



# HIGH COURT OF SINDH

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## Case Law Review



## Fortnightly Bench Update



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## FORTNIGHTLY BENCH UPDATE

(16-05-2025 to 31-05-2025)

An Overview of Recent Judgments of the Supreme Court of Pakistan, Sindh High Court, and Lahore High Court, Latest Legislative Amendments and Important Articles, Compiled and Published by the Legal Research Cell, High Court of Sindh, Karachi

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## SUPREME COURT OF PAKISTAN

### 1. SUPREME COURT OF PAKISTAN

Dr. Muhammad Asif Versus Dr. Sana Sattar and others  
C.R.P No. 458/2024 IN C.P.L.A No. 2514/2024 (Against the order dated 18.07.2024 passed by this Court in Civil Petition No.2514/2024)

**Present:** Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Aqeel Ahmed Abbasi

**Source** [https://www.supremecourt.gov.pk/downloads\\_judgements/c.r.p. 458\\_2024.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.r.p. 458_2024.pdf)

**Facts** The case revolves around a custody dispute concerning two minor children, aged eight and seven, between their divorced parents: Dr. Muhammad Asif (father) and Dr. Sana Sattar (mother), both qualified medical professionals. The mother had initially filed a custody application before the Senior Civil Judge (Family Division), Layyah, which was dismissed on 14.07.2023, though visitation rights were granted to her. Dissatisfied, both parents filed separate appeals before the Additional District Judge, Layyah. The appellate court allowed the mother's appeal on 25.04.2024, granting her custody of the children while maintaining visitation for the father. The father's appeal was dismissed.

Thereafter, the father challenged the judgment before the Lahore High Court, which also dismissed his constitutional petition. A civil petition for leave to appeal before the Supreme Court under Article 185(3) of the Constitution was also dismissed on 18.07.2024. The current review petition was filed against that dismissal order. The Supreme Court, invoking its limited review jurisdiction, considered whether the earlier decisions were flawed for not taking into account the voices and preferences of the children, particularly in light of Pakistan's constitutional obligations and international commitments under the United Nations Convention on the Rights of the Child (CRC).

**Issue** Whether, in custody matters, the failure to hear the voice of the child renders prior judicial determinations flawed, thereby justifying review jurisdiction, and whether

Section 17 of the Guardians and Wards Act, 1890, must be interpreted in harmony with international child rights law and constitutional guarantees to ensure a child-centered adjudication?

## **Rule**

Under Section 17 of the Guardians and Wards Act, 1890, the paramount consideration in appointing a guardian is the welfare of the minor. The section enumerates various factors such as age, sex, religion, character and capacity of the proposed guardian, and the preference of the minor if old enough. Historically, however, this provision has been applied in a paternalistic and discretionary manner, rooted in colonial conceptions of child welfare.

In contrast, the United Nations Convention on the Rights of the Child (CRC), ratified by Pakistan in 1990, sets out a more structured and rights-based framework. Article 3 mandates that the best interests of the child shall be a primary consideration in all actions concerning them. Article 12 grants children the right to express their views freely in all matters affecting them and requires that such views be given due weight in accordance with their age and maturity. These principles are elaborated in General Comment No. 14 (Article 3) and General Comment No. 12 (Article 12) of the UN Committee on the Rights of the Child, which emphasize the importance of structured, meaningful, and age-appropriate participation of children in legal proceedings.

From a constitutional perspective, Article 9 of the Constitution guarantees the right to life, including a meaningful existence; Article 14 ensures dignity of the individual; Article 25 mandates equality before the law and allows positive differentiation for the benefit of children under Article 25(3); Article 34 protects motherhood and childhood; and Article 35 ensures protection of family and marriage. Read together, these provisions impose a constitutional obligation to integrate a child-centered approach into all judicial determinations affecting minors.

The Court applied the doctrine of updating construction, which provides that statutes must be interpreted in a way that remains consistent with evolving legal, constitutional, and societal values. As such, Section 17 must be interpreted as a



“living” provision, incorporating the participatory rights of children and aligning the undefined term “welfare” with the modern, objective standard of “best interests” under the CRC.

**Application** The Court found that in the previous proceedings—including those before the family court, appellate court, and High Court—there was no meaningful opportunity given to the children to express their views, particularly in light of their age and capacity. This omission was contrary to both Pakistan’s international obligations under the CRC and constitutional protections of child dignity, participation, and development.

To rectify this, the Court personally engaged with both children in a child-sensitive, informal setting. The elder child expressed a preference for both parents, while the younger child, suffering from developmental delays, was unable to effectively articulate his views. Upon careful consideration of the children’s emotional well-being, continuity in education and therapy, parental availability, and caregiving environments, the Court determined that custody should remain with the mother, especially given her role as the primary caregiver and the medical attention provided to the special-needs child. The father’s work commitments, remarriage, and limited home availability were noted as potential obstacles to providing full-time care.

The Court also addressed the father’s concern that the mother’s professional employment should not hinder her custodial role. Relying on CEDAW Articles 11 and 16 and its General Recommendation No. 21, the Court emphasized that working mothers cannot be discriminated against in custody matters merely for exercising their right to employment.

Finally, the Court highlighted the significance of Alternative Dispute Resolution (ADR) mechanisms, such as mediation, in family disputes. It observed that adversarial litigation is often detrimental to a child’s emotional stability, and that mediation aligns with the principles of the CRC and Pakistan’s constitutional commitment to child welfare.

**Conclusion** The Supreme Court held that the prior failure to hear the voice of the children constituted a serious procedural flaw, and the review petition provided an opportunity to correct that error. Nevertheless, after giving the children an opportunity to be heard and analyzing the circumstances afresh, the Court concluded that there was no sufficient ground for reviewing the earlier order refusing leave to appeal. Custody would remain with the mother, subject to adherence to the visitation schedule framed by the lower appellate court. The judgment issued a binding directive to all courts—particularly Family Courts and the District Judiciary—to hear the voice of the child in every custody and guardianship matter.

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## **2. SINDH HIGH COURT**

Chief Commissioner Inland Revenue Corporate Tax Office FBR V. Federal Secretary / Revisional Authority Ministry of Religious Affairs & Interfaith Harmony-Islamabad & others  
C.P. No. D-6608 of 2020

**Present:** **Mr. Justice Muhammad Iqbal Kalhoro**  
**Mr. Justice Muhammad Osman Ali Hadi (author)**

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY4ODc0Y2Ztcy1kYzgZ>

*Sindh High Court Citation (2025 SHC KHI 1548)*

**Facts** The Federal Board of Revenue (FBR), representing the Federal Government of Pakistan, has occupied the Guru Mandar Building in Karachi since 1961, having acquired it lawfully from Frederick Sidney Cotton (FSC), who purchased it from the Guru Mandir Association (GMA). The Evacuee Trust Property Board (ETPB) declared the building evacuee trust property in 1998 and issued orders to reclaim possession. The Petitioner challenged these orders, asserting lawful transfer and continuous possession, and contended that the declaration was unlawful and unsupported by evidence.

**Issue:** Whether the declaration of the Guru Mandar Building as evacuee trust property and the subsequent eviction orders by ETPB are legally valid in light of the lawful transfer, possession, and applicable evacuee property laws.

**Rule:** The Pakistan (Administration of Evacuee Property) Ordinance, 1949, regulates evacuee property transfers and defines “Custodian” to include Additional, Deputy, and Assistant Custodians (Section 2(1)). Transfers require confirmation by the Custodian or authorized officers before registration (Sections 16 and 17), with exclusive and final jurisdiction resting with the Custodian’s office, whose orders are not subject to judicial review (Section 36). The Evacuee Trust Properties (Management & Disposal) Act, 1975 empowers the Chairman of ETPB to declare evacuee properties as trust properties, with decisions being final (Section 8), and vests all evacuee trust properties in the Federal Government (Section 6). The Constitution of Pakistan guarantees protection of vested property rights under Articles 4, 8, 23, 24, and 25. Additionally, legal doctrines such as *interest reipublicae ut sit finis litium* (litigation must end), *res judicata* (finality of judgment), and protection against vexatious litigation ensure that final judicial decisions are binding and prevent reopening of settled matters. Precedents require substantial evidence to establish trust property status and forbid reliance on presumptions or mere usage.

**Application:** The Court found that the initial transfer from Mr. Advani (authorized agent of GMA) to FSC, and then to the Federal Government, was conducted with due process under the 1949 Ordinance, including confirmations by the Custodian’s office, which encompasses Additional Custodians as per the Ordinance. The Respondents’ contention that approvals from Additional Custodians were invalid was rejected, as the law explicitly includes them within the definition of Custodian. The 1998 declaration by ETPB lacked detailed reasoning, failed to produce credible evidence such as trust deeds or registration certificates, and simply presumed the building’s trust status based on it being a ‘Mandir’ property, which the Petitioner categorically denied.

Repeated litigation on this matter contravened the doctrines of finality and *res judicata*, especially given several previous judicial decisions upheld the Petitioner’s possession. The declaration of evacuee trust status post-1957 also violated the Pakistan (Administration of Evacuee Property) Act, 1957, which prohibits such retroactive classifications unless the property was already declared evacuee before

1957.

The Court emphasized that the ETPB, under the 1975 Act, does not have jurisdiction to override the Custodian's legally valid orders or assume a correctional jurisdiction over those transfers. Since the building is vested in and used by the Federal Government, any dispossession without lawful cause would violate constitutional rights. Therefore, the eviction orders and declaration were held void and ultra vires.

**Conclusion:** The High Court set aside the Impugned Judgment dated 15.10.2020, the 1998 Order declaring the Guru Mandar Building evacuee trust property, and the eviction notice issued in consequence. The Court upheld the validity of the original lawful transfer and long-standing possession by the Federal Government (Petitioner), declaring the Respondents' orders void for lack of jurisdiction and failure to adhere to legal requirements. The Petitioner's fundamental rights were protected, reinforcing the rule of law and finality of legal transactions.

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### 3. SINDH HIGH COURT

Muhammad Iqbal & Others v Province of Sindh & others  
Constitutional Petition No. D-5254 of 2021

**Present:** **Mr. Justice Muhammad Karim Khan Agha (author)**  
**Mr. Justice Adnan -ul- Karim Memon**

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY4MjI1Y2Ztcy1kYzgZ>

*Sindh High Court Citation (2025 SHC KHI 1528)*

**Facts:** The petitioners, serving as Additional Prosecutor Generals (APGs) in the Sindh Criminal Prosecution Service, approached the High Court of Sindh seeking enhancement of their non-practicing allowance. They argued that while they are currently receiving a fixed allowance of Rs. 75,000 (with a later increment of Rs. 15,000), this amount is significantly lower than what is being paid to similarly placed officers, such as Law Officers in the Advocate General's office and those serving in the Law Department. The petitioners contended that, since they perform legal

functions of a similar nature for the Government of Sindh, they are entitled to equal remuneration, including parity in the non-practicing allowance, under Article 25 of the Constitution.

**Issue:** Whether Additional Prosecutor Generals (APGs), as civil servants in the Sindh Criminal Prosecution Service, are entitled to receive the same non-practicing allowance as Law Officers (e.g., Assistant Advocate Generals) working in the Advocate General’s office, in light of the constitutional right to equality under Article 25 of the Constitution of Pakistan.

**Rule:** The principle of equality before the law, enshrined in Article 25 of the Constitution of Pakistan, guarantees equal protection to all persons similarly situated. However, the law also permits reasonable classification based on an intelligible differentia that has a rational nexus to the objective sought to be achieved. The leading case of *I.A. Sherwani v. Government of Pakistan* (1991 SCMR 1041) established that equal treatment applies to individuals who are similarly placed in terms of job function, role, and conditions of service. The classification must not be arbitrary or unreasonable and must be based on sound policy rationale. Furthermore, under the **Sindh Criminal Prosecution Service Act, 2009**, and **Sindh Civil Servants Act, 1973**, the APGs are designated civil servants with defined service structure, security of tenure, and pension rights. In contrast, Law Officers in the Advocate General’s office are governed by the **Sindh Law Officers (Conditions of Service) Rules, 1940**, and serve purely at the discretion—or pleasure—of the government, with no such protections or structured benefits. These legal distinctions create a legitimate basis for differential treatment in terms of remuneration, including allowances.

**Application** The Court analyzed the respective service frameworks and financial entitlements of the two categories of officers. APGs are appointed through a competitive examination conducted by the Sindh Public Service Commission and enjoy the privileges of civil servants, including structured promotion pathways, job security, annual pay increments, and pension benefits. Conversely, Law Officers in the Advocate General’s office are appointed directly by the Chief Minister, serve at the government’s

discretion, and can be removed at will, without any legal right to tenure or post-retirement benefits. A comparison of the pay slips revealed that although Law Officers receive a higher non-practicing allowance, APGs benefit from a more secure and structured compensation system, which includes multiple allowances and long-term financial benefits. The Court emphasized that a holistic view must be taken when assessing the overall package of benefits, and not merely focus on the non-practicing allowance in isolation. Given these material differences in appointment, status, and service conditions, the Court held that APGs and Law Officers are not similarly placed, and therefore the difference in their non-practicing allowance does not amount to discrimination under Article 25 of the Constitution.

**Conclusion:** The Court held that the petitioners (APGs) were not being discriminated against as they were not similarly situated to Law Officers in the Advocate General's office. The difference in non-practicing allowance was found to be justified in view of the broader service structure, job security, and pension rights available to APGs.

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#### **4. SINDH HIGH COURT**

Muhammad Suleman Ghouri and 4 others versus Federation of Pakistan and 3 others (C. P. No. D – 1622 of 2025)

**Present:** **Mr. Justice Faisal Kamal Alam (Author)**  
**Mr. Justice Jawad Akbar Sarwana**

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY5NDYyY2Ztcy1kYzgZ>

**Facts:** The Petitioners, Muhammad Suleman Ghouri and four others, are Senior Deputy Directors working in Executive Grade-4 (EG-4) within the Directorate of Air Transport and Economic Regulations (AT & ER) of the Civil Aviation Authority (CAA). They were soon to become eligible for promotion to Executive Grade-5 (EG-5) Joint Director positions, as per the CAA Service Regulations, which require a minimum of twelve years of service. However, the CAA issued an advertisement on March 7, 2025, to fill four Joint Director posts on a contract basis with a reduced eligibility criterion, lowering the required length of service from twelve years to five years. The Petitioners contended that this reduction and the contract-based recruitment

were designed to favor outsiders or select candidates unfairly, thereby bypassing the established promotion rules and jeopardizing their career progression. They asserted that the Service Regulations mandate that such posts should primarily be filled by promotion, and contract appointments can only be made when no regular employee is eligible. The Respondents, including the Federation of Pakistan and the CAA, argued that the advertisement was a valid executive decision intended to select the best candidates and fill the vacancies promptly. They also claimed that since the Service Regulations are non-statutory, alternate remedies are available, making the petition non-maintainable. The Respondents justified the reduced eligibility by stating that previous higher standards failed to attract suitable candidates. The Petitioners challenged this recruitment process, seeking to quash the advertisement and safeguard their rightful promotion opportunities.

- Issue (1)** Whether the Civil Aviation Authority (CAA) was legally justified in issuing the advertisement dated 07.03.2025 to fill Joint Director posts on a contract basis with reduced eligibility criteria, contrary to the existing Service Regulations requiring promotion based on length of service.
- Issue (2)** Whether the reduction of the eligibility criteria from twelve years to five years for the advertised posts violated the Service Regulations framed under statutory authority and thus was unlawful.
- Issue (3)** Whether the Petitioners, who were soon eligible for promotion, have a legitimate expectation and right to be considered for promotion as per the Service Regulations, and whether the impugned advertisement prejudiced their career progression.
- Issue (4)** Whether the Petition challenging the advertisement and recruitment process is maintainable, considering the non-statutory nature of the Service Regulations and the availability of alternate remedies.
- Issue (5)** The extent to which the Court can exercise judicial review over administrative recruitment decisions, especially in relation to adherence to statutory rules, principles of natural justice, and protection of employee rights.

**Rule:** Constitution of Pakistan, 1973 – Provides the fundamental framework for rights, principles of administrative law, and judicial review under Article 199 (writ

jurisdiction).

Pakistan Civil Aviation Act, 2023 – Governs the functioning and administrative structure of the Civil Aviation Authority (CAA), including appointment and promotion procedures.

Civil Aviation Authority Service Regulations, 2014 (2019) – Statutorily framed regulations under Section 27 of the CAA Ordinance, specifying service conditions including eligibility criteria for promotion and contract appointments:

Regulation 21(3): Contract appointments shall only be made when no regular employee is eligible for promotion to the vacant post.

Regulations 31 to 34: Define promotion eligibility and procedures within CAA.

Length of Service Requirement: Minimum twelve years of service for promotion to Executive Grade-5 (EG-5), including two years in Executive Grade-4 (EG-4).

Judicial Precedents:

Pakistan Defence Officers' Housing Authority (DHA) Case (2017 SCMR 2010): Clarifies when writ petitions challenging service matters are maintainable, especially violations of statutory rules or procedural fairness.

Rafi Case (2016 SCMR 2146): Writ jurisdiction is available when recruitment or promotion processes are tainted or arbitrarily scrapped after selection.

Pakistan Red Crescent Society Case (2014 SCMR 982): Distinguishes statutory and non-statutory service rules and emphasizes the need for judicial intervention when natural justice principles are violated.

Co-operative Bank Case (2024 PLC (C.S.) 1028): Reinforces that where no statutory rules exist, writ jurisdiction is limited; however, fundamental rights and due process must still be respected.

Principle of Legitimate Expectation: Employees have a reasonable expectation to be considered for promotion when fulfilling eligibility criteria under lawful regulations.

Principles of Natural Justice and Judicial Review: Courts can review administrative decisions violating statutory rules, fairness, or legitimate expectations but generally will not substitute their own opinion on merits of appointments.

**Application:** The Court carefully examined the Petitioners' claim that the impugned advertisement,



which reduced the eligibility criterion for Joint Director posts from twelve years to five years of service, violated the Service Regulations framed under the statutory authority of the Pakistan Civil Aviation Act, 2023. The Petitioners, who were soon eligible for promotion based on the existing Regulations, argued that this reduction unfairly bypassed their legitimate career progression and favored outside candidates.

The Respondents countered by asserting that the decision to issue the advertisement was a valid executive and policy decision aimed at promptly filling vacancies and enhancing organizational expertise by recruiting from outside. They also contended that since the Service Regulations are non-statutory, the petition was not maintainable and alternate remedies existed.

The Court found that the Service Regulations were indeed framed under statutory authority, thus possessing legal force. It emphasized Regulation 21(3), which clearly restricts contract appointments to situations where no regular employee is eligible for promotion. Since the Petitioners met the eligibility criteria for promotion, the impugned advertisement circumvented this mandatory provision, making the process unlawful.

Furthermore, the Court acknowledged the Petitioners' legitimate expectation to be considered for promotion as per the regulations, stressing that arbitrarily reducing eligibility criteria and advertising for contract appointments undermined this expectation and the principles of natural justice. It was held that such actions could negatively affect employee morale and the overall functioning of the CAA.

The timing of the advertisement, issued just six months before the Petitioners would have become eligible for promotion, was viewed with suspicion, suggesting an intent to rush and avoid internal promotion processes. The Court rejected the Respondents' justification that previous higher criteria failed to attract suitable candidates, ruling that lowering statutory eligibility to such an extent was not justified.

While recognizing the management's discretion in recruitment, the Court clarified that such discretion must be exercised within the bounds of law and fairness, respecting statutory regulations and employee rights.

The Court also referred to relevant Supreme Court precedents, including the DHA case and Pakistan Red Crescent Society case, to highlight the limits of writ

jurisdiction and the importance of upholding statutory service rules and legitimate expectations.

In sum, the Court applied these legal principles strictly to protect the Petitioners' career progression rights and ensure administrative compliance with statutory regulations.

**Conclusion:** The Court held that the impugned advertisement dated 07.03.2025, which lowered the eligibility criteria for filling the Joint Director posts from twelve years to five years and allowed contract appointments bypassing promotion, was illegal and contrary to the statutory Service Regulations of the Civil Aviation Authority.

The Petitioners' legitimate expectation to be considered for promotion as per the Service Regulations was unlawfully violated, and the timing and manner of the advertisement appeared arbitrary and prejudicial to their career progression.

Accordingly, the Court partly accepted the Petition and set aside the impugned advertisement and related selection process to the extent it violated the prescribed eligibility criteria. The Court directed the Respondents to first fill vacancies through internal promotion as mandated by the Regulations before considering contract or outside appointments.

The judgment reinforced the principle that while management has discretion in recruitment, such discretion must be exercised lawfully, fairly, and transparently, respecting statutory rules and natural justice.

**Ratio decidendi:** The impugned selection process was unlawful because it violated statutory Service Regulations on eligibility and contract appointments, thereby breaching principles of natural justice and legitimate expectation.

**Obiter dicta:** Though promotion is not a vested right, arbitrarily circumventing statutory eligibility harms employee morale and organizational effectiveness, and courts can intervene to prevent such abuse.

## 5. **SINDH HIGH COURT**

Tanveer ul Hassan & Others v. Province of Sindh & Others and Yasir Ali & Others v. Province of Sindh & Others )  
CP No. D-5136 of 2023 and CP No. D-4623 of 2024

**Present:** Mr. Justice Yousuf Ali Sayeed  
Justice Ms. Sana Akram Minhas (author)

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY4OTgxY2Ztcy1kYzgZ>

*Sindh High Court Citation (2025 SHC KHI 1557)*

**Facts** The petitioners in both constitutional petitions challenged the continued failure of the Sadaf Cooperative Housing Society Ltd. to conduct elections for its Managing Committee. They alleged that the Society's membership had exceeded the number of available plots in violation of its own byelaws and that the current electoral process was being manipulated by including ineligible members. The dispute centered on the eligibility criteria for voters, specifically whether only those members with allotted and identifiable plot numbers under a sanctioned layout plan should be allowed to vote. The Society's counsel argued that even individuals who had not yet been allotted plots but for whom land was "available" should be eligible. The sanctioned layout plan, however, only pertained to Sector 15-A, whereas the plans for Sectors 15-B and 12-B/3 were either unapproved or cancelled.

**Issue** Whether individuals who have not been allotted specific plots in a sanctioned layout plan, and whose membership claims are contingent upon future approvals, can be granted voting rights in the election of a Cooperative Housing Society.

**Rule** Under the applicable legal framework comprising the Sindh Cooperative Societies Act, 2020, the Sindh Cooperative Societies Rules, 2020, and the Byelaws of the Society—particularly Byelaw No. 8 and 8(a)—it is explicitly provided that the total number of Society members shall not exceed the number of plots available for allotment. This means that membership must correspond to actual, identifiable allotments and not to anticipated or future availability of plots. Furthermore, Rule 9 of the 2020 Rules prescribes the procedure for the conduct of elections, including the preparation of a valid voter list composed of eligible members. These provisions collectively establish that only individuals with confirmed, sanctioned allotments possess the legal status of members and are thereby qualified to participate in the governance of the Society through elections.

**Application** The Court evaluated the Society’s sanctioned layout plan and the compliance report from the Sindh Master Plan Authority. It confirmed that the only approved plan pertained to Sector 15-A, comprising 671 plots, while the Society’s claimed membership stood at 1,663—clearly in violation of Byelaws 8 and 8(a). The Court reasoned that allowing voting rights to individuals without finalized allotments or without inclusion in the sanctioned layout would inject uncertainty into the election process and potentially invalidate the elections. Such individuals lacked a current, legally recognizable interest in the Society’s land. The Court emphasized that fairness and transparency in the electoral process necessitate excluding speculative claimants from voting.

**Conclusion** The High Court of Sindh held that only members who have been allotted specific plot numbers under the sanctioned layout plan of Sector 15-A are entitled to voting rights. It directed the holding of elections within 60 days under a neutral Election Committee, strictly in accordance with the Society’s Byelaws and the Cooperative Societies Act and Rules. The Court disposed of both petitions accordingly and ordered that interim orders will remain effective until the new Managing Committee assumes charge.

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## 6. SINDH HIGH COURT

Aijaz Ahmed and others V. Province of Sindh and others  
CP No.D-373 of 2025

**Present:** **Mr. Justice Muhammad Saleem Jessar**  
**Mr. Justice Nisar Ahmed Bhanbhro**

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY4MTgzY2Ztcy1kYzgZ>

*Sindh High Court Citation (2025 SHC LAR 1518)*

**Facts** Petitioners are the members of Sindh Police, Petitioners No 1 to 3 are serving as Inspectors and posted as Station House Officers at different Police Stations of District Kashmore @ Kandhkot, Petitioner No 4 is serving as Senior Superintendent of Police Kashmore @ Kandhkot. They filed this petition, seeking enforcement of fundamental rights guaranteed to them as the citizens of the Country and members of the Police Force. They were annoyed by the activities of most civilized faction of the Society,

popular as the “CREAM OF SOCIETY”, the lawyers, the architects and founders of beloved country, the pioneers of democracy and democratic values. The Petitioners complained of vandalism, harassment, mobbing and obstructing them from performance of lawful duties. They sought assistance of the Court to ensure protection of their fundamental rights to perform duties in accordance with law without fear and favor to any particular class of Society.

**Issue** Whether the fundamental rights of police officers to carry out their official duties without obstruction, harassment, and victimization by protestors—mainly lawyers holding sit-ins and road blockades—are being infringed, and whether there is a need for legal regulation of such protests to protect public order and police functioning.

**Rule** Under the Constitution of Pakistan, every citizen, including police officers, enjoys fundamental rights guaranteed under Articles 9, 14, 15, 16, 17, 18, 23, and 199. These include the right to life with dignity, freedom of movement, right to perform lawful duties, and the right to assemble peacefully subject to reasonable restrictions in the interest of public order. Bar Councils and other statutory bodies are required to uphold the rule of law and ensure that protests comply with legal and constitutional standards. Unauthorized protests, road blockades, and obstruction of police duties violate these rights and public order.

**Application:** The petitioners are police officers serving in District Kashmore who have faced prolonged protests and road blockades by lawyers and others without government permission, resulting in paralysis of civic life and obstruction of police duties. The protests included calls to bar police from court premises, leading to harassment and criminal cases against police personnel. Despite police efforts to maintain peace and avoid escalation, these actions undermined public order and violated police officers’ constitutional rights to perform their duties without fear. The lack of statutory backing to regulate such protests leaves police vulnerable and the public at large deprived of their fundamental rights, including access to courts and freedom of movement. The petition argues for judicial directives to protect police rights and to prompt the government for legislative measures regulating protests, balancing the right to

assemble with the need to maintain public order.

**Conclusion:** The court concluded that while the right to peaceful protest is constitutionally protected, it must be exercised within the bounds of law and without infringing on the fundamental rights of others, including police officers and the general public. The sit-ins and road blockades disrupted public order, obstructed police duties, and violated citizens' rights to movement and access to justice. Recognizing the absence of clear statutory provisions to regulate such protests, the court emphasized the urgent need for legislative action to balance the right to assemble with maintaining public order. To address the broader legal and constitutional issues involved, the matter was referred to the Head of the Constitutional Bench for consideration by a larger bench, underscoring the importance of a comprehensive and authoritative resolution.

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## **7. SINDH HIGH COURT**

Waqar Ali Jatoi v/s. Federation of Pakistan through Chairman FPSC and Ors  
CP No.D-198 of 2023

**Present:** **Mr Justice Muhammad Saleem Jessar**  
**Mr Justice Nisar Ahmed Bhanbhro**

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY3OTgyY2Ztcy1kYzgZ>

*Sindh High Court Citation (2025 SHC LAR 1513)*

**Facts** The petitioner, Waqar Ali Jatoi, an employee of the Sindh High Court, applied to appear in the Combined Competitive Examination (CCE) 2022 conducted by the Federal Public Service Commission (FPSC). Although he was initially issued an admission certificate, his candidature was later rejected on the ground of exceeding the upper age limit. The petitioner claimed that as a government servant under the Sindh Judicial Service Rules, he was entitled to a two-year age relaxation. After his representation was rejected, he filed this petition challenging the rejection and sought his examination result transcript, which the FPSC did not provide, stating that failed candidates are not issued marks sheets or transcripts.

<b>Issue</b>	Whether the petitioner, an employee of the Sindh High Court, was unlawfully denied the benefit of upper age relaxation for government servants by the Federal Public Service Commission (FPSC) in the Combined Competitive Examination (CCE) 2022, and whether the FPSC's refusal to provide the petitioner with his marks transcript after failing the examination was lawful.
<b>Rule</b>	Candidates who fail the exam (less than 50% aggregate) must be informed of their result and are entitled to marks transcripts and can request recounting under the rules. Fundamental rights under the Constitution guarantee access to information and fair procedure.
<b>Application:</b>	The Court found that the FPSC unlawfully withheld the petitioner's marks transcript despite his failure in the examination, violating both FPSC Rules and the petitioner's fundamental rights to information and fair procedure. While the question of the petitioner's eligibility for age relaxation was left undecided, the Court emphasized that candidates must be properly informed of their results to exercise their legal remedies. Consequently, the Court ordered the FPSC to issue the transcript and facilitate recounting if requested, ensuring the petitioner's right to fair treatment.
<b>Conclusion:</b>	The Court held that FPSC's failure to issue the transcript and inform the petitioner of his result was unlawful and violated fundamental rights and FPSC Rules. The petitioner's age relaxation claim was left open to be pursued after issuance of the transcript if applicable. The direction to issue the transcript and allow recounting was the ratio decidendi of the judgment. The discussion on the petitioner's entitlement to age relaxation is obiter dicta, as the Court did not decide that issue finally.

## 8. SINDH HIGH COURT

Arif Manzoor vs. Federation of Pakistan and 02 others  
C.P No.D-687 of 2023

**Present:** **Mr. Justice Arbab Ali Hakro**  
**Mr. Justice Riazat Ali Sahar**

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY2NzEwY2Ztcy1kYzgZ>

**Facts:** The petitioner was appointed as Assistant Manager (MM)/Store at HESCO in 2016 after due process but was barred from joining on medical grounds. Pursuant to court directions in C.P. No.D-689 of 2016, he was re-evaluated, declared fit, and allowed to join on 26.02.2020. Despite completing his contractual term, his case was not placed before the Regularization Board, while similarly placed employees were regularized via Board Resolution dated 22.06.2021. Alleging arbitrary exclusion and discriminatory treatment in violation of constitutional guarantees, he filed the present petition under Article 199 of the Constitution.

**Issue:** Whether the petitioner, a contractual employee of HESCO, is entitled to regularization of service and equal treatment under Article 199 of the Constitution, despite HESCO being a non-statutory body.

**Rule:** Under settled law, writ jurisdiction under Article 199 is not maintainable against entities lacking statutory service rules. The Supreme Court in *Waqar Ahmed v. Federation of Pakistan* (2024 SCMR 1877) and *Pakistan Electric Power Company v. Syed Salahuddin* (2022 SCMR 991) has held that contractual employees of non-statutory bodies have no vested right to regularization unless such right arises from a statutory instrument or government policy. The principle of “master and servant” governs such employment relationships. Furthermore, in *Faraz Ahmed v. Federation of Pakistan* (2022 SCMR 1680), it was reaffirmed that mere administrative regularization of others does not create a legally enforceable right.

**Application:** The petitioner, after being initially barred from joining HESCO on medical grounds, was allowed to assume duty in 2020 pursuant to a court order. He served the required term and contends that similarly situated employees were regularized via a Board Resolution. However, his employment letter expressly excluded any claim for regular absorption, and HESCO lacks statutory rules of service. The petitioner also failed to demonstrate any statutory or legal provision mandating his regularization. While the Cabinet Secretariat issued a memorandum recommending regularization of contractual



employees, such policy guidance does not create enforceable rights unless adopted through law or rules. Moreover, the petitioner's grievance concerns a service matter within a non-statutory organization, falling outside the High Court's constitutional jurisdiction.

**Conclusion:** The petition was dismissed on the ground that the petitioner had no enforceable legal right to regularization, as his employment was contractual and HESCO does not operate under statutory service rules. The Court held that such service matters fall outside the scope of constitutional jurisdiction under Article 199. The central basis of the decision was the absence of any statutory provision supporting the petitioner's claim. References to government policy memos and the regularization of other employees were noted by the Court but did not form the basis of its decision.

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## 9. SINDH HIGH COURT

Safiyani Vs Director School Education Elementary, Secondary & Higher  
Secondary Mirpurkhas.  
CP No. D-798 of 2024

**Present:** Mr. Justice Arbab Ali Hakro  
Mr. Justice Riazat Ali Sahar

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY3NjY2Y2Ztcv1kYzgZ>

**Facts:** The petitioner was initially appointed as a Junior School Teacher (BPS-14) on contract from 16.01.2010, and later appointed as High School Teacher (BPS-15) on 25.09.2013 through a fresh recruitment process. His services were regularized under the *Teachers Appointed on Contract Basis (Regularization) Act, 2018*, with effect from 18.04.2018. Subsequently, on 09.06.2023, the competent authority directed that his service be counted from 16.01.2013 with pay protection and inclusion of earlier service. However, on 01.08.2023, Respondent No.1 issued an order declaring the earlier regularization and pay protection **infructuous**, on the ground that it was issued without lawful authority, as contractual service in a different cadre could not be counted for regularization or seniority. This reversal led to the filing of the present

constitutional petition.

- Issue:** The principal issue before the Court was whether the petitioner, having been initially appointed as a Junior School Teacher (JST) on a contractual basis in 2010 and subsequently appointed as a High School Teacher (HST) through a separate recruitment process in 2013, was entitled to regularization of service from the date of initial appointment, pay protection, and grant of time-scale promotion to BPS-17 under the relevant laws and policies of the Government of Sindh.
- Rule:** The Sindh Regularization of Teachers Appointed on Contractual Basis Ordinance, 2012 provides for regularization of contract employees appointed against sanctioned posts, but only with immediate and prospective effect. The Teachers Appointed on Contract Basis (Regularization) Act, 2018 similarly mandates regularization from the notified date and does not authorize retrospective benefits or seniority. Rule 41(a)(i) of the Sindh Civil Services Rules Vol-I governs pay protection in cases of transfer or appointment without break in service within the same administrative control. Time-scale promotion is regulated by the Finance Department Notification dated 07.06.2010, which requires a minimum of nine years of regular service in BPS-16 or equivalent to qualify for promotion to BPS-17.
- Application:** The Court held that the petitioner's appointments as JST and later as HST were distinct and made through separate processes, breaking continuity of service. As such, regularization from the initial appointment date was not permissible under the *2012 Ordinance* or the *2018 Act*, both of which provide only for prospective effect. Citing *Saeed Habib v. National Bank of Pakistan* (C.P. No. D-2666 of 2020), the Court reiterated that fresh selection constitutes a new appointment. The plea for pay protection under Rule 41(a)(i) was rejected, as the petitioner voluntarily moved posts through a new selection and thus lacked uninterrupted service.
- Conclusion:** The Court found no statutory basis for retrospective regularization, pay protection, or time-scale promotion. It upheld the 01.08.2023 order as a lawful correction and

dismissed the petition, holding that no illegality, discrimination, or violation of rights was established.

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**10. SINDH HIGH COURT**

Nazar Muhammad Jokhio v. The State and Seven (7) Others  
(Criminal Miscellaneous Application No. 740 of 2024)

**Present:** Mr. Justice Jawad Akbar Sarwana

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY3MjA2Y2Ztcy1kYzgZ>

**Facts:** The case involves a dispute between Nazar Muhammad Jokhio (the Applicant) and Sarfaraz Ali (Respondent No.4) concerning ownership, sale, and possession of two plots of land situated in the Gulshan-e-Kareem Housing Society. Sarfaraz Ali claimed that he purchased these two plots through a broker and made full payment with the consent of the project owner, who is the Applicant. However, a conflict arose when Danish, claiming to be the project manager, allegedly stopped Sarfaraz Ali and his brother from constructing on the plots without approval from certain other respondents. Additionally, Irshad asserted ownership over one of the plots and began construction, which led Sarfaraz Ali to file complaints with the police. Despite these complaints, the police authorities took no action. Consequently, Sarfaraz Ali filed an application under Sections 22-A and 22-B of the Criminal Procedure Code, seeking a direction for the police to register an FIR. On the other hand, Nazar Muhammad Jokhio denied having any direct connection with the housing society or any sale agreement with Sarfaraz Ali and contended that the matter was a civil dispute not warranting automatic FIR registration.

**Issue:** Whether the Ex-Officio Justice of Peace was justified in directing the police authorities to register an FIR based on the complaint by Sarfaraz Ali without conducting a proper evaluation to determine if the complaint disclosed a cognizable offense, or whether such direction was premature given that the matter might be a civil dispute not warranting FIR registration?

**Rule:** As per Section 154 of the Cr.P.C., the police must register an FIR only if the information reveals the commission of a cognizable offense. Before lodging the FIR,

police authorities must evaluate the complaint to determine whether the offense is cognizable, non-cognizable, or if the information is false. Likewise, an Ex-Officio Justice of Peace, when hearing complaints under Sections 22-A and 22-B Cr.P.C., must also conduct this evaluation before directing FIR registration. A direction to register an FIR without this process, especially in civil disputes, is legally unsustainable.

**Application:** The Ex-Officio Justice of Peace issued an order directing police to register an FIR based solely on Sarfaraz Ali's complaint without articulating any evaluation process or reasoning to show that a cognizable offense was disclosed. The facts indicated a civil dispute over property ownership and possession, which does not automatically justify FIR registration. The police had neither recorded a statement nor lodged an FIR, implying no prima facie criminal case was found. Therefore, the Justice of Peace failed to apply the proper legal test required under Section 154 Cr.P.C. before ordering FIR registration. This lack of evaluative process made the order unsustainable in law.

**Conclusion:** The court concluded that the Ex-Officio Justice of Peace's order directing the registration of an FIR without proper evaluation was legally unsustainable. The underlying dispute was essentially civil, and no prima facie case for a cognizable offense was shown at this stage. Therefore, the impugned order was set aside, and the direction for mandatory FIR registration was withdrawn. The police were instead directed to record the statement and take appropriate action in accordance with the law.

This decision reflects the **ratio decidendi** that before ordering FIR registration, there must be a careful legal evaluation of whether the complaint discloses a cognizable offense. Any direction to register an FIR without such evaluation amounts to an abuse of process and is not sustainable. The judgment also contains **obiter dicta** emphasizing the importance of judicial articulation of the reasoning behind FIR registration orders.

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## 11. SINDH HIGH COURT

Umar Farooq son of Khan Bahadur vs. The State  
Criminal Appeal No. 654 of 2024

**Present:** Mr. Justice Khalid Hussain Shahani

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY4NzMvY2Ztcy1kYzgZ>  
*Sindh High Court Citation (2025 SHC KHI 1543)*

**Facts:** The appellant Umar Farooq was convicted by the learned Xth Additional Sessions Judge Karachi West under Section 376 sub-section 3 of the Pakistan Penal Code for repeatedly raping a minor girl Zoha aged thirteen or fourteen years. Zoha and her younger sister Haya had been living in the custody of the appellant and his wife Saeeda for approximately three years as the couple had no children. Two months prior to the FIR the appellant returned the girls to their maternal uncle Gul Muhammad. Fifteen days thereafter Zoha complained of abdominal pain and disclosed to her sister-in-law that the appellant had committed rape upon her on the second and third day of Eid-ul-Adha during the absence of his wife and had threatened to kill her younger sister if she revealed the incidents. The FIR was registered with a delay of sixty-eight days under Section 376 PPC. The victim was medically examined and her hymen was found torn in the two to five o'clock position with the doctor opining that she had been subjected to sexual intercourse. No semen was detected. The victim gave her statement under Section 164 CrPC and supported the prosecution case during trial. The appellant denied the charge and took the plea of false implication due to a property dispute and produced his wife in defence. The trial court found the prosecution evidence trustworthy and sentenced the appellant to rigorous life imprisonment. The appellant filed an appeal before the High Court of Sindh.

**Issue:** Whether the conviction of the appellant for repeated rape under Section 376 sub-section 3 PPC can be sustained in light of the delay in lodging the FIR, absence of semen in forensic evidence, and the argument of alleged family dispute causing false implication?

**Rule:** In criminal law especially in cases of rape the testimony of the victim is sufficient to sustain conviction if found to be reliable trustworthy and confidence-inspiring. Courts

have consistently held that corroboration through medical or forensic evidence is desirable but not essential and lack of semen or physical injury does not disprove rape. Delay in lodging the FIR can be excused where justified by fear trauma or coercion especially in cases involving minor victims. The law does not require use of technical terms by child victims and courts are to assess evidence in light of trauma-informed principles and the socio-cultural context.

**Application:** The High Court held that the minor victim had provided a consistent and credible account of the incidents during her statement under Section 164 CrPC and examination before the trial court. The allegations were specific and detailed with the victim identifying the time the occasion and the threats given. The explanation for delay in FIR was found to be reasonable given the fear and coercive control exercised by the appellant. The absence of seminal fluid was not held fatal to the prosecution's case as the medical officer confirmed hymenal injury and opined that the victim had been subjected to sexual intercourse. The court noted that rape is established by proof of penetration not ejaculation and the forensic report did not negate penetration. The defence plea of false implication due to property dispute was not substantiated by any documentary evidence and the testimony of the appellant's wife was treated as a self-serving statement. The court observed that minor discrepancies or use of non-technical language such as *badtamizi* by a child victim cannot be used to discard otherwise reliable testimony. The trial court had rightly concluded that the prosecution had proved its case beyond reasonable doubt.

**Conclusion:** The High Court dismissed the appeal and upheld the conviction and sentence awarded to the appellant under Section 376 sub-section 3 PPC. The court held that the minor victim's testimony was consistent reliable and corroborated by medical findings. The delay in FIR was justified and the absence of semen was not material in light of other evidence. This forms the ratio decidendi of the judgment. The court's observations regarding child witness assessment trauma-informed interpretation and non-technical language used by victims constitute the obiter dicta of the judgment.

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## 12. SINDH HIGH COURT

Muhammad Ali son of Hameed vs. The State  
Criminal Appeal No. 304 of 2025

**Present:** Mr. Justice Khalid Hussain Shahani

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY4MTQ5Y2Ztcy1kYzgZ>

*Sindh High Court Citation (2025 SHC KHI 1553)*

**Facts:** Muhammad Ali, son of Hameed, was convicted by the VIIIth Additional Sessions Judge, Malir, Karachi, in Sessions Case No. 1650/2021 arising from FIR No. 12/2021 registered at Police Station Sharafi Goth for offences under Sections 392, 397, 109, and 34 PPC. He was sentenced to three years' rigorous imprisonment under Section 392 PPC with a fine of Rs. 50,000/-, or in default, one month of simple imprisonment. The incident pertained to a street robbery in which the complainant and his wife were allegedly robbed at gunpoint of cash, gold jewelry, and other items by three armed men. The trial court acquitted three co-accused but convicted Muhammad Ali on the basis of in-court identification and an alleged recovery of Rs. 35,000 from his possession. The appeal challenged the legality of the conviction, citing flawed identification, non-production of recovered property, procedural irregularities, and discriminatory treatment vis-à-vis co-accused.

**Issue:** Whether the conviction of Muhammad Ali under Section 392 PPC was sustainable in light of flawed identification, lack of substantive recovery, and procedural lapses in trial, particularly when co-accused were acquitted on the same evidentiary record?

**Rule:** In criminal law, the prosecution must prove its case beyond a reasonable doubt. A test identification parade is essential where the accused is unknown prior to arrest. Non-production of case property, failure to conduct judicial identification, and inconsistent treatment among co-accused violate settled principles of criminal jurisprudence. Article 10-A of the Constitution ensures the right to fair trial, and any trial lacking legal representation or proper adjudication violates this right. The *benefit of doubt* must be extended if even a single material circumstance raises reasonable doubt — as held in *Muhammad Mansha v. The State* (2018 SCMR 772), *Wazir Muhammad v. The State* (1992 SCMR 1134), and *Shamoon alias Shamma v. The State* (1995 SCMR

1377).

**Application:** The High Court found that the alleged recovery of Rs. 35,000 was not proved, as the amount was never exhibited or produced in court, nor was it linked to the complainant. Furthermore, the recovery was made without independent witnesses in violation of Section 103 CrPC. The identification of the appellant was first made in court without prior judicial identification proceedings, which is not reliable as per settled law. The FIR and statements under Section 161 CrPC lacked any prior description of the accused. Moreover, the trial proceedings suffered from serious procedural irregularities — including the absence of clear legal representation and lack of finding on one of the co-accused, in violation of Section 367 CrPC. While the appellant was convicted, his co-accused were acquitted on the same evidence, and the trial court failed to explain this differential treatment, which is contrary to the rulings in *2016 SCMR 274* and *2019 SCMR 64*.

**Conclusion:** The High Court allowed the appeal, holding that the prosecution failed to prove its case beyond reasonable doubt. The conviction was set aside, and Muhammad Ali was acquitted. The ratio decidendi of the judgment is that in the absence of judicial identification, non-production of case property, and procedural irregularities affecting fair trial rights, conviction cannot be sustained. The Court reiterated that the benefit of doubt is a right, not a concession. The comments regarding Article 10-A and the lack of clear findings on co-accused constitute obiter dicta, reinforcing the importance of procedural fairness.

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### 13. SINDH HIGH COURT

Muhammad Adil son of Muhammad Haroon vs. The State  
Criminal Bail Application No.1079 of 2025

**Present:** Mr. Justice Khalid Hussain Shahani

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY3MDUwY2Ztcv1kYzgZ>  
*Sindh High Court Citation (2025 SHC KHI 1484)*

**Facts:** Muhammad Adil, the applicant, is seeking post-arrest bail in a criminal case registered at Police Station Nazimabad, Karachi, under Sections 420 (cheating), 468 (forgery for



purpose of cheating), 471 (using forged documents), and 34 (common intention) of the Pakistan Penal Code (PPC). The complainant, Dr. Muhammad Shoaib Khan, entered into an agreement in June 2023 with Muhammad Adil and co-accused for the purchase of a plot in Federal B Area, Karachi, paying Rs. 14 million partly by cash and cheque, even selling his vehicle to fund the purchase. The complainant alleges that the applicant and co-accused handed over forged documents in the name of one Abdul Ejaz, a supposed seller without legal title, and failed to register the sale despite repeated demands. The accused had earlier obtained pre-arrest bail subject to court undertakings to transfer the property, but these were violated, including dishonoring post-dated cheques. The applicant absconded, was declared a proclaimed offender, and faced multiple dismissed bail applications.

**Issue:** Whether the applicant, Muhammad Adil, is entitled to post-arrest bail in the case involving allegations of fraud, forgery, cheating, and breach of judicial undertakings under Sections 420, 468, 471, and 34 PPC?

**Rule:** Under Pakistani law, bail is a discretionary relief granted unless the accused's conduct shows abuse of process, violation of court orders, involvement in serious economic crimes, or risk of absconding. The Supreme Court has consistently held that persons involved in organized fraud, submission of forged documents, or who violate bail undertakings are not entitled to bail (see PLD 2007 SC 539; 2015 SCMR 1716). Section 497 Cr.P.C. requires the Court to consider the nature and gravity of the offense, the accused's conduct, evidence, and possibility of misuse of bail.

**Application:** The applicant admitted liability and receipt of money via written undertakings during earlier bail proceedings, acknowledging an intermediary and material role in the transaction. The alleged seller had no legal title, confirmed by KDA, and the documents provided by the applicant were forged. The applicant deliberately breached solemn court undertakings, absconded, and misused the concession of bail. The dishonoring of post-dated cheques further supports the claim of fraud. The applicant's conduct demonstrates a calculated pattern of deceit and obstruction of justice. This is not a mere civil dispute but a case of structured criminality involving white-collar crime. The plea that the matter is documentary and civil in nature fails because the documents themselves are forged and the offense implicates penal liability under the

relevant PPC sections. Given the history of the applicant's non-compliance and absconding, granting bail would likely result in further misuse and jeopardize the trial.

**Conclusion:** The bail application is dismissed as the applicant has been shown to be involved in serious economic fraud with forged documents and has violated court orders. The Court held that the applicant is disentitled to bail at this stage. This is the ratio decidendi of the judgment. The observations about the gravity of offenses and judicial misuse form the obiter dicta.

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#### **14. SINDH HIGH COURT**

Musawer Ahmed son of Israr Ahmed VS The State another Criminal Miscellaneous Application No. 304 of 2025

**Present:** Mr. Justice Khalid Hussain Shahani

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjewNDg3Y2Ztcy1kYzgZ>

*Sindh High Court Citation (2025 SHC KHI 1650)*

**Facts:** Musawer Ahmed, the applicant, challenged an order dated 21.03.2025 passed by Judicial Magistrate-V, Karachi South. The case originated from FIR No. 555/2024 (PS Darakhshan), where the deceased Zain Abbasi allegedly died due to the administration of intoxicating substances by the accused. The IO submitted a final challan under Section 319/34 PPC, but the District Public Prosecutor (DPP), relying on forensic reports and evidence, advised application of Section 302/34 PPC along with Sections 9 and 16 of the CNSA, 1997. The Magistrate took cognizance under these graver offences and referred the case to the Sessions Court. The applicant contested the Magistrate's jurisdiction to alter the offences in a positive police report.

**Issue:** Whether the Magistrate acted lawfully in modifying the offences proposed in the police report under Section 173 Cr.P.C., particularly by including Sections 302/34 PPC and Sections 9 and 16 of the CNSA, 1997, despite the absence of recovery or possession of narcotics.

**Rule:** Section 173 Cr.P.C. requires the police to submit a final report which is scrutinized by the Prosecutor under Section 9 of the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009.

1. Section 302/34 PPC deals with intentional murder with common intention.
2. Section 9 of CNSA, 1997 penalizes possession or trafficking of narcotics.
3. Section 16 of CNSA, 1997 penalizes organized drug crimes including financing and harboring.
4. As held in *Said Jalal v. The State* (1972 SCMR 516) and *Habib v. The State* (1983 SCMR 370), when a report recommends trial, the Magistrate must transmit the case or issue process; they cannot disregard prima facie evidence.
5. However, the Magistrate's powers at cognizance stage include judicial assessment, especially if the original challan contains legal inconsistencies.

**Analysis:** The Court observed that the IO's proposal of Section 319 PPC (Qatl-i-Khata) was inconsistent with Section 34 PPC (common intention), since accidental homicide cannot occur with shared intent. The DPP's scrutiny note, supported by forensic evidence (methamphetamine and cannabis presence), suggested a premeditated act potentially falling under Section 302/34 PPC. The Magistrate, applying judicial mind, rightly relied on these materials to alter the sections and take cognizance under the more serious offences.

However, as to the inclusion of **Sections 9 and 16 of the CNSA**, the Court held that no recovery of narcotics from the accused, nor any evidence of possession or trafficking, was presented. The mere presence of drugs in the deceased's body does not, per se, establish constructive or actual possession. Hence, the CNSA sections were inapplicable as they require proof of possession or trafficking, not just consequence (death) of drug use. The reliance on Section 16 (related to organized drug crimes) was held wholly misplaced as no such activity was proven.

The precedents cited by the applicant regarding limitation on Magistrate's powers were held distinguishable, as in this case, the Magistrate did not reject a positive

report but corrected an evident misapplication of law based on the record and the Prosecutor's expert opinion, which he was mandated to consider under the Prosecutors Ordinance.

**Conclusion:** The Court **partially allowed** the applicant's challenge. It **set aside** the Magistrate's inclusion of **Sections 9 and 16 of the CNSA, 1997**, holding that such invocation was not legally tenable due to lack of recovery or evidence of possession/trafficking. However, the Court **upheld** the Magistrate's order to the extent of taking cognizance under **Section 302/34 PPC**, ruling that it was supported by material on record and a legitimate judicial exercise of power.

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## 15. SINDH HIGH COURT

Arbab Ali Shaikh v/s. The State  
Cr. Bail Application No.S-44 of 2025

**Present:** **Mr Justice Nisar Ahmed Bhanbhro**

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY4Nzc2Y2Ztcv1kYzgZ>

*Sindh High Court Citation (2025 SHC LAR 1547)*

**Facts:** The facts as unfolded in the F.I.R. are that Sajid Ali, cousin of complainant was standing near Qutub Marriage Hall; when at about 06:00 p.m. in the evening accused Arbab Ali came there and by force of pistol took him into the lands and committed act of sodomy; complainant appeared at the police station and recorded F.I.R. on the same date.

**Issue:** Whether the applicant, Arbab Ali Shaikh, accused of committing sodomy on a minor under Sections 376(3), 377, and 506/2 PPC, is entitled to post-arrest bail despite the forensic evidence linking him to the crime and the serious nature of the offence against a minor.

**Rule:** Under Pakistani law, bail is generally not granted in heinous offences, especially sexual offences against minors, when the prosecution has established a prima facie case supported by medical and forensic evidence. The availability of lesser

punishment options does not compel bail in such cases.

**Application:** The victim, a minor aged about 14 years and the sole eyewitness, promptly lodged the FIR. Forensic evidence matched the accused's semen to stains on the victim's clothing, and the medical examination corroborated the prosecution's case. The accused's status as a police constable aggravates the misconduct. Defence claims of false implication and previous acquittal were not persuasive. Crucially, while the offence carries a lesser alternative punishment of two years, the court held that the availability of a lesser punishment does not create a right to bail in heinous offences involving minors. This principle safeguards the dignity and protection of minors and prevents misuse of the bail process in serious crimes.

**Conclusion:** The Court concluded that the offence as alleged no doubt carries alternative punishment, whereas the lesser punishment is two years, but in such heinous nature offences the bail on the ground of alternative punishment cannot be granted. The Court noted that there appears no ground of false involvement of the accused with the commission of crime and the material available on record prima facie connects the accused with the commission of offence. Hence, the bail application was dismissed by the Court.

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## 16. SINDH HIGH COURT

Mst. Wajiha Fatima & another VS Syed Badar Abbas Jafri & others  
Constitution Petition No. S-1168 of 2024

**Present:** **Mr. Justice Muhammad Jaffer Raza**

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY2MTI3Y2Ztcy1kYzgZ>

*Sindh High Court Citation 2025 SHC KHI 1325*

**Facts:** Respondent No.1 filed an application under Section 25 of the Guardians and Wards Act, 1890, seeking permanent custody of a minor girl. During the pendency of this application, the Petitioner, who is the biological mother of the minor, contracted a second marriage. The Respondent contended that the minor was within the prohibited degree of relationship with the Petitioner's new husband. Consequently, the Family Court granted custody of the minor to the Respondent. The Petitioner challenged this

order through a Family Appeal, which was dismissed, leading to the filing of the present constitutional petition.

**Issue:** Whether the second marriage of the mother automatically disentitle her from the custody of the minor child?

**Rule:** The law firmly establishes that the welfare of the minor child is the paramount consideration in custody matters. While traditional Muhammadan Law, as stated in paragraphs 352 and 354 of D.F. Mulla's Principles of Muhammadan Law, suggests that a mother's right of custody may be forfeited upon remarriage, particularly if the new husband falls outside the prohibited degrees, this rule is not absolute. The Supreme Court of Pakistan has consistently held that the mere fact of a mother's remarriage does not ipso facto disentitle her from custody if it is in the best interest and welfare of the child. Relevant precedents include *Asjad Ullah v. Mst. Asia Bano* (Civil Petition No. 3920 of 2024), *Mehmood Akhtar v. District Judge, Attock* (2004 SCMR 1839), *Shaista Habib v. Muhammad Arif Habib* (2024 SCMR 629), and *Raja Muhammad Owais v. Mst. Nazia Jabeen* (2022 SCMR 2123).

**Application:** In the instant case, the Court observed that the Petitioner's second marriage does not automatically disentitle her from custody of the minor, a three-year-old girl. The Court found that the minor's welfare is best served by remaining with her biological mother. The Petitioner's new husband and family have accepted the minor, and the minor's temporary residence with the maternal grandmother was only during the Petitioner's wedding ceremony. The courts below erred by focusing on the Petitioner's remarriage rather than prioritizing the child's welfare. The Court also recognized the damaging effect of the misconception that a mother's remarriage should be a decisive factor in custody decisions, noting this myth often results in unfair control and subjugation of women.

**Conclusion:** The constitutional petition was allowed, setting aside the impugned orders that had granted custody to the Respondent. Custody was restored to the Petitioner. This judgment underscores the legal principle that the welfare and best interests of the child must prevail above all else in custody disputes. The ruling aligns with the binding ratio decidendi of the Supreme Court that a mother's remarriage, in itself, does not deprive her of the right to custody if it is conducive to the child's welfare. The Court's observations also serve to dispel obiter dicta and societal

**17. SINDH HIGH COURT**

Mr. Abdul Haleem Siddiqui VS Sidra Ali & others  
Constitution Petition No. S-1407 of 2024

**Present:** Hon'ble Mr. Justice Muhammad Jaffer Raza

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjY3Njc4Y2Ztcy1kYzgZ>

**Facts:** The petitioner, Mr. Abdul Haleem Siddiqui, challenged the execution proceedings and orders passed against him, including the issuance of warrants and attachment of his property, arising from a family decree dated 13.03.2021 for the maintenance of a minor. The decree was originally against the petitioner's deceased son, who died on 18.11.2023. Respondent No.1 filed an execution application against the son and later sought execution against the petitioner, who acted as attorney for his deceased son. The petitioner contended he was not the judgment debtor, and execution against him was unlawful. Respondents argued that the petitioner, as the grandfather and attorney, could be held liable to satisfy the decree.

**Issue:** Whether a maintenance decree passed against the father (the petitioner's deceased son) can be executed against the grandfather (the petitioner), who was not a party to the original suit and judgment?

**Rule:** According to Bashir Ahmed v. Addl. District Judge, Hafizabad (PLD 2024 SC 67), under Islamic law and Pakistani jurisprudence, the grandfather's obligation to maintain a grandchild arises only if (i) the father is financially incapable, and (ii) the grandfather is financially able. Execution of a maintenance decree passed against the father cannot be enforced against the grandfather unless a separate maintenance suit is filed against the grandfather and proved accordingly. Execution proceedings cannot determine such factual conditions nor extend liability beyond the original judgment debtor.

**Application:** In the present case, the petitioner was not a party to the original maintenance suit nor the judgment debtor. The courts below improperly allowed execution against the petitioner, surpassing the scope of the decree. The petitioner’s defense that he lacked financial resources and the existence of another wife and children of the deceased son supported the rule that the grandfather’s liability must be separately determined through due process. Execution courts cannot modify the decree or expand liability without proper suit and evidence.

**Conclusion:** The High Court held that the execution of the maintenance decree against the petitioner grandfather was not legally permissible. The petitioner could not be held liable without a separate maintenance claim adjudicated on the established criteria. The impugned judgment and decree executing against the petitioner were set aside. The Respondents were directed to institute a fresh maintenance suit against the petitioner if desired, which should be decided expeditiously. The decree against the deceased son remains a debt against his estate to be executed accordingly.

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## SELECTED ARTICLES

### “Reforming the Sindh Rented Premises Ordinance, 1979: A Comparative Analysis with Punjab’s Modern Tenancy Law”

*By: Waseem Ahmed (Additional Registrar Research) High Court of Sindh*

## INTRODUCTION

The Sindh Rented Premises Ordinance, 1979 (SRPO 1979) continues to govern landlord-tenant relations across urban Sindh. While this law was progressive in its time, the evolution of urban tenancy, increasing litigation, and a growing need for procedural efficiency now expose its limitations. In contrast, the Punjab Rented Premises Act, 2009 (PRPA 2009) embodies a more modern approach, ensuring timely rent recovery, procedural simplicity, and access to dedicated forums. This article comparatively analyses the two laws and proposes reforms that Sindh may adopt to bring its tenancy regime into the modern era.

## COMPARATIVE FRAMEWORK

### 1. Institutional Structure

The SRPO operates through Controllers—essentially Senior Civil Judges acting with rent jurisdiction. Appeals lie before the District Judges. This traditional structure lacks the specialization and speed required in high-volume tenancy disputes.



On the other hand, PRPA 2009 introduces dedicated Rent Tribunals and appoints Special Judges (Rent) to exercise exclusive jurisdiction over rent matters. This model professionalizes the adjudication process and introduces efficiency, with mandatory timelines such as a four-month limit for disposal of cases<sup>1</sup>.

## **2. Tenancy Documentation and Registration**

Under SRPO 1979, written agreements are to be attested but not mandatorily registered with a central authority, leading to informal tenancies and evidentiary disputes.

In contrast, PRPA 2009 establishes the office of the Rent Registrar, where all tenancy agreements must be submitted<sup>2</sup>. Non-compliance invites financial penalties and procedural disqualification for seeking relief before the Tribunal<sup>3</sup>. This ensures transparency and curtails the misuse of oral tenancies.

## **3. Eviction and Rent Recovery Mechanism**

While both statutes allow eviction for non-payment, unlawful subletting, or personal need, Punjab's Act significantly improves enforcement through an integrated rent recovery mechanism.

Under Section 24 of PRPA, a tenant who is granted leave to defend an eviction application must:

- i. Deposit all arrears of rent within a specified period.
- ii. Continue paying rent monthly during the pendency of the proceedings. Failure to comply results in immediate eviction without trial—a powerful tool to deter default.

Additionally, Section 20 provides relief where a landlord refuses to accept rent. The tenant may deposit it with the Rent Tribunal, which notifies the landlord and permits withdrawal. This protects honest tenants and forms a judicial record of rent payments.

Importantly, Section 31 empowers the Tribunal to execute all final rent orders as civil court decrees, including recovery of arrears, compensation, and costs, making rent recovery streamlined and enforceable within the same forum.

In contrast, SRPO 1979 lacks an express mechanism for securing rent recovery during litigation. While it allows for deposit under Section 16, its non-compliance results in only striking off the defense without a recovery mechanism.

## **4. Grounds for Eviction**

Both laws include similar grounds: non-payment, subletting, change of use, personal need, nuisance, and reconstruction. However, PRPA introduces a new and essential ground—expiry of tenancy term. SRPO 1979 is silent on this aspect, making it harder for landlords to reclaim possession after a fixed-term lease ends unless additional grounds are proved.

## **5. Repair, Maintenance, and Utilities**

Both laws empower tenants to carry out essential repairs and recover the amount from rent. Yet Punjab's Act is more detailed—it allows tenants to approach the Tribunal directly if the landlord fails to maintain the property or pay property taxes. In such cases, tenants may pay dues and deduct the

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<sup>1</sup> Section 27

<sup>2</sup> Sections 5–6-17

<sup>3</sup> Section 9

same from rent<sup>4</sup>.

## **6. Procedure and Evidence**

PRPA excludes the Code of Civil Procedure and the Qanun-e-Shahadat Order<sup>5</sup>, unless expressly mentioned. This ensures faster adjudication, reliance on affidavit evidence, and limited adjournments. In contrast, SRPO 1979 adopts a hybrid approach. While affidavit evidence is accepted, proceedings are still rooted in CPC norms, lacking clear timelines or limits on procedural delays.

## **7. Execution of Orders**

While SRPO authorizes the Controller to execute orders, their powers are restricted. Punjab's Rent Tribunal is empowered to execute any final order as a civil decree with full coercive powers, including attachment and recovery<sup>6</sup>.

## **NEED FOR REFORM IN SINDH**

The analysis highlights that Sindh's law, though functional, is outdated and procedurally weak. The absence of a streamlined rent recovery system delays due to CPC-based procedure, and the lack of a specialized forum contribute to judicial backlog and landlord-tenant friction.

Punjab, on the other hand, offers a modern, enforceable, and time-bound tenancy regime. By requiring the deposit of rent during litigation and empowering Tribunals with civil court execution powers, it creates both deterrence against frivolous litigation and a path for effective enforcement.

## **RECOMMENDATIONS FOR LEGISLATIVE REFORM**

To modernize the Sindh Rented Premises Ordinance, the following reforms are essential:

1. Establish Rent Tribunals with exclusive jurisdiction over tenancy matters.
2. Create the post of Rent Registrar and mandate registration of tenancy agreements.
3. Introduce a structured rent recovery mechanism.
4. Recognize the expiration of the tenancy term as a ground for eviction.
5. Exclude the CPC and QSO from summary proceedings.
6. Limit adjournments.
7. Strengthen execution powers by enabling Tribunals to enforce orders as decrees.

## **Conclusion**

The Punjab Rented Premises Act, 2009 is a model of modern tenancy legislation—comprehensive, efficient, and just. Its integrated rent recovery framework exemplifies how laws can balance landlord rights and tenant protections without procedural entanglement. Sindh must now rise to the occasion

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<sup>4</sup> Section 14

<sup>5</sup> Section 34

<sup>6</sup> Section 31

and reform its outdated ordinance to ensure that rent disputes are resolved fairly, swiftly, and in alignment with constitutional principles of access to justice and the rule of law.

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