

April 2025

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## Sacred-Secular Schism

The Lahore High Court's ruling granting a Ja'fari Muslim woman Khula without her husband's consent has reignited debate over the controversial "Court Khula" mechanism. Page 16

05	<b>News Briefing</b> Judgev Cash Scandal 250-year Jail Term	28	<b>Guardian of Prisoners</b> Not an Ordinary Job in Indonesian Correctional Institutions
07	<b>LawTech Revolution</b> The Future of Justice in Digital Age	30	<b>Voting Right</b> A Constitutional Right in Limbo
08	<b>Political Infiltration in Bar Associations</b>	33	<b>TL Event</b> Judicial Round Table on Insolvency in Hong Kong
09	<b>Lawyers' Listing</b>		
10	<b>Bypassing LCIA Clauses</b> Russian Supreme Court Asserts Jurisdiction		
12	<b>UAE Judicial System</b> Tradition and Modernity in Pursuit of Legal Excellence		
14	<b>US Focus</b> Legal Showdowns Define Trump Administration's Domestic Policy Agenda		
16	<b>Special Report</b> Khula - Verdict Deepens Sacred-Secular Schism		
20	<b>Faith and Modernity</b> The Role of ADR in Resolving Family Conflicts		
23	<b>Research Report</b> Law, Power, and Global Stability		
26	<b>Constitutional Rights</b> Canadian-Style Framework for Balancing Free Speech and Public Order		

### What's on Your mind?

Write to us on law, legal research, law profession, and justice system. We shall also appreciate your comments on any article/research published in The Legal. Write-ups or letter intended for publication should be emailed to:

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Please include your full name, city, telephone number. All write-ups or letter are subject to editing for length and clarity. Unpublished material cannot be acknowledged or returned. Please keep your letters under 250 words.

## Editor's Note

### A Month of Growth and Global Dialogue

Last month marked a milestone for *The Legal International*, as we witnessed unprecedented growth in both readership and international engagement. This surge, spanning readers and contributors from different countries, underscores the magazine's evolving role as a platform for global legal discourse. Such momentum has galvanised our team to redouble efforts in curating content that is not only timely but also intellectually rigorous – reflected vividly in this month's edition. To our loyal readers and the wider legal fraternity: your trust fuels our mission, and we remain committed to amplifying voices that shape justice, equity, and the rule of law worldwide.

Central to this issue is the exceptional contribution of Alfred Eli K Dei, a Ghanaian legal scholar whose incisive analysis unpacks the geopolitical complexities of international sanctions. His work meticulously examines how such measures – while rooted in legal frameworks – often intersect with power dynamics, disproportionately affecting vulnerable nations. Dei's perspective, emerging from a region frequently navigating these challenges, enriches our understanding of sovereignty and accountability in an increasingly interconnected world. It is a testament to the magazine's ethos: fostering dialogue that transcends borders.

Equally compelling is our focus on *Khula*, a woman's right to seek divorce under Islamic principles – a topic reignited by a recent Pakistani court ruling. The decision, hailed by some as progressive and critiqued by others as divergent from Islamic jurisprudence, underscores the delicate conflict between secular governance and religious obligations. Our two-part analysis begins this month with a critique framed through *Jafari* jurisprudence while acknowledging the broader consensus among Islamic schools. The follow-up in May will explore comparative legal approaches, illustrating how cultural context shapes judicial outcomes.

This discourse dovetails with Dr Jo D Chitlik's groundbreaking research, summarised here, which argues for legislative frameworks to mediate such conflicts. Her proposal challenges policy and law makers to harmonise religion with secular jurisprudence through an effective use of the mechanism of Alternate Dispute Resolution (ADR). While space constraints limit us to an overview, her full paper (available on our website, [www.the-legal.org](http://www.the-legal.org)) is a clarion call for pragmatic, inclusive solutions.

As always, The Legal International remains a collaborative platform. We invite legal practitioners, academics, and students alike to submit original research, case studies, or commentaries – without fee – to further our collective exploration of law's evolving contours. Your critiques and suggestions, too, are invaluable; they ensure the magazine remains responsive to the community it serves.

Finally, a personal note: editing this publication is a privilege. Each contribution, from Ghana to Pakistan, reflects law's universal resonance – its power to confront injustice, bridge divides, and inspire change. Let us continue this journey together.

**Aftab Kazmi**  
Editor in Chief



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## NEWS BRIEFING

**Social Media Ban**

**LAHORE** - Lahore High Court has sought, on March 14, comprehensive reports from the interior ministry and the Pakistan Telecommunication Authority (PTA) on petitions challenging the ban on the social media platform 'X' (formerly Twitter).

The court has also directed clarification regarding which government institutions continue to use the banned app despite restrictions.

During the hearing, a three-judge bench, led by Chief Justice Aalia Neelum, instructed the PTA to present relevant records and summoned a responsible official for the next session. Justice Ali Zia Bajwa raised concerns about accountability, questioning why 'X' remains accessible despite the ban.

The PTA's counsel explained that users access the platform via Virtual Private Networks (VPNs), prompting the bench to demand a detailed report on how 'X' continues to operate under these circumstances. The next hearing is scheduled for 20 March.

Petitions argued that the government's restrictions on 'X' violate citizens' fundamental rights, as enshrined in Articles 19 and 19-A of the Constitution, which guarantee freedom of information. The petitioners requested the court to lift the social media ban and nullify related government notifications.

Additionally, the court asked the respondents to provide details about the legal framework governing 'X's usage in Pakistan and why certain government bodies still utilise the platform despite the restrictions. Petitioners contended that such actions undermine constitutional rights and public access to information.

The hearing underscores the ongoing debate surrounding internet freedom and governmental control in Pakistan. The court's verdict on this matter could set a significant precedent.

**Judge Cash Scandal**

**New Delhi** - Chief Justice of India (CJI) Sanjiv Khanna constituted a three-member committee, on March 22, to investigate allegations surrounding Delhi High Court judge Justice Yashwant Varma. The inquiry follows reports of cash recovery during a fire at Justice Varma's residence on March 14-15. Justice Varma has denied the allegations, calling them a conspiracy.

The panel includes Justice Sheel Nagu, Chief Justice of Punjab and Haryana High Court; Justice G S Sandhawalia, Chief Justice of Himachal Pradesh High Court; and Justice Anu Sivaraman of Karnataka High Court. The CJI has also directed that Justice Varma be relieved of judicial duties.

The inquiry stems from a report by Delhi High Court Chief Justice D K Upadhyaya, who found no evidence of external access to the storeroom where the cash was allegedly discovered. Justice Upadhyaya recommended a deeper probe, citing the involvement of household staff and CPWD personnel. Justice Varma has strongly refuted the claims, stating, "No cash was ever placed in that storeroom by me or my family." He described the allegations as part of a broader conspiracy, referencing unfounded accusations circulated on social media in December 2024.

The Supreme Court has initiated an in-house inquiry and decided to transfer Justice Varma to the Allahabad High Court, his parent court. This decision follows a video allegedly showing burning cash at his residence. Justice Varma, who was not home during the fire, expressed shock upon viewing the footage, asserting it did not match the scene he witnessed.

The fire incident, which occurred at 11:30 pm on March 14, led to the discovery of 4-5 half-burnt sacks of currency by fire and police personnel. Justice Varma maintains that neither he nor his family had any knowledge of the cash and dismissed the idea as "preposterous."

**Tenant Vindicated**

**Dubai** - Dubai Rental Disputes Centre issued a landmark ruling earlier last month, awarding Dh700,000 in damages to a European tenant wrongfully evicted by a landlord.

The tenant, who had paid the full 2023-2024 annual rent to the original property owner, faced eviction after the villa was sold to a new landlord. The new owner falsely claimed unpaid rent and manipulated legal procedures, including providing incorrect contact details, to obtain a default eviction order.

Upon returning from vacation, the tenant discovered they were locked out and sought legal recourse. The Rental Disputes Centre annulled the eviction and enforcement actions after finding evidence of the landlord's misconduct.

Chairman Judge Abdul Qader Mousa Mohammed reaffirmed the centre's commitment to protecting tenants' rights and warned against deceptive practices by landlords. The case highlights the importance of transparency, fair practices, and documented communication in rental agreements. This judgement underscores the severe repercussions for exploiting legal systems.

## NEWS BRIEFING



### Woman Sentenced to 250 Years Jail

**West Virginia** - Jeanne Kay Whitefeather, 63, and Donald Lantz, 64, were sentenced to 215 years and 160 years in prison respectively for treating their five adopted Black children as slaves. Their crimes, which included human trafficking, child neglect, and forced labour, shocked the community and prompted severe legal consequences.

The children were adopted from Minnesota and later moved to Washington State in 2018 before arriving in Virginia in 2023. Their ordeal came to light following a welfare check conducted by police after a neighbour reported seeing two children locked in a shed. Authorities discovered the children living in appalling conditions, deprived of food, water, and basic sanitation. They were forced to sleep on cold concrete and survive on peanut butter sandwiches. A 14-year-old boy was found barefoot, wearing dirty clothes, and with sores on his feet.

The case highlights the lasting strength and resilience of the children, who vowed to rise above their suffering and create brighter futures for themselves.

Circuit Court Judge MaryClaire Akers condemned their actions, stating, "You brought these kids to a place I know as almost heaven and put them in hell."

During the trial, prosecutors argued that the couple deliberately targeted the children because of their race and forced them to perform arduous manual labour, including pulling grass and carrying buckets uphill. The defence, however, claimed the couple were overwhelmed by the children's mental health issues and denied that the labour was racially motivated. Whitefeather's lawyer stated that the tasks were merely farm chores, while Lantz's lawyer indicated his client's intention to appeal.

### The LBA Challenge

**Islamabad** - The Lahore Bar Association (LBA) filed a petition, on March 14, urging the Supreme Court to clarify the president's authority in transferring judges under Article 200(1) of the Constitution. The LBA argues that such powers should be exercised only in cases of manifest public interest and aligned with Article 175(A), without overriding the Judicial Commission of Pakistan's role in appointing high court judges.

The petition, submitted through senior counsel Hamid Khan under Article 184(3), follows the controversial transfer of three judges – Justices Sardar Muhammad Sarfraz Dogar, Khadim Hussain Soomro, and Muhammad Asif – from Lahore, Sindh, and Balochistan High Courts, respectively, to the Islamabad High Court in February 2025.

### Anti-Corruption Hotline

**Islamabad** - In a bid to uphold accountability and ensure swift justice, the Supreme Court of Pakistan has launched a dedicated Anti-Corruption Hotline (03264442444). The hotline offers a secure and confidential platform for citizens to report instances of graft, nepotism, or other corrupt practices without fear of retaliation. Whistleblowers can remain anonymous, with their identities fully protected. Accessible through phone, online portal, email, and text messages, the hotline operates 24/7.

### Execution by Firing

**New York** - The United States conducted its first execution by firing squad in 15 years, with South Carolina officials executing Brad Sigmon, 67, on the evening of March 7. Sigmon, the oldest person executed in the state's history, was convicted of the 2001 murders of his ex-girlfriend's parents.

Sigmon's execution followed a series of rapid capital punishments in South Carolina, which resumed after a 13-year hiatus due to a shortage of lethal injection drugs. Sigmon chose the firing squad over lethal injection or electrocution, fearing a prolonged and painful death. Reports of previous executions involving pentobarbital, a sedative, described agonising deaths lasting over 20 minutes. Sigmon's lawyers highlighted his concerns, citing the suffering of three executed inmates he had known.

The execution process involved strapping Sigmon to a chair in the death chamber, restraining him at multiple points, and placing a hood over his head. Three prison employees, positioned 15 feet away, fired simultaneously, striking a target on his chest. Sigmon was declared dead three minutes later.

Witnesses, including media representatives, reported the violent nature of the execution, raising safety concerns about the setup.

Sigmon's final words called for Christians to oppose the death penalty, quoting biblical verses advocating forgiveness. His lawyers argued that his mental health issues and childhood trauma were not adequately considered during his trial. Appeals for clemency were denied by South Carolina's governor and the US Supreme Court.

The execution reignited debates over the ethics of capital punishment and the methods employed. Critics condemned the state's decision to offer inmates a choice between methods deemed inhumane.

## LawTech Revolution

# The Future of Justice in Digital Age

by **Mark Adgar** - Blackburn (UK)

The legal profession built upon traditional methods now faces rapid innovation through Legaltech which drives modernisation into the legal sector. Developed nations rush to implement these innovations while underdeveloped countries stay at the sidelines as they wait to evolve into modern systems.

Legaltech represents a widely used term which describes various technologies that help automate legal services and service delivery while streamlining legal operations. The extensive suite of innovations that includes artificial intelligence and cloud computing along with automation serves to transform courtroom litigation while reshaping both legal research and client service operations.

At the Legaltech UK Conference 2025 last month Sir Geoffrey Vos who serves as Master of the Rolls and Head of Civil Justice in the UK described how technology is reshaping legal practices. He emphasised both procedural reform and technological advancement as solutions to improve judicial services. During his remarks Vos highlighted the immediate necessity for courts to adjust their operations according to digital age requirements. The judicial system faces increasing delays according to Vos who advocated optimising case procedures to improve efficiency. Lawyers and judges need to work alongside policymakers through enhanced partnerships to develop a judicial system that

responds faster to the needs of justice seekers he emphasised.

The discussion focused on artificial intelligence's crucial role in shaping legal processes during the meeting. Vos regarded the automation of decision-making processes positively but warned against leaning too heavily on these digital systems. Vos emphasised the need for judicial oversight systems to monitor AI against potential biases and maintain fairness when AI operates in the legal system. The discourse emphasised both efficiency benefits but also highlighted issues regarding legal aid access and justice representation for people who lack resources. Vos declared the judiciary will continue its commitment to judicial rule enforcement while working to eliminate financial restrictions on legal representation access.

He ended his address by encouraging legal sector stakeholders to establish dialogue and develop innovative solutions that modernise the judicial system to maintain core elements of justice. Studies have extensively documented the speed of Legaltech's development. The LawtechUK Ecosystem Tracker together with the Legaltech Startup Report 2019 identified four essential areas of legal work where technology creates fundamental changes.

AI-powered law management platforms with litigation support capabilities deliver quick and accessible legal services by revolutionising discovery operations and court

dispute resolutions and client communication processes. Software-based solutions handle administrative responsibilities including billing functions and client communications while practice management tasks which enhance workplace efficiency while preserving the core focus of legal work. Organisations can create custom solutions through no-code platforms including Betty Blocks and Bryter without needing expertise in complex coding. Data management and visualisation tools maintain effective organisation and convenient access to large-scale legal database information.

Despite its many benefits, Legaltech still faces hurdles. The development of sophisticated AI systems including those from OpenAI has intensified privacy concerns involving data protection. As a response Legaltech providers work on building platforms that combine enhanced security measures and digital barriers along with preinstalled protection features.

The COVID-19 pandemic has reshaped societal values in addition to its other impacts. Cloud infrastructure has earned acceptance from previously cautious firms who recognise its simultaneous benefits of enhanced security solutions and business continuity capabilities.

The legal sector stands at a crucial intersection where technology development determines the speed of its digital transformation. ■

# Political Infiltration Threatens Autonomy of Pakistan's Bar Associations

## Growing Party Influence, Sparking Fears Over Legal Independence

*Amid rising political sway over legal bodies, concerns intensify that partisanship is eroding the impartiality of bar associations. The writer warns that factional agendas, financial incentives, and early co-optation of young lawyers risk sidelining professional ethics and justice reform.*



by **Raja Abdul Ahad Janjua** - Law Student, Rawalpindi

The legal profession's traditional autonomy, upheld for decades by bar associations prioritising members' welfare, ethics, and development, faces renewed scrutiny as Pakistan's 2025 bar elections reveal increasing influence from mainstream political parties. This politicisation risks undermining legal bodies' independence, eroding their foundational role in safeguarding professional integrity and collective interests.

Bar associations are traditionally formed to serve as guardians of the legal profession's integrity. Their core objectives include promoting legal education, advocating for the fair administration of justice, and safeguarding the rights and interests of their members.

In recent years, there has been a discernible shift in the dynamics of bar associations, with political agendas infiltrating their operations. The 2025 elections of the Bars in Pakistan, specifically Lahore High Court Bar Association (LHCBA), Islamabad High Court Bar Association (IHCBA), High Court Bar Association Rawalpindi, and other bar associations have witnessed candidates backed by major political parties taking the lead. This trend is not isolated; past elections have also shown similar patterns, indicating a growing politicisation within these professional bodies.

The intertwining of politics with bar associations poses several risks to the profession's integrity. Bar associations are expected to maintain impartiality, especially when addressing legal matters that may have political implications. Political affiliations can cloud judgment and lead to biased decisions, undermining the association's credibility. Members holding positions within political parties may face situations where their political obligations conflict with their duties to the bar association, resulting in compromised decisions that do not serve the best interests of the legal community. The public relies on the legal profession to uphold justice impartially. When bar associations are perceived as extensions of political entities, public trust in the legal system diminishes, affecting the overall administration of justice.

Unlike the developed countries, where bar associations focus on upholding legal standards, continuous education, and professional

ethics, bar politics in Pakistan has shifted towards influence-driven decision-making. Political factions dominate appointments, and financial incentives often determine election outcomes. Younger lawyers are frequently drawn into the political machinery early in their careers, learning politics rather than law. This politicisation ultimately contributes to a dearth of skilled professionals, undermining the quality of legal services and delaying justice for the public.

To preserve the sanctity and primary purpose of bar associations, it is imperative that they revisit and reinforce

**Bar associations must remain steadfast to lawyers' welfare.**

their foundational principles, ensuring that their activities and policies align with the welfare of their members and the broader legal community.

While lawyers, like all citizens, have the right to personal political beliefs, bar associations must remain steadfast in their commitment to the profession's welfare. It is incumbent upon the legal community to recognise and address this challenge, ensuring that bar associations remain true to their original mandate of serving and advocating for lawyers' interests. The bar must realise its immense potential through robust internal reforms, thereby restoring its status as a bastion of knowledge, integrity, and the rule of law. ■

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**Bypassing LCIA Arbitration Clauses**

**Russian Supreme Court Asserts**

**Jurisdiction Over Sanctions-Hit Disputes**

by **Emilia Meier** - Lausanne (Switzerland)

A ruling from the Russian Supreme Court establishes exclusive domestic arbitrazh courts jurisdiction in disputes involving Russian-based companies even though parties selected London Court of International Arbitration (LCIA) arbitration rules in their contracts.

The dispute emerged when NS Bank attempted to collect the US\$ 19,375 coupon payment for LUKOIL Securities B.V. bonds which were in its ownership. The bond prospectus disked dispute resolution under English law in London however NS Bank received the payment at a Russian depository after it received EU (European Union) sanctions. Because of sanctions NS Bank believed it became impossible to access arbitration overseas so the company decided to have its case heard by domestic courts instead of following the arbitration agreement. The bank succeeded in taking its appeal to Russia's highest court despite Lukoil obtaining favourable court decisions regarding the validity of the arbitration clause and the intra-Russian nature of the parties.

The Supreme Court issued its decision on November 28, 2024 based on how the Lugovoy Law should be implemented. The Lugovoy Law was implemented to safeguard Russian parties under sanctions from hostile states and gives Russian courts authority to reject arbitration agreements when foreign proceedings prove impractical. NS Bank faced legal troubles because the imposed sanctions prevented them from securing their funds according to court determination. Under this arbitration ruling it became clear that substantial financial hurdles together with lengthy delays and negative reputation could stop parties from receiving their fundamental right to judicial defence.

The court expanded the application range of its exclusive jurisdiction by stating that foreign element disputes include more than just cases where foreign parties participate. Reclusive measures that modify legal terrain trigger unenforceable arbitration agreements because they erect insurmountable barriers that obstruct access to justice.

Legal experts state that the recent ruling created substantial changes to traditional arbitration practices. The ruling implies that international arbitration tribunals located in states labeled as unfriendly might suffer inherent bias because of sanctions thereby warning about the renewed assessment of such neutral forums.

This verdict will likely shape future drafting guidelines for arbitration clauses specifically when Russian entities participate in those agreements.

The business community which conducts international deals now faces complex obstacles because of this ruling. Legal practitioners advocate reviewing arbitration agreements to establish special procedural frameworks and favour arbitration jurisdictions that show support for Russia rather than Western arbitration bodies like the LCIA.

The Supreme Court's decision which protects Russian companies' constitutional rights delivers further complications to the international arbitration system. Moscow's judicial system shows growing authority in sanction-related disputes which causes doubt about LCIA arbitration and other Western rules' futures and potential global business consequences.

The upcoming review at the Moscow Court creates uncertainty about the changes it will bring to international arbitration while the world wonders if this decision marks permanent legal alterations or remains a part of broader diplomatic struggles. ■



IMAGE: © THE LEGAL



## Experts Advocate DIFC as New Enforcement Hub for Russian Judgements Amid Sanctions

International sanctions combined with Russian court applications of Lugovoy Law have created enforcement difficulties which experts from arbitration and law fields propose a new resolution method through the use of the Dubai International Financial Centre.

The experts propose Russian creditors should explore the Dubai International Financial Centre (DIFC) as an alternative jurisdiction which provides a modern legal framework together with a strong enforcement mechanism.

The proposed solution provides two fundamental choices to creditors. Businesses can start winding-up procedures by applying DIFC insolvency regulations. A final and unchallenged Russian judgment establishing a liquidated debt enables recognition even if the judgment has not officially been declared enforceable to warrant the winding up of a recognised company. Under English common law principles the DIFC courts could validate such judgments which would grant a court-appointed liquidator the authority to seize international assets of the debtor.

If direct recognition and enforcement proves unsuccessful creditors may pursue the Russian judgment under separate arrangements. Such an approach needs a final and definite judgment with specified monetary compensation that excludes penalties and taxes from its content which has been issued by a court having proper jurisdiction. A recognised judgment becomes a local DIFC judgment that enables domestic enforcement as well as enforcement across neighbouring Middle Eastern jurisdictions through existing regional conventions.

The participants flag important implementation barriers while providing their assessment. Current economic sanctions make it impossible for Russian entities to pay litigation costs and secure lawyer representation. Offering enforcement through the DIFC allows creditors to bypass challenges that stem from being judged by "unfriendly" forums because this jurisdiction follows the UAE's sanctions regime. Judgments which contest jurisdiction bases or questions of fraud or public policy through the DIFC framework require proof that the initial dispute resolution clause collapsed in delivering fair performance despite the fact that sanctions might bolster such arguments.

Within the DIFC legal framework creditors should consider applying for emergency asset protection measures before obtaining final grant of enforcement. The precautionary action proves crucial when asset values from Russian debtors decrease due to self-divestment activities. The proposed strategy presents a feasible method to bypass enforcement barriers of the Lugovoy Law while international sanctions that can provide more effective recovery of assets in today's complex geopolitical framework. ■

### Lugovoy Law

Lugovoy Law describes the particular changes implemented in Russia's Arbitrazh (Commercial) Procedure Code when it became law in June 2020. The Russian Federation implemented this measure because of intensifying international sanctions against Russian organisations. The main purpose of this law protects Russian parties by granting national courts full authority to resolve disputes when sanctions cause the initial dispute resolution agreement to become invalid.

Russian courts according to Lugovoy Law have the power to reject arbitration clauses alongside foreign court decisions when sanctions produce insurmountable barriers to international legal processes. The foreign sanctions can create severe financial problems and lawyer appointment limitations and delay justice in various situations. Under the law Russian disputants can access domestic courts for viable legal action when international enforcement channels cease to operate.

International law and arbitration experts show growing concerns about how Lugovoy Law gets used at an extensive scale. Testimonies against the law assert that it breaks down dispute resolution independence for involved parties and endangers long-term cross-border business relations. The Russian dispute resolution framework shifts direction under the influence of Lugovoy Law which acts as a key component. — EM



IMAGE: Courtesy Dubai Govt.

**UAE Judicial System**

# Balancing Tradition and Modernity in Pursuit of Legal Excellence

*As the UAE cements its status as a global hub, its judiciary navigates a dual framework of Sharia and civil law, achieving economic acclaim while facing scrutiny over transparency and migrant rights.*

by **Abdul Kareem** - Dubai (UAE)

The United Arab Emirates' judicial system, a blend of Islamic principles and contemporary legal frameworks, has become a cornerstone of its rapid socio-economic transformation. As the nation approaches its 52nd anniversary, its courts are lauded for fostering a business-friendly environment, yet criticisms linger over due process and human rights. This duality underscores a system striving to balance tradition with modernity.

**Historical Foundations**

The UAE's legal framework traces its origins to the federation's establishment in 1971, when seven emirates unified under a constitution that enshrined Sharia (Islamic law) as a primary source. Early courts amalgamated tribal customs with Sharia tenets, handling matters from family disputes to commercial grievances.

The first formal legal system in the UAE was established in the 1970s under the leadership of the late Shaikh Zayed bin Sultan Al Nahyan, the founding father of the UAE. The country derived a structure of legal system based on a combination of Islamic law, tribal customs, and foreign legal systems, including those of Egypt and India. The first court in the UAE was established in Abu Dhabi in 1971, and the first judge was Sheikh Rashid bin Humaid Al Nuaimi. Later, the first legal code, known as the Federal Law No. 1 of 1972, established the legal framework for the country's legal system and outlined the powers and responsibilities of the federal government.

Shaikh Zayed was inspired by the Egyptian slogan of Arab nation' [al-watan al-'arabi] and Egyptian scholars and lawyers. Egypt was former French colony and its legal system, established in 19th and 20th centuries, has roots in the French civil law. The 1980s marked a pivotal shift with the introduction of federal civil and criminal codes, modernising the judiciary while retaining Islamic foundations.

Today, the system operates across federal and local tiers. Abu Dhabi, Dubai, and Ras Al Khaimah maintain independent judicial departments, while other emirates fall under the federal Supreme Court's purview. Specialised courts for commercial, labour, and family disputes reflect efforts to address the needs of a diversifying population, now exceeding 10 million.

Strengths: Efficiency and Innovation

The UAE judiciary's evolution has bolstered its global standing. The World Bank's 2020 Doing Business report ranked the UAE 16th for contract enforcement, recognising streamlined case resolutions. Dubai's International Financial Centre (DIFC) Courts, established in 2004, exemplify this progress, resolving over 1,200 commercial cases in 2022 with an average turnaround of 47 days—a benchmark for efficiency.

Digital transformation has been transformative. Platforms like the Smart Court and Virtual Bankruptcy System enable remote filings and hearings, slashing administrative delays. Dubai's ambition to digitise all court services by 2025 aligns with a broader vision to become a "smart government" leader.

Legislative reforms, such as

**With ambitions to integrate AI and blockchain, the UAE aims to reshape its legal landscape, yet challenges persist.**

دائرة القضاء  
JUDICIAL DEPARTMENT



IMAGE: Courtesy AUD Judicial Department

decriminalising bounced cheques (2022) and allowing 100% foreign business ownership, underscore efforts to attract investment. These changes have propelled the UAE to 10th in the Global Competitiveness Index for legal adaptability.

Criticisms: Transparency and Rights Concerns

Despite accolades, the system faces international censure. Human Rights Watch and Amnesty International highlight opaque procedures in state security cases, where vague cybercrime laws have been used to stifle dissent. Migrant workers, constituting 88% of the population, report barriers in labour disputes, despite protections like the Wage Protection System.

Language barriers further complicate access; non-Arabic speakers often struggle with untranslated documents. While Abu Dhabi launched an English-language commercial court in 2021, inconsistencies persist elsewhere.

Judicial discretion, rooted in Sharia, occasionally leads to divergent rulings. For instance, personal status laws for non-Muslims remain contested, though recent reforms allow non-citizens to follow home country laws in inheritance and marriage.

Success Metrics: A Mixed Portrait  
The judiciary boasts an 85% case clearance rate, with commercial disputes resolved 30% faster than the global average. However, success ratios vary: labour courts

handle 90,000 cases annually, yet enforcement gaps leave workers vulnerable. The DIFC Courts' 98% enforcement rate of judgements contrasts with lower figures in federal courts, highlighting systemic disparities.

Future Vision: AI, Arbitration, and Global Integration

Looking ahead, the UAE aims to leverage technology and global partnerships. Abu Dhabi's adoption of AI for case prediction and Dubai's blockchain-based "Court of the Future" project seek to minimise human error. Plans to expand international arbitration centres, like the Abu Dhabi Global Market (ADGM) Arbitration Registry, align with goals to rival hubs such as Singapore and London.

Legislative priorities include bolstering sustainability laws and enhancing protections for women and workers. The 2021 decriminalisation of alcohol consumption and cohabitation reflects gradual social liberalisation, though cultural sensitivities endure.

Conclusion

The UAE's judicial system stands at a crossroads, celebrated for modernisation yet challenged by calls for greater transparency. As it harnesses innovation to refine its legal ethos, the balance between heritage and global integration will define its trajectory. With ambitions as bold as its skyline, the Emirates' judiciary seeks not just to adapt, but to lead—a vision as complex as the nation itself. ■



# Legal Showdowns Define Trump Administration's Domestic Policy Agenda

IMAGE: © THE LEGAL

**From immigration to environmental rollbacks, courts are shaping the boundaries of executive power in the United States.**

by *Josephine King* - Washington DC

The Trump presidency has been subject to legal challenge, with numerous of his executive orders being challenged in courts across the United States. The cases, roughly a hundred or so, have raised significant questions about constitutional law, administrative power, and the separation of powers among the government's branches. Lawyers and legal experts are watching these developments closely, which are shaping the country's legal landscape.

Perhaps the most contentious legal controversy has been the use of the Alien Enemies Act by the administration to accelerate deportations. The 18th-century statute, which was intended for use during wartime, has been employed to address individuals allegedly affiliated with criminal gangs. Legal practitioners have raised issues that the application of the act is capable of evading due process rights, as it allows for expedited procedures that may bypass traditional judicial safeguards. A federal court injunction to defer such deportations is an indication of the court taking its role of safeguarding constitutional guarantees in the event of executive exercise. In a court ruling, one judge said, "The rights afforded by the Constitution must be honored even in the case of meeting executive branch authority."

Another significant legal dispute involves the executive order by the administration to end birthright citizenship for children born

in the United States to parents who are not legally present. This order has been challenged on grounds of unconstitutionality in the context of the Fourteenth Amendment, which grants citizenship to all persons born or naturalized in the United States. The federal courts have granted temporary injunctions against the order due to its likely unconstitutionality. Judge Deborah Boardman, in ruling on it, stated, "Citizenship is a national issue that demands a national policy, and this executive order undermines the constitutional framework established by the Fourteenth Amendment."

The regulatory changes made by the administration have also led to lawsuits challenging the scope of executive authority. For instance, the duties on foreign steel and aluminum have been generating controversy about interpreting trade law and the president's authority under the Trade Expansion Act of 1962. Legal experts argue that the consequences of the decisions

**Judges across the nation weigh in on constitutional challenges, ensuring the rule of law remains at the forefront of governance.**

in these cases could rewrite the boundaries of presidential authority on international trade. In an important case, Judge Gary Katzmann wrote, "Economic policy must be bounded by law, and judicial review is essential to making certain executive action remain tethered to statutory purpose."

Environmental policies have also been brought to court as a matter of dispute. States and green advocates have challenged the administration's unwinding of flagship policies, such as the Clean Power Plan. These issues tend to hinge on the meaning of statutory requirements and agency discretion, with broad implications for federal-state balance of power. California and other states have filed suits alleging that the federal deregulatory agenda undermines public health and environmental sustainability. Judge William Orrick, in a ruling against such a rollback, said, "The principles of cooperative federalism embedded in our laws must be upheld, even in the face of changing political priorities."

In civil rights, the administration's immigration and health care policies have come under withering legal challenge. Challenges to the Deferred Action for Childhood Arrivals (DACA) and the Affordable Care Act (ACA) have put questions of equal protection and federalism on the front burner. In a seminal case regarding DACA, Judge Nicholas Garaufis took the view, "While the executive branch has discretion in enforcing immigration law, it cannot unilaterally dismantle programs that have provided lawful relief to millions without adhering to the procedural safeguards established by Congress."

A high-profile example is the lawsuit against the executive order of the administration to revive the "Schedule F" classification for certain federal workers. The order, which reclassifies employment status to make it easier to terminate career federal employees, has been attacked as potentially undermining job protections. Labour unions and activist groups have argued that the order is unconstitutional under the Administrative Procedures Act and the Fifth Amendment. Judge Loren Alikhan, in ruling against the order, said, "The federal workforce is not a political tool; it is a foundation of our democracy, and its impartiality must be preserved."

The government's reaction to diversity, equity, and inclusion (DEI) programs has also created legal disputes. Executive orders to end DEI programs in federal agencies and the military have been challenged as supposedly suppressing free speech and jeopardizing federal grant funding. A federal judge recently granted a temporary injunction against the orders, highlighting the legal furor over their implications.

A further pivotal legal development related to the travel bans issued by the administration on individuals from several countries predominantly Muslim. These were challenged in some cases, such as those alleging they violated the First Amendment's Establishment Clause. The Supreme Court ultimately approved the second travel ban from the administration in a 5-4 decision, with Chief Justice John Roberts writing, "The proclamation is squarely within the scope of presidential authority under the Immigration and Nationality Act." Justice Sonia Sotomayor's dissent, however, pointed out, "The court's decision fails to safeguard religious freedoms guaranteed under our Constitution."

As these legal battles play out, they serve to remind one of the significant position that the judiciary plays in setting the nation's legal course. The ongoing play between executive directives, judicial intrusion, and the legislative branch assures that the values of democracy get the upper hand. Lawyers stand to have an arsenal of opportunity to engage challenging constitutional and legislative issues in these developments, ensuring that the rule of law remains a pillar of American democracy. ■



**Trump's Deportation Drive Continues Under Alien Enemies Act Even After Hitting a Legal Speed Bump!**

IMAGE: © THE LEGAL



IMAGE: © THE LEGAL

## Courting Contention

# Khula

## Verdict Deepens Sacred-Secular Schism

Part 1/2

The Lahore High Court's ruling granting a Ja'fari Muslim woman Khula without her husband's consent has reignited debate over the controversial "Court Khula" mechanism. The decision, criticised for clashing with Islamic jurisprudence and secular law principles, highlights the tension between progressive judicial interpretations and orthodox religious norms in Pakistan. The issue sparked calls for legal clarity amid growing discord in a deeply religious society.



by **Aftab Kazmi**, Editor in Chief - Islamabad

The Lahore High Court (LHC) Rawalpindi Bench has recently upheld a lower court's decision to grant a Shia (Ja'fari) woman's plea for Khula – the Islamic right to seek separation – without her husband's consent. The ruling has stirred fresh debate over the divisive "Court Khula" mechanism, reigniting calls for urgent legal clarity as critics contend that the practice exacerbates social discord.

The court's legal rationale in this case has ignited fury among scholars, slammed as a glaring clash with both the Islamic jurisprudence – particularly the doctrines of Fiqah-e-Ja'faria, Fiqah-e-Hanafi, and Shafi'i – and bedrock principles of modern secular contract law. The ruling flouts near-unanimous theological consensus, with leading jurists stressing that such unilateral Khula procedures lack legitimacy under Shari'ah, which demands mutual consent for marital dissolution.

The controversy exposes the deepening rift between progressive judicial interpretations and orthodox religious frameworks, further muddying Pakistan's tangled legal-religious discourse. The judgement, delivered by Justice Mirza Viqas Rauf of the LHC, offers reasoning affirming the judicial system's authority to intervene in cases where reconciliation efforts prove unsuccessful. However, the matter warrants closer scrutiny. →

### Factual Background

In the writ petition *Syed Shouzab Imran Kazmi vs. Syeda Iffat Bukhari and Two Others*, the petitioner (husband) and respondent (wife) were married on June 19, 2003 under traditional dower arrangements and have four sons. Over time, irreconcilable differences arose between the parties. The respondent subsequently filed a suit in the Family Court at Attock, seeking dissolution of marriage, recovery of dower, maintenance, and ancillary relief. Despite the petitioner's opposition –including a written statement contesting the allegations – the Family Court decreed the dissolution of the marriage via khula on May 28, 2022 under Section 10(5) of the Family Courts Act 1964, following unsuccessful reconciliation proceedings.

### Legal and Jurisprudential Framework

Central to this case was the interpretation of Islamic law, as it applies to Ja'fari Muslims, particularly the distinctions between talaq (divorce pronounced by the husband) and khula (a dissolution initiated by the wife). Under Ja'fari jurisprudence, a valid talaq requires the husband to pronounce the divorce in Arabic, in the presence of two competent witnesses, and through the performance of "Seeghas" – a recitation that is integral to the act of divorce.

The petitioner contended that, by foregoing his consent and the performance of "Seeghas", the dissolution rendered through khula was procedurally flawed and contrary to the established requirements of Fiqah-e-Ja'faria. He further argued that amendments to the Muslim Family Laws Ordinance, 1961, were designed to restrict dissolution for spouses following the Ja'fari school of thought, thereby reinforcing the necessity for adherence to religious regulations.

### Arguments of the Parties

#### Petitioner's Position:

The petitioner's legal counsel contended that the sanctity of marriage under Fiqah-e-Ja'faria required strict compliance with prescribed conditions for a valid divorce. The counsel emphasised the following:

- Under Ja'fari jurisprudence, talaq must be pronounced in Arabic, in the presence of two competent witnesses, and accompanied by the recitation of Seeghas.

- Khula, though a recognised form of dissolution, is distinct from talaq and should not be granted without husband's explicit consent or the fulfilment of obligatory rites.
- Recent amendments to the Muslim Family Laws Ordinance 1961 (as modified by the Second Amendment Act 2021) were relied upon to assert that Parliament intended to uphold the unique procedural requirements governing Ja'fari marriages.

#### Respondent and State's Position:

The respondent's legal representatives, supported by the Advocate-General for Punjab, countered as follows:

- Islamic principles and Qur'anic injunctions – notably Surah Al-Baqarah (2:229) – explicitly affirm a wife's right to seek khula without spousal consent.
- The judicial framework, including the authority of a Qazi (judge) and the statutory powers conferred upon the Family Court under Section 10(5) of the Family Courts Act 1964, permits dissolution where reconciliation has irretrievably broken down.
- The legislative regime is not inconsistent with Islamic law; rather, it ensures wives are not compelled to endure untenable marriages solely due to a husband's refusal to comply with formalities.

#### Religious and Doctrinal Considerations

A significant portion of the judgment was devoted to analysing the religious texts and scholarly commentaries relevant to the issue of khula. The court reviewed several key sources:

#### ■ Qur'anic Interpretation:

The judgement referenced Surah Al-Baqarah, verse 229, which states, in essence, that a divorce may be pronounced twice and thereafter, the husband should either maintain the wife with kindness or release her gracefully. The court noted that this verse does not impose an absolute requirement for the husband's active participation in the dissolution process, particularly in situations where his consent is withheld.

#### ■ Scholarly Commentaries:

The Court drew on interpretations by scholars such as Abul Ala Maududi (in Tafhīm al-Qur'an),

Muhammad Asad (in *The Message of the Qur'an*), and Taqi Usmani (in *The Noble Qur'an*). These commentaries collectively underscore that while procedures (including the recitation of “Seeghas”) are integral to the act of talaq, the essence of khula is rooted in the principle of granting relief to a wife who cannot coexist harmoniously with her husband.

■ **Jurisprudential Distinctions:**

The judgment highlighted that, in the subcontinental context, khula has evolved as a separate judicial remedy. The landmark case of *Mst. Balqis Fatima vs. Najam-ul-Ikram Qureshi* was cited to affirm that the authority of the court to grant khula is not negated by the absence of the husband's consent or performing the “Seeghas”. This distinction is crucial because it protects the rights of the wife while still preserving the possibility for the husband to later pronounce a fresh talaq in accordance with Ja'fari law, if he so desires.

**Judicial Reasoning**

The Court reached the following conclusions:

1. **Jurisdiction and Authority:**

The Court affirmed that the Family Court is empowered by Section 10(5) of the Family Courts Act, 1964 to grant khula as a summary procedure for the dissolution of marriage. The decision to dissolve the marriage on the basis of khula does not exceed the jurisdiction of the court, even in the absence of the husband's consent or the performance of “Seeghas”. This power is consistent with the broader objectives of Islamic law, which prioritises the prevention of harm and the promotion of justice.

2. **Differentiation Between Talaq and Khula:**

The Court made a clear distinction between talaq and khula. While talaq, as under Ja'fari law, requires the husband to adhere to specific formalities (including oral pronouncement in Arabic in the presence of witnesses), khula is a judicially mediated process. As such, khula operates as a mechanism for the wife to secure her release from a marriage when reconciliation is impossible. This was encapsulated in the Court's observation that the right of a wife to seek khula is not contingent on the husband's participation in the process.

3. **Implications of Non-Compliance with Obligatory Requirements:**

The petitioner's insistence on the performance of “Seeghas” and his refusal to authorise the dissolution were deemed to be contrary to the spirit of Islamic injunctions, which emphasise fairness and compassion. The Court noted that if the husband were to insist on strict adherence to Fiqhi requirements in every case, it could result in prolonged suffering for the wife, potentially contravening the Qur'anic mandate to treat spouses with kindness. The judgment thus concluded that judicial intervention is not only permissible but necessary in circumstances where the husband's non-cooperation undermines the possibility of a harmonious marital life.

4. **Precedents and Comparative Jurisprudence:**

In discussing precedents, the Court referred to multiple earlier decisions – including those in cases such as *Syed Ali Nawaz Gardezi and Mst. Balqis Fatima* – to reinforce the view that the judicial remedy of khula is well established. These precedents illustrate that while some traditionalists maintain that the husband's consent is indispensable, the evolution of legal practice in the region has progressively recognised the independent right of the wife to seek a judicial divorce.

**Conclusion and Implications**

Ultimately, the Court held that the Family Court did not exceed its legal authority by granting khula without the husband's consent or the performance of “Seeghas”. The judgment concluded that:

- When reconciliation fails, the wife's right to secure a judicial dissolution of her marriage is paramount.
- The petitioner's challenge, based on the strict requirements of Ja'fari law, was without merit in the context of modern judicial interpretation.
- The petitioner remains at liberty to pronounce a fresh talaq in accordance with Ja'fari law if he chooses to do so in the future, thereby preserving his rights under the jurisprudence.

# Courts Annul Marriage Contracts, Yet Religious Bonds Leave Couples in Limbo

↓ The implications of this decision are momentous. It reinforces the view that, under the Family Courts Act, 1964, judicial intervention in matters of khula is not only permissible but necessary to safeguard the rights and well-being of spouses – especially wives who might otherwise be trapped in a marriage that has become a source of enduring distress.

This interpretation, which is although based on analogical reasoning to drive meaning of the Qur'anic verse, may hold provided it is implemented without prejudicing the rights of either spouse. The court appears to have prioritised the principle of gender equality, as conceptualised within Western legal paradigms, and scrutinised the issue exclusively through that analytical framework. As a consequence, it erroneously characterised khula as a unilateral right exercisable by the wife, juxtaposed against the husband's established prerogative to pronounce divorce – a construction fundamentally at odds with Islamic, particularly Ja'fari, doctrine. A judgment informed by such reasoning, which may reasonably be perceived as procedurally partial, aligns neither with the principles of Islamic Sharia nor with contemporary contractual law (explained in the part 2 next month). In fact, the court's assertion – that a wife's entitlement to khula operates independently of her husband's consent – is without merit. The question is: On what basis

could a court purport to nullify the husband's consent, a condition upheld as mandatory by virtually all Islamic jurisprudential schools? Marriage is a contract, why the court did not apply the law of contract in this case?

It is accurate that Section 10(5) of the Family Courts Act 1964 empowers the Family Court to issue a decree for the dissolution of marriage. However, this authority is frequently challenged on religious grounds when exercised in contravention of mandatory obligations under Sharia law. Such practices are inconsistent with the broader principles of Islamic jurisprudence, which prioritise promotion of justice. Ja'fari school of thought has been raising its voice against it. When the petitioner referred to the amendment (the Second Amendment Act 2021) in the Muslim Family Laws Ordinance 1961, he asserted that even the Parliament intended to uphold the unique procedural requirements governing Ja'fari marriages. The petitioner presumably, being an advocate, knew that this amendment is federal and it does not affect the provincial law. His intention was to highlight the fact that peoples' representatives in the Parliament are now considering Ja'fari point of view for legislation.

As far as the evolution of legal practice in Pakistan is concerned it has drawn criticism from Fiqa-e-Jafaria and other Islamic schools of thought, which reject court-administered khula for bypasses established religious prerequisites. These Islamic school of thoughts have also issued Fatwas (religious edicts) condemning such judicial interventions.

Furthermore, it is crucial to recognise that the husband's consent and other prerequisites for khula are not merely traditional formalities but constitute religious obligations. Khula itself is a faith-based remedy for irreparable marital breakdowns, rooted in Islamic teachings. Its application outside these doctrinal frameworks remains contentious among scholars and adherents of different jurisprudences. The court further engaged in extensive re-examination of settled Sharia principles to rationalise its predetermined conclusion under the rubric of Western gender-equality norms. In doing so, it relied upon selective statutory provisions that fail to engage substantively with the case's central issues, thereby departing from equitable adjudication.

This matter undeniably resides at the confluence of sacred jurisprudence and secular statutory law, necessitating a nuanced understanding of Muslim matrimonial obligations in both their doctrinal essence and practical application. Absent such comprehension, this exercise of judicial *ijtihad* (interpretation and reasoning) remains doctrinally unsustainable. Reflecting such jurisprudential discord, Grand Ayatollah Sheikh Bashir Hussain al-Najafi observes: 'Under Jafari jurisprudence, a divorce decreed by a Pakistani court holds no validity... The dissolution must be executed in strict accordance with Sharia law, contingent upon the husband's explicit authorisation.'

The respondent and state counsel in Syed Shouzab Imran Kazmi vs. Syeda Iffat Bukhari and Two Others case influenced the court's decision by erroneously asserting that Islamic principles and Qur'anic injunctions – specifically Surah Al-Baqarah (2:229) – affirm a wife's unilateral right to seek khula without spousal consent. The judge said in the decision:

“It would not be out of context to mention here that in arriving at its conclusion, the court observed that though all schools of thought do not accept the jurisdiction of the Qazi to dissolve a marriage on basis of khula without the husband's consent, however, in rendering judgment on a question of interpretation of the Quran, the High Court is not bound by the opinions of jurists, especially where the plain meaning of the verse is clear.”

The court took the 'plain meaning' of the verse predominantly from non-Ja'fari jurisprudential sources.

While citing various classical tafasir (exegeses), it relied solely on a superficial translation of the verse rather than engaging with its interpretative context, thereby misrepresenting its doctrinal nuances. Surah Al-Baqarah (2:229), in fact, comprises two distinct injunctions: the first pertains to talaq (divorce initiated by the husband), and the second addresses khula (dissolution sought by the wife).

The initial portion of the verse concerns the husband's prerogative to divorce twice without entitling him to reclaim any marital gifts or wealth and can revoke it, if he wish, before the completion of the wife's *iddah* (mandatory waiting period). The latter portion explicitly governs khula, wherein the wife may seek dissolution by relinquishing a portion of her personal assets. Crucially, these mechanisms operate under divergent conditions and should not be conflated.

Ja'fari jurisprudence maintains that this verse does not negate the necessity of the husband's consent in khula proceedings, instead affirms it. A holistic reading within the framework of authentic Ja'fari exegeses reveals that the verse establishes mutual conditions for marital dissolution. It emphasises balanced spousal rights rather than endorsing unilateral autonomy for the wife, as erroneously inferred by the court.

In *Al-Burhan fi Tafsir al-Quran* – a most trusted Shi'a Muslim exegesis of Quran written by Sayyid Hashim al-Bahrani – says:

“Ali ibn Ibrahim has stated that this verse (“*wala yahill lakum 'an takhudhuu mimma ataytumuhunn shayyan 'illa 'an yakhafa 'alla yuqima hudud allah*”) was revealed regarding khula. Imam Sadiq (a.s.) said: Khula: When a woman says to her husband, "I am free from all your obligations... I will not obey any of your commands until you divorce me." So, if the woman says this, then it is permissible for the man to take all that he has given her and an amount from her wealth that he has determined, and both of them agree on that amount. He should take it from the woman and divorce her in a state of purity in the presence of two just witnesses.”

In another explanation of the verse, Ibn Babawayh has narrated in his book *Man lā Ya uruhu al-Faqīh* (an authentic Shia book of narrations by Abu Jafar Muammad ibn Ali ibn Babawayh al-Qummi commonly known as Sheikh al-Saduq) from his chain of transmission from Muhammad ibn Muslim, who has narrated from Imam Baqir (a.s.) that he said: When a woman says to a man, "I will not obey any of your commands..." then it is permissible for the man to take the woman's property and divorce her. Both of these explanations support husband's consent.

By taking the simple allegorical and infused meaning of the verse, the LHC's ruling, certainly, plunges the dilemma deeper into crisis, exposing a stark contradiction. While the court upheld the severing of the marital bond, the sacred *Aqd-ē-Nikā* (marriage contract), it remains religiously unbroken – leaving the woman trapped in limbo, barred under Sharia from lawfully remarrying. Should she enter a new union, religious scholars warn the act would be deemed Haram (religiously prohibited), rendering any offspring from such a marriage illegitimate under Sharia. The decision has created a “twilight zone” where judiciary clashes with immutable theological tenets in a deeply religious society, while admitting the opposition of all schools of thought, further straining Pakistan's fraught balancing act between judicial mechanisms and sacred covenant.

It is imperative to recognise the need to reframe the court's role in such matters as a forum for mediation, aimed at facilitating reconciliation or persuading the husband to grant his consent. Such efforts, however, must be exercised without coercion or implicit threat of judicial sanction, as enshrined in the Quranic injunction: “*Let there be no compulsion in religion*” (Quran 2:256). This imperative retains its doctrinal force within the matrimonial context as a guiding principle for consensual resolution. ■ (2nd part next month)



This article is the summary of the research report "Mediating Islamic Family Law Disputes". The full-length paper can be read at [www.the-legal.org](http://www.the-legal.org)

## Balancing Faith and Modernity:

# The Role of ADR in Resolving Family Conflicts

*The Islamic Republic of Pakistan anchors its identity and societal fabric upon the principles of Islam. The inclusion of "Islamic" in its name transcends mere designation, serving as a profound reflection of the nation's core values, deeply rooted in the teachings of the Qur'an and Sunnah. At the heart of the Pakistani "ummah" (community), the institution of "usma" (family) holds paramount significance, embodying a sacred space where interpersonal relationships are nurtured and cherished. However, like any social structure, families in Pakistan are not immune to conflict. When these conflicts arise, the traditional and religiously informed approach to resolution often intersects with modern methodologies, particularly Alternative Dispute Resolution (ADR). This article is a summary of the paper that explores the application of ADR principles within the Pakistani context to family law conflicts, considering the cultural and religious sensitivities that shape family dynamics and conflict resolution.*

by **Dr Jo D Chitlik**, LLM, esq. – Atlanta, Georgia (USA)



In Pakistan, family is more than a biological unit; it represents a foundational pillar of society. Extending beyond the nuclear family, the Pakistani "usma" comprises extended relatives, offering emotional and financial support. Social values, such as filial piety and collective responsibility, further reinforce the significance of family. Elders are revered, and their wisdom often informs decision-making processes. Additionally, Islamic teachings stress the importance of maintaining familial bonds, with the Qur'an highlighting the rewards of preserving relationships and warning against their breakdown.

Despite the emphasis on family cohesion, conflicts arise over issues such as inheritance, marital disputes, alimony (nafaqah), dowry (mahr), and domestic responsibilities. Disagreements in these areas necessitate effective dispute resolution mechanisms that maintain family integrity while ensuring justice.

### The Influence of Secular Law on Sharia Law

The legal framework governing family law in Pakistan is an amalgamation of Islamic principles and colonial-era secular regulations. The Muslim Family Laws Ordinance of 1961, influenced

by the British colonial legal system, was an attempt to modernise family law while respecting Islamic traditions. However, due to cultural sensitivities and the stigma attached to marriage disputes, many Pakistanis prefer informal resolution mechanisms over formal court interventions.

Community elders, religious leaders, and respected figures frequently mediate disputes, ensuring discretion and preserving honour. These informal mediation methods, while effective, sometimes clash with formal legal principles, particularly in cases



IMAGE: Supplied

## Dr Jo D Chitlik

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Dr Chitlik is a licensed international attorney, litigator, high-level US government negotiator and registered mediator in; civil, probate and guardianship, family law and domestic violence. She has worked in the Ministry of Justice in the Republic of Georgia in the Office of International Arbitration. At the US Department of State, served as a Senior Investment Policy Specialist (TS/SCI) under Secretary John Kerry, overseeing the Western Hemisphere and Near Eastern Affairs portfolio in investment and trade. She represented the State Department in the Committee of Foreign Investment in the Unites States (CFIUS) on national security. She headed the taskforce that prepared the annual 527 Expropriation Claim Report for US Congress. Chitlik is credited with an innovative management system for the production of the Department's annual Investment Climate Statements. She represented the US mission to the United Nations, as lead negotiator to UNGA in trade and development. She ended her tenure at the State Department with the drafting of a memorandum of understanding between the Department, the United Nations and the Global Entrepreneurship Network, which aimed to improve the financial well-being of 1.8 billion vulnerable people worldwide.

Between 2014 to 2016, she received three State Department Meritorious Awards, one Superior Award and was distinguished as a Franklin Fellow for her work. In 2023, she received the Eleonore Raoul Trailblazer Award from Emory School of Law.

Chitlik has lectured at Emory Law School. She has taught at the Foreign Service Institute (FSI), the US federal government's training institution for the US foreign service. At the Central Bank of Oman on Bilateral Trade Agreements. She was a visiting scholar at American University Washington College of Law, at the Centre on International Commercial Arbitration and presided as adjudicator in the International Moot Competitions. She has taught human rights and comparative law at Universidad de La Sabana, in Bogota, Colombia. She teaches and lectures on Alternative Dispute Resolution at Fatima Jinnah Women's University, Beaconhouse International College, NUST, QAU, UMT, Kinnard College for Women, Kahuta Law College, the Sinhala Police Academy, and the Federal Judiciary Academy in Pakistan.

of gender-based discrimination and human rights violations.

### The Concept of Sulh (Reconciliation)

Sulh, an Islamic principle of reconciliation, plays a significant role in resolving family disputes outside formal judicial settings. Rooted in Islamic jurisprudence, sulh prioritises dialogue, understanding, and mutual agreement over adversarial litigation. Unlike court proceedings, which can be lengthy and public, sulh allows disputing parties to negotiate privately, preserving

relationships and social harmony.

In Pakistan, sulh operates as a supplementary channel within the legal system, offering parties the opportunity to resolve disputes amicably. However, for sulh agreements to be valid, all parties must consent freely. The process mirrors secular mediation practices, requiring an offer (icab) and acceptance (kabal). Despite its benefits, certain traditional practices, such as badla-e-sulh (swara or vani), have tarnished its reputation. Swara involves offering a woman – often a minor – in

marriage to settle disputes, a practice that was outlawed under the 2011 Criminal Law (Third Amendment).

### The Jirga System and Its Challenges

The Jirga system, an informal tribal council, often adjudicates family disputes based on customary laws. While jirgas provide swift resolutions, they are criticised for perpetuating power imbalances, corruption, and gender discrimination. Notably, the Supreme Court of Pakistan has declared that jirgas lack legal authority, deeming their decisions unconstitutional. A significant

## ***While Pakistan must tailor ADR mechanisms to its cultural and religious context, adopting structured mediation models could significantly improve family dispute resolution.***

ruling in the case of *National Commission on Status of Women v. Government of Pakistan* reinforced this stance, rejecting swara as un-Islamic.

Despite these legal challenges, jirgas remain influential in rural Pakistan, necessitating reforms that integrate ADR while safeguarding human rights.

### **The Rising Divorce Rate in Pakistan**

Pakistan has witnessed a surge in divorce rates due to economic pressures, evolving cultural norms, and changing gender dynamics. A survey by the Gilani Research Foundation identified lack of patience, declining religious adherence, and Western cultural influences as primary reasons for marital breakdowns.

Post-divorce challenges include financial instability, child custody disputes, and emotional distress. Women, in particular, face difficulties securing employment due to limited education or vocational training. Custody battles often exacerbate tensions, negatively impacting children's well-being. Legal expert Fahad Ahmad Siddiqi advocates for the "Doctrine of Shared Parenting," which promotes joint custody arrangements. However, deeply ingrained cultural norms often hinder fathers' active participation in post-divorce parenting.

### **The Need for Islah (Reform)**

Islah, meaning "reform," underscores the necessity of revisiting Islamic teachings to address contemporary challenges in family law. In the context of ADR, islah aligns with mediation and reconciliation, encouraging disputing parties to seek resolution while maintaining Islamic values.

Pakistan's judiciary faces significant case backlogs, with family disputes often taking years to resolve. Delayed legal proceedings add emotional and financial strain to families, making ADR a viable alternative. In contrast, Western legal systems, such as the United States, have successfully integrated mediation into family law to expedite case resolution. While Pakistan must tailor ADR mechanisms to its cultural and religious context, adopting structured mediation models could significantly improve family dispute resolution.

### **Family Law Mediation: A Cultural and Legal Imperative**

To be effective, family law mediation in Pakistan must be culturally sensitive and aligned with Islamic principles. Unlike generic mediation practices, family law mediation requires specialised training in both secular and Sharia law. In Western countries, family mediators undergo rigorous training to handle sensitive cases, including domestic violence and financial disputes. Pakistan must implement similar regulatory frameworks to ensure mediation services are professional, impartial, and accessible.

Furthermore, Pakistan's legal system prioritises reconciliation in marital disputes. While counselling and marital therapy are common in Western nations, Pakistani couples often lack access to such resources due to social stigma. Implementing structured mediation within court-annexed ADR programmes could provide couples with a neutral space to resolve conflicts before resorting to litigation.

### **Ensuring Privacy in Mediation**

Privacy is a cornerstone of Pakistani culture, particularly regarding family matters. Public litigation can bring social embarrassment, deterring many from seeking formal legal recourse. Mediation, conducted under strict confidentiality, offers a more acceptable alternative. Mediators, bound by ethical obligations, can provide a safe environment for open communication, reducing hostility and increasing the likelihood of amicable settlements.

Moreover, mediation can serve as a preventative measure against divorce. Couples facing marital discord could benefit from early

intervention, helping them navigate conflicts constructively. This approach aligns with Islamic teachings that encourage reconciliation before pursuing divorce.

### **The Future of ADR in Pakistan**

The future of ADR in Pakistan hinges on its ability to integrate cultural and religious values with modern dispute resolution techniques. Key areas for improvement include:

1. **Cultural Sensitivity:** ADR must respect Islamic traditions to gain public acceptance.
2. **Gender Equality:** Addressing systemic biases in family law to ensure just outcomes.
3. **Legal Frameworks:** Strengthening regulations to institutionalise ADR within the judicial system.
4. **Accessibility:** Expanding ADR services to rural and underprivileged communities

Incorporating religious scholars and community leaders into ADR processes could enhance legitimacy and trust. By bridging traditional and modern approaches, ADR can offer Pakistan a sustainable means of resolving family disputes while upholding Islamic values.

### **Conclusion**

Pakistan's resilience as a nation is rooted in its commitment to family values. While traditional dispute resolution mechanisms have long played a role in maintaining social harmony, evolving legal and social dynamics necessitate structured ADR reforms. By reinforcing Islamic principles, educating younger generations on marital responsibilities, and integrating mediation into the legal system, Pakistan can foster a more just and compassionate approach to family law. ADR, when implemented effectively, has the potential to uphold family sanctity while ensuring legal fairness, ultimately benefiting future generations. ■

## The Geopolitics of International Sanctions

# Law, Power, and Global Stability

*This article analyses the interplay between evolving legal frameworks, the use of sanctions, and their geopolitical ripple effects in a rapidly shifting world order.*

by **Alfred Eli K Dei**, Senior Lawyer / Researcher  
Greater Accra Region, Ghana



In the complex arena of international geopolitics, states and global institutions routinely wield sanctions—from asset freezes to sweeping trade restrictions—as tools to pressure nations accused of human rights violations, acts of aggression, or destabilising global security. Yet their deployment has sparked intensifying debate over their legal foundations, practical effectiveness, and unintended consequences for international stability.

### The Legal Basis for International Sanctions

The legitimacy of sanctions is derived from several sources of international law. In order to preserve or restore global peace and security, the United Nations (UN) Security Council may impose legally enforceable sanctions on member states in accordance with Chapter VII of the UN Charter.<sup>1</sup> To address circumstances in places like Southern Rhodesia, South Africa, the former Yugoslavia, and more recently, Mali and South Sudan, the Security Council has implemented 31 sanctions regimes since 1966. These have included broad trade and economic penalties as well as more focused measures like travel bans, financial restrictions, and arms embargoes.<sup>2</sup> Beyond the United Nations, individual states and regional organisations, including the European Union (EU), the United States, and the African Union (AU), have also imposed unilateral sanctions. The United States, for instance, enforces sanctions through laws such as the International Emergency Economic Powers Act (IEEPA) and the Global Magnitsky Human Rights Accountability Act, targeting individuals implicated in corruption and human rights abuses.<sup>3</sup> While sanctions function as legitimate instruments of international diplomacy, their unilateral implementation often raises problems about sovereignty, economic coercion, and compliance with international law. Questions persist over whether such punishments correspond to standards of proportionality and non-intervention under customary international law.

### Geopolitical Power Play: Sanctions as a Tool of Influence

Sanctions have long been strategic instruments of geopolitical manoeuvring, frequently used by powerful states to exert influence over others, enforce political change, or counter perceived threats. However, their effectiveness has often been debated.

### The US and Western Sanctions Regime

The United States has widely used economic sanctions against adversaries like Russia, Iran, and Venezuela. The Russian invasion of Ukraine in 2022, for instance, triggered an outpouring of Western-led sanctions,<sup>4</sup> such as freezing the assets of oligarchs and imposing financial restrictions on Russian banks. These sanctions weakened Russia's economic position but also prompted Russia to fortify its relations with other powers like China and India.

### China's Counter-Sanctions Strategy

As a superpower, China has reacted to Western sanctions by focusing on self-sufficiency in critical industries and imposing economic limitations on Western companies. Economic sanctions are increasingly influencing the trade and technical strategies of global superpowers, as demonstrated by the recent US limitations on semiconductor shipments to China.<sup>5</sup>

### Africa and the Middle East: The Sanctions Dilemma

African nations have frequently faced international sanctions, often in response to coups, corruption, or human rights violations. Following military coups in Mali and Burkina Faso, the African Union imposed sanctions.<sup>6</sup> However, some critics contend that such policies frequently affect civilians rather than political elites and may unintentionally

promote authoritarian governments by instilling anti-Western sentiment. In Eritrea, the expulsion of USAID in 2005 signalled a shift from over-reliance towards self-reliance, in contrast to other African countries experiencing severe humanitarian consequences as a result of budget cuts.<sup>7</sup>

**The Effectiveness and Consequences of Sanctions**

While sanctions are designed to pressure governments into compliance with international norms, their actual success rate varies. Key concerns include:

■ **Economic Fallout and Humanitarian Impact**

Sanctions frequently result in unforeseen humanitarian effects. Economic sanctions, such as those against Venezuela and Iran, have increased food and medical supply shortages, affecting ordinary citizens more than the political class. Furthermore, these sanctions have oftentimes impeded humanitarian aid and the delivery of life-saving medical care in conflict zones.<sup>8</sup>

■ **Sanctions Evasion and Alternative Alliances**

Sanctioned states usually seek strategies around restrictions. The growth of digital currency and alternative financial systems, such as China's Cross-Border Interbank Payment System (CIPS),<sup>9</sup> exemplifies how governments respond to economic warfare. Russia and Iran, for example, have boosted commerce with non-Western countries, knocking off the intended effects of sanctions.<sup>10</sup>

■ **Legal Challenges and Disputes**

Sanctions implemented outside of UN authority frequently face legal challenges. Countries such as Iran<sup>11</sup> and Venezuela have filed petitions before the International Court of Justice (ICJ), claiming that US restrictions violate international law.<sup>12</sup> Thus, the growing opposition to Western-dominated sanction regimes has sparked questions over the validity of unilateral coercive actions. Having previously imposed sanctions, it is important to note that the US' attempts to broker peace in Ukraine and the Middle East are

faltering, with Russia rejecting a full ceasefire and the Israel-Hamas truce collapsing. These developments highlight ongoing geopolitical tensions and shifting global power dynamics.<sup>13</sup>

**The Future of Sanctions in Global Politics**

As global power dynamics shift, the role of sanctions in geopolitics is likely to evolve in several ways:

■ **Multipolarity and the Decline of US-Led Sanctions**

The growth of other economic blocs, such as BRICS (Brazil, Russia, India, China, and South Africa), points to a future where the US-dominated sanctions would lose their efficiency. Countries are increasingly seeking financial systems that are independent of Western authority,<sup>14</sup> diminishing the effectiveness of traditional sanctions.

■ **Legal and Institutional Reforms**

There is an increasing demand for clearer international legal frameworks on sanctions. Calls for UN-led monitoring and better legal frameworks may help guarantee that sanctions are consistent with due process, human rights, and proportionality. The Guiding Principles on Sanctions, Business and Human Rights with its corresponding commentary which started in 2022 explain how existing international legal standards shall be applied in the context of sanctions; remind States of their responsibility to abide by and uphold international human rights standards; and reiterate States' responsibility to ensure through administrative and judicial measures that businesses under their jurisdiction and/or control, operating in sanctions contexts, do not violate human rights, including extraterritorially.<sup>15</sup>

■ **Hybrid Warfare and Digital Sanctions**

As cyber warfare and digital economies grow, sanctions will focus more on technology and data access. Restrictions on artificial intelligence development, cybersecurity measures, and digital trade could become the next battleground in economic conflict.<sup>16</sup> The US-China artificial intelligence (AI) conflict<sup>17</sup> illustrates hybrid warfare and digital sanctions, with China's DeepSeek AI platform developing as a significant competitor to US models like ChatGPT. Despite US prohibitions on semiconductor exports, China continues accelerating AI development, challenging American technological dominance.

**Conclusion**

Sanctions are still a crucial part of international diplomacy, although there is a continuing debate over their efficacy and legitimacy. While they can be used for non-military conflict settlement, their abuse could worsen geopolitical tensions and harm innocent communities. Therefore, a more balanced strategy that adheres to legal principles while considering geopolitical factors may be needed to ensure that sanctions are applied for justice rather than economic dominance. ■



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## Constitutional Rights

# Canadian-Style Framework for Balancing Free Speech and Public Order

*Comparative Analysis Highlights Canada's "Oakes Test" as Model for Justifying Restrictions While Safeguarding Democratic Freedoms in Pakistan*

by **Amna Ali** - Islamabad

The Supreme Court of Pakistan must develop a systematic approach, modelled on Canada's legal framework, to determine when restrictions on constitutionally guaranteed fundamental rights – such as freedom of speech and expression.

The Article 19 of the Constitution of Pakistan guarantees freedom of speech and expression, along with freedom of press, subject to following restrictions imposed by law “in the interest of the glory of Islam, security or defence of Pakistan or friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, commission/incitement to an offence.”

Regulatory bodies like the Pakistan Electronic Media Regulatory Authority (PEMRA) and the Central Board of Film Certification (CBFC) enforce these limits. However, Pakistan's approach lacks the structured methodology seen in democracies like Canada, which shares comparable judicial traditions.

As the custodian of the Constitution, the Supreme Court upholds and preserves fundamental rights, including freedom of speech, with regard to the Article 19. In the *Pakistan Broadcasters Association and others vs. PEMRA and others* (PLD 2016 SC 692), the Supreme Court specified that reasonable restrictions can be imposed if freedom of expression of one person is encroaching on rights of another person, such as the right to live a peaceful life.

Other cases where the Supreme Court limited the right to free speech and expression are *Masroor Ahsan vs. Ardeshir Cowasjee* (PLD 1998 SC 823). In this case, the Supreme Court maintained that the press should not compromise on public order, decency, and morality while performing its duties.

In *Zaheerud din vs. State* (1993 SCMR 1718), the Supreme Court imposed restrictions on the speech of the Ahmadiyya community to protect the sanctity of Islamic values and emphasised that although freedom of speech is a fundamental right, it shall not temper with the religious values of others.

Similarly, in the *Faizabad Dharna Case (2019)* (*Suo Moto Case*

IMAGE: © THE LEGAL

**Pakistan's Supreme Court could benefit from adopting a similarly rigorous, rights-focused test to ensure transparency and consistency in its rulings.**

No.7/2017 - PLD 2018 Supreme Court 72), the Supreme Court criticised media outlets for allowing hate speech and inciting violence during protests of Tehreek-e-Labbaik Pakistan (TLP), and in another case *Talal Ahmed Chaudhry vs. The State*, it took suo moto action in against politicians that made contemptuous remarks towards the judiciary (2019 SCMR 542).

The Supreme Court also delineated the restrictions on freedom of speech and media regulation to ensure that they are specific and precise, and if they contradict other prevailing rights, then it assesses each case on its own merits individually and determines whether to approve free speech or not. The Supreme Court maintained that: "Overt and covert censorship is unconstitutional and illegal... and no government, department, or intelligence agency can curtail the fundamental right of freedom of speech, expression, and press beyond the parameters mentioned in Article 19 of the Constitution (PLD 2019 SC 318)".

It further observed that it is the duty of government to strike a balance between individuals' rights to free speech and expression and imposing reasonable supervision at publication and broadcasting.

In Canada, Section 2(b) of the Canadian Charter of Rights and Freedoms confers "freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication". However, this right is not absolute as per Section 1 of the Charter, which is also called a limitations

clause, allowing the government to enact laws and rules that restrict an individual's rights listed in the Charter, including the right of free speech and expression, as long as the restrictions are 'reasonable and can be justified in a free and democratic society'. Moreover, Canadian courts use a legal test called the Oakes test that determines whether a government action that restricts the rights is justified or not. This test contains four steps:

1. The government must present a pressing and substantial reasoning behind the law.
2. The government must prove that the law is rationally connected to the pressing and substantial reasoning.
3. The government must demonstrate that the law is minimally impairing of the right, which means that the law shall limit the right as minimally as possible.
4. The government must show that the benefits of the law are outweighed by the negative impact caused by limiting the right (proportionality requirement).

If the government fails to fulfil any of these requirements, then the infringement is not justified and the right is not limited.

Dominique Clément, a leading Canadian expert on the history of social movements and human rights, notes that while free speech protections are robust, criminal codes still prohibit hate speech, obscenity, and defamation. Pakistan's Supreme Court could benefit from adopting a similarly rigorous, rights-focused test to ensure transparency and consistency in its rulings.

By codifying such principles would strengthen Pakistan's democratic credentials while addressing concerns over arbitrary censorship. A structured approach, like Canada's, would clarify where lines are drawn. It protects both free speech and public order – without leaving either to subjective interpretation. ■



IMAGE: Designed by Freepik

## Guardian of Prisoners

# Not an Ordinary Job in Indonesian Correctional Institutions

by **Markus Marselinus Soge**, Senior Lecturer  
Law Researcher - Jakarta



Indonesian correctional institutions are no different from correctional institutions in other countries. These institutions carry out the task of detaining people who have been sentenced to imprisonment, namely convicts, as well as providing care for them while they are serving their sentences. It is in this correctional institution that the status of the convicted person changes into a prisoner. However, there is something different about Indonesian correctional institutions, where there are correctional institution officers who are given the responsibility of guardian of prisoners.

### The Prisoner's Guardian is a Government Employee

A guardian of prisoners is not a representative of the prisoner's family, he is a government employee who is required to fulfil several certain conditions such as a minimum high school education or its equivalent, work experience in the correctional institution environment for at least five years, and of course not currently serving disciplinary punishment as a government employee.

This means that a prospective prisoner's guardian must first be accepted as a government employee in charge of a correctional institution by fulfilling various terms and conditions as well as the selection or recruitment of other prospective government employees. Only then, after officially having the status of a government employee, is the prospective prisoner's guardian considered by the head of the correctional institution to be appointed as a prisoner's guardian.

### Duties and Obligations of a Prisoner's Guardian

After being appointed by the head of the correctional institution as a prisoner's guardian, the main task is to accompany both male and female adult prisoner as well as child prisoner while the prisoner is undergoing the guidance process in interacting with fellow prisoners, with correctional institution officers, with his family and with members of the community. As a prisoner's guardian officer, it is his/her responsibility to continue to accompany the prisoner while in the correctional institution, if the prisoner must spend a sentence of less than five years or more than five years, the prisoner's guardian is obliged to accompany the prisoner for less or more than five years. One can imagine the potential boredom of working as a guardian of prisoners for years with prisoners.

In carrying out the main task, a prisoner's guardian is obliged to pay attention, observe, and record the development of coaching and positive changes in behaviour, as well as how the prisoner's relationship with his family and the community, including the

## Unbalanced Ratio

Indonesia's prison system is grappling with a critical imbalance in the ratio of correctional officers to inmates, raising concerns over the quality of rehabilitation and adherence to international human rights standards. Official figures reveal that as of 31st December 2024, the nation's adult and juvenile prison population stands at 216,114, while the number of correctional officers remains stagnant at 47,752 – a ratio of roughly one officer for every 4.5 prisoners.

On paper, this ratio suggests that one officer is tasked with managing around four inmates. However, field research conducted between 2021 and 2024 in various regencies and correctional institutions paints a far grimmer picture. Studies in facilities across Garut, Serang, Jepara, Klaten, Tulungagung, and Bojonegoro reveal that, in practice, one officer often oversees as many as 15 to 20 prisoners.

This stark discrepancy highlights the immense pressure correctional officers face in providing effective supervision, consultation, and guidance to inmates. The burden on officers is exacerbated by prisoners' daily needs, ranging from addressing grievances to seeking advice about their rehabilitation journeys. Despite these challenges, officers are expected to uphold high-quality standards that align with The Nelson Mandela Rules, which stipulate minimum standards for the treatment of prisoners.

The imbalance calls into question the sustainability of the current system and raises concerns about the quality of care, rehabilitation, and safety within correctional institutions. Addressing this issue is critical to ensuring a fair and humane approach to incarceration and rehabilitation. —MMS

## The treatment of prisoners is outlined by the United Nations in the Nelson Mandela Rules.

prisoner's obedience to the rules of the correctional institution.

Another obligation is to explore the potential of the prisoner to be developed and aligned with the coaching programme prepared by the correctional institution. They have to make a report on the development of coaching and changes in the behaviour of the prisoners. With the existence of duties and obligations of a prisoner's guardian, the authority is attached to him to receive complaints from prisoners and conduct consultations if the prisoner experiences obstacles in interacting with fellow prisoners and with correctional institution officers.

### The Nelson Mandela Rules and Prisoner's Guardian

The guardian of prisoners holds the status of a government employee. They must fulfil various terms and conditions during the selection or recruitment process for prospective government employees and prisoner guardians. In terms of international standards, the provision of minimum standards for the treatment of prisoners is outlined by the United Nations in The Nelson Mandela Rules. The fulfilment of these terms and conditions aligns with several provisions in these rules.

Firstly, Rule 74.1 states that "the prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends."

Additionally, Rule 74.3 specifies that "personnel shall be appointed on a full-time basis as professional prison staff have civil service status with security of tenure subject only to good conduct, efficiency



IMAGE: Social Media

and physical fitness."

Lastly, Rule 75.1 highlights that "all prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner." By meeting these conditions, the role of the guardian is aligned with international expectations and standards.

In terms of The Nelson Mandela Rules, the assignment to the correctional institution officer as the prisoner's guardian is in line with the provisions of "Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions" (Rule 76.2), and the provisions of "All prison staff shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect" (Rule 77).

The obligation of a prisoner's guardian to pay attention to, observe, and record the progress of the prisoner's development and behavioural changes, as well as the

prisoner's relationship with his family and the community, including the prisoner's obedience to the rules of the correctional institution, is in line with The Nelson Mandela Rules, in particular, the provisions of "The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose to establish in them the will to lead law-abiding and self-supporting lives after their release.

The treatment shall be such as will encourage their self-respect and develop their sense of responsibility" (Rule 91), and the provisions of "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times" (Rule 1). ■

## VOTING RIGHTS

## Overseas Pakistanis and the Ballot Box

## A Constitutional Right in Limbo

*These expatriates contribute significantly to the economy through remittances, but logistical and political challenges have hindered their voting rights.*

by **Sarmad Mahmood** - Advocate, Lahore

In a land where the Constitution unequivocally grants every sane and legally qualified citizen the right to vote, the reality tells a different story. Article 17(2) enshrines this fundamental right, yet for decades, one pressing issue has remained unresolved – the voting rights of overseas Pakistanis. Millions of expatriates continue to face uncertainty over their ability to participate in the democratic process.

An estimated nine to ten million Pakistanis reside abroad, with a substantial population in the Middle East, the United Kingdom, the United States, Saudi Arabia, the UAE, and other Gulf nations. These expatriates play a crucial role in Pakistan's economy, contributing billions of dollars in remittances each year. In 2023 alone, Pakistan received over \$31 billion in remittances from its overseas citizens—funds that serve as a lifeline for families and a critical source of foreign exchange for the nation. The trend has been consistent over recent years, with remittance inflows amounting to approximately \$31.2 billion in 2022 and \$29.4 billion in 2021. Despite their substantial economic contributions, overseas Pakistanis continue to face a significant democratic hurdle—the denial of their right to vote in general elections.

The Fundamental Rights of Pakistani citizens are enshrined in Chapter 2 of Part II of the Constitution of Pakistan (1973), with Article 8 explicitly stating that any law contrary to these rights is void. Among these rights is the entitlement to participate in the electoral process, as outlined in Article 17(2), which asserts: “Every citizen, who is not declared to be of unsound mind, and is not disqualified under any law, is entitled to vote.” This provision affirms the democratic rights of all Pakistani citizens, regardless of their place of residence. However, the reality for millions of expatriates tells a different story, as logistical and political challenges have long obstructed their ability to cast their votes.

The issue of granting voting rights to overseas Pakistanis has been under discussion for decades. It gained momentum in the early 2000s, notably during the 2002 presidential elections when limited voting rights were granted. However, progress has been slow, with only incremental steps taken towards implementing a comprehensive voting mechanism for expatriates.

A significant development occurred in 2018 when the Election Commission of Pakistan (ECP) proposed the use of technology-based voting for overseas Pakistanis. However, this initiative was not implemented in time for that year's general elections, leaving millions without a voice in the democratic process. Subsequent efforts to introduce digital voting have faced hurdles, including concerns over electoral security, the risk of voter fraud, and the lack of a robust digital infrastructure. These obstacles have

IMAGE: © THE LEGAL



prevented meaningful progress in enabling overseas Pakistanis to participate in national elections.

Despite being disenfranchised, overseas Pakistanis wield considerable influence in the country's economy and international reputation. Their remittances bolster financial stability, alleviate poverty, and sustain local businesses. Beyond their economic impact, they play a significant role in "diaspora diplomacy," enhancing Pakistan's soft power on the global stage. Former Prime Minister Imran Khan acknowledged their importance, referring to the diaspora as "brand ambassadors" who advance Pakistan's interests internationally.

The overseas community has also been vocal about governance issues in Pakistan, advocating for reforms and transparency. Many expatriates possess a deep-rooted affection for their homeland, and their desire to see it prosper fuels their engagement in political discourse. They have a vested interest in electing competent leaders capable of addressing the country's challenges, from economic instability to bureaucratic inefficiencies. Granting them the right to vote would not only recognize their contributions but also empower them to influence electoral outcomes, potentially fostering a more transparent and accountable political landscape.

The key to resolving the overseas voting issue lies in leveraging technology to create secure and accessible voting platforms. Digital voting systems, if implemented correctly, could provide a viable solution by allowing



expatriates to cast their ballots remotely. Several countries have successfully introduced online voting mechanisms, demonstrating that technological solutions can enhance electoral participation while ensuring security and transparency.

To make this a reality, Pakistan must invest in a secure and efficient digital voting system that addresses concerns regarding voter authentication, fraud prevention, and cybersecurity. Additionally, voter education initiatives are essential to familiarise overseas Pakistanis with the voting process and encourage participation. Simplified registration procedures and greater political will within Pakistan's legislative framework could also help overcome the current barriers to expatriate voting.

Enfranchising overseas Pakistanis is not just a matter of convenience; it is a fundamental democratic right. Their inclusion in the electoral process would ensure that all citizens, regardless of their geographic location, have a say in shaping Pakistan's future. Recognising their contributions and granting them voting rights would reinforce democratic principles, promote political inclusivity, and strengthen the bond between the state and its expatriate community.

Addressing the voting rights of overseas Pakistanis is imperative for a more robust and representative democracy. While economic contributions from expatriates are acknowledged and appreciated, their political voices must also be heard. By implementing a secure and efficient overseas voting mechanism, Pakistan can take a crucial step toward ensuring that all its citizens, no matter where they reside, can exercise their constitutional right to vote. ■

## THE LEGAL INTERNATIONAL

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TL EVENT



# Judicial Round Table on Insolvency in Hong Kong

**INSOL, The World Bank, and UNCITRAL, organised the event**

**Staff Report**

On 19th March 2025, the World Bank and INSOL International, in collaboration with the United Nations Commission on International Trade Law (UNCITRAL), organised the 'Asia Judicial Round Table on Insolvency' in Hong Kong. The event was aimed to foster the exchange of experiences and perspectives among participants from diverse jurisdictions.

The forum was part of a broader initiative to address insolvency-related issues and practices. Complementing the biennial Judicial Colloquia – designed to bring together judges, regulators, and judicial officials globally – these focused Judicial Round Tables create a platform for regional dialogue. They allow a larger number of judges to participate and provide opportunities for senior judges with expertise in complex restructurings and reorganisations to share insights.

Justice Jawad Hassan of the Lahore High Court, Pakistan, was among the distinguished participants at the round table. During the structured discussion, attendees tackled thought-provoking questions, including: “Would your court exercise jurisdiction over a foreign-registered company? If so, upon what basis?”

The discussions were led by Sir Alastair Norris of the High Court of England and Wales, with additional insights provided by Justice ONG Chee Kwan of the Kuala Lumpur High Court (Malaysia), Justice Aidan Xu of the Supreme Court of Singapore, and Justice Hassan of Pakistan.

INSOL International, a global federation of national associations for accountants and lawyers specialising in turnaround and insolvency, continues to play a pivotal role in driving professional collaboration. With over 44 Member Associations and more than 12,000 professionals worldwide, the organisation remains a cornerstone in fostering progress within the field. ■

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1. Strengthen Immune System
2. Strengthen Digestive System
3. Refreshes Your Taste Bud
4. Boost Skin's Health.
5. Delivers Oxygen Throughout the Body.
6. Regulates Body Temperature

## NUTRITIONAL FACTS

Magnesium	7-50 ppm
Sodium	7-50 ppm
Sulphate	5-150 ppm
Calcium	30-100 ppm
Potassium	0.01-5 ppm
Chloride	5-200 ppm
Fluoride	0.1-0.7 ppm
TDS	100-200 ppm
PH	6.5-8.5



**BAWA SKHS**  
SIMPLY A CLASS ON ITS OWN

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