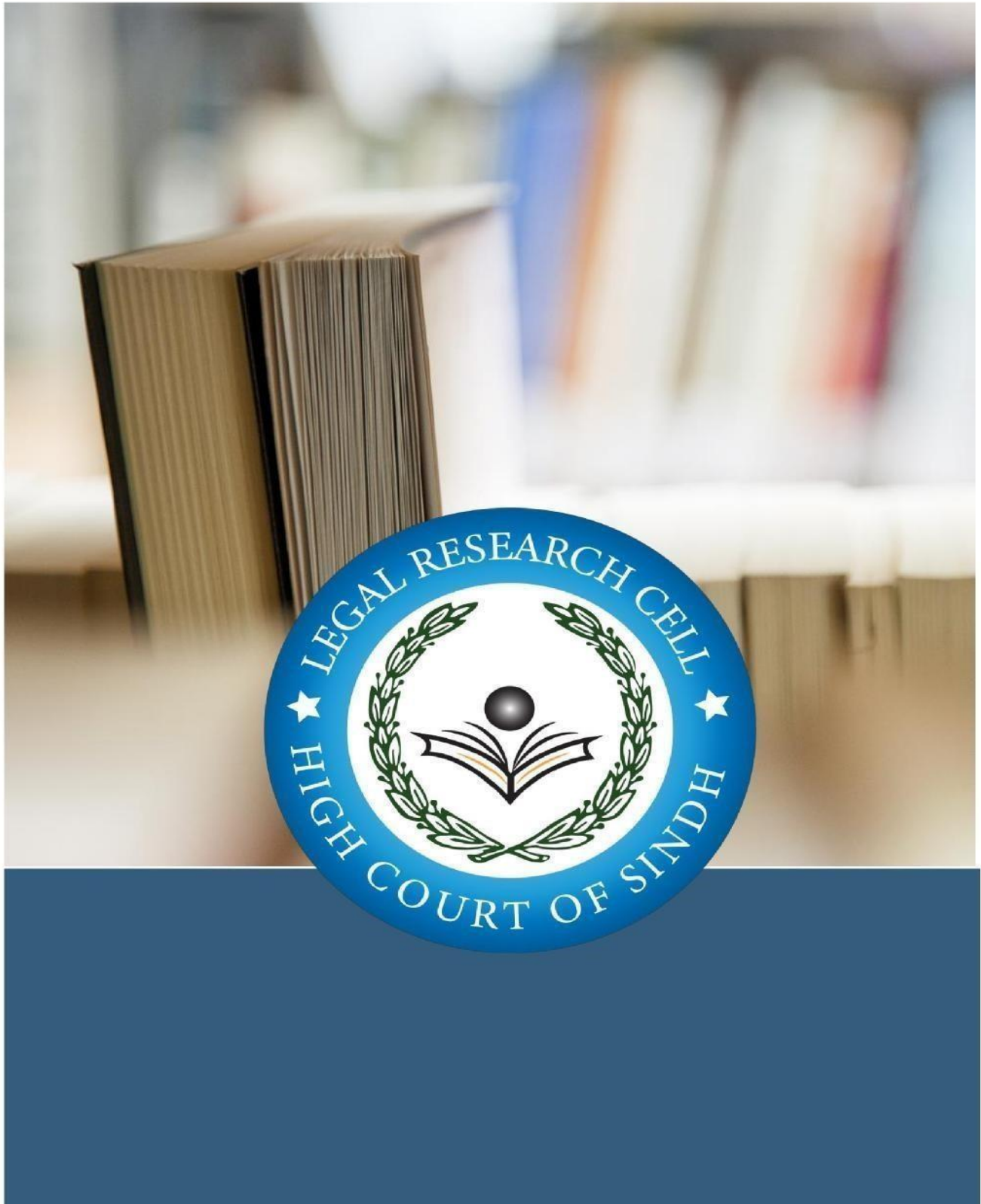


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Quarterly Case Law Report (Sep – Dec 2024)



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The Supreme Court of Pakistan

01. The Commissioner Inland Revenue, Legal Zone, Large Taxpayers Office, Lahore vs Mayfair Spinning Mills Ltd. etc.

Civil Appeal No. 947 of 2002

Present: *Mr. Justice Yahya Afridi, CJ*
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Shahid Waheed

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.a._947_2002.pdf

Facts: The factual background of the case involves Mayfair Spinning Mills Ltd., a manufacturer of cotton yarn, which purchased cotton bales in December 1996 and claimed a refund of input tax paid on the purchase. The refund was partially disallowed by the tax authorities due to the destruction of some cotton bales in a fire, which rendered them unusable for taxable supplies. The taxpayer challenged the partial refund decision, leading to a series of appeals.

The adjudicatory orders began with the tax officer granting only a partial refund, reasoning that the damaged and destroyed cotton bales could not be used for taxable supplies. This decision was upheld by the Collector (Appeals) and subsequently by the Customs, Excise, and Sales Tax Tribunal, rejecting the taxpayer's claim for a full refund. The Lahore High Court rendered a split decision. The majority held that under Section 7 of the Sales Tax Act, 1990, the input tax adjustment is related to the tax period in which it is paid and is not dependent on the actual utilization of goods for taxable supplies. It emphasized that the adjustment could be claimed as long as the goods were intended for taxable purposes. The minority, however, argued that input tax could only be adjusted if the goods were actually used in producing taxable supplies. This split interpretation became the focus of the subsequent appeal to the Supreme Court.

Another set of appeals involved The Collector of Sales Tax v. M/s Johnson and Johnson, Abbott Laboratories, Merch Sharp & Dohme, GlaxoSmithKline, and Wyeth Pakistan Ltd. In these cases, the core issue was whether pharmaceutical companies that had already adjusted input tax before an exemption was granted could be required to reverse their input tax adjustments due to the retrospective withdrawal of sales tax. The Sindh High Court ruled in favor of the companies, holding that retrospective exemptions through subordinate legislation (SROs) could not nullify vested tax rights of taxpayers who had already availed input tax benefits.

Issue 1: Whether the taxpayer, Mayfair Spinning Mills Ltd., could claim an adjustment of input tax under Section 7 of the Sales Tax Act, 1990, for goods that were damaged or destroyed and hence not utilized in the production of taxable supplies?

Issue 2: Whether a retrospective exemption from sales tax, introduced through subordinate legislation (SROs), can nullify a taxpayer's right to input tax adjustments that were lawfully availed in a prior tax period, and whether tax authorities can demand

repayment of such benefits in the absence of express authorization by primary legislation?

Rule 1: Section 7 of the Sales Tax Act, 1990, allows a registered taxpayer to deduct input tax paid during a tax period for the purpose of making taxable supplies, whether already made or intended to be made in the future. However, the adjustment must adhere to the conditions prescribed in the Act, which include the tax being related to goods intended for taxable supplies and within the relevant tax period.

Rule 2: The Supreme Court ruled that a retrospective exemption from sales tax through SROs cannot nullify input tax adjustments lawfully availed in a prior tax period unless explicitly authorized by primary legislation. Tax liabilities and benefits crystallized within a tax period are past and closed transactions that cannot be reopened through SROs. Subordinate legislation cannot override vested rights under the Sales Tax Act, 1990. Retrospective tax exemptions must be expressly provided by primary legislation to have legal effect. Therefore, tax authorities cannot demand repayment of input tax adjustments lawfully claimed before the exemption.

Application: The court analyzed the legislative framework of Section 7 of the Sales Tax Act and emphasized that the adjustment of input tax is not contingent on the actual use of goods but on their intended purpose for taxable supplies. The respondent had fulfilled the condition of paying input tax for goods intended for taxable supplies. The loss of goods due to fire did not disqualify the respondent from claiming the adjustment, as the Act does not mandate the physical use of such goods within the tax period. The court also rejected the tax authority's reliance on Section 8 of the Sales Tax Act, as the loss of goods through damage does not fall under the prohibition of claiming input tax adjustments for goods used for non-taxable purposes.

Further the Court analyzed regarding issue No.2 that a retrospective exemption from sales tax through an SRO cannot nullify a taxpayer's right to input tax adjustments that were lawfully availed in a prior tax period. It reasoned that tax liabilities and benefits are determined based on the law applicable during the relevant tax period, and any subsequent exemption cannot retrospectively revoke those benefits unless expressly provided by primary legislation. The Court observed that allowing such retrospective application through an SRO would violate the principle of past and closed transactions, which ensures that financial obligations settled under previous laws remain unaffected by later changes. Additionally, it emphasized that subordinate legislation cannot override or impair vested rights unless the parent statute explicitly authorizes such retrospective effect. Consequently, the tax authorities' demand for repayment of previously adjusted input tax was deemed unlawful, as no primary legislation permitted such retrospective revocation of tax benefits.

Conclusion: The Supreme Court upheld the majority decision of the Lahore High Court, affirming the respondent's entitlement to claim input tax adjustments despite the

destruction of goods. The appeal filed by the tax authorities was dismissed, reinforcing the legislative intent to ease tax burdens on suppliers and ensure clarity in tax refund mechanisms. This judgment clarifies the interpretation of Section 7, emphasizing the distinction between the purpose of goods and their actual utilization. Further Court concluded that the retrospective exemption from sales tax on pharmaceutical products through SROs could not invalidate input tax adjustments lawfully availed during the relevant tax period. It held that such adjustments constituted past and closed transactions that could not be reversed through subordinate legislation. The Court emphasized that SROs cannot override vested rights unless expressly authorized by primary legislation. Consequently, the tax authorities' demand for repayment of previously adjusted input tax was deemed unlawful, and the appeals were dismissed.

02. Muhammad Ramzan & others vs Member (Judicial-II) Board of Revenue, Punjab

Civil Appeals No. 936 to 938 of 2012

Present: *Mr. Justice Yahya Afridi, CJ*
Mr. Justice Amin-ud-Din Khan
Mrs. Ayesha A. Malik

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.a._936_2012.pdf

Facts: The appellants, who were Adna Maliks, filed Civil Appeals Nos. 936, 937, and 938 of 2012, challenging the judgment of the Lahore High Court. The dispute primarily revolved around proprietary rights in the Shamlat Deh land located in Daggar Aulakh, District Bhakkar. The appellants claimed that under West Pakistan Land Reforms Regulation, 1959 (MLR 64) and the 1960 Notification, they were entitled to full proprietary rights over the land they possessed. They argued that their possessory rights had already been recognized by earlier judgments, particularly in *Ladhoo v. B.O.R.* (1991 MLD 99) and subsequent Supreme Court decisions. Based on these precedents, they contended that they should be declared full owners of the land in their possession.

The dispute had a longstanding litigation history dating back to the 1960s, with multiple rounds of legal battles between Ala Maliks (superior landowners) and Adna Maliks (inferior landowners who cultivated the land). The appellants maintained that the abolition of Ala Malkiyat (superior ownership rights) under Paragraph 22 of MLR 64 entitled them to exclusive ownership of the land they had been cultivating. They further challenged the 1994 mutations, which, according to them, wrongly distributed Shamlat land based on the Hasab Rasad Khewat principle (proportionate shares of village ownership), instead of allocating land based on possession. Their main grievance was that the revenue authorities failed to implement the 1991 Supreme Court decision, which, according to them, had affirmed their exclusive ownership rights over the land they had cultivated. They sought to have the impugned orders set aside and their names entered as full proprietors in the revenue

records.

- Issue:** Whether the appellants (Adna Maliks) are entitled to full proprietary rights over the disputed Shamlat Deh land based on their possession, as per the West Pakistan Land Reforms Regulation, 1959 (MLR 64) and the 1960 Notification, or whether the land must be distributed proportionally among all proprietors (including Ala Maliks) based on the Hasab Rasad Khewat principle, as determined by the revenue authorities and upheld by the High Court?
- Rule:** The court examined MLR 64, Paragraph 22, which abolished Ala Malkiat (superior ownership rights), and Clause 6 of the 1960 Notification, which provided that Adna Maliks would become full proprietors of land held by them. The principle of distribution of Shamlat land was to be based on the entitlement of the village proprietors rather than mere possession. The Hasab Rasad Khewat principle (distribution of land based on proportionate shares in village ownership) was upheld, as reflected in revenue records and past judicial interpretations.
- Application:** The Supreme Court analyzed the prior judgments, particularly *Ladhoo v. B.O.R.*, and found that they did not grant exclusive proprietary rights to the appellants based solely on possession. The appellants had relied on selective portions of past decisions, ignoring the broader context that emphasized distribution based on village proprietary shares rather than mere cultivation. The court rejected the argument that mere possession without recognized ownership status could create a legal right. It was further observed that the 1990 and 1991 Supreme Court judgments had only affirmed the abolition of Ala Malkiat but did not establish new proprietary rights for Adna Maliks beyond their recorded entitlements.
- Conclusion:** The Supreme Court, by a majority decision (2-1), dismissed the appeals, holding that the appellants failed to establish a legal right to ownership of the Shamlat Deh land solely based on possession. The judgment reinforced that Shamlat land must be distributed among the proprietary body of the village based on established legal principles and revenue records, rather than being acquired through prolonged possession. Justice Ayesha A. Malik, however, dissented from the majority view.

03. Malik Mahmood Ahmad Khan vs Malik Moazam Khan Mahmood, etc.

C.P.L.A No. 2250-L of 2016

Present: *Mr. Justice Syed Mansoor Ali Shah*
Mrs. Justice Ayesha A. Malik

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p._2250_1_2016.pdf

Facts: A child, referred to as respondent No.1, following the divorce of his parents in 2009 and the subsequent death of his mother, filed a suit for maintenance through his maternal grandmother against his father (petitioner). The trial court decreed the suit, fixing the maintenance allowance at Rs. 5,000/- per month, effective from

November 2009 until respondent No.1 attained the age of majority, with a 10% annual increment, vide judgment dated 21.09.2015. Feeling aggrieved, the petitioner preferred an appeal before the learned Additional District Judge, Lahore, which was dismissed as non-maintainable vide order dated 17.10.2015. Subsequently, the petitioner challenged the judgment before the Lahore High Court, Lahore which was dismissed in limine vide order dated 11.05.2016 (impugned order). Hence, the present petition.

Issue: Whether the trial court's order fixing maintenance for a minor child, in light of the principles of child justice and the best interests of the child, was lawful and free from jurisdictional error or procedural irregularity?

Rule: The principle of child justice, as derived from the Constitution of Pakistan (Articles 25(3), 25A, 35, and 37(e)) and international obligations under the UN Convention on the Rights of the Child (UNCRC), emphasizes the best interests of the child, their rehabilitation, and their reintegration into society. Courts are required to ensure that decisions involving children prioritize their well-being, rights, and unique vulnerabilities.

Application: The main focus of this judgment centers on the application of a child justice approach in judicial proceedings involving children. It emphasizes that the judiciary has a moral and legal obligation to prioritize the best interests of the child, ensuring their protection, welfare, and development. The court underscores the following key aspects in its analysis:

01. **Best Interests of the Child:** The court highlights that the primary focus in cases involving children must be on their well-being, considering their developmental needs and vulnerabilities. The maintenance allowance fixed by the trial court aimed to secure the child's financial support, reflecting the principle of prioritizing their best interests.
02. **Child Justice Framework:** The court delineates the constitutional framework in Pakistan for protecting children's rights. Articles 25(3), 25A, 35, and 37(e) of the Constitution empower the State to enact special measures for children, including free and compulsory education, protection against exploitation, and ensuring just working conditions. These provisions emphasize the priority of safeguarding children's well-being and promoting their rehabilitation and reintegration into society. The court further highlights Pakistan's international obligations under the United Nations Convention on the Rights of the Child (UNCRC), which it ratified in 1990. The UNCRC recognizes children as rights holders and establishes a global framework for child justice systems that prioritize dignity, rehabilitation, and reintegration. The court links these international commitments to Pakistan's domestic laws, affirming the establishment of a child justice system in alignment with both national and international standards.
03. **Jurisdictional and Procedural Integrity:** The court finds no evidence of jurisdictional error, illegality, or procedural irregularity in the trial court's order or the appellate

decisions. It confirms that the decisions were made in accordance with the law and upheld the rights of the child.

04. Role of the Judiciary in Child Justice: The judgment reiterates the judiciary's responsibility to create an environment that protects children's rights, ensures access to education, and promotes their reintegration into society. By adopting a child-centered approach, courts contribute to fostering a just and compassionate society.

Conclusion: The Supreme Court dismissed the petition, upholding the decisions of courts below. It reiterated the judiciary's obligation to adopt a child-centered approach in cases involving minors, ensuring their rights and welfare are paramount. The trial court's maintenance order was affirmed as lawful and appropriate, reflecting the principles of child justice.

04. Kausar Rana Resources (Private) Limited and others vs Qatar Lubricants Company WLL (QALCO), Qatar and others

Civil Appeal No. 4468 of 2024

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

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p. 4468 2024.pdf

Facts: Qatar Lubricants Company W.L.L. (QALCO) and Fawad Naeem Rana (the respondents) filed a petition before the Lahore High Court, invoking its jurisdiction as a Company Bench under the Companies Act, 2017. They sought:

1. Rectification of the register of shareholders under Section 126 of the Companies Act.
2. Action against Atif Naeem Rana and Sameen Naeem Rana (the petitioners) under Section 127 of the Companies Act.

The respondents alleged that the petitioners fraudulently secured the transfer of their shares in KRR by relying on an illegal and void agreement dated April 12, 2020. The petitioners, in response, filed an application under Section 34 of the Arbitration Act, 1940, seeking:

1. Stay of proceedings on the respondents' petition.
2. Referral of the dispute to arbitration, as provided under Clause 13 of the agreement.

The Company Bench dismissed the petitioners' application on the ground that one of the petitioners, Sameen Naeem Rana, was not a party to the agreement containing the arbitration clause, and therefore, the arbitration clause could not be enforced. Aggrieved by this decision, the petitioners approached the Supreme Court through the present petition.

Issue: Whether the arbitration clause in the agreement could be enforced to resolve disputes related to the alleged fraudulent transfer of shares, and whether the award resulting from the arbitration could be filed before the Company Bench under the Companies Act instead of a general civil court?

Rule: The court applied principles derived from the Arbitration Act, 1940, which emphasizes minimal judicial interference in arbitral processes, and the Companies Act, 2017, which supports alternative dispute resolution for corporate disputes. Section 34 of the Arbitration Act allows a stay of proceedings if the matter is referable to arbitration under a valid agreement. Additionally, Section 2(c) of the Arbitration Act defines the jurisdiction of courts for arbitration-related matters, which can include courts of special jurisdiction.

Application: The court's overall analysis in this case reflects a pro-arbitration approach, emphasizing party autonomy and the necessity of arbitration as a means to resolve disputes efficiently and cost-effectively. The court assessed the case with a dual focus on the enforceability of the arbitration clause and the compatibility of arbitration proceedings with the statutory framework of the Companies Act, 2017.

Important Aspects of the Court's Analysis:

1. Primacy of Arbitration and Party Autonomy:

The court highlighted the principle of minimal judicial interference in arbitration proceedings. It underscored that arbitration is a preferred mode of dispute resolution, especially in commercial disputes, as it aligns with the parties' agreed-upon methods for resolving conflicts. The court emphasized that the judiciary's role is to facilitate, not hinder, the arbitral process.

2. Binding Nature of the Arbitration Clause:

The court rejected the argument that the arbitration clause could not bind one of the petitioners, Sameen Naeem Rana, because he was not a direct signatory to the agreement. The court reasoned that as a nominee of Atif Naeem Rana (a signatory), Sameen Naeem Rana derived rights and obligations under the agreement, including the arbitration clause.

3. Harmonization of Arbitration and Corporate Governance:

The court acknowledged that the dispute involved matters under the Companies Act, such as the fraudulent transfer of shares and the rectification of the share register. It clarified that the Company Bench, being a civil court of special jurisdiction, could accept arbitration awards under the Arbitration Act, ensuring consistency with statutory provisions.

4. Economic and Judicial Implications:

The court stressed that arbitration alleviates the burden on an overburdened judicial system, reduces economic costs, and ensures quicker resolution of disputes. It also noted the broader economic benefits of arbitration in fostering investor confidence, encouraging foreign investment, and promoting a favorable business environment.

5. Pro Arbitration Approach:

The Supreme Court of Pakistan, in the final part of its judgment, focused on the jurisdictional aspect of filing an arbitration award. It clarified that the term “Civil Court” under Section 2(c) of the Arbitration Act, 1940 is not restricted to general civil courts but also includes special civil courts such as the Company Bench of the High Court, provided the dispute falls within their exclusive jurisdiction. The Court reasoned that limiting the term “Civil Court” only to general jurisdiction courts would undermine the Arbitration Act’s intent, which is to promote arbitration as an alternative dispute resolution mechanism.

The Court applied this principle to the present case, where the dispute involved fraudulent share transfers and rectification of the register, matters that exclusively fall under the Company Bench’s jurisdiction as per the Companies Act, 2017. Given this, it was deemed appropriate for the arbitral award to be filed before the Company Bench rather than a general civil court. The Court further emphasized a pro-arbitration approach, stating that requiring parties to move between different courts would create unnecessary delays, contradicting arbitration’s purpose of providing a swift and efficient resolution process.

6. Judicial Encouragement for Legislative Modernization:

The court referred to the outdated nature of the Arbitration Act, 1940, and encouraged the enactment of a new arbitration framework to align with modern commercial realities. It directed the judgment to be forwarded to relevant authorities to expedite the process of legislative reform.

Conclusion: The petition was converted into an appeal and allowed, setting aside the Lahore High Court’s judgment dated 24.06.2024. The petitioners' application under Section 34 of the Arbitration Act, 1940, was accepted, and the dispute regarding the alleged fraudulent transfer of shares in Kausar Rana Resources (Pvt.) Ltd. was referred to arbitration. Justice (R) Maqbool Baqar was appointed as the Arbitrator, expected to conclude proceedings within four months. If he declines, the parties may seek a new appointment from the Company Bench of the Lahore High Court. The arbitration seat and venue shall be decided by the Arbitrator. Proceedings before the Company Bench under Sections 126 and 127 of the Companies Act, 2017, shall remain stayed. The arbitral Award shall be filed before the Company Bench instead of a general civil court. The Court emphasized a pro-arbitration approach to ensure efficient dispute resolution. A copy of this judgment shall be sent to the Attorney-General of

Pakistan for communication to the Federal Government regarding pending arbitration law reforms.

05. Ghulam Sarwar through LR.s vs Province of Punjab

Civil Appeal No. 766 of 2021 & CMA No. 7807 of 2021

Present: *Mr. Justice Munib Akhtar*
Mr. Justice Athar Minallah

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.a._766_2021.pdf

Facts: The appellant filed an appeal that was delayed by approximately three weeks, resulting in it being time-barred by 22 days. To address this, the appellant submitted CMA No. 7806/2021, seeking condonation of delay. The appellant's counsel argued that the appeal was filed as of right, a position consistently maintained throughout the proceedings. The office, however, determined that the appeal was beyond the prescribed limitation period. In support of the condonation request, the appellant's counsel referred to paragraphs 3 and 4 of the application, asserting that they provided sufficient cause for the delay. Additionally, reliance was placed on the precedent set by the Supreme Court's five-member bench in *Khushi Muhammad through LR.s v. Mst. Fazal Bibi* (PLD 2016 SC 872) to justify the condonation of delay.

Issue: Whether the delay of 22 days in filing the appeal should be condoned based on the confusion in legal advice regarding the mode of filing (leave petition vs appeal as of right)?

Rule: Section 5 of the Limitation Act, 1908 allows the condonation of delay if "sufficient cause" is shown. *Khushi Muhammad through LR.s vs Mst. Fazal Bibi* (PLD 2016 SC 872) was cited by the appellant, arguing that principles of Section 14 (exclusion of time spent in proceedings before the wrong forum) could apply to appeals under Section 5 in appropriate cases.

Application: The Supreme Court held that Section 14 applies to suits, not appeals, and its principles could only be applied in exceptional cases under Section 5. The case cited by the appellant was distinguished, as it involved confusion between appellate forums (District Court vs. High Court), whereas here, the confusion was merely about the type of petition to be filed in the Supreme Court. The Court found that wrong legal advice does not constitute sufficient cause under the law.

Conclusion: The Supreme Court dismissed the application for condonation of delay, ruling that the appeal was time-barred and could not be entertained. As a result, the appeal was also dismissed.

06. Mst. Anita Anam vs General Public & another

Civil Petition No. 256-Q of 2020

Present: *Mr. Justice Amin-ud-Din Khan*
Mr. Justice Jamal Khan Mandokhail

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p. 256_q_2020.pdf

Facts: Facts in brief are that father of the petitioner, who was a District Health Officer, Health Department, Government of Balochistan, after retirement from his service, died in the year 2008. The petitioner filed an application for the grant of a succession certificate, in the court of Civil Judge/Judicial Magistrate IX Quetta, alleging that her father had left behind him EIGHT legal heirs:

The petitioner claimed that being an unmarried eldest daughter of the deceased, she is entitled for her share in the monthly family pension, as provided by the Balochistan Civil Services Pension Rules, 1989. The respondents contested the application and it was dismissed up to the High Court of Balochistan; hence, this petition for leave to appeal.

Issue: Whether the petitioner, Mst. Anita Anam, as the eldest unmarried daughter of the deceased government servant, was entitled to receive a share in the monthly family pension under the Balochistan Civil Services Pension Rules, 1989, despite her initial omission to claim the pension in her first application for a succession certificate?

Rule: The Balochistan Civil Services Pension Rules, 1989, particularly Rule 4.10 (2) (as amended in 1999), grants the eldest unmarried daughter of a deceased government employee the right to receive a monthly family pension until her marriage. Additionally, the Succession Act, 1925, governs the issuance of succession certificates, and principle derived from Order II Rule 2 of the CPC is inapplicable as special statutes does not bar successive application and grant of more than one certificates.

Application: The High Court dismissed the petition on the grounds that the petitioner had not claimed her share in the pension in her initial succession certificate application, and therefore, a second application was barred under Order II Rule 2 CPC. However, the Supreme Court held that the Succession Act, 1925, allows multiple applications for different portions of an estate, and Order II Rule 2 CPC does not apply to succession matters. The Court further noted that the High Court erroneously relied on the unamended version of the Rules, ignoring the 1999 amendment that explicitly grants unmarried daughters a right to the family pension.

Conclusion: The Supreme Court allowed the appeal, set aside the judgments of the Trial Court, Appellate Court, and High Court, and remanded the case to the Trial Court to conduct summary proceedings under Section 373 of the Succession Act, 1925, to determine the petitioner's status, entitlement, and share in the family pension, while considering the rights of other legal heirs. The Trial Court was directed to decide the matter within 60 days.

07. Sui Northern Gas Pipelines Ltd. Islamabad vs M/s S.K. Pvt. Limited Rawalpindi

Civil Petitions No. 3589, 3590, 3602 of 2022

Present: *Mr. Justice Muhammad Ali Mazhar*
Mr. Justice Syed Hasan Azhar Rizvi

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p._3589_2022.pdf

Facts: Consumers, including M/s S.K. Pvt. Limited, M/s GASCO 2000 CNG Station, and Waqas Amjad, filed suits against SNGPL in the Gas Utility Court, Islamabad, challenging excessive gas charges from 2012 to 2014 and seeking refunds. SNGPL contended that the Gas Utility Court lacked jurisdiction due to the availability of an alternative remedy under the OGRA Ordinance, 2002. The Gas Utility Court dismissed the suits under Order VII Rule 11 CPC, directing the plaintiffs to approach OGRA. Thereafter, the Islamabad High Court overturned the dismissal by holding that the Gas (Theft, Control & Recovery) Act, 2016, grants exclusive jurisdiction to the Gas Utility Court for billing disputes.

Issue: Whether the suit filed by the consumers challenging excessive gas billing were maintainable before the Gas Utility Court, or if it was barred due to the availability of an alternate remedy under the Oil & Gas Regulatory Authority (OGRA) Ordinance, 2002, and its related regulations?

Rule: The Gas (Theft, Control & Recovery) Act, 2016 grants exclusive jurisdiction to Gas Utility Courts for disputes related to billing, metering, and overcharging. Consumers can directly file complaints or suits before the Gas Utility Court, and OGRA's dispute resolution mechanism is not a mandatory prerequisite. Section 31 of the 2016 Act overrides conflicting laws, ensuring that pending cases must be transferred to the Gas Utility Court.

Application: The respondents (consumers) filed suits against SNGPL for alleged excessive billing from 2012-2014, which they paid under protest. The Trial Court rejected the suits under Order VII, Rule 11, CPC, citing the availability of an alternate remedy under OGRA regulations. However, the Islamabad High Court allowed the appeals and remanded the case to the Gas Utility Court for adjudication on merits. The Supreme Court upheld the High Court's decision, ruling that consumers are not required to first seek redress under OGRA and can directly approach the Gas Utility Court. The Court emphasized a purposive interpretation of the 2016 Act, reaffirming that statutory provisions must be read in their entirety rather than being restricted by the preamble.

Conclusion: The Supreme Court dismissed these Civil Petitions by maintaining the Islamabad High Court's decision to remand the cases for adjudication on merits to the Gas Utility Court. It held that the Gas Utility Court has exclusive jurisdiction over disputes concerning gas billing and metering under the 2016 Act, and consumers are

not barred from filing complaints or suits before it, even if an alternate remedy exists under OGRA regulations. It reinforced that statutory provisions must be interpreted in a manner that upholds legislative intent and ensures the availability of remedies for aggrieved parties.

08. Muhammad Yousaf vs Member Judicial-IV, Board of Revenue, Punjab Lahore and others

Civil Petitions No. 3297 of 2024 and 1921-L of 2024

Present: *Mrs. Justice Ayesha A. Malik*
Mr. Justice Irfan Saadat Khan
Mr. Justice Shahid Bilal Hassan

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p._3297_2024.pdf

Facts: The respondent, Maratab Ali, was appointed lambardar of Chak No. 23, Malikwal, Mandi Baha-ud-Din in 2001 and was allotted 140 kanals of charagah land under a lambardari grant in 2009. The allotment was challenged twice, leading to conflicting decisions from revenue forums. In 2023, the Deputy Commissioner canceled the allotment, citing BOR advice that charagah land cannot be allotted under a lambardari grant. This cancellation was upheld by the Commissioner and BOR, but the Lahore High Court reversed it, treating charagah land as state land under the 2006 Notification. The Government of Punjab and Muhammad Yousaf filed civil petitions, arguing that charagah land is distinct from state land and requires BOR approval for allotment, which the respondent never obtained.

Issue: Whether Charagah land (grazing land) can be allotted under a Lambardari grant as state land?

Rule: Charagah land is traditionally reserved for public grazing purposes and cannot be treated as state land for individual allotment. Under various notifications, including those of 2001, 2013, and 2019, Charagah land was excluded from grants, with the Board of Revenue (BOR) having exclusive authority to permit any leasing. The 2006 Notification, under which the respondent claimed his allotment, only allowed state land to be leased to Lambardars, but Charagah land was not included in that definition. Furthermore, the 2019 Notification explicitly restricted the grant of Charagah land for private use.

Application: The respondent, a Lambardar, was granted 140 Kanals and 18 Marlas of Charagah land under a Lambardari grant in 2009. His allotment was challenged twice, with the Board of Revenue and local revenue authorities canceling it, citing the land's status as Charagah. The Lahore High Court, however, restored the allotment, treating Charagah land as state land, a decision that the Supreme Court found erroneous. The Supreme Court held that Charagah land had never been considered state land, and its use remained restricted for grazing and public purposes, requiring BOR approval for any exceptional use. Since the respondent lacked BOR approval, his allotment was

deemed unlawful.

Conclusion: The Supreme Court of Pakistan set aside the Lahore High Court's order and restored the cancellation of the respondent's land allotment, affirming that Charagah land is not state land and cannot be granted under a Lambardari scheme. The appeals were allowed, and the land was ordered to be resumed in favor of the state.

The High Court of Sindh

01. Attock Cement Pakistan Ltd. & others vs Federation of Pakistan & others

Constitutional Petition No. D-1590 of 2023 (D.B)

Present: *Mr. Justice Muhammad Shafi Siddiqui, CJ*
Mr. Justice Jawad Akbar Sarwana

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIyNzk5Y2Ztcy1kYzgz>

Facts: The petitioners challenged the constitutional validity of Section 31(8) of the NEPRA Act, 1997, which empowered the imposition of surcharges on electricity consumers. They argued that the surcharge amounted to taxation, which under Article 77 of the Constitution, could only be imposed through an Act of Parliament, not by executive discretion. The respondents, including NEPRA and the federal government, defended the provision, contending that the surcharge was a regulatory measure rather than a tax and fell within NEPRA's mandate to adjust electricity tariffs. They also raised a jurisdictional objection, arguing that the petitioners should have pursued an appeal through NEPRA's internal mechanisms rather than filing a constitutional petition before the High Court.

Issue: 01. Whether Section 31(8) of the NEPRA Act, 1997, which empowers the imposition of a surcharge on electricity consumers, is ultra vires to the Constitution of Pakistan, particularly in light of Articles 77 and 157, which vest taxation powers exclusively in the legislature and regulate the authority of the Federal and Provincial Governments over electricity tariffs and taxation?

02. Whether the High Court had jurisdiction under Article 199 of the Constitution to hear a constitutional challenge to Section 31(8) of the NEPRA Act, 1997, despite the availability of an appellate remedy within NEPRA's regulatory framework, and whether the matter required adjudication by a larger constitutional bench?

03. Whether the High Court of Sindh, under the 26th Constitutional Amendment, has the jurisdiction to hear petitions challenging the vires of Section 31(8) of the NEPRA Act, 1997 (the "NEPRA Act"). Specifically, it questions whether the petition should be heard by Constitution Bench "A" or Constitution Bench "B" as per the constitutional reforms under Article 202A.

- Rule:**
- 01. Taxation Must Be Imposed by Parliament – Under Article 77 of the Constitution of Pakistan, 1973, no tax can be levied or collected except by or under the authority of an Act of Parliament. The Federal Government or executive authority cannot impose a tax, fee, or surcharge without legislative approval.
 - 02. Delegation of Legislative Power Cannot Be Excessive – The doctrine of excessive delegation prohibits Parliament from transferring essential legislative functions to the executive. Section 31(8) of the NEPRA Act, 1997, if interpreted to allow an executive body to impose surcharges without clear legislative guidelines, violates the constitutional principle of separation of powers.
 - 03. Electricity Regulation Falls Under Constitutional Jurisdiction – Article 157 of the Constitution grants Provinces the authority to determine electricity tariffs and taxation on consumption within their jurisdiction. Any surcharge imposed without Provincial consent or beyond the legislative scope of Parliament may infringe upon provincial autonomy.
 - 04. Surcharges Cannot Be Imposed as a Tax Without Clear Legislative Mandate – Courts have consistently held that a surcharge imposed in the absence of explicit statutory authorization amounts to an unauthorized tax. The Supreme Court in D.G. Khan Cement Case (PLD 2013 SC 693) reaffirmed that any financial imposition must be backed by a valid legislative framework. Taxation Through Executive Action is Ultra Vires – Any provision allowing taxation or surcharge through executive discretion without Parliamentary approval is ultra vires (beyond legal authority) and unconstitutional. The relevant rules stem from Articles 199(1)(a)(i), 199(1)(a)(ii), and 199(1)(c) of the Constitution of Pakistan. These articles pertain to the High Court's jurisdiction to issue writs, including mandamus, prohibition, certiorari, habeas corpus, and quo warranto. The key focus is on the interpretation of the High Court's power to declare laws as ultra vires (without lawful authority and of no legal effect) under Article 199(1)(a)(ii).

Application: The court extensively analyzed the constitutional validity of Section 31(8) of the NEPRA Act, 1997, focusing on whether it unlawfully delegated taxation powers to the executive and whether the imposition of surcharges on electricity consumers was constitutionally permissible. The key question before the court was whether the surcharge constituted a tax, which under Article 77 of the Constitution, could only be imposed by an Act of Parliament. The petitioners argued that NEPRA's authority to impose surcharges lacked a legislative mandate and, therefore, amounted to an unconstitutional delegation of the power to tax. The court examined past precedents, particularly D.G. Khan Cement Case (PLD 2013 SC 693), where the Supreme Court held that any financial imposition affecting the public must be backed by express legislation and cannot be introduced through delegated authority. In reviewing Section 31(8), the court found that the provision lacked clear legislative guidance, granting unchecked discretion to the executive to impose surcharges. This unfettered discretion essentially allowed the executive to impose financial burdens on

electricity consumers without parliamentary oversight, which violated the fundamental principle that taxation must be legislated by Parliament. The court ruled that such a delegation of power was unconstitutional, as it allowed taxation through executive action, thereby breaching the separation of powers doctrine.

On the issue of jurisdiction, the respondents contended that the matter fell within the exclusive domain of NEPRA and that the petitioners should have exhausted the appellate remedies provided under the regulatory framework. They argued that electricity tariff regulation and surcharge imposition were technical matters best handled by NEPRA's Appellate Tribunal rather than through a constitutional petition before the High Court. The court rejected this argument, emphasizing that the challenge was not against an administrative or policy decision of NEPRA but rather against the constitutional validity of Section 31(8) itself. It held that when a provision of law is challenged on constitutional grounds, the High Court has jurisdiction under Article 199 of the Constitution, regardless of whether an alternative appellate remedy exists. The court further emphasized that judicial review remains available in cases where fundamental rights and constitutional mandates are at stake, reinforcing the principle that executive and regulatory actions must comply with constitutional provisions.

The issue regarding the division of work among different constitutional benches under the 26th Constitutional Amendment is discussed in this order. The court addresses the creation of two distinct types of constitutional benches under Article 202A of the Constitution:

Constitution Bench "A": This bench deals with matters under Article 199(1)(a)(ii) and related provisions, such as writs of certiorari and habeas corpus, and all other reliefs or remedies available under the Constitution, excluding matters related to Articles 199(1)(a)(i) and 199(1)(c).

Constitution Bench "B": This bench has a more limited jurisdiction and only handles matters under Article 199(1)(a)(i) and Article 199(1)(c), typically dealing with writs of mandamus, prohibition, and specific directions for the enforcement of fundamental rights.

The Constitution Bench "A" retains broader jurisdiction and is empowered to deal with a wider range of constitutional issues, including challenges to the vires of laws like the one raised in the current case regarding the NEPRA Act. The court determines that petitions related to declarations of unconstitutionality under Article 199(1)(a)(ii), such as the challenge to the NEPRA Act's Section 31(8), fall within the jurisdiction of Constitution Bench "A" due to the nature of the relief sought.

Thus, Constitution Bench "A" is the appropriate forum for dealing with this particular matter as it involves a challenge to the legislative competence of a law, which is a matter falling under Article 199(1)(a)(ii).

Conclusion: The court concluded that Section 31(8) of the NEPRA Act, 1997, was unconstitutional to the extent that it allowed the imposition of surcharges on electricity consumers without explicit parliamentary approval. It held that the power to impose any tax, levy, or financial burden on the public is an exclusive function of Parliament under Article 77 of the Constitution and cannot be delegated to the executive or any regulatory authority like NEPRA. The court emphasized that

taxation through executive discretion violates the principle of separation of powers, making Section 31(8) ultra vires the Constitution.

On the issue of jurisdiction, the court ruled that the High Court had the authority under Article 199 of the Constitution to adjudicate the challenge to the vires of the statutory provision, as the petition raised a fundamental constitutional question. The argument that the matter should have been addressed through NEPRA's internal appellate mechanisms was rejected, as the dispute was not about tariff determination but about the constitutional competence of the legislature in delegating taxation powers to the executive. Regarding the composition of the bench, the court found no procedural or legal requirement necessitating the formation of a larger constitutional bench, as the case involved a specific constitutional interpretation of a statutory provision rather than a broader review affecting multiple legal frameworks.

02. M/s. National Telecommunication Corporation vs Zahra Communications

High Court Appeal No. 465 of 2024 (D.B)

Present: *Mr. Justice Muhammad Shafi Siddiqui, CJ*
Mr. Justice Jawad Akbar Sarwana

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI0MTc3Y2Ztcy1kYzgZ>

Facts: The dispute arose between National Telecommunication Corporation (NTC) and Zahra Communications regarding an Arbitral Award dated 03.12.2013, which was later made a Rule of the Court on 10.09.2024. NTC challenged the award under Section 30 of the Arbitration Act, 1940, arguing that the Arbitrator had committed judicial misconduct by misreading evidence, awarding excessive damages without proper substantiation, and exceeding his jurisdiction. Zahra Communications had filed multiple claims against NTC, alleging contractual breaches resulting in financial losses. The Arbitrator partially accepted some claims and awarded Rs. 45 million in general damages while rejecting several other claims. NTC contended that the damages were based on conjecture, lacked evidentiary support, and that Zahra Communications had failed to provide documentary proof of actual losses. NTC also argued that the Arbitrator exceeded his mandate by granting damages beyond the terms of the arbitration agreement and that the Single Judge erred in making the award a Rule of the Court without considering the objections properly. The court had to determine whether the Arbitral Award was legally valid or should be set aside due to misconduct, jurisdictional overreach, or errors apparent on the face of the record.

Issue: Whether the Arbitral Award dated 03.12.2013, made a Rule of the Court on 10.09.2024, was liable to be set aside under Section 30 of the Arbitration Act, 1940, on the grounds of judicial misconduct, misreading of evidence, and improper assessment of damages, and whether the Arbitrator had acted within his jurisdiction and discretion in awarding general damages?

- Rule:** Under Section 30 of the Arbitration Act, 1940, an Arbitral Award can be set aside if there is misconduct by the Arbitrator, an error apparent on the face of the record, or if the award is beyond the terms of the arbitration agreement. The Superior Courts in *Abdul Majeed Khan v. Tawseen Abdul Haleem* (2012 CLD 6) and *Sufi Muhammad Ishaque v. The Metropolitan Corporation Lahore* (PLD 1996 SC 737) have held that general damages can be awarded at the Arbitrator's discretion if legal rights are violated, even when specific losses are not strictly quantified. Additionally, the Supreme Court in *Gerry's International (Pvt.) Ltd. v. Aeroflot Russian International Airlines* (2018 SCMR 662) ruled that an award can only be set aside if there is a clear factual or legal error that is apparent on the face of the award.
- Application:** NTC challenged the Arbitral Award, arguing that the findings on Claim Nos. 2, 4, 7, 11, and 12 were based on mere conjecture and lacked evidentiary support. It contended that Zahra Communications failed to provide documentary proof of specific damages and that the Arbitrator misread evidence and awarded excessive compensation. However, the court reviewed the award and found that the Arbitrator had assessed the claims based on available records and justified awarding general damages. The court noted that the Arbitrator had rejected 8 out of 13 claims filed by Zahra Communications and had awarded Rs. 45 million in general damages based on a reasonable assessment of the losses incurred. It held that NTC failed to demonstrate any legal misconduct by the Arbitrator and that the learned Single Judge had correctly upheld the award. Furthermore, the court found no evidence that the Arbitrator had exceeded his jurisdiction or committed any error that warranted interference under Section 30 of the Arbitration Act.
- Conclusion:** The court dismissed NTC's appeal, affirming that the Arbitral Award was legally valid and free from judicial misconduct or factual misreading. It ruled that the Arbitrator had properly exercised discretion in awarding general damages and that no legal grounds existed to set aside the award. Consequently, the High Court Appeal was dismissed, and the Arbitral Award remained a Rule of the Court.

03. M/S Elahee Buksh & Company Pvt. Ltd vs Additional Commissioner & others

INTRA 205 of 2023 (S.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE4ODM5Y2Ztcy1kYzgz>

Facts: The applicant taxpayer, M/s Elahee Buksh & Company (Pvt.) Ltd., a private limited company, received an interest-free loan from its associated company, M/s Khayaban-e-Iqbal (Pvt.) Ltd. The tax authorities treated this transaction as a taxable benefit, applying Section 18(1)(d) of the Income Tax Ordinance, 2001, and calculated deemed interest income based on the KIBOR rate, resulting in a tax demand of Rs.5,009,716. The applicant challenged this treatment through appeals before the Commissioner Inland Revenue (Appeals-IV) and the Appellate Tribunal Inland Revenue, both of which upheld the tax assessment. Dissatisfied, the applicant

filed an Income Tax Reference Application (ITRA) under Section 133 of the Income Tax Ordinance, 2001, before the High Court.

Issue: Whether an interest-free loan received by a taxpayer from its associated company constitutes a taxable benefit under Section 18 (1) (d) of the Income Tax Ordinance, 2001, and whether tax authorities have the power to recharacterize such transactions under Sections 108 and 109 to prevent tax avoidance?

Rule: Under Section 18 (1) (d) of the Income Tax Ordinance, 2001, any benefit or perquisite derived in the course of a business relationship is taxable income. The Explanation to Section 18 (1) (d) states that waiver of profit on debt or a debt itself can constitute a taxable benefit. Additionally, Section 108 of the Ordinance grants the tax authorities discretion to allocate income between associated companies to reflect fair business transactions, and Section 109 allows the re-characterization of transactions for tax purposes where they are structured to avoid taxation. The Supreme Court in Fauji Foundation (2024 SCMR 788) established a two-pronged test for taxation under Section 18(1)(d), requiring both a fair market value benefit and a business relationship for income to be taxable.

Application: The applicant taxpayer, M/s Elahee Buksh & Company (Pvt.) Ltd., received an interest-free loan from its associated company, M/s Khayaban-e-Iqbal (Pvt.) Ltd., which was flagged by tax authorities as a deemed benefit under Section 18(1)(d). The tax department applied the KIBOR rate of 7.38% and calculated an interest income of Rs.16,733,318, leading to a tax demand of Rs.5,009,716. The taxpayer challenged the tax assessment, arguing that the transaction was not a business relationship but a temporary placement of funds without any formal loan agreement. However, the court found that the taxpayer failed to provide any evidence that the transaction did not constitute a benefit under Section 18(1)(d). The taxpayer also did not challenge the application of Sections 108 and 109, which allow tax authorities to adjust income between associated companies and recharacterize transactions aimed at tax avoidance.

Conclusion: The court dismissed the taxpayer's reference, holding that the interest-free loan from an associated company constituted a taxable benefit under Section 18(1)(d) and that failure to record interest income resulted in a loss to the revenue. The court affirmed the tax authorities' right to adjust and recharacterize the transaction under Sections 108 and 109, concluding that the taxpayer failed to prove that the loan was exempt from taxation. The reference was dismissed, and the impugned tax assessments were upheld.

04. Muhammad Asif @ Billa vs The State

Criminal Jail Appeal No. D-141 of 2022 (D.B)

Present: *Mr. Justice Zafar Ahmed Rajput*
Mr. Justice Amjad Ali Bohio

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE5MTk1Y2Ztcy1kYzgZ>

Facts: The case arose with the arrest of the appellant, Muhammad Asif alias Billa, on 15th May 2022, by ASI Khair Muhammad Channa of Police Station Tando Yousuf, Hyderabad, for possessing 1030 grams of charas. The prosecution alleged that the appellant was found in possession of the narcotic substance behind the Primary School in Badin. After completing the investigation, a charge sheet was submitted, and the appellant was tried before the Special Judge for Control of Narcotic Substances (CNS) / Model Criminal Trial Court-II, Hyderabad. On 9th December 2022, the trial court convicted the appellant under Section 9(1) of the Control of Narcotic Substances Act, 1997, as amended by the Act of 2022, which had been promulgated on 5th September 2022. The appellant was sentenced to nine years of rigorous imprisonment and a fine of Rs. 30,000, with an additional one-month simple imprisonment in case of default. The appellant challenged this conviction in the High Court of Sindh, Circuit Court Hyderabad, through Criminal Jail Appeal No. D-141 of 2022. His counsel did not contest the conviction on merits but argued that the amended law could not be applied retrospectively since the alleged offense had occurred before the enactment of the amendment.

Issue: Whether the amended sentencing provisions (the CNS Act 2022”) of Section 9(1) of the Control of Narcotic Substances Act, 1997, can be applied retrospectively to an offense committed before its promulgation, or whether such application violates Article 12 of the Constitution, which prohibits ex post facto punishment?

Rule: Under Article 12 of the Constitution of Pakistan, 1973, no law can authorize the punishment of a person for an act that was not punishable at the time of its commission or impose a harsher penalty than the one prescribed at the time of the offense. Before the amendment, Section 9(c) of the CNS Act, 1997, prescribed up to 14 years of imprisonment for possessing more than 1 kilogram of narcotics. The Ghulam Murtaza case (PLD 2009 Lahore 362) and Ameer Zaib case (PLD 2012 SC 380) established a sentencing policy that prescribed 4 years and 6 months of imprisonment for possession between 1 and 2 kilograms of narcotics. The amendment of 5th September 2022 introduced new sentencing guidelines, but its application to past offenses violates the constitutional protection against retrospective punishment.

Application: The appellant was convicted for possessing 1030 grams of charas on 15th May 2022, before the 5th September 2022 amendment. The trial court sentenced him to 9 years in prison under the amended law, which imposed a lower but structurally different punishment than what was applicable at the time of the offense. The defense argued that this retrospective application of the amendment was unconstitutional. The prosecution conceded that the amended law should not apply retrospectively, and the High Court, applying Article 12 of the Constitution, ruled that the sentence should be determined based on the law in effect at the time of the offense.

Conclusion: The court converted the appellant's conviction from Section 9(1) (as amended/ CNS Act 2022) to Section 9(c) of the CNS Act, 1997, as it stood at the time of the offense. The sentence was reduced from 9 years to 4 years and 6 months, with a fine of Rs. 20,000 and an additional 5-month imprisonment in case of default, in accordance with the sentencing policy in Ghulam Murtaza's case. The appellant was also granted the benefit of Section 382-B CrPC (consideration of time served as an under-trial prisoner), and the appeal was disposed of accordingly.

05. Muhammad Hassan Sultan vs Chairman Union Council Cantonment Board & another

Constitutional Petition No. 525 of 2024 (S.B)

Present: *Mr. Justice Muhammad Iqbal Kalhoro*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIwNTM1Y2Ztcy1kYzgZ>

Facts: The petitioner and respondent No. 2 (wife) married in 2016, with the wife granted the delegated right of divorce (Talaq-e-Tafweez). On 03.07.2023, she exercised this right and submitted a divorce notice to the Cantonment Board Arbitration Council, Karachi, initiating the mandatory 90-day reconciliation period under Section 7 of the Muslim Family Laws Ordinance, 1961. On 10.08.2023, before the 90-day period expired, the wife withdrew the proceedings, citing reconciliation, and the Arbitration Council accepted the withdrawal on 11.08.2023. The petitioner opposed this, arguing that once divorce was pronounced, it could not be revoked. Meanwhile, the wife filed for divorce in New York, USA, raising concerns of forum shopping. The petitioner then filed for divorce before the Arbitration Council in Karachi, but his request was dismissed on 01.09.2023, as the wife was residing abroad, and under SRO No. 1086(K)/61, divorce proceedings had to be processed through the Pakistan Mission/Embassy in New York. Aggrieved, the petitioner challenged both the wife's withdrawal and the rejection of his own divorce filing before the High Court.

Issue: 01. Whether a wife who has exercised her delegated right of divorce (Talaq-e-Tafweez) under Section 8 of the Muslim Family Laws Ordinance, 1961, can lawfully withdraw the divorce proceedings within the mandatory 90-day reconciliation period under Section 7 of the Ordinance?

02. Whether the Arbitration Council within Pakistan had jurisdiction to process the divorce proceedings when the wife was residing in the United States, or whether the Pakistan Mission/Embassy abroad was the appropriate forum under the applicable legal framework?

Rule: Under Section 7 of the Muslim Family Laws Ordinance, 1961, a divorce, unless revoked earlier, does not take effect until the expiration of 90 days from the date of notice given to the Chairman of the Union Council. Section 8 of the Ordinance

applies the same procedure when a wife exercises a delegated right of divorce. The law mandates the formation of an Arbitration Council within 30 days to attempt reconciliation between the parties. Furthermore, Rule 3(b) of the West Pakistan Rules states that the Union Council where the wife is residing at the time of pronouncement has jurisdiction. The SRO No. 1086(K)/61, issued under Section 2 of the Ordinance, authorizes the Pakistan Mission/Embassy abroad to conduct divorce proceedings for spouses residing outside Pakistan.

Application: The petitioner and respondent No. 2 were married in 2016, and the wife was granted the delegated right of divorce (Talaq-e-Tafweez) in the Nikahnama. On 03.07.2023, she pronounced divorce and submitted notice to the Cantonment Board Arbitration Council, which initiated proceedings under Section 7 of the Ordinance. However, on 10.08.2023, before the expiration of 90 days, she requested withdrawal of the proceedings, stating she wished to reconcile. The Arbitration Council accepted the withdrawal on 11.08.2023, and the petitioner challenged this, arguing that once the divorce was pronounced, it was final and irrevocable. The respondent later filed for divorce in New York, USA, raising questions about mala fide intent and forum shopping. Additionally, the Arbitration Council later dismissed the petitioner's own divorce proceedings, directing him to approach the Pakistan Mission/Embassy in New York, as required by the SRO. The court found that the respondent withdrew the divorce within the 90-day reconciliation period, making the withdrawal legally valid. The petitioner's own divorce proceedings were also rightly dismissed due to lack of territorial jurisdiction since the wife resided in the USA.

Conclusion: The court dismissed the petition, holding that the wife's withdrawal of divorce proceedings within the 90-day period was lawful under Section 7 of the Ordinance. It also upheld the Arbitration Council's decision to direct the petitioner to approach the Pakistan Mission/Embassy in New York for initiating divorce proceedings. The court found no illegality in the disposal of both sets of divorce proceedings and concluded that the petitioner had no valid grounds to challenge the withdrawal or the jurisdictional ruling. The petition was dismissed accordingly.

06. Sajjad Anwar Sunny & others vs The Province of Sindh & others

Constitutional Petition No. D-5887 of 2024 (D.B)

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

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIzMjM5Y2Ztcy1kYzgZ>

Facts: The petitioners, directly recruited as Inspectors (Investigation) BPS-16 by the SPSC in 2018, have completed their probationary period and training courses. They submit that the respondents' orders dated 23.01.2024 and 24.01.2024 regarding their only posting in Investigation Branch and not in operational Branch Karachi Police violate the 2019 Amendment Act, the Police Rules 1934, and the Sindh Civil Servants Act

1973 and seniority rules framed their under. They also claim that they should be considered Gazetted Class-II officers and they be allowed to be posted in Executive Branch as they are liable to serve at any time in any branch, division, bureau and section in terms of the judgment passed by the Supreme Court in the case of Gul Hassan Jatoi and others v. Faqir Muhammad Jatoi, 2016 PLC (CS) 1102. The petitioners have filed representations but have not received any response.

- Issue:** Whether police officers recruited as Inspectors (Investigation) in BPS-16 can be transferred to the Executive Branch of the Sindh Police despite their appointment letters restricting them to the Investigation Cadre, and whether such a transfer is legally justified under the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) Amendment Act, 2019, the Police Rules, 1934, and relevant case law?
- Rule:** The Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) Amendment Act, 2019, along with the Police Rules, 1934, governs police appointments, postings, and cadre classifications. Officers recruited as Inspectors (Investigation) in BPS-16 are bound by their appointment letters, which restrict them to the Investigation Cadre, and they cannot be transferred to the Executive Branch unless expressly provided by law. The Supreme Court's decision in Gul Hassan Jatoi (2016 PLC (CS) 1102) reinforces that cadres must remain distinct, and service conditions must be determined as per statutory frameworks. Since matters relating to service terms fall under the jurisdiction of the Service Tribunal under Article 212 of the Constitution, the court lacks jurisdiction to entertain such claims.
- Application:** The petitioners, who were recruited as Inspectors (Investigation) in 2018 through the Sindh Public Service Commission (SPSC), argued that they had completed their probationary period and training and should be considered part of the Executive Cadre, allowing them to be transferred to any police branch. They relied on the IGP Sindh's earlier order merging Investigation Inspectors into the Executive Cadre, which was later reversed by a departmental committee, citing service rules and the Gul Hassan Jatoi (2016 PLC (CS) 1102). The respondents argued that the petitioners' appointment letters specifically restricted them to the Investigation Unit, and they could not claim postings outside their designated cadre. The DIGP/Establishment Sindh had also imposed a condition requiring Inspectors to complete 25 investigations before being eligible for promotion, further distinguishing their role from Executive Cadre officers.
- Conclusion:** The court held that transferring the Investigation Wing to the Executive Branch was not justified under the Police Act, the Police Rules 1934, or relevant case law. It held that the petitioners' appointment letters explicitly restricted them to the Investigation Cadre, and their seniority and promotions had to be determined accordingly. Since terms of service fall under the jurisdiction of the Service Tribunal as per Article 212 of the Constitution, the court dismissed the petition, concluding that the petitioners could not claim the right to be transferred to the

Executive Branch. The petition lacked merit and was accordingly dismissed.

07. Sultan Ali Panhwar vs Vice Chancellor, University of Sindh, Jamshoro & others

Constitutional Petition No. D-178 of 2019 (D.B)

Present: *Mr. Justice Muhammad Faisal Kamal Alam*
Mr. Justice Yousuf Ali Sayeed

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIxNTg5Y2Ztcy1kYzgZ>

Facts: The petitioner, Sultan Ali Panhwar, applied for the post of Lecturer in Social Work at the University of Sindh, Jamshoro, following an advertisement dated 21.12.2012. He scored 30 marks in the written test, while Respondent No.6, Waheed Akbar Khaskheli, obtained 25 marks. However, in the interview, Respondent No.6 secured higher overall marks (70.91) compared to the petitioner (64.32). The Selection Board recommended only Respondent No.6 for appointment, stating that the petitioner could be accommodated if a vacancy arose. The Syndicate endorsed this recommendation on 19.07.2014, but a clerical error in the resolution mistakenly used the plural term “Lecturers” instead of “Lecturer”, which the petitioner later relied upon to claim that he was also selected. The petitioner filed an appeal before the Syndicate, challenging his non-appointment, but it was dismissed on 09.04.2015, with the decision communicated to him on 30.04.2015. Thereafter, he filed the petition nearly four years later, on 24.01.2019.

Issue: Whether the petitioner’s non-appointment as Lecturer at the University of Sindh, despite securing higher marks in the written test than the selected candidate, was unlawful, and whether the petition was barred by laches due to a four-year delay in filing?

Rule: Under the University of Sindh’s statutes, recruitment rules, and the Selection Board’s recommendations, a candidate’s selection is based on both written test and interview scores. The final authority for appointment rests with the Selection Board and the Syndicate, which can approve, reject, or modify recommendations. Additionally, under settled legal principles, a petition challenging an administrative decision must be filed within a reasonable time, failing which the doctrine of laches applies, rendering the claim non-maintainable. In 2023 SCMR 1442 (Fayyaz Dawar case), the Supreme Court held that courts must consider whether a petitioner has challenged an impugned action within a reasonable time.

Application: The petitioner, Sultan Ali Panhwar, applied for the post of Lecturer in Social Work at the University of Sindh, Jamshoro through an advertisement dated 21.12.2012. He obtained higher marks (30) in the written test than Respondent No.6 (25) but was awarded lower marks in the interview, resulting in Respondent No.6 securing a higher overall score (70.91) than the petitioner (64.32). The Selection Board recommended only Respondent No.6 for appointment, while it stated that the

petitioner could be accommodated in case of a vacant position. The Syndicate later endorsed this decision. The petitioner challenged this non-appointment nearly four years later on 24.01.2019, arguing that the Syndicate's decision approved both candidates and that he was unfairly denied appointment. The respondents countered that only one position was advertised and that the term "Lecturers" in the Syndicate's resolution was a typographical error. The university also argued that the petitioner's appeal against non-appointment was dismissed by the Syndicate in 2015, and since he had been aware of this since 30.04.2015, his petition was barred by laches. The court found no contradictions in the university's stance and ruled that the Selection Board's decision was correctly upheld by the Syndicate.

Conclusion: The court dismissed the petition, holding that the petitioner failed to challenge his non-appointment within a reasonable time, making the claim non-maintainable under the doctrine of laches. It further ruled that the university followed due process in appointing the candidate with the highest aggregate score, and the petitioner had no enforceable right to appointment. However, the court allowed that if the petitioner's application was pending in response to a later advertisement, the university could consider it in accordance with applicable rules and regulations.

08. Nihal Khan & others vs Province of Sindh & others

Revision Application No. 157 of 2023 (S.B)

Present: *Mr. Justice Arshad Hussain Khan*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI0MDY1Y2Ztcy1kYzgZ>

Facts: The applicants filed Suit No. 109 of 2020 before the 1st Senior Civil Judge, Tando Allahyar, challenging the exclusion of their land (Survey No. 369/1) from revenue records due to an order passed by the District Officer (Revenue) in 2010. The trial court rejected the plaint under Order VII, Rule 11 CPC, holding that the matter fell within the exclusive jurisdiction of revenue authorities under Section 172 of the Land Revenue Act, 1967. The appellate court upheld this rejection in Civil Appeal No. 134 of 2022. The applicants argued that the revenue authorities acted beyond their jurisdiction by altering the land records without notice, violating their ownership rights, which could only be adjudicated by a civil court under Section 53 of the Land Revenue Act, 1967. They contended that the dispute was not merely about correction of revenue entries but involved fraudulent interference with their title and possession, making the civil court competent to hear the case. The respondents maintained that the applicants failed to exhaust remedies before the revenue hierarchy, and since their earlier constitutional petition was dismissed, their suit was not maintainable.

Issue: Whether the rejection of the plaint under Order VII, Rule 11 CPC was justified when the applicants alleged that the revenue authorities had unlawfully interfered with their land ownership rights without notice, and whether the civil court had

jurisdiction to hear the case despite the bar under Section 172 of the Land Revenue Act, 1967?

Rule: Under Section 172(2)(vi) of the Land Revenue Act, 1967, the jurisdiction of civil courts is barred in matters concerning correction of entries in revenue records, which fall within the exclusive domain of revenue authorities. However, under Section 53 of the Land Revenue Act, 1967, if a person's rights, title, or possession over land is interfered with due to fraudulent or illegal acts, they have the right to seek declaratory relief from a civil court. The Supreme Court in *Nausher v. Province of Punjab* (PLD 2022 SC 699) held that civil courts retain jurisdiction to review revenue decisions if fraud, mala fide intent, or jurisdictional excess is alleged. Furthermore, Article 10-A of the Constitution of Pakistan guarantees the right to a fair trial, emphasizing that a plaint should not be rejected without allowing the parties to present evidence.

Application: The applicants filed Suit No. 109 of 2020 before the 1st Senior Civil Judge, Tando Allahyar, challenging the exclusion of their land (Survey No. 369/1) from revenue records based on an order passed by the District Officer (Revenue) in 2010. The plaint was rejected under Order VII, Rule 11 CPC, on the ground that the dispute fell within the exclusive jurisdiction of the revenue authorities, and this decision was upheld by the 2nd Additional District Judge, Tando Allahyar in Civil Appeal No. 134 of 2022. The applicants argued that the revenue authorities acted beyond their jurisdiction by altering long-standing revenue entries without issuing them notice, thereby violating their ownership rights. They also contended that their claim was not merely about correcting an entry but about their title and possession over the land, which falls within the jurisdiction of civil courts under Section 53 of the Land Revenue Act, 1967. The respondents argued that the applicants failed to exhaust the revenue hierarchy's remedies and that their constitutional petition was earlier dismissed, making their suit non-maintainable. However, the court found that the constitutional petition was dismissed without deciding the case on merits, and thus, it did not bar the applicants from filing a civil suit.

Conclusion: The court held that both the trial and appellate courts had committed a jurisdictional error by rejecting the plaint without properly considering whether the applicants' claim involved fraudulent interference with their ownership rights, which falls within the domain of civil courts under Section 53 of the Land Revenue Act, 1967. It held that mere correction of revenue entries falls within the jurisdiction of revenue authorities, but when the alteration affects ownership rights without notice, a civil court has jurisdiction to hear the case. The revision application was allowed, the impugned orders were set aside, and the case was remanded to the trial court for recording evidence and deciding the matter on merits.

09. Gulab Sahito vs Province of Sindh & others

Constitutional Petition No. D-1754 of 2023 (D.B)

Present: *Mr. Justice Muhammad Saleem Jessar*
Mr. Justice Zulifqar Ali Sangi

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI0MzAzY2Ztcy1kYzgZ>

Facts: The petitioner sought declaration of nullity regarding the non-appointment decision by the respondents, arguing that his previous criminal case, from which he had been acquitted, could not be a basis for rejection. He further prayed for a direction to issue his appointment letter for the post of Police Constable (BPS-05), which he had successfully qualified for.

The Sindh Police advertised vacancies for the post of Police Constable (BPS-05), with applications closing on 30.06.2021. The petitioner applied, cleared the Pakistan Testing Service examination, medical checkup, and other codal formalities. During character verification, it was discovered that he had been nominated in FIR No. 82 of 2014 under Section 395 PPC. Based on this, the Recruitment Board rejected his appointment in its meeting on 31.08.2021, and a formal intimation was issued on 06.09.2022. The petitioner was acquitted from the said case by the Additional Sessions Judge, Gambat, on 09.10.2021. Despite this, when he approached the concerned authorities for reconsideration, his request was ignored, prompting him to file this constitutional petition.

Issue: Whether the Sindh Police Recruitment Board's refusal to appoint the petitioner as a Police Constable on the ground of a past criminal case, despite his subsequent acquittal, was legally justified, and whether an acquitted individual could be denied employment based solely on prior involvement in a criminal case.

Rule: Under Article 13(a) of the Constitution of Pakistan and Section 403 of the Code of Criminal Procedure (CrPC), 1898, an acquitted individual cannot be subjected to future legal consequences based on the same charge. The Supreme Court in PLD 2010 SC 695 (Chairman Agricultural Development Bank v. Mumtaz Khan) held that an acquittal, whether on merit or compromise, fully exonerates an accused for all future purposes, including employment eligibility. The Sindh Police Recruitment Policy, 2022 (para 4.1.18) states that convicted individuals are disqualified from police service, but this does not extend to those acquitted after trial. Courts have ruled in PLD 2018 SC 703 and 1998 SCMR 1993 that all acquittals, regardless of reason, are considered honorable, and an acquitted individual cannot be denied employment solely on the basis of prior allegations.

Application: The petitioner applied for the post of Police Constable (BPS-05) in 2021, successfully passing all tests and meeting the eligibility criteria. However, during character verification, authorities discovered his past involvement in FIR No. 82/2014 (Section 395 PPC), for which he had been acquitted by the Additional Sessions Judge, Gambat, on 09.10.2021. Despite his acquittal, the Sindh Police Recruitment Board rejected his appointment, citing his prior criminal record. The petitioner challenged this decision, arguing that his acquittal removed any legal stigma, making him eligible for appointment. The respondents failed to provide any

legal justification for denying him employment after acquittal and could not refute established case law affirming the right to employment for acquitted individuals.

Conclusion: The court held that the petitioner's rejection from service was unlawful, as an acquittal exonerates an individual fully and cannot serve as a basis for denial of employment. It ruled that the Sindh Police Recruitment Board's decision was unsustainable in law, and the petitioner was entitled to appointment as a Police Constable. The petition was allowed, and the respondents were directed to issue his appointment letter within 15 days.

10. Basheer Ahmed Sodhar vs The State & others

Criminal Revision No. 271 of 2022 (D.B)

Present: *Mr. Justice Salahuddin Panhwar*
Mr. Justice Adnan-ul-Karim Memon

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIyODE3Y2Ztcy1kYzgZ>

Facts: The facts of the case in nutshell are that on December 14, 2020, a team of revenue and police officials arrived at Abdullah Shah Ghazi Goth to remove encroachments on Government land. It is alleged that a mob of 60-70 people, armed with sticks, stones, and firearms, attacked the officials, injuring several and stealing money and mobile phones. The mob also attempted to snatch weapons and kidnap officials. The police were called, and the officials were taken to the hospital. An FIR was registered against the accused, including applicant Bashir Ahmed, for various offenses under sections 147, 148, 353, 324, 395, 397, 365, 511, 337-A (i) of PPC including under Sections 6, 7, and 8 of the Anti-Terrorism Act, 1997 (ATA 1997). The applicant being aggrieved by and dissatisfied with the inclusion of terrorism charges applied section 23 of the Anti-Terrorism Act to transfer the above Special Case to an ordinary court of law/Session Court, which request was declined by the trial court vide impugned order as discussed supra.

Issue: Whether the alleged attack on revenue and police officials during an anti-encroachment operation constituted "terrorism" under Section 6 of the Anti-Terrorism Act, 1997, warranting trial by the Anti-Terrorism Court, or whether it was a private land dispute falling within the jurisdiction of an ordinary criminal court under Section 23 of the ATA?

Rule: Under Section 6 of the Anti-Terrorism Act, 1997, an offense constitutes terrorism if it is committed with the intent to create fear, panic, insecurity, or destabilization in society. However, if an act stems from a personal dispute or land ownership conflict, it may not fall under the definition of terrorism. Section 23 of the ATA provides that if a case does not meet the legal criteria for terrorism, the ATC may transfer it to an ordinary court. The Supreme Court, in PLD 2020 SC 61 (Ghulam Hussain case) and 2020 SCMR 1422 (Sadiq Ullah case), held that not all violent crimes qualify as

terrorism unless they involve a broader intent to terrorize the public at large.

Application: The case arose from an incident on December 14, 2020, when a team of revenue and police officials arrived at Abdullah Shah Ghazi Goth to remove encroachments. A mob of 60-70 people, including the accused, allegedly attacked officials with sticks, stones, and firearms, causing injuries and stealing money and mobile phones. The accused were charged under Sections 147, 148, 353, 324, 395, 397, 365, 511, and 337-A(i) of the Pakistan Penal Code (PPC), along with Sections 6, 7, and 8 of the ATA. The applicant, Bashir Ahmed, sought transfer of the case to an ordinary court, arguing that the land in question was private property, and the conflict arose due to an ongoing land dispute, not an intent to terrorize the public. The trial court dismissed the transfer application, ruling that the attack on government officials fell within the definition of terrorism.

The defense contended that a pending civil suit established the land as private property and that a stay order had been issued, which meant the officials were conducting an illegal demolition. The defense further argued that the alleged attack was not meant to create widespread fear but was a reaction to a perceived injustice. The prosecution, led by the Additional Prosecutor General, countered that the attack was organized, targeted revenue officials, and created a sense of insecurity, justifying ATC jurisdiction. However, the court noted inconsistencies in the prosecution's case, particularly that the FIR initially classified the case under a minor offense and was later upgraded to terrorism charges, indicating possible exaggeration or misuse of the ATA provisions. The court also examined the Sindh Public Property (Removal of Encroachment) Act, 2010, which provides a legal framework for handling land encroachment disputes. It found that the incident was rooted in a land dispute, and similar cases have been tried by ordinary courts. The absence of a clear intent to spread terror and the prosecution's failure to establish that the crime was directed at society at large led the court to conclude that the case did not meet the criteria for terrorism.

Conclusion: The court allowed the Criminal Revision Application and set aside the trial court's order, held that the case did not fall within the ambit of Section 6 of the ATA, 1997. It directed that the case be transferred to an ordinary court with proper jurisdiction, as the alleged offense did not constitute terrorism but rather a private land dispute that should be adjudicated under regular criminal law. The court emphasized that misapplication of terrorism laws should be avoided to prevent wrongful prosecution under special statutes.

11. **Sheraz Hakeem vs Agha Khan University & others**

High Court Appeal No. 27 of 2023 (D.B)

Present: *Mr. Justice Yousuf Ali Sayeed*
Mr. Justice Arbab Ali Hakro

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIwNzgZ2Ztcy1kYzgZ>

- Facts:** The case arose from Suit No. 1938 of 2022, filed by Sheraz Hakeem (SH), a student of the MBBS program at Aga Khan University (AKU), challenging his expulsion from the university. The Disciplinary Committee of AKU expelled SH, citing violations of the Student Code of Conduct and Disciplinary Procedures, as communicated through the Disciplinary Decision Notification dated 23.09.2022, which was later upheld by the Appeals Committee via a letter dated 02.11.2022. The expulsion was based on multiple allegations, including that SH had unauthorizedly sought a foreign elective in the U.S. despite being ineligible, misrepresented facts regarding a family wedding to justify travel, and failed to inform the university about changes in his plans. Additionally, he was accused of breaching ethical standards by continuing patient rotations despite allegedly testing positive for COVID-19 and violating patient confidentiality. The university argued that his actions were deceptive, unethical, and detrimental to the institution's reputation and safety protocols.
- Issue:** Whether the disciplinary actions taken by Aga Khan University (AKU) against the appellant, including expulsion from the MBBS program, were justified under university policies, or whether the punishment was excessive and required suspension pending final adjudication of the underlying suit?
- Rule:** Under the principles of judicial review in academic matters, courts exercise limited interference in disciplinary actions of educational institutions unless there is a violation of fundamental rights, malafide intent, or a lack of due process. The Supreme Court in PLD 2022 SC 92 (Khyber Medical University case) and PLD 2021 SC 745 (Higher Education Commission case) reaffirmed that courts should not interfere with academic decisions unless clear procedural irregularities or bad faith are evident. AKU's Guidelines, Policies, and Procedures provide that students who violate disciplinary standards, misrepresent facts, or disregard policies can be subjected to penalties, including expulsion, following a fair inquiry process.
- Application:** Appellant was expelled from AKU following an inquiry by the Disciplinary Committee, which found that he had violated university policies by seeking an unauthorized foreign elective, misrepresenting facts regarding a family wedding, and breaching ethical standards in patient care. The university argued that SH's actions were not merely procedural violations but reflected dishonesty and misconduct, warranting strict disciplinary action. The appellant challenged the decision, arguing that his actions were misinterpreted, the punishment was disproportionate, and he had not received fair consideration of his defense. During interlocutory proceedings, the Single Judge initially dismissed application of appellant for suspension of the disciplinary decision, though he was granted temporary relief to continue attending classes and sitting for exams. As the appeals progressed, SH virtually completed the MBBS program, raising questions about the practical significance of the case. The court noted that AKU had agreed to disclose appellant's withheld exam results and allow him to re-sit any failed courses, subject to the final determination of the underlying suit. The appellant further objected to a

Note/Disclaimer on his transcript, stating that he was expelled but continued his studies due to court orders. AKU countered that this matter was already under separate legal challenge and should not be adjudicated in this appeal.

Conclusion: The court dismissed the appeals, holding that no interference was warranted at the interlocutory stage since the final determination of SH's disciplinary case remained pending in the trial court. The discretion exercised by the Single Judge in dismissing the suspension application was upheld, as there was no legal justification to disturb the ruling. The court also declined to address the issue of the Note/Disclaimer on appellant's transcript, ruling that it fell outside the scope of the present appeals and should be resolved within the framework of the pending suit. The judgment reinforced the principle that academic institutions have the discretion to enforce discipline, and judicial intervention should be minimal unless clear procedural violations or bad faith are established.

12. **Muhammad Shabbir Ahmed & others vs Province of Sindh & others**

Constitutional Petition No. 4850 of 2024 (D.B)

Present: *Mr. Justice Salahuddin Panhwar*
Mr. Justice Amjad Ali Sahito

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIyMTg3Y2Ztcy1kYzgZ>

Facts: The case arose from allegations that the Medical and Dental Colleges Admission Test (MDCAT) 2024, conducted by Dow University of Health Sciences (DUHS), was compromised due to widespread paper leakage and procedural irregularities. Several candidates and petitioners challenged the validity of the examination, alleging that the question paper was leaked at least 13 hours before the test and was circulated through digital platforms and social media, giving certain candidates an unfair advantage.

Multiple complaints were lodged regarding discrepancies in test scores, unauthorized access to examination content, and mismanagement by the exam-conducting body. The petitioners argued that the integrity of the test was irreparably damaged, and the results could not be considered a fair measure of merit-based admissions to medical and dental colleges. The case gained further significance when a special investigation committee, along with the FIA Cyber Crime Wing, confirmed the authenticity of the leaked content and its widespread circulation before the exam.

Issue: Whether the Medical and Dental Colleges Admission Test (MDCAT) 2024 conducted by Dow University of Health Sciences (DUHS) was compromised due to paper leakage and procedural irregularities, warranting judicial intervention and a retake to ensure fairness and transparency in the medical admissions process?

Rule: Under the Pakistan Medical and Dental Council (PMDC) Act, 2022, MDCAT is a

mandatory pre-requisite for admission to medical and dental colleges. It must be conducted fairly, transparently, and in accordance with statutory and regulatory requirements. The Supreme Court of Pakistan in PLD 2024 SC 724 (Hafsa Habib Qureshi case) held that courts can intervene in academic matters where there is evidence of procedural violations, misconduct, or breaches of fundamental rights. Judicial precedent establishes that if an examination process is compromised, courts have the authority to order a retake to protect merit and fairness in public admissions.

Application: The petitioners alleged that MDCAT 2024 was marred by widespread paper leakage, irregularities, and unfair practices, undermining the principles of merit-based admissions. Evidence presented included leaked exam content circulating on social media before the test, discrepancies in scores, and complaints from candidates who alleged an unfair advantage for certain students. The court constituted a special investigation committee, which conducted an inquiry and confirmed that the MDCAT paper was leaked at least 13 hours before the exam, and key content was distributed among students via digital platforms.

The Dow University and PMDC argued that the examination was conducted fairly, and there was no substantial evidence of misconduct that warranted a retake. They further contended that judicial interference in academic matters should be limited to exceptional circumstances. However, the court found that the forensic report from the FIA Cyber Crime Wing conclusively established that leaked exam questions were widely circulated before the test, making the process fundamentally flawed. Given the gravity of the situation, the court determined that MDCAT 2024 had lost its credibility, and allowing the results to stand would violate the principles of fairness and equal opportunity.

Conclusion: The court ordered a retake of MDCAT 2024 within four weeks, directing that it be conducted by IBA Karachi and IBA Sukkur to ensure fairness and transparency. It further held that no additional examination fees should be charged from candidates. The validation of the previous test results was revoked, and candidates who had appeared in prior years were granted fresh candidate status to ensure no undue disadvantage. The court reinforced that judicial intervention was justified given the widespread irregularities, and ensuring the integrity of the admission process was a constitutional necessity. Accordingly, all petitions were allowed, and the concerned authorities were instructed to implement the retake with strict monitoring to prevent future lapses.

13. National Accountability Bureau vs Federation of Pakistan & others

Constitutional Petition No. 1465 of 2024 (D.B)

Present: *Mr. Justice Amjad Ali Sahito*
Mr. Justice Khadim Hussain Soomro

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIzNTI0Y2Ztcy1kYzg>

- Facts:** The NAB filed a constitutional petition challenging the order dated 29.08.2024 of National Accountability Court-II, Hyderabad, which dismissed NAB's application seeking a 25% share from the recovered embezzled funds of the M-6 Motorway Project (District Matiari & Naushahro Feroze). During the investigation, it was found that the accused embezzled Rs. 5.8 billion, leading to the filing of Reference No. 01 of 2023 (State v. Adnan Rasheed & Others). NAB's Special Prosecutor filed an application claiming that under its SOPs, it was entitled to 25% (Rs. 219,529,500/-) of the Rs. 878,118,000/- recovered through plea bargain by accused Ashique Hussain Akhlaque. However, the Accountability Court dismissed NAB's request on 18.01.2024, which NAB has now challenged in this petition.
- Issue:** Whether the NAB has the legal authority to retain 25% of the recovered amount under the plea bargain mechanism, or such deductions violate Section 25 (c) of the National Accountability Ordinance, 1999, and Articles 77 and 78 of the Constitution, requiring full transfer of recovered funds to the concerned public entity?
- Rule:**
1. National Accountability Ordinance (NAO), 1999: Section 25(b) allows the NAB to accept a plea bargain, and Section 25(c) mandates that the recovered funds must be transferred to the concerned federal or provincial government or statutory body within one month.
 2. National Accountability Bureau (Recovery and Rewards) Rules, 2002: Rule 4 mentions that NAB is entitled to retain a share from the recovered amount based on a proposal by the Chief Executive. However, the rules are silent on when and how much NAB can retain.
 3. Constitution of Pakistan, Articles 77 and 78: Articles 77 and 78 of the Constitution stipulate that all revenues and recovered amounts must be credited to the Federal Consolidated Fund or the public account, rather than being retained by NAB for its operations.
- Application:** The court examined whether NAB's retention of 25% of the recovered amount under the plea bargain mechanism was legally justified and whether the Accountability Court-II, Hyderabad, had the jurisdiction to direct NAB to remit the deducted funds to the National Highway Authority (NHA). NAB relied on its internal SOPs and the NAB (Recovery and Rewards) Rules, 2002, arguing that it was entitled to retain a portion of recovered funds to support its operations and provide financial incentives to its officers. It contended that the executive notification dated 06.07.2000 provided the necessary legal backing for these deductions. However, the respondents, including the NHA and the Additional Advocate General Sindh, strongly opposed this claim, arguing that no statutory provision under the National Accountability Ordinance (NAO), 1999, authorizes NAB to withhold any portion of the recovered amount.
- The court found that NAB's justification lacked legal foundation, emphasizing that Section 25(c) of NAO explicitly requires that all recovered funds be transferred to

the Federal or Provincial Government, or the concerned statutory body, within one month of deposit. The court further highlighted that Articles 77 and 78 of the Constitution strictly prohibit the imposition of any tax or deduction from public funds unless expressly authorized by legislation. Since NAB's authority is derived from NAO, an executive notification or internal rules cannot override statutory provisions.

The Accountability Court's jurisdiction was also upheld, as it had the authority to scrutinize NAB's compliance with legal provisions governing recovered funds. The court ruled that NAB's reliance on its internal rules conflicted with the constitutional and statutory mandate, making the deductions unlawful. The NAB (Recovery and Rewards) Rules, 2002, were found to be inconsistent with NAO and, therefore, could not justify NAB's retention of the recovered amount. The court concluded that NAB's deductions were unauthorized, and the Accountability Court's direction to remit the full recovered amount to NHA was legally valid.

Conclusion: The court dismissed NAB's petition and upheld the Accountability Court-II, Hyderabad's order, directing NAB to remit the deducted 25% share of the recovered amount to the National Highway Authority (NHA). It ruled that NAB had no legal authority to retain any portion of the recovered funds, as such deductions violated Section 25(c) of the National Accountability Ordinance, 1999, and Articles 77 and 78 of the Constitution. The court further held that NAB's internal rules and executive notifications could not override statutory provisions, reaffirming that all recovered amounts must be fully deposited into the public treasury without unauthorized deductions.

14. Premium Textile Mills Ltd. & others vs Federation of Pakistan & others

Suit No. 129 of 2017 (S.B)

Present: *Mr. Justice Agha Faisal*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE4ODgxY2Ztcy1kYzgZ>

Facts: The case revolves around OGRA's notification dated 30.12.2016, which fixed gas prices without obtaining prior approval from the Federal Cabinet, as required under Section 8 of the OGRA Ordinance, 2002. The Federal Government later granted post-facto ratification on 13.01.2017, after the notification had already been issued. The petitioners challenged the validity of the notification, arguing that under the Supreme Court's ruling in *Mustafa Impex* (PLD 2016 SC 808), decisions requiring Federal Government approval must be made collectively by the Cabinet before implementation, and that post-facto ratification was unconstitutional. The respondents defended the notification, asserting that the approval by the Economic Coordination Committee (ECC) was sufficient and that the subsequent cabinet ratification cured any procedural defects.

Issue: Whether OGRA's notification dated 30.12.2016, fixing gas prices without prior

approval of the Federal Cabinet, was valid under Section 8 of the OGRA Ordinance, 2002, and whether its subsequent post-facto ratification by the Federal Government was unconstitutional in light of the Supreme Court's decision in *Mustafa Impex* (PLD 2016 SC 808)?

Rule: Under Section 8 of the OGRA Ordinance, 2002, the Federal Government has the exclusive authority to approve and notify gas prices. The Supreme Court in *Mustafa Impex* (PLD 2016 SC 808) established that any power vested in the Federal Government must be exercised by the Federal Cabinet collectively and not by an individual minister or committee. Additionally, the Sindh High Court in *A.D. Khawaja* (PLD 2018 Sindh 8) and *Mirpurkhas Sugar Mills* (2020 CLD 232) reaffirmed that post-facto ratification of executive decisions by the Federal Cabinet is unconstitutional and does not cure procedural defects.

Application: The plaintiffs challenged the Impugned Notification issued by OGRA on 30.12.2016, arguing that it lacked prior approval from the Federal Government, as required under the OGRA Ordinance and constitutional provisions. The Federal Government contended that since some members of the Federal Cabinet were also part of the Economic Coordination Committee (ECC), their approval of the gas price revision was tantamount to cabinet approval.

The court examined the chronology of events, noting that while the ECC approved the gas price revision on 15.12.2016, the Federal Cabinet only ratified the decision on 13.01.2017, after the Impugned Notification had already been issued. The court relied on *Mustafa Impex* and *A.D. Khawaja* to hold that cabinet approval must be obtained before issuing such notifications, and post-facto approval does not cure an otherwise unconstitutional exercise of power. The Sindh High Court's prior ruling in *SSGC v. Federation* (PLD 2017 Sindh 733) was also cited, which had struck down a similar notification for non-compliance with federal approval requirements. The defendants further argued that even if *Mustafa Impex* applied, the notification should still be upheld since no prejudice was caused to the plaintiffs. The court rejected this argument, holding that procedural irregularities in executive decision-making cannot be ignored merely because the outcome did not immediately harm a party.

Conclusion: The court ruled in favor of the plaintiffs, declaring that OGRA's notification dated 30.12.2016 was void ab initio as it was issued without prior approval of the Federal Cabinet, in violation of *Mustafa Impex* and statutory requirements. The post-facto ratification by the Cabinet on 13.01.2017 was held to be unconstitutional, reaffirming that all decisions requiring Federal Government approval must be taken collectively by the Cabinet before being implemented. The judgment was suspended for 30 days to allow the defendants to seek further legal recourse, but the notification was ultimately declared null and void.

15. Director, Directorate General I & I (customs) vs Muhammad Sabir & another

Special Custom Reference Application No. 213 of 2024 (D.B)

Present: *Mr. Justice Adnan Iqbal Chaudhry*
Mr. Justice Abdul Mubeen Lakho

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIxOTQ3Y2Ztcy1kYzgZ>

Facts: The controversy in this case revolves around the seizure of a trailer transporting foreign-origin scrap materials, including copper, brass, silver, nickel, and lead, by the Directorate General of Intelligence & Investigation (Customs) at Sukkur. The customs authorities suspected that the goods were smuggled into Pakistan without proper import documentation and, therefore, ordered their confiscation under Clause 89(i) of Section 156(1) of the Customs Act, 1969. The respondent, a local scrap dealer, claimed that the goods were lawfully purchased from Karachi-based vendors and produced purchase invoices to substantiate his claim. However, the Collector of Customs (Adjudication) rejected these invoices, stating that they were insufficient to establish legal importation, and upheld the confiscation order. The Customs Appellate Tribunal later set aside the confiscation order, ruling that the purchase invoices were adequate proof of lawful possession and that customs authorities had failed to provide substantive evidence of smuggling. The Directorate of Customs challenged the Tribunal's decision before the High Court, arguing that the invoices were not presented at the adjudication stage and should not have been accepted as evidence on appeal.

Issue: Whether the respondent, as the possessor of foreign-origin goods, had sufficiently discharged the burden of proof under Clause 89 (i) of Section 156 (1) and Section 187 of the Customs Act, 1969, to establish lawful possession, and whether the Customs authorities were justified in confiscating the goods based on suspicion of smuggling?

Rule: Under Clause 89 (i) of Section 156 (1) and Section 187 of the Customs Act, 1969, a possessor of foreign-origin goods must provide lawful justification and supporting documents to prove non-smuggling. However, courts have consistently ruled that mere suspicion is insufficient; customs authorities must first establish reasonable grounds for illegal importation before shifting the burden of proof to the possessor. The Supreme Court in *Pakistan State Oil* (2006 SCMR 425) and *Sikandar A. Karim* (1995 SCMR 387) held that when goods are legally importable and available in the local market, a presumption arises in favor of lawful importation unless customs authorities prove otherwise. In *Kamran Industries* (PLD 1996 Karachi 68), it was reaffirmed that once the possessor presents prima facie evidence of lawful acquisition, the burden shifts back to customs authorities to prove smuggling.

Application: The case originated from the seizure of a trailer at Sukkur transporting copper, brass, silver, nickel, and lead scrap, which was suspected of being smuggled. The Directorate General of Intelligence & Investigation (Customs) argued that the respondent failed to produce valid import documents and, therefore, the goods should be confiscated under Clause 89 (i) of Section 156 (1) of the Customs Act.

However, the respondent, a scrap dealer, submitted local purchase invoices issued by Karachi-based vendors to prove that the goods were legally acquired from the local market. The Collector of Customs (Adjudication) initially ruled against the respondent, holding that the invoices were insufficient evidence and ordered confiscation of the goods. The Customs Appellate Tribunal, however, overturned this order, finding that the invoices were adequate proof of lawful possession and that the customs authorities failed to provide reasonable grounds for suspecting smuggling. The applicant, Directorate General of Intelligence & Investigation (Customs), challenged the Tribunal's decision before the High Court under Section 196 of the Customs Act, arguing that the respondent had submitted additional invoices in the appeal, which were not presented before the adjudication authority, making them inadmissible.

The High Court found that the Customs authorities had failed to establish a reasonable suspicion that the goods were smuggled. The goods in question were not banned for import, were freely available in the market, and no specific evidence was presented to demonstrate that they had entered Pakistan illegally. The court held that the respondent had sufficiently discharged his burden of proof by producing purchase invoices, shifting the burden back to the customs authorities, who failed to counter it with substantive evidence.

Conclusion: The court dismissed the reference and upheld the Customs Appellate Tribunal's decision, ruling that the respondent had discharged his burden of proof under Clause 89 (i) of Section 156 (1) and Section 187 of the Customs Act, 1969. It reaffirmed that customs authorities cannot order confiscation based on mere suspicion and must provide concrete evidence of smuggling. The judgment emphasized that when goods are legally available in the market, the presumption is in favor of lawful importation, and the burden rests on the authorities to prove otherwise. Consequently, the confiscation order was set aside, and the respondent was entitled to the release of goods.

16. **Farooque vs The State**

Criminal Jail Appeal No. S-68 of 2022 (S.B)

Present: *Mr. Justice Zulifqar Ali Sangi*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIwNzYxY2Ztcy1kYzg>

Facts: The appellant, Farooque s/o Shaban Jamali, was convicted under Section 302 PPC for the murder of Haji Wali Muhammad Jamali and sentenced to life imprisonment along with a fine of Rs.100,000/- under Section 544-A CrPC, with an additional six months' imprisonment in case of non-payment. He was also granted the benefit of Section 382-B CrPC.

The incident occurred on 25.07.2020 at Sehrish Nagar near Max Bachat Mart, Hyderabad, where four armed assailants, including the appellant, fired at the deceased, causing fatal injuries. The complainant, Riaz Hussain, alleged that the

attack was motivated by revenge, as the accused suspected the deceased of assisting the police in an encounter that led to the death of Shoban Jamali. The FIR was registered after the funeral.

During investigation, the appellant was arrested on 07.09.2020, and a 30-bore TT pistol with a magazine and eight live bullets was recovered, which was sent for forensic analysis. The prosecution presented six witnesses, including the complainant and investigating officers, along with supporting evidence such as the FIR, postmortem report, and forensic reports. The appellant denied the charges in his Section 342 CrPC statement, but opted not to testify or present a defense. After evaluating the evidence, the trial court convicted the appellant, finding the eyewitness testimony, forensic evidence, and motive sufficient to prove guilt beyond a reasonable doubt. The appeal was filed challenging the conviction and sentence.

Issue: Whether the conviction and life imprisonment of the appellant for murder under Section 302 PPC were justified based on the prosecution's evidence, including eyewitness testimonies, forensic reports, and motive, or the contradictions in witness statements, delayed FIR, and alleged false implication warranted acquittal?

Rule: Under Section 302 of the Pakistan Penal Code (PPC), a conviction for qatl-i-amd (intentional murder) requires the prosecution to prove guilt beyond a reasonable doubt through eyewitness testimony, forensic evidence, and motive. The Supreme Court in *Muhammad Ehsan v. The State* (2006 SCMR 1857) and *Niaz-Ud-Din v. The State* (2011 SCMR 725) held that reliable direct evidence, even from a single witness, can sustain a conviction if supported by medical and forensic proof. Additionally, in *Zakir Khan v. The State* (1995 SCMR 1793), the court ruled that minor contradictions in witness statements do not weaken the prosecution's case if the overall evidence establishes guilt with certainty.

Application: The prosecution presented three eyewitnesses, including the complainant, who testified that the appellant and his accomplices, armed with pistols, fired directly at the deceased in broad daylight, causing fatal injuries. The FIR was lodged with a two-day delay, but the court found that the complainant was engaged in funeral proceedings, which justified the delay. The motive behind the murder was an alleged revenge killing after the appellant's father, Shoban Jamali, was killed in a police encounter, for which the accused believed the deceased had provided information to law enforcement.

The forensic reports confirmed that the bullets recovered from the crime scene matched the pistol seized from the appellant, further corroborating the prosecution's case. The postmortem report verified firearm injuries consistent with the complainant's narrative. The defense argued that the witnesses were interested parties, their statements contained discrepancies, and the appellant was falsely implicated. However, the court found the eyewitness accounts credible, noting that minor contradictions did not affect the core of the prosecution's case. The appellant neither examined himself on oath nor produced any defense witnesses, further weakening his position.

Conclusion: The court upheld the conviction and life imprisonment of the appellant, ruling that the prosecution successfully proved the case beyond a reasonable doubt through direct eyewitness testimony, forensic evidence, and motive. The court dismissed the appeal, concluding that the trial court committed no illegality or irregularity in convicting the appellant, and the judgment was based on substantive reasoning. Thus, the conviction and sentence were affirmed.

17. Muhammad Yaseen vs Shamshad Ali & others

Second Appeal No. S-08 of 2023 (S.B)

Present: *Mr. Justice Amjad Ali Bohio*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI0MzAxY2Ztcy1kYzgZ>

Facts: The dispute between the parties is that a sale agreement dated 13-05-2016, in which the appellant, Muhammad Yaseen, claimed to have purchased 4.22 acres of agricultural land from the respondents, including two illiterate and Pardanashin women, Mst. Allah Rakhi and Mst. Naheed. The appellant asserted that he had paid Rs. 7,00,000 upfront, with Rs. 3,00,000 remaining to be paid upon execution of the final sale deed, but the respondents failed to honor the agreement.

The respondents denied the validity of the agreement, arguing that the female respondents were illiterate and Pardanashin, and the document was never read out or explained to them. They claimed that their signatures were obtained fraudulently without their understanding of the transaction. The trial court partially decreed the suit, enforcing the sale agreement only against one male respondent, but the appellate court dismissed the entire suit, holding that the appellant failed to prove the proper execution of the agreement, particularly concerning the female respondents.

Issue: Whether the appellant successfully proved the validity and enforceability of the sale agreement dated 13-05-2016, particularly when two illiterate and Pardanashin female respondents were involved, and whether the appellate court correctly dismissed the suit due to lack of proper execution and legal compliance?

Rule: Under contract and property law principles, particularly in cases involving Pardanashin and illiterate women, the burden of proof rests on the party claiming the validity of the transaction. The law requires that documents executed by Pardanashin or illiterate women must be read over, explained, and executed in their full understanding. The Supreme Court in *Jannat Bibi v. Sikandar Ali* (PLD 1990 SC 642) and *Valluri Ramanamma v. Marina Virana* (AIR 1931 PC 100) has established that a claimant must affirmatively prove that the executants comprehended the nature of the transaction and that it was their free and intelligent act.

Application: The appellant filed a suit seeking specific performance of a sale agreement for 4.22 acres of land, claiming that he had paid Rs. 7,00,000 upfront, with Rs. 3,00,000

remaining to be paid upon execution of the final sale deed. However, the respondents failed to execute the sale deed, prompting the appellant to approach the trial court. The trial court partially decreed the suit, enforcing the agreement only against one male respondent. Upon appeal, the appellate court dismissed the entire suit, citing deficiencies in the execution of the sale agreement, particularly regarding the two female respondents, Mst. Allah Rakhi and Mst. Naheed. The court found that the attesting witnesses failed to testify that the sale agreement was properly explained to the illiterate Pardanashin women or that they executed it with full understanding. Furthermore, no independent legal advice was obtained, and the identification of the female respondents at the time of execution was not established. The absence of CNIC numbers and lack of proper attestation further weakened the appellant's claim. Given these shortcomings, the appellate court held that the appellant failed to prove the lawful execution of the agreement.

Conclusion: The court dismissed the second appeal, affirming the appellate court's decision that the appellant failed to prove that the illiterate and Pardanashin female respondents validly executed the sale agreement. The judgment reinforced the principle that transactions involving such individuals require heightened scrutiny and procedural compliance to ensure fairness and prevent exploitation. Consequently, the appellant's claim was rejected, and no interference was warranted in the appellate court's findings.

18. **Muhammad Akram vs Additional Chief Secretary & others**

Constitutional Petition No. D-1754 of 2014 (D.B)

Present: *Mr. Justice Arshad Hussain Khan*
Justice Ms. Sana Akram Minhas

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIxMzQ3Y2Ztcy1kYzgZ>

Facts: The matter centers around two petitions filed by the petitioners seeking recovery of unpaid compensation and interest under the Land Acquisition Act, 1894 for lands allegedly acquired in 1975. The petitioners claim the compensation amounts have been outstanding for decades. However, there are significant issues regarding the legitimacy of the claims. The petitioners' documents have been identified as forgeries, and no legal notifications, such as those required under Sections 4 and 6 of the 1894 Act, were issued. Furthermore, the petitioners failed to approach the appropriate forums for resolution of their grievances, despite orders from the court in previous years. The official respondents, for the first time, argued that the entire claims were fraudulent, based on forged documents, and the land acquisition itself lacked the necessary procedural foundation, including proper notifications.

Issue: Whether the petitioners were entitled to claim additional compensation, solatium, and interest for alleged land acquisitions under the Land Acquisition Act, 1894, despite significant delays in filing their claims, procedural deficiencies in the acquisition process, and the discovery of fraudulent documentation?

Rule: Under the Land Acquisition Act, 1894, compensation for acquired land must be determined and disbursed according to prescribed procedures. Section 4 of the Act mandates prior notification of intended acquisition, and Section 6 requires a declaration to be published within a specified time. If objections arise regarding compensation, they must be adjudicated by the Land Acquisition Officer (LAO) or referred to the District Judge under Section 18. Courts have repeatedly held that claims must be raised within a reasonable timeframe to avoid laches, and fraudulent claims are disqualified from judicial relief.

Application: The petitioners sought compensation for alleged land acquisitions dating back to 1975 and 1994, with claims filed decades later in 2014 and 2023. Despite receiving Rs.3,743,181/- through prior court proceedings, one petitioner later demanded an additional Rs.15,822,705.70 as interest and compensation. The respondents, including government officials, initially failed to contest these claims, but upon further investigation, the Assistant Commissioner and Advocate General declared the claims fraudulent, revealing that no official notification under Section 4 had ever been issued, making the acquisition process legally void. The court noted discrepancies in acquisition dates, forged documents, and non-existent official records supporting the petitioners' claims.

Conclusion: The court dismissed both petitions with costs and ordered the petitioners to return previously received compensation, citing fraud, lack of jurisdiction, and procedural irregularities. It also directed the Chief Secretary to initiate disciplinary action against officials involved in facilitating the false claims and imposed special costs under Section 151 CPC to deter frivolous litigation. The decision reinforced that fraudulent claims undermine the judicial system and must be met with strict legal consequences.

SELECTED ARTICLES

SUITS AGAINST FOREIGN RULERS, STATES AND DIPLOMATIC MISSIONS UNDER SECTION 86-A CPC AND ALLIED LEGAL FRAMEWORK

Waseem Ahmed
(Additional Registrar Research)

The conduct of foreign relations in any legal system is inherently intertwined with principles of sovereignty, reciprocity, and international comity. In Pakistan, these principles are manifested through legislative and judicial frameworks governing the immunity of foreign states, rulers, and diplomatic agents. Section 86-A of the Code

of Civil Procedure, 1908 (CPC), the Diplomatic and Consular Privileges Act, 1972, and the State Immunity Ordinance, 1981 constitute the bedrock of this regime.

This article critically analyzes the legal position relating to suits against foreign rulers, states, and diplomatic agents in Pakistan. It seeks to answer under what conditions such entities can be subjected to the jurisdiction of Pakistani courts and when such actions are barred by law.¹

DISSOLUTION OF MARRIAGE THROUGH KHULA & CRUELTY: A COMPARATIVE STUDY WITHIN LEGAL PRADIGM OF PAKISTAN

Zameer Ahmed Soomro
(Civil Judge/Research Officer)

Marriage, in Islam, is a sacred and solemn contract that establishes a bond of mutual respect, companionship, and responsibility between spouses. It is not merely a social institution but also a religious covenant, rooted in the teachings of the Quran and the Sunnah. While Islam emphasizes the preservation of marriage and encourages reconciliation in times of discord, it also recognizes the importance of providing individuals an avenue for marital dissolution in cases of irreconcilable differences or harm.

The dissolution of marriage is an integral aspect of Islamic family law, offering remedies to both spouses when the marital relationship becomes untenable. Among the recognized grounds for dissolution are khula, which allows a wife to initiate separation by returning her dower (*mahr*), and cruelty, a broader ground that encompasses physical, emotional, and psychological abuse.

This article delves into the distinctions and intersections of khula and cruelty as grounds for dissolution of marriage under Islamic jurisprudence and the legal framework in Pakistan. It aims to analyze these grounds through the lens of Quranic injunctions, classical Islamic thought, and contemporary judicial decisions of the Supreme Court of Pakistan. By exploring the evolving interpretations of khula and cruelty in legal and judicial contexts, the article highlights the challenges and implications for women's rights and agency in marital disputes.

The study seeks to provide a comprehensive understanding of how Islamic principles, codified laws, and judicial precedents interact in shaping the outcomes of marital dissolution cases.²

¹ <https://www.academia.edu/resource/work/128386574>

² https://www.academia.edu/128701820/Dissolution_of_Marriage_through_Khula_and_Cruelty_A_Comparative_Study_within_Legal_Paradigm_of_Pakistan

JUDICIARY AS THE CUSTODIAN OF ENVIRONMENTAL RIGHTS: A GLOBAL PERSPECTIVE WITH A MISSING PIECE FROM PAKISTAN

Naeem Akhtar
(Civil Judge/Research Officer)

The role of the judiciary in upholding environmental rights has evolved significantly, from passive interpretation of laws to active intervention in climate governance. The recognition of the right to a healthy environment as a fundamental human right has been reaffirmed in landmark court decisions across various jurisdictions. A recent compilation by the *NYU TERRA Program Report (2024)* highlights twenty influential court rulings that establish this right globally. However, this report conspicuously omits Pakistan's compelling climate jurisprudence, despite the country's status as one of the most climate-vulnerable nations. The Pakistani judiciary has played a pioneering role in climate litigation, expanding the scope of Article 9 of the Constitution—the right to life—to include environmental protection. This paper aims to fill this omission by presenting a comprehensive analysis of Pakistan's significant environmental judgments. It examines landmark cases such as *Shehla Zia v. WAPDA (PLD 1994 SC 693)*, *Asghar Leghari v. Federation of Pakistan (PLD 2018 Lahore 364)*, and *D.G. Khan Cement Co. v. Government of Punjab (2021 SCMR 834)*, among others, which demonstrate Pakistan's progressive judicial approach to environmental rights. The discussion also positions Pakistan within the broader landscape of global climate litigation, illustrating how courts worldwide have shaped environmental governance through judicial activism.³

Latest Legislation

- 01. The Sindh Control of Narcotic Substances Act, 2024 ⁴**
- 02. The Sindh Civil Servants (Amendment) Act, 2024 ⁵**
- 03. The Sindh Institute of Physical Medicine & Rehabilitation (Amendment) Act, 2024 ⁶**

³https://www.academia.edu/128334730/Judiciary_as_the_Custodian_of_Environmental_Rights_A_Global_Perspective_with_a_Missing_Piece_from_Pakistan

⁴<http://www.pas.gov.pk/index.php/acts/details/en/33/583>

⁵<http://www.pas.gov.pk/index.php/acts/details/en/33/581>

⁶<http://www.pas.gov.pk/index.php/acts/details/en/33/582>

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