

Amir Mahmood Chaudhry\*, Naveed-ur-Rehman\*\*, Farhana Aziz Rana\*\*\*, Imran Alam\*\*\*\*.

**LEGITIMACY STATUS AND ADMISSIBILITY OF DNA TESTING FOR DETERMINATION OF LEGITIMACY**

**Abstract**

*Birth during marriage is generally a conclusive proof of legitimacy of a child and a party which is questioning legitimacy of a child must not be allowed to disprove that fact. The stance of a party that birth was not taken place during valid marriage becomes a question of fact. If it can be proved that birth took place after the expiry of six lunar months, then it becomes conclusive proof of legitimacy which proof must not subsequently be allowed to be proved or disproved as the provisions of the Qanun-e-Shahadat Order, 1984 have categorically disallowed to prove such fact. Thus, where fact of birth during valid marriage is proved then the courts must not allow the evidence to be taken to disprove such fact. On the other hand, English Law presumed legitimacy irrespective of the fact that which man actually conceived the child and birth during marriage is always considered legitimate and thus attached paternity to every such child born during marriage irrespective of conception. However, Islamic Law is much strict to attach the conditions of legitimacy and described in clear terms that the father who was actually responsible for conception of child must be ascertained and in this sense attached limitations as to time. Although one can take the argument that there is a presumption that ‘child follows the bed’, but from that point of view, the presumption is either rebuttable or irrebuttable. Likewise, a man can disown a child as legitimate due to non-access to wife and thus the aforesaid presumption must be displaced but the fact is that legitimacy itself is a status which a child acquires on birth and he cannot be deprived of this status on mere subsequent negation of the father. Usually, all possible doubts must be resolved in favour of legitimacy and courts must not render a verdict in haste and to brandish a child as bastard or his mother as an unchaste woman. In this background, disowning a child born during wedlock must carefully be seen. It is to be seen that whether disowning a child is based on objective reasons. So, if there is an inordinate delay between the birth and the act of disowning a child, then according to ordinary principles of evidence the husband is estopped to prove the illegitimacy. But even if there is no such delay, even then the general principle as provided by Qanun-Shahadat Order, 1984 is that the party which is taking the stance of illegitimacy must be denied to prove or disprove what has been declared as conclusive proof by the law. However, this general rule is subject to certain statutory exceptions which are required to be adopted with extreme care and caution and not to be invariably and ruthlessly applied to either prove illegitimacy or disprove legitimacy. Similarly, the presumption available under the general rule cannot be taken away on the pretext of DNA testing. DNA testing also could not be considered as a good substitute for the exceptions to the general rule. The purpose of this article is to carefully discuss the scope of the general rule and critically evaluate its exceptions while also determining the judicial trends as to admissibility of DNA testing to resolve any such controversy in the context of this statutory provision.*

**Keywords:**

DNA Testing, Legitimacy, Conclusive Proof, Legal Status of Child, Unchaste Woman, Birth during Marriage, Rebuttable Presumptions, Irrebuttable Presumptions.

**1. INTRODUCTION:**

Article 128 of the Qanun-e-Shahadat Order, 1984 has introduced the concept of conclusive proof in cases of birth taken place during valid marriage and stated that a child born after the lapse of six lunar months from the marriage or born within two years after dissolution when wife remains unmarried shall be conclusive proof of the fact that child is legitimate issue of the male spouse. However, this conclusive proof has provided two statutory exceptions; firstly, where the father has disowned the child for the reason that it was born before the expiry of six months and secondly, where the mother had accepted the termination of *iddat* period whereas child was born after the lapse of six months from such acceptance.<sup>1</sup>

Practically, it has been observed that in Pakistani society, husbands usually avoid maintenance by taking such immoral pleas at belated stages in a hopeless manner or in the alternative demand DNA testing of the child without any justifiable reason. Such like plea is commonly taken in the suits for maintenance, which is of course a very tragic state of affairs as the whole repute of both mother as well as child becomes at stake and there is always a risk of life-long stigma of brandishing one as bastard child or unchaste woman. The statutory exceptions categorically state that for a husband to allege a child as illegitimate, he has to prove that child was not born during the existence of a valid marriage or that husband has disowned the child for certain other plausible reasons.

\* Amir Mahmood Chaudhry, Member Visiting Faculty / Former Legal Advisor, University of the Punjab, Lahore.

\*\* Naveed-ur-Rehman, Lecturer, University Law College, University of the Punjab, Lahore.

\*\*\* Farhana Aziz Rana, Assistant Professor, Department of Law, University of the Punjab, Gujranwala Campus.

\*\*\*\* Imran Alam, Assistant Professor, University Law College, University of the Punjab, Lahore.

The most disastrous effect of such plea is that if for any reason the proceedings successfully conclude in favour of husband, then for the rest of the life, the child would be brandished as bastard whereas the mother as an unchaste woman. This may adversely impact the honor and repute of a woman contrary to the rights guaranteed under the international covenants,<sup>2</sup> as well as domestic laws.<sup>3</sup> On the pretext of so-called plea of the husband which may be categorized as an exception to displace the conclusive proof, life and repute of a child and woman must not be jeopardized to such an extreme level.

Thus, initially any such plea must not be allowed to be taken easily and if so allowed to be taken then only strictly in terms of the exceptions provided by the rule and not through another mode of DNA testing. If the plea of illegitimacy taken by the husband remains unsuccessful, then he ought to be penalized for leveling such an extreme allegations on the person of child as well as mother. The courts in Pakistan have to address this aspect very carefully while weighing probabilities and improbabilities from both sides and to discourage the men to take such an extreme stance which if for any reason remains successful in our society may have larger impact on the person of both child and mother.

## **2. BIRTH DURING VALID MARRIAGE BEING CONCLUSIVE PROOF OF LEGITIMACY OF CHILD IS THE GENERAL RULE BASED ON CERTAIN IRREBUTTABLE PRESUMPTIONS:**

*Qanun-e-Shahadat* Order, 1984 has provided this general rule that where one fact is declared by the Order to be conclusive proof of another fact, then the courts on proof of one fact will not allow the evidence to be taken to disprove another fact. Thus, the provisions of conclusive proof generally operate as irrebuttable presumptions and when one fact is proved, the court will regard the other fact as proved.<sup>4</sup> This presumption of law could not be lightly discarded or shaken on mere balance or probability and the evidence to discard such presumption must be distinct, strong, satisfactory and conclusive.<sup>5</sup>

The presumption is based on this principle of law that '*odiosa et inhonesta non sunt in lege prae sumenda*', which means that nothing odious or dishonest shall be presumed by law. So presumption is taken in favour of legitimacy and not in favour of vice or immorality.<sup>6</sup> In this regard, an artificial probative effect has been provided by law to certain facts and evidence will not be taken to combat such effect. Generally, it so happens when it is considered against the public interest that such like issues must not be opened to dispute.<sup>7</sup>

So, where it is proved that birth was taken place during the continuance of valid marriage, then in such case the presumption as to legitimacy acquires the status of conclusive proof and the court will not allow the evidence to be taken to disprove such presumption which is otherwise irrebuttable in its nature. This general rule as to legitimacy of child is based on certain presumptions which are discussed as under:-

### **i) Birth took place during valid Marriage**

Earlier, Evidence Act 1872 provided that a child taking birth after marriage from his mother shall be considered as legitimate irrespective of the fact that whether husband was responsible for the conception of such child or not.<sup>8</sup> Thus, under the English Law, presumption as to legitimacy was regulated without considering the fact of ascertaining actual conception by the father and it was presumed that any man who married the mother even after the birth of child is his father.<sup>9</sup> The aforesaid principle is based on maxim '*Pater est quem nuptiae demonstrant*', which means that the father is one whom marriage indicates.

However, Islamic principle of paternity laid emphasis upon ascertaining the person actually responsible for the conception of child during marriage. It is only on such basis that 'time of conception' was held as an essential condition for determining paternity under the Islamic Law. It thus, appeared that conditions attached to legitimacy in Islam are more stringent as compared to those provided by the English law. Hence, birth during valid marriage is always presumed to be legitimate.<sup>10</sup>

In this regard, time of conception is essential during continuance of lawful wedlock and on establishment of paternity of child, legitimacy also stands established. Thus, the point of time when conception took place and that whether such conception lawfully justify the birth of child to be taken place during valid marriage are the core issues of facts which may be determined or proved in every such case.

So, where husband came to know of any alleged adultery, he is bound to take immediate steps to disown a child.<sup>11</sup> Any act of husband of disowning a child must always be substantiated from tangible proof and credible evidence as paternity of child born during wedlock always carried presumption of legitimacy.<sup>12</sup>

### **ii) Statement of Mother as Primary Evidence**

When legitimacy becomes questionable then in such an eventuality, primary evidence which shall be given weightage is that of the mother, who can better testify as to legitimacy and the father of child. So, when such evidence is proved as impartial and disinterested, the courts will generally believe it to be true whereas negative onus to disprove the legitimacy is always placed on the father.<sup>13</sup>

### **iii) Presumption that 'Child follows the Bed'**

A child born out of the lawful marriage carried presumption of legitimacy in his favour and simple bald denial could not take away such status because as per Muhammadan Law "child follows the bed" (*Firash*). Hence, a child is always presumed as lawful without any affirmation or formal acknowledgment of parentage by the father.<sup>14</sup>

If we carefully go through the provisions of Article 128, it emerges that the general rule as to legitimacy of child itself has evidently described some exceptions which will clearly operate as limitations upon the rule only in circumstances provided by such exceptions.

### 3. EXCEPTIONS TO THE GENERAL RULE:

Although we can say that birth of a child during valid marriage being conclusive proof of legitimacy is an irrebuttable presumption of law which cannot easily be dislodged but careful perusal reflects that this rule is subject to certain limitations. Thus, for a husband who takes the plea that a child is not legitimate, on one hand has to dislodge the irrebuttable presumptions whereas on the other hand he has to resort to at least one of the following statutory exceptions, which are necessarily required to be proved:-

#### a) Statutory Exceptions:

A husband can take the plea that birth of the child was not taken place during the continuance of a valid marriage. The plea of the husband thus invariably included in it the following instances, which serve as statutory exceptions to the general rule laid down in Article 128:-

- i) The child was born before the expiry of six lunar months from the date of marriage; or
- ii) The child was born after two years from the date of dissolution of marriage, when the mother remains unmarried; or
- iii) Birth taking place after the expiry of six lunar months from such date when woman had accepted that the period of *iddat* had come to an end.

#### b) General Exceptions:

A man who disowned a child may resort to the general exceptions and until and unless such exceptions are not taken, the general rule will remain irrebuttable and courts will not allow the evidence to be taken to disprove a conclusive proof or irrebuttable presumption of law. Thus refusal of the husband to disown a child must be based on objective reasons and not subjectively.

##### i) *Husband had no access to Wife*

The presumption of legitimacy shall not be available where the husband has proved non-access to the wife at any time during the marriage. Non-access may be established from some positive or direct evidence or also through circumstantial evidence. Presumption of legitimacy is highly favoured by law where proof of non-access is not clear and satisfactory.<sup>15</sup> 'Access' or 'non-access' means presence or absence of an opportunity for sexual intercourse. Hence, existence of an opportunity for sexual intercourse is an essential pre-requisite for establishing access.<sup>16</sup>

For rebutting the conclusive presumption, the requirement of section is more onerous and pervasive. So, for the plea of non-access it is not necessary to show that the man had no access but it is for the whole span of time when conception according to the ordinary course of nature possibly could take place.<sup>17</sup> In order to dispel the presumption, the party has to prove non-access whereas access means the existence of opportunity of sexual intercourse and non-access means non-existence of such an opportunity and thus access or non-access in the context of the exception does not mean actual cohabitation.<sup>18</sup> So, where evidence discloses that there was personal access between the spouses then the plea of no access could not be taken. As such presumption emanating from access is a rebuttable one and nothing less than cogent evidence is needed to dislodge such presumption.<sup>19</sup>

##### ii) *Husband at the time of birth or soon thereafter disowned the child*

The presumption that a child follows the bed is subject to the right of disavowal by the husband. The right in the context may be exercised as per custom of the locality either on the birth of child or at the time of purchasing articles necessary for birth. If the husband is not present, then in such case, on coming to know of the birth, he must forthwith disown the child.<sup>20</sup> Likewise, where father has not approached the court of competent jurisdiction for *Li'aan*, it shall be presumed that the child born out of wedlock is legitimate and is entitled to all rights including maintenance.<sup>21</sup> Hence, on the basis of rule of acknowledgment by an acknowledger, in respect of status of a person, a conclusive presumption can be drawn that a child is legitimate issue and once such status is confirmed, it cannot be destroyed by any subsequent act of the acknowledger or of anyone claiming through him.<sup>22</sup>

#### 4. LEGITIMACY IS A STATUS OF WHICH ONE CANNOT BE DEPRIVED:

Legitimacy itself is a status and on mere simple denial one cannot be deprived to take away such status. This status emanates from certain facts whereas legitimization is proceeding and creates a status, which is previously non-existent. Such proceeding becomes essential when either the existence of a valid marriage cannot be expressly proved or where the child is born within six months of the marriage.<sup>23</sup> The rule of acknowledgment by an acknowledger also gives legitimacy which cannot be subsequently taken away.<sup>24</sup>

Islam leans in favour of marriage and abhors illegitimacy.<sup>25</sup> Islamic laws also favour legitimization and not stigmatization.<sup>26</sup> Hence, to safeguard the legitimacy, onus is placed on the party challenging the legitimacy of child.<sup>27</sup> For this purpose, legitimacy is determined in line with Islamic ethos and principles whereas all possible doubts ought to be resolved in favour of legitimacy. However, in the process of judgment, if there arises any doubt then the decision could not be made so as to uphold the legitimacy at all costs.<sup>28</sup> Generally, the courts hesitate to stigmatize a child as illegitimate and usually a presumption is taken in favour of legitimacy. Where the legitimacy could be deduced from other connected aspects, the courts will refuse to admit illegitimacy.<sup>29</sup> In a case, even their Lordships of the Supreme Court of India observed that the rule of law as to legitimacy is based on the dictates of justice which has always inclined the courts to uphold the general principle of legitimacy until and unless the facts are not compelling to warrant an otherwise finding. The courts shall not take the issue lightly and render any such judgment in haste so as to brandish any child as bastard and the mother as an unchaste woman.<sup>30</sup>

From the aforesaid, it is evident that generally after acknowledgment, the acknowledger cannot take away the status of legitimacy. However, if illegitimacy is alleged by the father, then the burden of proof heavily lay on him and he is obliged to discharge such burden in a strict sense. Nevertheless, the courts usually take it as usual and normally order to conduct DNA tests of the child by fully ignoring the gravity of the situation underlying it. Therefore, it is to be seen that what is the admissibility of DNA testing to determine legitimacy of a child before the courts of law and that whether DNA testing could ordinarily be ordered for such purpose being a good substitute for the statutory exceptions to the general rule?

#### 5. ADMISSIBILITY OF DNA TESTING TO DETERMINE LEGITIMACY:

Although the results of DNA tests are said to be scientifically accurate but even that is not sufficient to escape the conclusiveness given by the statute (*Section 128 of the Qanun-e-Shahadat Order, 1984*). So, where spouses were living together at the time of conception whereas DNA test reflected that the child was not born to the husband, the conclusive proof will not be displaced on such basis. Although, it seems hard from the standpoint of husband who is constrained to bear the fatherhood but the law favour an innocent child.<sup>31</sup>

The law regulating paternity did not leave much space for the admissibility of DNA evidence,<sup>32</sup> as DNA test is not the sole proof of paternity of a child.<sup>33</sup> Determining legitimacy through DNA when the parties enjoyed the liberty of producing direct oral or documentary evidence amounts to stigmatizing the child for the rest of his life, therefore, such practice could not allowed to be conducted.<sup>34</sup> So, when paternity of a child can be decided conveniently in the civil proceedings without resort to DNA testing, then such testing could not be directed in such proceedings.<sup>35</sup>

Thus where in a suit for maintenance, the father disowned two minor daughters and sought permission for conducting DNA tests whereas nothing was brought on record by him that he had disputed legitimacy of children soon after their birth and earlier he actually remained silent, it was held that DNA test could not be ordered to be conducted.<sup>36</sup> Likewise, where a father filed a declaratory suit seeking declaration that he is not the biological father of the children born during valid marriage, the suit and subsequent proceedings including the order of the High Court passed in writ petition were set aside by the apex court while holding that Judgment-Day, the children of *Adam* would be called out by their mother's name, which reflected that even the Divine Being had, in His infinite wisdom and mercy, ensured that all personal secrets must not be opened and that paternity must not be delved into or divulged.<sup>37</sup>

However, in criminal matters, the situation is different and it was held that DNA profile test may be conducted only with the consent of the person concerned but not in cases where maintenance is resisted by the father on the plea that the son is not legitimate.<sup>38</sup> Hence, compelling a person to undergo DNA test without his consent was held to have serious consequences besides interference in the personal liberty of such person and it was emphasized that such power must not be exercised in a routine manner.<sup>39</sup> Even consent by the victim of a crime was held as necessary precondition and a victim could not be subjected to DNA test for the purpose of prosecution as doing so will amount to infringement of personal liberty of the victim.<sup>40</sup> Thus, in criminal matters, DNA report like any other opinion of an expert under Article 59 of the *Qanun-e-Shahadat Order, 1984* was held as relevant and admissible whereas it was further held that Article 164 of the *Qanun-e-Shahadat Order, 1984* has clearly underlined the admissibility, reliability and weight-age of modern scientific forensic evidence including DNA tests and accordingly provided that convictions may be based on modern techniques and devices.<sup>41</sup>

In Pakistan, considering the undesired practices of avoiding maintenance while denying legitimacy to one's own child or to seek his exclusion from inheritance, securing the direction to conduct DNA test held as not appropriate because the conditions prevailing in Pakistan for DNA testing were held as not suitable due to the lack of proper facilities which are considered necessary for DNA testing as there is every possibility and likelihood of any error

in the DNA result whereas any mistake, omission or malpractice committed in the course of such test was held as having drastic and disastrous effects and tantamount to stigmatizing the child for the rest of his life.

So, point of time at which the father denied paternity was held as the relevant factor whereas DNA testing was denied.<sup>42</sup> Thus, in paternity and other matters, DNA reports are only corroborative in nature and are necessary when other evidence is of doubtful character. It is for this reason alone that Supreme Court of Pakistan even placed warning on record while observing that:

*“.....unless one was absolutely sure and confident of the capacity, the competence and the veracity of the laboratory and the integrity of the one conducting such a test, taking recourse to the same would be fraught with immense dangers and could in fact lead to disastrous consequences not only in criminal cases but even in cases; for example, of paternity and inheritance etc.”<sup>43</sup>*

This clearly reflects that DNA testing to determine legitimacy of a child before the courts of law is not generally admissible and as such the same could not be ordered in a routine fashion being not a good substitute for the statutory exceptions to the general rule. Its admissibility perhaps amounts to overthrowing the law and discarding the established judicial systems. Perhaps, considering such an aspect in a case, the US Supreme Court refused to order DNA while observing that the task of establishing rules to harness DNA's power to prove innocence without unnecessarily overthrowing the established criminal justice system belongs primarily to the legislature.<sup>44</sup>

## 6. CONCLUSION:

Birth during valid marriage is a conclusive proof of legitimacy and is a general rule which cannot be allowed to be disproved. If someone intends to displace this general rule, then he has to timely resort to the statutory as well as general exceptions. In absence of any plea not falling in such exceptions, the general rule of legitimacy will remain operative which will presume the child as legitimate. The rule gives the child, the status of legitimacy and being legitimate issue of spouses irrespective of any actual acknowledgement by any acknowledger. Once, such status is acquired then no one can take away or destroy such status through any subsequent act or omission. Even a person, who has not timely invoked any exception to the general rule, cannot subsequently make a resort to DNA testing being a substitute to such exceptions and to displace the general rule. Hence, DNA testing is generally not admissible as a substitute of the exceptions provided by the general rule of legitimacy as doing so will amount to overthrowing the established legal system. Thus, the courts must sparingly order such tests to be conducted to determine paternity while weighing probabilities and improbabilities from both sides and discourage the persons who took such an extreme and extraordinary stance which if becomes successful for some reason may have larger impact of stigmatizing the whole life of both child and mother.

## References

- <sup>1</sup> Article 128 of the *Qanun-e-Shahadat* Order, 1984.
- <sup>2</sup> Article 1 and 15(2) of the Convention on the Elimination of All Forms of Discrimination against Women.
- <sup>3</sup> Article 25(2) of the Constitution of Islamic Republic of Pakistan, 1973.
- <sup>4</sup> Article 2(9) of the *Qanun-e-Shahadat* Order, 1984.
- <sup>5</sup> *Morris v. Davies*; 1837.
- <sup>6</sup> *Lal Haribansha v. Nikunja Behari*, ILR 1960 Cut 230 *relying on* 35 IA 41.
- <sup>7</sup> *Dindayal v. State*, AIR 1956 Allahabad 520.
- <sup>8</sup> Article 112 of the Evidence Act, 1872.
- <sup>9</sup> *Hamida Begum v. Murad Begum and others*, PLD 1975 SC 624.
- <sup>10</sup> *Shah Nawaz and another v. Nawab Khan*, PLD 1976 SC 767.
- <sup>11</sup> *Muhammad Pervez v. Additional District Judge and others*; 2000 CLC 1605 (Lahore).
- <sup>12</sup> *Muhammad Arshad v. Sughran Bibi and two others*; PLD 2008 Lahore 302.
- <sup>13</sup> *Muhammad Pervez v. Additional District Judge and others*; 2000 CLC 1605 (Lahore).
- <sup>14</sup> *Muhammad Arshad v. Sughran Bibi and two others*; PLD 2008 Lahore 302.
- <sup>15</sup> *Venkateswarlu v. Venkatanarayana*; AIR 1954 SC 176.
- <sup>16</sup> *Sarkar on Evidence*, 15<sup>th</sup> Edition (1999) at page.1613.
- <sup>17</sup> *Tushar Roy v. Shukla Roy*, 1993 Crimes 1014 at pg.1023.
- <sup>18</sup> *Gautam Kundu v. State of West Bengal*; AIR 1993 SC 2295.
- <sup>19</sup> *Kalikutty Kanapathipillai v. Velupillai Parpathy*; PLD 1957 Privy Council 76.
- <sup>20</sup> *Nazir Fatima v. Ghulam Fatima* at 1987 CLC 2073 (Lahore).
- <sup>21</sup> *Zaheer Ahmad v. Mst. Nasiman Bibi alias Nasim Bibi*; 2007 CLC 1145 (Lahore).
- <sup>22</sup> *Mst. Asma Naz v. Muhammad Younas Qureshi*; 2005 SCMR 401.
- <sup>23</sup> *Hamida Begum v. Murad Begum and others*, PLD 1975 SC 624.
- <sup>24</sup> *Mst. Asma Naz v. Muhammad Younas Qureshi*; 2005 SCMR 401.
- <sup>25</sup> *Manzoor-ul-Haq v. Kaneez Begum*; 1993 CLC 109 (Lahore).
- <sup>26</sup> *Manzoor Hussain v. Zahoor Ahmed* at 1992 SCMR 1191.
- <sup>27</sup> *Muhammad Hussain v. Sardar Khan*; PLD 1993 Lahore 575.
- <sup>28</sup> *Rehmat Khan v. Rehmat Khan*; PLD 1991 SC 275.
- <sup>29</sup> *Nazir Fatima v. Ghulam Fatima* at 1987 CLC 2073 (Lahore).
- <sup>30</sup> *Smt. Dukhtar Jahan v. Mohd. Farooq*; AIR 1987 SC 1049.
- <sup>31</sup> *Smt. Kamti Devi and another v. Poshi Ram*; AIR 2001 SC 2226.

- <sup>32</sup> Sohail Abbasi v. Mst. Khushboo; 2021 CLC 1904 (Karachi).  
<sup>33</sup> Roshan Ara v. Abdul Karim; 2020 CLC 1670 (Karachi).  
<sup>34</sup> Shamshad Bibi v. Riyasat Ali; 2017 CLC 1199 (Lahore).  
<sup>35</sup> Shaik Fakruddin v. Shaik Mohammed Hasan, AIR 2006 Andhra Pradesh 48.  
<sup>36</sup> Muhammad Nawaz v. Mst. Shamim Mai; PLD 2017 Lahore 892.  
<sup>37</sup> Mst. Ghulam Tehsin Zohra v. Mehr Ghulam Dastgir Khan and another; PLD 2015 SC 327.  
<sup>38</sup> Mst. Shamim Akhtar v. Additional District Judge, Gujranwala; PLD 2015 Lahore 500.  
<sup>39</sup> Mst. Safia Bibi v. Muhammad Akbar; PLD 2018 Lahore 758.  
<sup>40</sup> Salman Akram Raja v. Government of the Punjab through Chief Secretary; 2013 SCMR 203.  
<sup>41</sup> Ali Haider alias Papu v. Jameel Hussain and others; PLD 2021 SC 362.  
<sup>42</sup> Khizar Hayat v. Additional District Judge, Kabirwala; PLD 2010 Lahore 422.  
<sup>43</sup> Aman Ullah v. The State; PLD 2009 SC 542 at page 543.  
<sup>44</sup> District Attorney's Office v. Osborne, (2009) 129 S.Ct. 2308, U.S. 2009.