LAHORE HIGH COURT

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FORTNIGHTLY CASE LAW BULLETIN

(16-11-2021 to 30-11-2021)

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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1. **Supreme Court of Pakistan**
Secretary, M/o Finance, Islamabad, etc v. DG, FDE, Government of Pakistan
Civil Appeal No. 1546 of 2019
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1546_2019.pdf

Facts: Claim of respondents was that their services rendered on daily wages be counted towards pension.

Issue: i) Whether the service rendered on daily wages basis can be counted towards pension?
ii) What is a stop-gap arrangement?

Analysis: i) The respondents were not arbitrarily appointed as a stop-gap arrangement. Their services were utilized by the Appellants/ Petitioners for years on end till they reached the age of superannuation. Their services were substantive and permanent which were paid for on behalf of and with the consent or approval of the Government… Although the employment of the respondents was not permanent within the meaning of CSR 361, the establishment under which they were working was permanent and the fact that they rendered services for years shows that they were not employed on temporary basis as a stop-gap arrangement for short periods of time. Further, that the Federal Public Service Commission by recommending the Respondents for retention into service has confirmed their ability and qualification to hold these posts. It is an admitted fact that the Respondents have been working continuously for more than 5 years…. The Respondents have been performing their duties in their respective schools since long and such artificial breaks in their employment do not negate the fact that the Respondents had been continuously serving the Appellants/Petitioners for a long time… By no stretch of imagination can it be conceived that when the Respondents were working against their respective posts for long periods (in some cases for more than 10 years), the same can by any definition of the word be termed as a stop-gap arrangement.
ii) A stop-gap arrangement is one where a temporary arrangement is made for a limited time for a few months at the most until something better or more suitable can be found. Such an arrangement is typically made until someone can be hired permanently through the process provided in the law, rules or regulations. The Respondents were admittedly employed for long periods of time running into years and cannot be termed as stop-gap.

Conclusion: i) Petitioner who was a proforma respondent, in the Writ Petition dismissed by the High Court could not competently file petition under Article 185(3) of the Constitution when he was not aggrieved person.

ii) A stop-gap arrangement is one where a temporary arrangement is made for a limited time for a few months at the most until something better or more suitable can be found.

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2. **Supreme Court of Pakistan**
The Chief Secretary, Government of Baluchistan v. Hidayat Ullah Khan
Civil Petition No.22-Q of 2020
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.p._22_q_2020.pdf

Facts: Petitioner was a Field Program Officer. After devolution of departments in view of 18th amendment his services were placed at the disposal of Health Department and he was given charge of Law Officer in the Health Department of Province. Later on he wanted to his transfer and absorption in the post of Law Officer of P&D Department.

Issue: Whether change of cadre or absorption is permissible?

Analysis: Change of cadre and absorption is not permissible in law.

Conclusion: Change of cadre and absorption is not permissible in law.

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3. **Supreme Court of Pakistan**
Senior Superintendent of Police (Operations) v. Shahid Nazir
Civil Appeal No.608 of 2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._608_2021.pdf

Facts: Respondent/constable was issued a show cause notice that he failed to perform his duty efficiently and registration of some FIRs in different Police Stations exposes his involvement in criminal cases. Regular inquiry was dispensed with and he was dismissed from service.

Issue: When a regular inquiry may be dispensed with?

Analysis: There is no hard and fast rule that in each and every case after issuing show cause notice the regular inquiry should be conducted but if the department wants to dispense with the regularly inquiry there must be some compelling and justiciable reasons assigned in writing... If the charge is founded on admitted documents/facts, no full fledged inquiry is required but if the charge is based on disputed questions of fact, a civil servant cannot be denied a regular inquiry, as the same cannot be resolved without recording evidence and providing opportunity to the parties to cross-examine the witnesses…. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the

alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with… It is not a hard and fast rule that where there are serious allegations against an employee which are denied by him the department is under an obligation to conduct a regular inquiry in all circumstances in case the departmental authorities come to the conclusion that there is sufficient documentary evidence available on record which is enough to establish the charge, it can, after recording reasons, which are of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings.

Conclusion: There is no hard and fast rule that in each and every case after issuing show cause notice the regular inquiry should be conducted but if the department wants to dispense with the regularly inquiry there must be some compelling and justiciable reasons assigned in writing. In case the departmental authorities come to the conclusion that there is sufficient documentary evidence available on record which is enough to establish the charge, it can, after recording reasons, which are of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings.

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4. **Supreme Court of Pakistan**
Chief Executive, PESCO Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Afnan Khan and another
Civil Petition No. 443/2021
Mr. Justice Gulzar Ahmed, HCJ, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/c.a._443_2021.pdf

Facts: The High Court dismissed the revision petition being barred by time since it was presented after expiry of time allowed to remove objections.

Issue: Whether revision petition under section 115 of the C.P.C can be dismissed being time barred?

Analysis: The Hon'ble Court in order to answer the question referred following para of judgment by a five member bench in case titled **Hafeez Ahmad and others v. Civil Judge, Lahore and others (PLD 2012 Supreme Court 400):-**

> Now question arises whether suo motu jurisdiction under section 115 of the Code could be exercised by the High Court or the District Court in a case where a revision petition has been filed after the period of limitation prescribed therefor. The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor. Such petition, could be treated as an information even if it suffers from procedural lapses or

loopholes. Revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a revision petition, exercises its suo motu jurisdiction to correct the errors of the jurisdiction committed by a subordinate Court. This is what can be gathered from the language used in Section 115 of the Code and this is what was intended by the legislature, legislating it. If this jurisdiction is allowed to go into the spiral of technicalities and fetters of limitation, the purpose behind conferring it on the Court shall not only be defeated but the words providing therefor, would be reduced to dead letters. It is too known to be reiterated that the proper place of procedure is to provide stepping stones and not stumbling blocks in the way of administration of justice. Since the proceedings before a revisional Court is a proceeding between the Court and Court, for ensuring strict adherence to law and safe administration of justice, exercise of suo motu jurisdiction may not be conveniently avoided or overlooked altogether.

Conclusion: The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor.

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5. **Supreme Court of Pakistan**
Hamza Sheraz and another v. Riaz Mehmood (deceased) through L.Rs.
Civil Appeal No. 183 of 2015
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._183_2015.pdf

Facts: In compliance with the order of the Court to deposit Zar-e-Soem, one third of the sale price in a suit for pre-emption, plaintiff deposited the amount which was slightly less than the one third. He contended that it was mistakenly calculated and shortfall being meager, he could be allowed to deposit the shortfall.

Issue: Whether plaintiff can be allowed to deposit the meager remaining portion of the one third Zar-e-Soem (required to be deposited in pre-emption case) where he could not deposit the whole due to mistaken calculation?

Analysis: This is also not a case where the Court had itself calculated the one-third amount and made a mistake which required correction. In this case the plaintiff/pre-emptor himself committed the mistake, the consequences whereof he had to suffer. The quantum of the mistaken amount was inconsequential. The plaintiff/preemptor did not deposit the stipulated one-third of the sale consideration amount within the prescribed period, as provided for in section 24 of the Act, and thus attracted the consequences thereof, which was the dismissal of the suit.

Conclusion: Plaintiff cannot be allowed to deposit the meager remaining portion of the one third Zar-e-Soem required to be deposited in pre-emption case where he could not deposit the whole due to mistaken calculation.

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6. **Supreme Court of Pakistan**
Rashid Hussain v Additional District Judge
Civil Petition No.1665 of 2020
Mr. Justice Maqbool Baqar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1665_2020.pdf

Facts: Petitioner filed the petition for custody of his children who were in custody of their maternal grandfather while contending that he being father has preferential right of custody.

Issue: Whether general principle of "preferential right" in custody matter can be deviated from?

Analysis: As a general principle the degree of preference is confined to relationship depending upon the order of preference due to closeness of blood relationship and other aspects which are essential in upbringing of the minors within four corners of law. Any deviation from the general principle, where the blood relationship has to be departed, there should be very strong and compelling reasons to have a contrary view which includes upbringing, education, healthcare, congenial domestic atmosphere, physical and psychological advantages, sect, religion, character and capacity of the claimant to whom if it is assigned to take care of the minors. In short words, while ignoring/bypassing the general principle there must be very strong and exceptional circumstances which could be brought forth with reference to the intent of the legislature regarding the sole purpose of "welfare of minor".

Conclusion: Ignoring/bypassing the general principle there must be very strong and exceptional circumstances.

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7. **Supreme Court of Pakistan**
Muhammad Saeed Khan v. Malik Muhammad Ashraf and others
Civil Petition No. 1550 of 2017
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1550_2017.pdf

Facts: Petitioner was proforma respondent in writ wherein no claim was made against him. Writ petition was dismissed. Petitioner has filed leave to appeal against order of dismissal of writ petition.

Issue: Whether the Petitioner who was a proforma respondent, in the Writ Petition dismissed by the High Court could competently file petition under Article 185(3) of the Constitution?

Analysis: It is a settled principle of law that an aggrieved party can file an appeal or a petition for leave to appeal, whichever is maintainable, before this Court under Article 185 of the Constitution of the Islamic Republic of Pakistan, 1973… The Petitioner was respondent No. 4 before the High Court. He never challenged the order of the Appellate Authority or order of Excise and Taxation Officer/Motor Registering Authority before the High Court. If he was aggrieved by the orders of the Appellate Authority or Excise and Taxation Officer/Motor Registering Authority, Islamabad he was required to challenge the same before the available forum or the High Court in Constitutional jurisdiction and thereafter if his petition was dismissed by the High Court he would have been entitled to challenge the said order before this Court. By no stretch of imagination, it can be said that he is aggrieved by the order of the High Court when the Writ Petition filed by the Respondent was dismissed by the High Court. It is a settled view of this Court that if any person is a formal party as respondent before the High Court against whom no relief is claimed and the Writ Petition before the High Court is allowed even then the said formal respondent has no right to challenge the order of the High Court before this Court if the order does not prejudicially or adversely affects that person.

Conclusion: Petitioner who was a proforma respondent, in the Writ Petition dismissed by the High Court could not competently file petition under Article 185(3) of the Constitution when he was not aggrieved person.

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8. **Supreme Court of Pakistan**
Muhammad Iltaf Khan v. Basheer and others
Criminal Petition No.46-P of 2016
Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Qazi Muhammad Amin Ahmed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._46_p_2016.pdf

Facts: A criminal complaint under section 500 of the Pakistan Penal Code, 1860 (P.P.C.), was directly filed in the Court of Session in the wake of addition of section 502-A in the P.P.C., contending that there was no need now to route the complaint through magistrate.

Issue: Whether there was no need to route the complaint u/s 500 PPC through magisterial court in view of insertion of section 502-A in the PPC?

Analysis: Section 193 of the Code places a complete and clear bar on taking of cognizance of any offence by the Court of Session in its original jurisdiction unless the case is sent up by a Magistrate under subsection 2 of section 190 of the Code. Offence

under section 500 of the P.P.C. is punishable with imprisonment that may possibly extend to a period of 5 years and as such, triable by a Magistrate. The legislature in its wisdom desired an expeditious trial of the offence with right of appeal going to the High Court and this appears to be the dominant purpose for insertion of section 502A in the P.P.C. with no bearings upon the procedure, otherwise provided for the institution of a complaint.

Conclusion: Section 502-A PPC only confers jurisdiction on the Sessions Court to try case u/s 500 PPC. It has no bearings upon the procedure, otherwise provided for the institution of a complaint. Therefore, a complaint u/s 500 PPC must be routed through the Magistrate.

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9. **Supreme Court of Pakistan**
Muhammad Jameel, etc. v. Abdul Ghafoor
Civil Petition No. 1890-L of 2017 and C.M.A.2295-L of 2017
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1890_l_2017.pdf

Facts: Government was owner of land, however, suit of plaintiff for declaration and possession against private defendants was decreed throughout.

Issue: Whether a person can file a suit for declaration without having a pre-existing right and without impleading real owner as party?

Analysis: When the plaintiff claimed a declaration of title, without a pre-existing right, suit for declaration was not competent and the courts below should not have granted a declaratory decree when no pre-existing rights were available with the respondent-plaintiff in the suit "Ihata". If he was in possession of a portion of suit "Ihata" and was wrongly dispossessed by the petitioners-defendants who are admittedly in possession of a portion of suit "Ihata", the only remedy available with him was to file a suit under section 9 of the Specific Relief Act, 1877 and not a suit for declaration under section 42 of the Act, ibid, or he could file a suit for possession under section 8 of the Specific Relief Act, 1877.

Conclusion: When the plaintiff claimed a declaration of title, without a pre-existing right, suit for declaration was not competent.

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10. **Lahore High Court**
Sardaran Bibi etc. v. Rehma etc.
Civil Revision No.1786 of 2012
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2021LHC6784.pdf

Facts: The petitioners filed suit for declaration along-with permanent injunction and during the pendency of the first suit, they filed second suit where after withdrew the first suit. In the second suit, respondents filed application under Order VII

Rule 11 CPC for rejection plaint, which was accepted and the plaint was rejected.

Issues: Whether second suit is barred by law and plaint of the said second suit is liable to be rejected under Order VII Rule 11 CPC, where the first suit has been withdrawn after filing second suit.

Analysis: Where a suit is already pending before the institution of fresh/ new suit and later on previous suit is withdrawn, the provision of Order XXIII, rule 1, CPC would not be applicable. Order XXIII, rule 1 CPC refers to permission to withdraw a suit with liberty to institute a fresh suit after the first one has been withdrawn. Order XXIII, rule 1 CPC cannot be read so as to bar a suit which has already been instituted before the other suit has been abandoned or dismissed… The bar of Order XXIII rule 1 applies only to suit instituted after withdrawal or abandonment of previous suit.

Conclusion: Where the first suit has been withdrawn after filing of second suit, the second suit is not barred by law and plaint of the said second suit cannot be rejected under Order VII Rule 11 CPC.

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11. **Lahore High Court**
Tayyaba Mehboob v. Additional Sessions Judge, Sarai Alamgir, and others
Writ Petition No.58868/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC7202.pdf

Facts: The petitioner filed application under section 491(1-A) Cr.P.C. for their recovery of her minor children. The Court directed the respondent SHO to produce the minors but reportedly respondents No.4 to 6 took them to Rawalpindi. At which the Petitioner's counsel withdrew the aforementioned application which she states was without her instructions. The Petitioner has now made this petition under Article 199 of the Constitution for the recovery of the minors.

Issues: i) Whether the Principal Seat of Lahore High Court has jurisdiction only to the extent of its assigned area?
ii) Whether Order XXIII Rule 3 CPC is applicable to the proceedings under section 491(1-A) Cr.P.C?
iii) Whether principle of res judicata applies to habeas corpus proceedings?
iv) Whether during pendency of guardianship petition, constitutional petition of habeas corpus is not proceedable?

Analysis: i) Rule 3 stipulates that all matters arising within the area assigned to a Bench have to be filed before that Bench and decided by it. Rule 5 empowers the Chief Justice to transfer any proceedings pending at the Principal Seat of the Court or a Bench to another Bench or the Principal Seat. The Hon'ble Supreme Court of Pakistan had the occasion to consider Rule 3, supra, in Syed Ahmed Ali Rizvi and another v. The State (PLD 1995 SC 500). The August Court held that "Rule 3 provides that all matters arising within the area assigned to a Bench shall be filed before and disposed of by that Bench. This may be the territorial limit of the

Benches administratively fixed by the Rule but it cannot curtail or limit the jurisdiction conferred on a Judge of the High Court by Constitution and law and he can exercise such jurisdiction throughout the territorial limits of the High Court. In spite of the above rule a Judge sitting at the Principal Seat of the High Court having Benches can exercise jurisdiction within the entire territorial jurisdiction of the High Court." Admittedly, this petition under Article 199 of the Constitution is in the nature of habeas corpus. Therefore, in view of the above-mentioned dictum of the Hon'ble Supreme Court, no objection can be taken to its institution at the Principal Seat.

ii) Order XXIII Rule 3 CPC stipulates that where the plaintiff withdraws from a suit or abandons part of a claim without the court's permission is precluded from instituting a fresh suit in respect of such subject-matter or part of the claim. The proceedings under section 491(1-A) Cr.P.C. are neither a suit nor proceedings in a suit. The Order XXIII Rule 3 CPC is not applicable to the proceedings under section 491(1-A) Cr.P.C.

iii) Res judicata, also known as claim preclusion, is the Latin term for "a matter decided". Generally, it postulates that a cause of action may not be agitated again once it has been adjudged. The doctrine of res judicata is not applicable to the facts and circumstances of the instant case because the Additional Sessions Judge never decided the matter on merits. Even otherwise, in a cornucopia of cases the courts have held that this doctrine does not apply to habeas corpus proceedings. reference may be made to Mst. Nazneen v. Judicial Magistrate, Larkana, and 2 others (1999 MLD 1250) in which a Division Bench of the Sindh High Court held that "technically an order passed on an application under section 491 Cr.P.C. has not been treated as judgment in terms of section 369 of the Code so as to attract the bar of res judicata."

vi) In Nisar Muhammad and another v. Sultan Zari (PLD 1997 SC 852) the apex Court observed that the proceedings under section 491 Cr.P.C. are summary in nature. The court only determines whether the custody of the child with the parent is illegal or improper and makes a provisional order in that respect leaving the matter to be decided by the Guardian Judge in appropriate proceedings. In Mst. Ghulam Fatima v. The State and 5 others (1998 SCMR 289) ruled that pendency of the guardianship matter before a Family Court does not bar proceedings under section 491 Cr.P.C. The above principle also applies to the habeas corpus petitions filed under Article 199 of the Constitution.

Conclusion: i) In spite of the rule 3 a Judge sitting at the Principal Seat of the High Court having Benches can exercise jurisdiction within the entire territorial jurisdiction of Lahore High Court.

ii) The Order XXIII Rule 3 CPC is not applicable to the proceedings under section 491(1-A) Cr.P.C.

iii) Principle of res judicata does not apply to habeas corpus proceedings.

iv) Pendency of the guardianship matter before a Family Court does not bar proceedings of constitutional petition of habeas corpus.

12. **Lahore High Court**
Muhammad Sajid alias Sajo v. The State etc.
Crl. Misc. No.59005/B/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC7211.pdf

Facts: The petitioner had sought pre-arrest bail in offence punishable u/s 377-B PPC. It was the allegation against the petitioner that he deceitfully took along the son of the complainant to nearby fields, removed his cloths and started to fondle him. Screams of the victim attracted the complainant and others persons to the crime scene, making the petitioner flee from there.

Issue: i) What are the various international conventions, declarations and targets of global sustainable goals on the protection of child rights?
ii) Can, at bail stage, adverse inference for delayed registration of FIR is drawn in cases related to Child Abuse?
iii) What the Courts are required to see at the time of deciding bail before arrest?

Analysis: i) The United Nations Universal Declaration of Human Rights (1948) recognizes the right of motherhood and childhood to "special protection and assistance" and the right of all children to "social protection". The United Nations Declaration of the Rights of the Child (1959) has enunciated ten principles for the protection of children's rights. The United Nations Convention on the Rights of the Child (CRC) , while appreciating that there is "need to extend particular care to the child" has enumerated a full range of rights to which they are entitled…… Articles 19 and 34 of the CRC obligate the States parties to protect the children from sexual abuse. The UN Committee on the Rights of the Child (hereinafter referred to as the "UN Committee") in General Comment No.13 (2011) has emphasized that the State parties should adopt a child rights approach at all levels – legislative, administrative, social and educational – which envisages that the child should be viewed as a right holder and not a beneficiary of adults' benevolence..... General Comment No.21 (2017) paragraph 10 further explains that a child rights approach ensures respect for dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a right holder. The United Nations' Sustainable Development Goals has set an agenda for global human development efforts from 2015 to 2030. Significantly, these Goals have added two new targets acknowledging child abuse as a fundamental obstacle to health, demanding concerted action. Target 5.2 aims to eliminate all forms of violence against women and girls, including sexual exploitation, and Target 16.2 aims to end abuse and exploitation of children. Governments are required to report on progress against these targets.

ii) It is true that the Complainant approached the police seven days after the happening but an adverse inference cannot be drawn against her on that score at the bail stage because in our society the people generally do not report such

incidents immediately. The overall impact of the delay, if any, is to be determined by the court on the conclusion of the trial when the testimony of all the witnesses is recorded and they are duly cross-examined.

iii) In "Shahzada Qaiser Arfat alias Qaiser v. The State and another" (PLD 2021 SC 708) the Hon'ble Supreme Court of Pakistan ruled that while deciding applications for pre-arrest bail the courts should see whether there is sufficient incriminating material against the accused. In the case before me there is plenty of such material against the Petitioner. The prosecution case is supported by the Complainant, PWs and the victim himself who have got their statements recorded under section 161 Cr.P.C. During investigation the police have also found that the Petitioner has committed the alleged offence.

Conclusion: i) The United Nations Universal Declaration of Human Rights (1948), The United Nations Declaration of the Rights of the Child (1959) and The United Nations Convention on the Rights of the Child etc.
ii) Adverse inference for delayed registration of FIR in matter related to child abuse cannot be drawn at the bail stage.
iii) The Courts, while deciding an application for pre-arrest bail, are required to see whether there is sufficient incriminating material against the accused.

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13. **Lahore High Court**
Jamshed Iqbal Cheema v. The Election Appellate Tribunal and others
W.P. No. 70103 of 2021
Mr. Justice Jawad Hassan, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC6800.pdf

Facts: The Petitioners assailed the order passed by the Returning Officer and judgment passed by the Election Appellate Tribunal whereby their nomination papers for contesting bye-election for National Assembly were rejected and appeal against that was dismissed respectively.

Issue: i) Whether it is mandatory to be a registered voter in the electoral roll of a constituency for a person to propose and seconds a candidate for contesting election of National Assembly therefrom?
ii) Whether defect in nomination papers regarding the qualification of a Proposer and a Seconder can be cured at a subsequent stage?

Analysis: i) It is well founded that being a voter in any of electoral area of the constituency is mandatory requirement for a voter to propose and second the nomination of a candidate for becoming a Member of the National Assembly. Perusal of Section 2 (xli) of the Act evidently signifies that voter in relation to an Assembly is a person who is enrolled as a voter on the electoral roll of any electoral area in a constituency. This definition makes it abundantly clear that enrollment in the electoral roll is basic and fundamental requirement for a person to be a voter of a particular electoral area and mere residing in an area or having a temporary or

permanent residence in any part of the electoral area of a constituency is not a determinative factor to term a person as voter within the meaning of the Act. Even though Section 27 of the Act postulates a criterion with respect to having place of residence in an electoral area as to be generally included within the electoral roll, however, the determinant factor is not being a resident of the constituency but being enrolled in the electoral roll of any of the electoral area which is part of the said constituency.

ii) Although under second proviso of Section 62(9) the Returning Officer is empowered to allow removal of any such defects in the nomination papers, which are not of substantial nature, yet the requirements that only a voter of a constituency is competent to propose and second a candidate to contest election for Assembly being the only criteria for a candidate to participate in the election for National Assembly speaks volume about the significance of the role of such a voter who proposes and seconds a candidate. It was therefore, quite logical that the proposer and the seconder must be a voter enrolled in the electoral roll of that very constituency, which is to be represented in the National Assembly by such a candidate so nominated. The statutory requirement imposed upon a candidate to be named by a proposer and seconder is definitive and substantial in nature, which cannot be remedied and rectified by the Returning Officer under second proviso of Section 62(9) of the Act.-- The statutory requirement imposed upon a candidate to be named by a proposer and seconder is definitive and substantial in nature, which cannot be remedied and rectified by the Returning Officer under second proviso of Section 62(9) of the Act.

Conclusion: i) A candidate in order to become a Member of the Assembly requires nomination from a *(i)* proposer and *(ii)* seconder who must be enrolled as a voter on the electoral roll of any electoral area in that constituency and proving the factum of having a temporary or permanent residence in the area falling within the constituency is not an alternative to the mandatory requirement of having enrolled in the electoral roll of the Commission.

ii) Provisions relating to proposer and seconder of a candidate in the Election Act, 2017 are mandatory in nature and any defect in respect thereof in nomination, is a defect of substantial nature, which cannot be cured at subsequent stage.

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14. **Lahore High Court**
Muhammad Ayyub Alam Khan. v. Addl. District Judge, Kot Addu, etc.
W.P. No. 4191 of 2021
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC7144.pdf

Facts: Through this constitutional petition, the petitioner has called in question orders passed by both the courts below, whereby application filed by the petitioner for grant of permission to sell the property of his minor son before the Civil Judge, 1st Class, Kot Addu, District Muzaffargarh, has been dismissed on the ground that the petitioner was appointed as guardian of the minor by the Family Court at

Multan, therefore, the petition seeking afore-said relief was not maintainable in courts at Tehsil Kot Addu.

Issue: Whether permission to sell the property of minor may be granted by the court situated at different place other than the court which appointed guardian of the minor or property?

Analysis: The perusal of the Section 9 of the Guardian and Wards Act, 1890 shows that cases in which guardianship of person of minor only is required to be obtained then in terms of Section 9 subsection (1), the said application is to be filed in the District Court within jurisdiction of which the minor ordinarily resides but where the guardianship of 'property' of the minor is to be obtained then in terms of Section 9 subsection (2) in District Court of the places where the minor ordinarily resides and where the property is situated have the concurrent jurisdiction to entertain the same. Subsection (3) of Section 9 provides that in case the application for appointment of guardian of property of the minor is filed in the District Court of a place other than the place where the minor ordinarily resides, the said court can return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction. The perusal of Section 29 of the Act shows that where a person has been appointed or declared by the court to be the guardian of a ward, he shall not without the previous permission of the court transfer the property of the minor through modes mentioned in the said section which shows that the previous permission of the court that appointed him as the guardian is required for disposing/transferring of the property of the minor, which permission may be granted or refused in terms of Section 31 of the Act. Where petitioner was only seeking the relief of being appointed as guardian of property of the minor, which application in addition to the District Court within jurisdiction of which the minor resided, could have also been filed at the place where property is situated in terms of the afore-referred Section and in such situation the petitioner would have the option of choice of forum for filing guardianship on the basis of doctrine of election, which not only is applicable to the available remedies but also to the available forums, if they have concurrent jurisdiction to try a matter subject to exception of mala fide choice of forum. This position of law is fortified by the definition of court provided in Section 4 (5) of the Act. The perusal of Section 4 (5)(b) of the Act makes it clear that in cases where a guardian has been appointed or declared in pursuance of any such application for appointment of guardian of the minor, the court that can entertain further applications is the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian, which is subject to the only exception that in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides shall have the jurisdiction.. Even otherwise, where guardianship of person and property together are sought, then as per Section 9 subsection (1) of the Act, the place where the minor ordinarily resides would be of more significant value for determining the jurisdiction of the court than Section 9 subsection (2) of the

Act, which relates to guardianship of property and provides for concurrent jurisdiction to the courts of residence and situation of property of the minor. When a party opts to choose a forum it cannot be allowed to switch over to another forum qua the same grievance during the proceedings before the former.

Conclusion: Permission to sell the property of minor may not be granted by the court situated at different place other than the court which appointed guardian of the minor and property.

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15. **Lahore High Court**
Roshan Din v. Rashida Ilyas etc
WP No. 15138 of 2020
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2021LHC6969.pdf

Facts: The petitioner called in question the judgment passed by Judge Family Court whereby a suit for recovery of maintenance allowance filed by respondent No. 2/minor (grand-daughter of the Petitioner) was decreed against present Petitioner for an amount of Rs. 3,000/- per month as maintenance allowance.

Issue: i) Whether a grandfather is liable to maintain his grandchildren?

ii) Whether Family Court has decreed the suit for maintenance allowance against grandfather of the minor on wrong premise by treating him as his father instead of grandfather?

Analysis: i) Whether or not a grandfather is liable to maintain his grandchildren came up for consideration in the case titled Muhammad Ramzan vs. Ali Hamza and others (PLD 2016 Lahore 622), the relevant portion of which is reproduced below: "The liability of a grandfather starts when the father is poor and infirm and the mother is also not in a position to provide maintenance to her children but the liability of grandfather to maintain his grandchildren is also dependent upon the fact that he is in easy circumstances. Thus in my humble view if the father and mother are alive, the grandfather cannot be held responsible for maintenance of his grandchildren unless it is first determined that he is in easy circumstances. In order to determine that grandfather is in a position to maintain his grandchildren it is incumbent upon the Family Court to first adjudicate and determine this fact which cannot be done unless he is a party to the suit, having a fair opportunity to explain his status and position…."

ii) It appears that son of the Petitioner/husband of Respondent No. 1/father of Respondent No. 2 died in a road accident in Saudi Arabia in 2016, whereas it is noticed that the trial court decided the matter on wrong premise by treating the Petitioner, who was defendant in the suit, as father of the minor Respondent No. 2 and has not considered that he was the grandfather.

Conclusion: i) See para (i) of analysis.

ii) It is noticed that the trial court decided the matter on wrong premise by treating the Petitioner, who was defendant in the suit, as father of the minor Respondent No. 2 and has not considered that he was the grandfather.

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16. **Lahore High Court**
Riaz Hussain v. The State etc.
Crl. Misc. No.1229-M of 2011
Mr. Justice Anwaarul Haq Pannu
https://sys.lhc.gov.pk/appjudgments/2021LHC4304.pdf

Facts: Through instant application the petitioner has questioned the vires of order passed by respondent No.3/Addl. Sessions Judge, D.G Khan, dismissing a criminal revision petition filed by him against the order passed by respondent No.2/Magistrate Section-30, D.G. Khan, whereby he ordered the petitioner to pay back/return the amount of Daman Rs.90,000/-, deposited by the convict and received by him being an injured witness in pursuance of the judgment.

Issue: Whether appeal against conviction is maintainable if the convict deposits the amount of daman immediately and secures his release?

Analysis: The moment, an order under Section 337-Y PPC permitting the convict to pay the requisite amount/daman either in installments or in lumpsum by the Court, is passed, by implication, the convict is barred from challenging his conviction by way of appeal as no-body can be allowed to approbate and reprobate in the same breath, rather he would be bound by his previous stance. Furthermore, under Section 412 Cr.P.C, except on the ground of its legality, no appeal is maintainable against a judgment of conviction, passed upon pleading guilty of the charge, by a convict. The seeking of a permission by a convict to pay Diyat, Arsh or Daman, while invoking the power of a court, which has passed the final judgment, infact amounts to accepting his conviction and sentence, foregoing his right of appeal. Upon passing an order by a court under Section 337-Y(1a) PPC, allowing prayer of the convict, the judgement of conviction attains finality.

Conclusion: Appeal against conviction is not maintainable if the convict deposits the amount of daman immediately and secures his release as sentence stands executed.

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17. **Lahore High Court**
Muhammad Fayyaz, etc. v. Addl. District Judge, etc.
W.P No.5899 of 2020
Mr. Justice Anwaarul Haq Pannun
https://sys.lhc.gov.pk/appjudgments/2021LHC6761.pdf

Facts: Facts of the case are that respondent No.3 /daughter-in-law filed a suit for recovery of dower against her father in-law and same was decreed in her favour. The petitioners have called in question the vires of the judgment and decree.

Issue: Whether daughter-in-law can file a suit for recovery of dower against father-in-law if he is signatory of Nikah Nama as a Wakeel?

Analysis: There is no denial that it is primarily duty and obligation of the husband to pay dower to his wife, yet there is no bar or prohibition on another person to bind himself as a surety by way of putting his signature/thumb impression on the Nikah Nama, ensuring its payment and such surety cannot wriggle out from such legal obligation when a suit for the recovery of dower is brought against him by the wife, hence, there is no escape by father-in-law to wriggle out of his liability if being "Wakeel" of bridegroom, he had signed the prescribed column of nikahnama at the time of marriage. The suit filed by respondent No.3 for recovery of dower against her father-in-law, who had acted as a "Wakeel" of the bridegroom and had signed it, is held to be competent.

Conclusion: Suit for recovery of dower can validly be filed against father-in-law if he is signatory of Nikah Nama as a Wakeel.

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18. Lahore High Court
Rana Abid Hussain and two others v. National Highway Authority and three others
R. F. A. No. 100 of 2018 / BWP
Mr. Justice Anwaarul Haq Pannun, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC7106.pdf

Facts: Appellants were owners-in-possession of the suit property. The property was acquired at the instance of the NHA for public purpose in connection with the construction of Motorway. Acquisition proceedings were initiated through issuance of the notification under Section 4 of the Act culminating into the award. The Appellants assailed the Award averring that they received inadequate compensation under protest.

Issues: i) What are the determining factors of adequate compensation for compulsory acquisition of land?

ii) Whether sale mutations of small portions of land are out of context and cannot be taken into consideration for determining compensation of bigger holding?

Analysis: i) The privilege to acquire, hold and dispose of the property is a fundamental right guaranteed under Articles 23 & 24 by the Constitution of the Islamic Republic of Pakistan, 1973 which emphatically declares that no person shall be deprived from his property save in accordance with law and with adequate compensation. Section 23 of the Act spells out various factors to be considered for determining market and potential value of the Property. The Apex Court of the country in view of unflinching dictate of the Constitution that citizens subject to compulsory acquisition of their properties are adequately compensated has consistently endeavored to liberally interpret the provisions of the Act. The law is now well developed that adequate compensation is not merely restricted to market value at the relevant time but also includes future potential value of the property. The

escalation in price during the period consummated from the date of the notification under Section 4 of the Act till the pronouncement of Award is also a relevant consideration. Even valuation of adjacent or nearby properties can be analyzed to reach a fair and just price.

ii) Most of the sale mutations brought on record consisted of small portions of land manifestly demonstrates that land in the area was a precious and scarce commodity being located close to two cities. Therefore, such sale mutations of small portions of land were not completely out of context and cannot be ignored altogether when transactions of bigger holdings were not available. This is especially so when the property had the potential of conversion into smaller residential or commercial units as was evident from the fact of emerging residential colonies and existence of a host of commercial ventures in close vicinity of the Property.

Conclusion: i) Adequate compensation is not merely restricted to market value at the relevant time but also includes future potential value of the property.

ii) Sale mutations of small portions of land are not completely out of context and cannot be ignored altogether when transactions of bigger holdings are not available, especially when the property has the potential of conversion into smaller residential or commercial units.

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19. **Lahore High Court**
Ahmad Waqas etc. v. Ishtiaq Ali etc.
R.F.A. No.114 of 2017
Mr. Justice Anwaarul Haq Pannun Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC6768.pdf

Facts: Facts of the case are that appellants filed Regular First Appeal, wherein, they challenged the judgment and decree on the ground that they are in possession of suit property and said possession of the appellants over the suit property is protected on the basis of equitable doctrine of part performance.

Issue: i) When possession on the basis of part performance u/s 53-A of Transfer of Property Act,1882 can be retained?

ii) Whether mere pendency of appeal or revision before the Hon'ble Supreme Court does operate as stay or restrain order?

Analysis: i) Section 53-A of the Act, 1882 is to protect interest of a buyer of the property who has satisfied his commitments and is also willing to honour his commitments, and in that eventuality the transferor cannot go against him and take back possession or cancel the sale. In case the buyer has made defaults or from his conduct it appears that he will not fulfill his promises which are required to complete the sale then the buyer may not get protection of Section 53-A of the Act, 1882 and the seller can cancel the sale and repossess the property. It can be

said that Section 53-A of the Act, 1882 will come into play for protection of the buyer only when the buyer has performed his commitments substantially and is willing to perform the remaining part of his promise, if any, and there is no other way in which the buyer can be considered to have committed breach or there is indication of the buyer breaching his promises when required to be met as per contract. If there is no sale, then Section 53-A of the Act, 1882 will not be helpful.

ii) The Hon'ble Supreme Court of Pakistan has held in its reported judgments that mere filing of appeal or revision does not operate as stay order and prohibition or restraint cannot be implied but must be clearly expressed and communicated.

Conclusion: i) Possession on the basis of part performance under section 53-A of Transfer Property Act, 1882 can only be retained if the vendee proves agreement to sell otherwise his possession deemed to be illegal and a penal action can be initiated.

ii) Mere filing or pendency of petition/appeal/revision before the Hon'ble Supreme Court does not operate as a stay or restraint order.

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20. **Lahore High Court**
Shagufta Sarwar ADPP v. Special Judge Anti Terrorism Court
Writ Petition No. 17809 of 2021
The State v. Judge Anti Terrorism Court & 4 others
Criminal Revision No. 311 of 2021
Mr. Justice Sohail Nasir, Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC7050.pdf

Facts: An accused was produced before Duty Magistrate for physical remand wherein prosecution formed the opinion that section 387 PPC stated u/s 6(2)(k) under the definition of "Terrorism" of the Anti Terrorism Act, 1997 is attracted. The learned Duty Magistrate directed the IO to produce the accused before the ATC. Thereafter the ATC turned down the request of the Investigating Officer and directed him to produce the accused before the learned Area Magistrate. The judge ATC in his order criticized the working of Prosecution department and issued directions for strict actions against prosecutors. The Prosecution department challenged the order to the extent of these comments and directions.

Issue: i) What is judicial restraint?

ii) Whether the prosecutor was justified to give his opinion about the application of any other provision of law?

iii) Whether the comments of Court upon working of prosecutors and prosecution are justified or they should be expunged by applying principle of judicial restraint?

Analysis: i) While commenting upon judicial restraint, this Court had observed that:-

i. The courts can interpret the provisions of law but cannot change or substitute such provisions and also cannot go beyond the wisdom of law.
ii. When spoken about judicial review, it is also necessary to be alive to the concept of judicial restraint.
iii. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of powers.
iv. Judges are expected to interpret any law as per the limits laid down in the law.
v. It is the source of law which the judges are called upon to apply and that Judges, when apply the law, are constrained by the rules of language.

ii) The intervention of independent Prosecution Serving agency is not ceremonial or the role of the Prosecutor is not of a post office but to have a check on the working of the investigating officers at the right time and right place for the reason that the ultimate responsibility of the Prosecutors is to ensure effective prosecution. However, this cannot be disputed that finally the powers lie with the court to agree or disagree with the said opinion (in accordance with law) but under no circumstance it is within the domain of the court to sit over the powers of the Prosecutors.

iii) There was no material at all available with the learned Judge to make such derogatory, insulting and offensive remarks against any Prosecutor or the Prosecution department…. the learned Judge ATC has impinged upon the authority of the Prosecutors and crossed its' limits while giving unethical, biased and prejudiced observations in particular when there was no material at all in support of these remarks. We also find that the learned Judge was vested with no authority to restrain or restrict the statutory powers available to the Prosecutors. T

Conclusion: i) The courts can interpret the provisions of law but cannot change or substitute such provisions.

ii) The prosecutor was justified to give his opinion about the application of any other provision of law.

iii) The comments of Court upon working of prosecutors and prosecution are expunged by applying principle of judicial restraint.

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21. **Lahore High Court**
Mst. Nooran Mai deceased through legal heirs v. Shafqat Ali
Civil Revision No. 1367 of 2016
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC6792.pdf

Facts: The execution of sale deed and mutation were challenged by a lady on the ground of fraud. During pendency of suit, both the parties agreed to refer the matter to arbitrator with an undertaking that they will be bound by his decision. Thereafter name of arbitrator was changed on application of petitioner wherein they maintained that no further application for change of Arbitrator shall be moved.

Still the decision was awaited, when petitioners filed another application for withdrawal of her offer for decision of case through arbitration which was turned down. On the report of arbitrator the version of petitioner was false therefore her suit was dismissed.

Issue: i) What is scope of admissions as referred in Article 33 of QSO?
ii) Whether the arbitrator appointed during proceedings of suit is in terms of Section 22 of the Arbitration Act or his status was of a person expressly referred to by petitioners as mentioned under Article 33 of the QSO?
iii) Whether the court can straight away decide fate of suit on the report of arbitrator?

Analysis: i) The statement of person expressly referred for information with regard to matter in dispute is an admission. It, therefore, simply means that if a dispute is forwarded, the same has to be decided by the person on the basis of information that is already in his knowledge but he cannot inquire into the controversy, hear the parties and to decide the same. He has to simply make a statement about the fate of conflict on the basis of information, nothing more nothing less.
ii) Where parties had agreed for referring the matter with an undertaking that the decision will be binding on both the sides. The parties were obviously not seeking any information but a 'faisla', so despite the use of word 'Referee' in the joint application the real intention of the parties was to appoint an arbitrator for resolving the dispute.
iii) The decision of referee was an 'Arbitration Award' and the trial court could not have made it a rule of court without first giving an opportunity to the parties to file objections thereto and the matter was remanded back to the trial court.

Conclusion: i) If a dispute is forwarded, the same has to be decided by the person on the basis of information that is already in his knowledge without further inquiry into matter.
ii) The arbitrator appointed during proceedings of suit for decision falls under Section 22 of the Arbitration Act.
iii) The court cannot straight away decide fate of suit on the report of arbitrator.

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22. **Lahore High Court**
(Muhammad Ijaz & another v. The State
Criminal Appeal No. 1240-J of 2017
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC7190.pdf

Facts: The appeal is against the order of conviction in murder case.

Issue: What are the important features of identification parade?

Analysis: The important features for a valid identification parade are as under:

i. The proceedings shall be conducted under the supervision of a Magistrate.
ii. Proceedings shall be held inside the jail.
iii. Identification shall be carried as soon as possible after the arrest of suspect.
iv. Once the arrangements for proceedings have been undertaken, the Officer investigating the case and any Police Officer assisting him in that investigation should have no access whatever either to the suspect or to the witnesses.
v. List of all persons included in identification should be prepared, which should contain their names, parentage, address and occupation.
vi. The suspects shall be placed among other persons similarly dressed up, of the same religion and of same social status.
vii. There shall be proportion of 8 or 9 such person to one suspect.
viii. The identifying witnesses shall be kept separate from each other and at such distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called upon to make identification.
ix. Each witness shall be brought up separately to attempt his identification. Care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communication to pass between witnesses who have been called up and those who have not

Conclusion: i) The identification Parade is to be conducted under supervision of Magistrate inside jail keeping in view the cautions discussed above.

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23. Lahore High Court
Vital Chemicals Corporation & 02 others v. Silk Bank Limited
Regular First Appeal No. 72 of 2019
Mr. Justice Sohail Nasir, Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC6973.pdf

Facts: Appellants had applied for the sanction of renewal of finance facilities which was acceded to by the respondent Bank. Appellants again requested for the renewal of the existing financial facilities which was allowed. The appellants failed to liquidate their liabilities within stipulated time which compelled the respondent to file the suit for recovery of outstanding amount which was decreed by learned Banking Court. This Regular First Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is directed against the said

judgment and decree.

Issue: i) Whether mark-up levied is worked out on daily product basis if 'Running Finance facility' is availed and withdrawn at different intervals and paid back on various occasions?

ii) Whether facility of FIM is a banking facility?

iii) Whether pawnee/pledgee has the right either to bring a suit upon the debt or to sell the pledged stock after giving reasonable notice of sale?

Analysis: i) 'Running Finance facility' is the form of lending, where the customer is allowed to borrow money from a financial institution up to a certain limit either at once or as and when it is required. If it is availed and withdrawn at different intervals and paid back on various occasions, then mark-up levied thereon is worked out on daily product basis. The bank charges mark-up only to the amount availed by the consumer instead of buyback price. The formula to work out the mark up on 'daily product basis', in respect of Running Finances, according to recognized Banking practice is: - "Balance outstanding +Number of days+ rate 365 days in a calendar year"

ii) The facility of FIM is a banking facility which financial institution allows its customers for financing their import and local business. The customer when opens the LC , the bank on behalf of its customers gives an unconditional guarantee to the exporter that if the documents drawn under the letter of credit were in conformity with the terms of the letter of credit, the bank will pay the amount to the exporter without referring the demand to importer (LC opener). The bank after negotiating the documents creates a demand against the customer. The documents drawn under the LC are titled to goods. If the importer pays the amount of documents to the bank, the bank delivers the same to the importer and the importer on the basis thereof gets the delivery of imported goods from Port. After payments of the price of documents to bank, the FIM facility stands adjusted and transaction is over. But if the importer fails to pay the price of documents, the documents remain with the bank and the FIM facility in the books of the bank remains unadjusted and recoverable from the importer. The bank in this case had claimed that it allowed FIM facility to appellants and they opened two letters of credit but failed to liquidate that LC(s).

iii) When one person, in the light of a contract, delivers goods to another for some purpose with an understanding that when the purpose is accomplished he shall return the goods or otherwise dispose of according to the direction of the person delivering it, is called bailment as defined by Section 148 of the Contract Act, 1872. A bailee is a person to whom goods are deposited under a contract for a certain purpose and he is bound to return the goods so deposited when the purpose is accomplished. When the deposit of goods is for the purpose of security for payment of a debt or performance of a promise then such deposit is called pledge as defined under Section 172 of the Act. The slight difference between bailment and pledge is that in the case of bailment the deposit of goods is for a certain

purpose, to be returned after the purpose is accomplished but in the case of pledge, the goods are deposited as a security to be kept till the payment of debt is effected or a promise for which the goods were pledged is performed. In other words, the pledge is a kind of bailment and security . Section 151 of the Act provides that where the goods are bailed to the bailee he is bound to take as much care of the goods as a man of ordinary prudence, would under similar circumstances take of his own goods. Section 152 of the Act deals with the situation where the bailee is not responsible for the loss, destruction, or deterioration of the thing bailed. It provides that the bailee is responsible for the loss, destruction, or deterioration of the things bailed, if: - a) There is no special contract to the contrary; or b) The bailee has not taken the amount of care as described in section 151. where the goods are not actually delivered to the pledgee and only constructive possession of the pledged goods is handed over to the pledgee. In this form of pledge the pledgor wears two hats, one that of a pledgor and the other that of a person authorized by the pledgee to hold the pledged goods in trust for the pledgee with the freedom to deal with them in the ordinary course of business. Now the question arises that whether in that situation the right to sue and recover the debt remains alive or not to the respondent, to adopt the recourse of filing the recovery suit. The answer lies under Section 176 of the Contract Act, 1872 which provided that the Pawnee/pledgee has the right either to bring a suit upon the debt or to sell the pledged stock upon giving reasonable notice of sale. Both these rights are concurrent.. From bare reading, it appears that the keywords in Section 176 are "makes default in payment of the debt, or performance, at the stipulated time of the promise." Thus, the right under Section 176 is triggered on the default at the stipulated time.

Conclusion: i) Mark-up levied is worked out on daily product basis if 'Running Finance facility' is availed and withdrawn at different intervals and paid back on various occasions.
ii) Facility of FIM is a banking facility.
iii) Pawnee/pledgee has the right either to bring a suit upon the debt or to sell the pledged stock upon giving reasonable notice of sale.

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24. **Lahore High Court**
MCB Bank Limited v. M/s Mushtaq & Company & 02 others
Execution First Appeal No. 01 of 2020
Mr. Justice Sohail Nasir, Mr. Justice Ahmed Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2021LHC6989.pdf

Facts: Appellant instituted a suit for recovery which was decreed. Decree holder/bank (appellant) made a request that the bank had desired to auction the mortgaged property of its own under Section 19(3) of the Ordinance and requested for adjournment of the execution petition as sine-die. The learned trial court, vide an order instead of sine-die adjournment, dismissed the execution petition while holding that it was not pressed. Thereafter, an application was moved by appellant

for revival of the execution petition on the ground that the judgment debtors/respondents were failed to pay the amount under the decree but said application was dismissed for non-prosecution as well as for non-submission of correct/complete particulars of the case. Appellant again moved an application for revival of application for execution petition which was ultimately dismissed. This Execution First Appeal, (EFO) under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (Ordinance) is directed against the said order of the learned Judge Banking Court.

Issue: i) Whether on choice to satisfy the decree without intervention of the court, the doors are permanently closed for decree holder to come forward for satisfaction of the decree through the intervention of the court if it is unable to materialize the amount under the decree?

ii) Whether the Financial Institutions (Recovery of Finances) Ordinance is a complete Code in itself and being a Special law it over rides the general law?

Analysis: i) The Ordinance provides a complete mechanism to carry out the execution. Section 19(1) of the Ordinance mandates that upon pronouncement of the judgment and decree by the Banking Court, the suit shall automatically stand converted into execution proceedings without filing separate application in this regard. The plain reading of the provisions (ibid) read with sub-Section (2) to (4) makes it clear that it empowers the decree-holder to adopt any mode for realization of its decree with or without the intervention of the Banking Court and it does not mean that on choice to satisfy the decree without intervention of the court, the doors are permanently closed for decree holder to come forward for satisfaction of the decree through the intervention of the court if it is unable to materialize the amount under the decree.

ii) There is no cavil with the proposition that Special law shall prevail over the provisions of general law. The Ordinance is a complete code in itself and being a Special law it overrides the general law. However, for the sake of arguments, if such provisions of law are applied in the case of appellant, even then the case was not hit by law of limitation. Article 181 of the Act, which says that where no period of limitation is mentioned for moving an application, then it will be three years. Under Section 7(2) of the Ordinance, the court in the matters in respect of which procedure has not been provided in the Ordinance, will follow the procedure laid down in C.P.C. However Section 24(1) of the Ordinance allows the application of the Limitation Act, 1908, It appears from the reading of above said provisions of the Ordinance that C.P.C and the Act, will apply, where any procedure or provision is not provided in the Ordinance itself. Part II (Section 36 to Section 74) and Order XXI of the Code of Civil Procedure, 1908 deals with execution of decree. Order XXI rule 10 C.P.C. provides that where a decree-holder desires to execute its decree, he shall apply to the court which passed the decree and rule 11 describes that in a money decree, on the verbal application of the decree-holder the Court may direct the arrest of the judgment debtor if he is within the precincts of the court, prior to the preparation of the warrant, whereas

otherwise every application for the execution of a decree shall be in writing, signed and verified by the applicant. But there is no such requirement in the Ordinance. As discussed above, the Ordinance is a complete code and provides absolute procedure for realization of the decree by converting the suit into execution proceedings, the moment suit is decided. The intention of the law maker is very much clear, not only to save the time but also erode the very object and purpose of this Special law from unnecessary technicalities. Under the Ordinance there is no requirement for decree holder to file separate execution petition and it is duty of the court itself to convert the suit into execution proceedings without waiting for any separate application for execution. The application filed by appellant cannot be treated as execution petition, which at the most can be pursued to trigger the machinery of the court into motion and to start the execution proceedings for realization of decree therefore the same is not hit by law of Limitation or Section 48 of the C.P.C.

Conclusion: i) On choice to satisfy the decree without intervention of the court, the doors are not permanently closed for decree holder to come forward for satisfaction of the decree through the intervention of the court if it is unable to materialize the amount under the decree.

ii) The Financial Institutions (Recovery of Finances) Ordinance is a complete Code in itself and being a Special law it over rides the general law.

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25. **Lahore High Court**
Muhammad Zameer and another v. The State and another
Criminal Misc No.47516-B of 2021.
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC6887.pdf

Facts: This is pre arrest bail for offences under sections 337-A (i), 354, 452, 34, PPC.

Issue: Whether in every case it is necessary for the accused to establish malafide/ulterior motive for getting pre-arrest bail?

Analysis: Insofar as principles for grant of pre-arrest bail, i.e. mala fide or ulterior motive of the complainant and police is concerned, it is not possible in every case to prove the same, however, these grounds can be gathered from the facts and circumstances of this case.

Conclusion: It is not necessary for accused to establish malafide/ulterior motive for getting pre-arrest bail in every case.

26. **Lahore High Court**
Saif Ullah v. The State, etc.
W.P.No.68262/2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6917.pdf

Facts: Through this petition petitioner challenged an order whereby the recommendation of Regional Standing Board allowing second change of investigation of case under sections 324/337-A(i)/337-F(iii)/148/149 PPC has been approved by concerned Regional Police Officer.

Issues: i) What is difference between "Further investigation" and "Re-investigation" or "Fresh investigation"?
ii) When further investigation can be ordered?
iii) When transfer of investigation can be ordered?

Analysis: i) The meaning of "further" is additional, more or supplemental; "further investigation", therefore, is the continuation of the earlier investigation and not a fresh investigation or re-investigation to be started ab initio wiping out the earlier investigation altogether. Further investigation is done to find a concrete evidence or strong evidence against the person; whereas re-investigation is done when the case is in wrong track or the convicted is found not guilty and the criminal is on loose.
ii) Section 173 (2) Cr. P.C. clearly indicates that further investigation is subject to "pending the order of Magistrate". Proviso to Section 173(1) says that court shall commence the trial on the basis of interim report, unless, for reasons to be recorded, the court decides that the trial should not so commence. Meaning thereby if the court does not commence the trial, it would be presumed that the police should continue on for further investigation… In every category, if some additional material or evidence is required to cater to the pre-charge requirement, case shall be entrusted for further investigation and it could conveniently be done by the superior or supervisory officers;
iii) Transfer of investigation should not be ordered except where serious allegations of corruption of any kind is leveled against the investigating officer; but If there are any apprehension that police are investigating the case on the wrong lines, re-investigation would be the best choice and it could be done through transfer of investigation because it now needs more talented and expert members to attend it on such sophisticated lines. Similarly, if investigation requires modern gadgetry involving forensic techniques or collection of evidence could only be possible through personal scientific knowledge of any expert. List is not exhaustive, yet transfer of investigation can also be allowed if the police have personal interest being complainant or case is registered against the illegal acts of police… Authority if convinced after going through the record that either the investigating officer is inefficient or incapable or has connived with one of the parties for any reason, may transfer the investigation after recording reasons therefor in writing and must propose action against the said investigating officer

for misconduct, inefficiency and corruption as the case may be.

Conclusion: i) Further investigation is done to find a concrete evidence or strong evidence against the person; whereas re-investigation is done when the case is in wrong track or the convicted is found not guilty and the criminal is on loose.
ii) If some additional material or evidence is required to cater to the pre-charge requirement, case shall be entrusted for further investigation.
iii) Transfer of investigation should not be ordered except where serious allegations of corruption of any kind is leveled against the investigating officer; But if there are any apprehension that police are investigating the case on the wrong lines, re-investigation would be the best choice.

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27. **Lahore High Court**
Muhammad Riaz vs The State, etc.
Criminal Appeal No.76975/2017
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2021LHC6946.pdf

Facts: The appeal is against the order of conviction in murder case.

Issue: i) What does the expression "reasonable doubt" connotes?
ii) When statement of accused can be taken into consideration

Analysis: i) It is trite that there are different standards to prove a fact by prosecution and the defense. This expression can further be analyzed in the manner that standard of proof required from the prosecution is proof beyond reasonable doubt. Reasonable doubt means, something to which you can assign a reason…. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least possible', the case is proved beyond reasonable doubt and nothing short of that will suffice. The standard of proof put legal burden or the evidential burden on the parties to prove the facts. Legal burden refers to party to satisfy the court in respect of a fact in issue. It should be noted that the legal burden in respect of different facts in issue can rest on one or other of the parties within the same case.
ii) In the light of case reported as Ali Ahmad v. The State (PLD 2020 SC 201) wherein status of statement of accused u/s 342 Cr. P.C was declared as under:-

> "Status of a statement under section 342, Cr.P.C. 17. The words "taken into consideration" appearing in section 342(3), Cr.P.C are very wide. The statement of an accused recorded under section 342, Cr.P.C, has no less probative value than any other "matter" which may be taken into consideration against him within the

contemplation of the definition of "proved" given in Article 2(4) of the QSO (previously section 3 of the Evidence Act, 1872), which states that a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

The august court further clarifies in supra case that if the accused takes a stance and such stance does not fulfill the requirement of law and his act is not completely covered in legal protection available under the law, he can well be convicted.

Conclusion: i) If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least possible', the case is proved beyond reasonable doubt and nothing short of that will suffice.

ii) The statement u/s 342 Cr.PC may be taken into consideration against accused within the contemplation of the definition of "proved" given in Article 2(4) of the QSO.

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28. **Lahore High Court**
Muhammad Yasin v. Additional District Judge, Burewala etc.
Writ Petition No.4785/2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC6819.pdf

Facts: Predecessor-in-interest of the respondents, after issuing a notice of eviction, filed an eviction petition in respect of suit property. The respondents also filed two connected petitions being aggrieved of the impugned decisions to the extent of quantum of rent determined by the courts below.

Issues: i) Whether an agreement to sell or a suit for specific performance instituted on the basis of the same debars the eviction?

ii) Whether the rate of rent calculated for the purposes of payment of fine in terms of Section 9 is to be considered conclusive determination with regard to rent agreed to be paid by and between the landlord and the tenant?

iii) Whether the amount of final rent due at the time of passing the final order cannot be less than the tentative rent determined under Section 24 of the Act or the amount taken as monthly rent for the purpose of calculation of fine under Section 9?

Analysis: i) It is settled law that an agreement to sell or a suit for specific performance instituted on the basis of the same does not debar the eviction in accordance with law. Insofar as the contention of learned counsel for the petitioner that the suit for specific performance was prior in time is concerned, it has been admitted during the course of arguments that notice for eviction and recovery of rent was sent by predecessor-in-interest of the respondents to the petitioner where the suit for

specific performance was filed. Hence, it appears that the suit was filed as a counterblast to circumvent the eviction proceedings. Even otherwise, it is settled principle of law that if the tenancy is not in writing, the owner of the premises will be presumed to be the landlord and occupier thereof as the tenant unless the contesting tenant like the petitioner can come up with a declaration to the contrary from the court of a competent jurisdiction.

ii) Perusal of Section 9 reveals that it is a penal provision for failure to bring the tenancy agreement in conformity with the provision of the Act qua its registration under Section 5 of the Act. Section 9 places a bar upon learned Rent Tribunal in entertaining any application under the Act including ejectment petition unless the fine by the landlord or the tenant, as the case may be, is paid in cases where the tenancy is not created in accordance with provisions of Section 5. The fine and its deposit is a step that enables learned Rent Tribunal to entertain the applications under the Act. For this purpose, the annual rent is determined in terms of Section 9 on the basis of the tenancy agreement if the same is written and in case of oral tenancy, the rent mentioned in the application made by a party. However, this does not mean that the rent so determined is final or conclusive, as determination under Section 9 is an exercise to be carried out by learned Rent Tribunal for assumption of jurisdiction only. Even otherwise, the determination of the rate of rent for the purpose of deposit of fine under Section 9 is a matter between the court and the applicant which could be either landlord or the tenant and the same cannot be construed as determination of the rights of the parties inter se. The rate of rent calculated under Section 9 for determination of amount of fine is not to be considered as rent agreed between the landlord and the tenant.

iii) A bare reading of Section 24 reveals that at the time of grant of leave to contest, learned Rent Tribunal is to direct the tenant to make payment of monthly rent till the adjudication of eviction petition. However, where there is a dispute as to the rate of rent, learned Rent Tribunal is to determine tentative rent to be paid by the tenant till the final decision of the eviction petition. The actual amount of rent due only surfaces at the time of passing of the final order… Perusal of the term 'final order', as defined in Section 2(b) of the Act, reveals that it is an order whereby the proceedings before learned Rent Tribunal come to an end and any amount paid prior or during the course of proceedings can be on higher or lower side and is to be finally adjusted in the final order. The tentative determination under Section 24 is neither conclusive nor final rather the same is for the interregnum period of grant of leave to contest and final adjudication of the petition and subject to final determination at the time when the lis is ultimately disposed of on the basis of evidence produced by the parties respectively.

Conclusion: i) An agreement to sell or a suit for specific performance instituted on the basis of the same does not debar the eviction in accordance with law.

ii) The rate of rent calculated for the purposes of payment of fine in terms of Section 9 is not to be considered conclusive determination with regard to rent agreed to be paid by and between the landlord and the tenant.
iii) Final rate of rent can be lesser or greater than the rent tentatively determined under Section 24 of the Act or the amount taken as monthly rent for the purpose of calculation of fine under Section 9.

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29. **Lahore High Court**
Mst. Tahira Parveen v. District Judge etc.
Writ Petition No.153/2014
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2021LHC6839.pdf

Facts: The respondent filed a guardian petition with the averments that the petitioner had contracted second marriage, with a person who was already married and now had children from the second marriage as well, due to which the petitioner could not look after the minor; The welfare of the minor lies with the respondent.

Issues: i) Whether a mother has right to the custody of her son only till the age of seven years?
ii) Whether a child has a right to choose between the parents?

Analysis: i) It is well settled that a mother has a right to the custody of her son till the age of seven years and thereafter it goes to the father. However, this is not an absolute and invariable rule as there is no cavil to the proposition that notwithstanding the right of the mother or father for the custody of male or female child under the personal law, welfare of the child is given paramount importance. This Court has to consider child's welfare and interest over that of parents' rights as the courts in the cases of custody and guardianship exercise parental jurisdiction. Section 17 of the Act declares the "welfare of a minor" as paramount consideration rather than the right of the parents. Welfare is to be determined by taking into account many factors including the choice of a minor provided such minor is capable of forming such preference. Welfare of a minor being a question of fact has to be determined on case to case basis after appraising evidence on record.

ii) Choice of a minor in matters related to his well-being is also recognized under the Convention on the Rights of the Child, 1989, which Pakistan signed and ratified in the year 1990, where under it has been clearly envisaged that the children have a right to be heard in all matters affecting them and their views should be given due weightage in accordance with their age and maturity. In addition to the fact that choice of a minor qua right of the parents for his or her custody has its traces during the period of Prophet (Sallallahu Alaihi Wasallam) and His Companions, as well as International Law, the argument of learned counsel for the respondent that on attaining the age of 7 years, the custody of a minor child is to be handed over to the father ipso facto is nothing but unbridled flight of fancy on part of the respondent and runs counter to the spirit of sub-

section (3) of Section 17 of the Act as well, which is reproduced as under: "If the minor is old enough to form an intelligent preference, the court may consider that preference." Such statutory discretion vested in the court to consider the intelligent preference of the child where he is old enough to form it brings out the hollowness of the argument of learned counsel for the respondent. However, such preference of a minor does not underpin as an exclusive or only factor for handing over custody rather the same is one of the factors to be considered for determination of custody. However, their choice will be considered only if it is in their interest.

Conclusion: i) This is not an absolute and invariable rule that a mother has right to the custody of her son only till the age of seven years. Welfare of child is of paramount importance.

ii) Statutory discretion vests in the court to consider the intelligent preference of the child for his custody, where he is old enough to form opinion.

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30. **Lahore High Court**
Muhammad Saeed Akhtar v. Justice of Peace, etc.
W.P. No.17996 of 2021
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC6829.pdf

Facts: The father of respondents, since deceased, issued cheque to petitioner but the same was dishonored. Now the petitioner seeks to lodge FIR against respondents on the ground that now they are managing the business of their late father through an authorized agent and were claiming under him.

Issue: Whether FIR can be lodged against the legal heirs for the cheque drawn by their late father?

Analysis: In this view of the matter, the term "whoever' appearing at the start of Section 489-F PPC gains importance in the present context and it is obvious that unless and until an application for registration of a case is filed against a person who is the account holder and who has himself issued a cheque which has been dishonored, no criminal liability is attracted… It may also be noted that penal or criminal liability does not devolve upon legal heirs. While respondents No.4 and 5 may have inherited the business of their late father and while they may have inherited his estate, it does not mean that they become criminally liable for actions or activities allegedly undertaken by their late father. While a suit for recovery from the estate or inheritance may be in order, if at all, an application for registration of a criminal case against respondents No.4 and 5 on account of alleged deeds of their father cannot be countenanced.

Conclusion: The FIR cannot be lodged against the legal heirs for the cheque drawn by their late father.

31. **Lahore High Court**
Qasim Ali, etc v. Manzooran Bibi, etc.
C.R. No.869 of 2010
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC7122.pdf

Facts: The petitioners have challenged gift mutations in favour of respondents on the premise that not only was their paternal uncle incapacitated to make such a gift but also because he did not have a son and the petitioners had been deprived of their inheritance.

Issue: i) Whether gift to daughters by the father having no male issue is justified circumstance in which gift could have been made?
ii) Whether non impleadment of revenue officials and the revenue hierarchy in the suit is fatal to the case?

Analysis: i) It is indeed par for the course for Muslim men without sons but with daughters to gift their properties to their daughters during their lifetime so as to not allow the sons of theirs brothers or sisters to lay a claim to the property after their death…. Therefore, there existed circumstances in which the gift could have been, and was, made.
ii) Where a public document or document sanctioned by a public officer is challenged, it cannot be left at the whims of the parties to produce the same before the Court. Particularly, this burden would fall upon the defendant, trying to defend the sanctity of the impugned mutation or registered document, to bring the revenue officer in the witness box. However, the principles of justice dictate that the person whose act is challenged before the court should be allowed an opportunity to defend his actions. Even if no direct interest of said officer is being affected, his acts as a public officer carry the presumption of regularity and correctness attached to them which needs to be actively rebutted; further, he must also be provided with an opportunity to defend the same. Therefore, the revenue officers and the Provincial Government are proper parties in cases where registered sale deeds and mutations have been challenged.

Conclusion: i) The gift to daughters by father having no male issue is justified circumstance in which gift could have been made.
ii) The non impleadment of revenue officials and the revenue hierarchy in the suit filed is fatal to the case.

32. **Lahore High Court**
Safeer Ahmad v. Mst. Gulshan Bibi, etc.
No. W.P No.3392 of 2021
Mr. Justice Muhammad Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC6901.pdf

Facts: The learned Judge Family Court partially decreed the suit for dissolution of marriage, recovery of maintenance allowance, iddat period allowance and dowry articles etc. The person aggrieved by the decree preferred an appeal before learned Additional District Judge, but the same was dismissed. Through this writ petition, the petitioner has challenged the judgments and decrees of the courts below.

Issues: i) Whether surrendering dower under section 10(5) of the Family Court Act is mandatory by wife in a case of dissolution of marriage through khula and what is a limit of the dower amount to be surrendered?

ii) Whether husband can claim full return of dower from the wife seeking khula after the introduction of the Punjab Family Courts (Amendment) Act 2015?

Analysis: i**)** As per section 10(5) of the Punjab Family Courts (Amendment) Act 2015, the surrender of dower by wife in a case of dissolution of marriage through khula is no more mandatory or as a matter of course rather it is discretionary. Such surrender is not automatic but depends upon direction of the Family Court. The surrender by the wife under Section 10(5) of the Act is only a part of the dower and not the whole of it. The scope of discretion of the Family Court in this regard covers not only whether or not to direct surrender of the dower by the wife but also how much or what part of the prompt or deferred dower. Such direction for surrender has to be within the ceiling prescribed by the legislature in either case i.e. up to fifty percent of the deferred dower or up to twenty five percent of the admitted prompt dower. Any direction by the Family Court to the wife for the surrender of dower has to be part of either of the two namely deferred dower or admitted prompt dower and not both. In a decree for dissolution of marriage, in case whole or part of the deferred dower is outstanding, subject to Section 10(5) ibid, it is mandatory for the Family Court under Section 10(6) of the Act to direct the husband to pay the same to the wife.

ii) After the introduction of section 10(5) through the Punjab Family Courts (Amendment) Act, 2015 (XI of 2015), the return of entire prompt dower mentioned in the Nikahnama has no legal basis.

Conclusion i) The surrender of dower by wife in a case of dissolution of marriage through khula is discretionary.
ii) A husband cannot claim return of dower from the wife seeking khula after the introduction of the Punjab Family Courts (Amendment) Act 2015.

LIST OF ARTICLES:-

1. **MODERN LAW REVIEW**
   https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12669
   MEDICINAL CANNABIS PRESCRIBING: A STUDY OF BOUNDARY WORK AND MEDICO-LEGAL RISK by Paula Case

   The prescription of 'unlicensed' cannabis-based medicines was legalised in 2018. A 'boundary work' analysis of the post reform guidance issued for doctors reveals a discourse which frames the prescription of medicinal cannabis as a matter for clinical judgement, but also as fraught with medico-legal hazard. The article highlights a triad of rhetorical devices comprising the 'last resort' principle, 'personal responsibility' and the randomised controlled trial as an exclusive measure of 'safety and efficacy'. Having identified a pronounced signalling of medico-legal risk which is likely to have a chilling effect on prescribing, this article explores how the Bolam-Bolitho formulation of the legal standard of care in negligence litigation might respond to this new domain of prescribing. This article concludes with observations about the compatibility of innovative prescribing of unlicensed cannabis medicines with the standard of care in negligence law, notwithstanding the extreme caution inherent in the interim prescribing guidance.

2. **LUMS LAW JOURNAL**
   https://sahsol.lums.edu.pk/law-journal/criminal-defamation-laws-pakistan-and-their-use-silence-victims-sexual-harassment-abuse
   CRIMINAL DEFAMATION LAWS IN PAKISTAN AND THEIR USE TO SILENCE VICTIMS OF SEXUAL HARASSMENT, ABUSE, OR RAPE by Muhammad Anas Khan

   In Pakistan, the discourse around defamation laws in the context of sexual harassment and abuse cases is underdeveloped. With the #MeToo movement on a rise, several victims of sexual harassment and abuse have used social media to disclose their horrific stories. These claims are generally met with counter-claims of defamation by the alleged perpetrator or their supporters, which creates further hindrance for these victims trying to speak up. The victim, while fighting their own case of harassment, simultaneously has to defend themself against the defamation charges. This problem seems to be excerabated through criminal defamation laws where a First Information Report can also be registered against the victim speaking up under Sections 499 and 500 of the Penal Code of Pakistan 1860 ("Penal Code") and under Section 20 and 21 of the Prevention of Electronic Crimes Act 2016 ("PECA"). Therefore, it is imperative to revisit criminal defamation laws in Pakistan and to analyse their misuse in such claims. This paper aims to distinguish between civil and criminal defamation laws in Pakistan: the Defamation Ordinance 2002 ("2002 Ordinance"), the Penal Code, and the PECA. It analyses cases of harassment and defamation, both inside and outside the courtrooms. However, since the jurisprudence is underdeveloped, the caselaw alone might not be an adequate source to formulate a definitive argument. For this purpose, the paper includes interviews with lawyers, social activists, and law

enforcement personnel to gauge their understanding and views on the topic. Based on these interviews, this paper attempts to analyse the jurisprudential and practical lapses in the system that cause impediments in dispensation of justice. Thus, it will also look at criminal and civil defamation laws to determine whether they hinder sexual harassment claims, and violate consitutional rights to freedom of speech and expression.

3. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/rethinking-police-expertise
RETHINKING POLICE EXPERTISE by Anna Lvovsky

The courts' dual approaches to police expertise illuminate debates about institutional competency and deference in and beyond the criminal law. For one thing, they expose the moralistic assumptions undergirding our shared intuitions about expertise as a source of institutional authority, urging greater skepticism of a range of legal doctrines grounded on judicial self-abnegation to ostensibly more expert actors. At the same time, they complicate the conventional link between expertise and authority itself, revealing the ambiguous relationship between competency and legitimacy in a system administered by multiple, often conflicting agents of the law. Not least, they invite us to confront our commitment to certain government tasks, like so many apparently entrusted to the police, that inspire less controversy, ironically, the less masterfully they are performed.

Building on these insights, this Article contends that courts should take a technological view of expertise in all their encounters with law enforcement, a shift that will yield more rigorous scrutiny of a broad range of police behaviors. In a legal system populated by an increasingly professionalized police force, we must do away with the assumption that more expert policing is, invariably, more lawful policing, and recognize how this development raises new issues for—and imposes novel obligations on—judges committed to the protection of individual rights.

4. **LUMS LAW JOURNAL**
https://sahsol.lums.edu.pk/law-journal/use-ai-arbitral-proceedings
THE USE OF AI IN ARBITRAL PROCEEDINGS by Mahnoor Waqar

This research paper aims to explore, a concept once considered alien, the usage of artificial intelligence ("AI") in arbitral proceedings. The sphere of arbitration has, to date, been deemed inherently conservative, where change and development have been slow. However, this paper aims to illustrate that the new wave of the technological revolution has now made it difficult for arbitration to stay far behind, or follow obsolete practices. Although, this is not without its challenges, and therefore, the author seeks to strike a balance between the advantages and disadvantages of AI in arbitration, without undermining its very essence. Resultantly, it is argued that its usage needs to be slowly phased in. The discipline referred to in this paper mainly pertains to the realm of International Commercial Arbitration.

5. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/disparate-limbo
DISPARATE LIMBO: HOW ADMINISTRATIVE LAW ERASED ANTIDISCRIMINATION by Cristina Isabel Ceballos, David Freeman Engstrom & Daniel E. Ho

Article uncovers how modern administrative law erased antidiscrimination principles. This story begins with the Civil Rights Act of 1964, when Congress punted on questions about disparate impact and the relationship between Title VI and the Administrative Procedure Act (APA). But the plot thickened when the D.C. Circuit, in an opinion by then-Judge Ginsburg, held that § 704 of the APA barred civil rights plaintiffs from bringing an APA challenge because Title VI provided an alternative "adequate remedy."[1] *Subsequent courts seized on the D.C. Circuit's § 704 dodge, using it to channel antidiscrimination claims away from the APA. Worse, courts have reflexively applied § 704 to oust civil rights claims, even after the Supreme Court's decision in Alexander v. Sandoval rendered Title VI demonstrably inadequate.*