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FORTNIGHTLY CASE LAW BULLETIN

(16-08-2022 to 31-08-2022)

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

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1. Supreme Court of Pakistan
Muhammad Anwar (decd) through his LRs. etc and Abdul Hameed and others v. Essa and others.
Civil Petitions No. 3950 & 4047 of 2019.
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Sajjad Ali Shah, Mr. Justice Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3950_2019.pdf

Facts: The petitioners seek leave of this Court against the common judgment of Balochistan High Court at Quetta whereby the said Court while setting aside the concurrent findings of the Courts below, on the point of limitation, remanded the case for trial on merits.

Issues: i) Whether the revisional court can allow withdrawal of the suit with the permission to file a fresh suit if the plaint is rejected under order VII rule 11(d) of CPC?
ii) In which situations the courts allow withdrawal of the suit with permission to file a fresh suit?
iii) Whether fresh cause of action would accrue from the date when permission for filling second suit was granted by the Court?
iv) Whether the Court has unlimited discretion or power to condone the delay in filing the suit?
v) Whether the court can condone the delay on oral submission?
vi) What will be the effect of the expiry of limitation upon the rights of parties?

Analysis: i) Where the plaint under order VII rule 11(d) of CPC is rejected on the ground that the suit is barred by any law, the filing of fresh plaint is not envisaged unless the findings declaring the suit to be barred by any law are reversed and, therefore, the withdrawal of the suit could not be allowed with the permission to file a fresh. It would of course be unlawful to revive a dead cause without bringing back the suit to life. The rejection of plaint on any of the grounds given in clause (a) to (c) in Order 11 shall not on its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. The exclusion of clause (d) appears to be well considered.
ii) A case law study shows that the suit may be allowed to be withdrawn in a case where the plaintiff fails to implead necessary party or where the suit as framed does not lie or the suit would fail on account of misjoinder of parties or causes of action or where the material document is not stamped or where prayer for necessary relief has been omitted or where the suit has been erroneously valued and cases of like nature. It is always to be kept in mind that where such defect could be remedied by allowing amendments, the Court should liberally exercise such powers but within the parameters prescribed by Order VI Rule 17 CPC. Besides while exercising powers under this provision the Court must identify the defect and record its satisfaction that the defect is formal and does not go to the root of the case.

iii) if permission is granted for filing a fresh suit under Order XXIII Rule I CPC, then, pursuant to Order XXIII Rule 2, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been filed, therefore, no fresh cause of action would accrue from the date when such permission was granted by the Court.
iv) The Courts on the original side while trying a suit as required under Section 3 of the Act are bound to dismiss the suit if it is found to be barred by time notwithstanding that the limitation has not been set up as defense. The Court has no power to condone the delay in filing the suit but could exclude time the concession whereof is provided in Section 4 to 25 of the Act only in cases where the plaintiff has set up in the plaint one of such grounds available in the Act such as disability, minority, insanity, proceedings bona fide before a Court without jurisdiction etc. and not otherwise. In fact, the language used in Section 3 of the Act is mandatory in nature and imposes a duty upon the Court to dismiss the suit instituted after the expiry of period provided, unless the plaintiff seeks exclusion of time by pleading in the plaint one of the grounds provided in Sections 4 to 25 of the Act. .. . In cases where limitation is not set up in defense and consequently a waiver is pleaded, the Courts notwithstanding such waiver are bound to decide the question of limitation in accordance with law. .. The Court even has no discretion or power to condone the delay in filing the suit on humanitarian grounds.
v) An oral submission for condonation of delay does not make a valid justification for condoning the delay in cases even falling under Section 5 of the Limitation Act. As the party seeking condonation or exclusion of time in terms of Section 5 or Section 3 of the Limitation Act has to explain the delay of each and every day through an affidavit and/or justify exclusion of time.
vi) Upon expiry of the period of limitation a claimant loses his right to enforce his claim through the Court of law and consequently a right accrues in favour of respondent by operation of law which cannot be lightly disturbed or brushed aside unless "sufficient cause" is shown and accepted by the Court. It has been held in numerous judgments by this Court that the Law of Limitation is not a mere technicality and that once the limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

Conclusion: i) The revisional court cannot allow withdrawal of the suit with the permission to file a fresh suit if the plaint is rejected under order VII rule 11(d) of CPC.
ii) The permission to withdraw with permission to file fresh suit may be granted when the plaintiff fails to implead necessary party or where the suit as framed does not lie or the suit would fail on account of misjoinder of parties or causes of action or where the material document is not stamped or where prayer for necessary relief has been omitted or where the suit has been erroneously valued and cases of like nature.
iii) Fresh cause of action would not accrue from the date when permission for filling second suit was granted by the Court.

iv) The Court has no power to condone the delay in filing the suit but could exclude time the concession whereof is provided in Section 4 to 25 of the Limitation Act.
v) An oral submission for condonation of delay does not make a valid justification for condoning the delay in cases even falling under Section 5 of the Limitation Act.
vi) Once the limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

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2. **Supreme Court of Pakistan**
Pak Leather Crafts Limited and others v. Al-Barka Bank Pakistan Limited.
Civil Appeal No. 24-K of 2019
Mr. Justice Umar Atta Bandial HCJ, Mr. Justice Sajjad Ali Shah Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._24_k_2019.pdf

Facts: The appellants have impugned the judgment of the High Court, whereby their appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance. 2001, was dismissed after having been found barred by time.

Issues: i) If the copies were to be issued on payment of fee whether the time consumed in payment of such fee would fall within the ambit of “time requisite” as envisaged under section 12 of the Act and thereby stop the period of limitation?
ii) Whether intimation notice shall be issued under section 12(5) once the copy is made ready?
iii) What should the applicant do if the copy is not ready for delivery on the intimated date?

Analysis: i) The interpretation that mere filing of an application would be suffice to stop the period of limitation would not only be against the spirit and purpose for which the legislature has created the fiction, but would also be against the purpose and object for which the legislative intervention was suggested by this Court. Besides, this interpretation would not only render the scheme of law behind the limitation Act as redundant but at the mercy of the litigant… Admittedly, the application for certified copies referred to is not entertained and/or processed till the prescribed fee/cost is paid and in case such interpretation is accepted that mere filing of application would stop the CA 24-K At 2019 14 period of limitation then by not paying the prescribed fee/cost one could prolong the period of limitation as has happened in the instant case, which would be against the intention and purpose of the legislation. This interpretation not only appears to be against the reasons and object of the law of limitation but would substantially frustrate it. The law of Limitation seeks to prescribe the time limit for invoking remedies in order to curtail period of suspense and uncertainty and ensure peace of mind to the parties, and such interpretation would be against the very purpose of the statute as it would prolong the period of uncertainty and suspense.
ii) A careful reading of sub-Section 5 shows that the intimation of the day on which the copy will be ready for delivery by the very language adopted by sub-Section 5 appears to be an intimation of a future date, a date expected by the office by which it would be in a position to make the copy ready for delivery. It

does not envisage a notice after the certified copy is ready for delivery. In our opinion, it is a date intimated to the applicant after he has effectively made the application for the certified copies i.e. upon payment of cost/fee to be a date acknowledging receipt of cost/fee and providing a date on which copy would be ready for delivery.

iii) It also cast a duty upon the applicant that while making the payment of cost/fee for certified copy to obtain a receipt containing a date when the certified copies will be ready for delivery to eliminate once for all the pre-amendrnent dispute of non-intimation of date on which the certified copies are ready for delivery. Since the burden to demonstrate that the copies were not ready on the day intimated to the applicant to be the day on which the copy will be ready for delivery is upon the applicant, therefore, in case of non-delivery of certified copy on the date intimated to the applicant then in order to eliminate the controversy and to discharge his burden the applicant should accordingly take a fresh date so that the dispute of applicant having different date and the copy containing different date of "copy ready for delivery" comes to an end.

Conclusion: i) If the copies were to be issued on payment of fee then the time consumed in payment of such fee would not fall within the ambit of “time requisite” as envisaged under section 12 of the Act. Thus non-payment of fee does not stop the period of limitation.

ii) Section 12(5) does not envisage a notice after the certified copy is ready for delivery.

iii) Applicant must take a fresh date for delivery of copy in case of non-delivery of certified copy on the date intimated to him.

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3. **Supreme Court of Pakistan**
Pervez Khan & others v. Ali Asghar Khan & others
Civil Appeal N0.1602 of 1014
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1602_2014.pdf

Facts: The appellant filed a suit for declaration and injunction regarding a house whereas the respondent No.1 also filed a suit for specific performance of the sale agreement regarding same house and consequently, both the suits were consolidated and on conclusion of the trial, the suit of the appellants was dismissed, whereas, suit of the respondent No.1 was decreed by the trial Court. The appeal filed by the appellants was allowed by the appellate Court pursuant to which, the suit of the appellants was decreed, while dismissed that of the respondent No. 1. The respondents No.1, 2 and 3 filed a revision petition before the learned High Court which was allowed and the judgment and decree of the Appellate Court were set aside and restored that of the trial Court. The appellant challenged it through this civil appeal.

Issue: i) What are the parameters and conditions for considering the evidentiary, value of thirty years old document?

ii) Whether the presumption of genuineness with regard to 30 years old document is discretionary in nature?

Analysis: i) Article 100 of the Qanun-c-Shahadat Order 1984 describes parameters and condition for considering the evidentiary value of thirty years old document. According to the said provision of law, before arriving at any conclusion with regard to a presumption in respect of a document, the Court must satisfy itself about its originality, age, production from proper custody, unsuspicious character and other circumstances. The Court may make some presumption that the signature, handwriting and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested, provided that the original is before the Court, without which no such observations can he made.

ii) The presumption of genuineness with regard to 30 years old document is discretionary; therefore, the Court generally arrives at its conclusion on the document, after the evidence of both sides has been given. The Court is not supposed to presume every document and signature upon it as genuine, of a particular person, without considering the relevant factors, necessary to bring the document within the parameter of Article 100 of the Qanun_eShahadat Order, 1984.

Conclusion: i) The parameters and conditions for considering the evidentiary, value of thirty years old document are its originality, age, production from proper custody, unsuspicious character and other circumstances.

ii) The presumption of genuineness with regard to 30 years old document is discretionary in nature and the Court is to arrive at its conclusion on the document, after the evidence of both sides has been given.

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4. **Supreme Court of Pakistan**
Uzma Naveed Chaudhary, etc (in CP-1655/2019) Ather Farook Buttar (in CP-1347/2019) v. Federation of Pakistan, etc. (in both cases)
Civil Petitions No.1347 & 1655 of 2019
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1347_2019.pdf

Facts: The present petitions have been filed by both the petitioners and the respondent by feeling aggrieved from the decision of the Islamabad High Court. The petitioners pray for restoration of the order of the President and the respondent, for setting aside the decision of the Federal Ombudsman.

Issues: i) Whether High Court can interfere, in its constitutional jurisdiction, with findings of fact recorded by the competent courts, tribunals or authorities?

ii) Whether delay in reporting the incident to the police in criminal cases involving sexual assault is fatal?

iii) What is object and scope of The Protection against Harassment of Women at Workplace Act, 2010?

iv) What is applicability of amendment of The Protection against Harassment of

Women at Workplace Act, 2010?
v) How right to life under the Constitution can be defined?
vi) How right to liberty under the Constitution can be defined?
vii) How right to dignity under the Constitution can be defined?

Analysis: i) Needless to state that a High Court cannot interfere, in its constitutional jurisdiction, with findings of fact recorded by the competent courts, tribunals or authorities unless such findings are the result of misreading or non-reading of the material evidence or based on no evidence, which amounts to an error of law and thus justifies, rather calls for, interference.
ii) The courts, tribunals and authorities concerned must take a lenient view on the delay in filing the complaint by the victim and decide the case on merits. This will encourage victims to come forward to seek justice. The principle enunciated by this Court in several criminal cases5 involving sexual assault, that delay in reporting the incident to the police in such cases is not material, equally applies to the complaints of sexual harassment made under the Act.
iii) As evident from its Statement of Objects and Reasons, Preamble and substantive provisions, the objective of the Act is to actualize the right of women to join a profession or occupation of their choice, where they are treated as an equal with dignity and honour, and feel safe that their working environment is free of harassment, abuse and intimidation. The Act gives effect to Article 34 of the Principles of Policy under our Constitution which provides that "steps shall be taken to ensure full participation of women in all spheres of national life". The Act opens pathways for women to participate more fully in the development of the country at all levels, and ensures equal opportunity for them to earn their livelihood in a safe working environment. The Act also promotes the standards set by international commitments of Pakistan under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the ILO Discrimination (Employment and Occupation) Convention.
iv) The Amendment Act has substituted the expression "a woman or man" with "any person" in the definition of "complainant" and has thus made applicable the protection of the Act to transgender persons also. The scope of the Act is not restricted to women only but it protects everyone – male, female and transgender persons. This change in the Act is commendable, as it would now extend the protection to transgender persons also, who are often the most vulnerable to different forms of harassment. The amendments introduced in the Act, we hope, would play an important role to realize the constitutional ideals and values of liberty, dignity, equality and social justice for women and transgender persons in Pakistan.
v) Right to life includes the right to livelihood and thus assumes the right to a safe working environment for everyone, especially women, for earning such a livelihood; intimidating, hostile, abusive and offensive workplace environment

offends the right to livelihood and the right to life of a person.

vi) Right to liberty includes the right to agency, choice and freedom to join any profession or occupation of ones choice; right to enter upon any lawful profession or occupation, carries an inbuilt protection to make and execute such a choice. Any act of harassment done by any person that affects the free choice to enter and continue any lawful profession or occupation would amount to threatening the safety of the working environment. Only a safe working environment meets the constitutional standard of fundamental rights guaranteed under Articles 9 and 18 of the Constitution.

vii) It is underlined that dignity is an inherent and inseparable right of a human being and has thus been guaranteed by our Constitution as an absolute, non-negotiable and inviolable fundamental right that is not subject to any qualification, restriction or regulation. Dignity values the worth of each person and requires the recognition of each person's worth to be held in equal measure for all. It is harmed when individuals are marginalized, ignored or devalued, and is enhanced when the full place of all individuals within the society is recognized. The right to dignity under Article 14 and the construct of "gender equality" turns "sexual harassment" on its head and buries it deep underground. The universal value of human dignity provides that "all human beings are born free and equal in dignity and rights." It shuns patriarchy, misogyny and the age-old archaic and dogmatic social norms, and nurtures progressive and forward-looking constitutional ideals of liberty, equality and social justice. It is time to bid farewell to gender biases and prejudices, and pave the way towards the actualization of these robust and unwavering constitutional ideals and values by embracing the participation of women in all spheres of life with honour and dignity.

Conclusion: i) High Court cannot interfere, in its constitutional jurisdiction, with findings of fact recorded by the competent courts, tribunals or authorities unless such findings are the result of misreading or non-reading of the material evidence or based on no evidence.

ii) Delay in reporting the incident to the police in criminal cases involving sexual assault is not fatal.

iii) The object of the Act is to actualize the right of women to join a profession or occupation of their choice.

iv) The Act is applicable to woman or man and transgender persons also.

v) Right to life includes the right to livelihood and the right to a safe working environment for everyone, especially women.

vi) Right to liberty includes the right to agency, choice and freedom to join any profession or occupation of ones choice.

vii) Dignity values the worth of each person and requires the recognition of each person's worth to be held in equal measure for all.

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5. Supreme Court of Pakistan
Tahira Batool v. The State & another.
Criminal Petition No. 910 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._910_2022%20.pdf

Facts: Through instant criminal petition the petitioner has sought leave to appeal against the order of the Islamabad High Court, whereby post-arrest bail has been denied to her in case FIR registered for offences punishable under sections 395 and 412, PPC.

Issues: i) Whether the bail in cases falling under first proviso of section 497(1) is a rule and refusal is an exception?
ii) Whether the exceptions for refusing bail in offences that do not fall within the prohibitory clause of Section 497(1) Cr.PC are applicable to the accused who pray for bail under the first proviso to Section 497(1)?

Analysis: i) The first proviso has made equal the power of the Court to grant bail in the offences of prohibitory clause alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused, to its power under the first part of Section 497(1) CrPC. This means that in cases of women, etc., as mentioned in the first proviso to section 497(1), irrespective of the category of the offence, bail is to be granted as a rule and refused as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of Section 497(1) CrPC.
iii) The exceptions for refusing bail in offences that do not fall within the prohibitory clause of Section 497(1) CrPC are therefore also applicable to the accused who pray for bail under the first proviso to Section 497(1) CrPC in an offence falling within the prohibitory clause . These exceptions are likelihood of the accused: (a) to abscond to escape trial; (b) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; or (c) to repeat the offence keeping in view his previous criminal record , nature of the offence or the desperate manner in which he has prima facie acted in the commission of offence.

Conclusion: i) The bail in cases falling under first proviso of section 497(1) is a rule and refusal is an exception.
ii) The exceptions for refusing bail in offences that do not fall within the prohibitory clause of Section 497(1) Cr.PC are applicable to the accused who pray for bail under the first proviso to Section 497(1).

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6. Supreme Court of Pakistan
First Dawood Investment Bank Ltd., Karachi v. Bank of Punjab through its President, Lahore,
Civil Appeal No. 1003 of 2019

Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1003_2019.pdf

Facts: The appellant-company has through the instant appeal by leave challenged the order of the High Court of Sindh, whereby on a petition filed by respondent-bank, a conditional order of winding up of the appellant-company was passed under the enabling provisions of the then applicable Companies Ordinance, 1984 ("Ordinance").

Issue: i) What does 'neglect to pay' mean as expressed in section 306(1)(a) of the Ordinance?

ii) How to determine that a dispute raised by the company regarding the claimed debt is bona fide or not?

iii) What is the principle on which the company courts are to act in case a dispute is raised by the company?

Analysis: i) The legislature has, vested the creditor-petitioner with an advantage, that when the creditor has served upon a company, a statutory notice under section 306(1)(a) to pay its debt, and the company has neglected to pay the debt, within the stipulated thirty days, a presumption by a legal fiction is created in favour of the creditor, that the company is unable to pay its debt due to the creditor. Judicial pronouncements are by now consistent in enunciating that the words 'neglect to pay' expressed in section 306(1)(a) of the Ordinance, refers to a refusal of the company to pay without any reasonable cause. If the company raises a bona fide dispute, as to its liability to pay the amount claimed by the creditor, then in that case, there can be no 'neglect to pay' by the company, within the meaning of section 306(1)(a).

ii) The question whether a dispute raised by the company regarding the claimed debt is bona fide or not depends upon the circumstances of each case. It will always be a question of fact, as to whether the company has a bona fide dispute to the debt claimed by the creditor-petitioner. The litmus test, however, would be to adjudge, whether the dispute raised by the respondent company is only to avoid payment of the debt, and is not based on a substantial ground. In cases where the company sets up a bona fide dispute, based on a substantial ground, to the debt claimed by the creditor, the company court is to refuse an order of winding up.

iii) The principle on which the company courts are to act, in this regard, is to see: first, whether the dispute raised by the company is one of substance; secondly, whether the dispute is likely to succeed in point of law; and, thirdly, whether the company has adduced prima facie proof of the facts on which the dispute depends. If the facts of the case suggest that the debt is substantially disputed, then to continue with the winding-up proceedings would be an abuse of the process of the court.

Conclusion: i) The words 'neglect to pay' expressed in section 306(1)(a) of the Ordinance, refers to a refusal of the company to pay without any reasonable cause.

ii) To determine that a dispute rose by the company regarding the claimed debt is bona fide or not is always a question of fact. The litmus test, however, would be to adjudge, whether the dispute raised by the respondent company is only to avoid payment of the debt, and is not based on a substantial ground.

iii) The company courts are to see: first, whether the dispute raised by the company is one of substance; secondly, whether the dispute is likely to succeed in point of law; and, thirdly, whether the company has adduced prima facie proof of the facts on which the dispute depends.

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7. **Supreme Court of Pakistan**
Nausher v. Province of Punjab through District Collector, Khanewal & another
Civil Appeal No. 1011 of 2016
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1011_2016.pdf

Facts: The appellant has through the present appeal challenged the judgment passed by the Lahore High Court in a civil revision petition filed by the Province of Punjab and the Member, Board of Revenue, Punjab ("respondents"). By the impugned judgment, the Lahore High Court has accepted the revision petition of the respondents, and set aside the concurrent judgments and decrees in favour of the appellant passed by the trial and appellate courts.

Issues: i) Whether Civil Courts have the ultimate jurisdiction, even where their jurisdiction relating to certain civil matters is barred, to examine the acts, proceedings or orders of those special tribunals and determine whether or not such acts, proceedings or orders have been done, taken or made in accordance with law?
ii) Whether under section 16 of the Colonization of Government Lands (Punjab) Act 1912, the allotment of the suit land could not have been cancelled after the lapse of a period of three years?
iii) Whether the Board of Revenue is competent to decide upon whether any person had acquired the tenancy rights, under the Act, in respect of any land by means of fraud?
iv) Whether Civil Court can, in its limited jurisdiction of examining legality of the challenged order of administrative tribunal, record additional evidence on the disputed fact and re-decide the same?
v) When Protection under section 41 of Transfer of Property Act, 1882 can be claimed?

Analysis: i) In view of the general jurisdiction conferred by section 9 of the Code of Civil Procedure 1908 ("CPC"), Civil Courts have the ultimate jurisdiction, even where their jurisdiction relating to certain civil matters is barred, to examine the acts, proceedings or orders of those special tribunals and determine whether or not such

acts, proceedings or orders have been done, taken or made in accordance with law. Accordingly, when a special tribunal is found to have acted not in accordance with the law under which it purportedly acted, its act does not come within the scope of the exclusionary provisions of the law that bar the jurisdiction of Civil Courts.
ii) The ground of challenge that as per proviso to section 16 of the Act, the allotment of the suit land could not have been cancelled after the lapse of a period of three years, is also not maintainable, as the said proviso has been deleted by the Colonization of Government Lands (Punjab Amendment) Ordinance, 1978.
iii) Section 30(2) of the Act has clearly conferred power on the Board of Revenue to decide the allegation of fraud. The Board of Revenue is competent to decide upon whether any person had acquired the tenancy rights, under the Act, in respect of any land by means of fraud.
iv) Civil Court cannot, in its limited jurisdiction of examining legality of the challenged order, record additional evidence on the disputed fact and re-decide the same, as an appellate court of the administrative tribunal. When there exists some evidence and that evidence reasonably supports the finding recorded by the administrative tribunal, it is not the function of Civil Court to reappraise that evidence and to substitute its own finding. Civil Court can interfere with and set aside only such finding of the administrative tribunal which is based upon no evidence or which no reasonable person can record on the basis of the evidence available before the administrative tribunal.
v) Protection under section 41 of Transfer of Property Act, 1882 can only be claimed when the following conditions are fulfilled: (a) the transferor is the ostensible owner; (b) he is so by the consent, express or implied, of the real owner; (c) transfer is for consideration; and (e) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

Conclusion: i) Civil Courts have the ultimate jurisdiction, even where their jurisdiction relating to certain civil matters is barred, to examine the acts, proceedings or orders of those special tribunals and determine whether or not such acts, proceedings or orders have been done, taken or made in accordance with law.
ii) Under section 16 of the Colonization of Government Lands (Punjab) Act 1912, the allotment of the suit land could have been cancelled after the lapse of a period of three years.
iii) The Board of Revenue is competent to decide upon whether any person had acquired the tenancy rights, under the Act, in respect of any land by means of fraud.
iv) Civil Court cannot, in its limited jurisdiction of examining legality of the challenged order of administrative tribunal, record additional evidence on the disputed fact and re-decide the same.
v) Protection under section 41 of Transfer of Property Act, 1882 can only be claimed when the following conditions are fulfilled: (a) the transferor is the ostensible owner; (b) he is so by the consent, express or implied, of the real

owner; (c) transfer is for consideration; and (e) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

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8. **Supreme Court of Pakistan**
Model Customs Collectorate, Islamabad v. Aamir Mumtaz Qureshi
Criminal Petition No.209 of 2018 and Crl. Misc application No. 392 of 2018
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._209_2018.pdf

Facts: The petitioner department has impugned the judgment of the Islamabad high Court whereby it upheld the order of acquittal of respondent, passed by the Special Court (Customs, Taxation & Anti-Smuggling), under section 265-K Cr.P.C., in case FIR registered at Police Station under sections 2(s), 156(1), 8, 70 and 157 of the Customs Act 1969, read with section 8 of the Foreign Exchange Regulation Act,1947 (1V1 ACT)..

Issues: i) What is the trial court can acquit accused u/s 249-A or 265-K Cr.PC if there is remote possibility of conviction?
ii) Whether presumption of double innocence is available to accused acquitted under section 249-A & 265-K Cr.PC?

Analysis i) When there is no evidence on the record and even there is no remote probability of conviction then the court is required to record the evidence and then decide the case on evidence bought on record during the trial. The application under sections 249-A and 265-K Cr.P.C. can be filed or taken up for adjudication at any stage of proceeding of trial i.e. even before recording of prosecution evidence or during recording of evidence or when recording of evidence is over. From the above sections, it is also clear that application under sections 249-A and 265-K Cr.P.C. can be filed or taken up for adjudication at any stage of proceeding of trial i.e. before recording of prosecution evidence or during recording of evidence or when recording of evidence is over. Although there is no bar for an accused to file application under the said sections at any stage of proceeding of the trial, yet the fact and circumstance, the prosecution case will have to be kept in mind and if there is slight probability of conviction then off course, instead of deciding the said application should record the evidence and allowed the case to decide on its merit after appraising the evidence available on recorded.
ii) In appellate or revisional proceedings, the same sanctity cannot be accorded to acquittals at intermediary stages such as under, sections 249-A or 265-K Cr.P.C., as available for those recorded and based on full-fledged trial after recording of evidence. In appeal or revision proceedings, the order of acquittal of the accused under section 249-A or section 265-K of the Cr.PC would not have the same sanctity as orders of acquittal on merits. Consequently, the principles which are to be observed and applied in setting aside concurrent findings of acquittal or the principle relating to the presumption of double innocence when an accused is acquitted after a full-fledged inquiry and trial, would not be applicable to the acquittals under section 249-A, Cr.PC or section 265-K, Cr.PC.

Conclusion: i) The trial court should not acquit accused u/s 249-A or 265-K Cr.PC if there is remote possibility of conviction but it is required to record the evidence.

ii) Presumption of double innocence is available to accused acquitted under section 249-A & 265-K CrPC.

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9. **Supreme Court of Pakistan**
Sajid Mehmood v. The State
Criminal Appeal No. 398 of 2020
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar All Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._398_2020.pdf

Facts: The appellant through this criminal appeal has challenged the judgment through which the High Court maintained the conviction of the appellant under Section 302(b) PPC, altered the sentence of death into imprisonment for life. The amount of compensation and the mode of recovery thereof were also maintained.

Issue: i) Whether in the event of contradiction between ocular version and medical evidence, the ocular version is to be discarded?

ii) Whether relationship of witness with the deceased makes his testimony unreliable?

iii) Whether Trial Court can examine the witness whose statement under section 161 Cr.P.C is not recorded during the investigation?

Analysis: i) So far as the argument of learned counsel for the appellant that the medical evidence contradicts the ocular version is concerned, we may observe that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence. It is settled that casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During turmoil when live shots are being fired, witnesses in a momentary glance make only tentative assessment of points where such fire shots appeared to have landed and it becomes highly improbable to mention their location with exactitude.

ii) As far as the question that the complainant was brother of the deceased, therefore, his testimony cannot be believed to sustain conviction of the appellant is concerned, it is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case.

iii) The very purpose of Section 265-F is to ensure the concept of a fair trial and to achieve this purpose equal opportunity has been given to both the accused and the prosecution for summoning the evidence. There is nowhere mentioned in this Section that only those witnesses could be examined whose statements under Section 161 Cr.P.C. have been recorded. Under this provision of law i.e. Section 265-F the Trial Court is not bound to record the statements of only those witnesses who have been listed in the calendar of witnesses. On the other hand, Section 540 Cr.P.C. empowers the Trial Court to summon a material witness even if his name

did not appear in the column of witnesses provided his evidence is deemed essential for the just and proper decision of the case.

Conclusion: i) In the event of contradiction, when ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence.

ii) The relationship of witness with the deceased does not makes his testimony unreliable unless previous enmity or ill will is established on the record to falsely implicate the accused in the case.

iii) The Trial Court can examine the witness whose statement under section 161 Cr.P.C is not recorded during the investigation.

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10. Supreme Court of Pakistan
Abdul Wahid v. The State and another
Criminal Petition No. 103-P OF 2022
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._103_p_2022.pdf

Facts: The petitioner approached the learned Trial Court as well as the High Court for post-arrest bail but his bail petitions stood dismissed. Hence, this petition seeking post-arrest bail.

Issues: Whether the confessional statement of an accused recorded through video has prima facie any evidentiary value in the eye of law?

Analysis: The confessional statement in an interview of an accused prima facie has no evidentiary value if the maker of the video has not been cited as a witness in the calendar of witnesses or the forensic test of the said video has not been conducted. This Court in the case of lshtiaq Ahmed Mirza Vs. Federation of Pakistan (PLD 2019 SC 675) has candidly held that such kind of alleged confessionary video is not beneficial to the concerned party unless it is properly produced before the court of law, its genuineness is established and then the same is proved in accordance with law for it to be treated as evidence in the case.

Conclusion: The confessional statement of an accused recorded through video has no prima facie any evidentiary value in the eye of law unless its genuineness is established.

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11. Supreme Court of Pakistan
Jail Petition No. 154 of 2016 and Criminal Petition No.108-L of 2016
Shamsher Ahmed and Manzoor Ahmed v. The State & others .
Mr. Justice Ijaz ul Ahsan, Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._154_2016.pdf

Facts: The Petitioner/convict has filed Jail Petition against his conviction in murder

case whereas the complainant has filed Criminal Petition before this Court seeking enhancement of the sentence of the petitioner/convict.

Issue: i) Whether the relationship of the prosecution witnesses with the deceased can be a ground to discard the testimony of such witness?
ii) Whether importance can be given to minor discrepancies in prosecution case?
iii) What is the effect of non recovery of source of light at the time of occurrence, on the prosecution case?
iv) Whether, mere recovery of weapon is consequential especially whereas no empty was recovered?
v) When ocular evidence should be given preference over medical evidence?

Analysis i) It is by now a well established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case.
ii) The court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The accused cannot claim premium of such minor discrepancies. If importance be given to such insignificant inconsistencies then there would hardly be any conviction.
iii) It depends upon the ownership of the article, which ultimately provided the source for identification, and secondly, it is for the Investigating Officer either he deems it essential or otherwise Even if this aspect of the argument is evaluated broadly, it is suffice to state that this principle is not absolute because it depends upon (i) source, (ii) question of ownership, (iii) public or private, & (iv) essential to show the source. When all these matters are taken into consideration, it is established that it was a tube-light and as such the same cannot be made part of case property merely on the ground that the assailant was identified from the source, which has been shown. This source of light is also established from the rough site plan as well as scaled site plan, which is essential part of the prosecution case.
iv) So far as the recovery of weapon of offence i.e. .12 bore rifle is concerned, admittedly no empty was recovered from the place of occurrence, which could be sent to Forensic Science Laboratory for analysis, therefore, the recovery is inconsequential.
v) Where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence. It is settled that casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence when live shots are being fired, witnesses in a momentary glance make only tentative assessment of points where such fire shots appeared to have landed and it becomes highly improbable to mention their location with exactitude.

Conclusion: i) Mere relationship of witnesses with the deceased is not sufficient to shatter the

prosecution case.
ii) The court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored.
iii) The principle of source of light is not absolute because it depends upon (i) source, (ii) question of ownership, (iii) public or private, & (iv) essential to show the source.
vi) Mere recovery of weapon is not sufficient if the empties are not recovered from the place of occurrence.
v) The ocular evidence must be given preference over medical evidence if the same is trustworthy and confidence inspiring.

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12. **Supreme Court of Pakistan**
Azhar Hussain v. The State & others.
Jail Petition No. 190 of 2017
Haji Ghous Bakhsh v. The State & others.
Criminal Petition No. 398-L of 2017
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._190_2017.pdf

Facts: The petitioner/convict has filed jail petition against his conviction in murder case while the complainant has also filed Criminal Petition seeking enhancement of the sentence of the petitioner/convict.

Issues: i) Whether mere relationship of the prosecution witness with the deceased can be a ground to discard the testimony of such witness?
ii) Whether court can attach undue importance to minor discrepancies which do not shake the salient features of the prosecution case?
iii) What happens when gut comes out of the belly?
iv) Whether a conviction can be based solely upon trustworthy and confidence inspiring ocular evidence?

Analysis: i) Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case.
ii) While appreciating the evidence, the court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The accused cannot claim premium of such minor discrepancies. If importance be given to such insignificant inconsistencies then there would hardly be any conviction.
iii) When the gut comes out of the belly, it seals the margin of the wound and the blood falls inside the body cavity instead of oozing outside the body.
iv) Where ocular evidence is found trustworthy and confidence inspiring then the conviction can be solely based upon it.

Conclusion: i) Mere relationship of the prosecution witness with the deceased cannot be a ground to discard the testimony of such witness.
ii) Court cannot attach undue importance to minor discrepancies which do not shake the salient features of the prosecution case.
iii) When the gut comes out of the belly, it seals the margin of the wound.
iv) Yes, a conviction can be based solely upon trustworthy and confidence inspiring ocular evidence.

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13. Supreme Court of Pakistan
Criminal Petition No. 358-1of 2022
Rana Muhammad Imran NasrUIlah v. The State etc.
Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._358_l_2022.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the learned Single judge of the Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered under Sections 337_H(i1)/506(iO/148/'149 'PC & 440 PPC (reportedly added later on) at Police Station , in the interest of safe administration of criminal justice.

Issues: i) Whether liberty of person is a precious right and same cannot be taken away merely on bald and vague allegations?
ii) Whenever an overt act is materialized and ended into an overt act, whether the provision of Section 506(b) PPC would be applicable?

Analysis i) It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations.
ii) Whenever an overt act is materialized and ended into an overt act, the provision of Section 506(b) PPC would not be applicable and the only provision which will remain in the field is the overt act, which is committed in consequence of criminal intimidation.

Conclusion: i) The liberty of person cannot be taken away merely on the basis of vague allegations.
ii) The provision of Section 506(b) PPC would not be applicable if the act is materialized and ended into an overt act.

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14. **Supreme Court of Pakistan**
Raja Ali Zaman (deed.) thr. LRs v. Evacuee Trust Property Board etc
Civil Appeal No.668 of 2022
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._668_2022.pdf

Facts: The suit property owned by Evacuee Trust Property Board (ETPB) and rented out to Appellants by the Deputy Commissioner/ Chairman defunct Evacuee Trust Committee. During their tenancy, the Appellants approached the Federal Minister for Social Welfare & Rural Development and sought outright sale of the suit property in their favour. The Federal Minister assented to the Appellants' request and allowed the sale of the suit land to the Appellants vide memorandum. When the Federal Government was made aware of the memorandum, it issued memorandum wherein restrained ETPB from finalizing the deal. The matter ostensibly came to an end but thereafter, the Deputy Administrator ETPB, Rawalpindi executed Sale Deed in favour of the Appellants. Being aggrieved of the sale deed, ETPB filed a suit for declaration & cancellation which was dismissed by learned trial and appellate court but decreed by High Court, Hence this Appeal.

Issues: i) Under what law or rules ETPB is authorized to sell property under its ownership?
ii) How can authorization be granted for sale of the land under management/control of ETPB by either the federal government or by ETPB itself on behalf of the Federal Government?

Analysis: i) In order for a property to be disposed of by ETPB, it has to go through a rigorous and transparent process before it can be transferred to any private party. Before any evacuee land or property can be sold, it must be notified by the relevant Member Board of Revenue (Residual Properties) in the Official Gazette under para 3 of the 1977 Scheme. Once the requisite notification has been gazetted, applications need to be moved by prospective bidders to the concerned Deputy Administrator (Residual Properties) in order to become a part of the transfer process. A person in possession of the notified property/land may move an application to the concerned Deputy Administrator (Residual Properties) who is then required, under para 6 of the 1977 Scheme, to transfer the notified land on such price as may be fixed by the concerned Administrator (Residual Properties). In the other instance, where no application is received, a process of un-restricted public auction commences where two rounds of public auction have to take place as per rule before the notified land can be sold by the ETPB through negotiation/ private treaty. Even where public auctions have failed and the ETPB resorts to disposing of the notified land under para 12, it is still important to note that negotiations can only take place after a tendering process has taken place and prospective tenderers have deposited their tenders with the ETPB. The ethos of transparency that pervades through para. 12 can also be seen by the fact that all tenders need to be opened by the concerned Deputy Administrator (Residual Properties) in the presence of all other prospective tenderers or their duly authorized representatives before a bid can be accepted. The Deputy Administrator (Residual Properties) is also constrained by the fact that if the tendered price is below the reserve price, the notified land can only be sold if the competent authority in the ETPB hierarchy accords its approval.

ii) Before any land can be sold by ETPB, it has to first conduct an internal board meeting and decide whether to sell land under its management and control. If, through a Board meeting, ETPB decided to sell any land under its management and control, a resolution has to be moved and passed to that effect which would then be subject to approval of the Federal Government. … Therefore, it is incumbent upon ETPB to seek permission from the Federal Government before it can dispose of any land under its management or supervision. If the ETPB's Board never moves a resolution recommending sale seeks approval/ permission to sell, then it will be deemed that the Federal Government's permission was never sought for the sale of ETPB-managed land. If, however, it was the Federal Government that wished to sell any of the land under the management of ETPB, the process for doing so would be to refer the matter to the ETPB's Board, allows the Board to deliberate on the matter and then give its recommendations to the Federal Government before any sale is carried out. After the Federal Government has accorded its approval, the Chairman of ETPB would then exercise authority under Section 12 of the ETPB Act to designate an officer to carry out the sale or disposal of the land/property.

Conclusion: i) The basic law or rules under which ETPB authorized to sell property is ETPB Act. Also after the ETPB Act was passed, a scheme was framed by ETPB in 1977 i.e. Scheme for the Management and Disposal of Available Urban Properties Situated in the Province of Punjab, 1977. Chapter III of the 1977 Scheme deals with the submission and scrutiny of applications Chapter IV of the 1977 Scheme deals with disposal of available properties. Chapter V of the 1977 Scheme deals with Auction Committees and the Manner of Auction.

ii) Section 3 & 12 of ETPB Act deals with grant of authorization for sale of the land under management/control of ETPB by either the federal government or by ETPB itself on behalf of the Federal Government.

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15. **Supreme Court of Pakistan**

Dadu Khan (deed.) thr. LRs and 3 others v. Ghulam Abbas and 23 others

Civil Appeal NO.339 Of 2016

Mr.Justice Ijaz Ul Ahsan, Mr. Justice Jamal Khan Mandokhail

https://www.supremecourt.gov.pk/downloads_judgements/c.a._339_2016.pdf

Facts: Through the instant Appeal, the Appellants have challenged the judgment of the Lahore High Court, wherein the judgment and decree of the Additional District Judge was set aside and the judgment and decree of the Senior Civil Judge was restored holding that the entire proceedings before the Civil Court were corarm non judice in light of the ouster of jurisdiction as per Section 25 of the Displaced Persons (Land Settlement) Act of 1958.

Issues: i) Whether provision under section 13 of the Limitation Act, 1908 shall apply where the party has no grievance against the defendant and who has also migrated to India?

ii) Whether the proceedings before Civil Court are corarm non judice in light of the ouster of jurisdiction as per Section 25 of the Displaced Persons (Land Settlement) Act of 1958?

Analysis: i) Limitation under Section 13 of the Limitation Act, 1908 shall stop running during which the defendant has been absent from [Pakistan] and from the territories beyond [Pakistan] under the administration of [the [Federal] Government]. Any person who has migrated to India and the party has no grievance against him will not fall within the definition of a "defendant" for the purposes of the Section 13 and as a result, limitation will not stop in such circumstances.

ii) It is an appropriate option for the aggrieved person to challenge the allotment made by the Settlement Officers by exercising his right to appeal provided in Section 18 of the Land Settlement Act and the proceedings before Civil Court are corarn non judice in light of the ouster of jurisdiction as per Section 25 of the Displaced Persons (Land Settlement) Act of 1958.

Conclusion: i) The provision under section 13 of the Limitation Act, 1908 shall not apply where the party has no grievance against the defendant who has migrated to India.

ii) The proceedings before Civil Court are corarm non judice in light of the ouster of jurisdiction as per Section 25 of the Displaced Persons (Land Settlement) Act of 1958.

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16. **Supreme Court of Pakistan**
Syed Raza Hussain Bukhari v. The State
Crl. P. 636/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._636_2022.pdf

Facts: The Petitioner seeks leave to appeal against the order passed by the High Court, whereby the second post-arrest bail petition of the petitioner, based on the ground of delay in the conclusion of the trial was dismissed.

Issues: i) Whether the provisions of the first and third provisos to subsection (1) of section 497 of the Code are available to the Special Court under section 5(6) Banks (Special Courts) Ordinance, 1984?

ii) What is binding effect of Section 5(6) of the Ordinance on the High Court and Whether High Court can grant bail on the ground of delay in scheduled offences under Ordinance?

iii) Whether delay in conclusion of trial infringes the fundamental right of fair trial?

Analysis: i) Section 5(6) of the Ordinance has borrowed the language of the second part of Section 497(1) Cr.PC, which extends to offences falling under the prohibitory clause, and has made it applicable to all the scheduled offences under the Ordinance. However, the exceptions of prohibitory clause of Section 497(1) CrPC have not been so adopted and made applicable to the scheduled offences under the Ordinance. In Allied Bank of Pakistan v. Khalid Farooq 1991 SCMR 599, this Court held that whilst the provisions of the first and third provisos to subsection (1) of section 497 of the Code may be treated as not available to the Special Court or the High Court, such a situation would not apply to subsections (2) to (5) of section 497 of the Code, as they do not affect the rule stated in subsection (6) of

section 5 of the Ordinance.
ii) In appropriate cases, a High Court can grant bail on the ground of delay in conclusion of the trial, similar to that which is available under the third proviso to section 497(1) Cr.PC, under its inherent powers under Section 561-A Cr.PC to secure the ends of justice or to prevent the abuse of the process of court as held in Khalid Farooq but going further, a High Court also enjoys constitutional jurisdiction under Article 199(1)(c) of the Constitution for the enforcement of fundamental rights. This constitutional jurisdiction of High Courts cannot be abridged by any sub-constitutional legislation. So, while Section 5(6) of the Ordinance is binding on the Special Court, it is not so upon a High Court which fashions its jurisdiction on the basis of the enforcement of the fundamental rights under the Constitution.
iii) Undue delay in the trial of the accused infringes his fundamental rights to liberty, fair trial and dignity under Articles 9, 10A and 14 of the Constitution, if the delay cannot be attributed to him…Delay in the conclusion of a criminal trial is antithetic to the very concept of a fair trial and due process guaranteed by Article 10A of the Constitution. The right to a fair trial is a cardinal requirement of the rule of law. If an accused cannot be tried fairly for an offence, he should not be tried for it at all.

Conclusion: i) The provisions of the first and third provisos to subsection (1) of section 497 of the Code are not available to the Special Court under section 5(6) Banks (Special Courts) Ordinance, 1984.
ii) Section 5(6) of the Ordinance is not binding on the High Court and High Court can grant bail on the ground of delay in scheduled offences under Ordinance.
iii) Delay in conclusion of trial infringes the fundamental right of fair trial as conclusion of trial within a reasonable time is an essential component of the right to a fair trial.

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17. **Supreme Court of Pakistan**
Civil Petition Nos. 189-0 & 190-0 of 2017
Abdul Habib & others v. Mst. Noor Bibi & others .
Mr. Justice Amin ud Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._189q2017pdf

Facts: The respondents filed an application before the revenue authorities Quetta, alleging therein that the parties are the legal heirs of late, who owned House, two Qitas. The respondents alleged that after the death of their predecessor, the house devolved upon his legal heirs i.e.. the parties to the petitions, but the petitioners mutated it in their names fraudulently depriving the respondents from their share of inheritance. Through the application, the respondents sought cancellation of the mutation, which was accepted. Consequently, the mutation was cancelled from the names of the petitioners and it was recorded as joint property of all the legal heirs of late. The petitioners being aggrieved filed these petitions for leave to appeal.

Issue: Whether the words 'any portion of property' mentioned in section 16 and 17 of CPC are limited to only one property?

Analysis The words 'any portion of the property' occurring in sections 16 and 17 of the CPC, cannot be limited to only one property. It may be a single immoveable property and may also include more than one property of different descriptions. In case, a person wants to obtain a relief through a suit, in respect of immoveable properties, situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction, any one of the immovable properties or a portion thereof is situated, provided that the cause of action in respect of the properties must be one and the same..(). The purpose of section 17 of the CPC is to avoid conflicting decisions, multiplicity of litigation and to give option to the parties to choose the court for adjudication of their disputes according to their convenience, in order to facilitate them.

Conclusion: As per section 16 and 17 the words 'any portion of the property' cannot be limited to only one property. It may be a single immoveable property and may also include more than one property of different descriptions.

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18. **Lahore High Court**
Subhan Allah v. The State & another.
Crl. Revision No.43716/2022
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC6197.pdf

Facts: Through the instant criminal revision petition filed under Section 435/439-A Code of Criminal Procedure (Cr.P.C.) the petitioner has called into question the vires of the impugned order passed by learned Judge, Anti-Terrorism Court through which his application for summoning of registers No.2, 19 and 21 of the concerned police station, was dismissed.

Issue: i) Whether registers No. 2, 19 and 21, as maintained under the Police Rules, 1934, are privileged documents and governed by section 172 Cr.P.C?
ii) Whether diary of proceedings in investigation under section 172 Cr.P.C may be used as evidence?
iii) Whether a police diary maintained in a criminal case is absolutely a privileged document?
iv) Whether it is necessary to keep a record of every step taken by the police officials in order to keep them strictly within the sphere of their legal duties?
v) Whether every accused has right to have fair trial?
vi) What is the scope of section 94, Cr.P.C for production of a document on request of accused person?

Analysis: i) Register No. II is called Station Diary. It is a complete record of all events which take place at the police station. It should, therefore, record not only the movements and activities of all police officers but also visits of outsiders, whether officials or non-officials, coming or brought to the police station for any purpose whatsoever. Register No XIX contains the details of every article placed in the

storeroom and removed therefrom. Register No. XXI is a bound book of road certificates, which are issued for a variety of purposes. For instance when some case property etc is sent from the police station for forensic analysis etc. A road certificate is a document necessary to be accompanied with a person carrying any parcel or property etc of the police station pertaining to any criminal case. When the police officer returns to the police station, the copy of the road certificate or receipt in lieu thereof shall be pasted onto the place from which the copy issued was taken. The registers requested to be summoned are public documents and with no stretch of the imagination are covered by the prohibition contained under Section 172 Cr.P.C.

ii) Section 172 Cr.P.C makes it the bounden duty of every investigating officer to enter day-to-day proceedings of the investigation in a case diary, setting forth the time at which the information reaches him, the time at which he begins and closes his investigation, the place or the places visited by him and statement of the circumstances ascertained through his investigation. Such case diary may be used by the court at the trial or inquiry, not as evidence in the case, but to aid itself in such inquiry or trial.

iii) A police diary maintained in a criminal case is absolutely a privileged document, which cannot be provided to an accused unless it is used by the Police officer who made it to refresh his memory or is used for the purpose of contradicting him. This section only deals with the case diary maintained by the investigating officer of every criminal case and has no relevance to the police registers, No. 2, 19 and 21, as maintained under the Police Rules, 1934.

iv) The famous quote of Lord Acton „power tends to corrupt, and absolute power corrupts absolutely‟ seems a rationale behind the effective mechanism of checks and balances provided in the Code and Rules. Policing is a job that carries a lot of authority and powers with it, including the power to deprive someone of his life and liberty, therefore, it was necessary to keep a record of every step taken by the police officials in order to keep them strictly within the sphere of their legal duties. Under Rule 45 Chapter 22 of the Rules, at every police station, there shall be maintained 25 types of police registers to keep a record of different duties and functions performed by the police officials. The aforementioned rule clearly depicts that keeping a record of every activity of police officers is with the purpose to keep the police proceedings transparent and within the domain of law.

v) Every accused has a right to have fair trial and the concept of fair trial recognized under the Code has been conferred an elevated status under Article 10-A of the Constitution and now it is a much broader and wider concept. Fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights. It is more than settled that a fair trial is the ultimate object of the criminal justice system, and such fairness should not be hampered or threatened in any manner because every person has the right to have a fair trial by the competent Court in the spirit of the right to life and personal liberty.

vi) Section 94, Cr.P.C, an enabling provision of law, provides this opportunity to the accused. The only precondition to invoke this Section is that he must satisfy the court that the production of such document or thing is "necessary or desirable" for the just decision of the case. The scope of section 94, Cr.P.C is very wide, and the word "whenever" suggests that the court can exercise its power conferred by this Section at any stage of inquiry or trial. Further, the words "any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code" have been used which implies that it is not necessary that such document or thing should be the subject matter of such inquiry or trial but only consideration to produce such document or thing is that it will serve the ends of justice in any such inquiry or trial.

Conclusion: i) Registers No. 2, 19 and 21, as maintained under the Police Rules, 1934, are not privileged documents and not governed by section 172 Cr.P.C.

ii) Diary of proceedings in investigation under section 172 Cr.P.C cannot be used as evidence.

iii) Yes, A police diary maintained in a criminal case is absolutely a privileged document.

iv) Yes, it is necessary to keep a record of every step taken by the police officials in order to keep them strictly within the sphere of their legal duties.

v) Yes, every accused has right to have fair trial.

vi) The scope of section 94, Cr.P.C is very wide for production of a document on request of accused person.

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19. **Lahore High Court**
Muhammad Ramzan v. Commissioner Inland Revenue etc.
Case No. STR No. 9296 of 2019
Mr. Justice Shahid Jamil Khan, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5029.pdf

Facts: The Petitioner has filed Reference under section 47 of the Sales Tax Act, 1990 against an order passed by Appellate Tribunal Inland Revenue whereby the matter in dispute was remanded to Commissioner Inland Revenue for denovo decision.

Issues: Whether a Reference under section 47 of the Sales Tax Act, 1990 is maintainable against a decision of Appellate Tribunal Inland Revenue where no question of law is involved?

Analysis: The Appellate Tribunal has pointed out certain discrepancies in order passed by Commissioner Inland Revenue by observing that some important facts have not been decided. While passing the remand order, the Appellate Tribunal has not finally determined anything through a conclusive finding of fact and at this stage there is no assessment order against the petitioner on the record. Such a remand order does not generally give rise to any question of law to be determined by this

court…Consequently the reference at this stage is premature, misconceived and not maintainable.

Conclusion: A Reference under section 47 of the Sales Tax Act, 1990 is not maintainable against a decision of Appellate Tribunal Inland Revenue where no question of law is involved.

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20. **Lahore High Court**
Gul Sher v. Additional Sessions Judge etc.
Writ Petition No. 67567of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC6191.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner has challenged that order of the Ex-officio Justice of Peace, whereby, he accepted application under section 22-A Cr.PC.

Issues: i) Whether the custom of vani or swara is un-Islamic and illegal?
ii) Whether law countenances/approves of deciding criminal cases through the intercession of the Panchayats/Arbitration Councils?

Analysis: i) In various parts of Pakistan there is custom of vani or swara under which girls are given in marriage or servitude to an aggrieved family as compensation to end feuds, generally murder and rape. It is a punishment decided by a Jirga (council of tribal elders). The result of vani or swara is that the criminal "gets away with his crime and one or more girls have to pay the price of the crime for the rest of their lives." Such nefarious practices cannot be preserved even in the name of culture. The custom of vani or swara is un-Islamic. Article 8(1) of the Constitution mandates that all laws, customs and usages which are inconsistent with or in derogation of the Fundamental Rights are void. The custom of vani / swara falls within the mischief of Article 8(1) and cannot, therefore, be practised. The Legislature has also criminalized vani/swara through section 310-A PPC.
ii) In National Commission on Status of Women and others v. Government of Pakistan and others (PLD 2019 SC 218) the apex Court held that the Jirga or Panchayat must operate within the law. It cannot make any decision which is arbitrary, unjust, illegal or contrary to the fundamental rights guaranteed by the Constitution. As regards the criminal cases, the Supreme Court approvingly cited the following excerpt from Hasnain Akhtar v. Justice of Peace (2015 YLR 2294): "… the law of the land does not countenance/approve of deciding criminal cases through the intercession of the Panchayats/Arbitration Councils. Even otherwise, it is tantamount to bypassing and short-cutting the procedure provided for under the law."

Conclusion: i) The custom of vani or swara is un-Islamic and illegal.

ii) Law does not countenance/approve of deciding criminal cases through the intercession of the Panchayats/Arbitration Councils.

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21. **Lahore High Court**
M/s Al-Barkat Seed Corporation and 3 others v. Silk Bank Limited etc.
R.F.A. No.44 of 2020/BWP
Mr. Justice Jawad Hassan, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC6281.pdf

Facts: The present Appeal, under Section 22 of Financial Institution (Recovery of Finance) Ordinance, 2001 ('FIO, 2001'), is filed against the judgment and decree passed by learned Banking Court, Bahawalpur (the 'Banking Court'), whereby suit of Respondent No. 1 (the 'Respondent-Bank') has been decreed to the extent of Rs.5,243,990.87 with costs of suit and cost of funds.

Issues: Whether under Section 10(12) of FIO, 2001 where application for leave to defend is rejected, the Banking Court shall forthwith pass judgment and decree?

Analysis: The acceptance of leave has result of treating the same as written statement, framing issues as to substantial questions of law and facts, followed by recording of evidence. However, when the leave application is rejected, the Banking Court is required to pass judgment and decree. Section 10(12) above, provides that upon rejection of leave application the Banking Court shall forthwith pass judgment and decree. The word 'forthwith' is preceded by 'shall' that hardly leaves any discretion with the Court but to pass judgment and decree on the material that is available on record. However, if the learned Banking Court on consideration of plaint, leave application and the reply thereto is of the view that some substantial question of law and / or fact have been raised, which require evidence, then procedure of law as envisaged in Sections 10(9), (10) & (11) should be followed.

Conclusion: Under Section 10(12) of FIO, 2001 where application for leave to defend is rejected, the Banking Court shall forthwith pass judgment and decree. However, if the learned Banking Court on consideration of plaint, leave application and the reply thereto is of the view that some substantial question of law and / or fact have been raised, which require evidence, then procedure of law as envisaged in Sections 10(9), (10) & (11) should be followed.

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22. **Lahore High Court**
Malik Fahim Ullah Khan v. The District Returning Officer and another
Election Appeal No.03 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6149.pdf

Facts: The Appellant, being candidate submitted his nomination papers, which were rejected by the Returning Officer of the Constituency on the ground of non-

enclosing tax returns till 30th June. Hence this appeal.

Issues: i) Whether income tax return falls within the definition of assets and liabilities in terms of section 60(2)(d) of the Election Act, 2017?
ii) Whether a particular thing would be deemed to be in-compliance with the legislative intent if it is not done in a manner in which it is required to be done?

Analysis: i) Bare reading of above Form-B of the Act makes it quite clear that it does not put any restriction of enclosing/annexing income tax return with the nomination papers rather it only requires submission of statements of assets which include details of immoveable property and moveable assets and other allied details. Income tax returns are filed before the Federal Board of Revenue as per procedure and mechanism provided under the Income Tax Ordinance, 2001 which is normally filed by a candidate to show his/her assets and labilities… Clause 2(d) of Section 60 of the Act only demonstrates about nomination papers to be filed through Form-B by mentioning statement of assets and liabilities of a candidate, his spouse and dependent children on the preceding thirtieth day of June. Section 60(2)(d) of the Act and the Rules does not put any restriction of filing income tax return with the nomination papers.
ii) It is settled principle of law that when law requires an act to be done in a particular manner and after fulfillment of certain requirements then it must be done in the very manner and after fulfillment of the very conditions as imposed by the law.

Conclusion: i) Income tax return does not fall within the definition of assets and liabilities in terms of section 60(2)(d) of the Election Act, 2017?
ii) If the law requires a particular thing to be done in a particular manner it has to be done accordingly, otherwise it would not be in-compliance with the legislative intent.

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23. **Lahore High Court**
Malik Fahim Ullah Khan v. The District Returning Officer and another.
Election Appeal No.05 of 2022/BWP
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6159.pdf

Facts: Through this election appeal appellant, sought setting aside order passed by the Returning Officer who rejected the objections filed by the him and the Respondents No.4&5 by accepting the nomination papers of the Respondent No.3.

Issue: i) Whether Election Tribunal with the mandate to decide the appeal within time frame specified under the law and the notification of the ECP is bound to decide the appeal under the given limitation?

ii) Whether any voter member of constituency may file objections to the candidature of a candidate before the Returning Officer beyond the period specified by the Commission for the scrutiny of nomination papers of candidates?

Analysis: i) When the statute has provided specific remedies of appeal to the Petitioner against Final Determination, already impugned before the Appellate Tribunal and when right of another appeal is still available after the decision of the Appellate Tribunal, then in such a situation, the impugned Final Determination cannot be given effect because doing so will not only frustrate the pending appeal before the Tribunal but it will also jeopardize the whole purpose of provision of remedy of Appeal under the Act. Needless to emphasize that making the process of hearing appeal by the Tribunal and also by the High Court in a specific time-bound manner within a definite period of 45 days and 90 days respectively, was also to streamline the whole process of ascertaining the correctness of the decisions of the Commission in a timely fashion, so that if found justified under the law, it can be given effect to or if not affirmed can be rectified in a timely manner, so that both the parties may have a definite decision to pursue their course of action within a reasonable and specific time.

ii) Section 62 of the Election Act, 2017 (the "Act") states that any voter of a constituency may file objections to the candidature of a candidate before the Returning Officer within the period specified by the Commission for the scrutiny of nomination papers of candidates. where the petitioner candidate had not filed objection as provided under S.112 of the Act against the nomination papers of respondent-candidate, he (petitioner) had no locus-standi to be heard before the Appellate Tribunal.

Conclusion: i) Yes, Election Tribunal with the mandate to decide the appeal within time frame specified under the law and the notification of the ECP is bound to decide the appeal under the given limitation.

ii) No, any voter member of constituency cannot file objections to the candidature of a candidate before the Returning Officer beyond the period specified by the Commission for the scrutiny of nomination papers of candidates.

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24. **Lahore High Court**
Ch. Muhammad Ashraf v. Malik Muhammad Muzaffar Khan etc.
Election Appeal No.04 & 06 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6166.pdf

Facts: The Appellant has challenged the order of Returning Officer whereby nomination papers for the Bye election of Respondent No.1 were accepted by rejecting objections of the Appellant/Objector.

Issues: i) Whether Appellate Tribunal is bound to decide appeals within the time notified by the Election Commission of Pakistan (ECP)?

ii) Whether a candidate, who files nomination papers as per requirement of Section 60(2)(d) of the Act read with Form-A and Form-B, can move an application for rectification of some information before the closing date as notified by the ECP?.

Analysis: i) Under Section 63(2) of the Act the appeal has to be decided by this Tribunal within the time notified by the ECP vide notification. In the light of case law reported in (2021 PTD 2126 Lahore), wherein the Court has elaborated and enunciated the principles of law regarding the time bound and time specific forum with time bound mandate to the Tribunals to decide appeal within time frame given under the legislation, which is also the requirement of Article 37(d) of the Constitution of Islamic Republic of Pakistan, 1973.

ii) Plain reading of Section 62 of Election Act, 2017 reveals in unequivocal terms that the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.

Conclusion: i) Appellate Tribunal is bound to decide appeals within the time notified by the Election Commission Pakistan (ECP).

ii) A candidate, who files nomination papers as per requirement of Section 60(2)(d) of the Act read with Form-A and Form-B, can move an application for rectification of some information before the closing date as notified by the ECP.

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25. **Lahore High Court**
Kabir Ahmad v. The learned Addl. District Judge, Lahore etc
Writ Petition No. 40510 of 2016
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5530.pdf

Facts: The petitioner filed ejectment petition against respondent no. 2. The learned Special Judge Rent partially dismissed the application for grant of leave to contest on the ground of default and directed the respondent to hand over vacant possession to petitioner. The application for leave to contest was partially allowed to the extent of rate of disputed rent and security. The respondent no. 2 filed appeal which was allowed and case was remanded to decide afresh after recording evidence. Hence the petitioner has filed instant writ petition.

Issues: i) Whether the amount of security can be adjusted against the due rent for absolving the tenant from his default?

ii) Whether the special judge rent can regulate its own procedure on the basis of material available with him?

Analysis: i) It is settled proposition of law that the amount of security cannot be adjusted as due rent during the pendency of the relationship of landlord and tenant between the parties, unless it is expressly agreed otherwise between the parties.

ii) The learned Special Judge Rent has ample jurisdiction to regulate its own procedure on the basis of material available with him. The learned Special judge rent could adopt the procedure of deciding the matter on the basis of facts established on the record and need not to record evidence for determination of a fact established on the record.

Conclusion: i) The amount of security cannot be adjusted against the due rent for absolving the tenant from his default.
ii) The special judge rent can regulate its own procedure on the basis of material available with him.

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26. **Lahore High Court**
Ameer Ali v. S.E. West Circles Motor Canal, etc.
C.R.No. 47469 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC6212.pdf

Facts: Through this revision petition, the petitioner has called in question orders passed by the courts below whereby in a suit for declaration with permanent injunctions filed by the present petitioner along with respondent No. 7 their application for grant of interim relief has been dismissed by the trial court on the ground that order of temporary injunctions has ceased to have its effect after expiry of one year in terms of Order XXXIX Rule 2B CPC and the appeal filed by the petitioner has also been dismissed by upholding the said order.

Issues: i) Whether an application is necessary under the Rule 2-B of Order XXXIX for the extension of interim order?
ii)What will be the effect if the order is not based on proper appreciation of law and where observations are recorded through lack of care or due regard to the law?
iii) What is the obligation of the court where the manner is prescribed to do the thing in particular way?

Analysis: i) There is no bar to file application for extension of order of interim injunction, it has not been mentioned that under what provision law filing of such an application was necessary as the Rule 2-B prima facie does not make the same as a mandatory requirement and court could hear the parties without any application to decide whether the interim relief should be extended or not in the given circumstances of the case. The court was only required to rehear the matter before allowing or refusing to extend the interim injunction any further with or without application filed by the plaintiffs.
ii) If the order passed by the court is not based on proper appreciation of law and where observations are recorded through lack of care or due regard to the law or facts of the case, the same have to be declared as per incuriam in view of the

principles laid down in judgments of the Honorable Supreme Court of Pakistan (PLD2015 SC 166).
iii) It is settled principle of law that where a statute/law described or required a thing to be done in a particular manner, it should be done in that manner or not at all, otherwise it would be non-compliance with the legislative intent.

Conclusion: i) Rule 2-B prima facie does not make the filing of application as a mandatory requirement and court can hear the parties without any application.
ii) The order not based on proper appreciation of law has to be declared as per incuriam.
iii) It is settled principle of law that where a statute/law described or required a thing to be done in a particular manner, it should be done in that manner not otherwise.

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27. **Lahore High Court**
Syed Sajjad Hussain v. Judge Family Court, etc
WP No. 8244 of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5032.pdf

Facts: The Petitioner has called in question the judgment and decree passed by the learned judge Family Court, whereby the suit for recovery of dower filed by the wife(respondent no.2) was decreed in her favour and the suit for restitution of conjugal rights filed by the petitioner was dismissed.

Issues: Whether the respondent wife can claim the deferred dower without establishing the fact of dissolution of marriage?

Analysis: Deferred dower is usually not payable immediately at the time of performance of marriage ceremony/Nikah as required in case of prompt dower. The codified law does not prescribe when the deferred dower becomes payable and the law has left the same to be decided by the parties themselves. Deferred dower becomes payable to the wife on the fixed date, expiry of time period, on the occurrence of any event or fulfillment of pre-condition fixed for the payment of the same in the Nikahnama or otherwise and if neither such date or period is fixed nor any condition is imposed, the same becomes payable on dissolution of marriage by death or divorce. In the absence of any agreed stipulation relating to the time of payment of deferred dower, the husband who has to make payment of the same can bilaterally or unilaterally, expressly or impliedly through his conduct, waive the condition of waiting till the dissolution of marriage for making such payment by tendering dower or agreeing to tender the same immediately or on future date, expiry of some time period or on happening of some event or fulfilment of fixed condition for which purpose subsistence or dissolution of marriage would be irrelevant.

Conclusion: If the husband who has to make payment of deferred dower can bilaterally or unilaterally, expressly or impliedly through his conduct, waive the condition of waiting till the dissolution of marriage then the subsistence or dissolution of marriage would be irrelevant.

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28. **Lahore High Court**
Mst. Sidra Asif v. Addl. District Judge, etc.
W.P.No.232652 of 2018
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5046.pdf

Facts: Through this Constitutional petition, petitioner has called in question order of Guardian Judge through which the petition has been dismissed for non-production of evidence and also called in question the order of learned appellate court who dismissed the appeal filed there against by the petitioner as barred by time along with application for condonation of delay in filing the same as not disclosing sufficient reasons.

Issues: i) Whether right to custody of minor gives recurring cause of action to the parties?
ii) What are the parameters for deciding an application for condonation of delay in filling appeal in guardianship matters?

Analysis: i) In cases relating to minors Superior Courts have always considered the welfare instead of deciding the matters on technicalities as right to custody of minor gives recurring cause of action to the parties to raise the said dispute again and again in the minor's welfare unless it is finally settled and there is no change in circumstances.
ii) An application for condonation of delay in filling appeal in guardianship matters is to be decided keeping in view welfare of the minor even if the said ground has been raised by a party or not.

Conclusion: i) Yes, right to custody of minor gives recurring cause of action to the parties unless it is finally settled and there is no change in circumstances.
ii) An application for condonation of delay in filling appeal in guardianship matters is to be decided keeping in view welfare of the minor.

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29. **Lahore High Court**
Ahsan Iftikhar v. Board of Intermerdiate & Secondary Education, etc.
W.P. No. 16568 of 2019
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2019LHC5040.pdf

Facts: Through this constitutional petition, petitioner has called in question order passed by Discipline committee of BISE whereby result of petitioner has been cancelled and also called in question order passed by appeal committee of the Board whereby the aforesaid decision has been upheld by dismissing the petitioner's

appeal.

Issues: i) Whether provisions of Conduct of Examination provided in Chapter 15 Rule 9 can be invoked after result has been announced?
ii) Whether passing of an order under certain provisions without mentioning such provisions in the charge sheet is sustainable in the eye of law?

Analysis: i) The provisions of rule 9 of Chapter 15 can only be exercised before the result of examination was declared as the candidate is to be declared disqualified from passing the said examination and be barred from appearing in two next examinations but the same cannot not be invoked after result has been declared. After declaration of result, result can only be quashed under chapter 14 rule 14 of the Calendar.
ii) The charge sheet in the nature of show cause notice requiring filing of reply should specifically have mention of details of allegations and provisions of law against which such person was required to be proceeded against. Non-Mentioning of correct/specific provisions in the charge sheet which vest powers in authority to proceed indicates that authority did not initiate proceedings under the said rule which power was vested in authority to proceed, therefore, by passing an order under said provisions without including the same in the charge sheet would be proceedings on wrong assumptions and not sustainable in the eye of law, as what is not charged through a charge sheet cannot be proved.

Conclusion: i) Provisions of conduct of examination provided in Chapter 15 Rule 9 cannot be invoked after result has been announced.
ii) Passing of an order under certain provisions without mentioning such provisions in the charge sheet is not sustainable in the eye of law.

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30. **Lahore High Court**
University of South Asia v. Higher Education Commission, Pakistan etc
Writ Petition No. 5142 of 2016
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2017LHC5518.pdf

Facts: Through this constitutional petition, the petitioner has sought declaration that action of the respondents to restrain the petitioner from exercising its powers of affiliation and creation of sub-campuses after the efflux of 10 years from the date of commencement of its parent statute be declared as without lawful authority and set aside as such.

Issues: Whether a provision of a statue couched in negative language is mandatory in nature?

Analysis: It is settled by now that a provision couched in negative language is mandatory.

Conclusion: A provision of a statue couched in negative language is mandatory in nature.

31. **Lahore High Court**
Khalid Mattoo v. The State & another
Case No. Crl. Misc. No.43237-B/2022
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC6207.pdf

Facts: Through the instant petition, the petitioner seeks his post arrest bail in case FIR No.17/2018, offences under section 161 PPC read with section 5(2) of Prevention of Corruption Act, 1947, (hereinafter „PCA 1947") registered with Police Station Anti-Corruption Establishment, Lahore.

Issues: i) Whether under provisions of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973, the amendment in any penal statute shall apply retrospectively?
ii) Whether the principle contained in Article 12 of the Constitution will come into play even at bail stage?

Analysis: i) It is a settled proposition of law, keeping in view the provisions of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter „the Constitution"), that the amendment in any penal statute shall not apply retrospectively. Moreover, under Articles 75 and 116 of the Constitution read with section 5 of the General Clauses Act, 1897, all the Acts (Central or Provincial), Presidential Orders, Ordinances and Notifications shall come into force from the day assent is granted by the President or Governor, as the case may be or from the day of enforcement provided thereunder.
ii) In AZMAT KHAN while dealing with the bail matter, wherein the Apex Court agreed with the contention of learned counsel for the appellant that amendment in a penal statute shall not apply retrospectively even at bail stage and granted bail to the appellant.

Conclusion: i) Under provisions of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973, the amendment in any penal statute shall not apply retrospectively.
ii) The principle contained in Article 12 of the Constitution will come into play even at bail stage.

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32. **Lahore High Court**
Zulfiqar Ali v. Learned Ex-officio Justice of Peace, etc.
Writ Petition No.47617/2022
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC6253.pdf

Facts: The instant constitutional petition filed by the petitioner with grievance that the petitioner is being harassed by respondents No.3, 4 & 6 on the behest of respondent No.5 without any justification.

Issues: i) What kind of cases can be reflected in criminal history of an accused?
ii) What is effect of a criminal case after earning acquittal from the court of competent jurisdiction, mentioned in criminal history of an accused?

Analysis: i) The criminal history must only reflect the cases where the petitioner/accused was convicted, including the suspended sentences and all pending First Information Reports, wherein he stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecution in cases resulting in acquittal or discharge, or when Court quashed the FIR or the prosecution stands withdrawn, cannot be enlisted/considered against the petitioner/accused.
ii) After earning acquittal from the court of competent jurisdiction, that criminal case has no relevance against the acquitted accused, therefore, mentioning any case, in which acquittal had been secured, in a list of cases against that person, is violative of his fundamental rights and an attempt to prejudice the mind of the Court through misrepresentation. The practice of submitting only a list of criminal case(s) registered against the petitioner/accused without the final fate or present status of such case(s) is hereby deprecated by this Court.

Conclusion: i) The criminal history must only reflect the cases where the accused was convicted, including the suspended sentences and all pending First Information Reports.
ii) After earning acquittal from the court of competent jurisdiction, that criminal case has no relevance against the acquitted accused.

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33. **Lahore High Court**
Muhammad Razzaq v. The State & another
Crl. Misc. No.23198-B/2022
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC6257.pdf

Facts: The petitioner has filed bail petition on the statutory ground of delay in the conclusion of trial after refusal of the same relief from the trial court.

Issues: (i) Whether an unjustified delay in the submission of report under section 173 Cr.PC violates the fundamental rights of an accused?
(ii) What is the rationale behind the requirement of submission of interim police report under section 173 Cr.PC?
(iii) What is the role and duties of prosecution regarding submission of report under section 173 Cr.PC?
(iv) What is the role of Area Magistrate regarding submission of report under section 173 Cr.PC?

Analysis: (i) Unjustified delay in submission of report under section 173 Cr.PC reflects failure of our criminal justice system and flagrant violations of the law by its main

stakeholders resulting in a complete miscarriage of justice and violation of the right to be dealt with in accordance with law, the right to life & liberty and the right to have a fair trial as ensured under Articles 4, 9 and 10A of the Constitution of Islamic Republic of Pakistan, 1973 respectively. It goes without saying that pre-trial proceedings are covered under the right to have a fair trial.
(ii) The rationale behind the submission of interim police report before the trial court is to leave it to the discretion of the court to decide whether there is some evidence available on the record which warrants the commencement of the trial or whether police should be granted further time to collect evidence sufficient to start proceedings against the accused…. Submission of an interim report also provides a safeguard against the padding, concoction and dishonest investigation by the investigating officer at subsequent stages of an investigation. Keeping in view the clog contained in Section 172 Cr.P.C.,which makes the entire case diary a privileged document, an interim report is the only document that can reflect upon the status of investigation and rule out the possibility of crafting the evidence or false implication of an innocent person as an accused at a belated stage.
(iii) If the report is not submitted within the stipulated period, the concerned prosecutor shall bring it to the notice of the Controlling Authority of the delinquent(s). It is the duty of every concerned prosecutor to inform, in black and white, the high-ups of investigating agency regarding non-submission of the investigation report in accordance with Section 173 Cr.P.C.
(iv) The Area Magistrate is overall incharge of every investigation conducted in his area and he is under a bounden duty to ensure that investigation in every criminal case is conducted strictly in accordance with the law... According to Lahore High Court Rules and Orders, an order to grant/extend judicial remand must show good grounds…. The instructions issued by the Directorate of District Judiciary vide letter No. 11125/DDJ/MNT dated 26.07.2021 also instructed the Magistrates to play their effective supervisory role regarding the timely submission of reports under Section 173 Cr.P.C. According to these instructions, every Area Magistrate is required to maintain a proper register disclosing the dates of lodging of FIR, sending the accused to judicial lock up and due date of submission of the report under Section 173 Cr.P.C. It was also specifically instructed that submission of the interim report is not the substitute for the complete report under Section 173 Cr.P.C. and Magistrates have to remain vigilant to ensure submission of the complete report under Section 173 Cr.P.C. as early as possible by issuing the directions to the concerned SHO.

Conclusion: (i) An unjustified delay in the submission of report under section 173 Cr.PC violates the fundamental rights of an accused.
(ii) The rationale behind submission of interim police report is to enable the court to property exercise its discretion regarding commencement of trial or grant of further time for investigation besides providing safe guard against concoction and dishonest investigation.

(iii) It is the duty of every concerned prosecutor to inform, in black and white, the high-ups of investigating agency regarding non-submission of the investigation report in accordance with Section 173 Cr.P.C.
(iv) Area Magistrates have to remain vigilant to ensure submission of thecomplete report under Section 173 Cr.P.C. as early as possible by issuing the directions to the concerned SHO.

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34. **Lahore High Court**
Hafiz Muhammad Zaman Khan through his legal heirs v. Member Board of Revenue and others
Writ Petition No.32-R/2000
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2022LHC6179.pdf

Facts: The property in dispute is an evacuee land which was allotted to respondents' no. 5 & 6. Subsequently, Respondents No.7 to 9 who claimed to be occupancy tenants of the subject matter land having acquired proprietary rights through mutations. The Respondents No. 7 to 9 challenged the allotment before the Deputy Settlement Commissioner. Ultimately the allotment in favour of respondents' no. 5 & 6 was cancelled. The petitioner claims to have purchased the property from respondents no. 5 & 8 bonafidely and have challenged the orders passed by the Revenue Officers in hierarchy.

Issues: i) Whether deficiency or flaw emerges in the title of original allottee shall always pass on to the subsequent transferee?
ii) Whether upon repeal of evacuee law only Notified Officer has jurisdiction to examine the allotment of evacuee land and settlement authorities have no jurisdiction in this regard?
iii) Whether the High Court is empowered to interfere with the decision of a Court or tribunal of inferior jurisdiction merely because in its opinion the decision is wrong?

Analysis: i) The subsequent transferee only stepped into the shoes of original vendor and is debarred to claim any independent or better title. Therefore, he has no protection under Section 41 of the Transfer of Property Act, 1882 and if any infirmity, deficiency or flaw subsequently emerges in the title of his vendor that shall always pass on to him when he does not enjoy a shield of bona fide purchaser... When it is established that the subject matter allotment was fraudulent then obviously fraud vitiates the most solemn proceedings and any edifice so raised on the basis of fraudulent transaction would automatically collapse.
ii) The legal status is that evacuee laws stood repealed from 01.07.1974 through promulgation of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, whereafter the jurisdiction of the Notified Officer under Section 2(2) of the Act was limited to decide only the actively pending proceedings on the matters which are remanded by the superior courts of the country, whereas he was

debarred to make any fresh allotment of the evacuee land. If any earlier allotment of evacuee land got allotted in excess of entitlement or obtained fraudulently, the settlement authorities still have the inbuilt inherent power to adjudicate and determine the existence of element of fraud in allotment of the evacuee land and once the existence of fraud stands established then such fraudulent allotment wears no worth and sanctity in the eyes of law and same necessarily is to be considered as void ab initio/ nullity since its inception. The Chief Settlement Commissioner has a jurisdiction to adjudicate or investigate the genuineness of the evacuee's claim as well as allotment made in his favour and if he finds the existence of any fraud committed in obtaining the allotment of the evacuee land, he has the authority to reverse the said order of allotment.

iii) The superior Courts normally withhold the exercise of their discretionary jurisdiction to annul the order of an authority, even though the order of the authorities suffers from some jurisdictional defect... Constitutional provision was not designed to empower the High Court to interfere with the decision of a Court or tribunal of inferior jurisdiction merely because in its opinion the decision is wrong.

Conclusion: i) The deficiency or flaw emerges in the title of original allottee shall always pass on to the subsequent transferee and he will have to face the legal consequences contained in provsions of Section 52 of Transfer of Property Act, 1882.

ii) It is incorrect that upon repeal of evacuee law only Notified Officer has jurisdiction to examine the allotment of evacuee land and settlement authorities have no jurisdiction in this regard. The jurisdiction of the Notified Officer was limited to decide only the actively pending proceedings on the matters which are remanded by the superior courts. The settlement authorities have inbuilt inherent power to adjudicate and determine the existence of element of fraud.

iii) The High Court cannot interfere with the decision of a Court or tribunal of inferior jurisdiction merely because in its opinion the decision is wrong.

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35. Lahore High Court
Riaz Ahmad v. Nasir Ahmad.
Civil Revision No. 2597/2014
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2022LHC6235.pdf

Facts: Through this Civil Revision under Section 115 of the Code of Civil Procedure, 1908, the Petitioner has challenged the Judgments and Decrees passed by the learned Trial Court and the learned Appellate Court, whereby learned Courts below concurrently dismissed the Suit for declaration.

Issues: i) When does the burden of proof shift from one party to the other?

ii) Whether the plaintiff can take benefit from the weaknesses in the evidence of the defendant?

Analysis: i) There is no cavil to the well-established principle that the burden of proof may shift from one party to the other during the course of trial of a suit but that burden only shifts once the initial burden is discharged by the plaintiff.

ii) In terms of law once the onus is not discharged, it never stood shifted to the opposite party and in such scenario; the weaknesses in the evidence of the defendant shall not advance the case of the Plaintiff. The Plaintiff is bound to seek strength from his own case and not from the weaknesses of the defendant.

Conclusion: i) The burden of proof may shift from one party to the other but that burden only shifts once the initial burden is discharged by the plaintiff.

ii) The plaintiff cannot take benefit from the weaknesses in the evidence of the defendant.

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36. **Lahore High Court**
Syed Haider Ali v. Sui Northern Gas Pipelines Limited etc.
R.F.A No.12451/2022
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2022LHC6227.pdf

Facts: The Appellant filed an Application for setting aside of Impugned Judgment and Decree. Along with his Application for setting aside ex-parte proceedings, the Appellant simultaneously filed an Application for leave to defend the Suit under Gas (Theft Control and Recovery) Act, 2016. The learned Gas Utility Court being dissatisfied with the reasons and justifications contained in the Application dismissed the said Application through the Impugned Order. Hence, the instant Regular First Appeal.

Issues: i) What if the summons are not duly served, whether the limitation period will be extended?

ii) Whether it is necessary to prove service through all three modes simultaneously and any of them would be sufficient?

iii) What is the object of law to declare the provisions mandatory regarding the application for leave to defend in the Act?

iv) What is the procedure to determine whether provision was mandatory or directory in character?

Analysis: i) Under Section 8 of the Act, the said Application was to be filed within 30 days of the date of the Decree. According to Section 8 even if the summons were not served upon the Appellant, he had to file this Application within a period of 30 days from the date of knowledge of the decree.

ii) In case law reported as "Abdul Sattar vs. The Bank of Punjab" (2017 CLD 1247), the learned Divisional Court of this Bench held as under: "A publication which is one of the modes of service is also considered as a valid service and it is not necessary to prove service through all three modes simultaneously and any of them should be sufficient in this regard."

iii) The provisions of section 7(3)(4)(5) are mandatory in their nature, scope and ambit. The object of the law is to simplify the defence so that the Gas Utility Court can reach to a just conclusion as expeditiously as possible. Declaring these provisions as mandatory has two reasons, firstly, all these subsections use the term 'shall' and secondly pursuant to Section 7(6) a penal consequence has been provided for non-compliance of the provisions of section 7(3)(4)(5).

iv) There are three fundamental tests which are often applied with remarkable success in the determination of this question. They are based on consideration of the scope, object and purpose of the enactment in question, on consideration of justice and balance of convenience and on a consideration of the nature of the particular provision, namely, whether it affected the performance of a public duty or related to a right, privilege or power. In the opinion of this Court, in latter case, it is mandatory. Since the ultimate test is the intent of the legislature and the provision provided a strong and clear indicator for ascertaining such intent of the legislature. A provision in the statute is mandatory if the omission to follow it rendered the proceedings to which it related illegal and void.

Conclusion: i) According to Section 8 even if the summons were not served upon the Appellant, he had to file this Application within a period of 30 days from the date of knowledge of the decree.

ii) it is not necessary to prove service through all three modes.

iii) The object of the law is to simplify the defence so that the Gas Utility Court can reach to a just conclusion as expeditiously as possible.

iv) There are three fundamental tests which are often applied with remarkable success in the determination of this question. They are based on consideration of the scope, object and purpose of the enactment in question.

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37. **Lahore High Court**
Mst. Nooran Bibi v. Mst. Sakeena Mai alias Karmai etc.
Civil Revision No.1384/2010
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2022LHC6243.pdf

Facts: This Civil Revision questions the legality and validity of the concurrent Judgments and Decrees passed by learned Courts below, whereby in a second round of litigation a preliminary issue was framed and the plaint in the suit filed by the petitioner was rejected on the principle of constructive res judicata in terms of Section 11, Explanation IV of Code of Civil Procedure, 1908 ("CPC").

Issues: Whether a suit requires adjudication on doctrine of constructive res judicata if the plaint fails to disclose a cause of action; subject matter and the actionable claim of the suit?

Analysis: In any event if the plaint in the subject matter suit was legally bound to fail on account of its failure to disclose a cause of action; abandonment of challenge to

the extent of the subject matter of the suit; and due to dismissal of suit against the actionable claim, if any, against the respondent has ceased to exist; then the suit to this extent becomes infructuous and did not require any adjudication on the issue of applicability of doctrine of constructive res judicata.

Conclusion: If a plaint fails to disclose a cause of action; subject matter and the actionable claim of the suit; the suit becomes infructuous and it does not require adjudication on the doctrine of constructive res judicata.

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38. Lahore High Court
Muhammad Azeem v. Noor Muhammad (deceased) through LRs. Etc.
Civil Revision No.1365-D/2016
Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2022LHC6273.pdf

Facts: Through the instant civil revision the Petitioner has challenged the Judgments and Decrees passed by the learned Trial Court and the learned Appellate Court below respectively whereby the learned Trial Court dismissed the Suit filed by the Petitioner and upon an Appeal the learned Appellate Court below rejected the Appeal of the Petitioner due to non-deposit of Court Fee.

Issue: Whether Court Fee is meant to arm a litigant with a weapon of technicality against his opponent?

Analysis: The Court Fee is not meant to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the State. The policy of law, in matters relating to payments required to be made by a litigant by way of fee, fine or other deposits appears to point towards flexibility rather than rigidity. Substance rather than form is the underlying principle. This is an area of the law where the litigant is, in most instances, given leeway and shown flexibility to enable him to meet technical requirements, which had inadvertently, in ignorance or because of misconception or misrepresentation of the relevant provision of law remained unattended. But it is equally important that if a litigant demonstrates a continuous default towards payment of Court Fee or exhibits adelinquent conduct continuously in making good the deficiency thereof then obviously neither law nor equity or justice can grant him such premium and consequence of the provision of Order VII rule 11 (c) CPC will come into play.

Conclusion: The Court Fee is not meant to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the State.

LATEST LEGISLATION/AMENDMENT

1. Section 4, 5, 6, 8, 16, 16-A, 17, 19, 20, 24, 25, 27 of the National Accountability Ordinance, 1999 (XVIII of 1999) are amended through "National Accountability (Second Amendment) Act, 2022. While Sections 5-A, 31-B are substituted and Section 11, 31-A are omitted.
2. National Information Technology Board Act 2022

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Execution-of-Warrant-outside-Jurisdiction

Execution of Warrant outside Jurisdiction by Harshit Kumar

There are times when such questions are taken up by the court which seem to already be well answered. But upon closer observation, they hold certain nuances which may reveal some useful insights. The case of Angel Click v. State of Karnataka MANU/MH/1274/2021 brought our attention to one such issue concerning the nature of sections 101 and 105 of the Code of Criminal Procedure. Section 101 is found under the "General provision related to searches" heading and Section 105 is found under the "Miscellaneous" heading of Chapter VII, "Process to compel the production of things", of the Code of Criminal Procedure, 1973. Upon a bare reading, these provisions appear deceivingly simple. This becomes evident when we see that it has been amended twice even after which we find parties litigating the nature of this section. The Hon'ble Bombay High Court had taken up this issue in Angel Click and once again reminded us that no law should be understood in isolation and that we must apply our minds judicially and carefully while interpreting any statute. Since the focus of this article is on sections 101 and 105, our analysis shall only be limited to the procedure for execution of a warrant of search and seizure outside the local jurisdiction of the court issuing it. For that, we will first briefly understand the relevant provisions under CrPC concerning the execution of such a warrant.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/THE-UNSEEN-UNKNOWN-AND-UNTOLD-ASSESSING-THE-IMPACT-OF-DOMESTIC-VIOLENCE-DURING-THE-COVID-19-PANDEMIC-THROUGH-THE-COMPETING-PERSPECTIVES-OF-RADICAL-FEMINISM-AND-LIBERALISM

The Unseen, Unknown And Untold: Assessing The Impact Of Domestic Violence During The Covid-19 Pandemic Through The Competing Perspectives Of Radical Feminism And Liberalism by Taneesha Ahuja

Since the onset of the second wave of the COVID-19 pandemic, the Indian subcontinent has experienced an unprecedented set of trials and tribulations that have percolated beyond healthcare and infrastructure - subsequently affecting the country's social and cultural fabric as well. In order words, the consequences of the pandemic have resulted in a heightened sense of anxiety and frustration amongst the general populace. This increase in psychiatric disorders coupled with the long-term confinement to homes, in adherence with social distancing norms, has led to an increase in the number of reported cases of domestic violence cases by women. This posits a significant challenge for women who are left without a significant support mechanisms or legislative policies which can be evoked during these difficult times. Several feminist scholars have argued that domestic and intimate partner violence stems from the traditional conceptualisation of the power imbalance between the two genders.1 Scholars believe that 'domestic violence' is a consequence of the male partner's need to exercise control over his female counterpart's autonomy.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Right-to-be-forgotten

Right to be forgotten by Zubair Ahmad

The 'Right to be forgotten' gives the right to individuals to have their private information removed from the internet, websites or any other public platforms under special circumstances. The 'Right to be forgotten' is also called the 'Right to erasure'. 'Right to be forgotten' was first established by the European Union in May 2014. In India, currently there is no law that specifically provides the 'Right to be forgotten'. However, a bill is already pending before the parliament. The issue of manipulation of individuals information is seen in the case of Jorawer Singh Mundy @ Jorawar Singh Mundy vs Union of India3 the Hon'ble Court held in this vide judgement and directed the respondents (Google, Lex.in and Indian kanoon) to remove the judgment till the further order. In the absence of a data protection regulation that restricts the fundamental Right to delete useless and defamatory private data from the online space, the 'Right to be forgotten' has attracted significant attention in India4. So by this case it is clear that it is need of the hour to consider the "'Right to be forgotten' as a fundamental Right".

4. **LATEST LAWS**

https://www.latestlaws.com/articles/concept-of-restitution-of-conjugal-rights-law-and-case-laws-186782/

Concept of Restitution of Conjugal Rights by Ridhi Seth

Marriage is considered to be a turning point in the life of an individual. It is believed that marriage marks the beginning of the second phase of one's life. It is considered to be a sacred act in Hinduism. Thus, marriage is a sacrament under the Hindu Law. It involves sharing of a common life, including the happiness and the sorrows coming along the way. It requires constant commitment from both the sides and a will to stay together despite of all the shortfalls. The apex court held that "the essence of marriage is sharing of a common life, sharing all the happiness that life has to offer and all the misery that one has to face."

5. **LATEST LAWS**

https://www.latestlaws.com/articles/concept-of-restitution-of-conjugal-rights-law-and-case-laws-186782/

Burden of Proof by Ridhi Seth

The parties to a suit make numerous claims during the trial. When either of the party states something, considering it to be a well-established fact, they themselves need to prove its validity and truthfulness. The concept is called 'Burden of proof' and it has been mentioned in the Indian Evidence Act, 1872 in the VIIth Chapter, which covers Section 101 to Section 114A. It is considered to be a duty of the parties to bring to the court, only which they believe to be true and can prove their belief beyond doubt. This assists the court greatly. Although, no definition of the term "burden of proof" is mentioned in the VIIth chapter, the requirements of the same are mentioned therein. In the normal course, the burden of proof lies upon the prosecution to prove that he/she had suffered an injury or had been affected beyond reasonable belief. Due to them being the one instituting the case, it was believed that they would be able to provide the most foolproof evidence. On the other hand, in case of heinous crimes this burden shifts on the accused to prove his/her innocence. In some cases, the burden keeps shifting from party to party and in others, it stays with one party only.

6. **LATEST LAWS**

https://www.latestlaws.com/articles/how-does-the-power-of-attorney-work-when-is-it-required-187530/

How Does the Power of Attorney Work? When is it Required?by Bhagyashree Behera

In the contemporary world, where commerce and industry have promised to play significant and lengthy roles, the necessity to enter into contracts and agreements with regard to business and other activities has become a regular and necessary

component of everyday life. Man had to become more and more reliant on others as his workload expanded. It was required to sign a power of attorney before delegating his responsibilities due to the businessperson's and industrialists' hectic schedules. The preparation of a document allowing another person the ability to act on your behalf is a requirement of the legal process for awarding a power of attorney. The principal should use prudence when appointing an agent as attorney to reduce the complexity and cost of any future legal proceedings. The "Power of Attorney Act, 1882" was adopted on February 24 of that year and entered into force on May 1. The main goal of establishing this legislation was to make it easier for your selected attorney to access your finances and, in turn, administer your property.

7. LATEST LAWS

https://www.latestlaws.com/articles/role-of-mediation-in-family-law-disputes-explained-187406/

Role of Mediation in Family Law Disputes: Explained by Prerna Pahwa

Marriage is said to be a lifetime commitment of both partners. But now, this phrase seems to be vague as the marriage is no longer a 'sacrosanct' or 'sacred' due to the prevailing laws regulating marriages and divorces. Along with this, marriage is not a lifetime commitment anymore. According to Herbert Jacob, wives were subordinate to their husbands in the early nineteenth century. When a woman marries, she loses her maiden name and assumes her husband's identity. Her new name represented not only a new identity but also, in many ways, she was subservient to her husband. Both custom and law, for example, required a wife was free to live wherever their husband desired. In exchange, wives were expected to care for the home and comply with their husband's sexual demands. Finally, wives had no control over their husbands at the first property, even if they brought it into the marriage. Now, the tables have changed, and the principle of equality replaces the principle of hierarchy. Even our constitution considers men and women equal. The committee on the elimination of discrimination against women (CEDAW)[1] in its general recommendation brings into the knowledge of the committee regarding equal rights of women in the family and equal share in the family property must be globally recognized. The perception of people regarding marriage as a partnership normalizes the fact that it is okay to move out of a relationship if it is not fulfilling or satisfactory. Various movements regarding children's and fathers' rights lead to an increased number of family conflicts. In India, the family's foundation is built up with emotions, sentiments, love, affection, and expectations. Therefore, the chances of getting into conflict are high. Some people feel reluctant to get involved in the cumbersome and lengthy litigation process to solve their disputes and get a fruitful result. They can opt for Alternative Dispute Resolution- Mediation to resolve their disputes. This article is written to highlight the process of mediation in family law disputes.