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FORTNIGHTLY CASE LAW BULLETIN

(16-01-2023 to 31-01-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Province of Sindh through Chief Minister & others v.
Sartaj Hyder Civil Petitions No.943 to 954 -K of 2022
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah,
Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._943_k_2022.pdf

Facts: The instant Civil Petition along with connected Petitions impugns interim orders, passed by the High Court of Sindh, Bench at Sukkur and Circuit Court Larkana. The orders have been passed in petitions filed by the Respondents in relation to the relief work carried out by the Petitioners in the flood affected areas of Sindh.

Issues: i) Whether Supreme Court can interfere in interim orders of High Court?
(ii) Whether as per National Disaster Management Authority Act members of the civil community can be made part of Provincial and District Management Authorities?
(iii) What are the Policy Guidelines regarding the participation of women in disaster management plan?
iv) On whom responsibility falls to propose a national adaptation plan?

Analysis: i) The orders impugned are interim orders and this Court normally does not interfere with the interim orders of the High Court except in exceptional circumstances.
ii) As per the scheme of the Act, members of the civil community which include volunteers, NGOs, doctors and others can be made part of the Provincial and District Management Authorities to help relief efforts. The record shows that they have been included in the DDMA vide notification dated 24.06.2014, however, there is no information on whether they actually participated. Section 3(2)(p) of the Act provides that National Commission shall also consist of representatives of civil society or any person appointed by the Prime Minister. As this is the policy making body, the inclusion of members of civil society on this Commission is imperative because for effective and efficient disaster management the inclusion of people likely to be affected is necessary not only for coordination, data collection and creating awareness but also to combine the efforts of the community and the authority in the event of a natural disaster. This gives civil society an opportunity to become part of the implementation, co-ordination and monitoring plan which only makes the work of the authority more effective. The Act also provides under Section 8 that the NDMA shall consist of members as may be prescribed by its chairperson. This Authority is headed by the Prime Minister, who can include any member as he deems appropriate. Similarly, at the provincial as well as the district level, the Act provides in its Sections 13 and 15 that members to the PDMA and DDMA may be nominated by the Chief Minister and by the District Authority to include any member as they deem appropriate.

Under these provisions, members of civil society can be included not only on the Commission but also in the Authorities to ensure that relief work is carried out where required and to help in mitigating the effects of the natural disaster as well as work on rehabilitation of the affectees. Hence, inclusion of civil society is necessary.

iii) In this context, we find that the Policy Guidelines requires the participation of women in disaster management plan at all levels to ensure integration of the gender perspective. As per the Policy Guidelines, women are at a greater risk from natural disasters than men. They are vulnerable and victims in natural disasters but also play a significant role throughout the disaster management cycle, without being adequately recognized and included in the decision making. The Policy Guidelines also emphasizes on ensuring equal access to relief opportunities for victims without any discrimination which requires the needs of vulnerable groups to be targeted to ensure that their needs are attended, safeguarded and protected. As per the Policy Guidelines, women, children, older persons, persons with disabilities are all defined as vulnerable groups in disaster. The NDMA and National Disaster Risk Reduction Policy all emphasize on reducing risks and vulnerabilities of those who are marginalized which include women, children, older person, persons with disabilities and minorities , however, there is no report available on the actual efforts made during the last six months .

(…)Therefore, in line with the policies formulated, it is imperative that the citizens committees include women, older persons and persons with disabilities so that the required response is ensured and provided and that the Policy Guidelines formulated be implemented real time. In this context, we note that the affected areas require maternity and healthcare for women so there is an increased need for female doctors, trainers and caretakers to attend to the health concerns. Women are often subjected to gender-based violence and harassment in times of such calamities, therefore safety and security concerns are also of significance for which appropriate response is also required. In this context, although the framework exists, an effort must go into ensuring that it actually functions and fulfils its mandate. Accordingly, we find that the citizens committee should ensure the representation of the vulnerable groups, particularly of women, in order to strengthen its perspective.

iv) Climate change is undoubtedly the most serious existential threat faced by Pakistan and the major cause of the recent floods. Therefore, any post-floods strategy must first and foremost propose a national strategy to deal with climate change today and tomorrow. The primary responsibility falls on the shoulders of the Ministry of Climate Change, Government of Pakistan, as well as, the National Disaster Management Authority (NDMA) to propose a national adaptation plan to avert the horrific devastation caused by floods this year and also to safeguard and protect the fundamental rights of the people from the wrath of climate change. I, therefore, feel compelled to append this additional note in public and national interest.(…) In view of this unprecedented damage and the likelihood of its recurrence, it is imperative that serious and practical efforts are undertaken for

prevention and adaptation against such disasters induced by climate change. It is also expected that existing policies or mechanisms catering to food insecurity etc. are mobilized as soon as possible and if no such policies or mechanisms exist, then the respective State functionaries should take urgent action to formulate such policies and create such mechanisms to prevent further exacerbation of the losses and damage already suffered due to the floods and for sustainable rehabilitation.

Conclusion: i) Supreme Court normally does not interfere with the interim orders of the High Court except in exceptional circumstances.

ii) As per the scheme of the Act, members of the civil community which include volunteers, NGOs, doctors and others can be made part of the Provincial and District Management Authorities to help relief efforts.

iii) Policy Guidelines require the participation of women in disaster management plan at all levels to ensure integration of the gender perspective.

iv) Primary responsibility falls on the shoulders of the Ministry of Climate Change, Government of Pakistan, as well as, the National Disaster Management Authority (NDMA) to propose a national adaptation plan.

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2. **Supreme Court of Pakistan**
Collector of Customs, Model Customs Collectorate, Peshawar v. Waseef Ullah and another etc.
Civil Petitions No. 389, 696 to 742 of 2022
Mr. Justice Umar Ata Bandial CJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._389_2022.pdf

Facts: The aforesaid forty-eight Civil Petitions for leave to appeal are directed against the common judgment passed by the learned Peshawar High Court in Custom References, whereby the Reference Applications were answered in the negative in favour of the respondents, and against the petitioner.

Issues: i) What is the duty of the Court while interpreting a law?

ii) What is the purpose of issuing S.R.Os?

iii) If the tax-payer is entitled for exemption in plain terms of notification, whether the department can deny the benefit of an exemption which was intended for the benefit of the taxpayer?

iv) Whether in a taxing statute, there is a leeway or probability of any intendment?

Analysis: i) According to well-settled canons and rules of interpretation laid down by the superior Courts time and again, the indispensable and imperative sense of the duty of the Court in interpreting a law is to find out and discover the intention of the legislature, and then endeavor to interpret the statute in order to promote or advance the object and purpose of the enactment. If the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is

more consistent with the alleged object and policy of the Act. If the words of the section are plain and unambiguous, then there is no question of interpretation or construction. The duty of the Court then is to implement those provisions with no hesitation. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. The Court cannot supply casus omissus and while interpreting a statute, the Court cannot fill in gaps or rectify defects and cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The legal maxim, "absoluta sententia expositore non indigent" also reminds us that, when the language is not only plain, but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Whereas another maxim "generalia verba sunt generalita intelligenda" expresses that general words are to be understood generally and what is generally spoken shall be generally understood unless it be qualified by some special subsequent words or unless there is in the statute itself some ground for restricting their meaning by reasonable construction, not by arbitrary addition or retrenchment.

ii) S.R.Os are issued fundamentally in the aid of substantive principles of law set out in the parent legislation, and to give effect to administrative directions and instructions for the implementation of the law.

iii) If the tax-payer is entitled for exemption in plain terms of notification, then the department could not deny the benefit of an exemption which was intended for the benefit of the taxpayer so it should be construed accordingly.

iv) In a taxing statute, there is no leeway or probability of any intendment but the manner of interpretation should be such which undoubtedly or unmistakably comes into sight from the plain language of the notification with the conditions laid down in it, but with the caution that the benefits arising from a particular exemption should not be defeated or negated and, in case of any ambiguity or mischief, the taxing statute should be construed in favour of the assessee.

Conclusion: i) The indispensable and imperative sense of the duty of the Court in interpreting a law is to find out and discover the intention of the legislature, and then endeavor to interpret the statute in order to promote or advance the object and purpose of the enactment.

ii) S.R.Os are issued in the aid of substantive principles of law set out in the parent legislation, and to give effect to administrative directions and instructions for the implementation of the law.

iii) If the tax-payer is entitled for exemption in plain terms of notification, then the department cannot deny the benefit of an exemption which was intended for the benefit of the taxpayer.

iv) In a taxing statute, there is no leeway or probability of any intendment but the manner of interpretation should be such which undoubtedly or unmistakably

comes into sight from the plain language of the notification with the conditions laid down in it, but with the caution that the benefits arising from a particular exemption should not be defeated or negated and, in case of any ambiguity or mischief, the taxing statute should be construed in favour of the assessee.

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3. **Supreme Court of Pakistan**
National Highway Authority through Ghulam Mujtiba, G.M, Lhr (in all cases) v. Mazhar Siddique & others (in all cases) C.P. 819, 820 of 2017 & 939-L of 2015
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._819_2017.pdf

Facts: Through petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, leave has been sought against the judgment/ orders of learned High Court whereby holding that ICA had become infructuous as award had already been announced however matter was referred again with consent of the parties for determining interest to be paid from the date of possession or from the date of corrigendum.

Issue: i) What is the relevant date under Section 34 of the Land Acquisition Act, 1894 for the computation of compound interest?
ii) Whether High Court can use contempt of court jurisdiction as a substitute of execution proceedings?

Analysis: i) The relevant starting date for the payment of compound interest on compensation amount, under Section 34 of the Land Acquisition Act, 1894, is the date of taking possession of the acquired land till the date of payment of entire amount of compensation by the collector where normal statutory period has been observed.
ii) Indeed, contempt jurisdiction vests in superior courts to ensure the maintenance of dignity of court and majesty of law. Such jurisdiction is to be exercised with circumspection and sparingly and not merely at whims and fancy of any person to satisfy personal ego or as an arm-twisting tool. Therefore, the use of contempt of court jurisdiction as a substitute of execution proceedings is undesirable.

Conclusion: i) The relevant starting date for the payment of compound interest on compensation amount is the date of taking possession of the acquired land.
ii) The use of contempt of court jurisdiction as a substitute of execution proceedings is undesirable.

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4. **Supreme Court of Pakistan**
Amanullah v. The State and another
Criminal Appeal No. 75-L of 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._75_l_2021.pdf

Facts: The appellant along with two co-accused was tried by the learned Additional Sessions Judge, for committing murder of brother of the complainant. The learned Trial Court while acquitting the co-accused, convicted the appellant and sentenced him to death. In appeal, the learned High Court while maintaining the conviction of the appellant, altered the sentence of death into imprisonment for life. Being aggrieved by the impugned judgment, the appellant filed instant Jail Petition.

Issues: i) Whether ocular evidence can be given preference over medical evidence?
ii) Whether testimony of a prosecution witness can be discarded mere on the ground of relationship with the deceased?

Analysis: i) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence
ii) This Court has time and again held that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses.

Conclusion: i) Trustworthy ocular evidence can be given preference over medical evidence.
ii) Testimony of a prosecution witness cannot be discarded mere on the ground of relationship with the deceased.

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5. **Supreme Court of Pakistan**
Muhammad Umar Waqas Barkat Ali v. The State and another Criminal Petition No. 352-L 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._352_l_2022.pdf

Facts: Through the instant petition the petitioner has assailed the consolidated order of the learned High Court with a prayer to grant pre-arrest bail in a cross-version recorded under Sections 337-A(i)/337-A(ii)/337- F(v)/354/148/149 PPC in the interest of safe administration of criminal justice.

Issues: i) Whether the opinion of the Investigating Officer can be evaluated without recording evidence regarding the overt act of petitioner?
ii) Whether a person can be put behind the bars for an indefinite period merely on bald and vague allegations?
iii) Whether the case of two versions falls within the ambit of section 497(2) Cr.P.C?

Analysis: i) The opinion of the Investigating Officer regarding the overt act of the petitioner has to be evaluated after recording of evidence as an abundant caution. In this view of the matter, the possibility of false implication just to pressurize the petitioner's side to gain ulterior motives cannot be ruled out.

ii) Trial Court after recording of evidence would decide about the guilt or otherwise of the petitioner and until then he cannot be put behind the bars for an indefinite period. 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.

iii) It is established principle of law that a case of two versions falls within the ambit of Section 497(2) Cr.P.C.

Conclusion: i) The opinion of the Investigating Officer regarding the overt act of the petitioner has to be evaluated after recording of evidence.

ii) It is settled law that liberty of a person is a precious right and the same cannot be taken away merely on bald and vague allegations.

iii) It is established principle of law that a case of two versions falls within the ambit of Section 497(2) Cr.P.C.

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6. **Supreme Court of Pakistan**
Federal Board of Revenue through its Chairman, Islamabad & others v. M/s Hub Power Company Ltd & others
Civil Petition No. 3739 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3739_2019.pdf

Facts: The petitioners have filed the instant petition without exhausting the available remedy of filing an Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972 before the High Court and the respondent, at the very outset, raised an objection that the instant petition is not maintainable. Hence objection is decided.

Issues: Whether a petition before Hon'ble Supreme Court can be filed without exhausting the available remedy of filing an Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972 before the High Court?

Analysis: It is settled law that where the right to file an ICA before the High Court under section 3 of the Ordinance exists, then a petition before this Court without exhausting the said remedy, and thereby circumventing the forum below, is ordinarily not maintainable. The requirement of filing an ICA is a rule of practice for regulating the procedure of the Court and does not oust or abridge the constitutional jurisdiction of this Court. Such petitions, however, have been entertained by this Court only when certain exceptional circumstances exist, such as, where the matter involves important questions of law of great public importance having far-reaching consequences, questions of law as to the interpretation of the Constitution and validity of provincial statutes, and

substantial questions of law involving fundamental rights, coupled with the fact that the objection with regards to maintainability is taken at a belated stage before the Court.

Conclusion: A petition before Hon'ble Supreme Court cannot be filed without exhausting the available remedy of filing an Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972 before the High Court except when certain exceptional circumstances exist.

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7. **Supreme Court of Pakistan**
Qazi Naveed ul Islam v. District Judge, Gujrat, etc.
C.P. 3127 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3127_2020.pdf

Facts: The trial court had dismissed the application of the petitioner filed under Section 476 of the Code of Criminal Procedure 1898 ("CrPC") against respondents No. 3 to 5 and the revisional court had also dismissed his revision petition filed against that order of the trial court and the writ petition filed against the orders of the trial court and revisional court was dismissed by the High Court. The petitioner seeks leave to appeal against the order of the High Court.

Issue: i) Whether the power conferred by Section 476, CrPC on a Court to take cognizance of certain offences committed in, or in relation to, any proceedings before it, is discretionary in nature and what is its scope?

ii) What is the importance of imposition of costs to curb frivolous and vexatious litigation?

Analysis: i) The power conferred by Section 476, CrPC on a Civil, Revenue or Criminal Court to take cognizance of certain offences committed in, or in relation to, any proceedings before it, is discretionary as evident from the expression, "may take cognizance", used in the Section. No doubt, like all other discretionary powers, the court concerned is to exercise this discretion judiciously, not arbitrarily, while taking into consideration the facts and circumstances of the case. Previously, before its substitution by the Act XXI of 1976, Section 476 had stated it expressly that the court is to take action under Section 476 when it is of opinion that "it is expedient in the interests of justice" that an inquiry should be made into such an offence. As the discretionary powers must always be exercised in the interests of justice, we are of the considered view that notwithstanding the omission of that expression in the present Section 476, while exercising its discretion under this Section the court concerned should give prime consideration to the question, whether it is expedient in the interests of justice to take cognizance of the offence. The court is to exercise this discretionary power with due care and caution, and must be watchful of the fact that its process under Section 476 is not abused by an unscrupulous litigant scheming to wreak private vengeance or satisfy a private grudge against a person, as has been done by the petitioner in the present case.

ii) The purpose of awarding costs at one level is to compensate the successful

party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences. In a nutshell costs encourage alternative dispute resolution; settlements between the parties; and reduces unnecessary burden off the courts, so that they can attend to genuine claims. Costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court.

Conclusion: i) The power conferred by Section 476, CrPC on a Court to take cognizance of certain offences committed in, or in relation to, any proceedings before it, is discretionary. Like all other discretionary powers, the court concerned is to exercise this discretion judiciously, not arbitrarily, while taking into consideration the facts and circumstances of the case.

ii) The purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences.

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8. **Supreme Court of Pakistan**
Mst. Jameela Bibi (decd) through LRs vs.
Mst. Fatima Bibi (decd) through LRs
C.P.3125 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3125_2020.pdf

Facts: The civil revision filed by the petitioner before the High Court was dismissed for non-prosecution. He filed an application for restoration of the said revision which was dismissed by the High Court through the impugned order on the ground that it was barred by time.

Issues: What is the limitation period for filling an application for the restoration of a civil revision dismissed for non-prosecution?

Analysis: The application for restoration of the civil revision of the petitioner was dismissed on the basis of Article 168 (mistakenly mentioned in the impugned order as Article 169) of the Third Division of the First Schedule of the Limitation Act, 1908 ("The Act"), which provides for a period of thirty days for maintaining such an application in case of an appeal. Perusal of the First Schedule of the Act reveals that Article 163 deals with application for restoration of the suits dismissed for non- prosecution and provides for a period of thirty days from the date of dismissal for filing such an application, while Article 168 provides for readmission of an appeal dismissed for want of prosecution and provides a period of limitation of thirty days from the date of dismissal for filing an application for restoration. There is, however, no specific article, which deals with the application for restoration of civil revision dismissed in default, therefore, reliance

has to be placed on Article 181 of the First Schedule to the Act, which provides that for an application for which no period of limitation is provided elsewhere in the Schedule the period of limitation is three years from the date when the right to apply accrues. In the present case Article 181 is attracted and a period of three years is available to the petitioner to make an application for restoration of the civil revision.

Conclusion: Art. 181 of Limitation Act 1908 shall apply for such an application which envisages a period of three years from the date when right to apply accrues.

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9. Supreme Court of Pakistan
Mubarik Ali Babar v. Punjab Public Service Commission through its Secretary & others
Criminal Petition No. 2045 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2045_2019.pdf

Facts: The petitioner challenged the allocation and reservation of seats for minorities and persons with disabilities in the Combined Competitive Examination, 2015 conducted by the Punjab Public Service Commission, Lahore. The said petition was dismissed by the Lahore High Court which was challenged through this petition.

Issues: Whether the quota reserved for minorities and persons with disabilities which remained unfilled in a particular year can be made available to the other deserving candidates applying under the general quota on open merit?

Analysis: In order to safeguard the rights of the minorities and persons with disabilities (PWDs) and to provide equality of status and opportunities, the State has to endeavor to bridge the gap and ensure that the differently-abled persons and the Non-Muslim minority in our country get to enjoy their fundamental rights under the Constitution with the same fervour and force as enjoyed by the Muslim majority and majority of persons with fuller abilities. Hence other than the general seats, the additional provision of quota for the PWDs and the minorities reaffirms the constitutional commitment. The argument of the petitioner that in case the said seats are not filled by PWDs and the Non-Muslim minority in a particular year, the said seats should be opened and made available to general quota. This is not permissible as it would offend constitutional values, fundamental rights and the Principles of Policy as discussed above. The seats earmarked for minorities or PWDs must be retained and carried forward. This quota is their constitutional right and cannot be reversed or made available to other citizens.

Conclusion: The quota reserved for minorities and persons with disabilities which remained unfilled in a particular year cannot be made available to the other deserving candidates applying under the general quota on open merit.

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10. **Supreme Court of Pakistan**
Peerzada Waqar Alam v. National Accountability Bureau (NAB) through its Chairman, Islamabad, etc. Civil Petition No. 4729 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4729_2019.pdf

Facts: The petitioner (a wheelchair user) was appointed with subject to the condition that he be declared medically fit by the Civil Surgeon. His medical Certificate stated that the petitioner was found "fit for office job". The Certificate, additionally recorded that the petitioner is "fit against disable quota, if any, otherwise as department likes". Then his selection was withdrawn. The petitioner preferred a departmental appeal which was also turned down. The petitioner challenged the same through constitutional petition before the High Court but was not successful and now has challenged the judgment of the High Court through this petition.

Issues: i) Whether section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance 1981apply to all organizations?
ii) Whether Employment of persons with disabilities is a charity?

Analysis: i) Under section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance 1981all establishments are to employ persons with disabilities "not less than 3% of the total number" of persons employed at any time by the establishment. There is no limitation or distinction of grade in allocating 3% quota for persons with disabilities in any organization. The 3% quota for persons with disability applies across the board in an organization, covering all tiers of posts in an organization and goes up to the highest post.
ii) Employment of population of persons (PWDs) with disabilities is not a charity but a right. The constitutional values of equality and social justice, the fundamental rights to life, to carrying out a profession and to non-discrimination also extend to PWDs and make no distinction between PWDs and others. Therefore, any law or policy relating to PWDs is rights-based and is not to be viewed as charity or pity or mercy. The universality, indivisibility, interdependence and interrelatedness of constitutional values and fundamental rights fully encompass the persons with disabilities and guarantees them full protection without discrimination.

Conclusion: i) Section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance 1981applies to all organizations in allocating 3% quota for persons with disabilities.
ii) Employment of persons with disabilities is not a charity but a right.

11. **Supreme Court of Pakistan**
Attiq ur Rehman v. Sh. Tahir Mehmood and others Civil Petition No.600 of 2020
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._600_2020.pdf

Facts: The Respondent No.1 challenged the initiation of inquiry against him on the charges of which he already stood exonerated in three previous inquiries.

Issues: Whether the Supreme Court can interfere in the interim orders passed by the High Court?

Analysis: It is the settled policy of Supreme Court not to readily interfere in the interim orders passed by the High Court. It is desirable that the court hearing the case finally decides the same before it is brought before the Supreme Court as piecemeal adjudication is not desirable. The only exception is when the interim relief granted by the High Court is arbitrary or unreasonable or reflects abuse of power or wanton exercise of discretion resulting in miscarriage of justice.

Conclusion: The Supreme Court cannot interfere in the interim orders passed by the High Court except where the interim relief granted by the High Court is arbitrary or unreasonable or reflects abuse of power or wanton exercise of discretion resulting in miscarriage of justice.

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12. **Supreme Court of Pakistan**
Muhammad Nawaz @ Karo v. The State
Criminal Petition No. 1392 of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1392_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 learned High Court of Sindh, Circuit Court Hyderabad, with a prayer to grant post-arrest bail in case registered under Sections 395/342/506-II PPC, in the interest of safe administration of criminal justice.

Issues: Whether the provision of Section 506(ii) PPC would be applicable whenever an overt act is materialized and ended into an overt act?

Analysis: 'Criminal intimidation' is defined in Section 503 PPC. A bare perusal of Section 503 PPC makes it clear that whenever an overt act is materialized and ended into an overt act, the provision of Section 506(ii) 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: No, the provision of Section 506(ii) PPC would not be applicable whenever an overt act is materialized and ended into an overt act. It is only Criminal intimidation as defined in Section 503 PPC.

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13. **Supreme Court of Pakistan**
M/s DW Pakistan (Private) Limited, Lahore v.
Begum Anisa Fazl-i-Mahmood and others
Civil Petition No. 3989 of 2022
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3989_2022.pdf

Facts: In a suit for specific performance of agreement to sell, the petitioner / plaintiff tendered a cheque on the order of the learned Trial Court to deposit the remaining sale consideration and the learned Trial Court handed it over to the officer of the Court to retain it in safe custody rather than encashing the same. Thereafter the respondents filed a Civil Revision in the Lahore High Court which was disposed with the direction to the learned Trial Court to deposit the subject matter cheque in a profit bearing account. Now petitioner assailed that order through this Civil Petition.

Issue: i) Whether readiness & willingness is a condition precedent for relief of specific performance?
ii) What should be the pattern and contents of plaint of a suit for specific performance?
iii) Whether the deposit of sale consideration in court by the vendee demonstrates his capability, readiness, and willingness to perform his part of the contract?
iv) Whether merely depositing the Cheque in Court without its encashment is a valid tender of the balance sale consideration in a suit for specific performance?

Analysis: i) The person seeking specific performance has to put on show that he is geared up and fervent to perform his part of the contract, but the other side is circumventing or evading the execution of his obligations arising out of the contract. While deciding the suit for specific performance of a contract, the Court has to consider and come to a decision regarding whether the plaintiff is ready and willing to perform his part of the contract, which is in fact substantiated by dint of the conduct or demeanor of the plaintiff before and after instituting the lawsuit. … The fundamental insightfulness of the Courts in directing the plaintiff in a suit for specific performance to deposit the sale consideration in Court in fact articulates that the vendee has the capacity to pay the sale consideration or balance sale consideration and is ready and willing to perform his obligations arising from the contract. An incessant readiness and willingness is a condition precedent for claiming relief of specific performance, which in unison also conveys the state of mind of the vendee, his capability to pay, keenness and commitment.

ii) Appendix "A" of the First Schedule of the CPC highlights the specimen and modules of pleadings in which Form-47 relates to the "Suit for Specific Performance" wherein there is a specific condition jotted down in paragraph (3) that is to be incorporated in the plaint that "The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice". It is unequivocally clear that the plaint instituted for specific performance of a contract should confirm the requirements prescribed in Form 47 of the CPC. Under the letter of the law, the plaintiff ought to communicate the essential particulars: that he approached the defendant for the performance of a contract/agreement which he failed, and the plaintiff is still ready and willing to specifically perform his part of the obligation arising from the contract/agreement.

iii) In the case of Messrs. Kuwait National Real Estate Company (Pvt.) Ltd. and others Vs Messrs. Educational Excellence Ltd. and another (2020 SCMR 171), this Court held that a party seeking specific performance of an agreement to sell is essentially required to deposit the sale consideration amount in Court. In fact, by making such deposit the plaintiff demonstrates its capability, readiness, and willingness to perform its part of the contract, which is an essential pre-requisite to seek specific performance of a contract. Failure of a plaintiff to meet the said essential requirement disentitles him to the relief of specific performance, which undoubtedly is a discretionary relief.

iv) In our view, there was no rhyme or reason, nor any commonsense explanation for retaining the Cheque in the shelf or vault for its cosmetic value without its encashment to gauge the readiness and willingness of buyer in the suit for specific performance. According to Section 6 of the Negotiable Instruments Act, 1881, a "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. While Section 84 of the same Act deals with the consequences where a cheque is not presented for payment within a reasonable time of its issue and, under sub-section (2), it is provided that in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case. While handing over the cheque to the officer of the Court by the learned Trial Court, it was ignored that all cheques remain valid for certain time, thereafter it loses its efficacy/validity. When a cheque runs out its time it becomes stale / unacceptable to the banker unless it is revalidated and confirmed by the drawer.

Conclusion: i) An incessant readiness and willingness is a condition precedent for claiming relief of specific performance, which in unison also conveys the state of mind of the vendee, his capability to pay, keenness and commitment.

ii) the plaint instituted for specific performance of a contract should confirm the requirements prescribed in Form 47 of the CPC.

iii) The deposit of sale consideration in court by the vendee demonstrates his capability, readiness, and willingness to perform his part of the contract.

iv) Merely depositing the Cheque in Court without its encashment is not a valid tender of the balance sale consideration in a suit for specific performance.

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14. **Lahore High Court**
Mst. Liaqat Sultana and others v. Mst. Mumtaz Tahawar and others Civil Revision No.64976 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC8782.pdf

Facts: The respondent No.1 to 4 and respondent No.7 to 10 instituted suits for declaration and partition and also sought revocation of succession certificate which were consolidated and decreed. The respondents preferred nine appeals and learned appellate Court modified the judgment and decree passed by the learned trial Court. Feeling aggrieved, the instant revision petition as well as connected civil revisions have been filed by the petitioners.

Issues: i) What are ingredients of a valid gift?
ii) Whether onus to prove original transaction also lies on the beneficiary when sanctity of a gift is challenged especially on the basis of fraud and misrepresentation?
iii) How many witnesses are required to prove execution of a document?
iv) Whether concurrent findings on facts can be disturbed when the same do not suffer from any misreading and non-reading of evidence?

Analysis: i) It is observed that ingredients for a valid gift are: offer, acceptance and delivery of possession.
ii) When sanctity of a gift is challenged or called into question especially on the basis of fraud and misrepresentation, the beneficiary has not only to prove the valid execution of gift deed or mutation but also the original transaction.
iii) Whereas law requires that in order to prove valid execution of a document, at least two truthful witnesses are to be produced, as has been enunciated under Article 79 of the Qanun-e-Shahadat Order, 1984.
iv) The concurrent findings on facts cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908.

Conclusion: i) Ingredients for a valid gift are: offer, acceptance and delivery of possession.
ii) Onus to prove original transaction also lies on the beneficiary when sanctity of a gift is challenged especially on the basis of fraud and misrepresentation.
iii) At least two truthful witnesses are required to prove execution of a document.
iv) The concurrent findings on facts cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence.

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15. **Lahore High Court**
Mst. Saima Noreen v. The State and another.
Crl. Appeal No. 59829/2021& Crl. Misc. No. 02 of 2021
Justice Miss Aalia Neelum, Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2022LHC8798.pdf

Facts: Through the instant miscellaneous application under Section: 428 Cr.P.C. read with Section: 561-A Cr.P.C appellant/applicant sought permission for additional evidence in the shape of oral & documentary preferred during pendency of main appeal.

Issues: i) What is the mandate of Pakistan Telecommunication Authority and which law prevents unauthorized acts with respect to information systems in Pakistan?
ii) What is the minimum period for which a service provider can retain its specified traffic data?
iii) Who is authorized to obtain CDRs from service providers?
iv) Whether the procedure for tendering CDR in evidence and proving the same would be like any other primary evidence?
v) Whether without "Voice Recording Transcript", mere "Call Data Record" (CDR) alone of the SIM is inconclusive piece of evidence regarding identity of its user/carrier?
vi) Whether a piece of evidence in the knowledge/notice to party not produced during trial can be allowed to come on record at appellate stage?

Analysis: i) Pakistan Telecommunication Authority (PTA) was established under Section: 3 of Pakistan Telecommunication (Reorganization) Act, 1996 and is mandated to regulate the establishment, maintenance and operation of the telecommunication system and provision of telecommunication services in Pakistan. Prevention of Electronic Crimes Act, 2016 (hereinafter to be referred as PECA 2016) is the law which has been legislated and promulgated to prevent unauthorized acts with respect to information systems and to provide mechanism for related offences as well as procedure for investigation, prosecution, trial and international cooperation with respect thereof and matters connected therewith or ancillary thereto.
ii) Section-32 of PECA 2016 provides that "a service provider shall within its existing or required technical capability, retain its specified traffic data for a minimum period of one year or such period as the "Authority" may notify from time to time. Service providers are bound, amongst others, to maintain call data record (CDR) of its customers/users of mobile phone for a period of one year.
iii) Federal and Provincial Interior Ministries have authorized the police department under their jurisdiction and other law enforcement agencies to obtain the CDRs as and when required from the service providers. The officials, who perform said job and have been duly authorized by designation as well as other

relevant information relating to them, whereby their authority can be identified, have been shared with the service provider.

iv) The procedure for tendering CDR in evidence and proving the same would be like any other primary evidence.

v) Although any accused or witness can claim or admit possession and use of any SIM "Subscriber Identity Module' by him or anybody else at the time of occurrence or any other relevant time yet mere such claim or admission is not sufficient for relying on CDR "Call Data Record" of said SIM because CDR only shows use of SIM in territorial/geographical jurisdiction of "Cell Phone Tower" installed by telecom operator and does not disclose that who is actually/exactly carrying and using said SIM; however, "Voice Record Transcript" or "End to End Audio Recording" can reflect the detail/identification of the user. Therefore, without "Voice Recording Transcript", mere "Call Data Record" (CDR) alone of the SIM is inconclusive piece of evidence regarding identity of its user/carrier.

Even "Voice Record Transcript" or "End to End Audio/Video Recording" of the call cannot be relied upon without forensic report about its genuineness.

vi) It is well settled that if any piece of evidence was in the knowledge/notice to party but neither produced nor asked to be produced during trial then same cannot be allowed to come on record under Section: 428 Cr.P.C. at appellate stage

Conclusion: i) The mandate of Pakistan Telecommunication Authority is to regulate the establishment, maintenance and operation of the telecommunication system and its services in Pakistan and Prevention of Electronic Crimes Act, 2016 prevents unauthorized acts with respect to information systems in Pakistan.

ii) Minimum period is one year for which a service provider can retain its specified traffic data.

iii) The officials authorized by the Federal and Provincial Interior Ministries under their jurisdiction and other law enforcement agencies can obtain the CDRs as and when required from the service providers.

iv) Yes, the procedure for tendering CDR in evidence and proving the same would be like any other primary evidence.

v) Yes, without "Voice Recording Transcript", mere "Call Data Record" (CDR) alone of the SIM is inconclusive piece of evidence regarding identity of its user/carrier.

vi) A piece of evidence in the knowledge/notice to party not produced during trial cannot be allowed to come on record at appellate stage.

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16. **Lahore High Court**
Shuja-ul-Haq Malik v. The State etc.
Crl. Appeal No.51188 of 2022
Justice Miss Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC27.pdf

Facts: The appellant was convicted in case F.I.R under Section 9 (c) of The Control of Narcotic Substances Act, 1997 and acquitted of the charge under Sections 420,

468 & 471 PPC. Through the instant criminal appeal, the appellant has challenged his conviction.

Issues: i) Whether under Section 150 of Qanoon-e-Shahadat Order, 1984 the power of the Court of the examination of the witness is limited to the stage of examination-in-chief only?

ii) Whether the trial court should consider the favorable answers elicited during the course of cross-examination while passing the final judgment?

Analysis: i) Section 150 of Qanoon-e-Shahadat Order, 1984 does not in terms or by necessary implication confine the exercise of the power by the Court to any particular stage of the examination of the witness to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. It is wide in scope, and the discretion is entirely left to the Court to exercise power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice.

ii) If the prosecution witness's design was obvious, we do not see why the trial court cannot, during the course of the prosecution witness's cross-examination, permit the person calling him/them as a witness/witnesses to put questions to him/them which might be put cross-examination by the adverse party. In the course of cross-examination, when favorable answers had been elicited, the same would be considered by the learned trial court while passing the final judgment.

Conclusion: i) Under Section 150 of Qanoon-e-Shahadat Order, 1984 the power of the Court of the examination of the witness is not limited to the stage of examination-in-chief only but it also includes the cross-examination by the adverse party.

ii) Yes, the trial court should consider the favorable answers elicited during the course of cross-examination while passing the final judgment.

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17. **Lahore High Court**
Muhammad Farooq v. The State and another Criminal Appeal No.23151 of 2019
The State v. Muhammad Farooq
Murder Reference No.94 of 2019
Justice Miss Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC65.pdf

Facts: This single judgment will dispose of Crl. Appeal filed by Muhammad Farooq (appellant/convict) and Murder Reference, sent by learned trial court for confirmation of death sentence awarded to Muhammad Farooq (appellant) as both the matters have arisen out of one and the same judgment passed by learned Additional Sessions Judge/Judge.

Issues: i) If an FIR is recorded with delay and no reasonable explanation regarding its delayed recording comes on the record, whether the same is fatal for the case of prosecution?

ii) Whether the chance witnesses have to plausibly/reasonably explain and prove reason of their presence at the "time and place" of occurrence?

iii) Whether the witness who introduces dishonest improvement for strengthening the case, can be relied?

iv) Whether medical evidence is mere supportive type of evidence and it cannot tell about identity of the assailant who caused the injury?

v) When substantive piece of evidence in the form of ocular account has been disbelieved, whether motive is of any help to the case of prosecution?

Analysis: i) By now it is well settled that First Information Report lays foundation of the criminal case and when it has not been promptly recorded rather with delay as stated above and no reasonable explanation regarding its delayed recording has come on the record, then it is fatal for the case of prosecution.

ii) It is by now well settled that chance witnesses have to plausibly/reasonably explain and prove reason of their presence at the "time and place" of occurrence.

iii) By now it is also well settled that witness who introduces dishonest improvement for strengthening the case, cannot be relied.

iv) By now law is well settled that medical evidence is mere supportive type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury.

v) When substantive piece of evidence in the form of ocular account has been disbelieved, then motive is of no help to the case of prosecution as the same loses its significance; furthermore, motive is a double edged weapon and in peculiar facts of the case, can be also considered as a reason for roping the accused in the case.

Conclusion: i) If an FIR is recorded with delay and no reasonable explanation regarding its delayed recording comes on the record, then the same is fatal for the case of prosecution.

ii) The chance witnesses have to plausibly/reasonably explain and prove reason of their presence at the "time and place" of occurrence.

iii) The witness who introduces dishonest improvement for strengthening the case, cannot be relied?

iv) Medical evidence is mere supportive type of evidence and it cannot tell about identity of the assailant who caused the injury.

v) When substantive piece of evidence in the form of ocular account has been disbelieved, then motive is of no help to the case of prosecution.

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18. **Lahore High Court**
The State v. Shazam Ali
Murder Reference No.82 of 2019
Shazam Ali v. The State.
Crl. Appeal No.26723-J of 2019
Justice Miss Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC124.pdf

Facts: The appellant has assailed his conviction and sentence recorded by the learned trial court in a private complaint filed under sections 302, 392 PPC and in case FIR No.241/2017. The learned trial court also referred murder reference for confirmation of the death sentence awarded to the appellant.

Issues: i) What is the rationale for making certain statements on fact admissible under Article 19-A of the Qanoon-e-Shahadat Order, 1984?
ii) Whether even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment to accused?
iii) What inference can be drawn from non-production/summoning of relevant evidence?

Analysis: i) The rationale for making certain statements on fact admissible under Article 19-A of the Qanoon-e-Shahadat Order, 1984 is on account of spontaneity and immediacy of such statement or fact in relation to the fact in issue. But such a fact or statement must be part of the same transaction. In other words, such a statement must have been made immediately thereafter. But if there was an interval that was sufficient for fabrication, then the statement is not relevant.
ii) The well-recognized principle is that the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence. The Hon'ble Supreme Court of Pakistan holds it in the case titled "*Dilawar Hussain v. The State" (2013 SCMR 1582)* in which the Hon'ble Supreme Court of Pakistan has observed on page 1590 as under: - "---It has neither been the mandate of law nor the dictates of this court as to what quantum of mitigation is required for awarding imprisonment for life rather even an iota towards the mitigation is sufficient to justify the lesser sentence. According to our estimation, even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment as an abundant caution. In such circumstances, if the court is satisfied that there are certain reasons due to which the death sentence is not warranted, the court has no other option but to improve second sentence of imprisonment for life while extending benefit of the extenuating circumstances to the convict in a just and fair manner---."
iii) If a party does not produce/summon relevant evidence then an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984, that had the evidence produced or summoned, then such would have been unfavorable to the party.

Conclusion: i) The rationale for making certain statements on fact admissible under Article 19-

A of the Qanoon-e-Shahadat Order, 1984 is on account of spontaneity and immediacy of such statement or fact in relation to the fact in issue.

ii) Yes, even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment to accused.

iii) An adverse inference within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 can be drawn from non-production/summoning of relevant evidence.

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19. **Lahore High Court**
Muhammad Ijaz v. The State etc.
Crl. Misc. No.69898-B of 2022
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2022LHC8659.pdf

Facts: The petitioner applied for the post-arrest bail in a case FIR registered under Section 302 PPC.

Issue: Whether making photographs of the accused publically, either by showing the same to the witness or by publicizing the same in any newspaper or TV program, would create doubt in the proceedings of the identification parade?

Analysis: Making photographs of the accused publically, either by showing the same to the witness or by publicizing the same in any newspaper or TV program would create doubt in the proceedings of the identification parade. The investigating officer has to ensure that there is no chance for the witness to see the accused before going to the identification parade. The accused should not be shown to the witness in person or through any other mode, i.e., photograph, video-graph, or the press or electronic media.

Conclusion: Making photographs of the accused publically, either by showing the same to the witness or by publicizing the same in any newspaper or TV program would create doubt in the proceedings of the identification parade.

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20. **Lahore High Court**
Sheraz Ahmad, etc v. The State
etc. Crl. Rev. No.69407 of 2022
Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2022LHC8819.pdf

Facts: This revision petition is directed against the order passed by the learned Addl. Sessions Judge, Lahore, whereby the application filed by the petitioners for not charge sheeting them for the offences of the Pakistan Penal Code was declined.

Issues: i) Whether the offences falling under Section 11 of PECA, 2016 and the offences falling under sections 295-A, 295-B, 295-C & 298-C PPC can be tried together or not?

ii) Whether there is a distinction between the “same transaction” and “a similar

transaction"?

Analysis: i) The short controversy for decision in the present case is whether the offences falling under Section 11 of PECA, 2016 and the offences falling under sections 295-A, 295-B, 295-C & 298-C PPC can be tried together or not. It was specifically mentioned in Section 235(2) and Section 4(c) of the Cr.P.C says that charge contains more than one head and that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for, each of such offences. Moreover, Section 235 of the Code speaks of more offences than one committed in the course of the same transaction. As per the allegations leveled in the crime report, the alleged acts constitute offences falling under Section 11 of PECA, 2016, and the offences falling under sections 295-A, 295-B, 295-C & 298-C PPC. The ingredients of Section 11 of PECA, 2016, and under sections 295-A, 295-B, 295-C & 298-C PPC are interlinked, supplementing each other and they are not inconsistent inter-se. So, the offences under section 11 of PECA, 2016, and sections 295-A, 295- B, 295-C & 298-C of the Pakistan Penal Code, 1860 cannot be tried separately because the offences falling under Section 11 of PECA, 2016, and under sections 295-A, 295-B, 295-C & 298-C PPC are interlinked.

ii) There is a clear distinction between the "same transaction" and "a similar transaction". The continuity of action is not in the sense that one act follows the other without any connection but in the sense of an intimate connection between the different acts. Accused persons committing offences of the same kind but separately may not be regarded as having committed those offences in the course of the same transaction. The series of acts which constitutes a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions.

Conclusion: i) The offences falling under Section 11 of PECA, 2016 and the offences falling under sections 295-A, 295-B, 295-C & 298-C PPC can be tried together.

ii) Yes, there is a clear distinction between the "same transaction" and "a similar transaction".

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21. **Lahore High Court**
Arshad Mehmood v. Judge Family Court and another
Writ Petition No. 11512 of 2019
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC95.pdf

Facts: Through this petition, interim orders passed by respondent no.1 have been assailed. By virtue of the former order, right of the petitioner to cross-examine the witnesses of respondent no.2 has been struck off and through the latter, his right to produce oral as well as documentary evidence has also been closed.

Issues: i) Whether against an interim order passed by a Family Court, a writ petition is maintainable?
ii) Whether wisdom/intention of the Legislature can be looked into by High Court in exercise of its constitutional jurisdiction?

Analysis: i) In order to meet the objectives of the Act a bar has been specifically created in section 14(3) of the Act which would show that any interim order passed by the Family Court cannot be subject to challenge through an appeal or a civil revision. While interpreting such like bar of jurisdiction, it has been held by the Hon'ble Supreme Court of Pakistan that where a particular law does not provide a remedy against an interim order passed by a court exercising jurisdiction under that law, the said order ordinarily cannot be assailed by way of filing a constitutional petition with a caveat that if the order is without jurisdiction. When an interim order passed by a family court is challenged before this Court in exercise of its Constitutional Jurisdiction (which according to the judgments mentioned supra is circumscribed), interference made by this Court would not only amount to challenging the wisdom/intention of the Legislature, who has deliberately not provided any remedy against the interim order passed by the family court but it is also violative of Article 189 of the Constitution of the Islamic Republic of Pakistan. Even otherwise, such interference will also be defeating the purpose of promulgation of the Act qua expeditious disposal of the family cases.
ii) It has also been held by the Hon'ble Apex Court that wisdom/intention of the Legislature cannot be looked into by this Court in exercise of its constitutional jurisdiction.

Conclusion: i) Against an interim order passed by a Family Court, a writ petition is not maintainable.
ii) Wisdom/intention of the Legislature cannot be looked into by High Court in exercise of its constitutional jurisdiction.

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22. **Lahore High Court**
Manzoor Ahmad, etc. v. Khalid Hassan Khan, etc.
Regular First Appeal .No.7238 of 2022
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC36.pdf

Facts: Through this Regular First Appeal, the appellants have called in question order passed by learned Civil Judge whereby suit for specific performance of agreement to sell filed by the appellants under Section 12 of the Specific Relief Act, 1877, has been dismissed for failure to produce evidence.

Issues: Whether the court can pass penal order under Order XVII Rule 3 of the C.P.C when the previous order was suffering from error and not unambiguous?

Analysis: Once it is established that initial error in passing the order was committed by the court then the blame cannot be shifted to the party in view of well embedded principle that an act of court shall prejudice none. Further, right to produce evidence can only be closed under Order XVII Rule 3 of the C.P.C when on the pen ultimate date request for adjournment has been made by the party in clear terms.

Conclusion: The court cannot pass penal order under Order XVII Rule 3 of the C.P.C when the previous order was suffering from error and not unambiguous.

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23. **Lahore High Court**
MCB Bank Limited v. The Federation of Pakistan etc.
W.P.No. 77994 of 2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC13.pdf

Facts: Through the instant writ petition the petitioner has challenged the validity of order passed by the President's Secretariat (Public), Aiwan-e-Sadr whereby representation of respondent No.3 was accepted directing the petitioner-bank to compensate her forthwith as per instructions of the State Bank of Pakistan.

Issues: i) Whether in absence of any counter-affidavit the contents of the sworn affidavit are deemed to be admitted?
ii) Whether relationship of a Bank and its customer is based on trust?

Analysis: i) It is settled law that in absence of any counter-affidavit the contents of the sworn affidavit are deemed to be admitted.
ii) The relationship of a Bank and its customer is based on trust The public opt to put their valuable articles in bank lockers for security purpose and if their articles are misplaced from there and the banks will not redress their grievance in such case of loss, the very foundation of the banking system would collapse.

Conclusion: i) Yes, in absence of any counter-affidavit the contents of the sworn affidavit are deemed to be admitted.
ii) Yes, relationship of a Bank and its customer is based on trust.

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24. **Lahore High Court**
Aashiq Hussain v. Fida Hussain & others
Writ Petition No.6404 of 2020
Mr. Justice Muhammad Sajid Mehmood Sethi,
https://sys.lhc.gov.pk/appjudgments/2023LHC100.pdf

Facts: Through instant petition, petitioner has called into question order & judgment passed by learned Civil Judge and Additional District Judge, respectively, whereby petitioner's application for comparison of thumb impressions / signatures of witnesses was concurrently dismissed.

Issues: i) Where the thumb-impressions /signatures of the executant or witness of a document are denied, then on whom burden to prove lies?
ii) If party fails to apply for comparison of thumb impression or signature then whether there might be a presumption against him?
iii) Whether Courts should be liberal in accepting the applications for comparison of thumb impression or signature?

Analysis: i) Under the law, a beneficiary of the document(s) is required to establish valid execution of the transaction(s) in his favour by producing attesting / marginal witnesses. In a situation, where the thumb-impressions / signatures of the executant or witness of a document are denied, a person pleading positivity of the thumb impressions / signatures will be under a heavy burden to prove the same by seeking comparison with the admitted thumb impressions / signatures.
ii) In case of failure to opt such course by a party / beneficiary, there might be a presumption against him that had the thumb impressions /signatures of aforesaid witnesses been got compared from the expert, the report would have received against him.
iii) It is well-established by now that the Courts must take liberal view regarding acceptance of request for comparison of signatures / thumb impressions, as there is no express provision in law to decline such request. Moreover, report of the expert will tend to supplement the evidence of either party enabling the Court to reach just and correct decision and pronounce a balanced judgment.(…) It is a right of a party to seek and demand every possible assistance from the Courts of law and to hold him/her responsible only when he or she is found to have acted contrary to law. The interest of justice can only be safely dispensed after the signatures and thumb impressions of aforesaid witnesses are got verified from the expert.

Conclusion: i) A person pleading positivity of the thumb impressions / signatures will be under a heavy burden to prove the same by seeking comparison with the admitted thumb impressions / signatures, if the same is denied.
ii) If party fails to apply for comparison of thumb impression or signature then there will presumption against him.
iii) The Courts must take liberal view regarding acceptance of request for comparison of signatures / thumb impressions.

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25. **Lahore High Court**
Shumaila Sharif v. The Secretary Union Council etc.
Writ Petition No. 66288 of 2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC8696.pdf

Facts: The petitioner is a Christian divorcee who applied for NADRA to replace her father's name with his husband's name after her divorce. NADRA authorities

required a divorce certificate for which she contacted the secretary union council concerned who refused to issue the certificate on the ground that it is not issued to the Christian community.

Issues: Whether a Christian divorcee has a right like a Muslim divorcee to secure a divorce certificate from the Secretary Union Council Concerned after getting a Judicial separation?

Analysis: The preamble of our Constitution gives minorities a special status. Moreover, Art. 2A (which makes the Objectives Resolution a substantive part of the Constitution). Art. 4 (Right of an individual to be dealt with in accordance with the law) and Part II (Fundamental Rights and Principles of Policy) safeguard the rights of minorities. Further, it is the function of the Local Government to register births, deaths, marriages, and divorces and issue certificates in respect thereof. Under section 51(2)(x) of the Punjab Local Government Act, 2013, the Municipal Committees were charged with this duty. The Punjab Local Government Act, 2019 (read with the Third and Fourth Schedules), the Metropolitan Corporations, Municipal Corporations, Municipal Committees, and the Town Committees performed this function. And now, under section 33(1)(j) of the recently enacted PLGA 2022, it is the mandate of the Union Council. At this stage, it is pertinent to mention that Section 21 of the National Database and Registration Authority Ordinance, 2000, ordains that the marriage or divorce of a citizen should be reported to NADRA. The non-issuance of a divorce certificate by a Union Council is now a general issue that the Christian community is facing. This Court considers that rules/bye-laws under sections 202/203 of the PLGA 2022 are necessary to meet the situation. Accordingly, the Government of Punjab is directed to frame the requisite rules and issue notifications and letters, etc., within 90 days from the date of announcement of this judgment.

Conclusion: Legally, a Christian divorcee is also entitled to secure a divorce certificate just like a Muslim divorcee. In this regard, the lacking relevant rules and bylaws must be framed within the time period given by the court.

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26. **Lahore High Court**
All Workmen Employed by Dandot Cement Company Pvt. Ltd v. Chairman, PLAT, Lahore etc. Writ Petition No.2162

of 2022 Mr. Justice Jawad Hassan

https://sys.lhc.gov.pk/appjudgments/2022LHC8711.pdf

Facts: The Respondent No.1 filed a petition under Standing Order 11-A of the Industrial and Commercial Employment (Standing Orders) Ordinance, which was accepted by Punjab Labour Court, Rawalpindi and upheld by Punjab Labour Appellate Tribunal, Rawalpindi. The petitioners/ workmen assailed the said judgments by invoking constitutional jurisdiction.

Issues: What remedy is available to workman in case of violation of past order of court based upon compromise between employer and workman culminating into consent decree?

Analysis: It is well settled that a consent decree or order is nothing but a contract between the parties with command of the Court is superadded to it… The Standing Order No.12(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance 1968 prescribes remedy for grievance of a workman. Plain reading of the order ibid shows that the petitioner was available with remedy under Section 33 of The Punjab Industrial Relations Act 2010 (Act XIX of 2010).

Conclusion: In case of violation of past order of Court based upon compromise between employer and workman culminating into consent decree appropriate remedy is available to workman under section 33 of the Punjab Industrial Relations Act 2010.

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27. **Lahore High Court**
Writ Petition No. 607 of 2019
Shahid Aziz v. Chairman Punjab Labour Appellate Tribunal, Multan and 4 Others Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2020LHC4389.pdf

Facts: This constitution petition impugned the order of Chairman, Punjab Labour Appellate Tribunal who has dismissed the appeal against judgment, whereby petition against his termination from service has been dismissed.

Issues: i) Whether lack of basic qualification or failure to meet with the eligibility criteria can be cured by attaining said qualification or higher qualification subsequently?
ii) Whether the appointee is bound by the terms and conditions mentioned in the appointment letter?
iii) Whether principle of *Locus poenitentiae* would help where basic appointment order was issued without lawful authority?

Analysis: i) In case the appointees were qualified for appointments, their appointments could not be terminated due to any lapses, laxities and irregularities committed by Government itself during the appointment process but the said benefit would not be available to appointees who at the time of their initial appointments, lacked basic qualifications, requirements and eligibilities, unless the same is permitted by the statute, rules, regulations, policy decision or the advertisement through which applications for appointment are invited. Any time spent in rendering the said service would not cure the defect in his appointment.
ii) It is settled by now that tentative appointment would always be subject to verification of character and antecedents as per conditions mentioned in the appointment letter. The appointee could not claim immunity against termination by claiming a vested right for appointment if clause of appointment letter/contract

clearly depicts that appointment was tentative and subject to conditions mentioned in the appointment letter.

iii) The principle of *Locus poenitentiae* confines the powers of the authorities for receding its decisions to a time frame till a decisive step is taken, but the said principle of law does not provide that every order once passed becomes irrevocable, rather it is subject to certain exceptions, which includes power to recede an order even after the same has taken effect in cases where the said order is illegal, unlawful, *corum non judice,* without jurisdiction or lawful authority on any other defect that strikes down the root of the matter for the reason that perpetual rights cannot be gained on the basis of an order suffering from any of the said vices.

Conclusion: i) Lack of basic qualification or failure to meet with the eligibility criteria is a defect which cannot be cured by attaining said qualification or higher qualification subsequently.

ii) The appointee is bound by the terms and conditions of his contract mentioned in the appointment letter.

iii) Where basic appointment order was issued without lawful authority, then superstructure built thereupon would fall on the ground automatically and the principle of *Locus poenitentiae* would not help.

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28. **Lahore High Court**
Haji Arshad Mehmood v. Farrukh Imtiaz Khokhar, etc. Crl.Misc.No.2759-CB of 2022
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC20.pdf

Facts: The petitioner challenged the order passed by an Additional Sessions Judge whereby pre-arrest bail was granted to the respondent No.1 in case FIR for offences under Sections302, 109, 148, 149 & 114 PPC.

Issues: (i) Whether a bail granting order can be recalled on the ground of perversity?
(ii) How the culpability of an accused in reference to the charge of abetment and criminal conspiracy is to be assessed?

Analysis: (i) The concession of bail extended in favour of an accused can be recalled on various grounds, foremost out of which is the perversity of impugned order. The term 'perverse' stands for a decision passed contrary to the judicial and statutory directions.

(ii) Offences of abetment and criminal conspiracy hail from the genesis of the crime, wherein collection of direct evidence is nothing less than a hard nut to crack. The abetment is always co-related with the main crime, whereas criminal conspiracy is an independent offence under Section 120-A PPC and in both of them the delinquents make sure to maintain secrecy. In the given circumstances, the culpability of an accused in reference to the charge of abetment and criminal

conspiracy is to be assessed from the attending circumstances through a pragmatic and dynamic approach.

Conclusion: (i) A bail granting order can be recalled on the ground of perversity.
(ii) The culpability of an accused in reference to the charge of abetment and criminal conspiracy is to be assessed from the attending circumstances through a pragmatic and dynamic approach.

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29. **Lahore High Court**
Nadeem Sultan & another v. Hamza Shamim & 2 others Criminal Revision No.91 of 2022
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2022LHC8703.pdf

Facts: The instant petition moved under Sections 435 & 439 of the Code of Criminal Procedure, 1898 (" Cr.P.C") read with Article 203 of the Constitution of Islamic Republic of Pakistan, 1973 is aimed at challenging the correctness, legality and propriety of order whereby the Sessions trial stemming out of FIR was adjourned *sine die.*

Issues: i) What does the term "*sine die*" means and whether in Sessions trials such an order can be passed or not?
ii) Whether the abscondence of the co-accused is a reasonable cause for an order of *sine die* adjournment under Section 344 (1) Cr.P.C.?

Analysis: i) The term "*sine die"* is a Latin word not defined anywhere in the Cr.P.C. In the Black's Law Dictionary 10th Edition, the term *sine die* is defined as "without day - with no day being assigned - to end a deliberative assembly's or court's session without setting a time to reconvene." In Webster's Unabridged Dictionary, 2nd Edition, following meanings are assigned to sine die; "without fixing a day for future action or meeting." The Sessions trials are to be carried out in consonance with the procedure laid down in Chapter XXII-A, where no express provision is provided whereby a Sessions trial can be adjourned for an indefinite period, without an actual date. Section 344 Cr.P.C does not enable the Sessions Court to adjourn the case without any date or for an indefinite period. The use of expression "from time to time" sheds no ambiguity rather manifests that the case can only be adjourned for a specific date and not for an indefinite period.
ii) The postponement or adjournment of a case under Section 344 (1) Cr.P.C can be made due to absence of witnesses or for any other reasonable cause. The recording of prosecution evidence will indeed preserve the statements of prosecution witnesses and if someone out of them is not available due to death or for any other reason upon the arrest of absconding co-accused, his deposition will legally be brought on record in terms of Article 47 of Qanun-e-Shahadat Order, 1984. According to Article 47, the evidence given by a witness in judicial proceeding is relevant in a subsequent judicial proceeding between the same

parties, if such witness is dead or cannot be found or becomes incapable of giving evidence or is kept out of the way by the adverse party.

Conclusion: i) Section 344 Cr.P.C, curtails the powers of Sessions Judge to keep the case pending without passing order of adjournment or to adjourn the case *sine die* for an indefinite period.

ii) The abscondence of the co-accused is not a reasonable cause for an order of *sine die* adjournment under Section 344 (1) Cr.P.C.

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30. **Lahore High Court**
Rana Muhammad Yousaf Khan Advocate v. The State, etc.
Crl. Misc. No.61551-M of 2022 Mr. Justice Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC115.pdf

Facts: By invoking inherent jurisdiction of this Court in terms of Section 561-A Cr.P.C., the petitioner/accused has challenged the vires of order passed by the learned Magistrate Section 30, Gojra, wherein, application filed by the petitioner under Section 249-A of Code of Criminal Procedure, 1898 (Cr.P.C) was turned down and order, whereby, Criminal Revision filed against the order was dismissed by the learned Additional Sessions Judge, Gojra, District T.T.Singh, who upheld the order of learned Judicial Magistrate.

Issues: i) Whether an embargo can be imposed upon the accused to file application u/s 249-A Cr.P.C., seeking his acquittal at any stage of the case?

ii) Whether powers under Sections 249-A and 265- K Cr.P.C available to the learned Trial Court are similar to powers of High Court u/s 561-A of Cr.P.C?

iii) Whether Audio Tape is admissible in evidence before court of law?

Analysis: i) On going through the above provision of law, it is clear that no embargo has been imposed upon the accused to file application u/s 249-A Cr.P.C., seeking his acquittal at any stage of the case and only certain conditions have been described therein, firstly, that the Court has to give the right of hearing to the prosecutor and the accused and if reaches to the conclusion that the charge against the accused is groundless or there is no probability of accused being convicted of any offence, he shall be acquitted of the charge through an order in which such reasons have to be recorded for reaching to the conclusion that charge(s) against the accused is/are baseless.

iii) There is no cavil with the proposition that powers under Sections 249-A and 265- K Cr.P.C available to the learned Trial Court are similar to powers of High Court u/s 561-A of Cr.P.C.

iii) The relevant provision regarding evidence prepared through modern devices is Article 164 of QANUN-E-SHAHADAT ORDER, 1984. However, in the light of Article 164 supra the august Supreme Court of Pakistan in case of "ISHTIAQ AHMED MIRZA and 2 others versus FEDERATION OF PAKISTAN and

others" (PLD 2019 Supreme Court 675), has laid down the following criteria regarding admissibility of an audio tape or video in evidence before a Court of law and the mode and manner of proving same before the Court.

Conclusion: i) No embargo can be imposed upon the accused to file application u/s 249-A Cr.P.C., seeking his acquittal at any stage of the case.
ii) Powers under Sections 249-A and 265- K Cr.P.C available to the learned Trial Court are similar to powers of High Court u/s 561-A of Cr.P.C.
iii) Audio Tape is admissible in evidence before court of law but subject to the criteria provided by the superior courts.

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31. **Lahore High Court, Lahore**
Mafaiza Begum v. Ghazwana Perveen and others C.R. No. 1157 of 2011
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8668.pdf

Facts: This civil revision calls into question judgments and decrees of the courts below, whereby suit of respondent No.1 seeking declaration to the extent of her entitlement to 1/3rd share in the estate of her grandfather thereby challenging certain inheritance mutations reflecting her share as 1/6th instead of claimed 1/3rd was decreed.

Issues: i) Having not been raised in pleadings, whether a new plea may be raised in Civil Revision before High Court?
ii) What rule comes into application whilst dealing with residue share after distributing share to daughter of pre-deceased son of a propositus?

Analysis: i) If the plea is not raised in pleadings, no issue can be framed nor any evidence may be produced to raise or prove such plea.
ii) According to Shariah the heirs of predeceased children would inherit what their father or mother would have inherited during their lifetime on the opening of succession and, as per section 4 of the Muslim Family Laws Ordinance, 1961, the share from the deceased grandfather would be endowed to children of the predeceased son but this would not mean that the other heirs of the deceased would be excluded from their share of inheritance.

Conclusion: i) A plea that was not initially raised in the pleadings or in the evidence cannot be raised later in a Civil Revision before High Court.
ii) After distributing share to daughter of pre-deceased son of a propositus, residue shall be controlled by application of the rule that the nearer in degree will exclude the more remote.

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32. **Lahore High Court**
Rana Karamat v. Farhan Haider and others W.P. No. 53269 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC8662.pdf

Facts: This Constitutional Petition arises from orders of the courts below in terms whereof petitioner's application for setting aside of ex parte proceeding was dismissed which order was also affirmed in appeal.

Issues: i) Whether in ex parte proceedings the defendant can participate in proceedings of the case?
ii) Whether defendant proceeded ex parte can be allowed to become part of proceedings recorded in his absence?

Analysis: i) It has been consistently ruled that in case the defendant is proceeded against ex parte s/he cannot be deemed to be a dead person for future proceedings and in facts s/he can appear and join the proceedings from the stage at which s/he appeared in the suit. In case s/he does not apply for setting aside of ex parte proceeding order or if the ex parte proceeding order is not set aside, still s/he can join the proceedings from the stage of his appearance and if the case is at evidence stage, s/he could cross-examine the witnesses and produce own evidence in rebuttal.(…) In other words under Rule 7 of Order IX, C.P.C. the absentee defendant cannot be relegated to the position s/he would have occupied had s/he appeared, unless "good cause" is demonstrated for previous non-appearance and if such defendant appears on the adjourned hearing the defendant cannot be stopped from participating in the proceedings simply because of default in appearance from the first or some other hearing..
ii) The petitioner will not be entitled to get the proceedings which were recorded in his absence set aside as he could not show any "sufficient cause"; but he will be entitled to join the proceedings from the stage he had appeared in the suit for setting aside of ex parte proceedings order and shall be entitled to cross-examine the witnesses of the opposite side if their statements had not been recorded by then and will also be entitled to produce his own evidence in defense.

Conclusion: i) In case the defendant is proceeded against ex parte s/he cannot be deemed to be a dead person for future proceedings and in facts s/he can appear and join the proceedings from the stage at which s/he appeared in the suit.
ii) The defendant proceeded ex parte without showing "sufficient cause" cannot be allowed to be part of proceedings recorded in his absence.

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33. **Lahore High Court**
Zaka Ud Din Malik v. Federation of Pakistan, etc.
W.P. No.50314 of 2022
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC8733.pdf

Facts: This and connected constitutional petitions throw challenge to the constitutionality of Section 8(2)(b) of the Finance Act, 2022 ("Act of 2022") on the premise of being nonconforming to the constitutional requirements; substantially on two-counts, firstly, that the law legislated, whereby it had allegedly taxed the foreign assets of the petitioners, is not within the territorial grasp of the Parliament; and secondly, the absence of legislative competence, because matter of taxing immovable property exclusively falls within the legislative domain of the provincial legislature(s).

Issues: i) Under what law, the power to legislate qua the resident person is drawable, when matter is covered under entry 50 of the Federal Legislative List?

ii) Whether the second half of entry 50 of the Fourth schedule of the Federal Legislative List which provided for taxes on the immovable property, is excluded from the legislative domain of the Parliament?

iii) Whether the Parliament can legislate law to tax foreign based assets of the person [domiciled in the foreign territories / jurisdiction(s)] in violation of rule of 'presumption against extraterritoriality'?

Analysis: i) Parliament, under entry 50, is competent to make laws to tax on the capital value of foreign assets – it is not the foreign assets, inter alia comprising of immovable property(ies), [real properties], which are essentially taxed through section 8(2)(b) of Act, 2022 but capital value of assets of a resident individual, as defined in Section 13(f) of the Act, 2022 and power to legislate qua the resident person is cleanly draw able under Article 142(a) of the Constitution of 1973, when matter is covered under entry 50 of the Federal Legislative List.

ii) Expression 'assets' in the context of capital value, manifests enumerated / specific genus, which has wider connotation in the context of the word 'immovable property', and latter otherwise restricts the meaning of the 'assets'. Entry 50, read disjunctively, comprised of two separate parts, each of which part describes / caters for a distinct and separate class / category of taxes; first half of the entry 50 provisioned for the authority to tax on capital value of the assets, and latter half provided for taxes on the immovable property, which category of taxes is excluded from the legislative domain of the Parliament. In view of the above, entry 50 manifests two separate and individual category of taxes and rules of statutory interpretation are not attracted, in the absence of requisite conditions for attracting rule of Noscitur a socii or/and Ejusdem Generis.

iii) Article 141 of the Constitution envisages extent of domain of Federal and Provincial laws and authorizes the Parliament to make laws, including laws having extra territorial operations. Article 143 of the Constitution has no application in absence of any inconsistency at all. No instance of overlapping /

occupied legislative field(s) arises in the context of distinctiveness of the subject matter tax and tax on immovable properties, each possessing different characteristics. Classification of the class / category subjected to tax is neither arbitrary, ex-proprietary nor discriminatory, which identified and differentiated persons based on the classification of those having foreign assets. The exclusion provided through the expression 'not including' qualifies the authority / legislative powers of the Parliament No redundancy or superfluousness could be attributed to second part of entry 50, which protected the legislative authority of the provinces to tax the immovable property, leaving no room for conjectural debate, speculation qua applicability of linguistic canons of construction, which otherwise defined the scope and extent of tax on capital value of assets and tax on immovable property, latter possessing distinguishing characteristics / features and otherwise coming within the legislative domain of the provincial legislature(s). It is reiterated that expression 'not including' is suggestively construable as 'other than' and 'except' to preserve the harmonious totality of entry 50 – which excludes the application of rule of Noscitur a socii or/and Ejusdem Generis. No fault is found in exercise of legislative powers by the Parliament under entry 50 of the Federal Legislative list, which matter is within the competence of Parliament in terms of Article 142(a) of the Constitution of Pakistan.

Conclusion: i) The power to legislate qua the resident person is draw able under Article 142(a) of the Constitution of 1973, when matter is covered under entry 50 of the Federal Legislative List.

ii) Yes, the second half of entry 50 of the Fourth schedule of the Federal Legislative List which provided for taxes on the immovable property is excluded from the legislative domain of the Parliament.

iii) Yes, the Parliament can legislate law to tax foreign based assets of the person [domiciled in the foreign territories / jurisdiction(s)].

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34. Lahore High Court
Shabbir Ahmad v. Additional District Judge, Multan, etc.
Writ Petition No.3227 of 2022.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC104.pdf

Facts: Through this Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner assailed the vires of orders/judgments, whereby the learned Courts below dismissed his application for correction of order and decree concurrently.

Issues: Whether the omission in the decree to expressly contain reliefs could be supplemented in exercise of the authority under section 152, C.P.C.?

Analysis Plain reading of said Section it appears that the Court under section 152, C.P.C. is not only competent to correct clerical or arithmetical mistake in the judgment, decree or order but may correct accidental slip or omission as well. Section 152,

C.P.C. can be conveniently divided into two parts. First half of the section provides authority to correct "clerical or arithmetical mistake in the judgment, decree or order", other half after or provides authority to correct error arising thereon from any accidental slip or omission. Use of word "or" indicates that, such powers to correct are not conjunctive but disjunctive and qualified. To correct clerical or arithmetical mistake, it means when some mistake either in calculation or numerical figures creeps in, which figures could be verified from the record, or where any party, property or fact has been incorrectly described or where some typographical error has crept in. Second half of the Section 152 (ibid) contemplates "error arising thereon from any accidental slip or omission". Catchword in phrase "accidental slip or omission" as used in section 152, C.P.C. is "accidental", it qualifies „slip" and „omissions". Thus it could be said that "accidental slip or omission" as used in section 152 C.P.C. means „to leave out or failure to mention something unintentionally". Thus, it could be safely said that it is only where the slip or omission is accidental or unintentional it could be supplemented or added in exercise of jurisdiction conferred under section 152 C.P.C. Such course is provided to foster cause of justice, to suppress mischief and to avoid multiplicity of proceedings.

Conclusion: The Court under section 152, C.P.C. is not only competent to correct clerical or arithmetical mistake in the judgment, decree or order but may correct accidental slip or omission as well. Omission in the decree to expressly contain reliefs could be supplemented in exercise of the authority under section 152, C.P.C

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35. **Lahore High Court**
Muhammad Hanif v. The State etc.
Criminal Revision No.173 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC76.pdf

Facts: The order, declining the application filed u/s 466 of Cr.P.C. (the code) for bail of insane bother of applicant, is assailed through this revision petition.

Issues: (i) What process is to be adopted by the court to attend legal disability?
(ii) What is meant by "trial within a trial" and when it is to be preferred?
(iii) What law requires if accused is fit to face the trial but claims unsoundness of mind at the time of commission of offence?
(iv) What is M'Naughton Rule and what outcome its application has?
(v) How the diminished criminal liability due to insanity can be adjudged?

Analysis: (i) Section 465 of the Code of Criminal Procedure requires the court to try first the fact of unsoundness and incapacity of accused to make his defence in order to ensure that accused understand the proceedings of trial against him so as to make the evidence admissible at trial. Such trial includes the examination of witnesses of accused, report of a medical board, examination of doctors/expert, cross examination by the prosecution or the complainant on such witnesses and expert

and recording of any other evidence seems necessary followed by arguments of the parties and an order that accused is of unsound mind and incapable to make his defence or otherwise and such record shall be part of his main trial before the court. As per section 466 CrPC, if court concludes that accused is of unsound mind, further proceedings shall be postponed and order to release the accused on bail or his detention in safe custody must be passed. If it is concluded that accused has not committed the offence, he would be set at liberty or would still be kept or detained in safe custody under section 471 of the Code. If the accused is later declared fit to be released, the procedure laid down u/ss 474 & 475 of the Code shall follow as may be practicable.

(ii) The concept of "trial within a trial" is known as *voir dire*, meaning 'to speak the truth' a recognized term to try a fact within the trial. In a trial, certain primary facts are to be proved as condition precedent to the admissibility of certain evidence. Such questions are also matter of law for the judge to adjudicate upon them first. For example if a party seeks to adduce a video clip or audio recording in the evidence, the question of its being genuine or non-tempered shall be decided first before its admission to evidence.

(iii) If accused is fit to face the trial but claims unsoundness of mind at the time of commission of offence, then section 469 of the Code requires that trial would proceed in a normal course led through prosecution evidence first including evidence of mental health of accused at the time of commission of offence and other circumstantial evidence regarding offence. After that, the accused can lead the evidence to rebut the prosecution evidence as well as adducing anything favouring or supporting his plea.

(iv) M'Naghten's Case (1843 10 C & F 200) have been a standard test for criminal liability in relation to mentally disordered defendants in common law jurisdictions. Under this M'Naghten test, all defendants are presumed to be sane unless they can prove that at the time of committing the criminal act, the defendant's state of mind caused him to (a) not know what he was doing when committed said act, or (b) that he knew what he was doing, but did not know that it was wrong. The M'Naughton Rule is incorporated in section 84 of Pakistan Penal Code, 1860.

(v) The diminished criminal liability due to insanity can be adjudged while relying on legal precedents developed on different set of facts and mania determined by the medical experts; In "R v Arnold (1724) 16 How St. Tr. 765" , the test for insanity was expressed in the following terms: Whether the accused is totally deprived of his understanding and memory and knew what he was doing "no more than a wild beast or a brute, or an infant". The next major advance occurred in "Hadfield's Trial 1800 27 How St. Tr. 1281" in which the court decided that a crime committed under some delusion would be excused only if it would have been excusable had the delusion been true.

Conclusion: (i) The process prescribed in sections no 465, 466,471, 474 and 475 of the Code of Criminal Procedure is to be adopted by the court to attend legal disability.

(ii) The concept of trial within a trial is known as "voir dire" a recognized term to

try a fact within the trial. In a trial there are certain primary facts which are must to be proved as condition precedent to the admissibility of certain items of evidence.
(iii) The process prescribed in section 469 of the Code of Criminal Procedure is to be adopted by the court when accused is fit to face the trial but claims unsoundness of mind at the time of commission of offence.
(iv) M'Naughton Rule is the first legal test for criminal insanity and such disability is claimed under said Rule for diminished responsibility.
(v) The diminished criminal liability due to insanity can be adjudged while relying on legal precedents developed on different set of facts and mania determined by the medical experts.

LATEST LEGISLATION/AMENDMENTS

1. Substitution of sections 3 and 8, addition of sections 10AA and 10AAA and amendments in sections 4, 5, 7 and 9 in The Punjab Holy Quran (Printing and Recording) Act, 2011(XIII of 2011) vide The Punjab Holy Quran (Printing and Recording) (Amendment) Act, 2022
2. Vide Notification No. SO(JUDI-II)8-2/2019 dated 28.12.2022 published in Punjab Gazette (Extraordinary) Darya Khan, District Bhakkar is declared as the place of sitting of Court of Sessions.
3. Vide Notification No. SO(JUDI-II)8-2/2019 published in Punjab Gazette (Extraordinary) Tehsil Chowk Sarwar Shaheed, District Muzaffargarh is declared as the place of sitting of Court of Sessions.
4. Sr. No.18 and 31 of The Punjab Agriculture Department (On Farm Water Management) Recruitment Rules, 2003 are amended.
5. In the second schedule of The Punjab Government Rules of Business, 2011 under the heading "Board of Revenue" under sub-heading (d) "Revenue Department" entries at serial numbers 44 & 72 (at item (Ixxi) are omitted and entries at serial numbers 51 & 57 are inserted.

SELECTED ARTICLES

1. **MANUPATRA** https://articles.manupatra.com/article-details/Article-Analysis-Should-We-Let-Computers-Get-Under-Our-Skin-James-H-Moor

Article Analysis: "Should We Let Computers Get Under Our Skin", James H. Moor by Avnee Byotra & Jayshree Priya

"Should we let computers get under our skins?" an article written by 'James H. Moor' in which he had discussed about that if we (humans) are converting to "Cyborgs" i.e. part humans and part computers. And he also discusses that if it is happening, then what should be the ethical limits that should be imposed on to control this situation. This paper will try to analyze the texts by putting forward the summary of the different arguments and views which were given by Moor in the article written by him. This paper analyses each argument and will side by side give opinion on each argument. This paper will try to feature the current

scenario and the future consequences of the act. Being a policy maker the author will try to figure out that where a line should be drawn between therapy and enhancement, and will also analyze the three important areas that were propounded by Moor which include; "Privacy, Consent, Fairness". To end of this paper a conclusion has been drawn, which says how with rapid advancement of technology, the creation of cyborgs would affect the social life.

2. **MANUPATRA** https://articles.manupatra.com/article-details/Analysis-of-Trust-Doctor-Patient-Relationship

Analysis of Trust: Doctor-Patient Relationship by Akriti Kumari

Recently, a psychiatrist in New Delhi told the patient's sexual orientation to his mother. The patient was a 19-year-old boy who had specifically mentioned that he was fearful of his parent's reaction and the consequences if they were to know about it. It's unclear as to what was the exact reason for her to pass on such a piece of private information, but it is and should be a clear case of medical negligence. The professionals need to handle much more private and intimate information about their patients, and they cannot be expected to go about communicating the same to others. It has a wider implication on the overall health of the country. The idea of confidentiality is as much technical as it is sympathetic and demands the doctors to be understanding. To teach future doctors to keep their values, beliefs, and stereotypes aside while dealing with a patient and their information is non-negotiable and should be sacrosanct.

3. **MANUPATRA** https://articles.manupatra.com/article-details/Vigilance-Commission-Checks-and-Balances

Vigilance Commission Checks and Balances by Rishabh Singh

Today, corruption is a serious problem in every country, but it is particularly pervasive in India. Each year," The Berlin-based non-governmental organization Transparency International publishes a corruption perception index of all the world's countries". Out of 180 countries, India is ranked 85th in 2021.As can be seen from the Green Light strategy, it has a favourable opinion of the state. The green light strategy emphasizes how crucial it is for administrative law to support government operations rather than obstruct them through judicial or political scrutiny. This example shows how the law can be used as a weapon against administrative authority by acting as an enabling tool. Vigilance is a portmanteau of objectivity, efficiency, reliability, and openness. It is crucial to resolve issues quickly while upholding consistency, openness, and fairness. The speedy conclusion of cases determines the efficacy of "vigilance.

4. **MANUPATRA** https://articles.manupatra.com/article-details/Environmentalism

Environmentalism by Abhyuday

Environment has always played an important role in everyone's life as the sole existence of life on earth is dependent on environment. Earth is not only a home to humans but also to other life forms be it smallest to the largest like blue whale.

We all are dependent on the environment for food, water, clothes and shelter so, it is our duty to protect the environment as misuse of the environmental resources have always caused problem. This article highlights the initiation of

5. **SPRINGER LINK**
https://link.springer.com/article/10.1007/s11196-022-09926-1

Regulatory Artifacts: Prescribing, Constituting, Steering by Giuseppe Lorini, Stefano Moroni & Olimpia Giuliana Loddo

Generally, when thinking of artifacts, one imagines "technical artifacts". Technical artifacts are those artifacts that perform a mere causal function. Their purpose is to instrumentally help and support an action, not to change behaviour. However, technical artifacts do not exhaust the set of artifacts. Alongside technical artifacts there are also artifacts that we can call "cognitive artifacts". Cognitive artifacts are all those artifacts that operate upon information in order to improve human cognitive performances. Artifacts of a further, different kind are what we may call "regulatory artifacts"; that is, material artifacts devised and made to regulate behaviour. Consider a roundabout, a traffic light or a speed bump. These artifacts do not make us stronger, faster, or more intelligent. They are placed on the road surface to regulate traffic. This article investigates artifacts of this third kind and, especially, the functions that they perform.