LAHORE HIGH COURT

BULLETIN

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Message by Mr. Justice Muhammad Qasim Khan, Hon'ble The Chief Justice Lahore High Court, Lahore

"Wisdom is not a product of schooling but of the lifelong attempt to acquire it." (Albert Einstein).

With a long run perspective of sharing recent case law developments and precedents as enunciated by Superior Courts of Pakistan and other countries and with an aim to enlighten the judges with updated knowledge of law and its applicability, I appreciate the initiative of my learned brother Judge, **Mr. Justice Shahid Waheed**, the Administrative Judge of Research Center of this Court for issuance of the "*Case Law Bulletin*" on fortnightly basis. It is high time to resurrect good practice of the past in a manner which not only enhances its utility but also makes it in line with the modern pattern, so that the reader must be communicated about the issue under adjudication and decision of the court in a precise manner. A quality judicial service can only be delivered with passion, enthusiasm, knowledge, analytical application of laws and awareness of latest developments in legislation and most importantly with the knowledge of recent precedents. I hope that this *Bulletin* will facilitate the reader to keep abreast of latest principles of law as laid down by Constitutional Courts of the Country and of other parts of the globe. The object of circulating this Bulletin will be accomplished only when the readers will not only learn the correct law as laid down by the Courts but also unlearn the existing principles of law overruled through these judgments. As it was said by famous Chinese Philosopher Lao Tse: "To attain knowledge, add things everyday. To attain wisdom, remove things every day."

I hope that this Bulletin will serve as a handbook for both researchers at various levels of academic endeavors as well as a guidebook for Judges and lawyers working in the field of law.

FORTNIGHTLY CASE LAW BULLETIN

(01-10-2020 to 15-10-2020)

A Summary of Latest Decisions by the superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

DECISIONS OF INTEREST

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1. **Supreme Court of Pakistan**
Civil Petition No.2129 of 2020
Khawaja Anwer Majid v. National Accountability Bureau
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2129_2020.pdf

Facts: The petitioner, a septuagenarian sought bail primarily on the ground of his cardiac conditions that required replacement of aortic valve with permission to go abroad to undertake cardiac surgery.

Issue: Whether bail can be granted for offshore treatment to a sick and infirm person?

Analysis: An accused all that he can claim is "due process of law" through a fair trial so as to possibly vindicate his position; it is a right equally extendible to all the accused without distinction of stature, status or station. As a sick and infirm person, as he appears to be, the petitioner is entitled to the concessions that the law provides to all and sundry; these do not include offshore treatments. Equality before law and equal protection thereof are not one sided affairs; these equally empower the State through its prosecuting agencies to effectively prosecute the alleged offenders and for that physical custody/presence of an accused to bring the prosecution to its logical end is a sine qua non.

Conclusion: Bail allowed without permission to go abroad for treatment.

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2. **Supreme Court of Pakistan**
Jail Petition No.499 of 2015
Muhammad Abbas v. The State
https://www.supremecourt.gov.pk/downloads_judgements/j.p._499_2015.pdf

Facts: The petitioner was tried and convicted for the qatl-iamd (murder) of his wife under Section 302(b) of the Pakistan Penal Code ('PPC') and sentenced to death. His version was that deceased was a woman of bad character. Having seen her in the company of a man, he was provoked. Hence under grave and sudden provocation, he shot her once. He submits that such circumstances bring the petitioner's case within the ambit of section 302(c) PPC

Issue: Whether killing in the name or pretext of honour falls within ambit of section 302(c)?

Analysis: The law specifically states that under no circumstances can a killing in the name or under the pretext of honour be brought within the ambit of section 302(c) PPC. A proviso was added after clause (c) of section 302 in the year 2005 to this effect. This proviso was then replaced by another proviso in the year 2016 which when read with the definition of fasad-fil-arz reiterated that killing in the name or under the pretext of honour cannot be brought within the ambit of section 302(c) PPC.

Conclusion: Killing in the name or on the pretext of honour cannot be brought within the ambit of section 302(c) PPC. Leave declined.

. **Supreme Court of Pakistan**
Criminal Petition No.682 of 2020
Abbas Raza v. The State
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._682_2020.pdf

Facts: It is alleged that the petitioner was selling narcotics while sitting in the "Baithak" adjacent to his house. He was taken into custody. During his personal search a polythene shopper was found containing opium weighing 1300 grams held in his right hand at the time of raid. The raiding party also took into possession one electric weighing machine and sale proceeds amounting to Rs.2129290/-.

Issue: Question of post arrest bail in case of 1300 gram opium?

Analysis: In the month of February, when the weather is cold, selling of narcotics while sitting in the "Baithak" seems to be something astonishing, when there is remote possibility of attracting any customer at that odd time. Otherwise when it is the allegation that the petitioner is selling narcotics substance "opium" a contraband the use of which makes the consumer affected through central nervous system pouring negative impact in the body while making him dull, depressed, of impaired reflexes, lacking sharpness turning into a sluggish entity. All these aspects when evaluated conjointly, it lends support to the arguments advanced by the learned counsel for the petitioner qua prosecution story being result of fabrication

Conclusion: Bail granted.

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4. **Supreme Court of Pakistan**
Criminal Petition No.290 of 2020
Muhammad Uzair Jamal v. The State
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._290_2020.pdf

Facts: A student of M.Phil, was shot dead in a family function scheduled to fix her marriage date by the petitioner who wanted to marry the deceased. accused/petitioner moved an application contending that he was suffering from different mental ailments from the last so many years and was unable to defend himself within the parameter of the law during the course of trial.

Issue: Whether a mental illness like Depressive illness is a ground recognized by law for seeking immunity from prosecution on the ground that accused is unable to defend himself?

Analysis: Depression is a natural concomitance of the crime and one may hardly find a prisoner facing corporal consequences, possibly the gallows to stay unperturbed; it is a state of mind primarily governed by a variety of factors including fear, regret or remorse; such inevitable disequilibriums are not recognized by law to

hold the process of justice in abeyance. An offender can claim immunity from prosecution on the basis of unsound mind if at the time of commission thereof, he by reason of unsoundness of mind, was incapable of knowing the nature of the act or lacked knowledge on account thereof about its being wrong or contrary to law ..... "Depressive Illness" is not a disease or incapacity recognized by law as a justification to deny justice to the victims of crimes or their families nor does it allow digging out of acclaimed incapacity by a Physician of offender's own choice, other than the designated medical officers.

Conclusion: Depressive illness is governed by a variety of factors including fear, regret or remorse. It is a natural concomitance of the crime. Such like illness is not recognized by law to hold the process of justice in abeyance. Application dismissed.

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5. **Supreme Court of Pakistan**
Civil Appeal No. 324 of 2020
District Police Officer v. Muhammad Hanif.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._324_2020.pdf

Facts: In the inquiry, an allegation of receiving bribe of Rs. 20000/- stood proved. Respondent was dismissed from service. In appeal the major penalty was converted to compulsory retirement. However, service tribunal treating, it a minor act, reinstated the respondent and imposed minor penalty upon him.

Issue: Whether taking illegal gratification is a minor act?

Analysis: Taking of illegal gratification is itself a heinous offence requiring imposition of major penalty. A civil servant found guilty cannot be retained in service and major penalty has to be imposed upon him.

Conclusion: Taking of illegal gratification was held to be a heinous offence requiring imposition of major penalty The modus operandi adopted by the Member Service Tribunal was highly deprecated. He was directed to be replaced. Judgment of the Tribunal was set aside.

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6. **Lahore High Court**
Munir Aftab v. The State & Others
W.P.No.6076 of 2020
2020 LHC 1813
https://sys.lhc.gov.pk/appjudgments/2020LHC1813.pdf

Facts: Magistrate while granting physical remand of the accused directed the investigation officer to add section 452 PPC in the FIR which was registered under section 354 PPC.

Issue: Whether Magistrate is empowered to direct addition of particular offence in an FIR at the stage of investigation?

Analysis: While deciding the question of grant of remand, the concerned court is not expected to act blindly and such orders are expected to be passed with due application of judicial mind. In an appropriate case and at an appropriate stage, the area magistrate can require the investigation officer to consider addition or deletion of any penal provision. If the Court mechanically accepts the prosecution version it may cause miscarriage of Justice.

Conclusion: At the time of remand, a magistrate may very well direct the investigating officer to consider addition, deletion or substitution of an offence mentioned in the FIR if the circumstances warrant. However, he cannot ask the IO to submit report under Section 173 Cr.P.C in a particular manner.

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7. **Lahore High Court**

Muhammad Shahid v. Aqeel and 5 others

Crl. Revision No. 01/2020/BWP

2020 LHC 1805

https://sys.lhc.gov.pk/appjudgments/2020LHC1805.pdf

Facts: Petitioner challenged dismissal of his application in a private Complaint for re-examination of medical officer to clarify certain ambiguities, which arose during cross-examination of said witness.

Issue: Whether petitioner could have moved application for re-examination of witness or it was the domain of Public Prosecutor being in-charge of Prosecution; and whether re-examination of witness can be allowed for the purpose of clarifying the fact about duration of time between injuries and death of the victim when doctor narrated it differently during his examination in chief and cross examination?

Analysis: The Public Prosecutor is in-charge of only those trials before Sessions Court which are initiated on behalf of State and in the form of registration of FIR and not in the matters of private complaint. The purpose of Article 133 (3) QSO, 1984 is to clear an ambiguity or clarify or explain a matter which has cropped up during cross-examination and the party who has produced the witness has the absolute right to re-examine him where explanation of an issue is required.

Conclusion: Petition is allowed and trial court is directed to recall the Medical Officer for re-examination.

8. **Lahore High Court**
W.P. No.1421 of 2020.
Syed Amjad Hussain Shah v. Ali Akash alias Asima Bibi
2020 LHC 1825
https://sys.lhc.gov.pk/appjudgments/2020LHC1825.pdf

Facts: Allegedly daughter of petitioner was seduced to marriage by respondent, who, according to petitioner, was also a female. Hence, petitioner claimed the issuance of direction to recover the detenue daughter from the illegal and improper detention and custody of respondent and hand her over to petitioner.

Issue: Whether questioning of status of relationship falls within the scope of section 491 CrPC and whether a sui juris can be sent to Dar-ul-Aman against her wishes?

Analysis: The Court, while deciding an application under section 491, Cr.P.C. is not required to go into the question of the status of the relationship of the parties by holding full-fledged trial of the counterclaims and it should concern itself only with the free will of the detenue. …… A detenue can be sent to "Dar-ul-Aman" when she has shown apprehension of danger to her life if she is sent with either of the parties. A free person, cannot be put to physical restraint or confinement in "Dar-ul-Aman" for an indefinite period and that too not based on any concrete fact or allegation……When a woman makes a prayer for security to her life, she can be lodged at "Dar-ul-Aman" but still the woman has the right to make a prayer at any stage to the Superintendent of "Dar-ul-Aman" or to the competent Court on whose order she has been sent to "Dar-ul-Aman" to release her and restore her right of liberty. In such a course, she cannot be further kept in "Dar-ul-Aman" under the law of the land.

Conclusion: Status of relationship cannot be questioned in proceedings under section 491 CrPC. A free person cannot be sent to Dar-ul-Aman against her wish.

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9. **Lahore High Court**
Writ Petition No. 37861 of 2020.
Shell Pakistan Limited v. Punjab through the Secretary Ministry of Finance
2020 LHC 1776
https://sys.lhc.gov.pk/appjudgments/2020LHC1776.pdf

Facts: Petitioner challenged recovery notice issued by Additional Commissioner under Punjab Sales Tax Services Act, 2012 and prayed for restraining the recovery till finalization of petitioner's appeal pending before Commissioner Appeal?

Issue: Whether proceedings in the form of notice for recovery of sales tax issued by Additional Commissioner can be restrained as a stop-gap arrangement U/A 199 of the Constitution when the appeal of petitioner is pending before Commissioner Appeal?

Analysis: The appeal of the petitioner is pending with the Commissioner Appeal and the case has not yet ripened since two further remedies to the Appellate Tribunal and a reference to learned Division Bench are available to the petitioner under the law; and if the matter is not yet ripened with the authorities, no recovery can be made.

Inbuilt interim stay mechanism under the statutory appeals is provided in all general laws especially in tax matters. The law of Sales Tax Services Act, 2012 has itself provided a time bound mechanism for expeditious disposal with inbuilt statutory right of appeal with inbuilt stay mechanism provided under the Statute in which both the Commissioner (Appeals) and the Tribunal have inbuilt mechanism of passing interim orders and then confirming it within a period of sixty days.

The appeal of the petitioner has not been decided despite lapse of statutory deadline. Therefore this Court has to protect the Petitioner's right under Article 18, 4, 10-A of the Constitution as a stop-gap arrangement. The stop-gap arrangement under tax laws is derived from Article 199(1)(4)(a) read with Section 66, 67 and 68 of the Act coupled with judgments of the Courts as a stop gap measure.

Conclusion: Temporary relief was granted as stop-gap arrangement and Commissioner was directed to decide the pending stay application and appeal within one and two months respectively and no coercive measure for recovery of disputed amount be taken till then.

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10. **Lahore High Court**
Case No. ICA No. 18 of 2002.
Chairman, Federal Land Commission v. Mst. Sanam Iqbal
2020 LHC 1978
https://sys.lhc.gov.pk/appjudgments/2020LHC1978.pdf

Facts: Deputy Land Commissioner issued notices in pursuance of order by the Chairman, for resumption of the land, which were challenged through the writ petition. The writ petition was allowed and the impugned judgment was assailed through intra court appeal.

Issue: Whether in view of availability of appeal, review and revision under the Ordinance of 1972, the writ petition was liable to be dismissed?

Analysis: The notices by DLC, were challenged on the ground of jurisdiction, against which no appeal, review or revision was available. It is by now settled that a show cause notice can be challenged in constitutional jurisdiction, for lacking jurisdiction. An action through a show cause notice, found to be without jurisdiction, patently illegal or with mala-fide intent, had to be nipped in the bud.

Conclusion: An action through a show cause notice found to be without jurisdiction, patently illegal or with mala-fide intent, had to be nipped in the bud.

11. **Lahore High Court**
Writ Petition No.32414 of 2015
Mst. Balqees Begum v. Addl. District Judge
2020 LHC 1996
https://sys.lhc.gov.pk/appjudgments/2020LHC1996.pdf

Facts: Suit for specific performance of contract. Application by the petitioner to produce secondary evidence under Article 76 of the Qanun-e-Shahadat, 1984 in respect of agreement to sell and receipt of payment on the plea that they had been lost; was dismissed by the trial court. The order was upheld by the Revisional Court. The orders were challenged before the High Court in its Constitutional Jurisdiction.

Issues: Whether an opportunity to prove the loss of primary evidence should be granted after filing of application for secondary evidence?

Analysis: Clause (c) of Article 76 of the Qanun-e-Shahadat, 1984 provides for permitting the parties to adduce secondary evidence of the existence, condition or contents of a document when the original has been lost. However, such a course is subject to certain limitations as it is not intended to be utilized for the benefit of a person who deliberately or with sinister motives refuses to produce in Court a document which is in its possession, power or control. It is designed only for the protection of a person who, in spite of best efforts, is unable from circumstances beyond its control to place before the Court primary evidence as required by law. Thus the party tendering secondary evidence must prove the existence and execution of the document directly, if possible, or presumptively, where not and then establish its loss, either by the admission of the adversary or by proof that it cannot be found after diligent search. The Trial Court ought to have granted opportunity to the plaintiff to lead some positive evidence so as to satisfy the preconditions for giving secondary evidence relating to the agreement to sell and the receipt and then exercised its discretion.

Conclusion: The Court set aside the orders and directed the trial court to decide the application afresh after allowing the plaintiff to produce evidence thereon.

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12. **Lahore High Court**
Mst. Sadia Jamshaid v. Province of Punjab & another
R.F.A. No. 73473/2019
2020 LHC 1993
https://sys.lhc.gov.pk/appjudgments/2020LHC1993.pdf

Facts: The suit of the appellant was dismissed by trial court under order XVII rule 3 C.P.C for non-production of evidence despite availing numerous opportunities.

Issue: Whether trial court was justified to close appellant's right of evidence without affording her an opportunity to record her testimony.

Analysis: It is unbeatable right of a party present before the court to make a statement to prove the contents of his/her case. It was incumbent upon the trial Court, despite non-production of witnesses by appellant, to let her come out with her own version in witness-box instead of dismissing the suit forthwith, in that, such recourse to O.XVII is not warranted by law.

Conclusion: Impugned judgment is set aside and trial court is directed to re-adjudicate the matter by giving one last opportunity to the appellant to produce all her evidence subject to payment of cost and in case of failure, her right shall be deemed to have closed.

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13. **Sindh High Court**
Constitutional Petition No. D-4622 of 2020
Ms. Mashal Khalidi v. Fed. Of Pakistan and Others
2020 SHC 758
https://eastlaw.pk/cases/Ms.-MashalVSFed.-of.Mzk1ODMz

Facts: Due to the outbreak of the Covid-19 pandemic, a change was brought about in the Education Policy and all regular and private candidates appearing in class 10 & 12 examinations were declared pass, based on their class 9 & 11 examination result with an increase of 3% marks respectively. Petitioner contends that cancellation of the examinations amounts to an infringement of her fundamental right under Article 25 of the Constitution, as she was resultantly deprived of a fair chance to obtain a better percentage than that awarded in terms of the Impugned Policy.

Issue: How the cancellation of the examination or the implementation of the promotion policy offended Article 25 of the Constitution and how it even fell within the province of this Court under Article 199 of the Constitution to direct the PMDC to relax the eligibility criteria set out in the Regulations?

Analysis: The individual interests of the petitioner cannot be accorded primacy over those of the public at large on that basis. It is speculative to say that upon being provided an opportunity through an examination the petitioner would do so; hence the plea taken on the ground of discrimination with reference to Article 25 of the Constitution appears to be misconceived.

Conclusion: Petition dismissed in *limine*.

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14. **Sindh High Court**
CP D-6006 of 2018
Pak Sarzameen Party v. E.C.P Etc.
2020 SHC 754
https://eastlaw.pk/cases/Pak-Sarzameen-PartyVSE.C.P.Mzk1ODAx

Facts: The Petitioner levelled certain allegations with respect to the conduct of the

General Elections 2018 and sought inter alia a forensic investigation into the allegations; a declaration that the 2018 elections may be declared void ab initio; and directions that the notifications of respondent Nos. 11 to 73, to be members of the national / provincial assemblies, be withdrawn and fresh elections be ordered in the respective constituencies.

Issue: Maintainability of the petition seeking forensic investigation into the allegations with respect to the conduct of the General Elections 2018 and de-notification of different members of respective constituencies by the High Court.

Analysis: Article 225 of the Constitution places a constitutional bar upon calling elections to the house or provincial assembly into question. However, the bar contained in Article 225 is not absolute and may be displaced under Article 199(1) (b)(ii) and/or Article 184(3). Facts about disqualification of a member of a house must be based on affirmative evidence and not upon presumptions, inferences and surmises and that interference may only be contemplated in the presence of admitted facts and / or irrefutable direct evidence available on the record to justify disqualification. Present petition does not qualify within the ambit of Article 199(1)(b)(ii). Article 199 specifically stipulates that jurisdiction is to be entertained upon invocation by an aggrieved person, an exception in such regard being a writ of quo warranto, however, this petition is not seeking such a writ.

Conclusion: Petition dismissed.

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15. **Sindh High Court**
Criminal Accountability Appeal No.29 of 2018 & C.P No.D-6233 of 2018 (2) Criminal Accountability Appeal No.30 of 2018 (3) Criminal Accountability Appeal No.31 of 2018 & C.P No.D-6331 of 2018
Aleemuddin v. The State (Nab)
2020 SHC 752
https://eastlaw.pk/cases/AleemuddinVSThe-State-NAB-.Mzk1NjY0

Facts: Allegedly the one of the accused persons was occupying precious Government land and was selling it to public and also handing over fake Sanads of Gothabad Scheme to the general public. Through this act the accused persons received an amount of Rs.186,959,000/- from over 500 persons; hence they were convicted and sentenced by the learned Accountability Court to suffer R.I. for 07 years each and disqualification for 10 years for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body.

Issue: Whether appreciation of evidence on the touchstone of production of documents and proof of documents are two different subjects?

Analysis: It is a settled principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of

unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the court of law in any manner from the due course to judge and make the appraisal of evidence in a let-down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the judges to patently wrong collusion. In that event, justice would be the casualty.

The burden to prove all the ingredients of the charge always lies on the prosecution and it never shifts on the accused, who can stand on the plea of innocence assail to him under the law, till it is dislodged prosecution would never be absolved from proving the charge beyond reasonable doubt and burden would shift to the accused only when the prosecution would succeed in establishing the presumption of the guilt against him. In the present case, the prosecution had failed to prove the charge against the accused beyond any shadow of a doubt.

Conclusion: Appeals were allowed. Accused persons were acquitted.

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16. **Sindh High Court**
Civil Revision Application No. S-85 of 2010
Safdar Hussain Jatt etc. v. Zafar Ali & Others
2020 SHC 746
https://eastlaw.pk/cases/Safdar-Hussain-JattVSZafar-Ali-.Mzk1NjEw

Facts: Plaintiff filed a suit for specific performance of an agreement to sell. In appeal, suit of plaintiff was decreed. Main contention of the present applicants was that the Appellate Court has failed to comply with the provision of Order 41 Rule 31, CPC, as no points for determination were settled.

Issue: (i) Whether a Civil Revision is not maintainable on the ground that the power of attorney annexed and placed on record is not in respect of present Civil Revision?
(ii) What remains the position about non-framing of points for determination during the appeal?

Analysis: It reflects that Muhammad Ismail Dahar was appointed by the present applicants on 05.09.2006 as their attorney purportedly after the demise of their father, the original owner of the property as *their special attorney for us, in our name and on our behalf in the "case" titled Zafar Ali v/s Province of Sindh*; however at the same time it needs to be appreciated that the proceedings of appeal and Revision are apparently in continuation of the said case and the word *"case"* would not only include only the suit but the adjudication of the case even thereafter. Moreover, it is also a settled proposition of law that if the attorney is acting in support of and to preserve the interest of the executants, whereas the executants have not come forward to object or dispute the authority so conferred, then the

presumption would be that the attorney is competent to act in the interest of the executants.

If the Appellate Court in each and every case, has not framed points for determination, such judgment would not be liable to be set aside on that ground alone. Particularly, when all the questions raised have been answered by the Appellate Court.

Unless the findings are reversed by the first Court of appeal which is not so in the present case, decision on each issue may not to be distinctly and essentially recorded, provided in substance compliance of the provisions of the Order XLI, Rule 31, C.P.C. has been made.

Conclusion: Appeal or revision are continuation of case, so , power of attorney in respect of case may also be used in revision or appeal.

If appellate court has not framed points for determination, it is not that such judgment would be liable to be set aside on that ground alone, whereas, it becomes immaterial, more-so, when all the questions raised have been answered by the Appellate Court.

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17. **Peshawar High Court**
W.P No. 1075-D/2019 & C.M No.1194-D/2019
Asif Raza Masih v. Mst. Sofia alias Pinky
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-No.-1075-D-of-2019-Non-Muslim-Jurisdiction-FC.pdf

Facts: A family court dissolved marriage between Christian couple on failure of pre-trial reconciliation. Husband challenged the order in writ jurisdiction of Peshawar High Court.

Issues: Has Family Courts jurisdiction under Family Courts Act 1964 to entertain matters belonging to other religions/personal laws? Was the Family Court justified in dissolving marriage between the Christian couple on their failure of pre-trial reconciliation?

Analysis: The scope of the Family Courts Act, 1964 is wider than that of the Muslim Family Laws Ordinance, 1961. The effect of the words in section 5 that the Family Courts shall have the jurisdiction to entertain suits relating to dissolution of marriage, etc. but subject to the provisions of the Muslim Family Laws Ordinance, 1961 imply only that where there is an inconsistency between Muslim Family Laws Ordinance, 1961 and the Family Courts Act, 1964, the provisions of the Muslim Family Laws Ordinance will prevail and shall be given effect to in their pristine form and no more. It is settled that the Muslim Family Laws Ordinance, 1961 applies only to Muslims as provided in its Section 1 Subsection (2). Suits of this nature filed by the parties other than Muslim citizens of Pakistan can be entertained by Family Courts but will be heard and tried not in accordance with

the provisions of the Muslim Family Laws Ordinance but by the proper law applicable to them.

Conclusion: Family court has jurisdiction even to try family cases of non-Muslims but not in accordance with the provisions of the Muslim Family Laws Ordinance but by the proper law applicable to them. Judicial separation between Christian couple is only possible in accordance with Provision of sec 10 and 22 of the Divorce Act 1869.

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18. **Peshawar High Court**
Crl. Appeal No.63-P/2018
Mukaram Khan v. The State
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Mukaram-Khan-vs-the-STate-_Abetment-of-appeal-to-the-extent-of-compensation_.pdf

Facts: The appellant, inter alia, was convicted u/s 302 PPC and sentenced to life imprisonment and Rs.4,00,000/, as compensation u/s 544-A Cr.P.C. But he died during pendency of his appeal before the High Court.

Issues: Whether on the death of the appellant, his appeal shall abate under section 431 Cr.P.C. only to the extent of his corporal punishment i.e. imprisonment for life or also to the extent of compensation under section 544-A Cr.P.C.?

Analysis: Under section 431 Cr.P.C on the death of appellant every appeal under chapter XXXI of the Code, except filed appeals u/s 411-A/417(2) Cr.P.C and appeal from a sentence of fine, is to abate on the death of the appellant. Compensation as a punishment is neither mentioned in Section 53 PPC nor in Section 302 PPC. The word "compensation" also does not a find mention in section 431 Cr.P.C, rather word "fine" has been specifically used therein. Had there been any intention of the legislature that the appeal on the death of the accused would not abate to the extent of compensation then, section 431 Cr.P.C., would have also been amended to this extent, but such is not the position. As per the golden principles of interpretation of statute the courts while interpreting a provision of law having penal consequences, follow the rule of strict interpretation, according to which words not used by the Legislature in a statue, cannot be inserted by the courts.

Conclusion: "Compensation" under section 544-A Cr.P.C., being neither a sentence under section 53 PPC nor under section 302 PPC, therefore, the appeal of the appellant on his demise shall stand abated to the extent of corporal punishment as well as compensation.

19. **Islamabad High Court**
Criminal Misc. No.215 of 2020 in Criminal Appeal No.121 of 2018
Mian Muhammad Nawaz Sharif v. State through Chairman NAB, Islamabad

Fact: The petitioner seeks personal exemption from court and decision of his appeal on merit in his absence.

Issue. Whether exemption from personal appearance can be granted to accused who is fugitive from law?

Analysis It is trite law that after a person has been declared as fugitive from law or an absconder, even in another case he loses his rights granted to him by procedural or substantive law.

Conclusion. First attendance of the appellant is to be procured and the decision regarding the disposal of the appeal on merit shall be rendered after the procedure is completed.

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20. **Islamabad High Court, Islamabad**
ICA. No.156 of 2020
Pakistan Sugar Mills Association and others v. Federation of Pakistan
http://mis.ihc.gov.pk

Facts: An inquiry committee was constituted by Prime Minister to probe in to dearth in the availability of sugar. Thereafter a summary was moved by the Interior Division for the Cabinet proposing that a Commission of Inquiry be constituted under the provisions of the Pakistan Commissions of Inquiry Act, 2017. So inquiry Commission was constituted. Later on representative of ISI was also added as member of Commission. Thereafter commission submitted its report. It was also decided by cabinet that the Special Assistant to the Prime Minister on Accountability and Interior ("Special Assistant") shall identify actions that are to be taken. The Prime Minister approved the 7-point action matrix proposed by the Special Assistant. The appellants, owners of sugar mills, aggrieved of report of commission and proposed actions.

Issues.

1. Whether the inquiry entrusted to the inquiry commission was a definite matter of public importance?
2. Whether the publication in the official gazette of the notifications constituting the inquiry commission after its inquiry report was submitted, rendered the proceedings before the inquiry commission coram non judice?
3. Whether the submission of the summary dated 10.03.2020 by the interior division in whose domain the subject of commissions of Inquiry Act, 2017 did not lay, rendered the cabinet's decision 10.03.2020 unlawful?
4. Whether the federal government could add members to the inquiry commission after it has been constituted?

Analysis: There is nothing on the record to show that any of the appellants had raised any objection regarding any procedural irregularity or illegality in the process culminating in the constitution of the Inquiry Commission until much after it had submitted its report. Now that the Inquiry Commission's report has been considered by the Cabinet in its special meeting held on 21.05.2020 and directions have been given on the basis of the recommendations in the said report, we are not inclined to exercise our discretion to undo the entire process from the stage of the moving of the summary and bring it to absolute naught. Such a course would be an irrational exercise of discretion and would most definitely not subserve the interests of justice.

Conclusion

1. The sharp increase in the price of sugar is without a doubt a definite matter of public importance warranting an inquiry into the causes for such increase.
2. On account of the non-publication in the official gazette of the notifications constituting the Inquiry Commission until after the said Commission had submitted its report, the proceedings before the Inquiry Commission prior to such publication are not coram non-judice.
3. The court refrained from invalidating the decision of the Cabinet to constitute an Inquiry Commission on the ground that the summary for the Cabinet was moved by the Ministry in whose domain the subject of the 2017 Act did not lay.
4. Since the report of the Inquiry Commission was unanimous, the court do not feel the need to interfere with the Inquiry Commission's report on the ground that one additional member was added to the Inquiry Commission nine days after it was constituted.

Therefore, it is our view that the inquiry report cannot be quashed on the ground that an opportunity of a hearing in the nature as a judicial or a quasi-judicial authority was not provided to all the appellants.

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21. **Supreme Court of Azad Jammu And Kashmir**
Civil PLA No.182 of 2020
Muhammad Rashad Sulehria…etc v. University of AJK through Vice Chancellor..etc
http://ajksupremecourt.gok.pk/wp-content/uploads/2020/09/Civil-PLA-No.182-of-2020.pdf

Facts: The petitioners challenged the act of the University authorities through writ petition before the Azad Jammu & Kashmir High Court on the ground that the examination of the students of the University (internal system) has been conducted online keeping in view the spread of coronavirus (covid 19) pandemic, whereas their examination has been scheduled under the conventional method in

the examination hall which is the clear violation of the current policy of the HEC, hence, they are discriminated.

Issue: When and where court can interfere in policy matter?

Analysis: Selection of the mode of taking/conducting the examination is the policy decision of the university authorities, which cannot be interfered with ordinarily. The interference in the policy decision of any authority is only justified when it is against the relevant statute or is discriminatory. No such eventuality is available in the case in hand. Making of the policy regarding mode of conducting the examination is the sole prerogative of the university authorities, therefore, the court cannot direct them to take examination under a particular manner. No violation of law or rules has been pointed out which is a condition prerequisite for interference of the Court in such like matters. No any legal question of public importance is involved in the case, therefore, leave cannot be granted as the same will hamper the functioning of the university and examination process.

Conclusion: The interference in the policy decision of any authority is only justified when it is against the relevant statute or is discriminatory.

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22. **Supreme Court of India**
Criminal Appeal No.688 OF 2013
Jeet Ram v. The Narcotics Control Bureau, Chandigarh
https://main.sci.gov.in/supremecourt/2013/9305/9305_2013_35_1502_23965_Judgement_15-Sep-2020.pdf

Facts: Appellant has sought setting aside judgment of High Court where his acquittal was converted into conviction by contending that High Court has not exercised its powers properly.

Issue: What are the principles of interfering with an order of acquittal?

Analysis: Supreme Court has delineated upon the proposition and has analyzed all the precedents on the point that it is always open to the appellate court to re-appreciate the evidence, on which the order of acquittal is founded, and appellate courts are vested with the powers to review and come to their own conclusion.

Conclusion: The following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerged:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

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23. **Supreme Court of the United States**
Trump vs. Vance
591 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/19-635_o7jq.pdf

Facts: The case pertains to the New York County District Attorney Cyrus Vance Jr.'s attempt to subpoena the tax records of President Donald Trump as part of the ongoing investigation into the Stormy Daniels scandal, which Trump has litigated to prevent their release.

Issue: May a New York grand jury requires President Trump's accountants and bankers to turn over records revealing his personal tax returns and financial dealings?

Analysis: The President enjoys no absolute immunity from state criminal subpoenas which are directed at his private papers and that he is also not entitled to a heightened standard for the issuance of such a subpoena. Moreover Justices Clarence Thomas and Samuel A. Alito Jr. dissented.

Conclusion: The Court affirmed the decision of the Second Circuit and remanded the case for continued review.

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24. **Supreme Court of the United States**
Bostock v. Clayton County,
590 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

Facts: The plaintiff, Gerald Bostock, was fired after he expressed interest in a gay softball league at work. The lower courts followed the Eleventh Circuit's past precedent that Title VII did not cover employment discrimination protection based on sexual orientation

Issue: Whether the federal civil rights laws protect LGBTQ (Lesbian, gay, bisexual, transgender and queer) employees from discrimination in the workplace nationwide?

Analysis: Yes, the court said in a 6-3 ruling that the employers may not fire or refuse to hire employees based on their race, religion, sex or national origin. The court observed that the discrimination based on sexual orientation or gender identity is discrimination based on sex. It was further opined that the lawmakers in 1964 (CIVIL RIGHTS ACT 1964) may not have intended to protect gay, lesbian, bisexual, transgender or queer employees but the courts always rely on the words of the law and not the aims of the lawmakers. Justices Thomas, Alito and Kavanaugh dissented.

Conclusion: Title VII of the Civil Rights Act of 1964 protects employees against discrimination because of their sexual orientation or gender identity.

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25. **Supreme Court of the United States**
Kelly v. United States,
590 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-1059_e2p3.pdf

Facts: The case known as "Bridgegate" involved the 2013 Fort Lee lane closure scandal. The case revolved around the controversy whether Bridget Anne Kelly, the chief of staff to New Jersey Governor Chris Christie who was running for reelection at the time, and Bill Baroni, the Deputy Executive Director of the Port Authority of New York and New Jersey, improperly used lane closures on the George Washington Bridge to create traffic jams as a means of retaliation against Mark Sokolich, the mayor of Fort Lee, New Jersey when he refused to support Christie's reelection campaign. The lower courts had convicted Kelly and Baroni on federal fraud, wire fraud and conspiracy charges.

Issue: Whether lane closures on the George Washington Bridge to create traffic jams as a means of retaliation against political opponents came under the garb of public corruption?

Analysis: It was opined by the court that that the lane closures could be taken as an exercise of regulatory power – a reallocation of the lanes between different groups of drivers. Further the court observed that the prosecution in the case had failed to show that the actions taken by the government were an "object of fraud" and concluded that as the scheme here did not aim to obtain money or property, Baroni and Kelly could not have violated the federal-program fraud or wire fraud laws.

Conclusion: The decision reversed the convictions and remanded the case to the lower courts for additional review based on the decision.

26. **Supreme Court of United Kingdom**
MS (Pakistan) (Appellant) v. Secretary of State for the Home Department (Respondent) Human Right [2020] UKSC 9
https://www.bailii.org/uk/cases/UKSC/2020/9.html

Facts: Supreme Court gave the appellant permission to appeal in February 2019. He was later able to resolve his immigration status by other means and applied to withdraw his appeal. However, the Equality and Human Rights Commission had applied to intervene in the case and wished to take over the appeal. This was resisted by the Secretary of State on the grounds that the Commission had no power to take over a case and that the Court had no power to allow it.

Issue: Whether Equality and Human Rights Commission (EHRC), as intervener, can take over the case, if the appellant wishes not to pursue it.

Analysis: An intervener is a party to an appeal (Rules of the Supreme Court 2009 (SI 2009/1603 (L 17)), rule 3(2)). It is clearly open to the Court to consider that the question should be decided even though one of the parties no longer wishes to pursue it.

Conclusion: The commission was allowed to take over the main conduct of the Appeal as intervener.

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27. **Supreme Court of Canada**
Canadian Coalition for Genetic Fairness (Appellant) v. Attorney General of Canada and Attorney General of Quebec (Respondent)
2020 SCC 17 (CanLII)
https://www.canlii.org/en/ca/scc/doc/2020/2020scc17/2020scc17.html

Facts: The Government of Quebec referred the constitutionality of ss. 1 to 7 of the (Genetic Non-Discrimination Act) to the Quebec Court of Appeal, asking whether these provisions were *ultra vires* to the jurisdiction of Parliament over criminal law under s. 91(27) of the *Constitution Act, 1867*. The Court of Appeal answered the reference question in the affirmative, concluding that ss. 1 to 7 of the Act exceeded Parliament's authority over criminal law. The Canadian Coalition for Genetic Fairness, which had intervened in the Court of Appeal, appeals to the Court as of right.

Issue: How **'Pith and Substance'** of the Act may be determined to characterize it as a provincial or a federal legislation?

Analysis: To determine whether a law falls within the authority of Parliament or a provincial legislature, a court must first characterize the law and then, based on that characterization, classify the law by reference to the federal and provincial heads of power under the Constitution. At the characterization stage, a court must identify the law's pith and substance.

Identifying a law's pith and substance requires considering both the law's purpose and its legal and practical effects… Legal effects flow directly from the provisions of the statute itself, whereas practical effects flow from the application of the statute [but] are not direct effects of the provisions of the statute itself"…While a statute's title can be helpful to identify its pith and substance…where the impugned legislation potentially relates to several different topics, the leading feature of the statute will be its pith and substance, meaning that the secondary purposes and effects effectively stand outside a precise characterization of the law's true character…a law will be valid criminal law if, in pith and substance, (1) it consists of a prohibition (2) accompanied by a penalty and (3) backed by a criminal law purpose… There is a general consensus that legislative debates are useful in the determination of pith and substance because they give context to the statute, explain its provisions, and articulate the policy of the government that proposed it… However, courts must remain mindful of the fact that legislative debates "cannot represent the 'intent' of the legislature, an incorporeal body"

Conclusion: With the majority of 5 to 4, the court held that the appeal should be allowed and the reference question answered in the negative.

LIST OF RESEARCH ARTICLES

1. JUSTICE QUARTERLY

i. Assessing Public Perceptions of Police Use-of-Force: Legal Reasonableness and Community Standards. (Scott M. Mourtgos & Ian T. Adams)
https://www.tandfonline.com/doi/full/10.1080/07418825.2019.1679864

ii. Police Misconduct, Media Coverage, and Public Perceptions of Racial Profiling: An Experiment. (Lisa Graziano, Amie Schuck & Christine Martin)
https://www.tandfonline.com/doi/full/10.1080/07418820902763046

iii. Procedural Justice for Victims and Offenders?: Exploring Restorative Justice Processes in Australia and the US. (Susan L. Miller & M. Kristen Hefner)
https://www.tandfonline.com/doi/full/10.1080/07418825.2012.760643

2. STANFORD LAW REVIEW

i. Why the Constitution Was Written Down *by (Nikolas Bowie)*

ii. Disaggregating Ineffective Assistance of Counsel Doctrine Four Forms of Constitutional Ineffectiveness by (Eve Brensike Primus)
https://www.stanfordlawreview.org/print/article/disaggregating-ineffective-assistance-of-counsel-doctrine/

3. YALE LAW REVIEW

i. Political Wine in a Judicial Bottle: Justice Sotomayor's Surprising Concurrence in Aurelius *(Christina D. Ponsa-Kraus)*
https://www.yalelawjournal.org/forum/political-wine-in-a-judicial-bottle-justice-sotomayors-surprising-concurrence-in-aurelius

ii. Disability Law and the Case for Evidence-Based Triage in a Pandemic *(Govind Persad)*
https://www.yalelawjournal.org/forum/evidence-based-triage-in-a-pandemic-

iii. The New Oil and Gas Governance *(Tara K. Righetti, Hannah Jacobs Wiseman & James W. Coleman)*
https://www.yalelawjournal.org/forum/the-new-oil-and-gas-governance

4. HARVARD LAW REVIEW

i. Expungement of Criminal Convictions: An Empirical Study (Article by J.J. Prescott & Sonja B. Starr)
https://harvardlawreview.org/2020/06/expungement-of-criminal-convictions-an-empirical-study/

ii. Implicit Bias in the Age of Trump (Charles R. Lawrence III)
https://harvardlawreview.org/2020/05/implicit-bias-in-the-age-of-trump/

iii. The Intellectual History of Unjust Enrichment 'Developments in the Law' Chapter One

5. PUBLIC LAW (Issue 2 April 2020)

i. The "Public element" test for amenability to judicial review: R. (on the application of Holmcroft Properties Ltd.) v KPMGLLP *(Kevin Costello)*

ii. Equality Before the Law: A Substantive Constitutional Principle *(Michael P. Foram)*

6. **THE AMERICAN JOURNAL OF 'COMPARATIVE LAW'**

i. Preservative or Transformative? Theorizing the U.K Constitution Using Comparative Method *(Jo Eric Khushal Murkens)* Volume 68. Number 2, Summer 2020

7. **LAW, TECHONOLOGY AND HUMANS**

Artificial Intelligence and the Transformation of Humans, Law and Technology Interactions in Judicial Proceedings" by Contini, Francesco published in [2020] LawTechHum 2; (2020) 2(1) Law, Technology and Humans 4

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/journals/LawTechHum//2020/2.html