LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-10-2021 to 15-10-2021)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
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Civil Appeal No. 648 of 2021
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._648_2021.pdf

Facts: Respondent a constable was dismissed from service after a regular inquiry. His period of absence from service without leave was treated as extra ordinary leave without pay.

Issue: i) Whether the penalty of dismissal from service may be imposed when period of absence has already been treated as extra ordinary leave without pay?
ii) Why it is necessary to provide for treatment of absence period?

Analysis: i) Employer/competent authority in case of unauthorized absence of employee from duty will be entitled to dismiss, remove or terminate the services of the employee concerned with effect from the date of unauthorized absence of the employee and the penalty of dismissal from service could be maintained even though the absence has been treated as leave without pay.
ii) The penalty imposed by the competent authority was of compulsory retirement which follows the payment of salaries and other dues till the date of imposing such penalty, therefore, it was necessary to give finding as to how such absence is to be treated but where an employee is dismissed from service he may not be entitled to any dues, therefore, there could hardly be any reason to provide for the treatment of his unauthorized absence as leave without pay.

Conclusion: i) Employer/competent authority in case of unauthorized absence of employee from duty will be entitled to dismiss, remove or terminate the services of the employee concerned with effect from the date of unauthorized absence of the employee and the penalty of dismissal from service could be maintained even though the absence has been treated as leave without pay.
ii) Penalty of compulsory retirement follows the payment of salaries and other dues till the date of imposing such penalty, therefore, it is necessary to give finding as to how such absence is to be treated.

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2. **Supreme Court of Pakistan**
Provincial Selection Board KPK v. Hidayat Ullah Khan Gandapur
Civil Appeal No.1486 of 2017
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1486_2017.pdf

Facts: Respondent was arrested by NAB. He opted for plea bargain. After retirement he claimed proforma promotion on the basis of case of another civil servant who in similar circumstance was granted proforma promotion.

Issue: Whether benefit on the basis of equal/similar treatment can be claimed when earlier benefit granting order to some other was wrong?

Analysis: We are sanguine that the catchphrase and expression "two wrongs don't make a right" symbolizes a philosophical benchmark in which a wrongdoing is made level or countered with another wrongdoing. In fact this maxim is used to reprimand or repudiate an unlawful deed as a reaction to another's misdemeanor. A wrong order or benefit cannot become a foundation for avowing equality or equal opportunity for enforcement of treatment alike rather such right should be founded on a legitimate and legally implementable right. A wrong order cannot be allowed to carry on which hardly confers any right to claim parity or equality. The respondent could not claim that if something wrong has been done in the case of Zahid Arif, therefore, the same direction should be given in his case also for committing another wrong which would not be setting a wrong to right but would be moving ahead and perpetuating another wrong which is disapproved and highly deprecated. No case of any sort of discrimination is made out. The concept of equal treatment could not be pressed into service by the respondent which presupposes and deduces the existence of right and remedy structured on legal foothold and not on wrong notion or whims.

Conclusion: A wrong order or benefit cannot become a foundation for avowing equality or equal opportunity for enforcement of treatment alike rather such right should be founded on a legitimate and legally implementable right. A wrong order cannot be allowed to carry on which hardly confers any right to claim parity or equality.

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3. Supreme Court of Pakistan
Fida Muhammad v. Government of Khyber Pakhtunkhwa Secretary of Education,
Civil Appeal No.465 of 2021
Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._465_2021.pdf

Facts: The benefit of up-gradation from BPS 16 to BPS 17 was not accommodated to the appellant while other employees at par were given the same benefit keeping in view their length of service in BPS 16.

Issue: What is upgradation and whether it can be claimed as matter of right?

Analysis: The upgradation cannot be claimed as a matter of right but it is in fact based on a policy decision of the competent authority for its implementation across the board for the particular categories of employees jot down in the scheme/notification who fulfilled the required qualification which is normally a particular length of service in a particular pay scale. There is a meticulous differentiation stuck

between upgradation and promotion. The promotion involves advancement in rank, grade or a footstep en route for advancement to higher position whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate stagnation. In an upgradation, the candidate continues to hold the same post without any change in his duties but he is accorded a higher pay scale. It is also well settled exposition of law that the benefit of upgradation is normally granted to the persons stuck-up in one pay-scale for considerable period of their length of service either having no venue for promotion or progression. In order to minimize the anguish or suffering being stuck-up in particular pay scale for a sizeable period, the mechanism of up-gradation as a policy decision comes in field for redress and rescue. Up-gradation is carried out under a policy and specified scheme. It is resorted only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to the incumbents of the isolated posts to address stagnation and frustration of incumbent on a particular post for sufficient length of service on particular post without any progression or avenue of promotion.

Conclusion: Up-gradation cannot be claimed as matter of right. It is carried out under a policy and specified scheme. It is resorted only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to the incumbents of the isolated posts to address stagnation and frustration of incumbent on a particular post for sufficient length of service on particular post without any progression or avenue of promotion.

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4. **Supreme Court of Pakistan**
Muhammad Ramzan v. The State, etc
Criminal Petition No.952/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._952_2021.pdf

Facts: During hearing of a bail petition in murder case, learned Additional Prosecutor General vehemently pointed out that the statement of witnesses referred to by the IO have been recorded in the case diary (zimni) prepared under section 172 of the Cr.P.C and do not constitute statement of a witness under section 161, Cr.P.C.

Issue: Whether the statement of witnesses recorded in the case diary (zimni) prepared under section 172 of the Cr.P.C do not constitute statement of a witness under section 161, Cr.P.C?

Analysis: Under section 161(3) Cr.P.C. the Police officer is to reduce in writing any statement made to him in the course of examination of any person supposed to be acquainted with the facts and circumstances of the case. The Police Officer is to make a separate record of the statement of each such person but in case the statement of such a person, recorded by the IO, is embodied in the case diary

instead of being recorded separately, it is at best a procedural lapse on the part of the IO but the statement itself does not lose its character as a statement under section 161, Cr.P.C. The distinction between sections 161 and 172, Cr.P.C is that while one deals with the recording of the statement of witnesses / persons acquainted with the facts and circumstances of the case, the other is the information or opinion of the IO which he gathers and forms during the course of the investigation. So if while recording his opinion in the case diary, the IO also records the statement of a witness, any such statement continues to pass for a statement under section 161 Cr.P.C. and does not become a part of the case diary under section 172 Cr.P.C.

Conclusion: In case the statement of a person, recorded by the IO, is embodied in the case diary instead of being recorded separately, it is at best a procedural lapse on the part of the IO but the statement itself does not lose its character as a statement under section 161, Cr.P.C.

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5. **Lahore High Court**
The State v. Muhammad Sarwar
Murder Reference No. 599 of 2017
Muhammad Sarwar v. The State
Crl. Appeal No. 105580 of 2017
Mr. Justice Muhammad Tariq Nadeem, Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC4929.pdf

Facts: Appellant/convict filed the criminal appeal against the judgment wherein he was awarded death penalty whereas the learned trial court sent Murder Reference for confirmation of the sentence of appellant.

Issue: i) What is the evidentiary value of chance witness?
ii) What is effect if motive alleged but not proved?
iii) What is effect of matching crime empty with recovered weapon if crime empty was sent to the Office of Punjab Forensic Science Agency after the arrest of culprit?

Analysis: i) The testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. In rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, otherwise his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.
ii) Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

iii) Although report of Punjab Forensic Science Agency is positive qua the gun but it has not been explained by the prosecution that why the crime empty was not sent to the Office of Punjab Forensic Science Agency till the arrest of appellant, this fact makes the report of Punjab Forensic Science Agency inconsequential.

Conclusion: i) The evidence of chance witness can only be relied upon if some convincing explanations, appealing to prudent mind for his presence on the crime spot, are provided.

ii) If prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

iii) If the crime empty was not sent to the Office of Punjab Forensic Science Agency till the arrest of culprit this fact makes the report of Punjab Forensic Science Agency inconsequential.

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6. **Lahore High Court**
Crl. Appeal No.75131 of 2019
Mazhar vs The State and another
Miss Justice Aalia Neelam, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC5161.pdf

Fact: The appellant/convict has filed instant criminal appeal against his conviction and sentence, passed by the trial court.

Issue: What is legal effect of non-production of Rapats of Roznamcha of departure or arrival at Police station about recovery proceedings especially when recovery is made from the jurisdiction of other police station?

Analysis: They raided house of present appellant in village Kurriala which is situated in the territorial jurisdiction of Police Station Kasoki, Tehsil and District Hafizabad on 07.07.2019 and statedly recovered detenue from there. However, neither any Rapat (رپٹ) of Rozenamcha (روزنامچہ) of any Police Station from Lahore about their departure on that day for Hafizabad nor any Rapat (رپٹ) of Rozenamcha (روزنامچہ) about their arrival in Police Station Kasoki, Tehsil and District Hafizabad for the purpose of conducting raid in the house of appellant situated in the territorial jurisdiction of said police station and then taking any police force from said Police Station and going to the house of appellant and after alleged recovery coming back to said Police Station has been produced by the prosecution. It is trite law that non-production of said rapats (رپٹس)/entries of Rozenamcha (روزنامچہ) is fatal for the case of prosecution and said recovery is, therefore, not reliable.

Conclusion: It is trite law that non-production of said rapats (رپٹس)/entries of Rozenamcha (روزنامچہ) is fatal for the case of prosecution and no implicit reliance can be placed on such type of recovery.

7. **Lahore High Court**
Babu Khan v. The State
Crl. Appeal No.1974 of 2012
Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2021LHC5254.pdf

Facts: The appellant filed complaint in High Court against Stenographer with the allegation that he paid amount for job of his son. During proceedings the appellant recorded statement that he did not want to pursue his complaint. But upon direction of High Court regular inquiry against Stenographer was conducted. On receiving inquiry report along with statement of the appellant, the proceedings under section 476 Cr.P.C. for summary trial of the appellant for the offence under Section 182 PPC was registered and the appellant was convicted and sentenced for making false statements. Hence, instant appeal.

Issue: i) How the jurisdiction can be taken in offences under section 182 PPC?
ii) Whether the District & Sessions Judge can take cognizance in trying offence on the basis of inquiry report?

Analysis: i) Section 195 (1) (a) of the Code of Criminal Procedure provides that no court shall take cognizance of any offence punishable under Sections 172 to 188 of the Pakistan Penal Code except on the complaint in writing of the public officer concerned or of some other public servant to whom he is subordinate. Section 476 of the Code of Criminal Procedure prescribes the procedure to be followed where a Court is moved to lay a complaint, and that applies only to offences mentioned in Sections 195(1)(b)(c) and not to those mentioned in section 195(1)(a).
ii) District and Sessions Judge, Hafizabad could have made a complaint in respect of an offence under Section 182 PPC before the jurisdictional Magistrate in accordance with law and the jurisdictional Court was not debarred from taking cognizance of that offence. Here, in the present case, the learned District and Sessions Judge has not taken cognizance of the offence punishable under Section 182 of the PPC in a separate complaint case on receiving an inquiry reportand the cognizance has been taken by himself under Section 476 of the Cr.P.C instead of making it to the jurisdictional Magistrate. The manner in which the cognizance of the offence has been taken cannot be approved.

Conclusion: i) The jurisdiction can only be taken on a complaint in writing of public officer.
ii) The District & Sessions Judge cannot take cognizance in trying offence on the basis of inquiry report.

8. **Lahore High Court**
M/s Jamal Tube (Pvt) Ltd, Lahore & others v. First Punjab Modaraba, Lahore & another
RFA No.901 of 2016
Mr. Justice Abid Aziz Sheikh, **Muhammad Sajid Mehmood Sethi**
https://sys.lhc.gov.pk/appjudgments/2021LHC5044.pdf

Facts: The Court, in a suit by the respondent/bank for recovery of money, dismissed the applications for leave to appear and defend the suit by the applicants and decreed the suit.

Issue: i) What is the legal requirement regarding submission of statement of account under the Financial Institutions (Recovery of Finances) Ordinance, 2001?

ii) What will be the effect if the financial institution omits to annex statement of account along with the plaint?

iii) Whether the defect of non-submission of statement of account is curable by its submission along with replication or application seeking submission of additional documents?

Analysis: i) Under Section 9(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("FIO, 2001"), plaint of the suit filed by financial institution must be supported by a statement of account, which shall be duly certified under the Bankers Books Evidence Act, 1891, and all other relevant documents relating to grant of finance. The purpose of such obligation was to give fair opportunity to defendant to come up with cogent grounds to seek leave from the Court.

ii) It is settled law that such omission by the bank is a non-compliance of provision of law and the effect of such non-compliance entails grant of leave to defend the suit to defendant. If a financial institution fails to adhere strictly to this mandatory requirement of law, then a defendant, of course, besides entitled for the grant of a leave to defend the suit or otherwise, may be within his/its right to contest for rejection of the plaint.

iii) It is equally well-settled that defect of non-filing of complete and accurate statement of account with the plaint cannot be cured subsequently by filing the same with replication or application seeking submission of additional documents. If it happens, no opportunity would be available to appellants to counter or rebut those documents, as after filing the PLA, the law does not permit and provide any further remedy to lead further defence unless leave is granted.

Conclusion: i) Under the Financial Institutions (Recovery of Finances) Ordinance, 2001, complete and accurate statement of account must be annexed with the plaint?

ii) The defendant, on failure of the bank to annex statement of account with the plaint, besides entitled for the grant of a leave to defend the suit or otherwise, may be within his right to contest for rejection of the plaint.

iii) Defect of non-filing of statement of account with the plaint cannot be cured subsequently by filing the same with replication or application seeking submission of additional documents.

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9. **Lahore High Court**
Mozammil Iqbal v. Deputy Director (HR) Punjab Emergency Service etc.
Writ Petition No.49994 of 2019
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5214.pdf

Facts: The petitioner was a contract employee of respondent department whose services were subsequently regularized but he was removed from service under Rule 4(5) of the Punjab Emergency Leave Efficiency & Disciplinary Rules, 2007 and his appeal was dismissed by the appellate authority.

Issue: Without holding regular inquiry, whether an employee of PESL can be removed from service after show cause on the ground of unsatisfactory service and earning three unsatisfactory PERs in consecutive two years?

Analysis: By plain reading of Rule 4(5) of the Rules, it appears that the Competent Authority may after serving show cause notice and affording an opportunity of hearing can remove an official from service, who earns three unsatisfactory performance evaluation Reports in two consecutive years. However under Rule 7 of the Rules, in case of other serious charges including "misconduct", the official shall be liable to be proceeded under PEEDA Act. There is also no dispute that under Section 5 (1) (a) of the PEEDA Act, the regular inquiry as required under sections 5 and 9 of PEEDA Act, could be dispensed with. However the perusal of the show-cause notice in this particular case shows that same was not merely confined to unsatisfactory three PERs in two consecutive years rather there were serious allegations of misconduct including irresponsible, non-serious, uninterested and negligent attitude towards job against the petitioner, which as per show cause notice amounts to misconduct and inefficiency. It was a case of misconduct on the basis of unsatisfactory performance since 2013 till 2018 and therefore, the petitioner could only be proceeded for misconduct under Rule 7 of the Rules read with relevant provision of the PEEDA Act, which contemplated regular inquiry in case of major penalty of removal from service under Section 4(b) (v) of the PEEDA Act.---- it is settled law that the major penalty like removal from service on the basis of serious allegation of misconduct can only be imposed after regular inquiry. The rule 4(5) does not dispense with the regular inquiry under sections 5 and 9 of the PEEDA Act unless the said inquiry is specifically

dispensed with by the competent authority under section 5(1)(a) of the PEEDA Act.

Conclusion: For disciplinary proceedings against employees of PESL, the PEEDA Act will apply and Rules are merely in addition to PEEDA Act. The major penalty like removal from service on the basis of serious allegation of misconduct can only be imposed after regular inquiry. Only in exceptional circumstances, the regular inquiry can be dispensed with and summary procedure may be followed when there was no factual controversy or the allegations are admitted and not otherwise.

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10. Lahore High Court
A.M. Construction Company (Pvt.) Ltd. v. The Province of Punjab through Secretary Communication & Works Department etc.
ICA No.18231/2021.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC5073.pdf

Facts: The intra court appeal is directed against the order of learned single judge in chamber dated 12.03.2021 wherein their writ petition against the demand of additional performance security being violative of rule 56 of rules 2014 was disposed of with the direction to the Redressal Grievance Committee under rule 67 of the Rules to decide the objections of the appellant, but the respondents again repeated the impugned demand through letter dated 12.03.2021.

Issue: Whether additional performance security demanded under Para 26(A) of the General Directions for the guidance of the tenderers (General Directions) is violative of the rule 56 of the Punjab Procurement Rules, 2014 (Rules)?

Analysis: The plain reading of Para 26(A), 26(B) of the General Directions shows that the same relates to the deposit of performance security/additional performance security by the "lowest bidder", whereas rule 56 of the Rules relate to the furnishing of performance guarantee by the "successful bidder". Under Para 26(A) of the General Directions, in case the total tender amount is less than 5% of the approved estimated amount, then the lowest bidder will have to deposit additional performance security from the scheduled bank ranging from 5% to 10% (however, in some of the General Directions, the upper limit prescribed in Para 26(A) is more than 10%). Under Para 26(B) of the General Directions, should the lowest evaluated bidder refused or failed for any reason to furnishing the performance security/additional performance security within specified time, it should constitute a just cause for rejection of his tender and in the event of such rejection, the entire earnest money shall be forfeited. Similarly, under Para 15, if the lowest bidder, who was required to furnish performance security or additional performance security to enter into contract, enters into contract and commences work but fails to furnish performance security, this will be a just cause to reject the tender and annulment of award. Paras 26(A), 26(B) and 15 of the General Directions show that these are for furnishing of performance security or additional

performance security by the lowest bidder in case the total tender amount is less than 5% of the estimated amount. However, once the lowest evaluated bid is accepted and lowest bidder becomes successful bidder only then rule 56 of the Rules shall come into play. The terms "performance security" and "additional performance security" are used interchangeably in Para 26(A), 26(B) and 15 of the General Directions. The test is not whether the demand is of performance security or additional performance security rather the test is that whether demand is from the lowest bidder or from a successful bidder. If the demand is from the lowest bidder, then whether it is performance security or additional performance security, the rule 56 of the Rules shall not apply, however, if the demand is from the successful bidder, then rule 56 of the Rules will apply regardless of the nomenclature used for the security. Rule 56 of the Rules is not an over-riding provision rather it is subject to bidding documents. Under rule 56 where it is needed and clearly expressed in bidding documents, the procuring agency shall require the successful bidder to furnish performance guarantee, however the successful bidder should not be required to furnish performance guarantee exceeding 10% of the contract amount. The perusal of Para 30 of the General Directions shows that same is relevant to rule 56 of the Rules and provide that successful tenderer shall furnish the performance security 5% of the contract amount.

Conclusion: In view of above discussion, this ICA alongwith writ petitions mentioned in Appendix A are disposed of in following terms: -

i) Demand of additional performance security under Para 26(A) of the General Directions is not violative of rule 56 of the Rules.

ii) In all those petitions/appeal, where the lowest bidder did not become successful bidder, the performance security or additional performance security under Para 26(A) of the General Directions could be demanded in terms thereof and rule 56 of the Rules had no bearing on such performance/additional performance securities.

iii) However, if the lower bidder acquired the status of a successful bidder, then performance security or even additional performance security shall be governed by rule 56 of the Rules and no payment of performance security or additional performance security could be demanded beyond the limit of 10% of the "contract price" prescribed in rule 56 of the Rules.

iv) In case no performance security or additional performance security as per Para 26(A) of the General Directions was provided by the lowest bidder, the procuring agency was within its right to reject the bid under Paras 15 and 26(B) of the General Directions read with rule 35 of the Rules.

11. **Lahore High Court**
Imran Hussain & another v. The State & another.
Crl. Misc. No.33826/B/2021
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC5015.pdf

Facts: Through this petition, petitioners seek post arrest bail for offences under Sections 2(S), 16, 139, 156(1)(8)(i)(c)(iii)(a)(70), 157 and 178 of Customs Act, 1969, read with SRO 666(1) 2006 and SRO 499(1)/2009.

Issue: What circumstances make the case one of further inquiry for offences under Sections 2(S), 16, 139, 156(1)(8)(i)(c)(iii)(a)(70), 157 and 178 of Customs Act, 1969, read with SRO 666(1) 2006 and SRO 499(1)/2009?

Analysis: The circumstances given below make the case one of further inquiry qua the offences relating to smuggling if, no luggage tag as well as information qua the subject luggage's booking in the name of accused is available on record, information regarding the luggage booked against the accused's' name is not received from the Airport, possession of CCTV footage or video is not taken by immigration and custom staff, certificate of registration of the cell phone numbers in culprit's name is not available, forensic report qua the use of recovered cell phones or the use of whatsapp account is not on record, nature or availability of recovered items in the luggage is not in knowledge of accused, availability or reference of method/formula for assessment of items, name of assessing person, the Officer is unable to point out the availability or reference of method/formula or any document, price list on file according to which the value was determined prior to the registration of this case, name of the person who assessed the goods' value for the complainant is not given in the file which is very much relevant with regard to the quantum of sentence of imprisonment provided by different provisions of The Customs Act, 1969 and there is no previous criminal record of the accused.

Conclusion: All above mentioned circumstances make the case one of further inquiry for the grant of post arrest bail in the above mentioned offences.

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12. **Lahore High Court**
Khawaja Aqeel Rasheed Butt v. CCPO, Lahore & others.
Crl. Revision No.59756 of 2021
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2021LHC5041.pdf

Facts: The petitioner through this criminal revision has come up to this Court challenging the legality and validity of the order passed by the learned Judicial Magistrate 1st Class upon a 'Qalandra' moved by the Station House Officer, under Sections 110 & 55 of the Code of Criminal Procedure, 1898.

Issue: Whether criminal revision can be directly filed in the High Court against order of Magistrate without first approaching to the Sessions Judge?

Analysis: Section 439 of the Code of Criminal Procedure, 1898, candidly provides concurrent jurisdiction to the High Court but at the same time it does not mean that without any plausible justification, a party being aggrieved by an order of the learned Magistrate who is inferior to the Sessions Judge as provided in explanation of Section 435 of the Code ibid, can directly approach the High Court as a parallel option available to him. I am of the opinion that such practice, if allowed, is likely to frustrate the wisdom behind the legislation of Section 439-A of the Code of Criminal Procedure, 1898, by virtue of which revisional powers have been devolved to the Sessions Judges and the scheme of dispensation of justice at doorstep.

Conclusion: Criminal revision cannot be directly filed in the High Court against order of Magistrate without first approaching to the Sessions Judge.

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13. **Lahore High Court**
Munir Ahmad v. Government of Pakistan, etc
W.P.No.3834 of 2020.
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC5001.pdf

Facts: This judgment addresses the issue of Price Control by Government, of Essential Commodities, as opposed to price determination by market forces on 'supply and demand' principle. August Supreme Court took notice of Government's failure, on a letter against price hike of flour being essential commodity. Directions were given for taking necessary steps under the Price Control and Prevention of Profiteering and Hoarding Act, 1977 to Federal Government and to Provincial Government under the Punjab Foodstuffs (Control) Act, 1958. Instant writs are filed highlighting the inaction on part of both the Governments by referring to the prevailing Sugar scam. It was pointed out that instead of controlling price of the Sugar, as essential commodity, the farmers are restrained from manufacturing Gur (jaggery), even for their own consumption, and are forced to supply sugarcane to the factories, in the garb of Gur Control Order, 1948 ("the Order of 1948")

Issue: i) What is object and scope of Price Control Laws?
ii) Who is primary responsible for the price control of essential food items?
iii) Whether "Gur Control Order, 1948 ("Order of 1948") is ultra vires of the Constitution?

Analysis: i) Price Control are restrictions, set in place and enforced by Government to manage affordability of certain goods and services. These are imposed in two primary forms, 'price ceiling'; maximum price of the commodities essential for living a respectable life and 'price flooring' minimum price; like limiting increase

in rent, minimum 'living wage' and minimum 'support price' for growers, of an essential crop…. Price control and competition laws, are meant to protect consumers' right, however, are required to be implemented by forging a balance, because a thriving stable economy is the backbone of a country, for which certainty in policy making and enforcement of law is a sine qua non. It is important to note that excessive price control may lead to disruptions in market like decrease in quality and losses for producers, which may result into flight of investment.

ii) Entry No.23 of the Rules of Business, 1973 with the caption 'National Food Security and Research Division' states that it was incorporated after the 18th Amendment in the Constitution, which shows that, price control of essential food items is a primary responsibility of the Federal Government…. that the 18th Amendment has not taken away or affected Federal Government's powers under the Act of 1977… Inter-provincial issues or matters, spilling over territorial boundaries of a Province and affecting enforcement of fundamental rights are within competence of the Federation after the 18th Amendment, despite absence of its specific mention in the Federal Legislative List, because enforcement of fundamental right cannot be compromised due to any vacuum. The issue of Price fixation and control has inter-provincial affect. Provinces cannot impose any restriction or tax, under Article 151(3) of the Constitution, on inter-provincial trade. …. The Federal Government has to have control on the production, supply chain and stocks of essential commodities to know their exact statistics, to meet the demand in market. The policy of having Buffer Stock of essential commodities be reconsidered, to avoid expensive import on emergent basis, which is still within Federation's competence after the 18th Amendment.

iii) There is no apparent existing force of law behind the Order of 1948. Even if exist, it appears to be in violation of Article 18 of the Constitution, particularly when no support price is fixed for purchase of sugarcane by Government to protect grower's interest. The Order of 1948 is held ultra vires hence void, being in violation of fundamental rights guaranteed by the Constitution. After this declaration and based on admission of not adopting or applying this law, all enforcement agencies, both Federal and Provincial are restrained from taking any action against farmers prohibiting manufacturing of Gur or Shaker (raw sugar)..

Conclusion: i) Price Control are restrictions, set in place and enforced by Government to manage affordability of certain goods and services.

ii) Federal Government is primary responsible for the price control of essential food items.

iii) Gur Control Order, 1948 ("Order of 1948") is ultra vires of the Constitution.

14. **Lahore High Court**
Gulzar Ahmad, etc. v. Ayesha Naz Sarwar, etc.
C.R.No.1514 of 2012
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2021LHC5299.pdf

Facts: A suit for declaration was instituted by the petitioners against the respondents alleging therein that the deceased was of Sunni faith, but the impugned mutation has shown him to be of Shia faith, therefore, impugned mutation is fraudulent.

Issue: How to prove that deceased belonged to a particular sect/faith?

Analysis: It is presumed by reference to section 28 of the Muhammadan Law that a Muslim is of Sunni faith unless proved otherwise. In this background it needs to be deciphered what is the status and binding effect of the provisions of Muhammadan Law. The Hon'ble Court by relying on the judgment referred as PLD 2021 Federal Shariat Court 1 observed that Muhammadan Law can only be consulted as a reference book and cannot be termed to be statutory law having binding effect, upon which any presumption can be drawn against a person. Further the court while dilating upon the term presumption opined that it can be bifurcated into two parts i.e. presumption of fact and presumption of law. In the first case, the presumption is rebuttable in view of the fact that it is not based on law and is based on the inference which the mind naturally and logically draws from the given facts, thus, to prove the said presumption it is the person, who alleges to believe/rely/seek benefit of such presumption and once he manages to prove the same through unequivocal and clear evidence, the onus shifts on the other side. Whereas, in the latter case where the presumption is based on law, it would be mandatory for the person, who negates the said presumption to prove the same. In the above circumstances, the Hon'ble Court formed the view that since it was alleged by the petitioners that the deceased was of Sunni faith and the impugned mutation has fraudulently been sanctioned in favour of respondent Nos.1 and 2 on the ground that deceased was of Shia faith, therefore under Article 119 of the Qanun-e-Shahadat Order 1984 being a particular fact, the initial onus to prove was on the petitioners, which in the case in hand, they have failed to discharge as no cogent and unequivocal evidence has been produced by them. It is settled proposition of law that a party, who alleges a fact has to prove his case himself and cannot thrive on the lacunas left by the opposite party. Moreover it is also trite law that when a person dies and his succession opens, his estate will be divided according to his faith and personal law and not according to the faith of the successors.

Conclusion: Muhammadan Law can only be consulted as a reference book and cannot be termed to be statutory law having binding effect, upon which any presumption can be drawn against a person. The term presumption can be bifurcated into two

parts i.e. presumption of fact and presumption of law. In the first case, the presumption is rebuttable in view of the fact that it is not based on law and is based on the inference which the mind naturally and logically draws from the given facts, thus, to prove the said presumption it is the person, who alleges to believe/rely/seek benefit of such presumption and once he manages to prove the same through unequivocal and clear evidence, the onus shifts on the other side. Where the presumption is based on law, it would be mandatory for the person, who negates the said presumption to prove the same.

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15. **Lahore High Court**
Province of Punjab & another v. Sajida Zaheer & others
W.P. No.33240 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2021LHC5050.pdf

Facts: Termination of respondent No.1 was set aside by the Labour Court through ex parte order, but it did not send copy of that order to the government. Petitioners appeal against the decision was dismissed by the appellate tribunal on the ground of limitation.

Issue: Whether the requirement of sending two copies of the order to the government as mentioned in 46 of the Punjab Industrial Relations Act, 2010 ("PIRA, 2010") is directory or mandatory?

Analysis: Reading of section 46 of PIRA 2010 makes it clear that the Labour Court is required to immediately forward two copies of its decision to the Government, which is under obligation to publish it in the official gazette. The above provision also provides remedy of appeal against decision of Labour Court along with its limitation, which has been linked with communication of the final decision. Section 46 ibid clearly suggests that communication of decision to the Government is mandatory in nature; therefore, its strict compliance is imperative and was to be strictly construed.

Conclusion: Requirement of sending two copies to the government u/s 46 of the PIRA 2010 is mandatory.

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16. **Lahore High Court**
Sabira Khatoon v. Government of the Punjab etc
Writ Petition No.53541/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC4695.pdf

Facts: Petitioner, an Elementary School Teacher, with 28 years' service has challenged the vires of show cause notice issued to her on the allegation that her appointment order was bogus.

Issue: i) What is doctrine of ripeness?

ii) Whether an order directing an inquiry or a show cause notice is an adverse order which can be challenged in constitutional petition?
iii) Whether disciplinary action against a civil servant is a part of his terms and conditions of service?

Analysis: i) Ripeness is a doctrine which courts use to enforce prudential limitations upon their jurisdiction. It is founded on the principle that judicial machinery should be conserved. It reflects concerns that courts involve themselves only in problems that are real and present or imminent and should not exhaust themselves in deciding theoretical or abstract questions that have no impact on the parties at least for the time being. This doctrine postulates that the lawsuit must be well developed and specific and appropriate for judicial resolution. Courts may not decide cases that involve uncertain and contingent future events that may not occur as anticipated, or indeed may not occur at all…The basic rational behind the 'Ripeness' doctrine is 'to prevent the courts through avoidance of premature adjudication, from entangling themselves, in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.
ii) Neither an order directing an inquiry nor a show cause notice is an adverse order. None of them mean that the case would unfailingly be decided against the official/officer. There is always a possibility of a decision in his favour. Thus, any petition for judicial review of such order or show cause notice would be based on apprehension or speculation and hit by the ripeness doctrine.
iii) Disciplinary action against a civil servant is a part of his terms and conditions of service and the jurisdiction of the High Court is expressly barred in respect thereof. The order directing an inquiry, the appointment of Inquiry Officer and issuance of show cause notice are integral part of disciplinary proceedings or at least preliminary steps towards thereto and would also attract the ouster clause of Article 212. If this Court cannot entertain a petition challenging a final order, it cannot interfere in an interim order.

Conclusion: i) Ripeness doctrine prevents the courts through avoidance of premature adjudication. The lawsuit must be well developed and specific and appropriate for judicial resolution. Courts may not decide cases that involve uncertain and contingent future events that may not occur as anticipated, or indeed may not occur at all.
ii) Neither an order directing an inquiry nor a show cause notice is an adverse order. It cannot be challenged in writ petition in view of doctrine of ripeness.
iii) Disciplinary action against a civil servant is a part of his terms and conditions of service.

17. **Lahore High Court**
Ameer Hussain v Government of Punjab etc.
Writ Petition No. 48765/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2021LHC5018.pdf

Facts: The petitioner impugns order of the Deputy Commissioner, Lahore directing detention of Hafiz Saad Hussain Rizvi under section 11-EEE of the Anti-Terrorism Act, 1997 (the "ATA"), and seeks his immediate release.

Issue: i) Contours of Preventive Detention.
ii) Whether a person released from preventive detention under a provincial law can be taken into custody subsequently under a federal law?
iii) Whether Federal and the Provincial Government have concurrent powers under section 11-EEE of the ATA 1997 to detain a proscribed person?
iv) Whether Punjab Rules of Business 2011 were followed in giving ex post facto approvals to the detention orders?
v) Applicability of principles of proportionality in preventive detention matters.
vi) Doctrine of exhaustion of statutory remedies.

Analysis: i) Personal liberty is one of the basic human rights and the principle that the governments cannot deprive individuals of that right is central to the concept of rule of law. Nevertheless, the right to personal liberty is not an unqualified right and in some compelling circumstances a State may have to put curbs on an individual and resort to what is called preventive (or preventative) detention. Preventive detention is a measure whereby the executive takes a person into custody to prevent a future harm. He may not have committed a crime but there is apprehension that he would indulge in acts that are prejudicial to public peace.

Article 10(4) of the Constitution mandates that a person cannot be detained under any preventive detention law beyond three months unless his case is reviewed by the prescribed Review Board and authorized by it. In the instant case in view of this constitutional command, the Punjab Government made a reference under section 3(5) of the MPO 1960 to the Provincial Review Board consisting of three Hon'ble Judges of this Court. The Board opined that there wasn't any sufficient ground for any further detention and hence declined the Government's request for extension and directed immediate release of the detenu. The Hon'ble Court with advantage referred to the erstwhile case of Amatul Jalil Khawaja and others (PLD 2003 SC 442) laying the criteria for cases of preventive detention. Moreover case of Bijaya Shaukat Ali Khan (PLD 1966 SC 286) was also relied where the Hon'ble Supreme Court held that preventive detention makes an inroad on the personal liberty of a person without the safeguards of a formal trial so it must be jealously kept within the legal confines. Where the government feels compelled to deprive a person of his liberty, it "must strictly and scrupulously observe the

forms and rules of law". Whenever this is not done, the Court will set the prisoner at liberty in a proceeding for habeas corpus.

ii) Legally speaking, a person released from preventive detention under a provincial law can be taken into custody again under a federal law provided it can be justified. It could only be justified only if new circumstances had arisen after its order. In the instant case, it was observed that the impugned order was founded on the same grounds which were rejected by the Provincial Advisory Board.

iii) Bearing in mind the definition in clause (i) of section 2, there is nothing in section 11-EEE of ATA to restrict the power to order preventive detention to the Federal Government. It can be legitimately exercised by the Provincial Government in its own right without any delegation from the Federal Government under section 33 of ATA.

iv) The Hon'ble Court after discussing the relevant Rules i.e. 24, 25, 27, 28 and 30 of the Punjab Rules of Business 2011 observed that the ex-post facto approval of notification in question for detention and the orders issued by the Deputy Commissioners exercising delegated powers were given without observing the mandate of the Rules of Business. It was opined that the Punjab Rules of Business have been framed under Article 139 of the Constitution and as such these constitutionally mandated rules were twined with the concept of good governance and were mandatory. The Punjab Government committed gross violations in following these which rendered the entire exercise nugatory.

v) The Hon'ble Court while discussing the law and jurisprudence developed globally opined that element of proportionality is also relevant for determining whether detention is arbitrary. In fact preventive detention is limited by the principles of legality, need and proportionality. An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. The jurisprudence developed interdicts arbitrary detention and holds that the principle of proportionality would apply even where the authorities claim that it is legitimate. However, a fair or reasonable balance must be struck between the rights of individuals and the general public interests of society. In the context of preventive detention of terror suspects, a proportionate balance is required between preventive detention and prevention of terrorism.

vi) The constitutional law recognizes the doctrine of exhaustion of statutory remedies. However, the courts generally distinguish between cases seeking enforcement of fundamental rights and those in which no such issue is involved "Habeas corpus is a writ 'of right' and not a writ 'of course', and not a discretionary writ. The court is bound to issue the writ if on return, no cause or no

sufficient cause appears and cannot refuse it on the ground of existence of alternative remedy.

Conclusion: On the touchstone of the afore-mentioned principles the petition stood accepted and the detention order was declared to be without lawful authority and set aside.

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18. **Lahore High Court**
Ch. Fayyaz Hussain v. Province of Punjab etc.
W.P No. 29668 of 2021
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2021LHC5112.pdf

Facts: The petitioner challenged the amendment made in Punjab Emergency Service Act, 2006 whereby Rescue 1122 was made an independent administrative department.

Issue: i) Whether it is necessary for a petitioner to establish his locus standi and grievance in order to challenge a validly passed legislation?
ii) Whether there is presumption of constitutionality attached with a law passed by the legislature?

Analysis: i) The petitioner has invoked the constitutional jurisdiction of High Court under Article 199 of the Constitution, therefore, it was incumbent upon him to establish that his legal or fundamental rights guaranteed under the Constitution have been violated. Similarly, he was bound to prove his *locus standi* to strike down the amendments in this regard on the pretext of denial of his legal rights, if any. For a person to have *locus standi* to initiate a petition for issuance of writ, he must have some right in the matter. The Fundamental Right to life is a constitutional guarantee pledged under Article 9 of the Constitution, and the expression 'life' has been interpreted through various precedents of Superior Courts a healthy life with all ancillary facilities/amenities, which are required for living a full and healthy life. Therefore, when the State is providing the basic necessities to fulfill the fundamental rights of health by providing an independent and more efficient emergency services through the Rescue 1122 then it should not be restrained or hindered to do so under the constitutional jurisdiction without any justiciable and justifiable reasons to substantiate such intervention. For that, the bar was on the petitioner to establish how and in which manner he is an aggrieved person and comes within the ambit of Article 199 of the Constitution to challenge the validly and competently enacted Amendments.
ii) Article 69 of the Constitution states that the validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of any procedure. However, this provision applies to the Provincial Assembly in terms of Article 127 of the Constitution, which specifically bars any person to approach the Courts of law for calling into question any of the proceedings regardless of the fact that it carries any irregularity in procedure.

There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two. The wisdom of the Parliament in legislation is outside the scope of Judicial Review. As long as the Legislature has the competence to legislate, the grounds or wisdom of legislation remains its exclusive prerogative. A strong presumption exists that a Legislature understands and correctly appreciates the needs of the public, that its laws are directed to the problems manifested by experience, and that its discrimination are based upon adequate grounds.

Conclusion: i) It was *sine qua non* for initiation of proceedings under Article 199 of the Constitution that the petitioner should have a *locus standi* to institute such proceedings or in other words the petitioner should have been an aggrieved party from the action of the respondents.
ii) There is always a presumption in favor of constitutionality of a law which must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two and where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favors validity and mala fide cannot be attributed to the legislature.

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19. **Lahore High Court**
Abdul Jabbar v. The State and another
Criminal Revision No.22730 of 2017
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2021LHC5156.pdf

Fact: The appellants/convicts have filed instant criminal appeal against their conviction and sentence. During instant appeal the complainant of the case sworn affidavit, wherein he has mentioned that in presence of Muhammad Ayub and Ahmad Deen (prosecution witnesses), he has forgiven the petitioners/convicts in the name of Almighty Allah.

Issue: Whether acquittal order can be made on the basis of partial compromise?

Analysis: Since complainant is not the only aggrieved person i.e. "the person cheated" rather other persons are also statedly aggrieved i.e. "the persons cheated", who have not effected compromise with the petitioners, therefore, this compromise is partial in nature and cannot be taken into consideration for acquittal.

Conclusion: Compromise partial in nature cannot be taken into consideration for acquittal.

20. **Lahore High Court**
Muhammad Rashid v. University of Engineering & Technology, Lahore, etc.
W.P. No.26155 of 2013
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5203.pdf

Facts: Petitioner was found guilty as charged and recommendation of major penalty of compulsory retirement from service was made. On receipt of findings/recommendations of the inquiry committee the competent authority imposed major penalty of removal from service.

Issues: i) Whether the competent authority is obliged to follow the recommendations of the inquiry committee, while deciding inquiry matters?

ii) Whether inquiry shall be vitiated merely on the grounds of non-observance of the time schedule?

Analysis: i) Perusal of section 10 of the Punjab Employees Efficiency Discipline and Accountability Act, 2006 that deals with inquiry committee's proceedings, findings and recommendations, shows that no such fetter is imposed on the powers of the competent authority as the third proviso to section 10(6) of the Act clearly states that the recommendations of the inquiry committee shall not be binding on the competent authority.

ii) The third proviso to section 10(6) of the Punjab Employees Efficiency Discipline and Accountability Act, 2006 clearly states that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for its completion

Conclusion: i) The competent authority is not obliged to follow the recommendations of the inquiry committee, while deciding inquiry matters.

ii) The inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for its completion.

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21. **Lahore High Court**
Israr Hussain v. Imtiaz Ahmad Sheikh, etc.
W.P. No.18754 of 2021
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2021LHC5225.pdf

Facts: Eviction petition was allowed on the ground of violation of terms and conditions of tenancy agreement.

Issues: Whether violation of terms and conditions of tenancy agreement and the rent laws in force are the valid grounds for eviction of a tenant?

Analysis: It is discernible from ground "(a)" in the eviction petition that ejectment was solicited amongst others on the ground of violation of terms and conditions of the

rent agreement and the rent laws in force. Under section 13(d) of the Punjab Rented Premises Act, 2009 the tenant is under obligation to deliver vacant possession of the rented premises on the expiry of lease. Similarly as per clause 12 of the lease agreement, the petitioner was under obligation to deliver vacant possession of the premises on expiry of lease. The period of lease in this case being 11 months, which undeniably stood expired, the continuation of possession on part of the petitioner was a clear violation of section 13(d) of the Act and also clause 12 of the lease agreement. Section 15(a) provides for the right of eviction on the expiry of lease while its clause (d) entails eviction of tenant due to violation of an obligation under section 13 of the Act. In "Waqar Zafar Bakhtawari and 6 others v. Haji Mazhar Hussain Shah and others" (PLD 2018 SC 81) while considering the infringement of terms and conditions of lease as a ground for eviction under section 17(2)(ii)(b) of the Islamabad Rent Restriction Ordinance, 2001, read with section 6 thereof, it was observed that as per said section 6, tenancy determines at expiry of terms of tenancy and if thereafter the tenant holds on to such property without the consent of the landlord, it shall be a clear violation and infringement of the conditions of tenancy on which the property was held and this in itself constituted a ground for eviction.

Conclusion: Under the Punjab Rented Premises Act, 2009 amongst other grounds, violation of terms and conditions of tenancy agreement and the rent laws in force are the valid grounds for eviction of a tenant.

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22. **Lahore High Court**
Allah Rakkha v. The State & another
Criminal appeal No. 445 of 2013
Mr. Justice Sohail Nasir
https://sys.lhc.gov.pk/appjudgments/2021LHC5167.pdf

Facts: Appellant was alleged to have murdered the deceased along with co-accused. Entire case was based on circumstantial evidence.

Issue: How the circumstantial evidence is to be appreciated?

Analysis: i) Circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined.
ii) Circumstances should be ascertained with minute care and caution, before any conclusion or inference adverse to the accused is drawn.
iii) The process of inference and deduction involved in such cases is of a delicate and perplexing character, liable to numerous causes of fallacy.
iv) This danger points need for great caution in accepting proof of the facts and circumstances, before they are held to be established for the purpose of drawing inferences there from.
v) A mere concurrence of circumstances, some or all of which are supported by defective or inadequate evidence, can create a specious appearance, leading to fallacious inferences.

vi) It is necessary that only such circumstances should be accepted as the basis of inferences that are, on careful examination of the evidence, found to be well established.

vii) A high quality of evidence is, therefore, required to prove the facts and circumstances from which the inference of the guilt of the accused person is to be drawn.

viii) There are chances of fabricating evidence in cases that are based solely on circumstantial evidence; therefore, the court, in such cases, should take extra care and caution to examine the evidence with pure judicial approach on strict legal standards to satisfy itself about its proof, probative value and reliability.

ix) When there are apparent indications of possibility of fabricating evidence by the investigating officer in making the case, the court must be watchful against the trap, which may misled to drawing a false inference, and satisfy itself about the fair and genuine collection of such evidence. The failure of the court to observe such care and caution can adversely affect the proper and safe administration of criminal justice.

x) The settled approach to deal with the question as to sufficiency of circumstantial evidence for conviction of the accused is this: If, on the facts and circumstances proved, no hypothesis consistent with the innocence of accused can be suggested, the case is fit for conviction on such conclusion; however, if such facts and circumstances can be reconciled with any reasonable hypothesis compatible with the innocence of the accused, the case is to be treated one of insufficient evidence, resulting in acquittal of the accused.

xi) Circumstantial evidence, in a murder case, should be like a well-knit chain, one end of which touches the dead body of the deceased and the other the neck of the accused.

xii) No link in chain of the circumstances should be broken and the circumstances should be such as cannot be explained away on any reasonable hypothesis other than guilt of accused.

xiii) Chain of such facts and circumstances has to be completed to establish guilt of the accused beyond reasonable doubt and to make the plea of his being innocent incompatible with the weight of evidence against him. Any link missing from the chain breaks the whole chain and renders the same unreliable and in that event, conviction cannot be safely recorded, especially on a capital charge.

xiv) If the circumstantial evidence is found not of the said standard and quality, it will be highly unsafe to rely upon the same for conviction; rather, not to rely upon such evidence will a better and a safer course.

Conclusion: Above parameters are to be considered to evaluate circumstantial evidence.

23. **Lahore High Court**
Zafar Iqbal v. The State and another
Crl. Appeal No. 220325 of 2018
Abdul Qayyum Khan v. The State and another
Crl. Revision No. 219868 of 2018
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2021LHC4917.pdf

Fact: The appellant has filed instant criminal appeal against his conviction and sentence, while criminal revision has been preferred by the complainant for enhancement of sentence from life imprisonment to normal penalty of death of Zafar Iqbal.

Issue: i) Whether delay in conducting of postmortem is always fatal to prosecution?
ii) What is the evidentiary value of related witnesses?
iii) Whether capital punishment can be awarded to accused when motive is not proved?

Analysis: i) Delay in conducting postmortem is not always fatal to prosecution, as occurrence took place in far-flung area and also just before sunset, therefore, time had been consumed in arranging and shifting the dead body to the hospital. The consumption of such a time seems to be quite reasonable hence, the prosecution evidence cannot be brushed aside on this score alone to extend the benefit of doubt as claimed.
ii) If evidence of related witnesses is free from ulterior motive and enmity then same could not be discarded merely on the basis of their relationship with the deceased. If otherwise is trustworthy and confidence.
iii) The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder.

Conclusion: i) Delay in conducting postmortem is not always fatal to prosecution.
ii) If evidence of related witnesses is trustworthy and confidence inspiring and is free from ulterior motive then same could not be discarded.
iii) If the prosecution fails to prove motive then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder.

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24. **Lahore High Court**
Abdul Hameed v. Province of the Punjab and seven others
W. P. No. 4488 / 2021 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC4948.pdf

Facts: The petitioner is aggrieved of the impugned notice, issued by respondent No. 5 (Sub Registrar) seeking payment of specified amount therein on the alleged

ground that Capital Value Tax (the "CVT") payable under the prevalent and applicable law on the date of registration of Power of Attorney in favour of the petitioner could not be collected in full, as such, the petitioner is liable to pay the deficient amount of the CVT.

Issues: Whether notice(s) for the recovery of outstanding CVT, after 10 years of registration of Power of Attorney, is time barred and unjustifiable?

Analysis: In Sections 6(7) to 6(17) of the Punjab Finance Act, 2012 comprehensive machinery regarding due collection and payment of the CVT is provided, which unequivocally manifests a conscious attempt by the legislature to provide for the blatant omission in the original Section 6 of the Act of 2010. Most importantly, Section 6(16) provides that the powers under Section 6(9) or Section 6(14) shall not be exercised after the expiry of five years from the conclusion of the financial year to which the assessment relates. It was thereafter that the person who was liable to pay it was made subject to recovery through an officer designated by the Board of Revenue in this behalf and the provisions of Punjab Land Revenue Act, 1967 were made applicable subject to remedies of appeal, review or revision as provided in the requisite Sections of the Punjab Land Revenue Act, 1967. It, therefore, follows that the aforesaid provisions were procedural in nature that provided a machinery for the determination of due assessment of the CVT and provision of information regarding the tax due from the taxpayer, which was prerequisite before notice of recovery could be served upon the taxpayer. Thereafter, the taxpayer was given a right of hearing to contest the claim of deficiency in the payment of the CVT. Since, the nature, substance and character of the aforesaid provisions are procedural; they shall be deemed to have retrospective effect and shall apply from the date of enforcement of the CVT, i.e. 01.07.2010. This view is further fortified from the fact that limitation of five years was provided under Section 6(16) of the Act of 2012 which validly covered the period from 01.07.2010 to 30.06.2012 when such machinery for the deficient collection and recovery of the CVT was not available in the original Section 6 of the Act of 2010. Procedural amendments providing a machinery to collect and recover a tax through due process, are given retrospective effect, especially when they are beneficial to the taxpayer. Absence of due process offends Articles 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan, 1973… Thus the liability arising from deficiency in the payment of the CVT under Section 6 of the Act of 2010 or the Act of 2012 does not lapse with the efflux of time, however the determination of specific liability of the petitioner(s) regarding payment of deficiency in the CVT is subject to the right of personal hearing and subsequent remedies provided under the Punjab Land Revenue Act, 1967.

Conclusion: The liability arising from deficiency in the payment of the CVT under Section 6 of the Act of 2010 or the Act of 2012 does not lapse with the efflux of time, however the determination of specific liability regarding payment of deficiency in

the CVT is subject to the right of personal hearing and subsequent remedies provided under the Punjab Land Revenue Act, 1967.

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25. **Lahore High Court**
Mst. Khalida Parveen & 19 others v. Government of Punjab and five others
W. P. No. 2962 / 2021 / BWP
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2021LHC5234.pdf

Facts: Petitioners were appointed on contract basis. They moved their applications for regularization or extension of their contract services which request was declined and the petitioners were relieved from their posts.

Issues: Whether a contract employee has vested right to remain in service after expiry of the contract period and can challenge his termination by filing a constitutional petition?

Analysis: The contract employee has no vested right to remain in service after expiry of the contract period. The only remedy available to a contractual employee is to seek damages for wrongful termination or for any alleged breach of the contract or failure to extend the contract… The principle of master and servant is attracted and applicable with respect to the contract employees and, therefore, a constitutional petition is not maintainable.

Conclusion: A contract employee has no vested right to remain in service after expiry of the contract period. The principle of master and servant is attracted and applicable with respect to the contract employees and, therefore, a constitutional petition is not maintainable.

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26. **Lahore High Court**
Mian Usman Ali v. District Judge and 17 Others.
Writ Petition No. 13535 of 2021
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC5059.pdf

Facts: The present constitution petition is filed against judgment passed by the learned District Judge in revision against the order of learned trial Court in which the application filed by respondent No.3 for producing the certified copies of mutation and original family registration certificate was accepted. The order passed by the learned trial Court has been maintained.

Issue: i) Whether a party can be allowed to produce the documents on subsequent stage?

ii) What is the object behind the provisions of Order 13 Rules 1 and 2 of the Code of Civil Procedure, 1908?

iv) Whether there are any fixed criteria or a yardstick to ascertain good cause and inadvertence and human error can be straightaway rejected as no ‘good cause’?

Analysis: i) The documents, which were in the possession or within the power of the parties, cannot be produced on subsequent stage, unless (i) 'good cause' is shown (ii) this 'good cause' should be to the satisfaction of the Court and (iii) Court is required to record reasons for allowing such production of documents. It is frequently held by the Honorable Supreme Court of the Pakistan that at the time of allowing production of documents under Order 13 Rule 2 of the Code of Civil Procedure, 1908 the learned Court should also consider the genuineness of the documents required to be produced and the prejudice that can possibly be caused to the other side of not having timely notice as well as the chance of depriving the opportunity of rebuttal of said documents.

ii) The objects behind provisions of Order 13 Rules 1 and 2 of the Code of Civil Procedure, 1908 are to prevent the litigants from fraud, to avoid undue delays and to create a barrier against the misuse of process of law. The purpose of requiring to record reasons for allowing such production is to be watchful that no collateral purpose besides establishing the cause(s) in the pleadings and enabling the Court to reach a just conclusion can be achieved by the litigants. There appears no intention behind this part legislation, to completely close the doors for receiving the documents, in the circumstances where these documents are necessary to reach the just conclusion and other side can reasonably be afforded an opportunity to admit or deny or rebut those documents.

iii) There cannot be any fixed criteria or a yardstick to ascertain 'good cause' and it certainly will fluctuate with the facts of every case, which has to be seen by the learned Courts while keeping in view the nature of documents sought to be produced, stage of the trial and / or proceedings and other elements. The real question for consideration is whether the negligence of such nature can be condoned and the plea of default due to inadvertence and human error can be straightaway rejected as no 'good cause', in every case and more importantly when the documents are relevant for the case. The error to attach a document with plaint or mentioning it in the list, in the experience of even a careful and prudent person, is neither improbable nor unexpected and if that is the case, such reason if joined by other indicators/elements can constitute a 'good cause'.

Conclusion: i) The court can allow the party to produce the documents on subsequent stage if court is satisfied about the 'good cause' shown by the party.

ii) The objects behind the above two provisions are to prevent the litigants from fraud, to avoid undue delays and to create a barrier against the misuse of process of law.

iii) There cannot be any fixed criteria or a yardstick to ascertain 'good cause' and it certainly will fluctuate with the facts of every case. The error to attach a document with plaint or mentioning it in the list, in the experience of even a careful and prudent person, is neither improbable nor unexpected and if that is the case, such reason if joined by other indicators/elements can constitute a 'good

cause'.

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27. **Lahore High Court**
W.P.No. 49447 of 2021
Zulqernain Khurram and another v. Punjab Healthcare Commission etc.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2021LHC5263.pdf

Facts: On the complaint, officer of Healthcare Commission visited the healthcare establishment and found that petitioner along with others were rendering healthcare services. Allegedly, the said service providers were providing medical services without basic medical education or license to practice and registration from Pakistan Medical and Dental Council/Pakistan Medical Council (PMC), in contravention of various provisions of the Punjab Healthcare Commission Act, 2010 (PHCA, 2010) and the Punjab Healthcare Commission Regulations for banning quackery in all its forms and manifestations (Anti-Quackery Regulations 2016). Action was taken against them. The appeal of petitioner before District & Sessions Judge failed. Hence this constitution petition.

Issue: i) When a particular plea or objection is not raised before the learned *fora* below, whether it can be raised in the Constitutional jurisdiction?
ii) Whether a person who has failed to avail the remedy provided by statute can invoke the constitutional jurisdiction?
iii) Who is under burden to prove the plea of *mala fide*?

Analysis: i) When a particular plea or objection is not raised before the learned *fora* below, it is not open for the party to raise the controversy at this stage. This plea was always available to the Petitioners, which is neither a part of the impugned judgment nor is given in the appeal, which shows that petitioners were satisfied with adopted procedure. Now, the same cannot be allowed to be raised in the Constitutional jurisdiction of this Court.
ii) When a person fails to avail the remedy of review, revision or appeal if provided by Statute, the constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can only be invoked in the limited and exceptional circumstances.
iii) The person who raises this allegation must bring something rational on record showing deviation from due process of law or clearly visible from circumstances, as initial burden to construct a cause to further proceed. Then for the final success, on the plea of *mala fide*, the party alleging has heavy burden to be discharged. Obviously, this burden is not that is required in the criminal cases or 'beyond reasonable doubt' but certainly evidence in this regard should be at least 'clear and convincing'.

Conclusion: i) When a particular plea or objection is not raised before the learned *fora* below, it cannot be raised in the Constitutional jurisdiction.
ii) When a person fails to avail the remedy if provided by Statute, the constitutional jurisdiction can only be invoked in the limited and exceptional circumstances.
iii) The person who raises allegation of mala fide must bring something rational on record showing deviation from due process of law or clearly visible from circumstances, as initial burden to construct a cause to further proceed.

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28. **Lahore High Court**
Fateh Muhammad, etc. v. Dishad Ahmad, etc.
C.R. No.11-D of 2009
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5129.pdf

Facts: The suit for possession under section 8 of Specific Relief Act was concurrently decreed by the learned trial as well as learned appellate court without determining the question of ownership.

Issue: Whether the High Court in exercise of revisional jurisdiction can remand a case where concurrent findings of fact are perverse and result of a material irregularity inasmuch as jurisdiction vesting in the courts below has not been exercised?

Analysis: A High Court in exercise of revisional jurisdiction is not bound to enter into the merits of the evidence or for that matter of the case or the controversy involved but in a case where concurrent findings of fact are perverse and result out of a material irregularity inasmuch as jurisdiction vesting in the courts below has not been exercised, a High Court can remand the matter to the courts below and not indulge in a fact finding exercise itself or even in an exercise rooted in discovering facts that have a crucial bearing on the controversy to be so resolved.

Conclusion: The High Court in exercise of revisional jurisdiction can remand a case where concurrent findings of fact are perverse and result of a material irregularity inasmuch as jurisdiction vesting in the courts below has not been exercised.

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29. **Lahore High Court**
Rashid Iqbal v. Chancellor, etc
W.P. No.18802 of 2019
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5149.pdf

Facts: Chancellor of Bahauddin Zakariya University, Multan set aside the order of appointment of the petitioners approved by the Syndicate but did so without affording any opportunity of hearing to them.

Issue: Whether hearing was to be given to petitioners mandatorily by Chancellor before setting aside appointment process?

Analysis: The proviso to section 11-A of the Bahauddin Zakariya University Act, 1975, was added subsequently after the promulgation of the Act in its original form and is, therefore, manifestly reflective of the legislative intent in supporting, ensuring and making the exercise of power under section 11-A subject to the right of fair hearing. The provision of personal hearing to affectees of exercise of powers in revision under section 11-A is mandatory.

Conclusion: Hearing was to be given to petitioners mandatorily by Chancellor before setting aside appointment process.

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30. **Lahore High Court**
Badar Din v. Province of Punjab
Civil Revision No. 577 of 2018
Mr. Justice Muhammad Shan Gul
https://sys.lhc.gov.pk/appjudgments/2021LHC5065.pdf

Facts: The suit for declaration was dismissed for non prosecution. Application for restoration of suit was also dismissed for non prosecution. Application for restoration of application for restoration of suit was filed after three years and four months.

Issue: Which article of Limitation Act governs such an application?

Analysis: A second application for restoration of previously dismissed application filed for restoration of a lis/suit would lie and in the absence of an express provision in the Limitation Act for dealing with such an eventuality, in all such cases, Article 181 of the Limitation Act would be properly applicable as this Article is a residuary Article which governs all applications for which no express provision is made in the Limitation Act.

Conclusion: Article 181 of Limitation Act governs such application.

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31. **Lahore High Court**
Province of Punjab, etc. v Mian Gohar Mubashar Hameed
Civil Revision No.2838 of 2012
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2021LHC4995.pdf

Facts: Through this civil revision, the petitioners have challenged the judgment and decree passed by the learned Additional District Judge, whereby appeal preferred by the respondent against the judgment and decree passed by the learned Civil Judge, dismissing his suit for declaration and permanent injunction, was accepted.

Issue: What will be the effect if the vires of the Valuation Table of the District Collector

was challenged in the suit on the ground that the same was not duly "notified"?

Analysis: For it to be effective and applicable, the Valuation Table determining the value of properties situated in the concerned locality is to be "notified" by the District Collector. It is a mandatory requirement of the law specified in Section 27-A of Stamp Act, 1899. The term "notified" has not been defined in the said Act and the same has been subject matter of judicial construction. The term "notify" has been judicially defined to mean give notice, proclaim or publish in any recognized manner. Whether or not the word "notified" used in any statute would require publication of a notification in the Official Gazette depends upon the nature and object of a particular statute and involvement of rights and obligations of the persons involved. The Act is a fiscal legislation that creates a burden and liability to pay stamp duty on occurrence of various taxable events specified therein. Section 27-A of the said Act relates to prescription of valuation of properties for the purpose of levy of a tax. In fact, by insertion of section 27-A ibid, the discretion of parties in fixing the valuation of property for the purpose of payment of stamp duty has been taken away, however, the effect of the Valuation Table has been judicially recognized to commence from the date when it is duly "notified" i.e. published in the Official gazette…. The learned District Judge, while recording his findings on the aforementioned issue in favour of the respondent, noted that the petitioners have not produced any concerned officer before the learned trial court to prove that the Valuation Table was published in the Official Gazette or newspaper or that it was made known to the public or by beat of drum or by affixation of the same at some conspicuous place in the locality, including on the notice board at respective offices of the Assistant Collectors, therefore, the same was not proved to have been duly notified on the relevant date to satisfy the requirement of Section 27-A of the Act, resultantly the demand of the stamp duty pursuant thereto through the notice impugned was declared to be unlawful.

Conclusion: If the Valuation Table of the District Collector was not duly "notified" it did not satisfy the requirement of Section 27-A of the Act and is ultra vires?

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32. **Sindh High Court**
Dawood Khan v. Rana Muhammad Rafique & others
Constitutional Petition No. S – 607 of 2021
Mr. Justice Nadeem Akhtar
https://caselaw.shc.gov.pk/caselaw/view-file/MTU0NDQ2Y2Ztcy1kYzgz

Facts: The petitioner invoked the constitutional jurisdiction of Hon'ble Sindh High Court under Article 199 of the Constitution by assailing the orders of the learned Appellate Court whereby his appeal was dismissed, filed against the orders of learned Rent Controller for striking off the defence of the petitioner, and directing him to vacate the rented premises.

Issue: i) Whether a tenant is required to vacate the rented premises even if he claims to have purchased the rented property during the continuation of tenancy?
ii) Whether a tenant is bound to pay monthly rent even after asserting purchase of the rented premises?
iii) Whether the right to defend may be struck off for not complying with the tentative order passed by the Rent Controller directing the tenant to pay arrears of rent?

Analysis: i) A tenant is bound to vacate the rented premises even if he asserts that he has purchased the rented premises/property. In such a scenario, the tenant is required to file a suit for specific performance of the agreement to sell, and he would be entitled to the possession of the property in accordance with law only if he succeeds in his suit.
ii) It is a well-settled principle of law that a tenant is bound to pay the monthly rent to the landlord till such time the Civil Court passes a decree against the landlord in a suit for specific performance of the agreement to sell.
iii) It is an established principle of law that non-compliance of the tentative order passed by the learned Rent Controller requiring the tenant to pay the arrears of rent, shall cause his right to defend to be struck off.

Conclusion: i) A tenant is obliged to vacate the rented premises despite the assertion that the he has purchased the rented property.
ii) A tenant is required to continue to pay monthly rent until getting a decree in his favour, entitling him to the ownership of the rented property.
iii) The default on the part of the tenant to pay arrears of rent shall cause his defence to be struck off.

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33. **Supreme Court of the United States**
Opati v. Republic of Sudan, 590 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/17-1268_c07d.pdf
https://ballotpedia.org/Opati_v._Republic_of_Sudan

Facts: It is a case involving the Foreign Sovereign Immunities Act with its 2008 amendments, whether plaintiffs in federal lawsuits against foreign countries may seek punitive damages for cause of actions prior to enactment of the amended law, with the specific case dealing with victims and their families from the 1998 United States embassy bombings.

Issue: Whether the Foreign Sovereign Immunities Act applies retroactively; thereby permitting recovery of punitive damages under 28 U.S.C. § l605A(c) against foreign states for terrorist activities occurring prior to the passage of the current version of the statute.

Analysis: As the case concerned the Foreign Sovereign Immunities Act (FSIA) and questioned if the Act prohibited a punitive damages award against Sudan for its

role in embassy bombings in Kenya and Tanzania in 1998. Justice Gorsuch observed that "*Congress was as clear as it could have been when it authorized plaintiffs to seek and win punitive damages for past conduct using §1065A(c)'s new federal cause of action. After all, in §1083(a), Congress created a federal cause of action that expressly allows suits for damages that "may include economic damages, solatium, pain and suffering, and punitive damages." ... Put another way, Congress proceeded in two equally evident steps: (1) It expressly authorized punitive damages under a new cause of action; and (2) it explicitly made that new cause of action available to remedy certain past acts of terrorism."*

Congress passed the FSIA in 1976. The Act held that foreign states are immune from lawsuits in federal and state courts, with exceptions. One of those exceptions was a terrorism exception Congress added in 1996. The terrorism exception allowed plaintiffs to sue foreign countries who had committed or supported terrorist acts and who the U.S. State Department designated as state sponsors of terror. As originally enacted, the FSIA barred foreign countries from being subject to punitive damages. However, Congress amended the FSIA in 2008, moving the terrorism exception from §1605(a)(7) of the FSIA to a new section of U.S. Code, 28 U. S. C. §1605A. The move thereby removed the terrorism exception from the FSIA's baseline punitive damages bar. §1605A(c) also authorized punitive damages to certain plaintiffs. Congress also allowed existing lawsuits to be treated as if they were filed under §1605A(c) and allowed plaintiffs to file new lawsuits to claim benefits under §1605A.

Conclusion: The Court ruled unanimously that punitive damages can be sought from foreign nations in such cases for pre enactment conduct. The unanimous ruling, written by Justice Neil Gorsuch, vacated the DC Circuit's ruling, restoring the US$4.3 billion punitive award, and remanded the case back to the lower court.

LATEST LEGISLATION/AMENDMENTS

- Vide notification dated 01, October 2021 No. PAP/Legis-2(82)/2020/263/ of Provincial Assembly of the Punjab, **The Companies Profits (Workers' Participation) (Amendment) Act 2021** has been enacted. Through this Act, **The Companies Profits (Workers' Participation) Act, 1968** has been adapted with following amendments;
    - 2nd paragraph of preamble of the Act has been omitted.
    - In Sections 2,3,4,5,6,7,8 and 9 the words 'Federal Government' has been substituted with words 'Government'.
- Vide notification dated 01, October 2021 No. PAP/Legis-3(76)/2020/2640 of Provincial Assembly of the Punjab, **The University of South Asia, Lahore (Amendment) Act, 2021** has been enacted. Through this Act amendments have been made in section 2 and section 4 of **The University of South Asia, Lahore Act, 2005.**

- Vide notification dated 01, October 2021 No. PAP/Legis-2(89)/2020/2639 of Provincial Assembly of the Punjab, **The Punjab Privatization Board (Repeal) Act, 2021** has been enacted. Through this Act **The Punjab Privatization Board Act, 2010** has been repealed and a saving has been added.
- Vide notification dated 01, October 2021 No. PAP/Legis-2(128)/2021/2638 of Provincial Assembly of the Punjab, **The Stamp (Amendment) Act, 2021** has been enacted. Through this Act amendments have been made in Section 1 and Section 2 of **The Stamp Act, 1899.** Moreover the words 'Provincial Government' have been substituted with the word 'Government', wherever used in the Act except in Schedule I, article 57, column 2, paragraph (b) and under the headings 'Exemption'.
- Vide notification dated 04, October 2021 No. PAP/Legis-2(113)/2021/2641 of Provincial Assembly of the Punjab, **The Lahore Ring Road Authority (Amendment) Act, 2021** has been enacted. Through this Act amendments have been made to substitute the word 'Act' and preamble of **The Lahore Ring Road Authority Act, 2011**.
- Vide official Gazette dated October 6, 2021, notification no. F 9(10)/2021- Legis. **The Special Technology Zones Authority Act, 2021** has been enacted to ensure the development of scientific and technological eco-system through development of zones to accelerate technology development in the country. This Act consists of a preamble, seven chapters and 46 Sections.
- Vide official Gazette dated October 6, 2021 **The National Accountability (Second Amendment) Ordinance, 2021** has been promulgated to amend **The National Accountability Ordinance, 1999.** Through this Ordinance, section 4, 5, 5-A, 6, 7, 8, 9, 15, 16,31DD, 33F of the ordinance has been amended.
- Vide official Gazette dated October 6, 2021, notification no. F 24(22)/2021- Legis, **The Legal Practitioners and Bar Councils (Amendment) Act, 2021** has been enacted. Through this Act section 5 and the schedule of **The Legal Practitioners and Bar Councils Act, 1973** has been amended.
- Vide official Gazette dated October 9, 2021 **The Ibadat International University Islamabad Act, 2021** has been enacted for the establishment of Ibadat International University at Islamabad. This Act consists of a preamble and 41 sections.

LIST OF ARTICLES:-

1. **MANUPATRA**
   https://www.manupatrafast.com/articles/ArticleSearch.aspx?c=4&subject=Criminal

   THE RELEVANCE AND ADEQUACY OF MOTIVE by Ms. Chinmayee Prasad

   Behind every criminal act of a human being, people tend to presume a motive, albeit more often than not there is not a sufficient or rather a proportionate motive for the criminal acts done by a person. Motive is the emotion, which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. As has been laid down in the landmark decision of R v Palmer that "…the adequacy of motive is of little importance…atrocious crimes have been

committed from very slight motive: not merely from malice or revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties." Thus, it would not be entirely wrong to contend that a person may be guilty of a crime, for which he had no apparent reason that could possible drive him to commit a crime of that magnitude. Human mind is one of the many complex areas which no scientific enquiries has been able to unravel. What impels a person to act in the manner, in which he does, cannot be ascertained compellingly by any fixed procedure and it's only through the conduct of the person or other related facts that it can be ascertained. Though, there is a great deal of confusion among the masses that only when the motive for an act is proved, that a person can be held guilty of that act, its not the same position in law. Motive is relevant to establish the guilt of an accused, however the absence of the same need not necessarily negate the possibility of his culpability.

2. **COURTING THE LAW**
https://courtingthelaw.com/2021/09/13/commentary/law-and-ai-should-artificial-intelligence-be-conceived-as-a-legal-inventor/
Network Neutrality and State's Obligation: Freedom of Speech vs Access to Information by Iqra Saif Agha

> *With the growing significance of information technology, the debates surrounding network neutrality also gain momentum. The notion of network neutrality has been able to highlight the concerns of possible human rights violations posed by practices entailing zero-rating. Central to these discussions has been the freedom of speech/expression and the important role played by network neutrality in upholding it in the public spaces of the internet. While these have been pertinent in raising valid arguments and bringing the state's attention towards its obligations in ensuring the freedom of speech/expression, an important aspect i.e. the right to access information, has been absent in the discourse so far. It is imperative that the discourse and debates surrounding network neutrality also focus on the access to information because this right is a subset of the right to speech/expression. Otherwise, as argued, it would lead to the state's failure to fully recognize and fulfill its positive obligation in ensuring that people have full access to information despite the circumstances….*

3. **LUMS LAW JOURNAL**
https://sahsol.lums.edu.pk/sites/default/files/a_concoction_of_powers.pdf
A CONCOCTION OF POWERS: THE JURISPRUDENTIAL DEVELOPMENT OF ARTICLE 184 (3) & ITS PROCEDURAL REQUIREMENTS by Shayan Manzar

> *This paper tracks the jurisprudential development of Article 184 (3) of the Constitution of Islamic Republic of Pakistan, across 941 cases from 1973 to 2019. The purpose of this consolidated research paper is to trace the origins of the suo motu power, while highlighting its obvious textual absence. For this purpose, this paper synthesises data on the Supreme Court's reading of the procedural*

requirements of Article 184 (3) during three time periods: The pre-Darshan Masih, the Darshan Masih, and the post-Darshan Masih eras. The study highlights the Supreme Court's varied reading of Public Interest Litigation as a legal tool and inconsistent deployment of statutory interpretational techniques. Finally, this paper analyses the implications that an expansive interpretation and complete subversion of Article 184 (3)'s procedural requirements has had on the dissemination of fundamental rights, doctrine of separation of powers, and the Court's questionable role as a framer of public policy.

4. **KING'S LAW JOURNAL**

https://www.tandfonline.com/doi/pdf/10.1080/09615768.2021.1885326

THE RULE OF (SOFT) LAW by Stephen Daly

The COVID-19 pandemic has forced governments around the world to become innovative in how they carry out their functions. In particular, they need to respond speedily to developments as the scientific evidence evolves. Rules for regulating conduct accordingly need to constantly evolve. The 'golden met-wand' of law is not particularly well-tuned to assist in such regulation other than at a level of generality. It is unsurprising accordingly that governments have had to 'supplement' legal provisions with soft law. There is nothing novel about this, but it does raise important questions about the nature of domestic soft law, what role it should play and whether the UK government's use of it during the period of the pandemic has been appropriate.