LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(1-08-2021 to 15-08-2021)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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$ELECTED ARTICLE$

1. **Supreme Court of Pakistan**
Khallid Hussain, etc. v. Nazir Ahmad, etc.
Civil Petition No. 2144-L of 2011 and Civil Appeal No. 1-L of 2012
Mr. Justice Ijaz ul Ahsan, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2144_l_2011.pdf

Facts: The petitioners claim that after the death of their father when they approached the revenue authorities to sanction the inheritance mutation regarding the disputed property, they were informed that through a Tamleeq Nama the disputed property had been transferred to the respondents.

Issue: What are the circumstances when a suit for declaration and a suit for cancellation of document can be filed?

Analysis: There is a marked yet subtle distinction between a suit for cancellation of a document under section 39 of the Act of 1877, and a suit for declaration of a document under section 42 of the Act of 1877. The crucial feature determining which remedy the aggrieved person is to adopt, is: whether the document is void or voidable. In case of a voidable document, for instance, where the document is admitted to have been executed by the executant, but is challenged for his consent having been obtained by coercion, fraud, misrepresentation or undue influence, then the person aggrieved only has the remedy of instituting a suit for cancellation of that document under section 39 of the Act of 1877, and a suit for declaration regarding the said document under section 42 is not maintainable. On the other hand, in respect of a void document, for instance, when the execution of the document is denied as being forged or procured through deceit about the very nature of the document, then the person aggrieved has the option to institute a suit, either for cancellation of that instrument under section 39 of the Act of 1877, or for declaration of his right not to be affected by that document under section 42 of the Act of 1877; it is not necessary for him to file a suit for cancellation of the void document.

Conclusion: See above.

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2. **Supreme Court of Pakistan**
Atif Mehmood Kiyani and another v. MIs SukhChayn Private Limited
Civil Petition Nos. 3209 and 3359 of 2020
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Amin-Ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3209_2020.pdf

Facts: An application for grant of temporary injunction restraining respondent No. I from encashment of insurance guarantee was allowed by the trial court but dismissed by the High Court. In second petition, prayer was made for the stay of subsequent suit.

Issue: i) What are the essential considerations for grant of temporary injunction?
ii) Where some of the matters in issue in the subsequent suits are same and some are not, then whether proceedings of that suit can be stayed under Section 10, CPC?

Analysis: i) The well-settled considerations for the grant or refusal of temporary injunction, as stated by a four-member larger Bench of this Court in "Muhammad Umar v. Sultan Mahmood" (PLD 1970 SC 139), are to see: firstly, whether the plaintiff has a prima fade good case; secondly, whether the balance of convenience lies in favour of the grant of injunction; and thirdly, whether the plaintiff would suffer irreparable loss if the injunction is refused.
ii) For attracting the application of the provisions of Section 10 of the Code of Civil Procedure 1980 ("CPC"), the matter in issue or all the matters in issue, if there are more than one, must be directly and substantially the same. Where some of the matters in issue in the subsequent suits are same and some are not, then proceedings of that suit cannot be stayed under Section 10, CPC; however, in order to avoid any conflicting finding on the issues that are common in both the suits, the proceedings of both the suits may be consolidated.

Conclusion: i) See above.
ii) Where some of the matters in issue in the subsequent suits are same and some are not, then proceedings of that suit cannot be stayed under Section 10, CPC.

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3. **Supreme Court of Pakistan**
Province of Punjab, etc. v. Hafiz Muhammad Ahmad
C.P.1274-L/2013
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1274_l_2013.pdf

Facts: The headnotes of the law reports were relied by the High Court.

Issue: Whether the headnotes of the law-reports can be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported?

Analysis: The headnotes preceding the judgment of a court are not a part of that judgment but are the notes prepared by the editors of the law-reports, highlighting the key law points discussed in the judgment and are supplied just to facilitate the reader with a summarized version of the salient features of the case which helps in quickly scanning through the law reports. It is a matter of common knowledge that the headnotes are at times misleading and contrary to the text of the judgment. Headnotes by the editors of the law-reports cannot be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported, hence they should not be cited as such. Therefore, it is neither safe nor desirable to cite a dictum by reference to the headnotes.

Conclusion: Headnotes by the editors of the law-reports cannot be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported, hence they should not be cited as such.

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4. **Lahore High Court**
Amar Jeet Singh v. Sant Singh
C.R. No. 22983 of 2021
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC3832.pdf

Facts: The petitioner assailed the order of Additional District Judge, wherein his leave to appear and defend the suit under Order XXXVII was dismissed on account of his failure to file the same within the limitation period computed from the day when he was brought before the Court from Jail wherein he was imprisoned after conviction by criminal court under section 489-F PPC against the same cheque.

Issue: i) Whether appearance of respondent before Court without summons fulfill the requirement of service of summons to compute limitation period for filing leave to defend in a suit under Order XXXVII CPC?
ii) Whether the act of Court to call a respondent from jail to give him opportunity to defend such suit fulfills the requirement of fair trial?
iii) Whether service of summons in the form 4, which is in English language, fulfills the purpose of summons?

Analysis: i) The objects of service of summons in the prescribed Form 4 in Appendix B is to warn the defendant in a suit under Order XXXVII C.P.C. about the consequences of his default to apply for the leave to appear and defend within the prescribed period of limitation. Service of summons in the Form 4 is a mandatory requirement of law and the period of limitation of ten days prescribed for filing the application for leave to appear and defend the suit under Order XXXVII starts from the date of service of such summons and failure to serve summons in the prescribed manner signifies that the mandatory requirement of law stipulated in rule 2(1) of Order XXXVII C.P.C. has not been complied with in this case.
ii) The requirement of fairness imposed under the said Article applies to civil and criminal litigation taken as a whole including access to justice and is not confined to fair trial once litigation is underway. The right to fair trial is not a qualified right but an absolute one which is neither required to be balanced against rights of other individuals or public interest nor the same is subject to any qualification such as those provided in some other fundamental rights embodied in Chapter I of Part II of the Constitution. Fairness of the procedural safeguards, *stricto senso*, the equality of arms is one of the hallmarks of such right. The principle of equality of arms, which is a judicial construct adopted by the European Court of Human Rights, means giving each party a reasonable possibility to present its cause in such conditions as would not put one party in disadvantage to its opponent. In

other words, there must be a fair balance between the opportunities afforded to the parties involved in litigation.

iii) A summons in the Form 4 assumes that the defendant served is able to read English or that he has assistance available to him to convey the content of the same, which is questionable as majority of the people in our society are unable to read English or may not have such assistance available to them. Resultantly, the purpose of the summon currently prescribed runs an obvious risk of being defeated. The notion that this type of summons satisfies the requirements of fair trial right is more of a fiction, which is permissible only if actual summons in a language that the recipient can understand is not feasible.

Conclusion: i) When neither a summons in the prescribed Form 4 is served nor a copy of the plaint in the suit is delivered to a defendant, the question of computing limitation under Article 159 of the Limitation Act, 1908 does not arise.

ii) It is trite law that the opportunity to defend necessitates that a party should be provided access to counsel and an opportunity to answer the case against him, which is not fulfilled in this case.

iii) Since service of the summons in prescribed Form is a mandatory requirement of law, it would only be in consonance with the object, letter and spirit of rule 2 of Order XXXVII C.P.C. as also in conformity with Articles 10A, 28 and 251 of the Constitution that the summons under the said rule is prescribed in bilingual form i.e. English and Urdu.

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5. **Supreme Court of Pakistan**
Haji Muhammad Latif v. Muhammad Sharif & another
Civil Petitions Nos. 805-L To 812-L and 814-L of 2019
Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._805_l_2019.pdf

Facts: The Rent Controller declined to grant leave to contest the ejectment petitions and directed the petitioner to adduce evidence and granted respondents' right to cross examine.

Issue: Whether after declining the leave to contest, the Rent Controller can direct the landlord to adduce evidence and grant respondent right to cross examine?

Analysis: In the instant case what escaped from the notice of the High Court was as to whether the Rent Controller after declining leave to the tenant to contest the ejectment application could direct the land-lord to adduce evidence and allow the tenant to cross examine the land-lord specially when the provision of sub-Section 6 of Section 22 of the Act, 2009 specifically provide that in case where the leave to contest is refused or the respondent has failed to file application for leave to contest within the stipulated time, the rent Tribunal shall pass the final order. This being a mandatory provision with the consequences spelled leaves no option for

the Rent Controller but to pass final order. However, it is to be noted that the language employed in Section 22(6) by using the words “final order" instead of "ejectment order", leaves room for the Rent Controller to apply his judicial mind before passing a final order as required under the circumstances of each case may it be ejectment of a tenant or otherwise.

Conclusion: After declining the leave to contest, the Rent Controller cannot direct the landlord to adduce evidence and grant respondent right to cross examine.

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6. **Lahore High Court**
Muhammad Nawazish Ali v. Family Judge etc.
Writ Petition No. 6694 of 2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC3750.pdf

Fact: The respondents filed suit for recovery of maintenance etc against petitioner’s son (the former husband and father of respondents respectively). The suit was decreed but son of petitioner failed to satisfy the decree because he was continually avoiding the process of law. Therefore property of petitioner (grandfather) was attached for satisfaction of decree. The petitioner has challenged said order of attachment of his property.

Issue: i) Under what circumstances, a grandfather may be liable to pay maintenance to minors?
ii) Whether grandfather is obliged to pay maintenance to his grandchildren without being party to suit if the father is unable to do so?

Analysis: i) Apparently Mulla’s book does not address the situation where the father goes into hiding to avoid execution of a decree for maintenance or, as in the instant case, immigrates and is beyond the reach of the courts of his home country. Law can never allow the children of such a man to be left in the lurch. Despite all the reverence that it receives from the courts, Mulla’s formulations are not a legislative dispensation so the rules of interpretation of statutes do not strictly apply to it. Consequently, this Court is competent to read into section 370 and hold that the grandfather is obligated to provide maintenance of grandchildren if he is in easy circumstances and the father is dead or not traceable or is residing abroad or is impecunious or infirm and the mother is also down-and-out.
ii) “Fair trial and due process” in civil lawsuits/proceedings contemplates notice and opportunity to be heard before judgment is rendered. Since a person who is not a party to the suit does not have the opportunity to present his case, two principles have developed: (a) decree cannot be executed against such a person, and (b) the executing court cannot go behind the decree. The impugned orders are liable to be struck down also on the ground that respondent No.3 has not established that the conditions exist on which the petitioner may become liable for

her maintenance. This is a question of fact which cannot be determined without recording evidence.

Conclusion: i) The grandfather is obligated to provide maintenance of grandchildren if he is in easy circumstances and the father is dead or not traceable or is residing abroad or is impecunious or infirm and the mother is also down-and-out.
ii) Grandfather is not obliged to pay maintenance to his grandchildren without being party to suit if the father is unable to do so.

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7. **Lahore High Court**
Muhammad Bashir v. Irshad Begum and two others
C. R. No. 3687 / 2011
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC3778.pdf

Fact: The petitioner asserted that his brother died issueless while respondents no. 1 & 2 fraudulently sanctioned the mutation in their favour by showing them as wife & daughter of deceased. In fact the petitioner and respondent no.3, being siblings of deceased are only legal heirs and entitled to inheritance.

Issue: i) Whether self-contradictory documentary evidence can prevail over oral evidence?
ii) Whether revenue officials are necessary party in every case wherein mutation has been challenged

Analysis: i) Although it is well established principle of law that documentary evidence always prevails over oral evidence; but if the contents of the documents are self-contradictory to each other and also in negation to the oral stance of party, who produced these documents, the same could not be relied upon in order to reach a just and fair decision of the case. Documents cannot be relied upon by ignoring the oral evidence and without analyzing and comparing the contents of the documents with each other.
ii) It is not a rule of thumb to implead revenue officials in every case in which mutation has been challenged. It will be decided by the court as per the facts and circumstances of each and every case

Conclusion: i) Self-contradictory documentary evidence cannot prevail over well-proved oral evidence
ii) Revenue official are not necessary party of each case in which mutation is challenged.

8. **Lahore High Court**
Mian Khurram Saeed v. Muhammad Khalid
Civil Revision No. 31615 of 2021.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC3692.pdf

Facts: The plaintiff/respondent filed a suit for malicious prosecution by claiming damages on the ground that the defendant/petitioner lodged a false case against the plaintiff/respondent and the criminal proceedings have culminated in favour of the respondent. Initially, the suit was dismissed by the trial court but was decreed by the appellate court. Being aggrieved, the petitioner assailed the decision of the appellate court through the Civil Revision on the premise, *inter alia*, that the respondent failed to prove the ingredients necessary to award damages.

Issues: i) What are the elements of malicious prosecution?
ii) Whether the proof of the element of "malice' is dependent upon the outcome of proving 'reasonable and probable cause'?
iii) What is a standard of proving 'malice' in order to establish malicious prosecution?

Analysis: i) To succeed in a suit of malicious prosecution, the plaintiff is required to prove the following essential constituents:

i) the plaintiff was prosecuted by the defendant,
ii) the prosecution ended up in favour of the plaintiff,
iii) the defendant acted without "reasonable and probable cause,
iv) the defendant has acted maliciously and
v) the plaintiff has suffered damages.

ii) In a case of malicious prosecution, the plaintiff is bound to prove the ingredients of 'reasonable and probable cause' and 'malice' independently. Therefore, when the issue of "reasonable and probable cause" is not established, the question of "malice" becomes irrelevant and even otherwise, the Courts may not be required to probe further because of the failure of the claimant to cross one hurdle. Nevertheless, when "reasonable and probable cause" is established, the Court should carefully examine the element of "malice" on the part of the defendant.

iii) In the present case, the element of 'malice' has been implied to the lodging and cancellation of FIR instead of independently proving it. Moreover, the learned first Appellant Court has drawn presumption of "malice" from the report of police filed under Section 173 Cr.P.C., without even examining the maker of the report to unearth as to the reason of discharge and that how the Investigation Officer found the respondent/plaintiff innocent, during "face to face" discussion. Furthermore, it was incumbent upon the respondent/plaintiff to produce the possible evidence to prove entire ingredients of "malicious prosecution" and it was the duty of the learned Court to secure all the possible evidence as to the elements of the "malicious prosecution" before awarding damages. Finding of

"malice" on the basis of the report under Section 173 Cr.P.C., without examining the maker of the statement/report, is unsafe, leaving no option with this Court apart from making an order of remand for procuring the evidence of concerned police official(s) and careful examination as to the ingredients of "malicious prosecution.

Conclusion: i) See above.
ii) Both, 'reasonable and probable cause 'and 'malice' are required to be proved independently. Therefore, before establishing malice, it is essential for the plaintiff to prove 'reasonable and probable cause'.
iii) See above.

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9. **Supreme Court of Pakistan**
Province of Punjab v. Khadim Hussain Abbasi
Civil Appeal No.20 1 of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Ijaz ul Ahsan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._201_2020.pdf

Facts: Respondent was proceeded against departmentally and was found guilty of the charges. Major penalty was imposed upon him. In appeal he produced an acquittal judgment from a Criminal Court.

Issue: Whether acquittal in criminal proceedings affects the outcome of the departmental proceeding?

Analysis: The Supreme Court has repeatedly held that departmental proceedings and criminal prosecution are not mutually exclusive. Those can be proceeded independently and acquittal in criminal proceedings does not affect the outcome of the departmental proceedings. It may be noted that departmental proceedings are undertaken under a different set of laws, are subject to different procedural requirements, are based upon different evidentiary principles and a different threshold of proof is to be met. Criminal proceedings on the other hand are undertaken under a different set of laws, have different standards of proof, are subject to different procedural requirements and different thresholds of proof are required to be met. Therefore, acquittal in criminal proceedings cannot and does not automatically knock off the outcome of the departmental proceedings if all legal and procedural formalities and due process have been followed independently.

Conclusion: Acquittal in criminal proceedings does not affect the outcome of the departmental proceedings.

10. **Supreme Court of Pakistan**
Muhammad Nawaz v. The State, etc
Crl.P.1050-L/2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1050_l_2020.pdf

Facts: Petitioner filed a petition seeking leave to appeal, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973, against order passed by the High Court whereby his pre-arrest bail petition filed, under Section 497/498 of the Code of Criminal Procedure, 1898, has been dismissed as withdrawn.

Issue: i) What is the nature of appellate jurisdiction of Supreme Court while dealing with the bail petitions?
ii) Under what provisions of law the Session Court and High Court entertain and decide pre-arrest and post arrest bail petitions?

Analysis: i) The essential criterion of appellate jurisdiction is that it examines and if required corrects the errors, if any, of a lower forum. That being the nature of appellate jurisdiction, this Court examines the legality of the orders passed by the High Court in bail matters and corrects those orders in appellate jurisdiction under Article 185 (3) of the Constitution only when it finds that the High Court has exercised the discretion in granting or declining bail arbitrarily, perversely or contrary to the settled principles of law, regulating bail matters.
ii) Section 498, CrPC confers original and concurrent jurisdiction on the High Court and Court of Session to grant bail, by stating that "the High Court or Court of Session may in any case…direct that any person be admitted to bail". That is why when a trial court, for instance, a Court of Magistrate, declines to grant post arrest bail under Section 497, CrPC to a person accused of having committed a nonbailable offence, the accused files a fresh petition under Section 498, CrPC in the Court of Session and, in case of failure to obtain the relief once again approaches the High Court. The Court of Session and the High Court have original jurisdiction to grant bail and they make their own independent orders on the said petitions without commenting upon and setting aside the order of the trial court. The power of the High Court and the Court of Session, under Section 498 CrPC, to grant post arrest bail is thus co-extensive and concurrent with that of the trial court under Section 497 CrPC, while the power to grant pre-arrest bail under the said Section is exclusive to them.

Conclusion: i) See above.
ii) Session Court and the High Court entertain and decide pre-arrest and post arrest bail petitions under section 498 Cr.P.C.

11. **Supreme Court of Pakistan**
Shazaib, etc v. The State, etc.
Crl.P.1075-L/2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1075_l_2020.pdf

Facts: Petitioners sought leave to appeal against the order passed by the Lahore High Court whereby the pre-arrest bail petition of the petitioners has been dismissed for non-prosecution, as well as, on merits.

Issue: i) Whether a pre-arrest bail may be dismissed due to non-prosecution as well as on merits when accused does not appear on adjourned date of hearing?
ii) What is the course available to the accused who files a second petition for pre-arrest bail after dismissal of his first petition for non-prosecution?

Analysis: i) The Court cannot, in the absence of the personal appearance of the petitioner, travel further into the case and examine the merits of the case. In fact the examination of the merits of the case in the absence of the accused totally defeats the intent and purpose of the aforementioned statutory provision. This is because once the Court proceeds to examine the merits of the case, then the Court has the option to either dismiss or allow the bail petition, while under Section 498-A CrPC the Court is not authorized to admit the accused to bail in his absence…The petition for pre-arrest bail is to be dismissed if the petitioner is not present in Court on the date fixed for hearing the petition and it is not to be decided on merits in his absence, unless the Court exempts his presence.
ii) In case the petition is dismissed for non-appearance of the accused in a pre-arrest bail matter under Section 498-A CrPC, the petitioner can file a fresh bail petition before the same Court provided that he furnishes sufficient explanation for his non-appearance in the earlier bail petition and the Court is satisfied with his said explanation. But if he fails to furnish any satisfactory explanation, his second bail petition is liable to be dismissed on account of his conduct of misusing the process of Court disentitling him to the grant of discretionary relief of pre-arrest bail.

Conclusion: i) A pre-arrest bail cannot be dismissed on merits when accused does not appear on adjourned date of hearing.
ii) Accused is under obligation to furnish sufficient explanation for his non-appearance in the earlier bail petition and the Court should be satisfied with his said explanation. But if he fails to furnish any satisfactory explanation, his second bail petition is liable to be dismissed on account of his conduct of misusing the process of Court disentitling him to the grant of discretionary relief of pre-arrest bail.

12. **Lahore High Court**
Muhammad Riaz v. The State etc.
Crl. Rev. No.128/2021
Mr. Justice Muhammad Ameer Bhatti, HCJ
https://sys.lhc.gov.pk/appjudgments/2021LHC3712.pdf

Fact: Petitioner's sentence was enhanced by the revisional court from 4 years to 7 years.

Issue: Whether it is mandatory for revisional court to issue notice to accused before enhancing his sentence?

Analysis: Sections 439 and 439-A of Cr.P.C. deal with the powers of revisional courts. Under section 439(2) of Cr.P.C. before passing an order prejudicial to the accused, it is obligatory for revisional court to send notice to accused for granting him an opportunity of being heard. Without issuing notice to the accused and granting him opportunity to advance arguments in his defence, enhancement of his sentence is glaring illegality.

Conclusion: It is mandatory for revisional court to issue notice to the accused before enhancing his sentence.

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13. **Lahore High Court**
Khizar Hayat v. The State etc.
Crl. Misc. No.18217-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC3876.pdf

Fact: The petitioner has applied for post-arrest bail in a case registered against him under Section 489-F PPC wherein he remained an absconder.

Issue: If case of accused is of further inquiry, then whether his mere absconsion will be an impediment in the way of granting bail?

Analysis: It is well settled principle of law that if case of accused is of further inquiry, mere absconsion of accused will not be an impediment in the way of granting bail.

Conclusion: If case of accused is of further inquiry, his mere absconsion will not be an impediment in the way of granting bail.

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14. **Lahore High Court**
Abdul Razzaq v. The State & another
Criminal Miscellaneous No.49079-T of 2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC3842.pdf

Facts: The petitioner is the complainant of main case and he has filed petition for transfer of bail application of the accused pending in the court of learned

Additional Sessions Judge having apprehension of injustice from that Court.

Issues: i) What are the grounds/principles for transferring a case/application?
ii) What is reasonable apprehension?

Analysis: i) The settled principles for transferring a case from one court to another are following:

a. A case should be transferred from a court, if the allegations are supported by strong reasons or convincing evidence.
b. Allowing such application would mean that the allegations against a Judge are being considered to be true and this will lower the image, dignity and honor of judiciary in public.
c. Such applications should be allowed only in exceptional situations, in case of availability of strong reasons and evidence. Otherwise the parties would take undue advantage by filing transfer applications on false and baseless grounds.
d. While accepting such applications, it should also be kept in mind that the parties should not be allowed to choose the Court of their own choice.
e. Interference in the working of the trial judge on frivolous grounds will create a sense of insecurity amongst the Judicial Officers, which will certainly affect their efficiency.
f. For transferring a case, allegations/grounds should be clear and specific.
g. For a transparent judicial system it is also necessary to protect the judicial officers from frivolous and baseless allegations, so that one of the parties cannot overpower the Judge to get decision is his favour.
h. Dubious and baseless apprehensions are not sufficient ground to transfer of case.

ii) Apprehension means anticipation of adversity or misfortune or fear of future trouble. While reasonable means logical. Thus 'reasonable apprehension' means the fear must be based on sound or logical judgment. For a transfer application the standard of a finding of real or perceived bias is high and it should be considered carefully, as an allegation of reasonable apprehension of bias not only calls into question the integrity of a judge, but also the integrity of the whole judicial system.

Conclusion: i) See above.
ii) Reasonable apprehension means the fear of future evil and it should be considered with due diligence and care while deciding transfer application.

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15. **Lahore High Court**
Allah Yar and 4 others v. The State and another
Criminal Misc. No. 31756-B/2021
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC3927.pdf

Facts: Petitioners applied for their bail after arrest in case under Sections 22-A/23/24/27/28/32 of the Punjab Food Authority Act, 2011 wherein they were

allegedly busy in preparation of Synthetic Milk.

Issues: Whether the bail can be claimed as a matter of right in offences which do not fall in prohibitory clause of section 497 Cr. P.C?

Analysis: Petitioners cannot claim the bail as a matter of right if the offences do not fall within the prohibition contained in Section 497 Cr.P.C, for the reason that still discretion lies with the Court and that has to be exercised keeping in view specific features of each case.

Conclusion: The bail cannot be claimed as a matter of right even in offences which do not fall in prohibitory clause of section 497 Cr. P.C.

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16. **Lahore High Court**
Khizar Hayat v. The State etc.
Crl.Misc. No.18217-B of 2021
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC3876.pdf

Facts: The petitioner supplicates bail after arrest under Section 489-F PPC.

Issue: Whether registration of cases of similar nature against the accused/petitioner is a ground to deprive him from the concession of bail?

Analysis: Petitioner is also involved in five other cases of similar nature, but no conviction order has been brought on the record against the petitioner. It is settled principle of law that mere registration of cases of similar nature against the petitioner is no ground to deprive him from the concession of bail. Reference is made to Qurban Ali vs. The State and another (2017 SCMR 279).

Conclusion: Registration of cases of similar nature against the accused/petitioner is no ground to deprive him from the concession of bail.

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17. **Lahore High Court**
Tariq Irshad v. Special Judge, etc.
Criminal Revision No.42994/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC3741.pdf

Fact: Petitioner contended that FIR is an attempt in duplication to repeat the sufferings that amounts to double jeopardy and he cannot be vexed twice and civil and criminal proceedings cannot go side by side.

Issue: Whether civil and criminal proceedings can go side by side?

Analysis: Criminal and civil proceedings pending between the parties are not identical to each other because in civil court question of genuineness of such documents is not pending in any suit; therefore, the question viz. stay of criminal proceedings does

not arise… civil and criminal proceedings can go side by side due to their ultimate outcome and difference in standard of proof.

Conclusion: Civil and criminal proceedings can go side by side due to their ultimate outcome and difference in standard of proof.

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18. **Lahore High Court**
Muhammad Jahangir Khan v. The State
Crl. Misc. No.1510-B/2021
Mr. Justice Muhammad Ameer Bhatti, HCJ
https://sys.lhc.gov.pk/appjudgments/2021LHC3710.pdf

Fact: Through this petition, the petitioner sought post-arrest bail in a case under Section 9(c), Control of Narcotic Substances Act, 1997. The allegation against the petitioner is that 1170 grams of Chars was found in his possession.

Issue: Whether 170 grams Chars above the one kilogram falls within the purview of borderline case?

Analysis: Allegedly 1170 grams of Chars was recovered from petitioner's possession. Only a meager quantity of Chars i.e. 170 grams exceeded the quantity of one kilogram which brought the case of petitioner within the ambit of Section 9(c) of CNSA, 1997. So it was a borderline case between sub-sections (b) and (c).

Conclusion: A meager quantity of Chars i.e. 170 grams exceeding the quantity of one kilogram makes it a borderline case.

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19. **Lahore High Court**
Abdul Rehman vs. The State
Crl. Appeal No. 19, 78 of 2008
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC3635.pdf

Fact: The appellants have challenged their conviction in offences Sections 9(c)/15 of the Control of Narcotic Substances Act, 1997.

Issue: i) Once a formal request is received from a foreign country, what is the mode to carry out inquiry and other process under Control of Narcotics Substance Act, 1997?
ii) What is “Principle of AutDedere, Aut Judicare”? Whether it applies in offences under CNSA?
iii) Whether investigation record of a foreign agency can be brought on record as evidence before the trial court without formal recording of statement of concerned investigator/witnesses?
iv) Whether evidence of a fact could be proved through an affidavit in criminal trial?

Analysis: i) Once a formal request of foreign country is received, it should be processed as mentioned in section 59 of the CNSA. It is not necessary that there must be a treaty in existence between the countries before a request is made rather arrangements and understanding is sufficient as mentioned in section 56 of CNSA. Section 59 of CNSA applies not only for making request pursuant to section 60 of CNSA, 1997 but request for evidence gathering process if it is received from a foreign government, which clearly provides that evidence gathering process shall be initiated only on the direction of High Court. The contour of this section has also been replicated in new legislation whereby Parliament has introduced "Mutual Legal Assistance (Criminal matters) Act, 2020". Provision of section 9 of the said Act, for evidence gathering order are almost similar to the section 59 of CNSA, 1997 which requires that permission of the court is essential.

ii) The principle autdedere, aut judicare finds its place in international criminal law and is the core principle in extradition offences; it is usually applied in transition offences particularly organized one which affect more than one sovereign states. The principle of double criminality pushes this principle on the ground that if an act or omission is an offence under the laws of both or more sovereign states, the offenders shall be tried and punished in either of the States and both of the Sovereign states can ask each other "either to Prosecute or to extradite" which is called "autdedere, aut judicare". It is applicable in extraditable offences; Section-66 of Control of Narcotics Substance Act, 1997 declares all offences in Chap II of the Act are extraditable.

iii) Once an investigation report or statement of investigation officer is recorded by a court of competent jurisdiction, it becomes an evidence of fact stated therein and not otherwise. Presumption cannot be imported from a foreign jurisdiction about the documents which are not admissible in evidence in our legal system. Though some other foreign documents which are not subject of criminal investigation can be admitted into evidence if certified as per law yet criminal investigation process has no scope for its admission in evidence unless it has undergone judicial scrutiny. Though report of expert is per-se admissible yet proceedings of recovery and affidavit of any witness is always subject to judicial scrutiny and contents thereof are to be proved by its maker. All such foreign documents without legal translation from High Commission, Embassy and Ministry of Foreign affairs are not admissible in evidence. Article 96 of Qanoon-e-Shahadat does not relate to admissibility or otherwise of a copy of judicial record of a foreign country; it merely enables the court to raise a presumption that a judicial record of foreign country is genuine.

iv) There are certain provisions in Cr.P.C which allow proving of fact through affidavit such as Section 74, 539-A & Section 526 (4). Except above provisions, there is no other provision in law which could be used to prove a fact through affidavit. If the witnesses are not available, or prosecution cannot produce them due to certain reasons, it can request the court for recording of statement of investigation members of foreign country through live Link i.e., Skype or through

any modern gadgetry. Even prosecution can apply for commission u/s 503 (2-B) of Cr. P.C for recording the statement of such witnesses.

Conclusion: See above.

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20. **Lahore High Court**
Naeem Gulzar v. The State
Crl. Appeal No.74601-J of 2017
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC3856.pdf

Fact: Appellant/accused along with another was tried by the learned Additional Sessions Judge, for the murder of deceased (father of complainant). The appellant was convicted and sentenced. The appellant filed the appeal against his sentence whereas the learned trial court sent Murder Reference for confirmation the sentence of appellant or otherwise.

Issue: i) What is the evidentiary value of chance witness?
ii) What is the effect of disbelieving prosecution witnesses in favour of one accused?

Analysis: i) In legal term a chance witness is the one who claims his presence at place of occurrence, while his presence at that place was a sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. The testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. In rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, otherwise his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.
ii) Once prosecution witnesses are disbelieved with respect to one co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature.

Conclusion: i) The evidence of chance witness can only be relied upon if some convincing explanations, appealing to prudent mind for his presence on the crime spot, are provided.
ii) Once prosecution witnesses are disbelieved with respect to one co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature.

21. **Lahore High Court**
Nisar Akhtar & others v. D.G.(HR), NTDCL
Writ Petition No.10371 of 2014
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC2853.pdf

Fact: The petitioners joined WAPDA as Junior Engineers. In the year 1999, WAPDA was re-organized resulting into creation of different Generation Companies (GENCOs), Distribution Companies (DISCOs), National Transmission and Dispatch Company (NTDC) and Pakistan Electrical Power Company Ltd. (PEPCO). In the year 2001, the petitioners accepted offers of their employment in NTDC, MEPCO & GEPCO. Subsequently, on the recommendations of the Selection Board, the petitioners were appointed as Senior Engineers by WAPDA against the quota reserved for Junior Engineers having M.Sc. qualification and seniority list of Senior Engineers working in Power Wing was prepared by WAPDA which was circulated. Later on, PEPCO, while withdrawing the seniority/promotion earned by the petitioners on account of merit as well as higher qualification i.e. M.Sc., disturbed the Seniority circulated earlier.

Issue: i) Whether the transferred employees of WAPDA to other companies whose terms and conditions stand protected may file writ petition if any of those is violated?
ii) Whether the PEPCO is competent to deal with the terms and conditions of employees of other companies?

Analysis: i) The petitioners were transferred to their respective companies on the same terms and conditions, which were applicable to them in WAPDA. Though after transfer to the companies, their status was no more that of an employee of WAPDA, however, till the formulation of Service Rules and Regulations by the company concerned, the terms and conditions of the transferred employees were to be governed under the rules and orders of WAPDA. Therefore, their writ petition complaining against non-fulfillment of terms and conditions prevalent in their parent department, is maintainable.
ii) A perusal of the Memorandum of Association of PEPCO shows that no-where the PEPCO was given the mandate to determine the terms and conditions of service of employees of other distribution companies rather the BODs of the companies concerned were vested with the power to determine the terms and conditions of service of the employees of the relevant companies. It is well-established by now that an authority which has not been given specific power/jurisdiction in respect of any matter cannot assume the same by itself.

Conclusion: i) Till the formulation of Service Rules and Regulations by the company concerned, the terms and conditions of the transferred employees were to be governed under the rules and orders of WAPDA. Therefore, their writ petition

complaining against non-fulfillment of terms and conditions prevalent in their parent department, is maintainable.
ii) The PEPCO is not competent to deal with the terms and conditions of employees of other companies.

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22. **Lahore High Court**
Mst. Amna Majeed v. Govt. of the Punjab.
Writ Petition No. 12244 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3907.pdf

Fact: The petitioner is a Civil servant and wants High Court to restrain the respondents from transferring her from her present place of posting to another through exercise of jurisdiction under article 199 of the Constitution.

Issue: Whether any order relating to terms and conditions of service of a civil servant is amenable to Constitutional jurisdiction?

Analysis: Even if a question of fundamental rights including discrimination is involved in the matter, even if a challenge is laid to statutory rules adversely affecting civil servants, even if the order has been passed by an incompetent authority or even where an order suffers from malice and has been passed in bad faith, and even when an authority not recognized by the governing law has passed an order affecting the terms and conditions of a civil servant, the only forum available in all instances listed above as also in other instances except when a person is seeking appointment or upgradation in civil service or when question of fitness as opposed to eligibility of a civil servant to be promoted to a particular post is involved, is that of the Service Tribunal constituted under Article 212 of the Constitution.

Conclusion: An order relating to terms and conditions of service of a civil servant except when a person is seeking appointment or upgradation in civil service or when question of fitness as opposed to eligibility of a civil servant to be promoted to a particular post is involved, is not amenable to Constitutional jurisdiction of High Court in view of bar of Article 212 of the Constitution.

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23. **Lahore High Court**
Miss Shakeela Rana Advocate v. Govt. of Pakistan etc.
W.P. No. 59314/2017
Mr. Justice Ali Baqar Najafi
https://sys.lhc.gov.pk/appjudgments/2021LHC3849.pdf

Facts: In this writ the petitioner has sought the prohibition of printing the National Flags in multiple colours except the original green and white colour. Printing of different portraits, cartoons on the National Flag and printing of flag on trousers etc. have been asserted as against the dignity of the National Flag.

Issue: What are the official protocols to protect the dignity of the National Flag of Pakistan?

Analysis: Our Parcham (flag) stands for freedom, liberty and equality for those who owe allegiance to it. It protects the legitimate rights of every citizen and upholds the integrity of the State of Pakistan. It is a mark that helps in maintaining peace throughout the world. It represents a State which has no special privileges or special rights for any particular community or interest but a State where citizens will have equal rights and equal opportunities and their share in privileges will be proportionate to their corresponding responsibilities.

As to the specification, the Pakistani Flag is a dark green, rectangular flag in the proportion of 3 x 2 with a white vertical bar, showing white crescent in the center and a five-pointed heraldic star. The size of the white portion is 1/4th size of the flag. Since the mast, the remainder is 3/4th being dark green. The dimensions of the five-pointed white heraldic star are determined by drawing a circle with radius equal to 1/10th of the width of the flag.

According to the National Flag Protocols prescribed officially, it must not touch the ground, shoes or feet or anything unclean and must not be flown in the darkness and must not be marked with anything (including words, numerals or images) and when raised or lowered it must be saluted by all in uniform and the others must stand in attention. It must not fly or be displayed upside down or with a crescent and star facing left. It must not be displayed where it is likely to get dirty. It must not be set on fire or trampled upon. It must not be buried or lowered into a grave. In the Pakistan Penal Code, 1860 section 123-B defines the defilement of the national flag an offence punishable with 3 years' imprisonment. Obviously, the printing of flags in different colours, on distorted shaped portraits, in ugly cartoons, its disgraceful imprint on cloths undermining the national dignity may be considered defilement.

Conclusion: See above.

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24. **Lahore High Court**
Sui Northern Gas Pipelines Ltd v. Federation of Pakistan & others
W.P No.63814 of 2020
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2021LHC3715.pdf

Fact: This petition intended to review the decision of Oil & Gas Regulatory Authority (OGRA) dated 11.11.2020 which determined the provisional price of Re-Gasified Liquefied Natural Gas (RLNG) for the month of August 2020. The petitioner challenged the decision on the ground that a sudden departure from past practice offended his rights of to be treated in accordance with law and violated the rule of law on which the determination of distribution loss has to be premised.

Issue: Whether the policy decision of (OGRA) determining a lower provisional price of (RLNG) while deviating from its previous settled practice has violated the right of legitimate expectation created in favour of petitioner?

Analysis: To avoid arbitrariness in agency decision making, the agencies must regard the decisional consistency to safeguard legitimate expectation. A comprehensive definition of the principle of legitimate expectation was provided by the Lord Fraser who indicated the two ways in which a legitimate expectation may arise: *"either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue."*

This case falls in the latter of the two categories of legitimate expectation as there was a "regular practice which the claimant can reasonably expect to continue. The regular past practice of OGRA was to adopt a certain criterion for determination of the provisional price provided the basis for legitimate expectation to SNGPL i.e. the settled practice be implemented and not departed from. Since, it was clear, unambiguous, and made by a person with actual authority, therefore, if that past practice had to be abandoned or changed, it could only be done after prior notice and hearing. The policy was adopted by adjudication and any change in second adjudication cannot be arbitrary nor can it be retroactive. Moreover, revisiting of past practice must conform to rules of fairness and legitimate expectation. The sudden volte face by OGRA impacted SNGPL enormously financially and had a spiral effect on the consumers generally.

Conclusion: The deviation of (OGRA) from its settled criterion for the determination of provisional price of (RNLG) violated the right of legitimate expectation of petitioner.

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25. **Lahore High Court**
Yasir v. The State & another
Crl. Misc. No.43708-B/2021
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2021LHC3918.pdf

Facts: In the cases of sexual assault enlisted as schedule offences under Anti-Rape (Investigation & Trial) Ordinance, 2020, it came to the notice of the Court that provisions of the Ordinance, especially section 9 pertaining to investigation, was never implemented, despite of it being enforced from seven months.

Issue: What are the legal consequences of non-implementation Section of 9 of ITO 2020?

Analysis: Investigation of cases pertaining to sexual assault always remained focal point for the reformers of criminal justice system, as investigation of a criminal case is bedrock for carrying out successful prosecution of a criminal case, therefore

flawed investigation often results in miscarriage of justice. Section 9 ITO 2020 is mandatory provision of law because intention to promulgate this law is to provide special procedure for the investigation of cases of sexual assaults and this intention is clearly discernable from the preamble of ITO 2020.
Account rendered by the investigation agency for not implementing ITO due to lack of resources and non-availability of required superior officers is not acceptable at all, however at the same time Government, before promulgation of a law, should also consider the state resources and capacity to implement the same, after taking all the stakeholders on board because a good law should be viable, clear, publicized and most essentially implemented. After promulgation of any law or even before that, it should be extensively circulated at grass root-level and concerned public functionaries should coordinate with each other for its effective implementation.

Conclusion: Under Article 89 of the Constitution ITO 2020 is as good law as an Act of Parliament, therefore, its implementation is mandatory duty of concerned state functionaries and any departure therefrom shall be violative of Articles 4, 9 & 10-A of the Constitution. If ITO 2020 requires investigation to be carried out in accordance with section 9, it has to be conducted accordingly, or it shall amount to non-compliance of law and would carry penal consequences as provided in S. 22 of ITO 2020 and under the provisions of Police Order 2002.

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26. **Lahore High Court**
Ahmad Latif Chief Operating Officer, etc. v. The Cane Commissioner etc.
W.P. No.48553 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3794.pdf

Facts: The petitioner challenged the vires of a letter-cum-correspondence issued by a Cane Commissioner for the registration of FIR through a writ petition whereby the Hon'ble High Court issued a restraining order, suspending the operation of such letter-cum-correspondence. The local police, nonetheless, registered the FIR the same day at 1:20 PM despite the fact the stay order had been passed at 11.00 AM that day. The petitioner assailed this act of the local police through a constitutional petition mainly on the grounds that the very registration of FIR was *void ab initio* and of no legal effect in presence of a stay order and that the cognizance by the police of a correspondence-cum-complaint is a nullity in the eyes of law.

Issues: i) Whether the order suspending the operation of letter-cum-complaint passed in an application under section 151 C.P.C., filed along with the constitutional petition, is a stay order or an injunction?
ii) What is the difference between the effective time of a stay order and an injunction?

iii) What is the status of acts committed after granting a stay order?

Analysis: i) As regards the nature of an interim order, halting the operation of the communique for the registration of FIR, it qualifies to be a stay order as it suspends the operation of the correspondence in general and does not address a particular authority or individual, unlike an injunction which is made over to a particular authority or an individual. Moreover, the interim orders passed in a constitutional petition are stay orders and not prohibitory orders by way of injunctions. In order to ascertain whether a restraining order passed by a High Court is a stay order, the litmus paper is that when a High Court has the power to declare any proceedings as being invalid at the time of final determination of the matter, it follows that the intention of passing a stay order was that such order is to be operative immediately upon its pronouncement.

ii) Unlike an injunction, a stay order operates from the time it is made and at the very instant deprives the court/authority the power to proceed any further. If the order passed by the Higher Courts is of the nature of "Stay" and not "Injunction", the same is effective immediately upon its pronouncement and any action taken after the passing of such order before the communication of the same shall be invalid and will be liable to be recalled i.e. parties shall be placed at the position where they were at the time of passing of the stay order. Furthermore, a stay order passed by the higher courts is analogous to the passing of a statutory enactment that is enforceable at the time it is enacted, irrespective of its communication to anyone it is enacted to govern. Hence, a restraining order passed by a Court would go into effect the very moment it is passed, regardless of the fact whether the same was conveyed to the quarters concerned or not.

iii) As soon as a stay order is passed, it takes away the power of a court/authority to proceed any further. Therefore, no further action can be taken and such action, if taken, even if it involves the rights of a third person, it shall be void. Thus, the acts and exercises undertaken by both judiciary and executive are declared nullity if those have been undertaken in contravention of a stay order issued by a Superior Court in appellate and revisional jurisdiction (stay against judicial forums) or constitutional jurisdiction (stay against executive orders), irrespective of whether the stay order was communicated to them or not. The rationale in setting aside acts committed in the oblivion of, but after the time of pronouncement of a stay order, lies in the effect of a stay order and which is that though the order assailed is not altogether erased, its force and effect are suspended and hence no further action can be taken based on the assailed order. It exists but in a state of hibernation till it is either revived or killed through the final adjudication; till then it cannot budge.

When a stay order divesting a lower authority of the jurisdiction to deal with a matter is issued, it makes the order assailed redundant till final adjudication and no valid action can commence on the basis of or in consequence of the stay order. Besides, the acts done which have the effect of nullifying a stay order are a nullity because the very authority/jurisdiction to do any such thing is suspended and does

not exist operationally. Thus, the very registration of F.I.R. is, for the present at least, a nullity. Nevertheless, by considering that the matter is yet to be determined judicially, the operation of the crime report shall remain suspended until the issue and controversy raised in a writ petition challenging the letter-cum-correspondence filed by the present petitioner is decided against him or the stay order issued in the said constitutional petition is vacated.

Conclusion: i) The order suspending the operation of a letter-cum-complaint passed in an application under section 151 C.P.C., filed along with the constitutional petition, is a stay order and not an injunction.
ii) The stay order takes effect the very moment it is passed while an injunction becomes operative from the time it is communicated to the authority or an individual against whom it is passed.
iii) The act committed after granting a stay order shall be void.

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27. **Lahore High Court**
Manzoor Hussain v. Govt. of Punjab through Chief Secretary, Punjab Lahore etc.
Writ Petition No. 5942 of 2021/BWP
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC3498.pdf

Fact: The petitioner, follower of the Fiqah-e- Jafria Sect, challenged an order of Deputy Commissioner whereby he refused to grant permission to the petitioner to hold Malis-e-Aza within the precincts of his property.

Issue: Whether right to profess religion freely, recognized by Article 20 of the Constitution of Islamic Republic of Pakistan 1973, can be interrupted by Executive Instructions or unstructured and subjective Standard Operating Procedures of the Provincial or the District Administration?

Analysis: Article 20 of the Constitution only permits to a Law to intrude into and regulate and control a citizens' right to freely profess his faith and show allegiance to it. This means that a citizen has the right to show allegiance to his religious beliefs and to profess and propagate the same freely, uninterruptedly, without any restrictions and without being hampered, unless a statutory law provides conditions, restrictions or riders to curtail the right or if such propagation damages public order or offends collective morality of the society. Administrative instructions or administrative guidelines or even Standard Operating Procedures, without requisite legal backing, cannot be allowed to make inroads in and dilute fundamental rights as contained in the Constitution. In any case, administrative instructions are neither laws nor rules and these can only be subservient to laws and rules and, therefore, cannot be allowed to dilute the allowance and freedom afforded by the Constitution.

Conclusion: Right to profess religion freely, recognized by Article 20 of the Constitution of Islamic Republic of Pakistan 1973, cannot be interrupted by Executive Instructions or unstructured and subjective Standard Operating Procedures of the Provincial or the District Administration, unless there is some legal backing.

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28. **Supreme Court of the United States**
Class v. United States, 583 U.S. ___ (2018)
https://www.supremecourt.gov/opinions/17pdf/16-424_g2bh.pdf

Facts: The decision relates to the ability to challenge the constitutionality of a federal law if the defendant has already pleaded guilty. After pleading guilty to a violation of federal law, Rodney Class sought to bring an appeal challenging the constitutionality of the same law. A three-judge panel of the D.C. Circuit denied Class' appeal, citing a precedent of the D.C circuit court, United States v. Delgado-Garciathat prohibits such challenges from defendants who pleaded guilty.

Issue: Is the D.C. Circuit's rule prohibiting defendants that plead guilty from later raising constitutional challenges to the same law on appeal unconstitutional?

Analysis: The case addressed a split among federal circuit courts on the issue of whether a guilty plea automatically waives a defendant's right to appeal the constitutionality of the statute under which a defendant was convicted. The D.C. Circuit, First Circuit, and Tenth Circuit prohibited a defendant who pleaded guilty from raising challenges on appeal to the constitutionality of the law under which the defendant was convicted. Under Rule 10 of the rules of procedure for the U.S. Supreme Court, the Supreme Court often grants certiorari to resolve differences between circuit courts.

Conclusion: The U.S. Supreme Court reversed the D.C. Circuit, ruling that a guilty plea does not prohibit a defendant from challenging the constitutionality of the statute under which they were convicted.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4
   RIGHT TO BE FORGOTTEN VIS A VIS RIGHT TO DISPENSATION OF INFORMATION by VenancioD'costa, Astha Ojha & Samarth Sansar

   The recognition of privacy as a fundamental right in India was bound to affect the existing laws and give rise to multiple new but related issues. One such facet is an individual's right to be forgotten, particularly in the digital sphere. While upholding privacy as a fundamental right in the Puttaswamy judgment, Hon'ble Supreme Court noted that "in the digital world, preservation is the norm and forgetting a struggle." However, the right to be forgotten comes with inevitable conflicts with other rights, most importantly, the right to information of others also understood as right to dispensation of information. In this article, we have

tried to understand the overlap and distinction between the two rights. We also discuss the legal status of the right to be forgotten in India, tracing the recent judicial trends as well as its recognition in other jurisdictions.

2. **MODERN LAW REVIEW**
https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12363
THE RULE OF LAW AND THE RULE OF EMPIRE: A.V. DICEY IN IMPERIAL CONTEXT by Dylan Lino

The idea of the rule of law, more ubiquitous globally today than ever before, owes a lasting debt to the work of Victorian legal theorist A. V. Dicey. But for all of Dicey's influence, little attention has been paid to the imperial entanglements of his thought, including on the rule of law. This article seeks to bring the imperial dimensions of Dicey's thinking about the rule of law into view. On Dicey's account, the rule of law represented a distinctive English civilizational achievement, one that furnished a liberal justification for British imperialism. And yet Dicey was forced to acknowledge that imperial rule at times required arbitrariness and formal inequality at odds with the rule of law. At a moment when the rule of law has once more come to license all sorts of transnational interventions by globally powerful political actors, Dicey's preoccupations and ambivalences are in many ways our own.

3. **HARVARD LAW REVIEW**
https://harvardlawreview.org/wp content/uploads/pdfs/vol123_admitting_doubt.pdf
ADMITTING DOUBT: A NEW STANDARD FOR SCIENTIFIC EVIDENCE in Vol 123; Issue 8

Since Daubert v. Merrell Dow Pharmaceuticals, Inc., 1 federal judges have had the responsibility to act as gatekeepers of scientific expert testimony through a two-pronged test to determine whether "an expert's testimony both rests on a reliable foundation and is relevant to the task at hand," based not on the expert's conclusions but on the "principles and methodology" used. Most state courts now use either the Daubert test, the older test from Frye v. United States requiring general acceptance by the relevant scientific community, or a mixture of the two standards. However, both tests mistakenly import scientific standards into the fundamentally legal decision of admissibility. This Note argues that admissibility should be based on relevance, with no separate reliability assessment, and also that judges should instruct juries on various factors related to reliability. This approach will improve accuracy by better informing the jury and by admitting evidence that does not meet current standards but that should be used to answer questions of fact. It also serves non-accuracy values by making adjudication fairer and by avoiding the inappropriate importation of scientific norms into law. The Note first describes relevant legal precedents and philosophy of science principles. It then discusses the different treatment of evidence in law and science and argues that current standards fall short of fulfilling the purposes of legal evidence. Finally, the Note sets out the proposed standard and explains why it provides a better solution.

4. **BANGLADESH LAW DIGEST**
https://bdlawdigest.org/extrajudicial-killings-and-constitution-of-bangladesh.html
EXTRAJUDICIAL KILLINGS: TOWARDS RESPONSIBLE STATE CARE by Mazharul Islam

The concept of 'Right to life' and 'Personal liberty' are the most esteemed and pivotal fundamental human rights. Therefore, Article 32 of the Constitution of Bangladesh occupies a unique position as a fundamental right. It is considered to be a prestigious provision. Thus, it ensures right to life and individual liberty not only for Bangladeshi citizens but also to the aliens. It is enforceable against the state. In Ekushay Television Ltd and others v Dr Chowdhury Mahmmod Hasan and others 54 DLR (AD) 130 it has been held that 'All the persons within the jurisdiction of Bangladesh are within the Bangladesh rule of law. The foreign investors in ETV are no exception to this principle.' Furthermore, Right to life and individual liberty is the contemporary term which has traditionally been called 'natural right'. It is the ancient right essential for the improvement of human individuality. It has also been mentioned in Magna Carta of 1215 Clause + (39) and + (40). Afterwards, John Locke articulated that the government is morally indebted to serve people by protecting life, liberty, and property and the views were mostly developed in his famous 'Second Treatise Concerning Civil Government.' Subsequently, Article 3 of the Universal Declaration of Human Rights reinforces the same.

5. **QUEENS LAW JOURNAL**
https://journal.queenslaw.ca/sites/journal/files/Issues/Vol%2042%20i1/2.%20Stratas.pdf
THE CANADIAN LAW OF JUDICIAL REVIEW: A PLEA FOR DOCTRINAL COHERENCE AND CONSISTENCY by The Hon'ble Justice David Stratas

The standard of judicial review rests at the very core of administrative law. For decades no, analytical approaches to judicial review have been constructed and demolished, and new ones offered in their place. In recent years, judges-including those on the Supreme Court of Canada-have openly expressed dissatisfaction with the current state of judicial review in administrative law and its application in Canada' highest court. Today, we have an incoherent and inconsistent jurisprudence that remains at risk of further change. Doctrinal clarity is the solution, but to achieve it, certain fundamental questions must be settled. Does the standard of review matter? What fundamental concepts animate judicial review? What is "reasonableness" and how should reasonableness review be conducted? Answering these questions and others, the author aims to close the never-ending construction site and allow for responsible renovations based on settled doctrine using accepted pathways of legal reasoning.

6. **Global Village Space**
   https://www.globalvillagespace.com/pakistan-islam-on-cryptocurrency-the-future/?amp=1

   Legality of Cryptocurrency: Legal & Islamic Perspective
   Barrister Muhammad Ahmad Pansota

   Regulating cryptocurrency is a challenge for the powerful cyber states of the West let alone Pakistan. But that doesn't mean that the country should fail to recognize the importance of this technological breakthrough.