigate transactions that existed prior to inclusion of Income Tax Ordinance in the Schedule of the Act?

Analysis:

i) In view of pronouncements of the Hon'ble Supreme Court stating in unequivocal terms that the judgments of that Court would ordinarily operate prospectively. In this regard, reference may be made to the case of Pakistan Mental and Dental Council v. Muhammad Fahad Malik (2018 SCMR 1956) in which the Hon'ble Supreme Court while dealing with a similar issue concluded to the effect that "The judgment of this Court, unless declared otherwise, operate prospectively, as such, the Amendment Ordinances are not hit by Mustafa Impex's case." Similarly, the Hon'ble Supreme Court in its judgment rendered in C.P. No.1622-L/2018 titled Chief Commissioner IR v. M/s Giggy Food (Pvt.) Limited was pleased to hold as follows "The prospective effectiveness of the rule in Mustafa Impex case laid down by the Court means that actions taken or instruments executed prior to the judgment in the Mustafa Impex case are not affected by the law enunciated by the said judgment."

ii) The Directorate (I&I) is now included in the definition of "Investigating Agency or Prosecuting Agency" as per section 2(xviii) of the Act. Notwithstanding the fact that this definition was included in section 2 through Anti-Money Laundering (Second Amendment) Act, 2020 dated 24.09.2020, the investigation of an offence is an essential part of and closely related to the procedure and conduct of the investigation and as such the fact that an authority is subsequently added as the investigating agency is no bar on its powers and authority to investigate cases in which the offence is said to have been committed in the past.

iii) Section 9 read with the SOPs clearly bring out the intent of the Act that call up notice must at the bare minimum specify the information regarding the alleged commission of the offence of money laundering and the details of the property which has allegedly been acquired from the proceeds of crime or contravention of any provision of the Act. The notice which does not fulfill the afore-mentioned requirements cannot be termed as a valid notice under section 9 of the Act and by the terms of SOPs.

iv) The steps in the inquiry/investigation as envisaged by sections 6, 8 and 9 are exhaustive and are not dependent on the rules. It may relevantly be pointed out that where the legislature intends that rules are required to be framed for a certain function under the statute to be performed or carried out, it makes provision for it by requiring it to be done through the prescribed manner. The term "prescribed" is defined in section 2(xxvii) of the Act to mean prescribed by rules and regulations under the Act. For the investigative processes to be carried out by the investigating officer under sections 8 and 9 relating to attachment, the legislature did not stipulate that these functions be further regulated and guided by rule making. This fact alone restrains the hands of this Court in issuing any direction for framing the rules.

v) On proper construction of the provision coupled with the law laid down in the judgments noted above, it becomes apparent that the term "complaint" mentioned in sub-section (2) of section 21 of the Act is not the same complaint as contemplated by the Code in section 202 rather it is in the nature of report/challan to be filed by the investigating/prosecuting agency in terms of section 173 of the of the Code before the appropriate court. So understood, there is no apparent contradiction between the provisions of subsections (1) (a) and (2) of section 21 of the Act. A natural corollary to this interpretation is the affirmation of the proposition that FIR can be registered by the investigating officer under the Act against the person if in his opinion a case for money laundering is made out.

vi) The Act is a penal statute and, therefore, it can have no retrospective operation by virtue of Article 12 of the Constitution. Based on this, any proceedings commenced under the Act cannot sustain in respect of a transaction which crystallized prior to the introduction of sections 192, 192A, 194 and 199 of the Income Tax Ordinance as predicate offences through amendment made in Schedule-I of the Act on 20.05.2016.

Conclusion: i) The judgments of Hon'ble Supreme Court of Pakistan would ordinarily operate prospectively.

ii) The Directorate (I&I) can conduct investigation in cases in which the offence is said to have been committed in the past to its inclusion in the definition of "investigating or prosecuting agency" in section 2(xviii) of the Act.

iii) It is mandatory for the Directorate (I&I) to specify in the call up notice the precise allegation against the petitioners relating to the offence of money

laundering.

iv) The framing of Rules under section 43 of the Act regarding inquiry / investigation is not necessary as the steps in the inquiry/investigation as envisaged by sections 6, 8 and 9 are exhaustive and are not dependent on the rules.

v) FIR can be registered by the investigating officer under the Act against the person if in his opinion a case for money laundering is made out.

vi) The Directorate (I&I) cannot inquire into and investigate transactions that existed prior to inclusion of Income Tax Ordinance in the Schedule of the Act.

---

10. **Lahore High Court**
Sui Northern Gas Pipe Lines Limited, etc. v. Farman Ali, etc.
Case No. RFA No. 51934 of 2022.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC6389.pdf

Facts: Regular First Appeal is filed under Section 13 of the Gas (Theft Control & Recovery) Act, 2016. Appellants (Sui Northern Gas Pipe Lines Limited) were confronted to show any ground for admission of the appeal.

Issues: Whether under Section 13 of the Act, 2016 the appellate court can dismiss the appeal in limine without sending notice to the lower court?

Analysis: The provisions of Section 13 of the Act of 2016 are special to override the general provisions, conferring jurisdiction of appeal to this Court. Rule 11 of Order XLI of CPC envisages dismissal of appeal, without sending notice to lower court, however, the special provisions under Section 13 are more stringent, as assumption of jurisdiction is stipulated with a reasoned order for admission of appeal and that too, only to the extent of admitted ground of appeal, because phrase "in part or in whole" narrows the scope of appeal further. Since, special procedure for admission of appeal is provided in Section 13 of the Act of 2016, therefore, under its Section 5(3) general provision under CPC, contrary to special procedure for admission of appeal shall not be applicable.

Conclusion: Section 13 of the Act, 2016 is a special provision which overrides the general provisions of CPC; therefore, under such provision of the Act, 2016 the appellate court can dismiss the appeal in limine without sending notice to the lower court if no ground or reason for admission of appeal, in part or in whole, is made out.

---

11. **Lahore High Court**
The State v. Muhammad Saleem
Murder Reference No. 340 of 2018
Muhammad Saleem v. The State and another
Crl. Appeal No. 237968 of 2018

Mr. Justice Shehram Sarwar Ch., Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC6374.pdf

Facts: Appellant was tried for offences under sections 302, 311 PPC and convicted and sentenced. The appellant has filed appeal against his conviction and sentence whereas the learned trial Court has sent Murder Reference for the confirmation of death sentence of appellant or otherwise.

Issues:
i) What is the effect of delay in lodging FIR?
ii) What presumption is attached with the delay in conducting the post mortem of deceased?
iii) What inference courts can take if any party withholds best piece of evidence?
iv) What is credibility of a witness who made dishonest improvements in his statement?
v) Whether the prosecution is under obligation to prove motive?

Analysis:
i) Delay in FiR is fatal for prosecution as this delay in setting the machinery of law into motion speaks volumes against the veracity of prosecution version.
ii) It has been held repeatedly by the Hon'ble Supreme Court of Pakistan that such noticeable delay is normally occasioned due to incomplete police papers necessary to be handed over to the Medical Officer to conduct the postmortem examination on the dead body of the deceased which happens only when the Complainant and police remain busy in consultation and preliminary inquiry regarding the culprits in such cases of unwitnessed occurrence.
iii) If any party withholds the best piece of evidence, then it can fairly be presumed that such party has some sinister motive behind it. Reliance in this respect is placed on the case of "Pervaiz Khan and another Vs. The State" (2022 SCMR 393).
iv) In a slew of decisions, the Hon'ble Supreme Court of Pakistan has held that a witness is untrustworthy if he makes dishonest improvements in his statement on a material aspect of the case in order to fill gaps in the prosecution case or to bring his statement in line with the other prosecution evidence.
v) Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

Conclusion:
i) Delay in lodging FIR is fatal for prosecution case.
ii) The presumption attached to delayed postmortem is that complainant and police remain busy in consultation and preliminary inquiry regarding the culprits in such cases of unwitnessed occurrence.
iii) If the best witness is not produced then the court can take adverse

inference that had they been produced in the witness box, they might have not supported the prosecution case.

iv) A witness is untrustworthy if he makes dishonest improvements in his statement.

v) Although the prosecution is not under obligation to prove motive but if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

---

12. **Lahore High Court**
Muhammad Umair v. The State & another
Crl. Appeal No.364/2022
Mr. Justice Asjad Javaid Ghural, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC6381.pdf

Facts: Through this criminal appeal the appellant assailed the judgment passed by the trial court, whereby, he was convicted and sentenced under section 11-EE(4) ATA 1997 while his trial was conducted in absentia.

Issues: i) Whether an accused can be tried and convicted in absentia under section 19(10) of the Anti-Terrorism Act, 1997?

ii) Whether a trial conducted in absentia violates both constitutional guarantees enshrined under Articles 4, 8, 9, 10 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 and principles of natural justice?

iii) Whether the concept of trial in absentia is inconsistent with the "doctrine of Islamic Justice" enunciated in the Holy Qur'an and Sunnah?

Analysis: i) Vires of the section 19(10) of the Anti-Terrorism Act, 1997 were judiciously reviewed by the Apex Court of the country in Mehram Ali and others vs. Federation of Pakistan and others – PLD 1998 SC 1445 whereby only section 19(10)(b) (since deleted) of the Anti-Terrorism Act, 1997 was declared ultra vires being violative of Article 10 of the Constitution of the Islamic Republic of Pakistan, 1973. Rest of the provisions of section 19 were held to be intra vires. Legality of trial in absentia was considered by the prestigious Supreme Court of Pakistan in Mir IKHLAQ AHMAD and another vs. THE STATE – 2008 SCMR 951 in which appellants were tried and convicted in absentia by the Anti-Terrorism Court, as they could not be arrested. Their conviction and sentences were upheld by this Court. The Apex Court ruled that trial of the appellants in absentia is violative of the Constitution and remanded the case to the trial court for decision afresh in accordance with the law.

ii) A trial conducted in absentia violates both constitutional guarantees enshrined under Articles 4, 8, 9, 10 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 and principles of natural justice.

iii) The concept of trial in absentia is inconsistent with the "doctrine of Islamic Justice" enunciated in the Holy Qur"an and Sunnah. This aspect was taken

into consideration and elaborated by august Supreme Court of Pakistan in a landmark judgment in PAKISTAN and others vs. PUBLIC AT LARGE and others - PLD 1987 Supreme Court 304. In the pronouncement the Apex Court while referring to numerous verses of the Holy Qur'an observed that even on the „Day of Judgment" everyone shall be confronted with the evidence of his deeds during the present life and he would have an opportunity of denial.

Conclusion: i) An accused cannot be tried and convicted in absentia under section 19(10) of the Anti-Terrorism Act, 1997.
ii) A trial conducted in absentia violates both constitutional guarantees enshrined under Articles 4, 8, 9, 10 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 and principles of natural justice.
iii) The concept of trial in absentia is inconsistent with the "doctrine of Islamic Justice" enunciated in the Holy Qur'an and Sunnah.

---

13. Lahore High Court (Bahawalpur Bench)
Muhammad Rasheed v. The State etc.
Criminal Appeal No. 411 of 2022/BWP
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC6295.pdf

Facts: Through this petition, the petitioner impugned the order of the trial court whereby he was penalized under Section 514 Cr.P.C for not producing the convict for whom he stood surety and sentenced to imprisonment for six months for not depositing the amount of penalty. The petitioner contended that the court had not complied with essential requirements of Section 514 Cr.P.C while passing sentencing the petitioner.

Issues: What steps should be taken by court when the bond is violated?

Analysis: The High Court emphasized that the following steps should be taken when the bond is violated i) The court should, in the first instance, satisfy itself that the bond has been forfeited. The word "forfeited" means that the condition imposed upon the executant of the bond and agreed to by him has been contravened. ii) When the court is satisfied that the bond has been forfeited, it should record the grounds of proof upon which it has come to that conclusion. Plainly, the court may say that the bond was executed for appearance of the accused and he did not appear on the date fixed, so it is forfeited. This is sufficient to meet the legal requirement and the question as to whether the accused had any good reason for his absence does not arise for consideration at that point of time. iii) When the court concludes that the bond has been forfeited, it should either call upon the executant to pay the penalty or to show cause as to why it should not be paid. It is at this stage that the court has to consider the explanation for non-appearance of the accused. iv) If neither sufficient cause is not shown nor penalty is paid, the court may issue a warrant

for attachment and sale of the movable property belonging to the executant or his estate for the recovery of that sum. v) If the penalty is not paid and cannot be recovered by attachment and sale, the court may imprison the executant for a specific term upto six months.

Conclusion: Once the court reaches upon conclusion based upon reasons that bond is forfeited it should give notice of penalty to executant. Upon non satisfaction from him, the court may issue a warrant for attachment and sale of the movable property belonging to the executant. If the penalty is not paid and cannot be recovered by attachment and sale, the court may imprison the executant for a specific term upto six months.

---

14. **Lahore High Court**
Usman Zulfiqar Khan v. The State etc
Writ Petition No. 19711/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC6401.pdf

Facts: The Petitioner purchased Ragu Sauce from the Superstore which was not Halal as pork was one of its active ingredients. The petitioner uploaded a video on the Facebook about the said incident and accused the Superstore. The Superstore (through Respondent No.2, its Public Relations Officer) lodged a complaint with the Federal Investigation Agency under the Prevention of Electronic Crimes Act, 2016 accusing the Petitioner of defamation. The FIA registered FIR. Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the Petitioner seeks quashing of the said FIR.

Issues: i) Whether the High Court under Article 199 of the Constitution or section 561-A Cr.PC have jurisdiction to quash the criminal proceedings?
ii) Whether certain provisions of Constitution can be interpreted to trump other provisions of Constitution?
iii) What kind of restrictions can be imposed on the right provided under article 19 of the Constitution?
iv) How citizen journalism can be defined?
v) Whether citizen journalists are entitled to the freedom of speech and expression under Article 19 of the Constitution?
vi) Whether defamation is a tort or a crime?
vii) What is aim of the Prevention of Electronic Crimes Act, 2016?
viii) Whether section 20 of the Prevention of Electronic Crimes Act, 2016 overlap the sections 499 & 500 of The Pakistan Penal Code 1960?
ix) Whether law of defamation applies to citizen journalists like as professional journalists?
x) Whether section 500 PPC and section 20 of the PECA can be invoked when a juristic person is defamed?

xi) Whether offences under sections 20 & 24 can be investigated without permission of competent court?

Analysis: i) It is trite that the jurisdiction of the High Court under Article 199 of the Constitution is extraordinary and should be invoked only when there is no adequate and efficacious alternative remedy. Generally speaking, section 249-A Cr.P.C. (and section 265-K Cr.P.C. in the cases triable by the Sessions Court) is considered to provide such remedy as it empowers the court to acquit the accused at any stage of the trial if it thinks that the charge is groundless or there is no probability of his being convicted of any offence. Therefore, the High Court should not interfere in the normal course of the trial and quash the criminal proceedings while exercising powers under Article 199 of the Constitution or section 561-A Cr.P.C. However, some authorities hold that the bar is not absolute. Every case has its own facts and the High Court can intervene in exceptional circumstances… The general rule is that the High Court should not intervene in the process of investigation and trial and allow them to be completed in due course. However, it may quash the proceedings by invoking its constitutional jurisdiction or inherent powers under section 561-A Cr.P.C. to prevent the abuse of the process of law.

ii) It is one of the fundamental canons of interpretation of Constitution that all its provisions should be harmoniously interpreted. The right to dignity is guaranteed by Article 14(1) of the Constitution and is inviolable. Reputation forms an important part of a person's dignity so he has the right to protect his reputation. Article 19 should be construed in a manner that balances the two competing rights. Article 19 cannot trump Article 14(1).

iii) Article 19 stipulates that even where the restrictions are imposed for the purposes specified therein, they should be "reasonable". Generally, this would mean restrictions that are in the public interest and not arbitrary.

iv) Citizen journalism is conducted by people who are not professional journalists but they disseminate information through blogs, forums and uploading photographs or videos to the internet. "The idea behind citizen journalism is that people without professional or formal training in journalism have an opportunity to use the tools of modern technology and the almost limitless reach of the Internet in order to create content that would otherwise not be revealed, as this kind of journalism goes far beyond the reach of professional journalism." It helps provide independent, wide-ranging and relevant information that is crucial to democratic societies.

v) The citizen journalists are entitled to the freedom of speech and expression under Article 19 of the Constitution as other mainstream media people. The State is obligated to create a conducive environment for them. However, it goes without saying that the citizen journalists are accountable for the information they disseminate.

vi) In Pakistan, defamation is a tort as well as crime. Defamation Ordinance, 2002, provides for civil remedy against the delinquent while the Pakistan

Penal Code 1898 ("PPC") and the PECA make provision for his criminal prosecution.

vii) The PECA is lex specialis which aims to check cybercrimes and provide a legal framework for their investigation, prosecution and trial and for international cooperation to that end.

viii) The cybercrimes are a category apart by their very nature as they may extend beyond the local and provincial boundaries and even national frontiers. They require special expertise for investigation which is generally not available with the local police. For all these reasons section 20 of the PECA and sections 499 & 500 PPC do not overlap.

ix) The professional journalists are trained to be fair, accurate and balanced in whatever they publish and have a code of ethics which they are to follow. On the other hand, "user-generated content is inherently biased so the notion of objectivity is far-fetched." However, both the mainstream and the citizen journalists are required to abide by law and be watchful of the limits within which the right to freedom of speech and expression is to be exercised. The law of defamation applies to both the classes. No one can be permitted to lower another person in the esteem of his peers or to expose him to hatred, ridicule or contempt.

x) Section 500 PPC is general law and applies to ordinary situations while, as adumbrated, section 20 of the PECA is invoked where defamation (or any other objectionable/offensive act mentioned therein) is committed in the cyberspace through the computers or other programmable devices. Importantly, section 20, supra, is restricted to natural persons. The legislature has not applied it to juristic persons either intentionally or through oversight. Therefore, when a juristic person is defamed – even if it is through the use of computers or other device – he can be prosecuted under section 500 PPC for two reasons. First, public policy does not allow any offence to go unpunished. Second, section 11 PPC perspicuously states that the word "person" includes any company or association, or body of persons, whether incorporated or not.

xi) Section 43 of the PECA stipulates that all the offences under the Act are non-cognizable, bailable and compoundable except the offences under sections 10, 21 and 22 and abetment thereof. On the other hand, the offences under section 17 shall be cognizable by the investigating agency on a written complaint by the Pakistan Telecommunication Authority established under Act XVII of 1996. It follows that the offences under section 20 & 24 of the PECA are noncognizable and compoundable. Section 43 must be read in conjunction with Rule 7(5) of the Investigation Rules (2018) which enjoins that non-cognizable offences shall be dealt with according to section 155 Cr.P.C. and permission of the competent court is mandatory for their investigation.

Conclusion: i) The High Court under Article 199 of the Constitution or section 561-A Cr.PC have jurisdiction to quash the criminal proceedings.

ii) Certain provisions of Constitution cannot be interpreted to trump other provisions of Constitution.
ii) Restrictions imposed on article 19 of the Constitution must be in the public interest and not arbitrary.
iv) Citizen journalism is conducted by people who are not professional journalists but they disseminate information through blogs, forums and uploading photographs or videos to the internet.
v) The citizen journalists are entitled to the freedom of speech and expression under Article 19 of the Constitution as other mainstream media people.
vi) In Pakistan, defamation is a tort as well as crime.
vii) PECA aims to check cybercrimes and provide a legal framework for their investigation, prosecution and trial.
viii) Section 20 of the PECA and sections 499 & 500 PPC do not overlap.
ix) The law of defamation applies to citizen journalists like as professional journalists.
x) Section 500 PPC and section 20 of the PECA can be invoked when a juristic person is defamed.
xi) Permission of the competent court is mandatory for investigation of offences under sections 20 & 24.

---

15. **Lahore High Court**
Muhammad Iqbal Shah v. Federation of Pakistan, etc.
W.P. No.177395/2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2018LHC4035.pdf

Facts: The petitioner has challenged travel restrictions placed upon Pakistani *Zaireen* to visit India for participation in the "Urs" celebrations of six prominent Muslim Saints in India.

Issues: (i) In what circumstances a policy decision of government can be revisited or set aside while invoking Constitutional jurisdiction?
(ii) Whether travel restrictions based on government policy infringe fundamental rights under the Constitution when these are based on reasonable classification?

Analysis: (i) The restrictions which have been placed upon travel of *Zaireen* of Pakistani under official arrangements to accommodate maximum number of *Zaireen* in the limited permissible number fixed for visiting under the Government supervision are based on Policy Decision of the Government and this Court in its Constitutional jurisdiction is not competent to revisit the policy of the Government or set aside the same unless some illegality, arbitrariness or established *mala fides* or violation of any law is pointed out which is not forthcoming in the present case….Even otherwise, the Policy fixing the

number of *Zaireen* has been framed by the Government of Pakistan in consultation with the Government of India and power to issue directions to a foreign government is not with the jurisdiction of this Court, consequently no direction could be issued to it to increase number of *Zaireen* or fix conditions.
(ii**)** As regards the question of fundamental right of the petitioner to travel abroad and visit restriction imposed upon the petitioner is concerned, suffice it to observe that the petitioner cannot visit India within three years from the date of his last visit on government arrangements; however, there is no restriction upon the petitioner or any other person in Pakistan to travel India by seeking Visa through his own source. Thus, question of violation of fundamental rights does not arise.

Conclusion: (i) A policy decision of government can be revisited or set aside while invoking Constitutional jurisdiction when there is some illegality, arbitrariness or established *mala fides* or violation of any law.
(ii**)** Travel restrictions based on government policy do not infringe fundamental rights under the Constitution when these are based on reasonable classification.

---

16. **Lahore High Court, Lahore**
Muhammad Shahbaz v. Punjab Public Service Commission, etc
W.P.No. 236131 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5061.pdf

Facts: Through the constitutional petition, petitioner has sought appointment as Assistant District Public Prosecutor against disabled quota after setting-aside orders respectively passed by Secretary , Punjab Public Service Commission rejecting his representation and order passed by Chairman, Punjab Public Service Commission, Lahore dismissing his consequent appeal.

Issues: Whether a person having not asserted his right to be appointed against disabled seat at the relevant stipulated date, may be allowed the benefit of appointment accepting such plea raised at belated stage at the time of interview or psychological test?

Analysis: A person having not asserted his right to be appointed against disabled seat at the relevant stipulated date, cannot be allowed the benefit of appointment accepting such plea raised at belated stage at the time of interview or psychological test.

Conclusion: A person having not asserted his right to be appointed against disabled seat at the relevant stipulated date, cannot be allowed the benefit of appointment

accepting such plea raised at belated stage at the time of interview or psychological test.

---

17. **Lahore High Court**
Mirza Rauf Ahmed v. Addl. District Judge, etc
W.P.No. 20532 of 2019
Mr. Justice Muzamil Akhtar Shabir.
https://sys.lhc.gov.pk/appjudgments/2019LHC5055.pdf

Facts: This petition is filed to challenge the eviction order passed by learned Special Judge (Rent)/trial court followed by order in appeal.

Issues: Whether the plea of extension of tenancy through oral agreement and oral assertion of payment of "*Pagri"*; could form the basis for setting aside the ejectment orders?

Analysis: The oral extension of tenancy cannot be treated as extension for more than one month at a time, while the payment of *'Pagri'* must be mentioned in the agreement between the parties.

Conclusion: Even if the tenancy was orally extended, it will be considered as expired after one month, and if *'Pagri'* has been settled between the parties, documentary prove of the same must be available on the record to form the basis for setting aside the ejectment orders.

---

18. **Lahore High Court**
Liaqat Ali v. Addl. District Judge, etc
W.P.No. 17066 of 2019
Mr. Justice Muzamil Akhtar Shabir.
https://sys.lhc.gov.pk/appjudgments/2019LHC5053.pdf

Facts: This constitutional petition has impugned the order passed by the trial court, whereby the judgment and decree earlier passed by the said court was corrected on an application filed by respondent Nos. 3 and 4 ("respondents") and has also called in question the order whereby an appeal filed by the petitioner there against has been dismissed by the appellate court.

Issues: How the courts can rectify the judgment or decree when there is contradiction in body of judgment and relief clause/decree?

Analysis: It is settled law that decree follows the judgment and judgment means reasons given by the court for passing any order or decree. The relief clause and the consequent decree had to follow the reasoning given in judgment.

Conclusion: The relief clause and the consequent decree had to follow the reasoning given in judgment. So the courts should rectify the judgment or decree as per reasoning in judgment.

---

19. **Lahore High Court**
Tariq Masood v. The Learned Addl. District Judge, etc.
W.P.No. 23081 of 2019
Mr. Justice Muzamil Akhtar Shabir.
https://sys.lhc.gov.pk/appjudgments/2019LHC5058.pdf

Facts: The judgments and decrees are impugned through this constitutional petition, whereby the courts below have concurrently decreed the claim of the plaintiff/respondent No.3 for recovery of dowry articles.

Issues: Which court has exclusive jurisdiction of the assessment and appraisal of evidence?

Analysis: The Court exercising constitutional jurisdiction does not ordinarily reappraise the evidence produced before the courts below to substitute findings of facts recorded by the said courts, nor gives its opinion regarding quality or adequacy of the evidence, unless any misreading, non-reading of record or any illegality is pointed out.

Conclusion: The assessment and appraisal of evidence is the function of the trial court, which is vested with exclusive jurisdiction in this regard.

---

20. **Lahore High Court**
Abdul Shakoor Sheikh v. Federation of Pakistan through Secretary, Ministry of Aviation, Civil Aviation Division, etc.
W.P. No. 18389/2016 etc.
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2018LHC4013.pdf

Facts: Through this single judgment various constitutional petitions in which a common question of law and fact is involved are decided. The Respondent/ Civil Aviation Authority "CAA" advertised some posts for appointment of employees in different categories on contract basis. Besides these vacancies, some other persons were also required to be appointed from time to time on 'work charge basis' as Labour, etc. The petitioners applied for the post of 'work charge basis' and were appointed. Through these Constitutional petitions the petitioners claimed to be treated as permanent employees and regularization in their service on the basis of Civil Aviation Authority Ordinance, 1982 and service regulations of CAA.

Issues: i) What is the status of service of employees of Civil Aviation Authority and whether the Constitutional Petition for the enforcement of service regulations of employees of CAA is maintainable?
ii) Whether a person appointed for a particular project, could claim regularization or extension of service beyond the period of completion of the project?

Analysis: i) In case of Muhammad Nawaz v. Civil Aviation Authority and others (2011

SCMR 523) the Supreme Court while making reference to Sections 26 and 27 of the Ordinance dismissed the appeal of the employees against the order of the Services Tribunal whereby the appeal of the employees of the Civil Aviation Authority had been dismissed on the ground that the regularization framed by the respondents have no statutory backing and Services Tribunal had thus no jurisdiction to entertain the appeal. By placing reliance on the afore referred judgment, conclusion is drawn that the of service regulations of employees CAA are non-statutory. When the service, rules and regulations are non-statutory then the Constitutional Petition for the enforcement of the same would also not be maintainable.

ii) A person appointed on contract basis accepts the terms and conditions of appointment before joining the service. A contract employee even if dismissed from service, instead for pressing of his reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service. If a contract employee cannot claim relief of allowing him for the performance of the remaining period of contract by reinstatement, then on the same analogy a contract employee, who was appointed for a particular project, could not claim regularization or extension of service beyond the period of completion of the project.

Conclusion: i) The services of employees of Civil Aviation Authority are non-statutory; therefore, the petition for the enforcement of the service regulations of employees of CAA is not maintainable.

ii) A person appointed for a particular project, could not claim regularization or extension of service beyond the period of completion of the project.

---

21. **Lahore High Court**
Zarai Taraqiati Bank Limited, through its Manager v. Afzal Shah.
RFA No.119 of 2017
Mr. Justice Shakil Ahmad, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2022LHC6422.pdf

Facts: Through the instant regular first appeal filed under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 petitioner has assailed ex-parte judgment & decree passed by learned Judge Banking Court-I, whereby suit filed by Zarai Taraqiati Bank Ltd. (appellant herein) against Afzal Shah (respondent herein) was dismissed.

Issue: i) Whether limitation for suit for the recovery of outstanding amount is 12 years?

ii) Whether exemption from the period of limitation can be sought?

iii) Whether a party who fails to plead a fact in pleadings can be allowed to prove the same through evidence?

iv) Whether limitation is mere a technicality?

v) Whether any credit entry in the account constituting an acknowledgment of payment must have been in the handwriting and within statutory limitation period?

Analysis: i) Under Article 132, Part VIII of the first schedule of the Limitation Act, 1908, suit for the recovery was to be filed within a period of twelve years from the date when outstanding amount became payable on the expiry date of finance facility.

ii) As per provisions of Order VII Rule 6 of CPC, where a suit is instituted after the expiration of the period prescribed by law of limitation, the plaint shall show the ground upon which exemption in view of the grounds as enumerated in Sections 6 to 20 of the Limitation Act, 1908 is claimed.

iii) The party filing suit has to specifically plead the circumstances under which exemption and in turn fresh point of limitation, has been claimed. In case a party fails to specifically mention those facts in the plaint, there is no need for the court to have framed the issue on the point of limitation and to require a party to adduce evidence to establish the same owing to yet another established principle of law that where a party fails to plead a fact in pleadings it cannot be allowed to prove the same through evidence.

iv) It is by now settled principle of law that limitation is not mere technicality and once period of limitation expires, right is accrued in favour of contesting party by operation of law and the same cannot be ignored lightly.

v) In order to invoke the provisions of section 19 of the Limitation Act, 1908, the condition precedent, that such acknowledgment ought to have been made within the period of limitation prescribed for a claim sought to be enforced, was to be fulfilled in the first place. Similarly, as per provisions of section 20 of the Limitation Act, 1908, any credit entry in the account constituting an acknowledgment of payment must have been in the handwriting or in writing signed by the person making the payment, so as to bring the case either within the purview of section 19 or section 20 of the Limitation Act, 1908, whereby acknowledgment of payment was to be made in the handwriting or in a writing signed by the person making the payment within the period of limitation. Fresh period of limitation would only start when firstly payment/acknowledgment has been made before the expiry of period of limitation and secondly the same is in the handwriting and signed by the party against whom any right is claimed.

Conclusion: i) Yes, limitation for suit for the recovery of outstanding amount is 12 years.

ii) Yes, exemption from the period of limitation can be sought in view of the grounds as enumerated in Sections 6 to 20 of the Limitation Act, 1908.

iii) A party who fails to plead a fact in pleadings cannot be allowed to prove the same through evidence.

iv) Limitation is not mere technicality.

v) Yes, any credit entry in the account constituting an acknowledgment of payment must have been in the handwriting and within statutory limitation period.

---

22. **Lahore High Court**
Muhammad Rafi v. Regional Police Officer, etc.
W.P. No.66649 of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC6301.pdf

Facts: Through the instant writ petition the petitioner has sought a Mandamus from this Court under Article 199 of the Constitution feeling aggrieved from the non-attendance of his application by the police regarding praying for initiation of criminal proceedings under Section 182 and 211 PPC read with other enabling provisions against respondent No.4 for filing an allegedly false and frivolous petition against the petitioner and on account of presenting incorrect facts, incorrect affidavits and false information in a petition filed under Sections 22-A/B Cr.P.C.

Issue: i) Whether Section 182 or 211 PPC could be attracted in the absence of registration of an FIR or complaint which were never investigated and rejected?
ii) Whether a private person has locus standi or legal authority to initiate or insist on initiating proceedings under Sections 182 PPC or 211 PPC?
iii) Whether a direction can be sought for initiation of proceedings under Section 182 PPC through petition under Sections 22-A/B Cr.P.C?

Analysis: i) Section 182 PPC only stands attracted where an FIR or a private complaint are registered and filed, subject matter of the same is investigated and the allegations contained in the FIR or the private complaint are rejected and discarded as false or untrue and not otherwise.
ii) A private person has no locus standi or legal authority to initiate or insist on initiating proceedings under Sections 182 PPC or 211 PPC. It is only the public authority mentioned in such sections which has the authority and prerogative of initiating proceedings under the said provisions of law and not a private person. The prerogative for proceedings under section 182, PPC lies only with the police officer who has moved the machinery of law against the accused persons nominated in the FIR by the complainant.
iii) A petition under Sections 22-A/B Cr.P.C. is not competent for the purpose of seeking a direction for initiation of proceedings under Section 182 PPC.

Conclusion: i) Section 182 or 211 PPC could not be attracted in the absence of registration of an FIR or complaint which were never investigated and rejected.

ii) A private person has no locus standi or legal authority to initiate or insist on initiating proceedings under Sections 182 PPC or 211 PPC.
iii) A direction cannot be sought for initiation of proceedings under Section 182 PPC through petition under Sections 22-A/B Cr.P.C.

---

23. **Lahore High Court**
Shahrukh Latif v. Govt. of Punjab, etc.
W.P. No.56598 of 2020
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC6312.pdf

Facts: The petitioner applied for the post of Assistant Director (Awareness and Training), BS-17, at the Punjab Information Commission, a next step agency of the Information Department of the Province of Punjab. The grievance of the petitioner is that he was not granted 05 additional marks for having obtained a position in LLB examination as per the Contract Appointment Policy, 2004. Hence this petition is filed.

Issues: i) Whether equity helps the vigilant and not the indolent?
ii) Whether the applicant can submit any further document or add any qualification beyond time bound schedule for submission of applications for recruitment?

Analysis: i) Respondent No.3 having been appointed and having acquired a right cannot possibly be put in discomfort especially on the asking of an indolent petitioner who kept sleeping over his rights.
ii) In "Muhammad Zahid and another v. Director of Schools and Literacy (2002 CLC 1576) at paragraph No.6 it has been held as follows:- "6. When a time bound schedule for submission of applications and documents is advertised, the candidates are bound to submit their documents within that period. Their eligibility is checked on the basis of such record, and calls for test/interview are issued to the eligible candidates accordingly. Marking is made in case of each candidate for his result in the test/interview and for his qualifications as shown by him through his application and testimonials. The candidate himself makes the representative of the employing authority to believe that the candidate had only those qualifications which he had shown. After completion of the exercise, certain rights of preference and appointment accrue to other persons, which cannot be snatched by the turn or afterthought of a candidate at later stage. Allowing the use of such turn or afterthought will make the whole exercise shaky, unreliable and inconclusive."

Conclusion: i) Equity helps the vigilant and not the indolent.
ii) The applicant cannot submit any further document or add any qualification beyond time bound schedule for submission of applications for recruitment.

---

24. **Lahore High Court**
Muhammad Iqbal v. Ghulam Mustafa.
C.R. No.2818 of 2012
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2022LHC6393.pdf

Facts: Through the instant civil revision the petitioner has challenged concurrent findings recorded by the courts below whereby the suit for specific performance of an agreement to sell filed by him was dismissed and the dismissal was upheld in appeal.

Issue: i) Whether a scribe of agreement to sell is material witness in the absence of second marginal witness?
ii) Whether it is mandatory requirement to produce two marginal witnesses for the purposes of proof of agreement to sell?

Analysis: i) A person who had reduced agreement into writing was a material witness and his presence and testimony was that much more relevant in view of the fact that only one marginal witness had been produced and in the absence of the second marginal witness the evidence of the scribe would have gained importance and helped the plaintiff in establishing and proving his case. Most of all, the stamp-vendor who issued the stamp paper on which the alleged agreement to sell was reduced into writing was, likewise, not produced or examined either. Hence, evidence of only one marginal witness was not sufficient to prove execution of the agreement to sell in issue.

ii) It is settled law that an agreement to sell of an immovable property squarely falls within the purview of the provisions of Article 17(2) of the Qanun-e-Shahadat Order, 1984 and has to be compulsorily attested by the two witnesses and this is sine qua non for the validity of the agreement. For the purposes of proof of such agreement it is mandatory that two attesting witnesses must be examined by the party to the lis as per Article 79 of the Order ibid.

Conclusion: i) Yes, a scribe of agreement to sell is material witness in the absence of second marginal witness.
ii) Yes, it is mandatory requirement to produce two marginal witnesses for the purposes of proof of agreement to sell.

LATEST LEGISLATION/AMENDMENTS

1. The Control of Narcotics Substances Act, 1997 is amended by The Control of Narcotics Substances (Amendment) Act, 2022. Wherein Preamble, Section 2,4,5,

16,17,19,23, 31, 33,37,39,40A, 45, 49 are amended while Section 9 is substituted and Section 49A is newly inserted.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Protection-of-Graphics-under-IPR

Protection of Graphics under IPR by Mansi Sharma and Ved Prakash Patel

Intellectual property rights provide incentive and reward to original creations. It has given the same standard of protection to intangible property as available to tangible property A piece of art created is also an intangible property of the creator, art is in the form of graphics and these are occasionally created on physical space like paper and sometimes on virtual space like computer screens. Graphics are often used as designs representing a specific product and in another instance are used as a design printed on a t-shirt and also as a graph chart used for a presentation, sometimes a product is also designed or shaped in a particular manner all these has led to certain ambiguities regarding the protection granted to graphics under IPR. Diverse laws of intellectual property deal with the protection of graphics. IPR laws provide manifold ways to the creators to protect their graphics from any type of unauthorized use.

2. **HAVARD LAW REVIEW**
https://harvardlawreview.org/2022/06/the-dangerous-few-taking-seriously-prison-abolition-and-its-skeptics/

The Dangerous Few: Taking Seriously Prison Abolition and Its Skeptics by Thomas Ward Frampton

Prison abolition, in the span of just a few short years, has established a foothold in elite criminal legal discourse. But the basic question of how abolitionists would address "the dangerous few" often receives superficial treatment; the problem constitutes a "spectral force haunting abolitionist thought. . . as soon as abolitionist discourses navigate towards the programmatic and enter the public arena." This Essay offers two main contributions: it (1) maps the diverse ways in which prison abolitionists most frequently respond to the challenge of "the dangerous few," highlighting strengths and infirmities of each stance, and (2) proposes alternative, hopefully more productive, responses that interrogate and probe the implicit premises (empirical, ideological, or moral) embedded in and animating questions concerning "the dangerous few."

3. **HAVARD LAW REVIEW**

https://harvardlawreview.org/2020/07/coronavirus-civil-liberties-and-the-courts/

Coronavirus, Civil Liberties, and the Courts: The Case Against "Suspending" Judicial Review by Lindsay F. Wiley & Stephen I. Vladeck

For obvious reasons, local and state orders designed to help "flatten the curve" of novel coronavirus infections (and conserve health care capacity to treat coronavirus disease) have provoked a series of constitutional objections — and a growing number of lawsuits attempting to have those orders modified or overturned. Like the coronavirus crisis itself, much of that litigation remains ongoing as we write this Essay. But even in these early days, the emerging body of case law has rather elegantly teed up what we have previously described as "the central (and long-running) normative debate over emergency powers: Should constitutional constraints on government action be suspended in times of emergency (because emergencies are 'extraconstitutional'), or do constitutional doctrines forged in calmer times adequately accommodate exigent circumstances.

4. **LATEST LAWS**

https://www.latestlaws.com/articles/anatomizing-judicial-intervention-under-section-34-of-the-arbitration-and-conciliation-act-1996-187369/

Anatomizing judicial intervention under Section 34 of the Arbitration and Conciliation Act, 1996 by Smita Singh

The Arbitration and Conciliation Act of 1996 (hereinafter referred to as 'the Act') was modelled after the UNCITRAL (United Nations Commission on International Trade Law) framework of rules in an effort to modernize Indian arbitration law, bring it in line with the best worldwide practices, and make India a hub for international arbitration. The celebrated act has been a success so far. However, it is still not completely devoid of nebulous provisions. Even though the arbitral award is comparable to a court's verdict, on specific reasons, however, the aggrieved party may utilize the existing remedies given under the act against such awards. Section 34 of the act governs the mechanism for setting aside an arbitral award, made by an arbitral tribunal, depending on the occurrence of certain circumstances specified in section 34(1). Even though the notion has always been in support of minimal judicial interference, there are several factors which call for it regardless.

5. **LATEST LAWS**

https://www.latestlaws.com/articles/prevention-of-money-laundering-act-law-and-case-laws-188794/

Prevention of Money Laundering Act: Law and Case Laws by Shweta Pathania

The general idea of money laundering has evolved from ancient times and is "intertwined with the development of money and banking". In general, money laundering as the name suggests is the process through which the proceeds of crime and illicit activities are transformed into legitimate assets. According to the United Nations, Office on Drugs and Crime, a whopping $2 trillion are laundered every year. The U.S Custom and Border Protection define money laundering as "the legitimization of proceeds from the illegal activity".

6. **MANUPATRA**

https://articles.manupatra.com/article-details/Is-the-Model-Tenancy-Act-the-Key-to-Success

Is the Model Tenancy Act the Key to Success by Viraja Shah

In 2021, the Union Cabinet passed the Model Tenancy Act of 2021 with an aim to subject the tenancy needs of the country and to implement a uniform tenancy regulation in the country. The act promulgates for a level playing field in order to ensure affordable housing for all communities including slum dwellers, rural migrants, students, and single professionals. The declaration aligns with the Prime Minister's commitment towards 'Housing of All by 2022'. State specific Tenancy laws became popular during the period of the World War I as way to confront high rents and insufficient housing, but these laws have long become archaic and unhinged by reform and inflation which has become a major bone of contention between landlords and lessees. While the Model tenancy brings a new wave of hope for equity in Tenancy Laws across the country, the question which still remains is that, when implemented by states, would the Model Tenancy Act continue to be served as the equitable saviour of rights it intended to be. The crème de la crème of Tenancy Laws is quite broad to embrace all tenancy issues and is thus met with certain drawbacks.