LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-12-2020 to 15-12-2020)

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

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: Direct appointees (respondents) were appointed vide order dated 03.12.2003. The appellants were recommended for promotion by the Departmental Promotion Committee (DPC) on 24.11.2003, however, their notifications for promotion were issued successively as follows: the promotion notification of one appellant was issued on 2.12.2003, while that of the two, who were recommended for promotion in the same DPC but subject to the completion of their ACRs for the year 2001-2002 were notified for promotion on 10.4.2004 and 24.11.2004, respectively. Appellant no.3, however, was initially deferred in the DPC held on 24.11.2003 and was later on considered in the DPC held on 12.10.2007 and notified for promotion on 26.4.2008. The seniority list prepared by the department placed the appellants over the respondents, who were appointed through direct recruitment. However, the Punjab Service Tribunal declared the respondents senior to appellants.

Issue: Whether the respondents shall rank senior to appellants? And how the seniority shall be fixed in the facts and circumstances of this case?

Analysis: If civil servants are selected for promotion in a "batch" or as a "group of persons" then the date of promotion of all the persons in the batch or the group shall be the date when anyone of them was first promoted to the post and they shall retain their inter se seniority. Therefore, appellants, in the same grade, when considered and recommended for promotion for the next grade in the same Departmental Promotion Committee (DPC) pass for a "batch" or "group of persons" and therefore as per the above provisions will be considered to have been promoted from the date when the first amongst the batch was promoted and will also retain their inter se seniority of the lower post. In this legal background, the three appellants were recommended for promotion on 24.11.2003. One of them N was promoted on 2.12.2003, thus the entire batch of appellants/ promotees who were recommended for promotion in the same DPC shall be considered to have been appointed w.e.f 2.12.2003, the date of promotion of N, one of the promotees, from the same batch or group of persons. However, appellant no. 3 who was deferred in the DPC held on 24.11.2003 on the ground that she was on a long leave and was subsequently recommended in the DPC held on 12.10.2007 (after almost four years) and promoted on 26.4.2008 cannot be considered to be from the same batch as that of the other appellants selected in the year 2003 and therefore the above provisions do not come to her rescue. Her seniority will be fixed according to the date of her promotion. The respondents were appointed through initial

appointment on 03.12.2003, a day after the promotion of the first promottee out of the batch of promotes, hence the respondents will fall under the appellants.

Conclusion: If the promotees from same group considered in one DPC were recommended for promotion but appointed on different dates, then all the promotees shall be deemed to have been appointed on the date when any one of them was first appointed on promotion. However, if anyone was deferred and recommended for promotion at a subsequent date (say after few years), he cannot be considered as promoted on a date when the last group was promoted and appointed. Similarly, if the promotees were recommended for promotion and one of them was appointed on promotion on a date while remaining were appointed on a subsequent date after the intervening appointment of direct appointees, then latter mentioned promotees shall be deemed to be appointed prior to the direct appointees on a date when former mentioned promotee was appointed.

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2. **Supreme Court of Pakistan**
Criminal Petition No.540 of 2020
Muhammad Ejaz v. The State
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._540_2020.pdf

Facts: Injured was examined and the medical officer noted injuries on his person and categorically ruled out possibility of their fabrication; he referred the examinee for radiographic examination wherefrom he was further referred for CT scan which confirmed fracture of nasal bone. The accused, however, moved learned Area Magistrate for re-examination of the injured on the grounds that medical report is totally false and fake. The learned Magistrate without taking the injured on board or recording argument of ADPP, marked present during the proceedings, directed medical examination by the Standing Medical Board.

Issue: **1.** What procedure should the Magistrate adopt while dealing with an application for constitution of Medical Board?
2. What is the value of observation of Medical Board regarding possibility of injury being result of fabrication/fall?

Analysis: 1. There was no occasion for the learned Magistrate to hurriedly exercise ex-parte jurisdiction to the detriment of prosecution/injured in the face of allegations vague and non-specific. The first medical examination was protected by statutory presumption of being genuine under Article 129(e) of the Qanun-e-Shahdat Order, 1984 as well as under Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973. Such formidable statutory protections cannot be summarily dismantled on the whims of an accused struggling to ward off consequences of criminal prosecution, therefore, a Magistrate must insist for tangible and sufficient grounds to plausibly justify exposure of a person already

wronged to the inconvenience and embarrassment of a re-examination, a consideration conspicuously missing in the present case.

2. Observation of Medical Board that possibility of fabrication/fall cannot be ruled out is a judgment resting upon the brink of hypothetical possibility that by itself cannot override positive findings earlier unanimously recorded by the medical officers who attended the injured; possibilities are infinite and cannot dislodge proof.

Conclusion: **1.** A Magistrate must insist for tangible and sufficient grounds to plausibly justify exposure of a person already wronged to the inconvenience and embarrassment of a re-examination. He should hear the other party and prosecutor while dealing with such a case.

2. Judgment of possibility of fabrication/fall resting upon the brink of hypothetical possibility that by itself cannot override positive findings earlier unanimously recorded by the medical officers who attended the injured.

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3. **Supreme Court of Pakistan**
Civil appeals No.433 to 438 & 596 of 2020
Government of Baluchistan etc v. Abdul Rauf etc
https://www.supremecourt.gov.pk/downloads_judgements/c.a._433_2020.pdf

Facts: Caretaker Government conducted the recruitment process and made recommendations for appointment of respondents. The incoming Government scrapped the entire process and re-advertised the posts.

Issue: **1.** Whether a caretaker government may conduct recruitment process?
2. When a vested right for appointment accrues?
3. Whether the Government can always stop or abandon the process of recruitment and initiate a fresh one

Analysis: A caretaker government is empowered only to carry out day to day affairs of the state with the help of available machinery/resources/manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments and transfer and postings of Government servants.

No vested right to appointment accrues unless the merit list is displayed and appointment letters are issued.

The Government can always stop or abandon the process of recruitment and initiate a fresh one if there are valid reasons or justification to support such action.

Conclusion: **1.** A caretaker Government cannot conduct recruitment process and make appointments.

2. Vested right to appointment accrues when the merit list is displayed and appointment letters are issued.

3. Government can always stop or abandon the process of recruitment and initiate a fresh one provided such action is supported by valid reasons or justifications.

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4. **Lahore High Court**
Mst. Nargis Yasmeen v. Mst. Ismat Khatoon
Civil Revision No.44031/2017
https://sys.lhc.gov.pk/appjudgments/2020LHC2944.pdf

Facts: A Headmaster while serving in BPS-17 passed away. A dispute amongst the legal heirs of deceased aroused about the entitlement qua Gratuity, General Provident Fund, Benevolent Fund, per month Salary for four months, Group Insurance, Leave Encashment and Financial Aid/Assistance.

Issue: Whether above referred assets would fall in the category of Tarka?

Analysis: The Hon'ble Court held that the fact remains that Rules 4.7 & 4.10 of West Pakistan Civil Servants Pension Rules, 1963, permit only wife and children of deceased civil servant to receive pension and gratuity as such…..The benefits accrued on end of service or after death of a person, as in the present case, Gratuity, Group Insurance, Benevolent Fund and General Provident Fund, being a grant/concession/compensation, cannot be regarded as hereditary in nature nor can be interpreted to mean Tarka.

Conclusion: Gratuity, Group Insurance, Benevolent Fund and General Provident Fund, being a grant/concession/compensation, cannot be regarded as hereditary in nature nor can be interpreted to mean Tarka

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5. **Lahore High Court**
Writ Petition No.17081-Q of 2019
Shaukat Ali Vs. The State etc.
https://sys.lhc.gov.pk/appjudgments/2019LHC4613.pdf

Facts: In a partnership deed the parties agreed that after deduction of expenses, profit shall be distributed equally between them. However, the petitioner did not pay any amount of profit to the complainant; so the FIR under section 406 PPC was lodged by the complainant against him. The petitioner seeks quashment of the FIR through this writ petition.

Issue: Whether the FIR regarding of money or rendition of accounts registered against the petitioner is liable to be quashed?

Analysis: From the given facts, it was a case of civil nature regarding recovery of money or rendition of accounts but the complainant has lodged the impugned FIR by merely mentioning a single sentence therein that the petitioner promised with the complainant that he will keep the remaining amount of the complainant as a **'trust'** with him and the same shall be returned to the complainant as and when

desired by him…There is nowhere mentioned in the partnership deed that the amount invested by the complainant shall remain as a 'trust' with the petitioner rather perusal of the contents of the said partnership deed reveals that the abovementioned amount was invested by the complainant in a joint business of hotel with the petitioner… It is by now well settled that there is a difference between the **'investment' and 'entrustment'** as envisaged under section 405 PPC punishable under section 406 PPC. Reliance placed on (2000 SCMR 122), (2006 PCr.L.J 1900)

Conclusion: It appears that by lodging the impugned FIR, the complainant has tried to convert the civil/business dispute into criminal case in order to blackmail and pressurize the petitioner and his co-accused and to get concession(s) in the civil litigation. I am, therefore, of the view that the impugned FIR is liable to be quashed.

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6. **Lahore High Court**
W.P.No. 667/2020
The State. Versus. Sardar Muhammad alias Sardara Gujjar, etc.
https://sys.lhc.gov.pk/appjudgments/2020LHC3071.pdf

Fact: Accused of a case under Articles 3 & 4 of Prohibition (Enforcement of Hadd) Order, 1979 read with Sections 9/14/15 of the Control of Narcotic Substances Act, 1997 and Sections 324/332 & 353 of PPC was acquitted after trial of case. After acquittal, he filed an application for release of his freezed property which was accepted by trial Court. Hence, the instant appeal before this Court is against the order of release of freezed property.

Issue. Whether property of acquitted accused can be freezed under sections 19 & 37 of the Control of Narcotic Substances Act, 1997 if his relatives (father and brother) are convicted in same case?

Analysis Although under Section 37 of the Act, a Court can pass an order for freezing of the assets of an accused, his relatives and associates. However, in this case accused was tried for charges and acquitted by the learned trial Court from all charges therefore, provisions of Section 37 of the Act supra are not attracted in this case.

Conclusion. The freezed property of acquitted accused is rightly released by learned Special Court. Appeal dismissed.

7. **Lahore High Court**
Ghulam Mustafa v. Judge Family Court & another
2020 LHC 2842
W.P. No.18768 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC2842.pdf

Facts: Wife filed suit against the husband for maintenance, dower and return of dowry articles. The husband admitted his Nikah but claimed that the wife was devoid of feminine characteristics. Husband moved an application to the trial court for medical examination of the wife which was dismissed. Husband challenged the order in High Court through constitutional petition.

Issue: **I)** Whether the wife has a fundamental right to privacy under the Constitution of Islamic Republic of Pakistan, 1973?

II) Whether the Family Court is competent to direct a party to undergo medical examination?

III) Whether the Family Court has rightly declined the husband's request for medical examination of wife?

Analysis: **I)** The Court observed that Pakistan has ratified/signed a number of international covenants/declarations like the Universal Declaration of Human Rights, the International Covenant on Political Rights, the Convention on the Rights of Child and the Cairo Declaration on Human Rights in Islam, which recognize the right of privacy as a basic human right. The Court also noted a number of verses from the Holy Quran and narrations of the Holy Prophet where importance of right of privacy is emphasized. Discussing the articles 9 and 14 of the Constitution and the case law developed, the Court held that the right to privacy is twined with the right to life, liberty and human dignity and thus the respondent has a fundamental right to privacy under the Constitution.

II) The Court thoroughly broached the law and decisions of various jurisdictions on the subject and concluded that the Family Court is competent to direct a party to undergo medical examination but observed that such order should only be made in exceptional circumstances, when there is sufficient material to justify the order. The court added that though no court can compel a person for medical examination if he/she does not consent for medical examination but the court would draw such inference as may be appropriate on the facts and the circumstances of the case. However, for that the court should specifically put the non-cooperating party on notice about the consequences of its refusal and warn it what adverse inference may be drawn against it.

III) The court observed that the contract of marriage entails various rights and obligations, which in Islam involve dower, maintenance and sexual relationship. But these obligations can only be enforced if the marriage is valid……..In the instant case, if the medical examination of the respondent reveals that she lacks

femininess, it would have bearing on the marriage between the parties and impact their rights and obligations arising therefrom, including the claim of the respondent for recovery of dower and alimony. The Petitioner lived with the respondent for quite some time and he has not divorced her to-date. This gives rise to a presumption, though rebuttable by evidence, that the marriage between the parties was valid…….Since the Petitioner had specifically questioned the gender of the respondent, an allegation denied by the latter, and the matter goes to the root of the case, it was incumbent on the Family Court to frame an issue in that respect and require the husband to produce evidence to prove his assertion. The husband could move an application for medical examination of the wife only after getting his evidence recorded and bringing material which could persuade the Court that an order therefor was absolutely necessary.

Conclusion: (I) Right of Privacy is a fundamental right protected under the constitution but this right is not absolute.

(II) & (III) By holding that the Family court was competent to direct medical examination of the respondent, the Court set aside its order and made the following directions:

- Application for medical examination shall be kept pending for the time being;
- Family court shall frame the issue as to *whether the marriage between the parties is void because the plaintiff lacks feminine characteristics?* OPD;
- The family court shall consider the application after the evidence of the parties have been recorded and pass a fresh order thereon but order for medical examination of the Respondent shall only be passed if it is unavoidable and absolutely necessary;
- The wife shall not be forced for medical examination; if she refuses, the Family Court shall draw such inference as may be just and proper.

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8. **Lahore High Court**
Civil Aviation Authority v. Government of Punjab
2020 LHC 2938
Case No. W. P. No. 247 of 2011
https://sys.lhc.gov.pk/appjudgments/2020LHC2938.pdf

Facts: Due to construction of a public road, the old airport was split in two portions and on the edge of one portion the land owned by Civil Aviation Authority (CAA) was leased out for CNG Station. In 2004 an application for commercialization was moved by lessee of the petitioner, whereupon commercialization fee was fixed and charged from the lessee. In 2010, CAA moved an application for waiving of and refund of the commercialization fee on the ground that the land owned by CAA is a federal subject, therefore, not amenable to the powers and jurisdiction of Tehsil Municipal Administration (TMA, as it was then). However,

through the impugned order the Secretary, LG&CD Department dismissed the application. Said order was challenged in the constitutional jurisdiction of High Court.

Issue: Whether land owned by CAA, being a federal subject, is not amenable to the powers and jurisdiction of Tehsil Municipal Administration and therefore no commercialization fee could be charged on it by TMA?

Analysis: The definition of Aerodrome and Airport as defined in Section 2(i) & (ii) of the Pakistan Civil Aviation Authority Ordinance, 1982 (Ordinance of 1982) alongwith Entry 22 of the Constitution conspicuously depict that these are meant for the purpose of Civil Aviation which has been explained in preamble of the Ordinance of 1982. None of these provisions suggest that any property owned by CAA situated within the territorial limits of a local or provincial government and in particular when being not used for any of the purposes under the Ordinance of 1982, shall be outside the jurisdiction of Provincial or Local Authority….Any land within the premises of an Airport, used for commercial purpose, may not require commercialization by Provincial or Local laws, because such commercial activity shall be primary for the passengers and other persons related thereto. However, a land outside the Airport premises, within territorial limits of Provincial or Local authority used for commercial activities for general public, would not fall under the Ordinance of 1982 or rules thereunder…….any land owned by an authority like Civil Aviation if not used for the purposes as defined under Ordinance of 1982 shall be subject to the Provincial and Local Government's administrative and executive authority and laws relating thereto shall be applicable unless any different intention appears in the Constitution or is exempted by the relevant Provincial or Local Government laws.

Conclusion: Commercialization fee will be payable on the land owned by CAA if used for purposes other than those defined in Ordinance of 1982. In this situation, it would be subject to the Provincial and Local Government's administrative and executive authority; and laws relating thereto shall be applicable to it.

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9. **Lahore High Court, Lahore**
Criminal Appeal No.11595 of 2019
Riaz Ahmad Vs. The State & another
https://sys.lhc.gov.pk/appjudgments/2020LHC3049.pdf

Facts: Accused was tried under section 9(c) of the Control of Narcotic Substances Act, 1997, and convicted.

Issue: Whether accused person can be acquitted on the sole ground that full protocols have not been mentioned by the office of Punjab Forensic Science Agency while preparing the report (Ex.PD)?

Analysis: The august Supreme Court of Pakistan in the case of ***"Khair-ul-Bashar"***acquitted the accused of the said case on the abovementioned sole ground of non-mentioning of protocols/full details of the tests applied in the report of the Punjab Forensic Science Agency, Lahore. Even otherwise, it is by now well settled that a single circumstance creating reasonable doubt would be sufficient to cast doubt about the veracity of prosecution case and the benefit of said doubt has to be extended in favour of the accused not as a matter of grace or concession but as a matter of right.

Conclusion: By following ***"Khair-ul-Bashar"*** case accused can be acquitted on this ground alone.

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10. **Lahore High Court**
Civil Original No. 229608 of 2018
Nadeem Kiani v M/s American Lycetuff (Pvt) Limited and others
https://sys.lhc.gov.pk/appjudgments/2020LHC2918.pdf

Facts: The petitioner, who was holding 50 percent shares in the company, equal to the 50 percent remaining shares owned by the respondent no. 2, his former wife, filed this petition with grievance that several issues including of trade mark is pending in different forums between the parties and Copyright Registrar has decided the issue of copyright/trade mark in favor of respondent No.2, against which he filed an appeal before the Copyright Board, but due to non-functionality of the Board, his grievance could not be redressed. So it was prayed that the High Court pass the orders under section 286 of the Companies Act, 2017 for regulating the future affairs of the company.

Issue: What are the requirements provided under section 286 of the Companies Act, 2017 to seek the intervention of the High Court? Whether the petitioner had fulfilled the said requirements?

Analysis: The basic requirement for seeking intervention of this Court by a member or creditor of a company under Section 286 of the Act is to be a member having not less than ten percent (10%) of issued share capital of a company or be a creditor having not less than ten percent (10%) of the paid-up capital of a company. Moreover, the next requirement is that such a member or creditor makes an application and satisfies this Court that the affairs of the company are being conducted, or are likely to be conducted, in (a) an unlawful manner, or (b) fraudulent manner, or (c) a manner not provided for in its memorandum, or (d) a manner oppressive to any of the member(s) or creditor(s), or (e) a manner that is unfairly prejudicial to the public interest.

Section 286 of the Act, it is an alternative to the winding up of a company and has been incorporated in the law to safeguard the minority shareholders from

oppression and mismanagement of majority shareholders and to ensure that the affairs of the Company must be conducted in a lawful manner and strictly in accordance with the Memorandum and the Articles.

While dealing with an application under this Section, the Court cannot look into dispute inter se the parties and this Section cannot be invoked for settlement of disputes in respect of intellectual property rights between the parties in which other forums are available under the relevant laws.

Conclusion: Section 286 of the Act did not provide any statutory right to any Director, Board of Directors, Chief Executive Officer or any person in management responsible for running affairs of the company, to file an application in the High Court. Since the petitioner was himself responsible for the management and administrative affairs of such Company and does not meet the strict requirement of the said Section. Therefore, he being the Chief Executive of the Company having 50% shareholding and a dispute with the Respondent No.2, is not entitled to relief under Section 286 of the Act especially when the allegations raised are not supported by any material on record.

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11. **Lahore High Court**
Writ Petition No.38872 of 2020
Iram Shahzadi v Government of Punjab etc.
https://sys.lhc.gov.pk/appjudgments/2020LHC2900.pdf

Facts: The petitioner, an Assistant Director of respondent PLRA, with grievance that she faced harassment at workplace sought intervention of Provincial Ombudsperson against another respondent/officer of PLRA, however, the respondent department in retaliation not only suspended her thrice but transferred her to far places. Ultimately Provincial Ombudsperson, upon her petition, directed the respondent to withdraw her suspension and also do not take any other action against her until her complaint is pending before the Ombudsperson, however, the same was not complied with. Through instant Writ petition, the petitioner sought execution of the direction issued by Ombudsperson as well as challenged legality of her suspension order and further registration of case for harassment at workplace against respondents/officers of PLRA.

Issue: Whether High Court can execute an order/direction of Provincial Ombudsperson under Harassment of Women at the Workplace Act, 2010?

Analysis: The answer to this question is that such powers have been given to Ombudsperson under Section 10(vi) of the Act which specifically provides procedure to punish any person who commits contempt of the orders passed by the Ombudsperson.

The only issue is the implementation of the order of Respondent No.8 which the Respondents are not adhering to is the order dated 25.08.2020. In that order the Ombudsperson requires the Respondent No.2 to withdraw the suspension order

which is not under the jurisdiction of Ombudsperson because order passed under the PEEDA Act has its own mechanism and procedure provided under the Act ibid.

Article 199 of the Constitution is very clear for seeking writ of mandamus to direct the Respondents to implement the order of the Respondent No.8 which is without any lawful authority because the Respondent No.2 cannot implement the order of the Respondent No.8 from the direction of this Court due to the powers provided under Section 10(vi) of the Act and the writ of mandamus is only maintainable if the Petitioner satisfies that there is no other alternate remedy is provided under the law.

Conclusion: This Court cannot exercise powers given to Ombudsperson under Section 10(vi) of the Act as the Court is bound to exercise its extra ordinary Constitutional jurisdiction where no other adequate remedy is provided by law but in the present case alternate remedy is available to the Petitioner before the Ombudsperson, therefore, this petition is not maintainable, hence ***dismissed***.

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12. **Lahore High Court**
Mst. Nasim Begum, etc. vs. Muhammad Nawaz,etc.
Civil Revision No.13 of 2004
https://sys.lhc.gov.pk/appjudgments/2020LHC2981.pdf

Facts: In a civil suit involving various factual issues, an intrinsic question regarding the true identity of sect/faith of a party to suit emerged which was decided by the courts below in favour of the respondent.

Issue: What are the parameters to ascertain the true identity of one's sect?

Analysis: It is open and shut that there is not any hard and fast rule/principle of universal application to test the faith of any person to determine this intricated issue, the Court has to probe the surrounding circumstances, the life style of the departed soul, the faith of his/her nearer. The opinion of the contestants, who are in fight to get the legacy of the deceased in one way or the other, definitely is not enough to conclusively determine the sect of a person, which, of course, was his personal belief. In such circumstances, it is always difficult to determine either one was Shia or Sunni. There is no cavil that as per section 28 of Mulla's Muhammadan Law, in this part of the world, majority of the Muslims is Sunni by sect, therefore, primary presumption qua a person tilts that he is follower of Sunni faith, but it definitely is rebuttable presumption.

Conclusion: The Court has to probe the surrounding circumstances, the life style of the departed soul, and the faith of his/her nearer. The opinion of the contestants, who are in fight to get the legacy of the deceased in one way or the other…In this part of the world, majority of the Muslims is Sunni by sect, therefore, primary

presumption qua a person tilts that he was follower of Sunni faith, but it definitely is rebuttable presumption.

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13. **Lahore High Court**
Inam Elahi etc. Vs. Mst. Saeeda Begum (deceased) through LRs etc
C.R.No.2931 of 2000
https://sys.lhc.gov.pk/appjudgments/2020LHC2973.pdf

Facts: The brother challenged the decisions of courts below favouring her two sisters (respondents) who had filed suit to nullify the sale & exchange deeds depriving them from their inheritance. The limitation was the major objection against the decisions of the subordinate courts.

Issue: What is the impact of limitation to claim the right of inheritance?

Analysis: There is no cavil that sanction of inheritance mutation is not essential to determine the right of succession, rather under the law of Shariah, on death of a Muslim, his estate automatically devolves among his heirs as per their shari shares. The law of Shariah being supreme, indeed, is not subordinate to any other law, policy, rules as well as judgment pronounced by Court of law… It is well established by now that right of inheritance cannot be defeated by law of limitation. In alike proposition where brothers deprived sisters of their due shares, the apex Court decreed latter's suits while ignoring law of limitation. See Khair Din vs. Mst. Salaman and others (PLD 2002 SC 677) and Mst. Gohar Khanum and others Vs. Mst. Jamila Jan and others (2014 SCMR 801)

Conclusion: It is settled law that the limitation does not run against the claiming of the right of inheritance. No doubt, that subsequent sale deed and exchange deed being registered one attained some presumption of correctness, but having been found superstructure of a fraudulent mutation, whereby the legal heirs were deprived of their shari shares, cannot be maintained and lost its efficacy when its foundation slipped away. Petition dismissed.

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14. **Lahore High Court**
Mst. Nabila Taj,etc. vs. Murad,etc
Civil Revision No. 2628/2009
https://sys.lhc.gov.pk/appjudgments/2020LHC2959.pdf

Facts: This civil revision is meant to challenge the decisions of the courts below wherein the application of revisionist filed under O. IX R. 13 was dismissed.

Issue: Whether upon transfer of a case on administrative side u/s.24-A of CPC, the parties were required to be informed through some notices, despite when the defendant had already been proceeded ex-parte by the previous court?

Analysis: As per para.6, Chapter XIII, Volume I, High Court Rules & Orders, it was not only usual, but mandatory to issue notice to the parties to impart them information that the case had been transferred from one Court to another and in absence of such notice, the defaulting party could well plead lack of knowledge that in which Court he had to appear… even an order of ex-parte did not deprive him to receive notice on transfer of suit on administrative side. Reliance placed on the judgment cited as *(1995 MLD 484)*

Conclusion: When ex parte case is transferred administratively to some other court, the issuance of notice by transferee court to the parties informing them of further proceedings by it is necessary.

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15. **Sindh High Court**
Asghar Ali, since deceased through legal heirs. and others vs. Mst. Batul Bai, since deceased through legal heirs, and others
Revision Application No.20/2017 (2) Second Appeal No.29/2017
[2020 SHC 1160]
https://eastlaw.pk/cases/Asghar-Ali-VSMst.-Batul.Mzk2ODAx

Facts: After about 25 years from the death of their predecessor the plaintiffs called upon all the defendants to disclose the assets and particulars of the properties of the family but they avoided to do so. Finally the main defendant agreed to sell the entire assets of the family together with all subsequently acquired properties and business at an agreed price but in spite of subsequent legal notices he did not fulfill the commitment and claimed an alleged agreement dated 12.10.1961 under which it was asserted that plaintiffs (including various ladies) had agreed to forego the accounts, partition and share in the family properties. Suit for declaration, mandatory injunction, accounts and partition was decreed in this regard by the learned trial Court and appeal was also decided in favour of the plaintiffs to the suit; hence the matter came to the High Court in appeal.

Issues: (i) Whether claim of a lady to get respective share upon ancestral properties, stands frustrated after lapse of several decades?

(ii) Whether successors are entitled to claim inheritance, if their predecessor died without claiming?

(iii) What is the effect of relinquishment deed qua inheritance rights?

Analysis: Regarding the hereditary disputes upon the properties, foremost effort of a Court of first instance should be (after examination of pleadings of respective parties) to separate disputed properties from undisputed one because the ‘adjudication must only be for disputes only’ and undisputed things should be allowed to take their course even if the same are from one and same tree. Limitation does not run in matter of inheritance. In such kind of cases one’s being out of possession also carries no weight. If one’s predecessor died without claiming / receiving his

share; even then his successors are entitled to claim inheritance. A right in inheritance can't be denied on any count including that of estoppels. The relinquishment deed by a woman, even if proved, would not be of any weight to deprive her of divine right in inheritance. No relinquishment can be said as voluntary and legal unless the person, executing such deed knows of her right and claim.

Conclusion: Claim of a lady to get respective share upon ancestral properties does not stand frustrated after lapse of several decades.

Successors are entitled to claim inheritance, if their predecessor died without claiming.

No relinquishment can be said as voluntary and legal unless the person, executing such deed knows of her right and claim.

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16. **Islamabad High Court**
W.P.No. 01/2020
Farrukh Nawaz Bhatti Versus Prime Minister of Pakistan, Prime Minister's Office, Islamabad and others
http://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-1-2020%20|%20Citation%20Awaited&cseTle=Farrukh%20Nawaz%20Bhatti-%20VS%20-Prime%20Minister%20of%20Pakistan&jgs=Mr.%20Justice%20Aamer%20Farooq%20&%20Mr.%20Justice%20Ghulam%20Azam%20Qambrani&jgmnt=/attachments/judgements/111896/1/Writ-Petition-01-2020_637430267374299255.pdf

Fact: Rule 4(6) of Rules of Business, 1973 deals with appointment of "Special Assistants to the Prime Minister with such status and functions as may be determined by the Prime Minister". Under this rule, respondent's no. 3 to 18 were appointed as Special Assistants to the Prime Minister and they were given the status of the Ministers of State or the Federal Ministers. In addition to it, respondent no. 3 is appointed as chairman of cabinet committee while respondent no. 4 to 6 are appointed as members of cabinet committee. The petitioner has challenged the Rule 4(6) being ultra vires to the Constitution of Islamic Republic of Pakistan, 1973. In addition to it, he challenged the appointment of respondent no. 3 to 18 as Special Assistants to the Prime Minister and appointment of respondent no. 3 to 6 as cabinet chairman and members.

Issue. **1.** Whether Rule 4(6) of Rules of Business, 1973 is ultra vires to the Constitution of Islamic Republic of Pakistan, 1973
2. Whether appointments of respondent no. 3 to 18 as Special Assistants to the Prime Minister are illegal and unlawful?

3. Whether respondent no. 3 can be legally appointed as chairman of cabinet committee and respondent no. 4 to 6 can be legally appointed as members of cabinet members?

Analysis The Rule 4(6) of the Rules of Business, 1973 came under challenge before this Court in case titled "Malik Munsif Awan Advocate Vs. Federation of Pakistan, etc." **(Writ Petition No.2058 of 2020)**, the Hon'ble Chief Justice of this Court, vide order dated 30.07.2020 dismissed the petition. Also it is not in violation of parameters for challenging the vires of statutes or delegated legislation settled in case reported as "Lahore Development Authority through D.G. and others Vs. Ms. Imrana Tiwana and others" **(2015 SCMR 1739).** The impugned Rule is also within framework of Constitution,

As far as issue regarding appointments of respondent no. 3 to 18 as Special Assistants to the Prime Minister is concerned, since no criteria is provided in any law for the credentials or the qualifications of Special Assistant to the Prime Minister, hence the Federal Government should look into the matter.

As far as issue regarding appointment of respondent no. 3 as chairman and respondents no. 4 to 6 as members of cabinet committee is concerned, a non-elected person cannot be a Member of the Cabinet so he cannot be a Member of the Committee of the Cabinet and even can chair the same. It would be in negation of the Constitution of Islamic Republic of Pakistan, 1973. Undoubtedly, on special requests, persons can be called in by the Committee but no person can be the Chairman or a Member of the Committee of the Cabinet, who is not a Member of the Cabinet. The conferment of status of Federal Minister to an Advisor is again only for the purpose of perks and privileges and the conferment does not make a person/advisor as a Federal Minister. He cannot address the parliament nor has any executive authority vested in him. He also is not a Member of the Cabinet and cannot take part in the proceedings of the same.

Conclusion. Rule 4(6) of Rules of Business, 1973 is not ultra vires to the Article 99 of the Constitution. The Federal Government should look into the matter regarding criteria and qualification of Special Assistants to the Prime Minister. Notification dated 25.04.2019 appointing respondent No.3 as Chairman and respondent number 4 to 6 as Members of the Committee of Cabinet on privatization is set-aside.

17. **Supreme Court of India**
Criminal Appeal No.826 Of 2020
Jayant Etc v. The State of Madhya Pradesh.
https://main.sci.gov.in/supremecourt/2020/12111/12111_2020_34_1502_24918_Judgement_03-Dec-2020.pdf

Facts: Appellants were caught while committing the offence under Mines & Minerals (Development & Regulation) Act, 1957 ("Mines and Minerals Act" hereafter). Mining officer filed case against them. Appellants/accused entered into plea bargain and deposited fine. Later on, upon news reports, concerned area magistrate suo moto directed the police to investigate the matter and to register an FIR against the appellants. Resultantly the case was registered against the Appellants for offences under section 4/21 of the Mines and Minerals Act and for offences under section 379 and 414 of Indian Penal Code.

The version of the appellants was that FIR cannot be registered for an offence under Mines & Minerals (Development & Regulation) Act, 1957, India as on a plain reading of Section 22, cognizance of the offence can be taken by the Magistrate only if there is a written complaint in that regard by the Mining Officer/authorizes officer.

Issue: Whether an FIR can be registered for offences under Mines and Minerals Act along with other offences, when cognizance of the offence under Mines and Minerals Act can only be taken by the Magistrate when there is a written complaint in that regard by the Mining Officer/authorizes officer?

Whether the provisions contained in Section 21,22 and other Sections of the Mines and Minerals Act operate as bar against prosecution of a person who has been charged with allegation which constitute offences under section 379/414 and other provisions of the Penal Code?

Whether the provisions of the Mines and Minerals Act explicitly and impliedly exclude the provisions of the Penal code when the act of an accused is an offence both under Penal Code and under the provisions of the Mines and Minerals Act?

Analysis: Reading of Section 22 would establish that cognizance of an offence punishable under the Mines and Minerals Act or the Rules made there under shall be taken only upon a written complaint made by a person authorized in this behalf by the Central Government or the State Government but the learned Magistrate has not taken the cognizance rather in exercise of the suo moto powers conferred under section 156(3) of Cr.P.C has directed the concerned In-charge/SHO of the police station to lodge/register the crime case/FIR and directed initiation of investigation and directed the concerned In-charge/SHO of the police station to submit a report after due investigation.

Further, the prohibition contained in section 22 would be attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Mines and

Minerals Act and not for any act or omission which constitutes an offence under the Penal Code.

Sub-section 2 of section 23-A provides that where an offence is compounded, no proceeding or further proceeding, as the case may be, shall be taken against the offender thus, the bar under sub-section 2 of Section 23-A shall be applicable with respect to offences under the Mines and Minerals Act or any rule made thereunder. However, the bar contained in Sub-section 2 of Section 23-A shall not be applicable for the offences under the IPC, such as, section 379 and 414 IPC and at the same time, the criminal complaint/proceedings for the offences under the IPC which are held to be distinct and different can be proceeded further.

Conclusion: It cannot be said that there is a bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation as contemplated under section 173, Cr.P.C. The bar contained in Sub-section 2 of Section 23-A shall not be applicable for the offences under the IPC, such as, section 379 and 414 IPC and at the same time, the criminal complaint/proceedings for the offences under the IPC which are held to be distinct and different can be proceeded further.

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18. **Supreme Court of India**
Criminal Appeal No. 38 of 2011
Rohtas & Anr. V. State of Haryanay
https://main.sci.gov.in/supremecourt/2010/10789/10789_2010_32_1501_25004_Judgement_10-Dec-2020.pdf

Facts: Three out of seven accused were acquitted by the High Court while conviction to the extent of remaining accused was maintained. Appellants/accused have preferred appeal against that order.

Issue: When three out of the seven accused have been acquitted by the High Court, whether the conviction for attempt to murder as part of an unlawful assembly could survive?

Whether case should not be converted to one under section 307 IPC simplicitor at an advanced stage and likewise?

Whether a charge framed with the assistance of Section 149 IPC can later be converted to one read with Section 34 IPC or even a simplicitor individual crime?

Analysis: Before the members of an 'unlawful assembly' can be vicariously held guilty of an offence committed in furtherance of common object, it is necessary to establish that not less than five persons, as mandatory prescribed under section 141 read with Section 149 of the IPC had actually participated in the occurrence. It is not uncommon when although the number of accused is more than five at the time of charge-sheeting, but owing to acquittals of some of them over the course of trial,

the remaining number of accused falls below five. It may be true that in such cases the charge under section 148 and 149 IPC would not survive.

This does not, however, imply that Courts can not alter the charge and seek the aid of Section 34 IPC (if there is common intention), that they cannot assess whether an accused independently satisfies the ingredients of a particular offence. Section 221 to 224 of Cr.P.C which deal with the framing of charges in criminal trials, give significant flexibility to Courts to alter and rectify the charges. The only controlling objective while deciding an alteration is whether the new charge would cause prejudice to the accused, say if he were to be taken by surprise or if the belated change would affect his defence strategy.

In the present case both the common object and the common intention are traced back to the same evidence as each of them had individually attacked the complainant with a deadly object in furtherance of common intention of killing him. That apart, even the requirements of Section 34 IPC are well established at the attack was apparently premeditated. The incident was not in a spur of the movement. The appellants have previously threatened the complainant with the physical harm if he were to attempt to irrigate his fields. Their attack was thus preplanned and calculated. There is nothing on the record to suggest that the complainant caused any provocation. Specific roles have been attributed to each of the appellants by the injured and solitary eyewitness, establishing their individual active participation in the crime.

Conclusion: Appellant did not suffer any adverse effect when the High Court held three of them individually guilty for the offence of attempted murder, without the aid of section 149 IPC.

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19. **Supreme Court of the United States**
Espinoza v. Montana Department of Revenue, 591 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-1195_g314.pdf

Facts: The state of Montana passed a special income tax credit program in 2015 to help fund non-profit scholarship organizations to help low-income families pay for private schools. For tax payers, they were able to pay up to US$150 into the program and receive a dollar-for-dollar state tax credit to support it. Montana's constitution bars the uses of "any direct or indirect appropriations or payment" to any religious organizations or schools affiliated with religious organizations, also known as the "no-aid" provision, prohibiting public support for religious or sectarian institutions. To reconcile this provision with the scholarship program, the Montana Department of Revenue promulgated a rule prohibiting families from using the scholarships to send their children to religious schools. In 2018 the Montana Supreme Court ruled that under the no-aid provision, the state could not operate its scholarship tax credit program, as some recipients would use the scholarships funded by public tax credits to attend religious schools. Montana

parents sued, arguing that the scholarship program discriminated against them based on their religion by prohibiting them from using the scholarships to send their children to schools aligned with their religious values.

Issue: Whether the exclusion of religious institutions from student aid programs violates the religion clauses or the equal protection clause of the United States Constitution?

Analysis: In a 5-4 decision, the application of the no-aid provision discriminated against religious schools. From the opinion by Chief Justice Roberts (joined by Justices Thomas, Alito, Gorsuch, and Kavanaugh), it was observed "we do not see how the no-aid provision promotes religious freedom. As noted, this Court has repeatedly upheld government programs that spend taxpayer funds on equal aid to religious observers and organizations, particularly when the link between government and religion is attenuated by private choices. A school, concerned about government involvement with its religious activities, might reasonably decide for itself not to participate in a government program. But we doubt that the school's liberty is enhanced by eliminating any option to participate in the first place."

Conclusion: The U.S. Supreme Court reversed and remanded the Montana Supreme Court's ruling holding that the application of Article X, Section 6 of the Montana Constitution violated the free exercise clause of the U.S. Constitution by barring from receiving public benefits on account of sending their children to religious schools/ institutions.

LIST OF ARTICLES: -

1. **JOURNAL OF CYBER SECURITY**
   https://doi.org/10.1093/cybsec/tyaa006
   Privacy threats in intimate relationships by Karen Levy and Bruce Schneier

2. **JOURNAL OF HUMAN RIGHTS PRACTICE**
   https://doi.org/10.1093/jhuman/huaa037
   Forum: Human Rights Practice in the Age of Pandemic by Richard Carver

3. **JOURNAL OF LEGAL ANALYSIS**
   https://doi.org/10.1093/jla/laaa003
   The Economics of Leasing by Thomas W Merrill