

# LAHORE HIGH COURT BULLETIN



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## FORTNIGHTLY CASE LAW BULLETIN

(01-01-2023 to 15-01-2023)

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

### JUDGMENTS OF INTEREST

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**1. Supreme Court of Pakistan  
The Commissioner, Inland Revenue, Karachi. v.  
M/s Attock Cement Pakistan Limited, Karachi  
Civil Appeals No. 1422 of 2019  
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan  
Mandokhail  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.a. 1422 2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.a. 1422 2019.pdf)**

**Facts:** Through this Appeal, the petitioner has assailed the judgment whereby the order passed by the Appellate Tribunal was maintained, directing refund for the respondents and another sum for the spare parts as goods within the contemplation of tax regime as enforced for the period 1996-97.

**Issues:**

- i) Whether the adjustment of ‘input tax’ from the ‘output tax’ provided under section 7(1) of the Sales Tax Act can be availed without any limitation of time?
- ii) What is relevant provision of the Sales Tax 1990 dealing with refund of tax claimed to have been ‘paid or over paid’ through ‘inadvertence, error or misconstruction’?
- iii) Whether there is period of limitation prescribed for seeking the refund under section 66 of the Sale Tax Act 1990?

**Analysis:**

- i) The provision does not stipulate any condition or restriction of time for adjustment of the ‘input tax’ from the ‘output tax’ payable in respect of taxable supplies made in a tax period. The stipulation of time, that is, a tax period, is with regard to determining the tax liability of the ‘output tax’ on taxable supplies made by the tax payer during that period, and does not relate to the period of payment of ‘input tax’ on the taxable supplies received by him.
- ii) Section 66 of the Sale Tax Act 1990 provides for refund of tax claimed to have been ‘paid or over paid’ through ‘inadvertence, error or misconstruction’ and prescribes a period of one year for preferring such claims.
- iii) The period of limitation prescribed for seeking the refund under section 66 of the Sale Tax Act 1990 is one year from the date of over-payment of tax that is, when ‘output tax’ was paid by the registered person without adjusting the ‘input tax’.

**Conclusion:**

- i) The adjustment of ‘input tax’ from the ‘output tax’ provided under section 7(1) of the Sales Tax Act can be availed without any limitation of time.
- ii) Section 66 of the Sale Tax Act 1990 provides for refund of tax claimed to have been ‘paid or over paid’.
- iii) The period of limitation prescribed for seeking the refund under section 66 of the Sale Tax Act 1990 is one year.

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**2. Supreme Court of Pakistan**

**Naeem Tahir and others v. Jahan Shah alias Shah Jehan and others**  
**Civil Petition No.2633 of 2019**

**Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar**

[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 2633 2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 2633 2019.pdf)

**Facts:** A civil misc. application was filed before the Supreme Court on behalf of some of the respondents through which they filed a document without any explanation of the same.

**Issues:** Whether mere filing of documents through a concise statement or an application without any explanation accords with the Supreme Court Rules, 1980?

**Analysis:** If there is a practice of merely filing documents through a concise statement or an application without any explanation, as contended by the learned counsel, it does not accord with the Supreme Court Rules, 1980 ('the Rules') nor with common sense. An application or concise statement must mention the purpose of its filing. Rule 1 of Order XVIII of the Rules stipulates that 'concise statements of the facts of the case and the arguments upon which they propose to rely' are to be mentioned therein. And, Order XVIII is also applicable to supplemental proceedings, which would include applications. Simply filing a document without explaining what it is and /or what is its effect would not put the other side on notice, as to purpose of its filing. Documents which are filed either through an application or a concise statement (save exhibits or pleadings) should be explained in the application/concise statement or in the affidavit in support thereof.

**Conclusion:** Mere filing of documents through a concise statement or an application without any explanation does not accord with the Supreme Court Rules, 1980.

**3. Supreme Court of Pakistan**

**Shahbaz Akmal v. The State through**  
**Prosecutor General Punjab, Lahore and another**  
**Criminal Petition No. 1496 of 2022**

**Mr. Justice Qazi Faez Isa, Mr. Justice Muhammad Ali Mazhar**

[https://www.supremecourt.gov.pk/downloads\\_judgements/crl.p. 1496 2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 1496 2022.pdf)

**Facts:** Through this petition the petitioner has sought post-arrest bail in a murder case.

**Issues:**

- i) Whether a bail application on the same ground can be repeated before the same court?
- ii) Whether a detained accused can be made to suffer because his advocate elects to strike?
- iii) Whether the exercise of authority is a sacred trust?
- iv) Whether action detrimental to the liberty of anyone can be taken?
- v) Whether a court has to wait for the complainant's advocate?

vi) Whether it is duty of bar councils of Pakistan to ensure the prestige of legal profession?

**Analysis:**

i) In the case of Nazir Ahmed (a judgment by a three -Member Bench of Hon'able Supreme Court) it was held that another bail application on the same ground cannot be repeated before the same court. And, if a bail application is withdrawn during the subsistence of a ground on which bail is sought it cannot be taken again if the bail application was withdrawn. The said decision was endorsed in the case of Muhammad Aslam (a judgment by a five -Member Bench of Hon'able Supreme Court).

ii) A detained accused must not be made to suffer because his advocate elects to strike or does so in solidarity with his colleagues. The Pakistan Bar Council has enacted the 'Canons of Professional Conduct and Etiquette of Advocates' which stipulates that, 'It is duty of the Advocates to appear in Court when a matter is called and 'make satisfactory alternative arrangements' if he is unable to. The advocate representing an accused must discharge his duty towards his client. If an advocate strikes for a lesser or personal reason it would be appropriate to first return the professional fee received from the client. An advocate should not strike at the expense of the client.

iii) The Constitution of the Islamic Republic of Pakistan ('Constitution') commences by stating that the exercise of authority is a sacred trust. If an advocate representing a detained accused does not attend court he fails to perform his professional duty and breaks his client's trust. An accused person like any other has the inalienable right to 'enjoy the protection of law and to be treated in accordance with law' but if advocates strike and trials are postponed this constitutional right of the accused is negated.

iv) The Constitution also mandates that 'no action detrimental to the liberty of anyone be taken except in accordance with law, therefore, if the trial of a detained accused is delayed on account of strike, and subsequently, the accused is acquitted then the additional incarceration suffered by the accused would have been detrimental to his liberty. Amongst the designated Fundamental Rights of an accused there is also the right to a fair trial and due process which rights are premised on proceeding with the trial of a detained accused.

v) It is clarified that a court does not have to wait for the complainant's advocate to attend court, much less adjourn a case due to his absence, because the State counsel, employed at taxpayers' expense, is required to prosecute cases.

vi) All provincial bar councils and the Pakistan Bar Council undoubtedly would remind advocates of their professional duties and would ensure that the prestige of the legal profession is not undermined by advocates who strike for a lesser cause than to protect and defend the Constitution in the public interest.

**Conclusion:**

i) A bail application on the same ground cannot be repeated before the same court.



- ii) A detained accused cannot be made to suffer because his advocate elects to strike.
- iii) Yes, the exercise of authority is a sacred trust.
- iv) Action detrimental to the liberty of anyone cannot be taken.
- v) A court has not to wait for the complainant's advocate and State counsel is required to prosecute cases in his absence.
- vi) Yes, it is duty of bar councils of Pakistan to ensure the prestige of legal profession.

**4. Supreme Court of Pakistan**  
**Amir Faraz v. The State**  
**Criminal Petition No.475 of 2022**  
**Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din-Khan, Mr. Justice Syed Hasan Azhar Rizvi**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/crl.p.475.2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.p.475.2022.pdf)

**Facts:** Through this Criminal Petition, petitioner / complainant of case sought cancellation of post arrest bail which was granted to respondent No.2 who is accused in the said FIR.

**Issue:**

- i) Whether the opinion of second investigation officer holding the complainant party aggressor can be believed at the stage of bail specially when accused party has neither agitated it nor moved for any cross-version?
- ii) Whether bail granting order can be cancelled if the same is perverse?

**Analysis:**

- i) No doubt, the opinion of the Investigating Officer has some persuasive value, if the same is based upon a strong and concrete material which is lacking in the present case. Some co-accused earlier filed petition for protective pre-arrest bail before the Lahore High Court and in the said petition, it is nowhere asserted that complainant party was aggressor nor any ground regarding cross-version, was agitated, meaning thereby that at that time, this plea was not taken by the respondent and was subsequently agitated, due to which the subsequent Investigating Officer formed the said opinion and due to this circumstance his opinion has no persuasive value at the stage of bail and it would be the trial Court which after recording the evidence will appreciate this aspect of the case.
- ii) It is settled law that bail granting order could be cancelled if the same was perverse. An order which is, inter-alia, entirely against the weight of the evidence on record, by ignoring material evidence on record indicating, prima-facie, involvement of the accused in the commission of crime, is always considered as a perverse order, which is in present case as material evidence on the record brought by prosecution promptly, was not given any weight by the High Court and a perverse order was passed upon a baled opinion of second Investigating Officer. ... Of course, bail can be cancelled if bail granting order is erroneous and resulted into miscarriage of justice.

- Conclusion:** i) The opinion of second investigation officer holding the complainant party aggressor cannot be believed at the stage of bail specially when accused party has neither agitated it nor moved for any cross-version.  
ii) Bail can be cancelled if bail granting order is perverse, erroneous and resulted into miscarriage of justice.

**5. Supreme Court of Pakistan**  
**Nasir Ahmed v. The State.**  
**Jail Petition No. 865 of 2017**  
**Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi,**  
**Mr. Justice Muhammad Ali Mazhar**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/j.p. 865\\_2017.pdf](https://www.supremecourt.gov.pk/downloads_judgements/j.p. 865_2017.pdf)

**Facts:** Through instant jail petition the petitioner has assailed the order of learned Lahore High Court, Lahore, whereby in appeal the conviction and sentence of death along with compensation and the sentence in default whereof awarded to the petitioner by the learned Trial Court was maintained.

- Issues:** i) Whether trustworthy and confidence inspiring ocular evidence alone is sufficient to sustain conviction of an accused?  
ii) Whether minor discrepancies, if any, in medical evidence relating to nature of injuries can negate the direct evidence?  
iii) Whether relationship of the prosecution witnesses with the deceased can be a ground to discard the testimony of such witnesses?

**Analysis:** i) It is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused.  
ii) Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse effect on prosecution case. It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence.  
iii) It is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses especially when the relationship with the assailant is so close.

- Conclusion:** i) Yes, trustworthy and confidence inspiring ocular evidence alone is sufficient to sustain conviction of an accused.  
ii) Minor discrepancies, if any, in medical evidence relating to nature of injuries cannot negate the direct evidence.  
iii) Relationship of the prosecution witnesses with the deceased cannot be a

ground to discard the testimony of such witnesses.

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**6. Supreme Court of Pakistan**  
**M/s Sadiq Poultry (Pvt.) Ltd. v. Government of**  
**Khyber Pukhtunkhwa thr. its Chief Secretary & others**  
**Civil Petition No.5646 of 2021**  
**Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.\\_5646\\_2021.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p._5646_2021.pdf)

**Facts:** Through this petition the petitioner assailed the impugned order passed by the Peshawar High Court, whereby, the learned High Court made several directions, inter alia, that a committee should be formed to review prices of livestock and poultry products and that officials of the government ought to make regular visits to the market to ensure that adulterated milk and other items which are not consumable are not sold in the market.

**Issues:**

- i) Whether the High Court does have suo motu jurisdiction?
- ii) Whether learned High Court is competent to fix the prices of products and can devise formula for pricing under Article 199 of the Constitution?
- iii) Whether the subject of restriction or prohibition of imports and exports falls within the domain of the Federal Government?
- iv) Whether section 5B of the Pakistan Imports and Exports (Control) Act, 1950 provides that in case of violation of an order restricting or prohibiting imports or exports, the jurisdiction to adjudge the same would exclusively vest with a Commercial Court?

**Analysis:**

- i) It is settled law that the High Court does not have suo motu jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan (the "Constitution") as compared to this Court which has been conferred exclusive jurisdiction in the matter by the Constitution in terms of Article 184(3). Article 184 of the Constitution provides that the power to exercise suo motu jurisdiction vests only with the Supreme Court.
- ii) It is pertinent to mention here that the learned High Court was not competent to even fix the prices of products. The only course of action available to it, if necessary, was to direct the Government to do what it is required to do under the law in case its officials /functionaries were not doing that. The High Court, under Article 199, cannot devise a formula for pricing. Doing so is not permitted under the law and does not fall in the domain of the Courts and goes against the principle of trichotomy of powers envisaged under the Constitution. The act of issuing directions with respect to an issue or dispute which was not before the High Court constitutes overstepping jurisdictional limits which cannot be countenanced. The learned High Court could only pass appropriate and lawful orders on matters which have a direct nexus with the lis before it and could not overstep or digress therefrom.
- iii) Item No.27 of the Federal Legislative List clearly and categorically provides

that import and export is a federal subject. Further, Section 3 of the Pakistan Imports and Exports (Control) Act, 1950 clearly states that the power to prohibit or restrict imports and exports vests with the Federal Government. The aforementioned provision of law clearly states that the subject of restriction or prohibition of imports and exports falls within the domain of the Federal Government.

iv) It is necessary to note that Section 5B of the *ibid* Act provides that in case of violation of an order restricting or prohibiting imports or exports, the jurisdiction to adjudge the same would exclusively vest with a Commercial Court. The High Court, acting under Article 199, cannot be termed as a Commercial Court. This is because civil/ criminal jurisdictions of the High Court are separate from the constitutional jurisdiction of the High Court. In the former, evidence is recorded by the competent Court and then the High Court sits in appeal/revision over a decision of the lower fora. In the latter, the High Court is the Court of first instance, does not ordinarily record evidence regarding factual matters, and is acting as a constitutional court *inter cilia* to ensure that there is no infringement of the Constitution or the rights guaranteed to citizens by the Constitution.

- Conclusion:**
- i) The High Court does not have suo motu jurisdiction as under Article 184 of the Constitution provides that the power to exercise suo motu jurisdiction vests only with the Supreme Court.
  - ii) Learned High Court is not competent to fix the prices of products and cannot devise formula for pricing under Article 199 of the Constitution.
  - iii) The subject of restriction or prohibition of imports and exports falls within the domain of the Federal Government.
  - iv) Section 5B of the Pakistan Imports and Exports (Control) Act, 1950 provides that in case of violation of an order restricting or prohibiting imports or exports, the jurisdiction to adjudge the same would exclusively vest with a Commercial Court.

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**7. Supreme Court of Pakistan  
Muhammad Abbas, and Muhammad Ramzan v. The State.  
Criminal Appeal No. 481/2012  
Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi  
[https://www.supremecourt.gov.pk/downloads\\_judgements/j.p.355.2018.pdf](https://www.supremecourt.gov.pk/downloads_judgements/j.p.355.2018.pdf)**

- Facts:** Petitioners along with two co accused were tried by the learned Additional Sessions Judge, in a private complaint under Sections 302/148/149 PPC for committing murder. The same was instituted being dissatisfied with the investigation conducted by the Police in case FIR under Sections 302/148/149 PPC. The learned Trial Court vide its judgment while acquitting the two co-accused, convicted the petitioners under Section 302(b) PPC and sentenced them to imprisonment for life. They were also directed to pay compensation to the legal heirs of the deceased or in default whereof to further suffer four months SI. Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioners. In appeal the learned High Court maintained the conviction and sentences awarded to the petitioners by the learned Trial Court.

- Issues:** i) Whether relationship of prosecution witnesses with deceased is fatal for prosecution case?  
ii) Whether accused is entitled for the benefit of minor discrepancies?
- Analysis** i) It is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses.  
ii) On account of lapse of memory owing to the intervening period, some minor discrepancies are inevitable and they may occur naturally. The accused cannot claim benefit of such minor discrepancies.
- Conclusion:** i) Relationship of witness with deceased is no ground to discard the testimony.  
ii) The accused cannot claim benefit of such minor discrepancies.

**8. Supreme Court of Pakistan  
Muhammad Yousaf and others v.  
Muhammad Ishaq Rana (deceased) through LRs and others  
Civil Appeal No.801 of 2021  
Mr. Justice Ijaz ul Ahsan, Mr. Justice Shahid Waheed  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.a.\\_801\\_2021.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.a._801_2021.pdf)**

- Facts:** The respondents filed suit for partition etc. against appellants and appellants filed suit for declaration to the effect that their predecessor was the real owner whereas predecessor of respondents was mere benamidar. The trial court dismissed the suit of appellants and partially decreed the suit of respondents. On appeal, first appellate court issued decree in favour of appellants. The respondents sought revision of decree from the High Court and the High Court restored the decree of trial court. Hence, this civil appeal by appellants.
- Issues:** i) How many persons and contracts are involved in benami transaction?  
ii) How benami transaction can be proved?  
iii) Whether in benami dispute, authenticity and execution of document is in question?  
iv) On whom burden to prove lies that the ostensible vendee (owner) was a mere name-lender and how this burden is discharged?
- Analysis:** i) There are three persons involved in benami transaction — the seller, the real owner, and the ostensible owner or benamidar, and, in the ordinary course of human conduct, it encompasses two different contracts, one is the contract, express or implied, between the ostensible owner and the purchaser (real owner) and it specifically mentions two things. First, the real owner expresses his desire or compulsion (also called motive) and obtains permission from the ostensible owner (Benamidar) to purchase the property in his name after paying the consideration amount to the seller, and second, it talks about the consent of the ostensible owner (Benamidar) that whenever the real owner demands, he will be bound to transfer the property to him. The other is a contract between the ostensible owner (Benamidar) and the seller of the property.

ii) Both contracts involved in benami transaction, though differ from each other in their legal character and incidents, complement each other to establish benami transaction, and thus, in cases of such transaction, the plaintiff must first state them, in detail, in his plaint, and then prove them by legal testimony, and failure to do so is fatal..

iii) The case of benami dispute is not one in which the authenticity of the document is in question, but in such cases the execution of the document is an admitted fact and the seeker only intends rectification of the document and wants that in it the name of the Benamidar be deleted and instead his name be written.

iv) The burden of proof lies heavily on the person who claims against the tenor of the document or deed to show that the ostensible vendee (owner) was a mere name-lender and the property was in fact purchased only for his benefit. Such burden would be discharged by satisfying the well-known criteria, to wit, (i) the source of purchase money relating to the transaction; (ii) possession of the property, (iii) the position of the parties and their relationship to one another, (iv) the circumstances, pecuniary or otherwise, of the alleged transferee, (v) the motive for the transaction, (vi) the custody and production of the title deed, and (vii) the previous and subsequent conduct of the parties. Each of the above-stated circumstances, taken by itself, is of no particular value and affords no conclusive proof of the intention to transfer the ownership from one person to the other. But a combination of some or all of them and a proper weighing and appreciation of their value would go a long way towards indicating whether the ownership has been really transferred or where the real title lies.

- Conclusion:**
- i) There are three persons involved in benami transaction and it encompasses two different contracts.
  - ii) The plaintiff must first state both contracts of benami, in detail, in his plaint, and then prove them by legal testimony.
  - iii) In benami dispute, authenticity and execution of document is not in question.
  - iv) The burden of proof lies heavily on the person who claims against the tenor of the document or deed to show that the ostensible vendee (owner) was a mere namelender and such burden is discharged by proving (i) source of purchase money, (ii) possession of property, (iii) position & relationship of parties, (iv) the circumstances, pecuniary or otherwise, of the alleged transferee, (v) the motive for the transaction, (vi) the custody and production of the title deed, and (vii) the previous and subsequent conduct of the parties.

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9.

**Supreme Court of Pakistan**

**Muhammad Iqbal (deceased) v. Ahmad Din (dec) through his L.Rs., etc.**

**C.M.A. No.1609-L of 2021 IN C.R.P. No.NIL-L of 2021 IN C.A. No.5-L of 2010 etc.**

**Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-Ud-Din Khan, Mrs. Justice Ayesha A. Malik**

[https://www.supremecourt.gov.pk/downloads\\_judgements/c.m.a.1609\\_1\\_2021.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.m.a.1609_1_2021.pdf)

**Facts:** Through this application permission is sought by the learned counsel to represent the petitioner in review petition by replacing the earlier counsel.

**Issues:**

- i) What are requirements for filing review petition before Supreme Court?
- ii) What can be the consequences of filing vexatious or frivolous review application?
- iii) Why order XXVI of the Supreme Court Rules 1980 requires the same Advocate, who earlier appeared to argue the case, to draw up the review application and appear in support of it before the Court?

**Analysis:**

i) Order XXVI of the Supreme Court Rules 1980 ("Rules") deals with the practice and procedure of Supreme Court in exercising its review jurisdiction. Under Rule 6 an application for review has to be drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made. Under Rule 4, the Advocate who draws up the review application has not only to specify the points upon which the prayer for review is based but he has also to add his certificate to the effect that the review would be justifiable in accordance with the law and practice of the Court.

i) Rule 5 of order XXVI of the Supreme Court Rules 1980 provides that in case the Court comes to the conclusion that the review application filed was vexatious or frivolous, the Advocate or the Advocate on Record drawing the application shall render himself liable to disciplinary action, while Rule 7 provides that no application for review shall be entertained unless party seeking review furnishes cash security of Rs. 10,000/- which shall stand forfeited if the review petition is dismissed or shall be paid to the opposite-party, if the review petition is contested.

ii) Order XXVI of the Supreme Court Rules 1980 Rules requires the same Advocate, who earlier appeared to argue the case, to draw up the review application and appear in support of it before the Court for certain reasons. It is because a review petition is not the equivalent of a petition for leave to appeal or an appeal where the case is argued for the first time. It is not the rehearing of the same matter. The Advocate who had earlier argued the main case is perhaps the best person to evaluate whether the said grounds of review are attracted in the case. He being part of the hearing of the main case is fully aware of the proceedings that transpired in the Court leading to the judgment or order sought to be reviewed. He is the one who knows what was argued before the Court and what weighed with the Court in deciding the matter either way.

**Conclusion:**

- i) Under Order XXVI an application for review has to be drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made and to specify the points upon which the prayer for review is based along with certificate to the effect that the review would be justifiable in accordance with the law and practice of the Court.
- ii) If the review application filed was vexatious or frivolous the Advocate drawing the application can be himself liable to disciplinary action and security Rs.

10,000/ furnished, under Rule 7 of Supreme Court Rules, shall stand forfeited if the review petition is dismissed or shall be paid to the opposite-party, if the review petition is contested.

iii) The Advocate who had earlier argued the main case being part of the hearing of the main case is fully aware of the proceedings that transpired in the Court leading to the judgment or order sought to be reviewed.

**10. Supreme Court of Pakistan  
Muhammad Yasin etc. v. The Director General,  
Pakistan Post Office, Islamabad & another  
Civil Petitions No.688 & 689 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. 688\\_2020.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 688_2020.pdf)

**Facts:** The petitioners seek leave to appeal against a consolidated judgment of the Federal Service Tribunal, whereby their appeals filed against the decisions of the departmental authority have been dismissed. The departmental authority had declined the petitioners' request for permission to appear in the departmental competitive exam for appointment to the posts of Assistant Superintendent on the ground that they were above 45 years of age and as such were not eligible for appointment to the said post under the relevant rules.

**Issues:** Whether an unlawful act or wrongful gains of others can be made a standard for enforcing the right to equality guaranteed by Article 25 the Constitution?

**Analysis:** Article 25 of the Constitution guarantees the equal protection of law, not the equal protection of lawlessness, by declaring that all citizens are equal before law and are entitled to equal protection of law. An unlawful act, therefore, cannot be made a standard for enforcing the right to equality guaranteed by the Constitution. One illegality cannot be allowed to be compounded by applying the right to equality. Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. Such other persons cannot be discriminated against to deny the same benefit, in view of their right to equality before law and equal protection of law guaranteed by Article 25 of the Constitution. If unlawful acts are allowed or acknowledged on the basis of the right to equality and nondiscrimination, it would negate the rule of law mandated by Articles 4 and 5 of the Constitution. The one who wants the court to grant him the relief prayed for must base his claim on his own legal right, not on the wrongful gains of others.

**Conclusion:** No, an unlawful act or wrongful gains of others cannot be made a standard for enforcing the right to equality guaranteed by Article 25 the Constitution.



- 11. Supreme Court of Pakistan**  
**Waqas Aslam & others v. Lahore Electric Supply Company Limited, etc.**  
**Civil Petition No.4806 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. 4806 2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 4806 2019.pdf)

**Facts:** The petitioners were not considered for the post of Line Superintendent Grade-I (BPS15) on the ground that they did not meet the eligibility criteria/selection requirement as per the advertisement. The refusal was challenged by the petitioners through a constitutional petition, which was allowed by the learned Single Judge. The respondents preferred Intra Court Appeal, which was allowed by holding that the petitioners did not meet the requirement of the advertisement and secondly that the petitioners being overqualified for the post were not suitable for the said position. Petitioners have assailed the said judgment through this petition.

**Issues:**

- i) Whether court can draw an inference that a higher qualification presupposes the acquisition of a lower qualification?
- ii) Whether court can examine the qualification and eligibility in a recruitment process?
- iii) Whether power of judicial review by the Courts can be extended to determine equivalence or comparison of academic qualifications for a post or assume the role of a human resource department of an employing institution?

**Analysis:**

- i) It is also important to note that in the absence of any such stipulation in the advertisement or the recruitment policy of the respondent company, it is not possible for the Court to draw an inference that a higher qualification presupposes the acquisition of a lower qualification or that a candidate having a higher qualification is better suited for the post as opposed to a candidate possessing the requisite qualification that has been expressly prescribed in the advertisement according to the nature of the post and the requirement of the employer.
- ii) It is not for the Court to examine the qualification and eligibility in a recruitment process. The Court, at best, can look into the legality of the recruitment process but cannot delve deeper into the design and need of the employing institution or second guess their selection criteria and job requirement.
- iii) It is also not open to the Courts to embark upon comparing various degrees held by the applicants with the advertised qualifications and carry out the function of an employer by carrying out the comparison of the said qualifications. The power of judicial review by the Courts cannot be extended to determine equivalence or comparison of academic qualifications for a post or assume the role of a human resource department of an employing institution. It is a specific expert area and can be best resolved by the institution itself according to the suitability and requirements of a certain post as designed and desired by the employer. It is an area for which the Courts are not best suited.

- Conclusion:** i) The court cannot draw an inference that a higher qualification presupposes the acquisition of a lower qualification.  
 ii) The court cannot examine the qualification and eligibility in a recruitment process.  
 iii) The power of judicial review by the Courts cannot be extended to determine equivalence or comparison of academic qualifications for a post or assume the role of a human resource department of an employing institution.

**12. Supreme Court of Pakistan**  
**Divisional Superintendent, Pakistan Railways & another v. Umar Daraz**  
**Civil Petition No.4618 of 2019**  
**Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 4618 2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 4618 2019.pdf)

**Facts:** The respondent, an employee in grade 5 of the Pakistan Railways became visually impaired and incapacitated to do the job of Pointsman for which he was initially appointed. The department adjusted him in grade 3 having regard to his incapacitation in compliance of Railways manual. The respondent successfully challenged the action and able to get the post equal to grade 5. The petitioner, through this petition has challenged the said order on the ground that post allocated to respondent is a selection post and he had to go through the process of promotion to be entitled to the said post.

**Issues:** Whether physical incapacitation of an employee during service entitles him to get a job of an equal grade and suitable description?

**Analysis:** The Court maintained that in case an officer develops physical incapacitation the department has to reach out to said officer to ensure the best possible option available for the officer in his condition to continue to serve the department. The said transfer to another suitable post of the respondent is as a special case and is over and above the regular process of transfer, appointment or promotion. Such a special transfer is to provide “reasonable accommodation” to an employee who has been incapacitated during service and for no fault of his own suffers from a disability. Any such “reasonable accommodation” is a priority action item for the department and must be addressed at the earliest. Suitability of the new post must factor in the earlier job description as well as the grade so that the employee is not worse off in financial terms. This finds support from Article 9 and 38(d) of the Constitution of Islamic Republic of Pakistan (“Constitution”) which provide for right to life, which includes right to a meaningful livelihood as an integral part of life and policies must be made by the State to safeguard the interest of persons suffering from infirmity or sickness. The Court further directed Pakistan Railways to revisit the Personnel Manual in the light of the fundamental rights and principles of policy enshrined in the Constitution, as well as, the Convention on the Rights of Persons with Disabilities (CRPD), in particular Article 27 thereof, so

that the Personnel Manual is constitution compliant and meets the international standards when dealing with persons with disabilities.

**Conclusion:** The physical incapacitation of an employee during service without fault of his own entitles him to get a job of equal grade and suitable description.

**13. Supreme Court of Pakistan**  
**SDO/AM, Hasht Nagri Sub Division, PESCO,**  
**Peshawar, etc. v. Khawazan Zad**  
**Civil Petition No.1159 of 20 19.**  
**Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.\\_1159\\_2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p._1159_2019.pdf)

**Facts:** Respondent instituted a suit for declaration and possession of the suit property against PESCO and its employees, SDO/AM etc., (“petitioners”). The petitioners contested the suit by filing a joint written statement. The respondent did not raise any objection as to the authority of the person filing the said written statement on behalf of all the petitioners, including PESCO, and thus no issue in this regard was framed for trial by the trial court. At the conclusion of the trial, the trial court dismissed the suit of the respondent. The respondent’s appeal, however, succeeded. The petitioners then filed a revision petition, which was dismissed by the High Court without touching upon the merits of the case, through the impugned judgment, on the ground that it had not been filed by a person duly authorized by a resolution of the Board of Directors of PESCO. Hence, the present petition has been filed by the petitioners for leave to appeal.

**Issues:**

- i) Whether there is a difference between the authority to sign and verify a pleading and the authority to institute or defend a suit by or against a corporation, under CPC?
- (ii) Whether the provisions of the CPC relating to signing and verification of the pleadings apply to the memorandums of appeal and revision petitions?
- (iii) Whether any defect or omission in signing and verifying, or presenting, pleading or a memorandum of appeal or revision is curable?
- iv) Whether any defect in the authority of a person to sign and verify a pleading filed in, or to institute or defend, such a suit or in signing and filing a memorandum of appeal or revision petition can be cured at a later stage of the proceedings?

**Analysis:** i) The notable point is that neither Rules 14 and 15 of Order VI nor Rule 1 of Order XXIX says anything about presenting the pleadings to the court after signing and verifying the same. Rather, these are Rule 1 of Order IV and Rule 1 of Order VIII which deal with the subject of presenting a plaint or a written statement to the court. Different rules on these two matters make it obvious that there is a difference between the signing and verifying a pleading (plaint or written statement) under Rules 14 and 15 of Order VI, or under Rule 1 of Order XXIX, and the presentation of that pleading to the court under Rule 1 of Order IV (plaint) and Rule 1 of Order VIII (written statement), CPC. The act of presenting

a plaint to the court under Rule 1 of Order IV is called the institution of the suit, and the act of presenting a written statement under Rule 1 of Order VIII constitutes the defence of the suit. These acts manifest the will of a litigant to pursue his claim or to defend the claim made against him, in a court of law. By presenting the plaint, a plaintiff sets the machinery of the court in motion for deciding upon his claim while the presentation of the written statement expresses the will of the defendant to defend that claim. The act of presentation of a plaint or a written statement can, therefore, be done only by the plaintiff and the defendant in person or by their recognized agents or by their duly appointed pleaders, in terms of Rule 1 of Order III. Rules 14 and 15 of Order VI, or Rule 1 of Order XXIX, which relates to signing and verifying the pleadings (plaint and written statement), cannot be referred to for the purpose of establishing the authority of a person to institute, or defend, the suit. (...) As the authority conferred by Rule 1 of Order XXIX, on the specified officers of the corporation to sign and verify any pleading on behalf of the corporation, does not include the authority to institute or defend the suit in their own names, a corporation (like PESCO in the present case) being a juristic person must sue or be sued in its own name. Therefore, the name of the corporation, not the name or designation of any of its officers or employees, is to be mentioned as a plaintiff or a defendant.

ii) A memorandum of appeal can be signed, as per Rule 1 of Order XLI, by the appellant or his pleader; so can a revision petition be signed by the petitioner or his pleader as the revisional jurisdiction is a part of the general appellate jurisdiction of a superior court and the provisions of the CPC in regard to appeals are applicable mutatis mutandis to revision petitions. A memorandum of appeal or a revision petition can, therefore, be signed by a duly appointed pleader as per Rule 1 of Order XLI, and presented to the appellate or revisional court by him on behalf of the appellant or petitioner as per Rule 1 of Order III, CPC. Rules 14 and 15 of Order VI, as well as Rule 1 of Order XXIX, as to signing and verifying the pleadings (plaint and written statement) are, thus, not applicable to the memorandums of appeal and revision petitions.

iii) Any defect or omission in signing and verifying, or presenting, a pleading (plaint or written statement) or a memorandum of appeal or revision petition does not affect the merits of the case or the jurisdiction of the court and is therefore taken to be such an irregularity which can be cured at any stage of the proceedings.

iv) Likewise, any defect in the authority of a person to sign and verify a pleading filed in a suit by or against a corporation, or to institute or defend such a suit by presenting that pleading to the court, or in signing or filing of a memorandum of appeal or revision petition by a corporation, can also be cured at any stage of the proceedings.

**Conclusion:** i) There is a difference between the signing and verifying a pleading and the presentation of that pleading to the court. Authority conferred by Rule 1 of Order XXIX, on the specified officers of the corporation to sign and verify any pleading

on behalf of the corporation, does not include the authority to institute or defend the suit in their own names.

ii) The provisions of the CPC relating to signing and verification of the pleadings does not apply to the memorandums of appeal and revision petitions

iii) Any defect or omission in signing and verifying, or presenting, a pleading or a memorandum of appeal or revision petition is curable.

iv) Suit filed by an unauthorized person is curable.

- 14. Supreme Court of Pakistan**  
**Province of the Punjab thr. Deputy Commissioner/District Collector, Rawalpindi & another v. Muhammad Akram & others**  
**Civil Petitions No.3760 of 20 19 & 3759 of 201 9**  
**Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Shahid Waheed**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 3760 2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3760 2019.pdf)

**Facts:** These Civil Petitions for leave to appeal are directed against the consolidated Order passed by the Lahore High Court, Rawalpindi Bench in W.P.No.3111/2018 and W.P. No.341/2019, whereby both the Writ Petitions filed by the respondents were disposed of with certain directions.

**Issues:** i) What is the object of Order 1 Rule 10 C.P.C?  
 ii) Which court can undertake a case of dispute between any two or more Governments?

**Analysis:** i) The Court, in exercise of powers conferred under Order I, Rule 10, C.P.C may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined be struck out and add the party who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved. The object of the Rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.  
 ii) According to the exactitudes of Article 184 of the Constitution, this Court , to the exclusion of every other Court, has original jurisdiction in any dispute between any two or more Governments and may pronounce declaratory judgments only. The explanation attached to this Article accentuates that the term "Governments" means the Federal Government and the Provincial Governments.

**Conclusion:** i) The object of Order 1 Rule 10 C.P.C is to enable the Court effectually and completely to adjudicate upon and settle all the questions involved between the necessary and proper parties.  
 ii) According to Article 184 of the Constitution, Supreme Court , to the exclusion of every other Court, has original jurisdiction in any dispute between any two or

more Governments and may pronounce declaratory judgments only.

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**15. Supreme Court of Pakistan**  
**Fahad Hussain and another v. The State through Prosecutor General Sindh.**  
**Criminal Petition No.167-K of 2022**  
**Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar,**  
**Mr. Justice Syed Hasan Azhar Rizvi**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/crl.p.167\\_k\\_2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.p.167_k_2022.pdf)

**Facts:** By dint of this Criminal Petition, the petitioners have called in question the order passed by the High Court of Sindh, Circuit Court, Larkana in Criminal Bail Application whereby the petitioners' application for pre-arrest bail was dismissed and an interim bail order was recalled in FIR, lodged under Sections 302 and 34, PPC at Police Station.

**Issues:** i) Whether benefit of doubt can be extended to the accused even at bail stage?  
 ii) What is meant by reasonable grounds?

**Analysis** i) It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time. .  
 ii) In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.

**Conclusion:** i) Benefit of doubt can be extended to the accused even at bail stage.  
 ii) Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds.

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**16. Lahore High Court**  
**National Engineering Services Pakistan (NESPAK)**  
**and 2 Others v. Muhammad Nawaz Cheema and 13 Others.**  
**ICA No. 32860 of 2022**  
**Mr. Justice Abid Aziz Sheikh, Mr. Justice Sultan Tanvir Ahmad**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8637.pdf>

**Facts:** Through the present decision, Honourable Lahore High Court disposed of the titled Intra Court Appeal, filed under section 3 of the Law Reforms Ordinance, 1972, as well as Intra Court Appeals bearing numbers 33125/2022, 33119/2022, 33122/2022, 33115/2022, 33123/2022, 33121/2022, 33124/2022&33120/2022, being outcome of the same judgment, passed by learned Single Judge of this Court.

**Issues:** Whether a constitutional petition is maintainable where the relationship between the employee and employer is not governed by any statutory rules of service?

**Analysis** where conditions of service of employees are not regulated by a statutory provision(s), the service / employment of employees is to be governed by the principle of “Master & Servant” and the employees of such entity cannot invoke Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for alleged violation of terms of service / employment.

**Conclusion:** An employee who is not governed by statutory rules cannot approach High Court in its constitutional jurisdiction.

**17. Lahore High Court**  
**Commissioner of Inland Revenue, Legal Division, Regional Tax Office,**  
**Lahore v. M/s. Razaqat Marketing, Lahore & another.**  
**STR No.18 of 2010**  
**Mr. Justice Shams Mehmood Mirza, Mr. Justice Shahid Jamil Khan, Mr.**  
**Justice Muhammad Sajid Mehmood Sethi**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8615.pdf>

**Facts:** During scrutiny of refund claims of taxpayer, the department observed that input invoices were issued by the suppliers who had either been declared blacklisted by the concerned authorities, or were nonexistent at their given addresses with “registration suspended” status and issued Show Cause Notices, which culminated in passing of Order-in-Original, whereby refund claims of taxpayer were rejected. Feeling aggrieved, taxpayer assailed said order in appeal before Collector (Appeals), which was dismissed. Feeling dissatisfied, taxpayer filed second appeal before the Appellate Tribunal, whereby orders passed by fora below were set-aside and appeal was accepted. Hence, instant Reference Application.

**Issues:** i) Whether department is authorized to reject the tax credit of all the previously issued invoices on the sole reason that the supplier was blacklisted subsequently?  
 ii) Who has initial burden to prove that invoices have nexus with blacklisting or

tax was not paid or deposited against the invoices?

- Analysis:**
- i) Provision of Section 21(3) of the Act of 1990 clarifies that the department is authorized to reject a refund claim based on invoices issued during the period of suspension and after consequent blacklisting, 'whether prior or after such blacklisting', by passing a speaking order after giving the registered person an opportunity of being heard. However, such power is not available to reject the tax credit of all the previously issued invoices on the sole reason that the supplier was blacklisted subsequently. Provisions of Section 21(3) cannot be read in isolation for refusing to entertain the invoice(s) issued prior to blacklisting of the supplier. The Taxation Officer has to establish, through plausible evidence, that the invoices have some nexus with the cause of blacklisting; that the suppliers were conducting business as per law when the invoices were issued; that blacklisting order was passed due to some subsequent defaults; and that order of blacklisting or suspension was reversed being challenged by the supplier subsequently. The reasons or cause of blacklisting is to be correlated with the invoices intended to be rejected for the adjustment of tax credit or its refund.
  - ii) To prove the facts that invoices have nexus with blacklisting or tax was not paid or deposited against the invoices, burden is upon the revenue, however, this burden can be shifted upon the registered person claiming adjustment or refund of tax, in cases of tax fraud, in accordance with the provisions of section 2(37) of the Act of 1990. Not by confronting, merely, that the supplier was blacklisted subsequently, initial burden, before shifting, is to be discharged by the revenue.
- Conclusion:**
- i) Department is not authorized to reject the tax credit of all the previously issued invoices on the sole reason that the supplier was blacklisted subsequently.
  - ii) Revenue department has initial burden to prove that invoices have nexus with blacklisting or tax was not paid or deposited against the invoices.

**18. Lahore High Court**

**M/s. Malik Mazhar Hussain Goraya v. Govt. of Punjab, etc.**

**Writ Petition No. 18004 of 2022.**

**Mr. Justice Shahid Jamil Khan**

<https://sys.lhc.gov.pk/appjudgments/2022LHC8584.pdf>

- Facts:** This judgment examines the extent of statutory authority and constitutional validity of appointment and powers of Administrators of Local Governments to utilize Local Government's Development Fund, in absence of Elected Representatives and that too for carrying out Development Scheme proposed by MNAs and MPAs.
- Issues:**
- i) Whether the Chief Minister, without approval of the Cabinet can Appoint Administrators and assign them functions?
  - ii) Whether executive order, allocating grants to MNAs and MPAs for development work within the domain of a Local Government, is legal?



- Analysis:**
- i) Appointment of Administrators and assigning of functions and power by the Chief Minister, without approval of the Cabinet is without lawful authority. However, the functions, not powers to be exercised by elected Local Government, can be ratified and continued by the Administrators appointed in accordance with law.
  - ii) Any executive order, allocating grants to MNAs and MPAs for development work within the domain of a Local Government, is declared illegal and any regulation or law permitting allocation of such grant shall be unenforceable in view of Section 4 of Punjab Local Government Act 2022.

- Conclusion:**
- i) The Chief Minister, without approval of the Cabinet cannot Appoint Administrators and assign them functions.
  - ii) Any executive order, allocating grants to MNAs and MPAs for development work within the domain of a Local Government, is illegal.

**19. Lahore High Court**  
**Mazhar Rasool Hashmi v. Government of Punjab etc.**  
**Writ Petition No. 81608/2022**  
**Mr. Justice Tariq Saleem Sheikh**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8622.pdf>

**Facts:** The petitioner through this Public Interest Litigation (PIL) has challenged the appointment of the current Advocate General of Punjab on the ground that under Article 140 of the Constitution of 1973, the Governor can appoint only such person as the Advocate General who is qualified to serve as a Judge of the High Court. Article 195 fixes the retirement age of a High Court Judge at 62 years. Since the present Advocate General is 73 years of age hence ineligible for the office.

- Issues:**
- i) Whether the retiring age mentioned in Art. 195 also applies to the Advocate General and anyone over that age is disqualified to be appointed as an Advocate General?
  - ii) What are the essential prerequisites for a Public Interest Litigation (PIL)?

**Analysis:** i) The positions of the High Court Judge and the Advocate General are distinct. There is a separate mechanism for appointment, remuneration, tenure, and removal from these posts. Their responsibilities differ as well. Article 140 governs the appointment of the Advocate General, which is found in Chapter 3 of Part IV of the Constitution, whereas Part VII governs the Judicature. Article 195 is in Chapter 3 of Part VII. Thus, the constitutional framework for the offices of the Advocate General and the High Court Judge is completely different. Article 140 of the Constitution, which provides for the appointment of an Advocate General for a Province as aforesaid, incorporates Article 193(2) only by reference. If the framers of the Constitution intended to prescribe the upper age limit for the appointment of Advocate General or to set the age of retirement for him, they

would have specifically said so. In *Secretary, Ministry of Law, Parliamentary Affairs, and Human Rights, Government of the Punjab, and others v. Muhammad Ashraf Khan and others* (PLD 2011 SC 7), the Hon'ble Supreme Court ruled that under Article 140 a person appointed as Advocate General should meet the requirements for appointment as a High Court Judge. However, this does not imply that he is subject to the same restrictions in other areas that the Constitution places on a High Court Judge.

ii) The courts consider Public Interest Litigation (PIL) a “part of the process of participative justice” and an extremely important jurisdiction. However, it must be exercised with great care and circumspection. In *Javed Ibrahim Paracha v. Federation of Pakistan and others* (PLD 2004 SC 482), the Hon'ble Supreme Court of Pakistan held that a person could invoke the constitutional jurisdiction of the superior courts as pro bono publico but he must show that he is prosecuting, first, in the public interest and, second, for the public good, or the welfare of the general public. In *Muhammad Shafique Khan Sawati v. Federation of Pakistan* (2015 SCMR 851), the apex Court emphasized that a citizen must first establish his bona fides in a PIL petition. He should demonstrate that he is not undertaking such litigation to advance a private or vested interest but to serve the public interest, good, or welfare. In *Premier Battery Industries Private Limited v. Karachi Water & Sewerage Board and others* (2018 SCMR 365), the Hon'ble Supreme Court stated: “Such litigation does not strictly fall under any part of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, it has received judicial recognition enabling the courts to enlarge the scope of the meaning of ‘aggrieved person’ under Article 199 of the Constitution to include a public-spirited person who brings to the notice of the court a matter of public importance requiring enforcement of fundamental rights. Nonetheless, the constitutional jurisdiction of the superior courts is required to be exercised carefully, cautiously, and with circumspection to safeguard and promote public interest and not to entertain and promote speculative, hypothetical, or malicious attacks that block or suspend the performance of executive functions by the Government”. In *Gurpal Singh v. State of Punjab & others*, [(2005) 5 SCC 136], the Indian Supreme Court ruled that before entertaining a PIL petition the court must be satisfied with (a) the applicant's credentials; (b) the prima facie correctness or nature of the information given by him; (c) the information is not vague and indefinite. The facts should reflect the gravity and urgency of the situation. It further held that the court should not allow anyone to make wild and reckless allegations besmirching the character of others and keep a check on public mischief. It should reject mischievous petitions trying to dispute lawful executive actions for oblique motives or to gain cheap popularity.

**Conclusion:** i) The offices of the High Court Judge and the Advocate General are distinct and governed by different constitutional provisions. The retiring age mentioned in Art. 195 for a High Court Judge does not apply to the Advocate General and anyone over that age is qualified to be appointed as an Advocate General.

ii) Primarily, the applicant must show that he is prosecuting in the public interest and for the public good or welfare. Moreover, the court before entertaining a PIL petition must be satisfied with (a) the applicant's credentials; (b) the prima facie correctness or nature of the information given; (c) the accuracy and the certainty of the information given; and (d) the facts should reflect the gravity and urgency of the situation. Lastly, in no circumstances it should be a Publicity Interest Litigation.

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**20. Lahore High Court**  
**Mst. Sughran Bibi v. Abdul Sattar, etc.**  
**Civil Revision No. 2194/2011**  
**Mr. Justice Asim Hafeez**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8604.pdf>

**Facts:** Instant and connected Civil Revision are directed against consolidated judgment and decree of first appellate court, whereby appeals preferred by petitioner was dismissed, and consolidated decision of court of first instance, was affirmed, in terms whereof trial court had dismissed suit for declaration instituted by the petitioner, and decreed suit for specific performance brought by respondent No.1, seeking enforcement of alleged agreement to sell.

**Issues:** Whether in view of sections 214 and 215 of the Contract Act, 1872, where agent purchases the property, subject of agency, for himself or his own benefit, same is obligated to seek principal's consent, after acquainting the principal with all material circumstances?

**Analysis:** It is established that no special permission was asked – though attorney admitted that respondent No.1 was his nephew [no explanation was provided to show that respondent No.1 was not the descendant from same ancestor, and respondent No.1 was not related by blood. Notwithstanding this inadequacy, there is another fundamental lapse in the performance of obligations by the Attorney. Attorney has to prove that transaction was not for his benefit, which material issue was not proved and instead it is established that suit property was sold in return of the services rendered by the respondent No.1 – which convincingly proved that attorney sold suit property for his own benefit. Evidently the transaction carried out secured him his comfort, residence, food and care extended by the respondent No.1, which influenced the attorney and led to compromising his duties, responsibilities and obligations towards the principal. The advantages / benefits drawn by the attorney, at the expense of the principal, are established. These admitted facts constitute provisioning of tangible benefits and calls for the necessity of prior permission from the principal. No evidence was led to prove that money allegedly received were paid to the principal. Attorney not even alleged this fact. Hence, requirements of sections 214 and 215 of the Contract Act, 1872 were not met.

**Conclusion:** In view of sections 214 and 215 of the Contract Act, 1872, where agent purchases the property, subject of agency, for himself or his own benefit, same is obligated to seek principal's consent, after acquainting the principal with all material circumstances.

**21. Lahore High Court**  
**Mst. Kausar Bibi v. Civil Judge Etc.**  
**Writ Petition No.5777 Of 2022**  
**Mr. Justice Safdar Saleem Shahid**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8611.pdf>

**Facts:** Through the writ petition, legality and validity of the order of the learned Civil Judge is assailed, whereby registration of FIR had been ordered against the judgment debtor, who according to report of the bailiff obstructed in the execution of warrants of possession.

**Issues:** Is the order of the executing Court for registration of FIR against the judgment debtor, who allegedly obstructed in the execution of warrants of possession, maintainable in eyes of law whilst relying upon mere report of bailiff instead of holding any inquiry?

**Analysis:** Procedure for execution of a decree/order is provided in Order XXI of the C.P.C. However, in case of any resistance in the execution process, the Court is empowered to proceed under Rule 98 to Order XXI of the C.P.C., at the instance of the applicant, to detain the judgment debtor or the person who was resisting or obstructing in the execution process, only after such fact having been proved in a result of inquiry. Necessary steps should be taken in order to determine the correctness or otherwise of the report of bailiff relied upon before passing the order. The Court may record statement of the bailiff, call upon him to submit affidavit to verify the correctness of his report and summon the SHO concerned or call for his report in order to satisfy itself about the correctness or otherwise of the report of bailiff, especially in case where, whilst issuing warrant for possession, the SHO concerned was directed to provide police aid to the bailiff for execution of warrants of possession without any unpleasant incident.

**Conclusion:** The order of the executing court, relying upon the report of the bailiff without holding an inquiry, for registration of an FIR against the judgment debtor, who allegedly obstructed in the execution of warrants of possession, is not sustainable in the eye of law.

**22. Lahore High Court**  
**Mst. Shamim Akhtar etc. v. Muhammad Younis Khan etc.**  
**RSA No.62 of 2018**  
**Mr. Justice Anwaar Hussain**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8645.pdf>

**Facts:** Through this Regular Second Appeal the appellants have challenged the judgment and decree of the learned Appellate Court below who allowed the appeal, set aside the judgment and decree of the learned Trial Court, and dismissed the suit for specific performance of the agreement to sell of the Plaintiffs/Appellants.

- Issues:**
- i) Whether simple denial of execution of agreement to sell is sufficient or alleged vendor must challenge that specifically by way of initiating criminal proceedings or through an independent civil suit?
  - ii) What are the requirements for a subsequent vendee/purchaser to establish his claim to be bona fide purchaser?
  - iii) In case of judgments at variance of the learned two Courts below, which one is to be preferred and on what grounds?

- Analysis**
- i) The Defendants/Respondents. No. 1 to 4, though in their written statement, have alleged that the agreement and the receipt are fake, yet they have not specifically challenged the same either by way of initiating criminal proceedings or through an independent civil suit even after taking preliminary objection in this regard. The Honorable Supreme Court in case titled “Sajjad Ahmad Khan v. Muhammad Saleem Alvi and others” (2021 SCMR 415) held that in such an eventuality simple denial of a document being fake and fictitious is not legally sufficient unless same facts are proved and established on record.
  - ii) It is settled law that a subsequent vendee/purchaser has to establish by discharging the initial onus that (i) he acquired the property for due consideration and thus is a transferee for value, meaning thereby that his purchase is for the price paid to the vendor and not otherwise; (ii) there was no dishonesty of purpose or tainted intention to enter into the transaction while acting in good faith and (iii) he had no knowledge or notice of the original sale agreement between the plaintiff and the vendor at the time of his transaction with the latter. Reliance is placed on cases reported as “Hafiz Tassaduq Hussain v. Lal Khatoon” (PLD 2011 SC 296) and “Bahar Shah and others v. Manzoor Ahmad” (2022 SCMR 284).
  - iii) where the judgments of the learned Courts below are at variance and this Court is hearing a second appeal, preference should be given to the judgment of the learned Appellate Court below. However, the said principle of law does not entail its universal application, hence, it is not an impregnable and invariable rule of law as the finding of the lower Appellate Court would be immune from interference in second appeal only if the same is supported and substantiated by logical reasoning and proper appreciation of evidence and is not result of misreading and/or non-reading of evidence. Where the findings of the lower Appellate Court are at variance with that of the Trial Court, the two will definitely come in for comparison of their merits in light of the facts of the case and the reasons of which the two different and contradictory, if not opposing, findings have been respectively proceeded. If the judgment of the learned lower Appellate Court is found to be arbitrary or capricious, it can be rejected as held by the Honorable Supreme Court in case reported as “Madan Gopal & 4 others vs. Maran Bepari & 3 others (PLD 1969 SC 617).

- Conclusion:**
- i) Simple denial of execution of agreement to sell is not sufficient rather alleged vendor must challenge that specifically by way of initiating criminal proceedings or through an independent civil suit.

ii) A subsequent vendee/purchaser has to establish his claim to be bona fide purchaser by discharging the initial onus that, he acquired the property for due consideration, acted in good faith and that he had no knowledge or notice of the original sale agreement.

iii) Generally, in case of judgments at variance of the learned two Courts below, preference should be given to the judgment of the learned Appellate Court below, but it is not universal rather both the judgments will definitely come in for comparison of their merits in light of the facts of the case and the reasons of which the two are different and contradictory.

**23. Lahore High Court**  
**Muhammad Latif v. The State and another**  
**Writ Petition No.573-Q of 2022**  
**Mr. Justice Raheel kamran**  
<https://sys.lhc.gov.pk/appjudgments/2022LHC8632.pdf>

**Facts:** Through this writ petition, the petitioner seeks quashing of the First Information Report registered against him for the offences under Sections 419, 420, 468, 471 & 109 PPC at Police Station Federal Investigation Agency (“FIA”), on complaint

**Issues:** i) What is nature and scope of jurisdiction of FIA?  
 ii) Whether Mala fide must be pleaded with particularity?

**Analysis:** i) The nature and scope of jurisdiction of the FIA is governed by Section 3(1) and Schedule to the Act read with preamble thereof, which embodies its purpose, object and reads as follows:- “Whereas it is expedient to provide for the constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith, it is hereby enacted as follows:”It is well settled by now that although preamble to a statute is not operative part thereof, however, the same provides a useful guidance for determining the purpose and intention of the legislature behind the enactment. There is no cavil with the proposition that the FIA has been established/constituted for investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith.(..) Through the Act, the FIA, in terms of Schedule to the Act, has been granted jurisdiction to take cognizance in respect of several offences under the Pakistan Penal Code, 1860 (“P.P.C.”) which are cognizable by the local police also.

ii) As regards allegation of mala fide, suffice it to observe that it is well settled that mala fide must be pleaded with particularity. Wage and general allegations have no value in the eye of law.

**Conclusion:** i) The nature and scope of jurisdiction of the FIA is governed by Section 3(1) and Schedule to the Act read with preamble thereof, which embodies its purpose,

object .The FIA, in terms of Schedule to the Act, has been granted jurisdiction to take cognizance in respect of several offences under the Pakistan Penal Code, 1860 (“P.P.C.”) which are cognizable by the local police also .

ii) Mala fide must be pleaded with particularity and not in general.

### **LATEST LEGISLATION/AMENDMENTS**

1. Section 1 of the “The Foreign Investment (Promotion and Protection) Act, 2022 is amended.
2. Section 325 Of the “The Pakistan Penal Code, 1860” is omitted and amendment of Schedule-II in the Code of Criminal Procedure, 1898 is made.
3. Section 3, 7, 9, 11, 15, 20 and 92 of “The Punjab Trusts Act, 2020” are amended and Section 15-A is inserted.
4. Rule 1 and 4 of “The Punjab Pakistan Waqf Properties (Accounts) Rules, 1982 are amended and Rule 5 is omitted.
5. Amendment in Schedule at Sr. No. 6 of “The Punjab Criminal Prosecution Service (Conditions of Service) Rules, t 2007 is made.
6. Amendment in “The Punjab Government Letter No.2374-88-VI/2808-CS, dated 07.08.1988 under the subject “Misuse of Agricultural Land/States-Assessment of Condonation Fee.”
7. Sr. No. 7 of “The Punjab Government Rules of Business, 2011” is amended.
8. Amendment in Local area of metropolitan corporation, Sargodha, Punjab.
9. Amendment in Rule, 22 of “The Punjab Local Governments Land Use Plan (Classification, Reclassification and Redevelopment) Rules, 2020” is made.

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### **SELECTED ARTICLES**

#### **1. MANUPATRA**

<https://articles.manupatra.com/article-details/Antitrust-A-major-issue-in-the-modern-MA-Regime>

#### **Antitrust - A major issue in the modern M&A Regime by Akshit Gupta**

*Since mergers and acquisitions is a collusive activity, it is rife with numerous behind-the-scenes factors which induce anti-competitive trade culture and threaten to damage the small-investors and shareholders. Despite the fact that the antitrust and anti-unfair competition phenomena has received a sufficient concern of the Government, and subsequently reasonable steps a lot had s been taken, done in that regard as well, yet the issue of mergers control under anti-trust laws remains a rather complex entity. The smaller target enterprises remain at a constant state of perplexity due to lower negotiation capacity as compared to foreign giants. In this article, we try to critically analyze, the various what are the various antitrust challenges faced by corporate entities while undergoing the process of mergers/demergers, how have the laws evolved to shield the market from monopolistic and damaging anti-competitive motives of few key players, what is the position of the International conglomerate market on this issue and what can be a viable roadmap ahead to address this issue more prudently.*

2. **MANUPATRA**  
<https://articles.manupatra.com/article-details/Interplay-of-Arbitration-and-Intellectual-Property-Rights>

**Interplay of Arbitration and Intellectual Property Rights by Arjim Jain**

*The commercial and business-commerce sectors have finally greatly embraced and benefited from alternative conflict resolution techniques. One of the most popular ways is arbitration; today, the majority of parties involved in business transactions choose to use arbitration to resolve any sort of disagreement. The article uses many case laws to argue whether intellectual property disputes are arbitrable in India. Is arbitration a viable option for IP disputes is the question this study seeks to answer. Also being contested is whether IPs fall under Right in rem or Right in personam. This article also briefly discussed the status of international IPR disputes' arbitrability. Additionally, several recommendations have been given.*

3. **MANUPATRA**  
<https://articles.manupatra.com/article-details/Diplomatic-means-of-Dispute-Settlement-in-Public-International-Law>

**Diplomatic means of Dispute Settlement in Public International Law by VedikaKakar**

*Post-World War II the world leaders were confident they needed a new international organisation (to replace League of Nations) to create a stable world order and to be a peacemaker and a peacekeeper. The UN Charter in Chapter VI discusses "peaceful substitutes for techniques of violence". Several other declarations recognised peaceful settlement of disputes as one of the seven principles of international law. International dispute settlement refers to submitting the dispute to a body that would assess the merits and issues and come to a conclusion on how to best settle it.*

4. **MANUPATRA**  
<https://articles.manupatra.com/article-details/To-Pierce-or-not-to-pierce-A-General-survey-of-Doctrine-of-piercing-the-corporate-veil>

**To Pierce or not to pierce: A General survey of Doctrine of piercing the corporate veil by Mr. Soham Sakpal**

*A company is a legal entity formed by a group of like-minded individuals with the capital, to engage in and operate a commercial enterprise and thereby further their business ambitions. In this day and age of globalized economies formation of a company has become a standard medium to pursue any commercial venture. Historically, this "association of individuals" of western origin and its genesis lies in both the ingenuity and financial exigencies of the Dutch which compelled them to launch the first joint stock corporation so as to not miss the proverbial ship of exploration for new trade routes, with one fell swoop the Dutch not only gained access to the limitless public funds but also the financial risk of a perilous business venture was now distributed throughout the ranks of multitudes of shareholders thus minimizing the risk of an individual investor, even today modern corporations are*



*formed with this same motivation. Thus, the Dutch East India Company has the distinction of being the first multinational corporation established in 1602. Being a student of law & of history, I would argue that it was the impeachment trial of Governor General of India Warren Hastings in 1787 when the prosecution led by Edmund Burke, rather unknowingly and unsuccessfully first attempted to pierce the corporate veil (although the concept of the corporate veil was not yet invented) by seeking to impeach the senior most administrator of the East India Company in India for his acts of mismanagement and corruption allegedly committed under the garb of Company's authority. It was the first time in history that not only the official in charge of the company's affairs was held accountable for illegal acts done in the Company's name but also the overall conduct of the East India Company in carrying out its business was discussed and debated in the House of Lords which until 2009 was the highest court of appeal in the UK..*

5. **SPRINGER LINK**

<https://link.springer.com/article/10.1007/s11572-023-09654-y>

**A Fiduciary Principle of Policing by Stephen Galoob**

*Consider two cases of policing. The first is Whren v. United States. Footnote 1 In the early 1990s, two plainclothes District of Columbia police officers, Soto and Littlejohn, were patrolling a so-called high crime area in an unmarked car when they noticed a truck that they suspected was engaged in the drug trade. However, at this point the officers lacked an independent legal basis for detaining or searching the truck. The officers made a U-turn toward the truck. The truck turned right without signaling and sped off. The officers then pulled over the truck for traffic violations. After stopping the truck, the officers saw large plastic bags containing crack cocaine in the passenger compartment. The two occupants of the truck, Whren and Brown, were arrested and charged with possessing cocaine with the intent to distribute it within 1000 feet of a school.*

6. **SPRINGER LINK**

<https://link.springer.com/article/10.1007/s11196-022-09962-x>

**Langue and Parole of Investment Law by Paolo Vargiu**

*This article identifies the principal signs forming the language of investment law and arbitration, isolating for each of them its signifier and its signified in light of how such signs are used by arbitrators, practitioners and scholars. In light of this analysis, investment arbitration is assessed from a semiotic standpoint in order to verify whether it is possible, under this perspective, to consider international investment law as a multilateralised branch of international law, with a common language, customs and rules rightly referred to by international arbitral tribunals, or if the term “international investment law” is merely a conventional expression that simply groups together a plurality of micro-systems with no significant link among each other to justify the arbitrators' establishment of a de facto system of precedent and the constant reference to a non-existent body of international law rules on foreign investment.*

7. **THE NATIONAL LAW REVIEW**  
<https://www.natlawreview.com/article/wedded-to-law-striking-marital-discrimination-failure-explained-uk>

**Wedded to The Law – striking marital discrimination failure explained (UK) by David Whincup**

*As the next in our occasional series of posts about The Law, here is a new Employment Appeal Tribunal decision so morally unjust that even the Judge himself didn't want to make it. Mrs Bacon was married to the majority shareholder of their joint employer, Advanced Fire Solutions Limited. She was also employee, director and shareholder of AFS. When she told her husband that she wanted to separate (but from him, not it), he promptly demonstrated beyond reasonable argument that hell having no fury is in no sense limited by gender. Both directly and via AFS's managing director, a Mr Ellis, Bacon subjected his wife to a series of retaliatory detriments including denying her dividend payments, fitting a tracking device to her car, falsely alleging IT abuse, dismissing her and making what the Employment Tribunal found to be a wholly spurious complaint to the police about her.*

