



# HIGH COURT OF SINDH

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## Case Law Review



## Fortnightly Bench Update



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## FORTNIGHTLY BENCH UPDATE

(16-04-2025 to 30-04-2025)

An Overview of Recent Judgments of the Supreme Court of Pakistan, Sindh High Court, Lahore High Court, Peshawar High Court, and Balochistan 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**  
**The Chief Commissioner RTO Bahawalpur v. Shaheen Yousaf,**

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

**Source:** [https://www.supremecourt.gov.pk/downloads\\_judgements/c.p. 88\\_2023\\_16042025.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p. 88_2023_16042025.pdf)

**Facts:** The respondent's husband, an employee of the Income Tax Department, died in service on 14.02.2006, following which she was appointed as a Lower Division Clerk (LDC) under the Prime Minister's Assistance Package on a two-year contract starting 26.05.2010, with subsequent extensions. However, her services were terminated on 04.01.2016 by the FBR on the basis of an Office Memorandum dated 15.12.2015, which declared widows ineligible for continued compassionate employment upon remarriage. She challenged the termination before the Lahore High Court, which directed the FBR to treat her petition as a representation. After her representation was rejected on 11.05.2017, she filed a second writ petition, which was allowed on 21.12.2022, resulting in her reinstatement. The department then filed this petition seeking leave to appeal against the High Court's judgment.

**Issue:** Whether the termination of compassionate employment granted to a widow under the **Prime Minister's Assistance Package** on the ground of her **remarriage** is constitutionally valid and legally sustainable?

**Rule:** Prime Minister's Assistance Package (initially notified in 2006) provided employment and financial benefits to families of deceased government employees.

1. Office Memorandum dated 15.12.2015 stated that widows who remarry shall become ineligible for continued compassionate employment.
2. Article 25(1) & (2) of the Constitution prohibits discrimination and ensures equality before law regardless of sex.
3. Article 27 prohibits discrimination in public service appointments.
4. Article 14 protects dignity and livelihood.
5. International instruments like CEDAW, ICCPR, and ICESCR, to which Pakistan is a signatory, guarantee non-discrimination and economic participation for women.

6. Judgment in *Zahida Parveen v. Government of KP* reaffirmed the unconstitutionality of denying employment based on marital status.
7. The O.M. dated 15.12.2015 was later withdrawn via O.M. dated 07.11.2024.

**Application:** The respondent, widow of an Income Tax Department employee, was appointed on a two-year contract under the Prime Minister's Assistance Package in 2010. After repeated extensions, her services were terminated in 2016 based on the O.M. of 2015, due to her remarriage.

The Supreme Court held that the said O.M.:

- Discriminated against women by conditioning continued employment on their remarital status, while imposing no such bar on widowers.
- Violated the right to equality, dignity, and non-discrimination guaranteed under Articles 14, 25, and 27.
- Reflected a patriarchal mindset, treating widows as dependent and undeserving of financial independence post-remarriage.
- Was inherently arbitrary and unconstitutional, failing the test of reasonable classification.
- Was inconsistent with international human rights standards.

The Court emphasized that compassionate employment is not a charity but a legal entitlement rooted in fundamental rights. Moreover, societal stigma attached to widowhood and remarriage must not inform state policy.

It also clarified that the *General Post Office v. Muhammad Jalal* (PLD 2024 SC 1276) case, which struck down the PM Assistance Package, operates prospectively, and hence has no application to appointments already made under the previous policy.

**Conclusion:** The Supreme Court dismissed the petition and refused leave to appeal, upholding the Lahore High Court's judgment reinstating the respondent.

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### **SINDH HIGH COURT**

2. **Sindh High Court**  
**M/s. New Era Fabric, Karachi vs Commissioner Inland Revenue Zone-I,**  
**CTO, Kar. & Ors**  
**Spl: Sales Tax Ref: A. 160/2024**



**Present:** Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Mohammad Abdur Rahman

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU2MTkwY2Ztcy1kYzgZ>

**Facts:** The Applicant is challenging an order passed by the Appellate Tribunal, Inland Revenue, Karachi, in STA No. 855/KB/2023, which imposed a penalty under Section 33(1) of the Sales Tax Act, 1990 for not filing sales tax returns. The Applicant argues that the penalty was unjustified because the relevant provisions were not properly applied. Specifically, the Show Cause Notice was issued under Section 11(1) of the Sales Tax Act, but penalty under Section 33(1) is only applicable for violations under Section 26, and no separate notice was issued under Section 26. Furthermore, the Applicant contends that there was no mens rea (guilty mind) in failing to file the returns, as there was no business activity during the period in question, and no sales tax was due.

**Issue:** The issue is whether the penalty under Section 33(1) of the Sales Tax Act, 1990 was properly imposed when the Show Cause Notice was issued under Section 11(1) (not Section 26) and whether mens rea needs to be established for imposing such a penalty.

**Rule:** Under Section 33(1) of the Sales Tax Act, penalties can only be imposed for violations under Section 26 of the Act. For imposition of penalties in such cases, there must be an element of mens rea, or a guilty mind, especially where there is no short levy of sales tax. The jurisprudence established in prior cases, such as *Hardcastle Waud (Pakistan) Ltd.* and *Byco Petroleum Pakistan Ltd.*, states that a penalty cannot be imposed without proving mens rea unless specifically stated in the statute. Additionally, penalties must be proportionate to the gravity of the offence.

**Application:** The Court observed that the Show Cause Notice was issued under Section 11(1) but referenced violations under Section 26, which made the imposition of a penalty under Section 33(1) improper. The Court also noted that there was no short levy of sales tax because no business was conducted during the period in question. The lack of mens rea, coupled with the absence of any tax liability, meant that the imposition of the maximum penalty was not justified.

**Conclusion:** The Court ruled in favor of the Applicant, stating that the penalty under Section 33(1) could not be imposed because the Show Cause Notice was not issued under the correct provision and there was no mens rea. The Court set aside the impugned orders of the Appellate Tribunal and allowed the Reference Application, thereby ruling that the penalty was improperly imposed.

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**3. Sindh High Court**  
**Mrs. Viqar Unisa Begum V. The Province of Sindh & others**  
**C.P. No. D-4037 of 2023**

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

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU2MTAwY2Ztcy1kYzgZ>

**Facts:** The petitioner is the owner of property no. 159, Block 7/8 C.P. & Berar C.H. Society, Karachi. She claims that the neighboring Plot No. 158, a residential plot, has been unlawfully converted into a commercial plot, contrary to the zoning laws. The petitioner learned in 2023 that construction for a residential-cum-commercial project was being carried out on Plot No. 158. She filed complaints with various authorities, including the Sindh Building Control Authority (SBCA), but the construction continued. The petitioner contends that the conversion is illegal and violates her fundamental rights under Articles 2-A, 3, 4, 5, 9, 10-A, 14, 25, 37, and 38 of the Constitution.

**Issue:**

1. Whether the petitioner holds locus standi to file this petition?
2. What is the commercial status of Plot No. 158?
3. Whether the petition is barred by the doctrine of laches due to the delay in challenging the conversion?

**Rule:**

1. Locus Standi: The person seeking judicial intervention must demonstrate that they are aggrieved or have a substantial interest in the matter.
2. Commercialization of Property: The change of land use, from residential to commercial, requires proper approval and must comply with the regulations in force.
3. Doctrine of Laches: A party that delays in asserting their rights without justifiable cause may lose the right to enforce those rights, particularly in constitutional petitions.

**Application:** The petitioner has claimed that she has the right to file the petition as the owner of the neighboring property. However, the Court found inconsistencies in her claim of public interest litigation and personal interest. The Court noted the contradictions in her petition and the belated approach after a 50-year delay in raising the issue. The Court examined the status of Plot No. 158, finding that it

was legally converted from residential to commercial in 1971 by the Karachi Development Authority (KDA). The SBICA supported the stance that the plot had been classified as commercial, and the conversion had been properly authorized at the time. The Court invoked the doctrine of laches, noting that the petitioner had waited over 50 years before challenging the conversion, without providing a reasonable explanation for the delay.

**Conclusion:** The Court dismissed the petition on the grounds of lack of locus standi and the doctrine of laches. The petitioner failed to demonstrate sufficient legal interest in the case, and the claim was not filed within a reasonable time. The Court observed that the plot's conversion had been lawfully completed in 1971, and the petitioner could not challenge it after such a prolonged delay. The petition was dismissed with costs of Rs. 100,000/- to be paid to the current owners of the plot.

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**4. Sindh High Court**  
**Raees Muhammad Khan v Federation of Pakistan & others**  
**Constitutional Petition No. D-1524 of 2016**

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

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU0MTg4Y2Ztcy1kYzgZ>

**Facts** The Petitioner, Raees Muhammad Khan, a former Assistant Vice President at Zarai Taraqati Bank Limited (ZTBL), challenged his dismissal from service and the imposition of a recovery order for 50% of outstanding fraudulent loans sanctioned under his supervision. He highlighted his 27-year unblemished service record and claimed that he acted in good faith, relying on the Mobile Credit Officer (MCO) and Credit Administration Department (CAD) for verification of security documents. The Petitioner asserted that the inquiry process was flawed, biased, and denied him a fair hearing. He sought reinstatement with full back benefits, challenging the legality of the dismissal and the recovery order.

**Issue** Whether the dismissal of the Petitioner coupled with the order of recovery, based on the findings of an allegedly flawed departmental inquiry, was lawful, and whether, considering the inquiry's deficiencies and the Petitioner's partial consent, the penalty could be converted to compulsory retirement?

**Rule** It is a settled principle that once an employer chooses to initiate a formal inquiry under its disciplinary regulations, it must strictly adhere to due process requirements, including proper framing of charges, recording of evidence under

oath, and affording the employee a full opportunity to cross-examine witnesses. Failure to comply with these mandatory procedural safeguards renders the inquiry proceedings defective and the resultant punishment vulnerable to judicial interference. Furthermore, imposing multiple punishments — such as dismissal and monetary recovery — for the same misconduct may contravene the principle against double jeopardy. In disciplinary jurisprudence, where an employee consents to or offers willingness for a lesser penalty, particularly in cases involving service termination disputes, courts may modify dismissal to compulsory retirement if the facts so justify. Reference in this regard is drawn from authoritative precedents such as *Pakistan Defense Housing Authority v. Lt. Col. Syed Jawaid Ahmed* (2013 SCMR 1707), *Muhammad Sharif Abbasi v. WAPDA* (2013 SCMR 903), and *Lahore Development Authority v. Muhammad Nadeem Kachloo* (2006 SCMR 434).

**Application** Applying these principles, the Court found substantial procedural lapses in the departmental inquiry against the Petitioner, including the absence of evidence recording and denial of cross-examination rights. Although the Inquiry Officer noted certain failures by the Petitioner, the responsibility for document verification primarily lay with the MCO, and the Petitioner's reliance on departmental processes was not without basis. Given the Petitioner's consent to accept a lesser penalty, the Court, following its approach in a co-employee's similar case (Ali Murad Brohi), deemed it appropriate to modify the punishment. The dismissal order was found disproportionate in the circumstances, and hence, was modified to compulsory retirement, thereby safeguarding the Petitioner's right to pension and retirement benefits without undermining the findings of misconduct.

**Conclusion** The High Court of Sindh allowed the Petition, set aside the dismissal order, and modified the penalty to compulsory retirement, directing the Bank to grant the Petitioner all benefits associated with compulsory retirement, along with back benefits, within three months.

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**5. Sindh High Court**  
**Abdul Razzaque Memon v National Bank of Pakistan & others**  
**CP. No. D-1979 of 2013**

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

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU5MzkwY2Ztcy1kYzgZ>

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| <b>Facts</b>       | <p>The Petitioner, Abdul Razzaque Memon, a qualified engineer, was offered employment as a Grade-III officer at the National Bank of Pakistan through a letter dated May 5, 1996. However, due to political developments and the dismissal of the government, he was prevented from joining. Meanwhile, his similarly qualified peers were appointed and promoted. Subsequently, Ordinance No. II of 2009 was enacted for reinstating dismissed employees, leading the Petitioner to approach the Court. Through a compromise recorded in Constitutional Petition D-106/2010, the Petitioner was allowed to join with effect from May 5, 1996. After resuming duty, he alleged that he was discriminated against by being posted to a remote location, denied medical leave, paid a lower salary than colleagues, and denied recognition of his prior government service for retirement and service benefits. He thus filed this petition seeking equal treatment, financial adjustments, and recognition of his continuous service.</p>   |
| <b>Issue</b>       | <p>Whether the Petitioner, under the compromise agreement and subsequent Court order, is entitled to have his prior service recognized for pension and pay fixation, and to be treated equally with his batchmates regarding seniority, promotions, and service benefits?</p>  |
| <b>Rule</b>        | <p>The binding effect of a court-approved compromise agreement requires strict compliance by the parties involved. As per the settled principle under Civil Service Rules and authoritative judgments such as 2021 SCMR 1546, Nafees Ahmad v. Government of Pakistan (2000 SCMR 1864), and other cited cases, when a civil servant's prior government service is properly relieved for joining another institution under a compromise endorsed by the Court, that service must be counted for pensionary and seniority benefits. The doctrine of estoppel prevents the employer from denying the agreed terms after benefiting from the compromise. Furthermore, Fundamental Rule 22-A and CSR Article 371-A(i) support continuity of service for pay fixation and pension purposes when service is transferred between public sector employers. Any violation of such a compromise, particularly when endorsed by a Court order, not only breaches contractual obligations but also amounts to disobedience of judicial directions, warranting judicial intervention to enforce compliance.</p> |
| <b>Application</b> | <p>Applying the above legal principles to the present case, the Court found that although the settlement reached earlier between the Petitioner and the Bank cannot now be reopened, its terms must be strictly enforced. The record clearly demonstrated that the Petitioner's prior service in the Labour Department was explicitly agreed to be carried forward for pension and other benefits. The Bank's refusal to acknowledge this service constituted a breach of the compromise agreement and the Court's order dated December 8, 2011. Additionally, the</p>   |

discrimination in salary fixation, seniority, and promotion prospects vis-à-vis his batchmates was unjustified, especially when the Petitioner's service record was satisfactory and without blemish. Thus, the Petitioner's grievances were found meritorious and warranted appropriate relief.

**Conclusion** The High Court of Sindh disposed of the petition by directing the National Bank of Pakistan to strictly implement the terms of the earlier Court order dated December 8, 2011. The Court ordered that the Petitioner's service from the Labour Department be treated as continuous for pension and pay fixation, that he be considered equally with his batchmates for seniority and promotion (subject to satisfactory service record), and that arrears for the intervening period be considered for payment.

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**6. Sindh High Court**  
**Saif ul Islam & others vs Federation of Pakistan & others**  
**Constitutional Petition No. D-1229 of 2025**

**Present:** Mr. Justice Muhammad Faisal Kamal Alam  
Mr. Justice Jawad Akbar Sarwana

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU5NTQyY2Ztcy1kYzgZ>

**Facts:** The case revolves around the termination of the petitioners, who were appointed on a contract basis as Entomologists (BPS-17). The controversy arose when their services were terminated through a notification dated 11.03.2025 on disciplinary grounds, allegedly for negligence in duty, and while criminal proceedings under FIR No. 40 of 2024 were pending against them, registered by the Federal Investigation Agency (FIA). The petitioners challenged this termination on the ground that it was not a case of termination simpliciter under Clause 11 of their contract, which allowed termination on one month's notice by either party. Instead, the department cited disciplinary misconduct as the basis for their removal, without issuing any show cause notice or conducting formal disciplinary proceedings. This, according to the petitioners, was in violation of Clauses 10 and 12 of their employment contracts, which expressly extended the applicability of Efficiency and Discipline Rules (as applicable to civil servants) to them. The petitioners contended that their termination on disciplinary grounds, without affording them the right to be heard, violated the principles of natural justice and could prejudice their future employability by attaching stigma to their service record. Hence, they approached the High Court under Article 199 of the Constitution, seeking to set aside the impugned notification and to be reinstated into service.

- Issue:** Whether the termination of the petitioners' services on disciplinary grounds, without issuance of a show cause notice or conducting disciplinary proceedings, was lawful under the terms of their contract and the applicable service rules?
- Rule:** The rule applicable was derived from Clauses 10, 11, 12, and 14 of the petitioners' employment contracts. Clause 11 allowed for termination simpliciter on one month's notice by either party without assigning any reason. However, Clauses 10 and 12 extended the application of the Efficiency and Disciplinary Rules (ordinarily applicable to civil servants) to the petitioners in case of disciplinary action, thus invoking the principles of natural justice, including the right to a show cause notice and a fair hearing. The court also relied on precedents including 2004 PLC (C.S.) 992 and 2009 PLC (C.S.) 245, which reiterated the principle that termination on disciplinary grounds must follow due process.
- Application:** Applying this rule, the court found that while the contract permitted termination simpliciter, the respondents chose to terminate the petitioners specifically on disciplinary grounds due to pending FIA cases. Therefore, the respondents were obligated to initiate formal disciplinary proceedings in line with Clauses 10 and 12, but they failed to do so. No show cause notice was issued, no inquiry was conducted, and no opportunity to be heard was given. This failure violated the petitioners' right to due process and natural justice, especially considering the stigma attached to a termination on disciplinary grounds, which could impair future employment opportunities.
- Conclusion:** In conclusion, the court partially accepted the petition. It set aside the impugned termination notification dated 11.03.2025 and reinstated the petitioners into service. However, the court allowed the respondents liberty to proceed afresh under the law. If they opt for termination simpliciter under Clause 11, then all service dues must be timely paid. The ratio decidendi is that any termination on disciplinary grounds must follow due process and comply with disciplinary rules; otherwise, it is legally void. The allowance to proceed afresh under applicable law constitutes obiter dicta, outlining procedural options without affecting the main outcome.
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**7. Sindh High Court**  
**Abdul Hussain Soomro v/s Province of Sindh and others**  
**CP No.D-468 of 2019**

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

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzNTgwY2Ztcy1kYzgZ>

|                     |  |
|---------------------|--|
| <b>Facts</b>        | The facts of the case are that the petitioner, whose father, Abdullah Soomro, was serving as a Beldar in the Agriculture Extension Department, passed away while in service on 01.06.2002. The petitioner applied for a job under the deceased quota on 01.04.2009, but the application was not processed, and the case remained pending for years. The respondents argued that the petitioner applied beyond the prescribed cut-off date, as the relevant rules were introduced in 2002, and the petitioner failed to apply within two years of the father's death. The petitioner, however, contended that he was unaware of the law and applied as soon as he became aware of the rules. The case was brought before the court after years of inaction, with the petitioner seeking a decision for employment under the deceased quota.   |
| <b>Issue</b>        | Whether the petitioner, who applied for a job under the deceased quota after the two-year cut-off period, is entitled to be considered for employment, despite the rules specifying a deadline, and whether the delay in processing his application violated his fundamental rights.   |
| <b>Rule</b>         | The relevant rules are Rules 10-A and 11-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, which allowed children of deceased civil servants to apply for jobs under the deceased quota within two years of the employee's death. However, the Supreme Court's ruling in General Post Office v. Muhammad Jalal (PLD 2024 SC 1276) declared the deceased quota rules discriminatory, but this judgment was prospective. Additionally, the Honorable Supreme Court of Pakistan in its decision dated 10.08.2016 passed in CPs No 482 – K and 503 – K of 2016 has held that those candidates under the above quota whose right of employment has already occurred and the clog of two years for making the application for employment under the deceased quota for children who have already applied for employment before making this rule, was done away with. |
| <b>Application:</b> | The Court observed that the Petitioner, who had applied for a job under the deceased quota after the death of his father in 2002, was unjustly delayed in receiving a decision on his application. The Respondents argued that the Petitioner had applied past the deadline set by the relevant rules, which were introduced after the death of his father. However, the Court held that the right to employment under the deceased quota arose when the rules were introduced, the petitioner had applied prior to that, and the delay in processing the Petitioner's application was attributable to the department's negligence. The Court relied on the observations of the Honorable Supreme Court of Pakistan made in CPs No 482 – K and 503 – K of 2016, which ruled that candidates whose right to employment under the deceased quota had already occurred were not bound by      |



the two-year application deadline, as the rule's restriction did not apply to those who had already applied before the rule was introduced. Citing the Supreme Court's judgment in **General Post Office, Islamabad v. Muhammad Jalal (PLD 2024 SC 1276)**, the Court emphasized that the rights of those who had already applied under the deceased quota prior to the Supreme Court's ruling remained intact. The Court further noted that any denial of the Petitioner's right would constitute discrimination and violation of his constitutional rights under Articles 4, 5, 9, 25, and 27 of the Constitution, and thus ordered that his case be considered in light of the applicable rules within three months.

**Conclusion:** In conclusion, the Court ruled in favor of the Petitioner, directing the Respondents to reconsider his application for employment under the deceased quota, as his right to the job arose when the relevant rules were introduced. The Court emphasized that the delay in processing the application was due to the department's negligence, not the Petitioner's fault. Citing the Supreme Court's ruling in **Muhammad Jalal case**, the Court affirmed that rights under the deceased quota, once accrued, remain unaffected by later judgments, and any denial of the Petitioner's right would constitute a violation of his fundamental constitutional rights.

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**8. Sindh High Court**

**Kotri Roller Flour Mills, Applicants vs Bheru Mal, Respondent.  
Civil Revision Application No.159 of 2021**

**Present:** MUHAMMAD HASAN (AKBER), J.

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzNTY2Y2Ztcy1kYzgZ>

**Facts:** The case involves a dispute between Kotri Roller Flour Mills (the applicant) and Bheru Mal (the respondent) regarding the recovery of Rs.72,14,643 for wheat flour supplied. The applicant filed F.C. Suit No.45 of 2020 before the learned Senior Civil Judge-II at Kotri due to the respondent's alleged default in payments. The respondent, who works for gain at a shop opposite Soneri Bank, Badin Road, Matli, filed a written statement and an application under Order VII Rule 10 CPC, arguing that the Kotri court lacked territorial jurisdiction. The Senior Civil Judge-II at Kotri upheld the respondent's claim and returned the plaint to the applicant for presentation before the court with proper jurisdiction. The applicant challenged this order in Civil Miscellaneous Appeal No.03 of 2021, but the Additional District Judge-II, Jamshoro, confirmed the lower court's decision, leading the applicant to file the current Civil Revision Application.

**Issue:** The central issue is whether the Senior Civil Judge-II at Kotri had territorial jurisdiction to entertain and try F.C. Suit No.45 of 2020 filed by Kotri Roller Flour Mills (the applicant) against Bheru Mal (the respondent) for recovery of Rs. 72,14,643 due to an alleged default in payments for wheat flour, given that the respondent works for gain at a location outside the jurisdiction of Kotri.

**Rule:** The key legal principle here is Section 20 of the Civil Procedure Code (CPC), which determines the territorial jurisdiction where a suit may be instituted. Specifically, the suit should be filed:

1. Where the defendant resides, carries on business, or works for gain.
2. Where any part of the cause of action arises.

Section 20 CPC reads:

A suit must be instituted in a Court within whose jurisdiction the defendant resides, carries on business, or where any part of the cause of action arises.

**Application:** The applicant claims that part of the cause of action arose at Kotri, where the head office and mill are located, and where invoices for the sale of wheat flour to the respondent were issued.

The respondent, however, works at a shop in Matli, which is outside the jurisdiction of Kotri. The respondent argues that the Senior Civil Judge-II at Kotri does not have jurisdiction because the respondent's place of work is in Matli, and no part of the cause of action arose at Kotri.

In previous case law, the Court held that jurisdiction is determined by where the rights of the plaintiff are infringed or where the cause of action, wholly or in part, arises. Merely issuing invoices from the plaintiff's head office does not constitute a sufficient cause of action to establish jurisdiction.

**Conclusion:** The Court upheld the findings of the courts below, ruling that the Senior Civil Judge-II at Kotri lacked territorial jurisdiction. The case law cited by the applicant was found to be distinguishable. The Court further concluded that the revision application did not meet the criteria for interference under Section 115 CPC, as no jurisdictional error, material illegality, or arbitrary exercise of power was demonstrated. As a result, the revision application was dismissed, and the orders of both lower courts were upheld.

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**9. Sindh High Court**  
**Azhar Ali son of Abdul Rasheed vs. The State**  
**Criminal Bail Application No. 358 of 2025**

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

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzNDYyY2Ztcy1kYzgZ>

**Facts:** The applicant Azhar Ali sought post-arrest bail in a case registered under FIR No. 22 of 2025 for offences under Section 365-B of the Pakistan Penal Code read with Section 3 of the Prevention of Trafficking in Persons Act, 2018 at Police Station Gulshan-e-Iqbal, Karachi. It was alleged that the applicant had abducted Zehra Batool, a minor girl aged between 15 to 16 years, with the intent to seduce her for illicit intercourse. The complainant, Darya Batool, claimed that her daughter had left home to attend a Majlis but did not return. The applicant was suspected based on his previous interactions with the girl. The applicant, however, claimed that the girl voluntarily left her home and married him of her own free will. Copies of the free-will affidavit and Nikahnama were presented to substantiate the defense. The ossification test and documentary records established the age of the girl as below 16 years, and recovery was effected from the applicant's custody.

**Issues:** Whether the applicant Azhar Ali is entitled to post-arrest bail despite the alleged abductee's statements of consent and marriage when her minority is medically and officially established and whether the consent of a minor can constitute a valid defense against the offence charged under Section 365-B PPC?

**Rule:** The established rule of law is that in offences involving the abduction or kidnapping of minors, the consent of the minor is immaterial. Sections 361, 363, 365-B, and 366 of the Pakistan Penal Code criminalize the taking away of a minor from lawful guardianship regardless of the minor's consent. Numerous precedents including PLD 1964 Dacca 225, PLD 1962 W.P. Karachi 886, 2009 MLD 1350, and PLD 1972 Lahore 121 reaffirm that marriage or consent is not a valid defense where the girl is under the age of sixteen years. Under Section 497(II) Cr.P.C., bail may be granted only if the case calls for further inquiry which does not exist where the medical and official record conclusively proves the minority of the abductee.

**Analysis:** The record clearly shows that the abductee Zehra Batool was a minor based on the ossification report, NADRA records, and educational certificates, establishing her age between 15 and 16 years. The applicant's plea that the girl voluntarily accompanied him and entered into marriage cannot override the statutory protection afforded to minors under the law. The recovery of the girl from the applicant's custody strengthens the prosecution's version. Judicial precedents

consistently hold that in such cases the consent of the minor is irrelevant, and the act of taking her away constitutes the offence irrespective of her willingness. The free-will affidavit and Nikahnama submitted by the applicant also do not exonerate him at the bail stage given the established minority of the abductee. Case law including Abdul Hamid v. The State (PLD 1962 W.P. Karachi 886) and Alfat Bibi v. The State (PLD 1972 Lahore 121) has been relied upon to emphasize that even if a minor female agrees to marriage, the accused remains liable for the offence of kidnapping. The unreported constitutional petition cited by the defense was distinguished on factual and legal grounds as it did not deal with criminal liability under penal provisions.

**Conclusion:** In view of the undisputed minority of the abductee and the consistent legal position that consent of a minor is legally inconsequential in such offences, the applicant failed to establish a case of further inquiry under Section 497(II) Cr.P.C. Accordingly, the bail application was dismissed. The learned trial court was directed to conclude the trial preferably within ninety days. The observations made were held to be tentative and shall not prejudice the trial.

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**10. Sindh High Court**  
**Muhammad Siddique son of Munsif Khan vs. The State**  
**Criminal Revision Application No. 179 of 2022**

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

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU5ODI0Y2Ztcy1kYzgZ>

**Facts:** The Applicant Muhammad Siddique claimed to be the lawful allottee and occupant of Shop No 303 at Loco Colony Kala Pul Cantonment Karachi under a Licensing Agreement dated 12 December 2004. He alleged that Respondents No 2 and 3 forcibly dispossessed him from the shop without legal authority despite a civil court decree in his favor and pending execution proceedings. He filed a Direct Complaint under Section 3(2) of the Illegal Dispossession Act 2005 which was dismissed by the learned trial court. The Applicant filed a Criminal Revision Application challenging the dismissal.

**Issues:** Whether the applicant was unlawfully and forcibly dispossessed from the subject property within the meaning of Section 3(2) of the Illegal Dispossession Act 2005, whether the applicant had a recognized legal right to possession under tenancy laws or other enforceable property rights and whether the complaint filed was civil in nature and thus outside the scope of the criminal provisions of the Act?

- Rules:** Section 3(2) of the Illegal Dispossession Act 2005 penalizes unlawful and forcible dispossession of lawful owners or occupants from immovable property. A license under Section 52 of the Easements Act 1882 grants only a personal right to do certain acts on the property of the grantor and does not create any proprietary or possessory interest. Criminal law cannot be used to resolve disputes that are civil in nature such as contractual or monetary claims. Precedents such as 2016 SCMR 2039 and 2019 P CrLJ 1023 apply only when there is clear evidence of tenancy or ownership and illegal eviction without due process.
- Application:** The Court found that the Applicant held a license not a tenancy and therefore had no legal possessory right after the license term expired. The Licensing Agreement governed the relationship which by its nature is revocable and does not bestow a proprietary interest. The original civil suit filed by the Applicant did not seek a declaration of tenancy but pertained to monetary disputes. No evidence was provided showing unlawful forcible dispossession in the presence of a subsisting legal right to occupy the premises. As such the complaint was rightly held to fall outside the scope of the Illegal Dispossession Act. The cited case law was found inapplicable due to materially different facts.
- Conclusion:** The Applicant failed to establish unlawful dispossession under Section 3(2) of the Illegal Dispossession Act 2005. The relationship was governed by a licensing arrangement which had expired and conferred no right to possession. The complaint was civil in nature and not maintainable under criminal law. Therefore the Criminal Revision Application was dismissed for being devoid of merit and the impugned order of the trial court was upheld.
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**11. Mst Shamshad Begum v/s Shahid Ali & Others**  
**CP No.D-240 of 2024**

**Present:** Mr Justice Abdul Hamid Bhurgri

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzNDE2Y2Ztcv1kYzgZ>

**Facts** The petitioner, Mst. Shamshad Begum, filed a rent application before the Rent Controller at Sukkur, alleging that the respondent, Shahid Ali, was a tenant in her late father's property and had defaulted on rent payments since February 2022. The Rent Controller allowed the application ex parte and directed eviction. The respondent subsequently filed an application under Section 12(2) CPC, challenging the eviction order, which was dismissed by the Rent Controller. Upon revision, the Additional District Judge-IV, Sukkur set aside the dismissal, remanded the case for framing issues, and directed the Rent Controller to decide afresh after recording evidence. Aggrieved, the petitioner filed the present constitutional petition.

|                     |   |
|---------------------|---|
| <b>Issue</b>        | Whether the Revisional Court rightly remanded the matter to the Rent Controller for fresh decision under Section 12(2) CPC when the existence of landlord-tenant relationship was disputed.   |
| <b>Rule</b>         | A judgment can be challenged on grounds of fraud, misrepresentation, or want of jurisdiction Under Section 12(2) CPC. Although the Sindh Rented Premises Ordinance, 1979 generally limits jurisdiction, courts have recognized that Rent Controllers may invoke equitable principles to recall orders obtained through fraud or if jurisdiction was wrongly assumed (1992 SCMR 1908; PLD 1991 SC 997).  |
| <b>Application:</b> | The Court observed that the petitioner failed to produce any documentary evidence, such as a rent agreement or receipts, to establish the landlord-tenant relationship, which was crucial for maintaining the eviction proceedings. Given that the respondent categorically denied any such relationship and possession, a serious jurisdictional question was raised. Relying on established case law, the Court held that even Rent Controllers, under equitable principles recognized by the Supreme Court, have the authority to entertain applications under Section 12(2) CPC where fraud, misrepresentation, or want of jurisdiction is alleged. Since the dispute involved foundational issues that required evidence, the Revisional Court rightly remanded the matter for fresh adjudication. |
| <b>Conclusion:</b>  | The Court concluded that no illegality or irregularity was found in the Revisional Court's order remanding the matter, as serious disputes over the existence of landlord-tenant relationship raised a question of jurisdiction, justifying proceedings under Section 12(2) CPC. Relying on <b>Mst. Fehmida Begum v. Muhammad Khalid (1992 SCMR 1908)</b> and <b>Ismail v. Subedar Gul Inayat Shah (PLD 1991 SC 997)</b> , it was reaffirmed that Rent Controllers have the authority to entertain Section 12(2) applications where fraud, misrepresentation, or jurisdictional defects are alleged. Consequently, the constitutional petition was dismissed.   |

**12. Sindh High Court**  
**Mst. Muskan d/o Hamadullah,**  
**Mst. Ayesha Bibi d/o Hamadullah Vs The State**  
**Criminal Misc. Appln. No.S-622 of 2024**

**Present:** Mr. Justice Dr. Syed Fiaz ul Hassan Shah

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU4ODI2Y2Ztcy1kYzgZ>

**Brief Facts:** In Crime No. 25 of 2024 registered at P.S. ANF Hyderabad under Sections 6, 9(c), 14, and 15 of the CNS Act, 1997, Hamadullah Soomro was apprehended with 7 kg charas. Applicants Mst. Muskan and Mst. Ayesha Bibi were neither present at recovery nor named in the FIR or initial investigation. Later, based solely on an unverified disclosure by Hamadullah without preparation of an interrogation report or collection of corroborative evidence, their names were inserted into the final challan. Cognizance was taken against them by the Special Judge (CNS) Hyderabad on 22.08.2024, prompting the filing of Criminal Misc. Application No. S-622 of 2024 under Section 561-A Cr.P.C. before the High Court.

**Issue:** Whether the cognizance taken against the applicants, based solely on an uncorroborated oral disclosure by the principal accused without independent evidence or interrogation record, constituted an abuse of process justifying quashment under Section 561-A Cr.P.C.

**Rule:** The rule applicable in this case is that the High Court's inherent jurisdiction under Section 561-A Cr.P.C. allows for the quashing of criminal proceedings if they are found to be frivolous, vexatious, or an abuse of the court's process. This jurisdiction can be exercised to prevent the continuation of proceedings that are manifestly illegal, improper, or oppressive. Additionally, the court may impose costs on the party engaging in such baseless litigation to deter misuse of the legal process.

**Application:** The Sindh High Court discussed key legal principles, including Section 173 of the Code of Criminal Procedure (Cr.P.C.), which mandates that the police report must provide sufficient evidence for taking cognizance of a case. It highlighted the necessity of foundational documents, such as the Memorandum of Recovery and Seizure, to establish the accused's connection to the alleged offence, noting that the absence of an interrogation report undermined the claims against the applicants. Ultimately, the court found the proceedings against the applicants unjustified due to a lack of evidentiary support.

**Conclusion:** The Court exercising its inherent jurisdiction under Section 561-A Cr.P.C., quashed the proceedings against the applicants Mst. Muskan and Mst. Ayesha Bibi, finding that their indictment lacked any evidentiary basis, as no material, documentary proof, or proper interrogation reports were produced linking them to the principal accused. The Court relied on multiple precedents including *Arif Ali Khan v. State* (1993 SCMR 187), *Ali Gohar v. State* (2020 SCMR), *The State v. Asif Ali Zardari* (1994 SCMR 798), *Miraj Khan v. Gul Ahmed* (2000 SCMR 122), *Maqbool Rehman v. State* (2002 SCMR 1076), *Muhammad Idrees v. The State*



(Crl.P.742-L/2019), and *Ahmed Yousuf v. The State* (Crl. Petition No. 225 of 2023), among others. The Court highlighted the Investigation Officer's breach of duty under Rule 25.28 of the Police Rules, 1934, and emphasized that mere statements of a co-accused made during police custody without corroboration are inadmissible under Article 38 of the Qanun-e-Shahadat Order, 1984. In view of the mala fide and vexatious nature of the proceedings initiated without lawful basis, the Court imposed a cost of Rs. 40,000/- upon the Investigation Officer PI Daud Munawar, referring also to the principles laid down in *Inayatullah v. Sheikh Muhammad Yousaf* (1997 SCMR 1020) regarding imposition of costs in criminal matters to compensate victims of frivolous litigation.

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**13. Sindh High Court**  
**Zulfiqar Ali @ Bhutto & Others v/s The State**  
**Criminal Revision No.S-71 of 2022**

**Present:** Mr Justice Jan Ali Junejo

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU2NzQ0Y2Ztcy1kYzgZ>

**Facts** The facts of the case revolve around a criminal revision application challenging the order passed by the learned 1st Additional Sessions Judge/MCTC, Kandhkot, in Sessions Case No. 114 of 2008. During the trial, the legal heirs of the deceased, including a minor son and a lunatic son, through their legal guardian (WALI), Mst. Raheema Khatoon, filed compromise applications under Sections 345(2), (4), and (6) of the Cr.P.C. The compromise was accepted, and the applicants were acquitted under Section 345(6) of the Cr.P.C. However, the trial court held that while the WALI could waive the right of Qisas, they could not waive the Diyat (blood money) for the minor and lunatic heirs. Consequently, the applicants were remanded into custody until the payment of Diyat was made.

**Issue** Whether the WALI (legal guardian) of minor and lunatic heirs has the authority to waive the Diyat (blood money) on behalf of the heirs, and whether the trial court erred in remanding the applicants into custody for failure to pay the Diyat after their acquittal under Section 345(6) Cr.P.C.

**Rule** The compromise for the offence of Qatal-e-Amd (intentional murder) can be accepted, and the accused may be acquitted if the compromise is lawful Under Section 345(6) of the Cr.P.C. However, under Section 310 of the Pakistan Penal Code (PPC), the waiver of Diyat (compensatory blood money) can only be made by the competent heirs themselves, not their legal guardians. In the case of minor or mentally incapacitated heirs, the WALI may compound the offence (Qisas), but cannot waive the Diyat.

**Application:** The court observed that while the WALI (legal guardian) of minor and lunatic heirs has the authority to compound the offence of Qatal-e-Amd (intentional murder) under Section 345 of the Cr.P.C., they do not possess the legal capacity to waive the Diyat (blood money) on behalf of the heirs. The court emphasized that the waiver of Diyat can only be made by the heirs themselves, as supported by the precedent in Javaid Masih v. The State (1993 SCMR 1574), which clarified that a WALI cannot waive Diyat on behalf of a minor or mentally incapacitated person. The court further relied on Ghulam Shabbir v. The State (2003 SCMR 663) and Hassan Din v. The State (PLD 1992 SC 246) to uphold the principle that the entitlement to Diyat for minors is strictly governed by their capacity, not by their legal guardians. The trial court's decision to remand the applicants into custody until the Diyat was paid was in line with these legal principles, and the revision application was dismissed, affirming the trial court's order.

**Conclusion:** The court concluded that the trial court's decision to remand the applicants into custody for non-payment of Diyat was legally sound. It upheld the principle that while the WALI can compound the offence of Qatal-e-Amd on behalf of minors or mentally incapacitated individuals, they cannot waive the Diyat, which can only be done by the heirs themselves. The court affirmed the trial court's order, citing precedents such as Javaid Masih v. The State, Ghulam Shabbir v. The State, and Hassan Din v. The State, and dismissed the criminal revision application.

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**14. Sindh High Court**  
**Mst Ruqiya Khatoon & Others v/s Akhtiar Ali Sangi & Others**  
**Civil Revision No.S-34 of 2024**

**Present:** Mr Justice Nisar Ahmed Bhanbhro

**Source** <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzNDUyY2Ztcy1kYzg>

**Facts** The brief facts of the case are that the Respondent No. 1, Akhtiar Ali Sangi, filed a suit against Mst. Ruqiya Khatoon and others, claiming ownership and possession of a 10,000 square feet property in Larkana, which he purchased in 2005 through a registered sale deed from Applicant No. 1. Respondent No. 1 was in peaceful possession of the property until 2016 when he was dispossessed by the Applicants. The Applicants disputed his claim, asserting that while Applicant No. 1 sold her share of the property, the possession remained with other family members of the original owner, Ghulam Mustafa Qureshi. The Trial Court ruled in favor of Respondent No. 1, granting possession but modifying the claim for damages. The Applicants appealed, but the Appellate Court upheld the decision, prompting the Applicants to file this revision application, challenging the

maintainability of the suit, especially as it involved a dwelling house and was allegedly barred by law under Section 44 of the Transfer of Property Act.

**Issue** Whether the Respondent No. 1, a stranger transferee, is entitled to claim joint possession of a dwelling house co-owned by the Applicants without partition, under Section 44 of the Transfer of Property Act (TPA) and Section 4 of the Partition Act.

**Rule** A co-owner can sell their share in immovable property, but a stranger transferee (i.e., someone who is not a member of the undivided family) is not entitled to joint possession of a dwelling house Under Section 44 of the TPA. The Partition Act, Section 4, further restricts a stranger from claiming joint possession of a dwelling house, even if they purchase a share, unless the property is partitioned.

**Application:** The Court addressed whether Respondent No. 1, a stranger transferee, could claim joint possession of a dwelling house under Section 44 of the Transfer of Property Act (TPA) and Section 4 of the Partition Act. It concluded that a stranger transferee is not entitled to joint possession of a dwelling house unless partition occurs, relying on *Mst. Nafeesa Siddiqui v. Danish Rafique* (2019 CLC 1739). Additionally, the Court clarified that under Section 4 of the Partition Act, a stranger can only claim partition, and the co-owners have the right to purchase the stranger's share. The Court also emphasized the scope of revisional jurisdiction, stating that it is limited to correcting jurisdictional errors, misreading of evidence, or material irregularities. Since the lower courts failed to address the issue of joint possession in a dwelling house, the Court exercised its revisional powers and dismissed the suit, finding it not maintainable.

**Conclusion:** In conclusion, the High Court's revision of the impugned judgment and decree underscores the legal distinction between joint property and dwelling houses. The Court determined that the Respondent, being a stranger transferee, was not entitled to joint possession of a dwelling house, as protected under Section 44 of the Transfer of Property Act (TPA) and Section 4 of the Partition Act. The Court emphasized that a co-owner's sale of a dwelling house to a non-family member does not confer the right to joint possession. The lower courts had failed to address this critical issue and thus made material errors in their decisions. Consequently, the Court exercised its revisional jurisdiction, set aside the judgments of the Trial and Appellate Courts, and dismissed the suit. The ruling highlights the importance of proper legal analysis when it comes to the sale and possession of joint property within an undivided family context, reinforcing the protective provisions available to family members under the law.

- 15. Sindh High Court**  
**Awais ul Haq (Petitioner) vs. Rabia Akhter and others (Respondents)**  
**C.P. No.S-146 of 2025 and C.P. No.S-147 of 2025**
- Present:** Mr. Justice Muhammad Jaffer Raza
- Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU5MTEvY2Ztcy1kYzgZ>
- Facts:** The Petitioner, Awais ul Haq, challenged the Impugned Order dated 07.01.2025, passed in Family Appeal Nos.86 & 87 of 2024, wherein the Family Court's judgment dated 15.04.2024 had granted permanent custody of the minor girl, Mirha Fatima, to her mother, Respondent No.1, Rabia Akhter, and issued a guardianship certificate. The Family Court allowed reasonable visitation rights to the Petitioner/father but denied his application for permanent custody. The Petitioner resides permanently in Lahore, while the minor has been residing with her mother. The Petitioner argued that the custody and guardianship should have been granted to him, criticizing the sufficiency of visitation rights and fearing misuse of the guardianship certificate by the Respondent to remove the child from Karachi's jurisdiction.
- Issue:** Whether the findings of the Family Court and Appellate Court regarding grant of permanent custody to the mother and issuance of guardianship certificate, while allowing visitation rights to the Petitioner, suffered from any jurisdictional error, procedural irregularity, or perversity warranting interference under Article 199 of the Constitution?
- Rule:** The Court emphasized the limited scope of interference in family matters under Article 199 of the Constitution. This principle was reaffirmed in the cases of 2023 SCMR 1434 (M. Hamad Hassan) and 2024 SCMR 1642 (Muhammad Shamim Ali), which highlighted that the High Court cannot reappreciate evidence or facts already adjudicated by the Family and Appellate Courts unless the findings are perverse, contrary to law, or cause grave injustice. The welfare of the minor is of paramount importance and must guide decisions regarding custody and guardianship.
- Application:** The Court analyzed the facts and reiterated the limited scope of interference in family matters under Article 199, citing 2023 SCMR 1434 (M. Hamad Hassan) and 2024 SCMR 1642 (Muhammad Shamim Ali). It was emphasized that the High Court cannot re-appreciate evidence or facts already adjudicated by the Family and Appellate Courts unless findings are perverse or contrary to law causing grave injustice. The Court noted that the minor girl, under six years of age, had been consistently living with the Respondent since the parties' separation and that no evidence was led by the Petitioner to disqualify the mother from custody or guardianship. The Court also observed that the guardianship certificate

was necessary for minor's welfare, specifically for educational and daily purposes, and not to the exclusion of the Petitioner. Concerns about the minor's removal from jurisdiction were held to be speculative and not germane to the present petitions.

**Conclusion:** The petitions were dismissed as being devoid of merit, with no case made out for interference. It was held that permanent custody rightly remained with the mother in the welfare of the minor and that the guardianship certificate was correctly issued for limited purposes.

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**16. Sindh High Court**  
**M/s Pakistan National Shipping Corporation VS. Muhammad Reyaz**  
**IInd Appeal No. 38 of 2023**

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

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzMjYyY2Ztcy1kYzgZ>

**Facts:** The Respondent filed Suit No.376/2014 seeking salaries, benefits, terminal dues, compensation for loss of job, markup on unpaid claims, and damages against the Appellants (Pakistan National Shipping Corporation). The trial court decreed Rs.4,807,125 along with damages of Rs.300,000 in favor of the Respondent. The Appellants' appeal was dismissed by the appellate court. They challenged both decisions in the IInd Appeal, arguing that the Respondent was a contractual employee, had been paid full dues, and was not entitled to additional claims.

**Issue:** Whether the Respondent's suit was maintainable in light of the Sindh Payment of Wages Act, 2015, and whether the findings of the trial court and appellate court regarding the Respondent's entitlement to additional dues and damages suffered from misreading of evidence or misinterpretation of contractual terms, justifying interference under Section 100 CPC?

**Rule:** **Sindh Payment of Wages Act, 2015:** Section 2(d) defines a 'workman,' and only workmen are entitled to the benefits under the Act.

**Civil Procedure Code, Section 100:** This section allows interference in decisions under the appellate jurisdiction if there are errors in the lower courts' findings or misinterpretation of the contract.

**Order 41 Rule 31 CPC:** Requires the lower appellate courts to frame specific points for determination in the judgment.

**Application:** The High Court analyzed the Respondent's employment status, finding him a managerial employee and not a 'workman' under Section 2(d) of the Sindh

Payment of Wages Act, 2015, making the civil court competent to entertain the suit. However, regarding entitlement to further amounts, the Court found that the contractual terms expressly limited the Respondent's benefits. The Respondent himself admitted that his status remained contractual without conversion to permanent. The courts below had erroneously decreed amounts without evidentiary basis or proper application of the terms of the contract, and had overlooked critical admissions regarding payment already received. It was also held that the lower appellate court had committed substantial errors and failed to frame points for determination under Order 41 Rule 31 CPC.

**Conclusion:** The High Court, after analyzing the Respondent's employment status and he contractual terms, found that the Respondent was not entitled to the additional claims and damages awarded by the lower courts. The Respondent was a managerial employee, and as such, he did not qualify as a 'workman' under the Sindh Payment of Wages Act, 2015. The civil court had jurisdiction over the suit, but the claims made by the Respondent were not supported by sufficient evidence or the proper application of contractual terms. Moreover, the lower appellate court had failed to frame specific points for determination as required under Order 41 Rule 31 CPC, and had erroneously decreed amounts without proper evidentiary support. Therefore, the IInd Appeal was allowed, and the judgments and decrees of the trial and appellate courts were set aside. As a result, the Respondent's Suit No.376/2014 was dismissed.

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**17. Sindh High Court**  
**Constitution Petition No. S-391 of 2023**  
**Constitution Petition No. S-976 of 2024**  
**Mrs. Rehana Khatoon Versus M/s Deisol The School & others**  
**M/s Deisol The Versus Mrs. Rehana Khatoon & others**

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

**Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjU1MDczY2Ztcy1kYzgZ>

**Facts:** In CP No. S-391 of 2023, Mrs. Rehana Khatoon filed Rent Application No.119/2020 under Section 15 of the Sindh Rented Premises Ordinance, 1979 ('SRPO, 1979') on grounds of default, nuisance, and personal bona fide need. The Rent Controller allowed the application on 11.05.2022, but the First Rent Appeal No.115/2022 reversed this decision on 30.01.2023, dismissing her application. In CP No. S-976 of 2024, M/s Deisol The School filed Rent Application No.378/2023 under Section 14 SRPO, 1979, claiming personal need after being widowed. Their application was allowed on 03.04.2024, and the tenant's First

Rent Appeal No.106/2024 was dismissed on 23.07.2024. Both petitions were clubbed together for decision.

**Issue:** The issue before the Court was whether the Petitioner, Mrs. Rehana Khatoon, successfully established her personal bona fide need for the tenement despite the appellate court's contrary findings, warranting setting aside of the appellate order.

**Rule:** Under Section 15 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979), a landlord may seek eviction of a tenant on the grounds of personal bona fide need, default, or nuisance. Additionally, Section 15-A of the SRPO provides protections to prevent the misuse of this provision by landlords. The Court held that once a landlord affirms under oath their need for the premises for personal use, and such testimony remains consistent and unshaken in cross-examination, eviction must follow unless there is strong counter-evidence

**Application:** The Court analyzed that once a landlord steps into the witness box and affirms under oath the need for the premises for personal use, and if such testimony is consistent and unshaken in cross-examination, ejectment must follow. The Court found that Mrs. Rehana Khatoon's claim of personal need was consistent and stood un-rebutted. Physical infirmities or better alternatives suggested by the tenant do not negate the landlord's choice of residence. The use of the premises as a school did not disqualify it from residential use if the landlord so desired. Section 15-A SRPO provides protection against misuse by the landlord, balancing tenant rights. Reliance by respondents on case law was found misplaced as the Petitioner's claim was properly pleaded and proven. Representation through attorney was deemed valid. Thus, the appellate court's findings were held to be presumptuous and unfounded.

**Conclusion:** The Constitution Petitions, C.P. S-391 of 2023 and C.P. S-976 of 2024, were adjudicated in light of the personal bona fide need of the landlord under the Sindh Rented Premises Ordinance, 1979. In the case of C.P. S-391 of 2023, the Petitioner, Mrs. Rehana Khatoon, had filed a rent application under Section 15 of the Ordinance, seeking eviction of her tenants based on personal bonafide need, which was initially allowed but later set aside in the First Rent Appeal. Upon review, it was determined that the assertion of personal need by the Petitioner remained unchallenged and unrefuted, despite the Respondent's claim that the premises were not habitable. The Court emphasized that once a landlord's claim of personal need is made and substantiated by oath, the burden shifts to the tenant to disprove the bona fides of that claim.

In the second petition, C.P. S-976 of 2024, the issue of whether the tenant could remain in the property under the same circumstances became moot after the primary petition was resolved. The court granted six months for the Respondent



to vacate the premises, reinforcing the principle that a landlord's right to reclaim possession for personal use supersedes tenant claims once personal need is proved, subject to accountability mechanisms under Section 15-A of the Ordinance.

The Court ultimately ruled in favor of the Petitioner in C.P. S-391 of 2023, allowing the eviction and setting aside the earlier dismissal. However, C.P. S-976 of 2024 was rendered infructuous and dismissed without any order as to costs.

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### LAHORE HIGH COURT, LAHORE

**18. Lahore High Court**  
**Munawar Ali vs The Additional Sessions Judge, etc**  
**Criminal Miscellaneous Application No. 1620-M of 2024**

**Present:** Mr. Justice Muhammad Amjad Rafiq

**Source:** <https://sys.lhc.gov.pk/appjudgments/2025LHC2439.pdf>

**Facts:** In this case, the brief facts are that Dr. Muhammad Iqbal Anjum, CEO of Shaheen Maternity & Surgical Hospital, Harappa (Respondent No.4), filed a private complaint against Munawar Ali (the petitioner) and another individual after he was allegedly coerced into certifying a surgical procedure as fake. It was claimed that the petitioner, pretending to be an insurance agent, forcibly took away hospital letterheads and later used them to fabricate two certificates related to the surgery of one Iftikhar Ahmad, an employee of TCS. These alleged fake certificates were then used to deny Iftikhar's insurance reimbursement. During trial proceedings on the private complaint, Respondent No.4 filed an application under Sections 540 and 94 of the Cr.P.C. seeking production of CCTV footage and the alleged fake certificates. The Magistrate partially allowed the application by summoning the CCTV footage but declined to compel the petitioner to produce the certificates. That part of the order was overturned by the learned Additional Sessions Judge on 25.11.2023, leading to the present petition.

**Issue:** Whether the order of the learned Additional Sessions Judge, directing the petitioner to produce the alleged fake certificates, violated the constitutional protection against self-incrimination under Article 13 of the Constitution, and whether such direction was legally sustainable under the Qanun-e-Shahadat Order, 1984.

**Rule:** The **relevant rules** include Article 13 of the Constitution of Pakistan, which prohibits self-incrimination, and Articles 76, 77, 74, 159, 160, and 14 of the Qanun-e-Shahadat Order, 1984. Article 76 allows secondary evidence when the

original document is in the possession of the adverse party and is not produced after notice. Article 77 lays down the requirement of prior notice before introducing secondary evidence, except in certain situations—such as when the adverse party must reasonably know the document will be required, or when the document was obtained by fraud. Article 159 binds the party who requested production of a document to use it as evidence if produced. Article 160 bars a party from later using a document it had refused to produce, unless consented to by the opposing party or allowed by the court. Article 14 allows production of documents in possession of a third party if consent is given by the party who could have otherwise refused.

**Application:** The Court found that although a person cannot be compelled to produce evidence against themselves in violation of Article 13 of the Constitution, the legal framework under Qanun-e-Shahadat Order 1984 allows the adverse party to seek secondary evidence if the original is withheld. The learned Additional Sessions Judge's direction did not compel self-incrimination; rather, it triggered the legal mechanism under Article 76, entitling Respondent No.4 to produce secondary evidence in case of non-compliance. The Court also recognized that proper notice had effectively been given through the application, and that circumstances exempted formal notice under Article 77. Further, by the petitioner's consent, the responsibility to produce the documents now extended to TCS Pakistan's offices, and any refusal by them would not be valid under Article 14.

**Conclusion:** The Court upheld the order of the learned Additional Sessions Judge and disposed of the petition with the direction that if the alleged fake certificates are not produced from TCS's record, Respondent No.4 shall be entitled to produce secondary evidence under Article 74 of the Qanun-e-Shahadat Order. The petitioner's consent placed an obligation on TCS officials to produce the documents, and any failure to do so would not prevent the admission of secondary evidence by the complainant.

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## UNITED KINGDOM SUPREME COURT

19. **United Kingdom Supreme Court**  
**Abbasi and another (Respondents) v Newcastle upon Tyne Hospitals NHS Foundation Trust (Appellant);**  
**Haastrup (Respondent) v King's College Hospital NHS Foundation Trust (Appellant)**

**Present:** **Lord Reed, President**  
**Lord Hodge, Deputy President**  
**Lord Briggs**

**Lord Sales**

**Lord Stephens**

**Source:** [https://supremecourt.uk/uploads/uksc\\_2023\\_0052\\_0053\\_judgment\\_updated\\_77ac2bdf75.pdf](https://supremecourt.uk/uploads/uksc_2023_0052_0053_judgment_updated_77ac2bdf75.pdf)

**Facts:** (Zainab Abaasi Case) Zainab Abbasi was born in 2013 with a rare and severe neurodegenerative disease, and later developed lung damage due to contracting swine flu in 2016. For most of her life, she received palliative care at the Newcastle upon Tyne Hospitals NHS Foundation Trust. Zainab's parents, both medical professionals, disagreed with the palliative-only care plan and argued that a more active treatment approach should be considered. As their criticism grew, the hospital sought to prohibit Zainab's father from attending the ward, and when he did, he was forcibly removed by the police. In response, the hospital applied to the Family Division for a declaration to withdraw life-sustaining treatment, and simultaneously sought an injunction to anonymize the identities of Zainab, her family, and the clinicians involved in her care. The injunction was granted, and Zainab tragically passed away before a full hearing could take place. Despite this, the injunction remained in effect, preventing the public identification of those involved in her treatment.

(Isaiah Haastrup Case) Isaiah Haastrup was born in February 2017 with severe brain damage due to oxygen deprivation during birth, which left him permanently reliant on a ventilator for life support. He was treated under intensive care at King's College Hospital NHS Foundation Trust. The Trust sought a court declaration in 2017 that withdrawing life-sustaining treatment was in Isaiah's best interests. As the case gained media attention, the Trust sought an injunction to prevent identifying any of the clinicians involved in Isaiah's care, citing concerns about harassment and abuse directed at medical staff, which could affect the care of Isaiah and other patients. Isaiah's parents, however, wished to speak out about their child's treatment and criticize the clinical care provided. The injunction was granted to anonymize the clinicians' identities, but after Isaiah's death in 2018, his parents sought to have the injunction lifted to publicly share their concerns and experiences.

**Issue:** The issue at hand involves the conflict between the parents of critically ill children (Zainab and Isaiah) and medical authorities regarding the continuation or withdrawal of life-sustaining treatment, while considering the implications of anonymity injunctions issued during the proceedings.

**Rule:** The central legal rule revolves around the use of injunctions to anonymize individuals involved in medical care in such sensitive cases, balancing the child's right to privacy under Article 8 of the European Convention on Human Rights

and the public interest in open justice. The injunctions in both cases prohibited the publication of identifying information of clinicians, family members, and medical institutions involved in the treatment.

**Application:** In the *Abbasi* case, the injunction sought by the Trust prevented the identification of Zainab, her family, and the clinicians involved, citing concerns about the safety and wellbeing of the medical professionals, particularly given the high public interest and the potential for harassment.

In the *Haastrup* case, a similar injunction was issued concerning Isaiah's treatment, focusing on the clinicians' identities and their right to privacy, particularly after the media's interest in the case grew. The hospital authorities argued that public exposure could interfere with ongoing care and treatment of Isaiah and other patients.

**Conclusion:** The Supreme Court held that while injunctions of this nature are often necessary to protect clinicians and ensure the proper administration of care, they must be carefully balanced against the need for open justice. The Court discussed how injunctions could be justified under the *parens patriae* jurisdiction, ensuring the child's best interests are maintained, and protecting the integrity of medical care amidst public scrutiny. However, the injunctions were not without limitation, particularly concerning their scope and duration post the child's death, reflecting the complex interplay between privacy, public interest, and the judicial process. The court set aside the earlier decisions and issued directives on how to handle the continuation of the injunctions.

This judgment emphasized the nuanced legal and ethical considerations in medical cases involving children, particularly where life-sustaining treatment is at issue and where public and professional interests collide.

Clinicians are responsible for diagnosing, treating, and managing patients' healthcare needs, often working together as part of a medical team

## SELECTED ARTICLES

### "A New Era in Cooperative Law: The Establishment and Jurisdiction of the Special Court for Cooperative Societies in Sindh"

By Naleymitho @ Muhammad Ishaq,

*Senior Civil Judge/Deputy Director, AJP, Posted at High Court of Sindh at Karachi.*

#### Abstract:

This article explores the establishment and jurisdiction of the Special Court for Cooperative Societies in Sindh, introduced by the Sindh Cooperative Societies Act, 2020. It examines the evolution of cooperative society laws from the British colonial era to modern legislative frameworks, highlighting significant departures from the repealed Cooperative Societies Act, 1925. The analysis delves into the jurisdictional authority and procedural reforms brought about by the 2020 Act, emphasizing its role in replacing administrative arbitration with judicial adjudication. Relevant provisions, case law, and practical implications for cooperative societies are thoroughly examined. The article also identifies challenges in implementation and proposes amendments to further clarify the jurisdiction and enhance the efficiency of the Special Court. These insights underscore the pivotal role of the Special Court in safeguarding members' rights, fostering transparency, and modernizing dispute resolution mechanisms within Sindh's cooperative ecosystem. Looking ahead, the article advocates for judicial training, public awareness campaigns, and procedural streamlining as vital steps toward strengthening cooperative governance in Pakistan.

#### 1. Early Forms of Cooperation

##### 1.1. Ancient and Medieval Times:

- Early societies exhibited cooperation in agriculture, irrigation, and mutual aid (e.g., Mesopotamia, Egypt, and Rome).
- **Guilds in Medieval Europe:** Supported members through mutual insurance, training, and collective bargaining.<sup>1</sup>

#### 2. Birth of the Modern Cooperative Movement

##### 2.1. Industrial Revolution:

- Industrialization led to exploitation, poverty, and poor working conditions, inspiring the cooperative movement.

##### 2.2. The Rochdale Pioneers (1844):

- A landmark in cooperative history, the Rochdale Equitable Pioneers Society was established in Rochdale, England.
- Created the **Rochdale Principles**, which remain the foundation of cooperatives globally.<sup>2</sup>

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<sup>1</sup> Brett Fairbairn, B. (1994). *The Meaning of Rochdale: The Rochdale Pioneers and the Co-operative Principles*.

**2.3.** Rochdale, England, is renowned worldwide for one pivotal reason: a group of 28 artisans, primarily laborers working in the town's cotton mills, founded a co-operative in 1844 known as the Rochdale Society of Equitable Pioneers. This co-operative served as the foundational model and inspiration for a global movement that now encompasses nearly 700 million members. Rochdale stands as a vibrant and influential symbol, shaping the understanding and practice of co-operatives across various countries today. The legend of Rochdale revolves around these 28 impoverished weavers who established a shop on Toad Lane in 1844—a shop that became the first successful co-operative in the world. This co-operative codified the principles that have guided the formation and governance of subsequent co-operatives globally<sup>3</sup>. This initiative was undertaken as the weavers faced deplorable working conditions and meager wages, leaving them unable to afford the exorbitant prices of food and household goods. They concluded that by pooling their limited resources and collaborating, they could obtain essential commodities at reduced prices. Initially, the shop offered only four items for sale: flour, oatmeal, sugar, and butter. The Pioneers resolved that consumers should be treated with honesty, transparency, and respect, that they should share in the profits their patronage generated, and that they should have a democratic right to participate in the business's governance. Every customer of the shop became a member, thereby securing an equitable stake in the enterprise. While not the first co-operative ever established, it was the first to codify a set of seven principles that would subsequently guide co-operatives globally, benefiting both member-owners and their communities. Nearly 180 years later, these principles have undeniably withstood the test of time<sup>4</sup>.

### **3. Cooperative Expansion in Europe**

#### **3.1. Germany:**

- Friedrich Wilhelm Raiffeisen (1818–1888): Pioneered rural credit cooperatives to fight rural poverty.
- Hermann Schulze-Delitzsch: Developed urban consumer and worker cooperatives.

#### **3.2. France:**

- Influenced by utopian thinkers like Charles Fourier and Robert Owen, cooperatives emerged as tools for equitable economic systems.<sup>5</sup>

### **4. Spread of Cooperatives Globally**

#### **4.1. United States:**

- The Grange Movement (1867): Supported agricultural cooperatives.
- Cooperative banks and housing societies grew during the Great Depression.

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<sup>2</sup> Birchall, J. (1997). *The International Co-operative Movement*.

<sup>3</sup> Brett Fairbairn, B. (1994). *The Meaning of Rochdale: The Rochdale Pioneers and the Co-operative Principles*.

<sup>4</sup> <https://www.rochdaleonline.co.uk/news-features/2/news-headlines/158474/rochdale-equitable-pioneers-society-celebrates-180th-anniversary>

<sup>5</sup> Münkner, H.-H. (2012). *Co-operative Principles and Co-operative Law*.

- 4.2. **India:**
  - British colonial rule introduced the Cooperative Credit Societies Act of 1904.
  - Post-independence, cooperatives became key to rural development.
- 4.3. **Japan:**
  - Agricultural cooperatives flourished under the Meiji era reforms.
- 4.4. **Africa:**
  - Initially introduced during colonial rule, cooperatives became instruments of economic empowerment post-independence.<sup>6</sup>
- 5. **Institutional Support**
  - 5.1. **International Co-operative Alliance (ICA):**
    - The International Co-operative Alliance was founded in London, England on 19 August 1895 during the 1st Co-operative Congress. In attendance were delegates from co-operatives from Argentina, Australia, Belgium, England, Denmark, France, Germany, Holland, India, Italy, Switzerland, Serbia, and the USA. The International Cooperative Alliance advocates the interests and success of cooperatives, providing a global voice and forum for knowledge, expertise and co-ordinated action<sup>7</sup>.
  - 5.2. **United Nations:**
    - The United Nations, through Resolution adopted during the 64th Session of the United Nations General Assembly on 18 December 2009, proclaimed the year 2012 as the International Year of Cooperatives (IYC). The primary objective of this designation was to emphasize the significant contribution of cooperatives to socio-economic development, with a particular focus on poverty alleviation, job creation, and social inclusion. Furthermore, the International Year sought to promote the expansion and establishment of cooperatives globally. The official theme of the IYC was “Cooperative enterprises build a better world”.<sup>8</sup>
  - 5.3. **2025 UN International Year of Cooperatives (Cooperatives Build a Better World)**
    - The theme for the 2025 United Nations International Year of Cooperatives (IYC2025) is “**Cooperatives Build a Better World**”, highlighting the significant and lasting impact of cooperatives worldwide. This theme underscores the cooperative model as a vital solution for addressing numerous global challenges and emphasizes its ongoing role in advancing efforts to achieve the Sustainable Development Goals (SDGs) by 2030.<sup>9</sup>

<sup>6</sup> ICA (International Co-operative Alliance). (2014). *Co-operative Identity, Values & Principles*.

<sup>7</sup> <https://www.ukscs.coop/pages/international-co-operative-alliance>

<sup>8</sup> Resolution A/RES/64/136, adopted on December 18, 2009.

<sup>9</sup> <https://ica.coop/en/2025-international-year-cooperatives>



## 6. Evolution of Dispute Resolution in Sindh's Cooperative Societies: From the Cooperative Credit Societies Act, 1904, to the 2020 Reform

**6.1.** The legal framework regulating cooperative societies in Sindh has evolved significantly over time. This development began with the enactment of the Cooperative Credit Societies Act of 1904 during British rule in India. This legislation laid the foundation for the Cooperative Movement in the region, inspired by Raiffeisen's system, which was later adopted in countries such as Sri Lanka, Malaysia, and Singapore<sup>10</sup>. Subsequently, on **March 1, 1912**, the **Cooperative Societies Act, 1912**, was promulgated, replacing the earlier legislation to provide a more comprehensive legal foundation for cooperative societies. This framework was later superseded by the **Bombay Cooperative Societies Act, 1925**, enacted by the Bombay Legislative Council on **December 4, 1925**, effectively repealing the 1912 Act. Post-independence, significant adaptations were made to align the legislative framework with the needs of the Province of Sindh. This culminated in the promulgation of the **Sind Adaptation of Laws Order, 1975**, on **July 22, 1975**, which introduced several modifications to the Bombay Cooperative Societies Act, 1925. These adaptations included:

1. **Title and Preamble:** The phrase "the Province of West Pakistan" was substituted with "the Province of Sind".
2. **Section 1:** The term "the Cooperative Societies Act, 1925" was replaced with "the Sind Co-operative Societies Act, 1925".
3. **Section 2:** The jurisdictional reference to "West Pakistan except the Tribal Areas" was amended to "Sind".
4. **Section 33:** "Central Government" was replaced with "Federal Government".
5. **Section 69:** The phrase "Province of West Pakistan" was substituted with "Province of Sind".
6. **Section 72A:** References to "the Province of West Pakistan" were changed to "Sind".

**6.2.** These amendments ensured the localization of the cooperative societies' legal framework to reflect the administrative and territorial realities of Sindh. Over time, further reforms, including the **2020 legislative amendments**, have continued to modernize and streamline dispute resolution mechanisms within Sindh's cooperative societies, enhancing their efficiency and alignment with contemporary legal principles.

**6.3.** Before the enactment of the Sindh Cooperative Societies Act, 2020, cooperative societies in Sindh faced considerable challenges in resolving disputes. Under the previous legal framework, the Cooperative Societies Act, 1925, the Registrar of Cooperative Societies predominantly managed dispute resolution. This was done either personally or through nominees or arbitrators appointed by the parties involved. However, this system proved ineffective due to

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<sup>10</sup> International Labour Organization (ILO). (2012). *Resilience in a Downturn: The Power of Financial Cooperatives*.

its reliance on administrative mechanisms rather than a formal judicial structure, leading to delays and insufficient resolution of complex legal issues. The 2020 Act aimed to rectify these deficiencies by establishing the Special Court for Cooperative Societies, a dedicated judicial body designed to manage disputes within the cooperative sector efficiently. It mandated the resolution of cases within a specified timeframe of 120 days and required day-to-day proceedings, as stipulated in Section 117(3) of the Act. This reform benefits cooperative societies, their members (both current and former), and individuals claiming through such members by providing a streamlined process for resolving disputes related to the business of the society.

**6.4.** In India, the establishment of **Co-operative Courts**, presided over by **Judicial Officers** (not below the rank of **Civil Judges**), was introduced under the **Maharashtra Co-operative Societies Act, 1960**, and the **Maharashtra Co-operative Societies Rules, 1961**. These courts were vested with **exclusive jurisdiction** to adjudicate disputes arising between members and co-operative societies. The **powers and jurisdiction** of the Co-operative Courts are explicitly conferred under **Sections 91 to 96** of the **Maharashtra Co-operative Societies Act, 1960**.

## **7. Establishment and Jurisdiction of the Special Court for Cooperative Societies in Sindh:**

**7.1.** For the first time in the history of cooperative laws in Pakistan, the “Special Court for Cooperative Societies” was established through the Sindh Cooperative Societies Act, 2020, and the accompanying Sindh Cooperative Societies Rules, 2020. This Special Court supplants the powers and jurisdiction previously vested in the “Registrar of Cooperative Societies” under Section 54 of the repealed Cooperative Societies Act, 1925 (applicable in the Sindh Province). The authority to adjudicate and resolve disputes touching upon the business of cooperative societies, as well as to address offences, has now been conferred upon the Special Court under Section 73 of the Sindh Cooperative Societies Act, 2020. The detailed procedural and jurisdictional framework of the Special Court is further elaborated under Rule 53 of the Sindh Cooperative Societies Rules, 2020. For clarity and context, it is pertinent to reproduce the relevant provisions of Section 73 of the Act, 2020, and Rule 53 of the Rules, 2020.

**73. Disputes referred to the Cooperative Court.--** All disputes (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society and liquidation disputes) shall be tried by the Cooperative Court established under section.<sup>11</sup>

**53. Disputes.---** (1) If any dispute touching the business of a society other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society arises:

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<sup>11</sup> Section 73, of the Sindh Cooperative Societies Act, 2020.

- a) between Members or past members of the society or persons claiming through a member or past member; or
  - b) between Members or past members or persons so claiming and any past or present officer, agent or servant of the society; or
  - c) between the society or its committee and past or present member of the society; or
  - d) between the society or its committee and any past or present officer, agent or servant of the society, or a surety of such officer, agent or servant, whether such surety is or is a member of the society or surety of such officer, agent or servant, whether such surety is or is not a member of the society;
  - a) between a society authorized under sub-section (1) of section 45 and a person who is not a member of a society,  
it shall be referred to Cooperative Court established under Section 117 established by Government with the concurrence of the Chief Justice of the *Sindh* High Court, by notification.
- (2) Any party aggrieved by any decision, order or judgment of the Special Court for Cooperatives may within 30 days of the date of such decision, order or judgment, appeal to the High Court of Sindh.<sup>12</sup>

**7.2.** A detailed analysis of Section 73 of the Sindh Cooperative Societies Act, 2020, read in conjunction with Sub-rule (1) of Rule 53 of the Sindh Cooperative Societies Rules, 2020, reveals that these provisions are applicable in cases where disputes pertain to the business of a cooperative society. Such disputes fall under the jurisdiction of the Special Court for Cooperative Societies, constituted under Section 117 of the Act, subject to the condition that the parties involved are among those specified in clauses (a) to (e) of the relevant provisions. This category includes the society itself, its members, past members, or individuals asserting rights through a member or past member. The jurisdiction conferred by Section 73 of the Sindh Cooperative Societies Act, 2020, and elaborated under Rule 53 of the Rules, 2020, is specifically limited to disputes involving members, past members, or individuals deriving claims from such members, as well as past or present officers, agents, or servants of the society and their sureties. These provisions clearly delineate the legal scope of disputes subject to adjudication by the Special Courts for Cooperative Societies. In accordance with Notification No. S.JUDL:4-1/2021/109, dated August 9, 2021, and with the concurrence of the Honourable Chief Justice of the High Court of Sindh, as well as the approval of the Government of Sindh, the designated Courts of Senior Civil Judges/Assistant Sessions Judges have been formally notified as “Special Courts for Cooperative Societies”. These Courts are vested with jurisdiction to adjudicate offences under the Sindh Cooperative Societies Act, 2020, with immediate effect.

| Sr.# | Division | Court specified |
|------|----------|-----------------|
|------|----------|-----------------|

<sup>12</sup> Rule 53, of the Sindh Cooperative Societies Rules, 2020.

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|----|------------------------------------|---|
| 1. | Karachi Division                   | 5 <sup>th</sup> Senior Civil Judge/ASJ,<br>Karachi-West |
| 2. | Hyderabad Division                 | 5 <sup>th</sup> Senior Civil Judge/ASJ,<br>Hyderabad    |
| 3. | Sukkur Division                    | 2 <sup>nd</sup> Senior Civil Judge/ASJ,<br>Sukkur       |
| 4. | Mirpurkhas Division                | 3 <sup>rd</sup> Senior Civil Judge/ASJ,<br>Mirpurkhas   |
| 5. | Shaheed<br>Benazirabad<br>Division | Ist Senior Civil Judge/ASJ,<br>Shaheed Benazirabad      |
| 6. | Larkana Division                   | 4 <sup>th</sup> Senior Civil Judge/ASJ,<br>Larkana      |

**7.3.** However, pursuant to Notification No. S.JUDL:4-1/2021/363, dated August 9, 2021, and in continuation and partial modification of earlier Notification No. S.JUDL:4-1/2021/109, dated August 3, 2021, the Courts designated therein for the trial of offences under the Sindh Cooperative Societies Act, 2020, were vested with jurisdiction to adjudicate civil disputes arising under the said Act and the rules promulgated thereunder.

**7.4.** The Honourable High Court of Sindh delivered a landmark judgment interpreting specific provisions and elucidating the primary aims and objectives of the Sindh Cooperative Societies Act, 2020. The judgment was rendered in the case titled Messrs Meerut Cooperative Housing Society Ltd., through Honorary Secretary v. Shahid Akhtar Qureshi and 3 Others<sup>13</sup>. In this decision, the Honourable High Court of Sindh held that: *“For the foregoing reasons, the Chief Secretary Sindh shall constitute a high-level committee comprising on prominent economists, Agriculturist, Philanthropist, Bankers and from development sector to ensure implementation of the Sindh Cooperative Societies Act, 2020 in its letter and spirit and amend the Rules, 2020 in view of the observations made here-in-above in order to meet with the main objects, scheme and purposes of the Sindh Cooperative Societies Act, 2020 to the promotion of thrift, self-help and mutual aid amongst the agriculturists, small farmers, labours and poor people with common economic needs so as to bring about better living, better business and better methods of production preferably the model adopted by the Punjab Province shall be taken as example at the first phase. Secretary Cooperative Department shall ensure that Act, 2020 and this judgment shall be widely circulated enabling the deserved persons to have the fruit of this Act unfortunately same is not received by the persons for what this Act was promulgated, in a century since 1925 under a philosophy”*. The Honourable High Court of Sindh also issued directives to the Chairman of the Federal and Sindh Higher Education Commissions, as well as the Secretary of the Boards and Universities. They were instructed to

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<sup>13</sup> (2024 C.L.C. 1206)

ensure the introduction of Bachelor's and Master's programs in Cooperative Societies across all general universities. This initiative aims to align Pakistan's higher education system with international practices in countries such as Germany, the United Kingdom, the Philippines, and India, where cooperative studies are integrated into higher education curricula.

## **8. Analysis of Notice Requirements, Jurisdiction, and Legislative Evolution under the Sindh Cooperative Societies Act, 2020:**

**8.1.** To determine the non-mandatory nature of a written notice prior to institution of a Suit against the Society or its officers under Section 115 of the Sindh Cooperative Societies Act, 2020, it is essential to critically examine the corresponding provisions. A comparative analysis of Section 70 of the Cooperative Societies Act, 1925, and Section 115 of the Sindh Cooperative Societies Act, 2020, is provided below to substantiate this interpretation:

**70. Notice necessary in suits.**--- No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.<sup>14</sup>

**115. Notice necessary in suits.**--- No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months' notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, name, description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.<sup>15</sup>

**8.2.** The legislative framework of the Sindh Cooperative Societies Act, 2020, departs significantly from its predecessor, the Cooperative Societies Act, 1925. Notably, the newly enacted law omits a provision analogous to Section 54 of the repealed Act, which expressly barred the jurisdiction of the Special Court for Cooperative Societies. Under the 2020 Act, jurisdiction is conferred upon the Special Court for Cooperative Societies to resolve disputes specified in Section 73 of the Act and further delineated in Rule 53 of the Sindh Cooperative Societies Rules, 2020. This delegation of authority underscores a shift in the statutory scheme, enhancing the role of the Special Court in dispute resolution. Guidance in this respect can be derived from the seminal judgment of the Honourable Supreme Court of Pakistan in Defence

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<sup>14</sup> Section 70, of the Cooperative Societies Act, 1925

<sup>15</sup> Section 115, of the Sindh Cooperative Societies Act, 2020

**Housing Authority Lahore v. Messrs Builders and Developers (Pvt.) Ltd. and another.** In this case, the Apex Court was pleased to hold as follows:

**“Restricting the provision of section 70 to only those disputes covered by section 54 is consistent with the scheme of the Act of 1925, providing for regulating registration, working and business of the cooperative societies. The Registrar has been conferred a pivotal role in implementing the obligations cast upon the Society and its members including hearing complaints and implementing his decisions. Section 70 of the Act of 1925 does not apply to all suits instituted against the Society or any of its officers. It is restricted to suits in respect of any act 'touching the business of the society'. If, as held in some of the judgments of the High Court and canvassed by the learned counsel for the appellant, the 'business of the society' should be given an expanded meaning so as to include any business dealing by an outsider with the Society is accepted, then perhaps barely any suit filed against the society would be excluded from the application of section 70 of the Act of 1925. The only reasonable construction consistent with the scheme and purpose of the Cooperative Societies Act would be to limit the application of section 70 to matters falling under section 54 of the Act”.**<sup>16</sup>

**8.3.** The highlighted provisions hold significant importance. Section 70 of the repealed Cooperative Societies Act, 1925, was narrowly confined to disputes falling within the ambit of Section 54 of the same Act. It did not extend its applicability to all suits filed against a cooperative society or its officers. The only logical interpretation, consistent with the framework and objectives of the Cooperative Societies Act, 1925, is that Section 70 applied exclusively to matters addressed under Section 54 of the Act. However, the Cooperative Societies Act of 1925 has been repealed in Sindh Province, and the newly enacted Sindh Cooperative Societies Act, 2020 lacks a provision equivalent to Section 54 of the previous Act. Section 54 of the 1925 Act conferred jurisdiction upon the Registrar of Cooperative Societies, effectively restricting the jurisdiction of the Courts. Given that the Sindh Cooperative Societies Act, 2020 does not incorporate a provision similar to Section 54, the jurisdiction of the Special Court for Cooperative Societies, established under the 2020 Act, remains neither limited nor barred. This holds true even if the notice requirement stipulated in Section 115 of the 2020 Act is not fulfilled. Consequently, compliance with the notice requirement under Section 115 of the Sindh Cooperative Societies Act, 2020 is not a prerequisite for invoking the jurisdiction of the Special Court for Cooperative Societies.

## **9. Transition from Arbitration to Judicial Adjudication: A Comparative Study of Section 54, Cooperative Societies Act, 1925 and Rule 53, Sindh Cooperative Societies Rules, 2020**

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<sup>16</sup> (2015 SCMR 1799)

**9.1.** Section 54 of the Cooperative Societies Act, 1925 stipulated that disputes falling under clauses (a) to (e) of this provision should be referred to the Registrar for resolution, either by the Registrar himself or by his nominee. Alternatively, if either party so desired, the matter could be submitted to arbitration involving three arbitrators: the Registrar or his nominee, along with two individuals, each nominated by the respective parties. The proviso to Section 54 of the Cooperative Societies Act, 1925 specified that if the issue in question between a society and a claimant, or among different claimants, involves complex legal and factual matters, the Registrar may, if he thinks fit, suspend the proceedings until the matter has been adjudicated through a regular suit initiated by one of the parties or by the society itself. Should no such suit be filed within six months of the Registrar's suspension order, he is required to proceed in accordance with the initial provisions of this section. The arbitration proceedings outlined in Section 54 of the former Cooperative Societies Act, 1925, are characterized by their quasi-judicial nature, as they involve the adjudication of the rights and obligations of the parties in a manner akin to judicial proceedings. An arbitrator, appointed by the parties or designated by the Court, possesses the authority to resolve disputes submitted for arbitration and to issue an award based on such deliberations. It is crucial to emphasize that an arbitrator lacks the unilateral power to annul a registered instrument, such as a deed or a contract. The annulment of a registered instrument falls squarely within the jurisdiction of the Civil Courts. According to the Proviso to Section 54 of the former Cooperative Societies Act, 1925, the Arbitrator or Registrar's Nominee is expressly barred from adjudicating matters involving complex questions of law and fact. The Registrar has the discretion to stay proceedings pending the resolution of these questions through a regular suit filed by one of the parties or by the society itself. If no such suit is initiated within six months of the Registrar's suspension order, the Registrar must proceed as specified in Paragraph I of the aforementioned section. Furthermore, the arbitrator's role is limited to interpreting and applying the contract and relevant law to the facts of the case in order to reach a decision. The arbitrator is not authorized to alter the legal status of documents that have been duly executed and registered in accordance with the law. If a party wishes to challenge the validity or enforceability of a registered instrument, it is typically required to initiate a separate legal action in an appropriate Court of law. In conclusion, although arbitration proceedings exhibit a quasi-judicial character, an arbitrator does not have the authority to invalidate a registered instrument. This authority is exclusively held by the Civil Courts, which have the ultimate jurisdiction to evaluate the validity and voidability of registered documents.

**9.2.** A plain reading of Rule 53 of the Sindh Cooperative Societies Rules, 2020, reveals that the proviso to Section 54 of the repealed Act, which stated: *"if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceeding, in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society"*<sup>17</sup>, has been deliberately omitted. Additionally, the terms "Arbitration" and "referral to arbitrators" have

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<sup>17</sup> Proviso to Section 54, of the Cooperative Societies Act, 1925.

also been excluded. The legislative intent behind the omission of the Proviso to Section 54 of the repealed Act of 1925 and the introduction of Rule 53—excluding references to “Arbitration” and provisions concerning “Referral to Arbitrators”—was to empower the Special Cooperative Court to adjudicate all matters “touching the business of the Society”. This includes disputes among members, past members, and individuals claiming through such members, as well as complex questions of law and fact, which encompass the determination of whether registered instruments are void or voidable. Reliance may be placed on the authoritative decision of the Honourable High Court of Sindh in the case of *Mehar Ali Memon v. Federation of Pakistan and 13 Others*, wherein it was held that: “*First of all we would like to examine the legal character and locus standi of the petitioner. If the petition has been moved as bona fide member of the society then being a bona fide member of the society, the petitioner could have easily approached to the Registrar Cooperative Housing Society under section 54 of the Cooperative Societies Act, 1925, which pertains to the Arbitration proceedings and clearly provides that if any dispute touching the business of a society arises between the member or past member of the society or persons, claiming through a member or past member, it shall be referred to the Registrar for decision by himself or his nominee. In the Proviso attached with Section 54 of the aforesaid Act, it is further provided that if the question at issue between the society and a claimant or between different claimant involving complicated question of law and fact, the Registrar may if he thinks fit suspend the proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by a society*”. The underlining is supplied.<sup>18</sup>

**9.3.** Reference may also be made to the case of *Syed Rafat Abbas Jafferi v. Sikander Ahmed Ghouri and 6 Others*, in which the Honourable High Court of Sindh held that: “*The consequence and effect of the said Judgment and Decree cannot be directly or indirectly diluted in the subsequent proceeding before the Registrar under the Cooperative Societies Act, 1925, specially, when two Registered instruments, viz. the afore referred Lease Deed and Conveyance Deed are also available in record in favour of first allottee Muhammad Hassan and Mst. Rounaq Aran Afridi*”.<sup>19</sup>

## **10. Future Considerations**

**10.1.** Looking ahead, there is significant potential for further reforms aimed at enhancing the effectiveness of the Special Court for Cooperative Societies. The following recommendations may be considered:

**10.1. Training for Court Officials:** It is imperative to ensure that judges and staff are proficient in cooperative laws to effectively serve the interests of the society and its members. To achieve this, the judges and personnel of the Special Court for Cooperative Societies should undergo comprehensive training facilitated by

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<sup>18</sup> (PLD 2012 Sindh 425)

<sup>19</sup> (2023 CLC 800)



senior advocates and judicial officers who possess specialized expertise in cooperative law.

**10.2. Public Awareness Campaigns:** The implementation of educational initiatives designed to inform members of cooperative societies about their legal rights and the procedural dynamics of the Special Court will empower them and foster enhanced engagement with the judicial system.

**10.3. Streamlined Procedures:** Establishing clear guidelines will facilitate quicker dispute resolution, ultimately improving the Special Court's efficiency.

#### **10.4. Digitalization of Records**

- **Centralized Database:** Create a secure, cloud-based database for storing all court records, including case files, judgments, and procedural documents. This would ensure easy retrieval and long-term preservation of records.
- **Document Management System:** Implement an electronic document management system (EDMS) to scan, index, and organize existing physical records for seamless access.
- **Data Security:** Employ robust cybersecurity measures such as encryption, firewalls, and regular audits to protect sensitive data from unauthorized access or breaches.

#### **10.5. Online Proceedings**

- **Virtual Courtrooms:** Use platforms like Zoom or Microsoft Teams with added security features for conducting online hearings, especially for remote parties.
- **E-Filing System:** Introduce an online portal where litigants can submit applications, suits, lead evidence, and track case progress.
- **Digital Notices:** Enable digital issuance of summons, notices, and court orders through email or SMS to speed up communication and reduce administrative burdens.

#### **10.6. Recording Evidence Through Modern Devices**

- **Audio-Visual Equipment:** Install high-definition cameras, microphones, and transcription software in Courtrooms to record proceedings and evidence.
- **Electronic Evidence Submission:** Allow litigants to upload evidence digitally in admissible formats (PDF, images, videos) through a secure portal.
- **Remote Witness Testimony:** Facilitate remote recording of witness testimony using secure video conferencing tools, particularly for individuals unable to attend in person.

#### **10.7. Training and Capacity Building**

- **Judicial Training:** Organize training programs for judges and staff on the use of digital tools and understanding electronic evidence.
- **User Manuals and Support:** Provide comprehensive guides and 24/7 technical support for Court personnel and litigants to adapt to the digital infrastructure.

#### **10.8. Legislative and Policy Reforms**

- **Legal Framework:** Amend laws and rules to recognize and validate digital records, online proceedings, and electronic evidence.
- **Standard Operating Procedures (SOPs):** Develop SOPs for handling and maintaining digital records and conducting online proceedings.

#### **10.9. Enhancing Accessibility**

- **Mobile-Friendly Portals:** Design user-friendly, mobile-compatible platforms to ensure accessibility for all litigants, including those in rural areas.
- **Language Support:** Offer interfaces in local languages to facilitate better understanding for all parties.

#### **10.10. Monitoring and Feedback**

- **Performance Metrics:** Regularly evaluate the digital systems through feedback from users and key performance indicators (KPIs) like case disposal rates and user satisfaction.
- **Continuous Upgradation:** Update technology and systems periodically to align with the latest advancements and user needs.

### **11. Recommendations for Amending Section 73 of the Sindh Cooperative Societies Act, 2020 or Inserting a Comprehensive Provision to Specify the Jurisdiction of the Special Court for Cooperative Societies and amending Rules 2020:**

**11.1.** The Sindh Cooperative Societies Act, 2020, though comprehensive in addressing numerous foreseeable situations, necessitates certain amendments and clarifications to improve the clarity and efficacy of the Special Court for Cooperative Societies. These proposed amendments are intended to provide explicit legal guidance on the jurisdiction and authority of the Special Court, thereby aiding cooperative societies and their members in navigating legal disputes more effectively. The proposed changes would ensure the Act aligns with Rule 53 of the Sindh Cooperative Societies Rules, 2020, and empower the Special Court to address a broader spectrum of disputes effectively in accordance with international standards.

#### **Proposed Amendments in Sindh Cooperative Societies Act, 2020:**

##### **Section 73: Jurisdiction and Scope of the Special Court for Cooperative Societies**

- 1. Jurisdiction of the Special Court:** The Special Court for Cooperative Societies shall have jurisdiction over all disputes touching the business of a society, including but not limited to:
  - a. Membership Disputes:**
    - Admission, termination, or suspension of membership.
  - b. Shares:**
    - Allotment, transfer, or transmission of shares.

**c. Property Allotments:**

- Allocation, possession, or occupation of plots, flats, or other properties.

**d. Transfers:**

- Transfer of ownership, possession, or occupation of plots, flats, or other properties.

**e. Lease/Sub-Lease Deeds:**

- Execution of lease deed, sub-lease deed, or other agreements related to the society's properties.

**f. Land or Plot Demarcation:**

- Issues involving boundaries, measurements, or encroachments.

**g. Elections:**

- Disputes related to nominations, voting, or election processes within the society.

**h. General Body Meetings:**

- Issues concerning notices, quorums, voting, or resolutions of Annual General Body Meetings or Special General Body Meetings.

**i. Audit Matters:**

- Disputes related to audit reports, accounts, or financial matters.

**j. Management Supersession:**

- Actions related to the removal, suspension, appointment of administrators, or reinstatement of committee or management members.

**k. Bye-laws, Rules, and Regulations:**

- Any other dispute arising out of the society's bye-laws, rules, or regulations.

**2. Powers of the Special Court:**

a. The Special Court for Cooperative Societies shall have jurisdiction to adjudicate all disputes specified in Sub-Section (1).

b. The Special Court shall be empowered to grant all necessary reliefs, including but not limited to:

- Recovery of possession
- Specific performance of contracts
- Rescission of contracts
- Administration and partition
- Rectification of instruments
- Mandatory and permanent injunctions
- General and special damages
- Declarations
- Cancellations
- Settlement or rendition of accounts

- Issuance of directions
  - Any other relief deemed necessary for the proper administration of justice.
- c. The Special Court shall have the authority to summon and examine witnesses, receive evidence, and issue commissions for the examination of witnesses and documents. It may inspect any property or order local investigations necessary to clarify matters in dispute or to ascertain the market value of property, mesne profits, damages, or annual net profits.
- d. The Special Court shall be authorized to conduct demarcation or topographical surveys of any property, or land during the proceedings of any suit, interlocutory or miscellaneous application, or execution proceedings. This shall be carried out through the Survey Department (Board of Revenue, Sindh), Master Plan Department, KDA/KMC, or any other relevant department using digital models or methods in accordance with satellite or Google maps, to resolve disputes accurately and justly.
- e. The Special Court may review its own decisions and judgments. It may review or set aside any judgment, decree, or order, provided that reasons are recorded in writing, and due notice along with an opportunity for hearing is given to the parties involved.

### **3. Comprehensive Authority and Procedural Flexibility of the Special Court**

- The Special Court is vested with comprehensive authority to execute its own orders, judgments, and decrees. It is further empowered to exercise discretion in adopting any procedural measures necessary to achieve justice and ensure the effective implementation of its decisions, as long as such measures are consistent with the principles and objectives of the Sindh Cooperative Societies Act, 2020 and Rules framed thereunder.

### **4. Contempt Proceedings**

The Special Court is empowered to initiate contempt proceedings against any person who:

- (a) Fails to produce or deliver a document or provide information when legally bound to do so, despite an explicit order from the Court.
- (b) Refuses to take an oath or affirmation when required by the Court to truthfully testify.
- (c) Willfully declines to answer questions posed by the Court on matters relevant to the judicial proceedings, despite being legally obligated to do so.

(d) Intentionally insults or disrupts the Court during its judicial proceedings. Such conduct, upon conviction, shall be punishable with imprisonment for up to six months, a fine of up to one thousand rupees, or both.

(e) Refuses to sign a statement made before the Court when required to do so. Such refusal, upon conviction, shall be punishable with imprisonment for up to three months, a fine of up to five hundred rupees, or both.

### **Proposed Amendments to Sindh Cooperative Societies Rules, 2020**

In line with the **dictum laid down by the Honourable High Court of Sindh** in case of Messrs Meerut Cooperative Housing Society Ltd., through Honorary Secretary v. Shahid Akhtar Qureshi and 3 Others<sup>20</sup>, it is essential to amend the **Sindh Cooperative Societies Rules, 2020** to align with the objectives of the **Sindh Cooperative Societies Act, 2020**. These amendments are intended to enhance the role of cooperative societies in promoting economic, social, and community development. Cooperative societies should act as instruments for advancing collective well-being, ensuring equitable resource distribution, and encouraging sustainable practices, particularly within agriculture-based communities. The directives from the Honourable High Court of Sindh are summarized as follows:-

- Establish a committee comprising **prominent economists, agriculturists, philanthropists, bankers**, and representatives from the **development sector**.
- The committee's mandate will be to ensure the **implementation of the Act** and the proposed amendments, providing oversight and guidance in line with the objectives of the Act.
- The rules should emphasize measures that ensure **cooperation, transparency, and responsible management** within cooperative societies.
- Adoption of **best practices** from other provinces, notably the **Punjab model**, should be considered in the first phase.
- The amendments should encourage activities that promote **thrift, self-help, and mutual aid**, especially among **agriculturists, small farmers, laborers, and the economically disadvantaged**.
- Clear guidelines should be established for the **equitable distribution of resources and community empowerment**.
- The **Secretary of the Cooperative Department** shall ensure that the **Act and subsequent judgment** are widely circulated.

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<sup>20</sup> (2024 C.L.C. 1206)

- Awareness campaigns should be launched to inform the public, particularly **small farmers and laborers**, about their rights and benefits under the Act.
- The committee should conduct **periodic reviews** of the implementation of the Rules and solicit **feedback from stakeholders**.
- This approach will ensure that the Rules remain **dynamic and responsive** to the needs of the communities they serve.

#### **Objectives of the Proposed Amendments:**

1. Develop a **robust and transparent framework** for resolving disputes within cooperative societies, adhering to **international standards** for cooperatives to ensure fairness and efficiency.
2. Grant the **Special Court** the authority to adjudicate a broader range of cases with increased **effectiveness and efficiency**, thereby enhancing its **operational capacity** to handle disputes within cooperative societies.
3. Align the **jurisdiction and powers** of the Special Court with the provisions in **Rule 53** of the **Sindh Cooperative Societies Rules, 2020**, ensuring **consistency** in legal interpretation and application.
4. Ensure that the legislative framework evolves to meet the **dynamic needs** of cooperative societies and their members, fostering **trust and confidence** in the legal system governing these entities.
5. By incorporating these amendments, the **Sindh Cooperative Societies Rules, 2020** will better fulfill the objectives of the **Sindh Cooperative Societies Act, 2020**, promoting **economic empowerment, social justice, and sustainable development** within cooperative societies.

## **12. CONCLUSION:**

In conclusion, the establishment of the Special Court for Cooperative Societies in Sindh, Pakistan, through the Sindh Cooperative Societies Act, 2020, represents a significant milestone in the evolution of cooperative law and dispute resolution mechanisms. By replacing the Registrar's predominant role with a dedicated judicial body, the new legal framework has aimed to enhance the efficiency, transparency, and impartiality of the dispute resolution process. The Act's provisions, read in conjunction with the Sindh Cooperative Societies Rules, 2020, delineate the jurisdiction and powers of the Special Court, enabling it to adjudicate a wide range of disputes touching the business of cooperative societies. This shift from administrative arbitration to judicial adjudication is a positive development, as it empowers the Special Court to delve into complex questions of law and fact, including the validity of registered instruments. As the Special Court for Cooperative Societies begins to assert its authority, it is poised to play a pivotal role in safeguarding the rights and interests of cooperative societies, their members, and associated stakeholders. Looking ahead, further reforms aimed at enhancing the capacity and efficiency of the Special Court, coupled with public awareness campaigns, have the potential to

strengthen the overall cooperative ecosystem in Sindh. This legislative transformation sets an important precedent and may inspire similar reforms in other provinces, ultimately contributing to the strengthening of the cooperative movement across Pakistan.

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## Judicial Overreach: Historical and Pakistan Perspective

*By: Naeem Akhtar\**

### Abstract

Judicial overreach occurs when courts extend their role beyond their constitutional mandate, interfering in the domains of the executive and legislative branches. This article explores the historical origins and implications of judicial overreach globally, with a focused analysis of Pakistan. By tracing landmark cases and analyzing constitutional debates, the study reveals how the judiciary's actions can both safeguard and undermine democratic principles. Through a comparative lens, the article also addresses the thin line between judicial activism and overreach.

### Introduction

The judiciary is a cornerstone of democracy, tasked with interpreting and applying the law impartially. However, when it exceeds its boundaries, it risks disrupting the delicate balance of power between the judiciary, legislature, and executive. This phenomenon, termed judicial overreach, is both a global and a localized issue in Pakistan's constitutional history. By analyzing historical cases, constitutional provisions, and contemporary examples, this article aims to delineate judicial overreach's dynamics and its consequences for governance.

### The Concept of Judicial Overreach

#### *Judicial Activism vs. Judicial Overreach*

Judicial activism involves proactive judicial efforts to protect fundamental rights and uphold justice, particularly when other state organs fail. In contrast, judicial overreach occurs when courts assume the roles of the legislature or executive, undermining the principle of separation of powers. Judicial overreach often manifests when the judiciary's interventions exceed its constitutional authority, leading to unintended consequences for governance and policy-making.

For instance, in India, the judiciary's imposition of a ban on firecrackers and mandatory national anthem screenings in cinemas drew criticism for encroaching on policymaking. Similarly, in Pakistan, the Supreme Court's intervention in political matters, such as the disqualification of

Prime Ministers and decisions involving legislative processes, has sparked debates about judicial encroachment.

## Historical Context

The roots of judicial overreach can be traced to constitutional frameworks that empower courts to uphold fundamental rights. In Pakistan, Article 184(3) of the Constitution grants the Supreme Court suo motu jurisdiction to address issues of public importance, a provision often criticized for enabling judicial overreach. Globally, similar provisions in other democratic systems have raised concerns about judicial encroachment on legislative and executive functions.

## Judicial Overreach in Pakistan

### *Landmark Cases and Debates*

1. **Objectives Resolution and Article 2A** The Objectives Resolution, initially a guiding principle, was later incorporated into the Constitution as Article 2A, giving it substantive force. Courts have often relied on this provision to interpret legislation, occasionally overriding legislative intent. For instance, in the Elections Act case, the judiciary invoked the Objectives Resolution to challenge legislative provisions, raising concerns about judicial encroachment into parliamentary sovereignty.
2. **Suo Motu Jurisdiction** The Supreme Court's exercise of suo motu powers under Article 184(3) has been a double-edged sword. While it has addressed governance failures, it has also led to accusations of overreach. For example, the Court's directive to the National Assembly Speaker during the no-confidence vote against a Prime Minister was criticized for violating parliamentary privileges.
3. **Economic and Administrative Decisions** Judicial interventions in policymaking, such as regulating petrol sales or mandating helmet usage, illustrate overreach into administrative functions. These actions often blur the lines between judicial responsibility and executive authority.

## Challenges in Pakistan

The judiciary's encroachment often stems from perceived failures of the legislature and executive to address public grievances. This judicial assertiveness has sparked debates about its impact on democratic governance, with critics warning against weakening the separation of powers.

1. **Interference in Legislative Processes** Recent cases highlight instances where the judiciary has intervened in legislative processes, including invalidating parliamentary decisions. Such actions undermine the autonomy of the legislature and create a precedent for judicial dominance.



2. **Impact on Governance** Judicial overreach disrupts governance by delaying administrative decisions and creating uncertainty in policymaking. This can lead to inefficiencies and weaken public trust in democratic institutions.
3. **Erosion of Parliamentary Privileges** The judiciary's encroachment on parliamentary matters, such as dictating legislative procedures, erodes parliamentary privileges enshrined in the Constitution. This overreach undermines the legislature's independence.
4. **Judicial Overreach in Key Judgments** Judicial overreach, as defined in the leading judgments of **C.P. 303 of 2019** and **C.P. 446-L of 2019**, occurs when courts exceed their constitutional role, encroaching upon legislative or executive domains. The Supreme Court in **C.P. 303 of 2019** reversed the Islamabad High Court's annulment of a motorcycle ban on motorways, emphasizing that regulatory powers under Section 45 of the National Highways Safety Ordinance, 2000, were lawful and aimed at public safety. Similarly, in **C.P. 446-L of 2019**, the Supreme Court struck down the Lahore High Court's directive banning petrol sales to helmetless motorcyclists, criticizing it as judicial legislation without legal backing. These cases underscore that while judicial review ensures constitutional compliance, overreach undermines democratic principles and disrupts the separation of powers by transforming the judiciary into a policymaking entity.

## Global Comparisons

### India

Judicial overreach in India has been a subject of extensive debate. Cases like *Vishaka v. State of Rajasthan*, where the Supreme Court laid down guidelines for workplace harassment in the absence of specific legislation, highlight the judiciary's proactive role. However, interventions such as banning firecrackers during Diwali or mandating the national anthem in cinemas have been criticized as overstepping judicial boundaries.

### United States

In the United States, the Supreme Court's landmark decisions in cases like *Roe v. Wade* and *Bush v. Gore* illustrate judicial activism and its implications. While these decisions addressed significant social and political issues, they also sparked debates about the judiciary's role in shaping public policy.

### South Africa

South African courts have faced accusations of judicial overreach for invalidating government policies deemed unconstitutional. Critics argue that such interventions disrupt the balance of

power between state organs, although proponents view them as necessary to uphold constitutional principles.

### **Judicial Overreach: A Threat to Governance**

Judicial overreach poses significant threats to the governance structure of any democratic state. By stepping into the domains of the executive and legislature, the judiciary risks undermining the effectiveness and credibility of these institutions. In Pakistan, this issue is particularly pronounced given the judiciary's history of intervention in politically charged matters.

1. **Undermining Democratic Principles** When courts encroach upon the jurisdiction of the legislature and executive, it distorts the democratic framework. Pakistan's constitutional setup emphasizes the separation of powers, with each branch functioning independently. Judicial overreach disrupts this balance, raising concerns about accountability and legitimacy.
2. **Overburdening the Judiciary** Frequent involvement in non-judicial matters burdens the judiciary, diverting its focus from its primary role of adjudicating disputes and protecting fundamental rights. This overreach not only delays the resolution of critical cases but also affects the overall efficiency of the judicial system.
3. **Creating Policy Uncertainty** Judicial interventions in policymaking can lead to uncertainty, as courts lack the expertise and resources to address the complexities of governance. This uncertainty can discourage investment, hinder development, and erode public confidence in state institutions.
4. **Political Polarization** Judicial overreach often fuels political polarization, as decisions perceived to favor one party or ideology undermine public trust in the judiciary's impartiality. This polarization can destabilize the political environment, complicating efforts to achieve consensus on critical national issues.

### **Judicial Independence vs. Judicial Overreach**

While judicial independence is essential for upholding the rule of law, it must not be conflated with judicial overreach. Independence ensures that judges can make decisions free from external pressures, while overreach occurs when courts assume roles beyond their constitutional mandate. Striking a balance between these principles is vital for maintaining the integrity and functionality of democratic institutions.

1. **Guardians of the Constitution** The judiciary's primary responsibility is to interpret and uphold the Constitution. This role requires judges to exercise restraint and avoid encroaching on the jurisdictions of other state organs. By adhering to constitutional boundaries, the judiciary can safeguard its independence while respecting the principles of separation of powers.

2. **Judicial Accountability** Ensuring accountability within the judiciary is crucial for preventing overreach. Transparent decision-making processes, adherence to established legal standards, and mechanisms for addressing judicial misconduct can help maintain the judiciary's credibility and legitimacy.

## Conclusion

Judicial overreach is a critical issue that challenges the doctrine of separation of powers. While the judiciary must act as a guardian of constitutional values, it must also respect the boundaries of its authority. In Pakistan, addressing this issue requires a nuanced understanding of constitutional provisions, judicial precedents, and democratic principles. By fostering collaboration among state organs and adhering to the rule of law, Pakistan can mitigate judicial overreach while ensuring effective governance.

Globally, the experience of judicial overreach underscores the need for a balanced approach to judicial intervention. As democracies evolve, maintaining the delicate balance between judicial activism and overreach is essential for upholding the rule of law and democratic governance.

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