

January 2025

THE LEGAL

INTERNATIONAL

2025
**Happy
New
Year**

Elections 2025
**ISLAMABAD BAR
ASSOCIATION**

Indian Criminal Law
**OLD WINE IN A
NEW BOTTLE**

**THE MYTH OF
RULE OF LAW**

19 MILLION
**CHILD BRIDES IN
PAKISTAN**

**TAX LAW
(Amendment)
ACT, 2024**

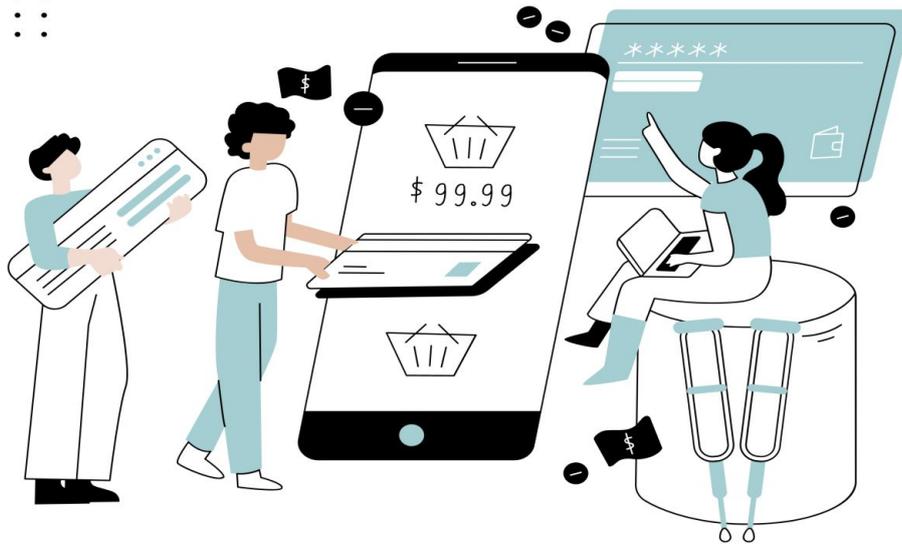
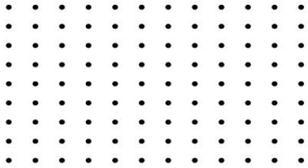
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Special Report

Chief Justice of Pakistan Yahya Afridi said that a survey by the Law and Justice Commission of Pakistan (LJCP), which provides legal consultancy to prisoners, highlighted the dire conditions in Pakistan's prisons. It revealed that 108,643 detainees are crammed into facilities meant for just 66,625 inmates, underscoring the urgent need for reform.



THE LEGAL INTERNATIONAL

Never miss an issue

The Legal International is a law research & development digital magazine of the concise content mostly published on www.the-legal.org. It also covers law news, major legal issues, legal analysis and important events of law and justice community. Our editorial focus tracks significant news and research articles from across the key practice areas, jurisdictions and sectors. We are the first of its kind digital publication in Pakistan with a multi platform approach.

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Editor's Note

WE WISH YOU A HAPPY

new year

A New Dawn for Unity and Hope

As we usher in 2025, we must embrace it with open hearts, love, and a renewed commitment to peace and prosperity. The past year has left us with a plethora of lessons, challenges, and memories, both sweet and bitter. While it was fraught with difficulties, we look forward to brighter days ahead. As Albert Einstein once said, "Learn from yesterday, live for today, hope for tomorrow."

Our aspirations call for unity, faith, and action. Across the globe, people have paid a heavy price for the follies of selfish, power-hungry extremists. The world stands on the brink of World War III, a testament to the ongoing folly that surrounds us.

In Pakistan, reason must prevail for the future. Controversial politics, religious disputes, and conflicts within civil and military establishments, the judiciary, and other national institutions achieve nothing. The nation grows increasingly polarised, reflecting in national policies. We must remember that a scattered, confused, and antagonised mind cannot think and work cohesively.

2024 was tumultuous for Pakistan on all fronts. Since February, the populace has suffered from the extreme actions of all players. The only way out of the current impasse is mutual acceptance. We witnessed a flurry of hasty legislations, including the infamous 26th Constitutional Amendment. The executive targeted the judiciary's independence, reducing it to a tool for justifying its actions. This was undoubtedly one of the weakest phases in the judiciary's history since the country's independence. The judiciary and the legal fraternity now stand divided.

Despite the challenges and unpleasant events, 2024 has also given us hope for brighter days ahead. In this extraordinary year, The Legal International was born and thrived. We are grateful to our readers and contributors for furthering this agenda-free project, serving the busy community of lawyers, judges, law students, and researchers.

With your support, we started seven months ago and now reach 110,000 viewers worldwide. We hope to grow further this year, becoming an effective, august, and the largest international digital law magazine from a third-world country. We invite you to share your comments, reviews, and suggestions on our progress.

Remember the words of Eleanor Roosevelt:

"The future belongs to those who believe in the beauty of their dreams."

Aftab Kazmi
Editor in Chief

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NEWS BRIEFING

IMAGE: © THE LEGAL



Judicial Discontent

Islamabad - Three senior Supreme Court judges took stock of the country's prevailing instability and expressed, on December 20, their dissatisfaction with the performance of the government, state institutions, and judiciary.

As reported by the national media, one judge noted that the state is preoccupied with installing and toppling political governments, while all institutions are engaged in persecuting political opponents. "As long as state institutions are involved in political engineering, the situation will remain the same. Had the Constitution been upheld, these circumstances would not have arisen," remarked Justice Athar Minallah.

Justice Jamal Khan Mandhokhail also criticised the state for its alleged lack of will "to do anything." He pointed out, "What can we say about the state? Three prime ministers have been killed but no one was held accountable," apparently referencing the assassinations of prime ministers Liaquat Ali Khan, Zulfikar Ali Bhutto, and Benazir Bhutto. "The real issue is the lack of will to do anything," he reiterated.

Justice Athar Minallah further commented, "It took us forty years to acknowledge the assassination of a democratically elected prime minister (ZA Bhutto). What crime could be greater than the killing of a prime minister? Someone should have been held accountable and punished."

Justice Malik Shahzad Ahmad Khan questioned the condition of the common man in a country where even prime ministers do not receive justice. "One day a prime minister is in the Prime Minister House, and the next day, in jail. No one knows how long anyone will remain prime minister," he added.

Justice Mandhokhail remarked that people have lost trust in institutions and expect the Supreme Court to handle everything. Justice Minallah concluded that even the Supreme Court is only as truthful as the rest of society.

Judicial Support

Islamabad - In an effort to bolster the operational capacity of bar associations across the country, Chief Justice of Pakistan, Yahya Afridi, announced on 26th December that the Law and Justice Commission will disburse Rs1 million under its Access to Justice programme. Speaking at a meeting with representatives of bar associations from various regions, CJP Afridi emphasised that this initiative aims to address the critical needs within associations and enhance their functionality.

The meeting was part of Chief Justice Afridi's broader campaign to consult with key stakeholders to improve service delivery. Attendees included delegates from the Supreme Court Bar Association of AJK, High Court Bar Association of Multan, District Bar Associations of Sahiwal, Okara, and Pakpattan, Tehsil Bar Associations of Arifwala, Renala Khurd, and Depalpur, as well as representatives from the District Bar Association of Tank and advocates from the Afridi tribe.

85 Civilians Convicted

Rawalpindi - Military courts sentenced 85 civilians to prison terms ranging from two to ten years for their involvement in attacks on military installations during the nationwide riots in May 2023.

The convictions were announced in two phases on December 21 and 26. The verdicts came after the Constitutional Bench of the Supreme Court granted permission on December 12 for military courts to announce sentences. The military rulings are, however, conditional depending upon the outcome of an ongoing constitutional case. The bench has currently been hearing intra-court appeals challenging the decisions of the military courts, which is adjourned until after the winter recess. It means that implementation of the verdicts hinges on the Supreme Court's pending decision.

The Inter-Services Public Relations (ISPR) said the convicted individuals were involved in assaults on military sites, including Jinnah House, the General Headquarters (GHQ), and the Pakistan Air Force Base in Mianwali. In a statement, the ISPR underscored the imperative of addressing such actions, labelling them as an "unacceptable attempt of political terrorism to impose a perverted will through violence and coercion." The military's media wing further noted that detailed investigations had been conducted, yielding irrefutable evidence to prosecute those involved.

The convictions, however, have drawn scrutiny from Western nations, including the US, UK, and the European Union. The UK Foreign Office expressed concerns, stating that trying civilians in military courts lacked transparency, independent scrutiny, and undermined the right to a fair trial. "We call on the Government of Pakistan to uphold its obligations under the International Covenant on Civil and Political Rights," the statement read.



IMAGE: COURTESY NDTV

Mosque Eviction Dispute

Lucknow - A Hindu extremist group has invoked the Enemy Property Act of 1968 to prompt authorities to clear a mosque situated on land once owned by Pakistan's first prime minister Liaquat Ali Khan near Muzaffarnagar Railway Station in Uttar Pradesh.

Sanjay Arora, a leader of the Rashtriya Hindu Shakti Sangathan, asserted that the government had declared the land "enemy property" under the Act. In a complaint to the district authorities, he contended that the mosque and the four adjacent shops were illegally constructed on what was deemed "enemy property" and should therefore be acquired.

Arora, without providing any evidence, made allegations that the property and the mosque are a "threat to national security".

The Muslim community, however, argued that the land had been donated to the Waqf by Khan and his family in 1930. Under pressure from the outfit, district officials were reportedly preparing to send a notice to the caretaker of the mosque and the shop owners, demanding they vacate the premises.

Maulana Mujibul Islam, the mosque's caretaker, has vowed to take the matter to court and challenge the eviction order.

CrPC Amendments

Islamabad - On 17 December 2024, the federal cabinet of Pakistan approved the Criminal Procedure Code (CrPC) Amendment Bill 2024, seemingly following the example set by India.

According to reports, the amendments aim to simplify the procedure for registering First Information Reports (FIRs). They also provide for the use of modern technology in investigations, including forensic techniques, and the audio-video recording of witness statements.

The amendments further stipulate that the trial court must deliver its verdict within one year. In case of delays, the relevant high court will be held accountable. Additionally, the appellate court will be required to make a decision on any appeal within six months to one year.

Inheritance Ruling

Lahore - The Lahore High Court (LHC) has decreed that non-Muslims are not entitled to inherit any part of the estate of a Muslim relative, neither as successors nor predecessors. Justice Chaudry Muhammad Iqbal affirmed the verdicts of two subordinate courts concerning the devolution of an 83-kanal land tract in Gojra tehsil, Toba Tek Singh district. The landowner, a Muslim, had passed away, bequeathing the property to his children—three sons and two daughters.

A Muslim grandson of the deceased contested the transfer of ownership in favour of one of his uncles, alleging that the latter was an Ahmadi and thus ineligible to inherit from his Muslim father's estate. The LHC upheld this challenge, reinforcing the previous rulings.

Basmati Battle

Brussels - India has sought the intervention of the European Court of Justice after the European Union denied its request to access the Annexures accompanying Pakistan's application for protected Geographical Indication (PGI). The EU argued that granting such access would compromise its international relations with Islamabad.

The battle over the PGI status of Basmati rice in the EU has been ongoing between India and Pakistan since 2020. The dispute began when India applied for an exclusive trademark that would grant it sole ownership of the Basmati title within the EU, a move that Pakistan promptly contested.

The two rival neighbours have failed to make any progress in reaching an amicable resolution within the timeframe set by the European Commission (EC), as the Modi-led government remains steadfast in its rigid stance.

The PGI status provides intellectual property rights for products associated with a specific geographic region, where at least one stage of production, processing, or preparation occurs. India maintains that it did not claim to be the sole producer of the distinctive rice grown in the Himalayan foothills in its application, but securing PGI status would nonetheless afford it this recognition.

According to official's privy to the matter, apart from India and Pakistan, Nepal has also become a party in the case by also submitting an opposition to India's application in the EU.

India holds the title as the world's largest rice exporter, achieving annual earnings of \$6.8 billion, while Pakistan ranks fourth with \$2.2 billion, according to United Nations figures. Notably, India and Pakistan are the sole global exporters of basmati rice.

NEWS BRIEFING

EU Tobacco Law

Brussels – Sixteen European Union member states have called upon the European Commission to draft new legislation within the forthcoming months, aimed at revising tobacco taxation within the bloc. This proposed law seeks to encompass new products, including electronic cigarettes (vapes), which remain unregulated under the current framework.

The Netherlands, spearheading this initiative, has conveyed a formal letter to the Commission asserting the necessity for an update to the EU's 2011 tobacco taxation law, a need identified since 2022.

Judicial Reforms

Gwadar – In an effort to bolster judicial reforms in Balochistan, Chief Justice Yahya Afridi has set up a dedicated sub-committee on December 9.

The committee's mandate includes addressing the critical issues faced by under-trial prisoners. Emphasis has been placed on the implementation of rehabilitative programmes within the prison system, encompassing vocational training, mental health support, and educational initiatives.

Historic Fraud Sentence

Copenhagen – A Danish court has sentenced 54-year-old British businessman Sanjay Shah to 12 years in prison for defrauding the Danish state—the longest sentence for a financial crime in the country's history. On 12 December, the Glostrup court found Shah guilty of gross fraud, determining that he played a central and controlling role in a major tax fraud scheme involving more than DKK9 billion in dividend tax refunds.

In addition to his prison sentence, Shah will be expelled from Denmark and banned from running a business in the country. Authorities have also seized his assets, valued at DKK7.2 billion. Despite the conviction, Shah denied any criminal wrongdoing, claiming he merely exploited a loophole in Danish tax regulations.

The case esd started in 2015 and the British financier was extradited in 2023, following a lengthy extradition process. He was living in Dubai, UAE.

Vaccination Mandate

Peshawar – The district administration has implemented a new directive mandating polio vaccination for acquiring official documents, including birth, marriage, divorce, and death certificates, across all seven tehsils of the district.

A notification issued on December 22, says individuals applying for these certificates must provide a confirmation certificate from the District Health Office. This certificate must verify that polio drops have been administered to the applicants' children.

Prison Phone Reforms

Lahore – Last month, the Punjab Home Department unveiled new prison regulations permitting the use of Public Call Office (PCO) phone services in jails. This move will enable inmates to make both audio and video calls to their lawyers and family members.

The service will be accessible from Monday to Saturday, between 8 AM and 5 PM. The jail superintendent will oversee the creation of a weekly schedule for prisoners to utilise this service. Each inmate can register up to five phone numbers, limited to close relatives, spouses, and legal representatives.

Prisoners will be allotted 60 to 80 minutes of PCO use per week. Inmates under 18 and those facing financial hardships will receive the service free of charge. If security threats arise or prisoners engage in criminal activities within the jail, the superintendent has the authority to suspend PCO privileges, pending a review by the relevant authority within three days. Female, juvenile, and death-row inmates will have designated PCO booths in their barracks. However, individuals convicted of terrorism or anti-state activities are barred from using the service, as per the department's statement.

Former CJP Fined

Islamabad – The Constitutional Bench of the Supreme Court of Pakistan levied a fine of Rs20,000 on former Chief Justice Jawad S Khwaja, on December 10, for submitting an unnecessary plea.

The plea in question had requested a postponement of the hearing on government petitions against the supreme court's ruling on the trial of civilians in military courts, pending decisions on several identical petitions challenging the 26th Constitutional Amendment.

AJK Judicial Representation

Mirpur – Chief Justice Yahya Afridi has reaffirmed the representation of the Azad Jammu and Kashmir Supreme Court in the national Judicial Policy Committee, in accordance with the MoU signed in 2013.

The Azad Jammu and Kashmir Supreme Court Bar Association raised this issue during a meeting last month. The bar's representative also put forward suggestions for implementing a 2 per cent quota for AJK citizens in federal judicial institutions. Plan to host a judicial conference in AJK has also been announced, inviting Chief Justice Afridi.

Child Priority

Islamabad – In a recent ruling on a child maintenance case, a division bench of the Supreme Court of Pakistan underscored the importance of prioritising the best interests of children by adopting a child-centred approach. The bench, comprising Justice Syed Mansoor Ali Shah and Justice Ayesha Malik, emphasised that the Constitution of Pakistan provides a comprehensive framework for child justice. The five-page judgement stated, "By adhering to these principles, the judiciary not only fulfils its legal obligations but also demonstrates judicial sensitivity towards children, contributing to a just and compassionate society."

NEWS BRIEFING



The ICC in Jeopardy

The International Criminal Court (ICC) has unveiled the harsh reality of Western democracies and human rights advocates, particularly the United States and Israel, by issuing arrest warrants for Israeli leader Benjamin Netanyahu and his former defence minister Yoav Gallant.

This unprecedented move has sent shockwaves through the legal system, marking the first time officials from a so-called democratic, Western-allied state have been charged with war crimes in Gaza.

The US and Israel are now waging a campaign against the ICC, accusing it of acting unfairly. The outgoing Biden administration has already condemned the warrants, and Donald Trump is expected to take an even tougher stance.

Tomoko Akane, the president judge of the ICC, stated that the institution is facing threats, including possible US sanctions and Russian warrants for staff members that could "jeopardise its very existence." She emphasised that the court faces "coercive measures, threats, pressure, and acts of sabotage," but firmly rejects any "attempt to influence (its) independence and impartiality."

In May 2024, British newspaper The Guardian revealed how Israel conducted a nine-year-long secret "war" against the court, deploying its intelligence agencies to surveil, hack, smear, and allegedly threaten senior ICC staff. Israel, like the US, is not a member of the court.



Parents Sentenced for Murder

A British court sentenced Urfan Sharif, 43, and his wife Beinash Batool, 30, both of Pakistani origin, for the murder of their 10-year-old daughter, Sara Sharif, on December 17, in Surrey, England.

Sharif will serve 40 years, while Batool faces a minimum term of 33 years. The victim's uncle, Faisal Malik, 29, received a 16-year sentence. Justice Cavanagh delivered the verdict after an eight-week trial at the Old Bailey. Malik was acquitted of murder but convicted of causing or allowing Sara's death. Sara was discovered dead in a bunk bed at the family home on August 10, 2023. The couple had fled to Pakistan two days earlier, with Sharif later calling police to admit he had beaten her "too much" for being naughty.

A postmortem examination found Sara had 71 external injuries, including bruises, burns and human bite marks. She also had at least 25 fractures, including 11 to her spine.

Scandal Rocks 'Business' of PM Modi's Friend Adani

In a dramatic turn of events, New York prosecutors have indicted Gautam S. Adani, a close confidant of Indian Prime Minister Narendra Modi, along with seven others, on charges of fraud. The allegations centre around a scheme to bribe Indian officials in Andhra Pradesh and Tamil Nadu to the tune of \$250 million, securing lucrative solar power contracts while concealing the bribery from US investors.

The five-count criminal indictment, unsealed on November 20, 2024, in Brooklyn federal court, accuses Adani, Sagar R. Adani, and Vneet S. Jaain—executives of an Indian renewable-energy firm—of conspiring to commit securities and wire fraud. The charges detail a multi-billion-dollar scheme to deceive US investors and global financial institutions with false and misleading statements.

At the heart of the controversy is a \$490-million annual contract for a 12 GW solar power project with US-based Azure Power Global, signed in late 2021 and heralded as the largest ever by the Solar Energy Corporation of India (SECI). The contract was finalised in a mere 57 days.

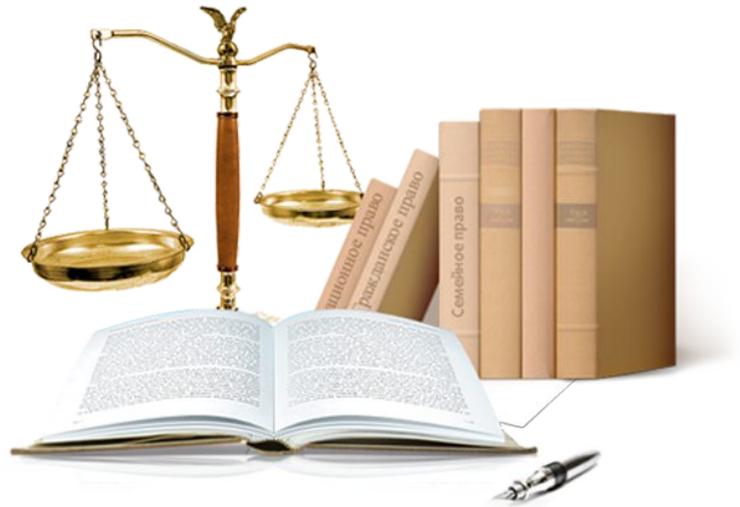
The indictment also implicates Ranjit Gupta and Rupesh Agarwal, former executives of a renewable-energy company listed on the New York Stock Exchange, and Cyril Cabanes, Saurabh Agarwal, and Deepak Malhotra, former employees of a Canadian institutional investor. They are charged with conspiracy to violate the Foreign Corrupt Practices Act, linked to the bribery scheme orchestrated by Gautam Adani, Sagar Adani, and Vneet Jaain.

Breon Peace, US Attorney for the Eastern District of New York, alongside Lisa H. Miller, Deputy Assistant Attorney General for the Justice Department's Criminal Division, and James E. Dennehy, Assistant Director in Charge of the FBI's New York Field Office, announced the charges. Deputy Assistant Attorney General Miller stated, "This indictment alleges schemes to pay over \$250 million in bribes to Indian government officials, deceive investors and banks to raise billions, and obstruct justice. These offenses were committed by senior executives to secure massive state energy contracts through corruption and fraud at the expense of US investors. The Criminal Division will continue to prosecute such conduct aggressively, regardless of where it occurs."

Gautam Adani has a history of financial scandals with corruption ingrained in India's government contract culture. Critics claim Adani enjoys Modi's support in his empire-building ventures.

Power Play: Judiciary Under Siege

*The principle of separation of powers, articulated by Montesquieu in **The Spirit of Laws** appears to have been eroded*



Pakistan's judiciary faces a crisis as a controversial constitutional amendment threatens the independence of the Supreme Court, igniting fears of political dominance and undermining the justice system.

The judiciary stands as one of the fundamental pillars of any state, ensuring that justice is not only done but also seen to be done. Without it, a state cannot function properly. Pakistan, unfortunately, ranks among the lowest in terms of justice. The appointment of the Chief Justice of the Supreme Court of Pakistan (CJP) has traditionally been a process free from political influence, ensuring the judiciary's supreme status.

Judges were traditionally appointed based on a list detailing their respective tenures, with the most senior judge automatically ascending to the Supreme Court of Pakistan. However, the recent (26th) constitutional amendment has sent shockwaves through the legal community, particularly among law students. Remarkably, all legislators from PMLN (Pakistan Muslim League-Nawaz) and PPP (Pakistan Peoples Party Parliamentarian) were present, with none on leave. This raises questions about whether this is a standard amendment or an exercise of brute majority.

Under amendments to Clause 3 of Article 175A, the CJP will no longer be appointed by the president based on seniority. Instead, the appointment will be made on the recommendation of a Special Parliamentary Committee from among the three most senior Supreme Court judges. Clause

3A of Article 175A outlines that this committee comprises twelve members – eight from the National Assembly and four from the Senate – selected on the basis of proportional representation. This committee sends its nominee to the prime minister, who then forwards the recommendation to the president for formal appointment. The current CJP was appointed by this committee, notably without the participation of the member of Sunni Ittehad Council – an opposition party.

The principle of separation of powers, articulated by Montesquieu in "The Spirit of Laws," (1748), appears to have been eroded, with the new amendments, in the Islamic Republic of Pakistan. The amendments are likely to incite political protests and unrest. This situation echoes the 2007 Emergency Rule in Pakistan, when the former President Pervez Musharraf suspended the constitution and dismissed dissenting judges, leading to a severe backlash. The attack on the judicial independence was eventually repulsed, forcing Musharraf to resign and allowing judiciary to reclaim its authority.

The importance of separation of power cannot be undermined in a democratic set up. In 2017, the US President Donald Trump's executive order aimed to bar travellers from several predominantly Muslim countries, leading to a significant clash with federal judges. Attempts by the executive branch to bypass judicial authority resulted in widespread confusion and open revolt. Similarly, during the impeachment of Brazilian

President Dilma Rousseff, judiciary found itself at the centre of the controversy. The Supreme Court's intervention in political matters sparked accusations of judicial overreach, leading to political and factional violence. This turmoil raised significant questions about the separation of powers and the judiciary's role in politics.

The Constitution (26th Amendment) Act, 2024, underscores the dominance of the executive over the judiciary, effectively restraining judicial independence. Judges are now appointed by politicians, with the most senior judge only selected if they align with the committee's preferences. This shift places significant political pressure on the judiciary, which, according to the World Justice Project, already ranks 129th out of 140 countries. The system is riddled with flaws, including corruption and prohibitive costs, which disproportionately affect marginalised communities. Access to justice remains a significant issue, with inconsistent application of laws leading to widespread frustration. Also, if every judge of the high court or the supreme court is appointed by a parliamentary committee, it undermines the efforts of lawyers striving for judicial positions. With a constant political shadow over the judiciary, how can justice truly prevail?

As a law student, I oppose this constitutional amendment, as it profoundly undermines the independence of the judiciary.

Furqan Ahmed Cheema

A law student at Quaid-e-Azam Law College, Lahore

ALTERNATE DISPUTE RESOLUTION



ADR

ADR in Pakistan

A Promise Thwarted by Judicial Inefficiencies

Despite high-level advocacy and significant judicial backing, ADR in Pakistan faces substantial hurdles due to systemic inefficiencies, questioning its efficacy as a viable alternative to traditional litigation.

Tariq Aziz, – Advocate Supreme Court of Pakistan

The surge in discourse surrounding Alternate Dispute Resolution (ADR) in Pakistan signals a noteworthy trend driven by the judiciary. However, systemic inefficiencies cast doubt on ADR's efficacy within the current legal landscape.

Despite enjoying hefty salaries, luxurious perks, and an authoritarian role in society even after retirement, judges from superior courts in Pakistan are ardent advocates for Alternate Dispute Resolution (ADR). The Supreme Court of Pakistan has notably established a committee consisting of judges from the supreme court, high courts, and district judiciary to explore and promote these alternatives. Members of this committee frequently attend seminars, both domestically and internationally, to champion the merits of ADR.

In practice, litigation is being discouraged by the imposition of heavy costs, primarily due to a backlog of cases. This backlog often stems from judicial inefficiencies such as frequent adjournments and the prioritisation of political cases over routine matters. In the realm of family law, ADR is utilised in the form of pre- and post-trial reconciliation proceedings. However, without amendments to the legal framework, ADR decisions require court confirmation and execution, resulting in further delays and increased costs.

The execution of decrees and remand of cases by the superior courts necessitates comprehensive revisions and amendments. ADR's success hinges on the implementation of its decisions; failure results in a significant increase in costs and time for dispute resolution. For instance, an execution of a decree in the Islamabad High Court has been pending since December 2006, with arbitration awarded in 1997 and made Rule of Court in October 2004 after objections were withdrawn. Another example is the Islamabad High Court's decision in July 2024 to set aside a civil court's order for the appointment of an umpire, referring the matter back to arbitrators, resulting in arbitration still pending since 2016.

Instead of solely promoting ADR, a strengthened judicial system is imperative. This includes increasing the number of judges and distributing the caseload evenly. Moreover, judges' promotions should be based on performance, focusing on the quality of judgments delivered and upheld by superior courts, rather than the number of cases decided.

In conclusion, while ADR presents a promising alternative to traditional litigation, its effectiveness in Pakistan is compromised by systemic issues within the judicial framework.

Child Marriage**There are 19 million child brides in Pakistan****Globally, Pakistan ranks 6th**

by **Aisha Jamshed**, Law Student at Hamdard School of Law
KARACHI



IMAGE: © THE LEGAL

Child Marriages become an evil practice when children are deprived of their rights. These rights include education, healthcare, equality, and mental development. Girls are often forced into running the household when they are not mentally and physically sufficient to do so.

Often in child marriages children are not asked about their choice of making decisions, elders of the family make decisions in this way the legal and medical safeguards for children especially the girls are not ensured. According to a survey in Punjab, only 4.8% girls in Punjab are being asked about their choices, or whether they agree with the proposal or not (Albena, Karen, Tasneem, 2020). In some cultures, boys have a little more right than a girl to decide their marriage.

Child marriage in general is a widespread, deeply rooted issue in which boys are also affected but girls suffer most. The factor of poverty also contributes to child marriages. According to a report of March 2024, in Swat a 70-year-old man was allegedly arrested for marrying a 13-year-old girl. (Pakistan Today, 2024)

In Pakistan the practice of child marriages is often dealt with as a controversial issue with fabricated opinions. Most of the people believe that child marriages are recommended by religion hence they should not be condemned (Naseem, Rashida, Fahad, Jibrán, 2021).

Read the full-length study at www.the-legal.org

According to UNICEF the matrimonial union that takes place between children before they reach the age of 18, or before one reaches the age of 18 while the other is an adult is defined as "Child Marriages" (UNICEF, 2023). Many human rights organisations define it as the violation of human rights. It is one of many issues that are rooted into the culture of various rural areas of Pakistan and counted as an unwritten law to follow from generation to generation (Zulfiqar Kunbhar, 2018). The Convention on the Rights of the Child (CRC) which is the most ratified human rights treaty was ratified by Pakistan in 1990, in which it was agreed to protect the rights of children protecting them from forced labour and early marriages.

Pakistan ranks 6th in terms of girls getting married before the age of 18. Almost 18.3% girls are married before the age of eighteen and 3.6% marry before the age of fifteen³ (NCRC, 2023). After 2012-13 the rate of child marriages has declined but still every one in

five Pakistani girls marry early (Chata Malé and Quentin Wodon, 2016). Government is also failed to establish a strong system of education and law enforcing agencies also do not ensure that the laws for restraint of child marriages are implemented.

Girls and boys both get affected by this practice, in most of the cases girls have to leave their education to fulfil matrimonial responsibilities, and boys have to earn livelihood to take care of their family. The factors and consequences of child marriages are discussed in detail ahead.

The research concludes that the practice of child marriages is harmful and condemnable as it brings forth social, economic, cultural concerns. It is also concluded that Islam has granted vast jurisdiction to the state, in order to set age for marriage. The laws related to child marriages also need to be imposed strictly in Pakistan and need to be amended where necessary, as a matter-of-fact, law enforcement agencies have failed in curbing such marriages.

Education must be used as a shield to counter the false social norms as the cost of child marriages are not only borne by those children but the society as a whole. It is a grave reality that the generations are impacted with this vicious cycle, which needs to be proscribed now. ■

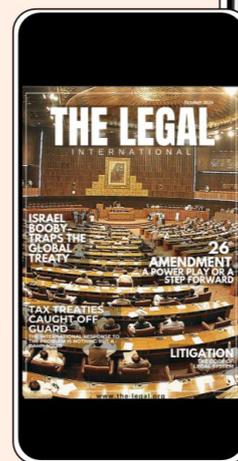
Family elders make decisions without ensuring legal safeguards for children especially the girls

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Junaid H Dahar

ELECTIONS 2025

The esteemed District Bar of Islamabad, established in 1980, has long championed civil liberties, human rights, and the rule of law. It regulates and facilitates the professional activities and business pursuits of its members. The association is dedicated to promoting professional competence, upholding ethical standards, and fostering a spirit of public service among its ranks. Additionally, the IBA organises schemes and programmes to provide housing and medical facilities for its members.

The IBA is governed by a 15-member executive committee, led by a president, elected annually. The association's office is situated within the Judicial Complex, G-11/4, Islamabad.

As the IBA elections of 2025 draw near, set for January 10th, we had the distinct pleasure of conversing with Chaudhary Naeem Ali Gujjar, a distinguished Advocate of the Supreme Court of Pakistan and an independent presidential candidate. Renowned for his dynamic leadership and unwavering dedication to the welfare of lawyers, Gujjar unveiled his vision and plans for the legal community.

Chaudhary Naeem Ali Gujjar A Visionary Leader for the IBA Presidency

Q: Could you share your journey in the legal profession with us?

A: I embarked on my legal career in 2003 and have since held numerous leadership roles. In 2008, I served as Joint Secretary of the Islamabad District Bar Association, and in 2014, I took on the role of General Secretary. By 2015, I was elected Nazim of Sector G-7 Islamabad, where I dedicated myself to addressing community issues. These experiences have endowed me with the skills and insights necessary to effectively advocate for the welfare of the bar.

Q: What inspired you to run for the presidency?

A: Lawyers are the backbone of justice, yet they frequently encounter significant challenges, such as inadequate infrastructure, limited opportunities for young lawyers, and insufficient welfare programmes. I am running as an independent candidate, free from political affiliations, to focus solely on the betterment of our bar and the dignity of our profession.

Q: What are the key



IMAGE: © THE LEGAL

points of your manifesto?

A: My manifesto is centred on addressing the most pressing issues lawyers face today. Some of the highlights include:

Chambers Construction:

- Immediate measures to resolve the chambers shortage.
- Propose temporary chambers on adjacent grounds while expediting permanent solutions in collaboration with relevant authorities.

Young and Female Lawyers:

- Establish affordable hostels for young lawyers, particularly those from remote areas.
- Create opportunities in legal advisory, court commissions, and evidence-writing to help young lawyers establish themselves.
- Improve barroom facilities for female lawyers and set up a daycare centre for working mothers.

Welfare Programmes:

- Partner with hospitals for discounted medical services and negotiate fee concessions at leading schools for lawyers' children.
- Revive the welfare fund to support struggling lawyers.
- Introduce an insurance scheme for lawyers and their families.

Transportation:

- Implement a shuttle service to improve accessibility between courts and chambers.

The Panel

1. **Chaudhary Naeem Ali Gujjar** (President)
2. **Abdul Ali Moto** (General Secretary)
3. **Sardar Yaqoob Mastoyi** (Vice President)
4. **Adam Khan** (Joint Secretary - Unopposed)
5. **Umair** (Auditor - Unopposed)
6. **Zafar Hussain** (Library Secretary - Unopposed)
7. **Qurat-ul-Ain Ayesha** (Additional Secretary)

Promoting Respect for Lawyers:

- Advocate for the dignity of lawyers as officers of the court, ensuring mutual respect between the bar and the bench.

Q: What are your plans for improving the Bar-Bench relationship?

A: The bar and the bench are akin to the two wheels of a vehicle—both must work in unison for the justice system to function smoothly. I am committed to fostering mutual respect and collaboration. Under my leadership, I will ensure that the bar remains united, independent, and respectful of the judiciary's role, while steadfastly safeguarding lawyers' rights and dignity.

Q: What specific initiatives will you undertake to support young lawyers?

A: Young lawyers represent the future of our profession. My initiatives for their benefit include securing affordable housing through subsidised hostels and offering practical opportunities such as evidence-writing, court commissions, and other legal

roles to help them gain valuable experience.

Additionally, I have established a partnership programme with law firms to create mentorship opportunities for young professionals.

Q: How do you plan to address the challenges female lawyers face?

A: Female lawyers deserve equal opportunities and facilities. I intend to upgrade their barroom amenities and introduce a daycare centre to support working mothers. These measures will ensure an inclusive and supportive environment for women in the legal profession.

Q: What message would you like to convey to your fellow lawyers?

A: My sole allegiance lies with the legal community. Together, we can confront our challenges, enhance the welfare of our bar, and uphold the dignity of our profession. I urge all lawyers to support me in this mission, so we can create a better future for ourselves and the generations to come. ■



IMAGE: PROVIDED

High Court Sets New Precedent

Seat of Arbitration

A Pivotal Reference Point in Dispute Resolution

Lahore High Court's approach reaffirms Pakistan's position as a jurisdiction that values the integrity of the arbitration process.

Staff Report

While scrutinised a complex arbitration agreement, a landmark ruling by Lahore High Court that the choice of a seat determines the procedural law governing arbitration would have sent ripples through the international arbitration community.

The ruling, delivered by Justice Shahid Karim, on November 6, 2024, in the case of SpaceCom International, LLC v. Wateen Telecom Limited underscores the importance of the "seat of arbitration" and the sanctity of party autonomy. The case is set to become a pivotal reference point in arbitration enforcement disputes, particularly within jurisdictions like Pakistan that adhere to the New York Convention.

The case centred around a 2014 Master Service Agreement (MSA) between SpaceCom, a US based satellite services provider, and Wateen, a telecommunications firm in Pakistan. The agreement contained an arbitration clause that designated Dubai, UAE, as the seat of arbitration, but also ambiguously referenced the rules of the Dubai International Financial Centre (DIFC).

SpaceCom initiated arbitration

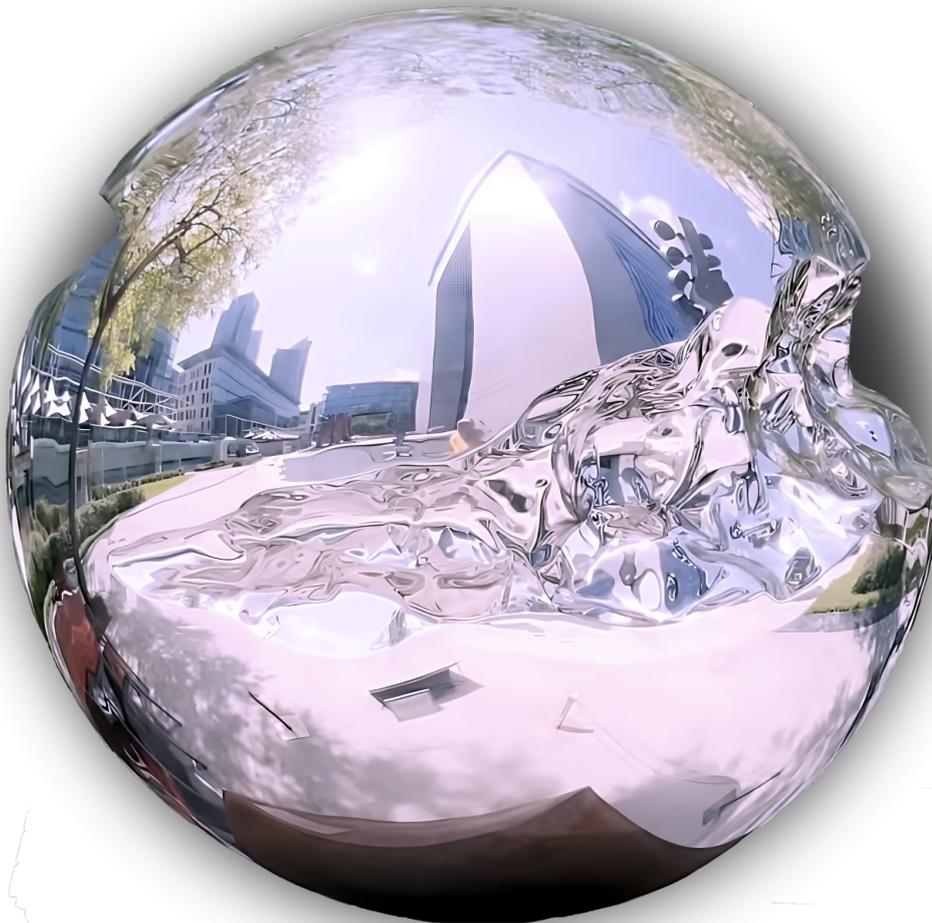


IMAGE: © THE LEGAL

The decision is a clarion call for businesses and legal practitioners to pay meticulous attention to arbitration clauses in cross-border contracts.

under the DIFC-LCIA (London Court of International Arbitration) Arbitration Rules, resulting in a favourable award. However, Wateen contested the enforcement of the award in Pakistan, arguing that the arbitration was improperly conducted in DIFC rather than Dubai. This dispute over the interpretation of the arbitration clause led to the intervention of Lahore High Court.

Justice Karim's judgment addressed critical issues in arbitration, including the distinction between the seat of arbitration and procedural rules. The court examined the agreement, procedural history, and international precedents to reach its conclusions. The court found that the parties explicitly agreed to Dubai as the seat of arbitration, making DIFC an improper venue. Referring to *Enka v. Chubb* [2020] UKSC 38 and *ST Group Co. v. Sanum Investments* [2019] SGCA 65, the court observed that the choice of a seat determines the procedural law governing the arbitration.

The decision reinforced that party autonomy is a cornerstone of arbitration. Conducting arbitration in DIFC violated the agreement, undermining the principles of fairness and mutual consent that underpin arbitration. Under Article V of the New York Convention, the court held that enforcement of the award would be contrary to Pakistan's public policy, as it disregarded the agreed-upon arbitration seat.

The judgment aligns with the global arbitration jurisprudence. Justice Karim referenced the seminal UK Supreme Court decision in *Dallah Real Estate v. Pakistan* [2010] UKSC 46, which upheld the right of enforcement courts to conduct a de novo review of arbitral jurisdiction. The court also considered the US decisions like *Polimaster Ltd. v. RAE Systems, Inc.*, emphasising the importance of respecting the arbitration agreement's terms.

These international references demonstrated Pakistan's commitment to harmonising its arbitration practices with global standards, while ensuring that procedural irregularities are not overlooked. The decision is a clarion call for businesses and legal practitioners to pay meticulous attention to arbitration clauses in cross-border contracts. It also underscores the necessity of clearly distinguishing the seat of arbitration from procedural rules or appointing authorities. Ambiguities in arbitration agreements can lead to prolonged disputes, eroding the efficiency that arbitration aims to provide.

Moreover, Lahore High Court's approach reaffirms Pakistan's position as a jurisdiction that values the integrity of the arbitration process. By refusing to enforce an award that contravened the parties' agreement, the court has sent a strong message that procedural compliance is non-negotiable. ■

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The New Indian Criminal Laws

Old Wine in a New Bottle

Experts believe the new Section 150 of the BNS is nothing but *the hallmark of an authoritarian police state*

A Hussain - Islamabad

Indian Prime Minister Narendra Modi urged the nation last month that India should now come out of the colonial mindset. This aspiration, however, remains unfulfilled as his government has merely rebranded the colonial-era laws with a fresh name. Legal experts contend that these laws are merely old wine in new bottles, potentially enabling the ruling BJP (Bharatiya Janata Party) to suppress dissent and manage opponents, thereby furthering its right-wing extremist ideology.

The Modi government has replaced the Indian Penal Code (IPC) of 1860 with the Bharatiya Nyaya Sanhita (BNS), the Code of Criminal Procedure (CrPC) with the Nagarik Suraksha Sanhita (NSS), and the Indian Evidence Act with the Bharatiya Sakshya Adhinyam (BSA). Prime Minister Modi hailed this as a significant achievement during his speech on December 3, 2024, in Chandigarh, which became the first administrative unit in the country to fully implement these laws since their enactment on July 1, 2024.

The government has added a new clause against fake news, but the prime minister himself is misleading the masses via the propaganda in favour of the so-called 'new laws' and, at the same time, saying the colonial-era laws were the medium of atrocities and exploitation committed by the British when they ruled over India. The aim of the new legislation should have been to transform the spirit and philosophy of the laws from 'the rule of masters' to 'the rule of people' under the modern democratic norms. The new laws, incongruously, retain 80 to 90 per cent of the old 'atrocious' provisions.

The changes are neither substantial, fundamental, nor structural. For instance, the Bharatiya Nyaya Sanhita (BNS) modifies 175 of the 511 Indian Penal Code (IPC) provisions (34.24 per cent) but mostly in minor ways. This includes the repeal of 22 provisions and the addition of only eight. Chapter II of the IPC on General Explanations, which contained 48 provisions, has been condensed into section 3 of Chapter I of the BNS. Similarly, Chapter XVII of the IPC on Offences Against Property, which contained 84 provisions, has been reduced to 31 sections in Chapter XVII of the BNS. Thus, the real change in the BNS is the addition of just eight new sections, amounting to just 2.24 per cent of the total 356 sections.

Only about 17 new offences have been added, nine of which are by way of sub-Sections to existing Sections. 144 Sections have been amended, largely due to an increase in punishments and about 198 Sections have remained unchanged. The numbers have decreased primarily due to the combining and reorganisation of Section numbers. Further, a total of 14 offences and five definitions have been deleted.

For over seven decades, the Indian populace was governed by colonial-era laws, albeit with necessary amendments over time.



The recent changes have unleashed a torrent of confusion at both court and police station levels, as they grapple with understanding the new laws and interpretations, effectively discarding 163 years of legal proceedings, precedents, definitions, and practices. The BNS also contains numerous ambiguous terms, likely to create further headaches for the already overburdened superior courts.

The Nyaya Sanhita will neither bolster the spirit 'of the people,' as claimed by the Indian Prime Minister, nor alter the societal psyche. Instead, superficiality and vanity seem to be the hallmarks of this change. It appears designed to elude the masses and empower the rulers, providing them with legal tools to settle scores with opponents. Notably, the term 'terrorism' has been defined for the first time in the BNS, a term

The colonial-era laws were the medium of atrocities and exploitation committed by the British.

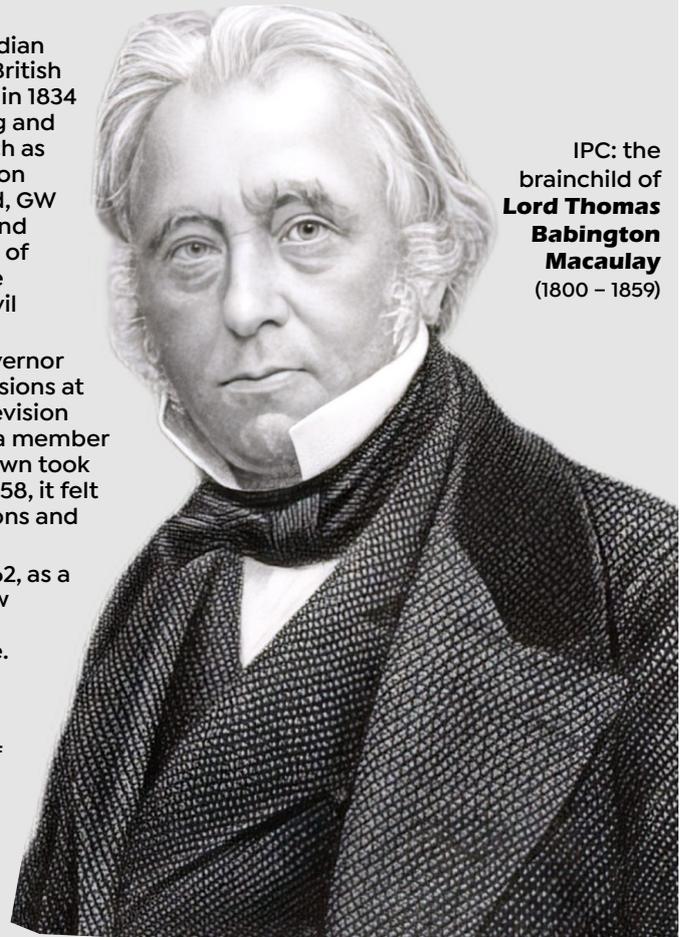
The Indian Penal Code (IPC)

It was inherited from British India and adopted by the Indian Republic after independence. For enacting the IPC, the British rulers had constituted the first Law Commission of India in 1834 which was tasked with the responsibility of consolidating and codifying laws for the British India. Led by luminaries such as Thomas Babington Macaulay as chairman, the commission included four other members: CH Cameron, JM MacLeod, GW Anderson, and F Millett, representing Madras, Bombay, and Calcutta, respectively. Based on a simplified codification of English law at the time, elements of the penal code were derived from the Napoleonic Code and the Louisiana Civil Code of 1825.

A draft penal code was submitted on May 2, 1837, to Governor General Lord Auckland. The draft underwent several revisions at times that caused delay in its implementation. Its final revision was done by Chief Justice Barnes Peacock who became a member of the Governor General's Council in 1852. The British crown took over the reins of India from the East India Company in 1858, it felt that such a law was necessary to quell any future rebellions and punish the locals as per British law.

The IPC was finally passed in October 1860, effective 1862, as a reaction to the events referred to above, heralding a new chapter in India's legal history and ushering in an era of codification and consolidation under British colonial rule. With the establishment of the Chartered High Courts on June 26, 1862, the dominion of law and judiciary over the entire territory was extended across the length and breadth of the subcontinent, cementing the authority of the colonial state and paving the way for the enforcement of legal norms.

After independence, both India and Pakistan adopted the penal code, periodically amending it to meet the requirements of law and justice, though its fundamental spirit and philosophy remain intact.



IPC: the brainchild of **Lord Thomas Babington Macaulay** (1800 – 1859)

IMAGE: © THE LEGAL

which was absent in the IPC. While the BNS abolishes sedition as a crime, it introduces a new section titled 'offences against the state.'

There is no need to delve into the ulterior motives of the hardline Hindu party rulers behind this legislation. The BNS identifies offences such as secession, armed rebellion, subversive activities, separatism, or actions threatening the sovereignty or unity of India, under its revamped sedition law, without defining these ambiguous terms. According to these new regulations, any individual who deliberately or knowingly, through spoken or written words, signs, visible representations, electronic communications, financial means, or any other method, incites or attempts to incite secession, armed rebellion, subversive activities, or separatism, or endangers the sovereignty, unity, and integrity of India, shall face life imprisonment or a term extending up to seven years, along with a possible fine.

It is peculiar that terrorism has been incorporated into the general penal law, despite being punishable under special legislation. This appears to be a calculated move to subject Indian citizens to severe terrorism charges on a regular basis. In some 24 states, people are unwilling to endure the oppressive yoke of the so-called world's largest democracy, which is also notorious for state-sponsored religious and ethnic terrorism against minorities. Consequently, it has become easier to charge individuals from Assam to Punjab and Kashmir with terrorism offences.

Two senior Indian counsels Arvind Datar and Kapil Sibal

BNS contains ambiguous terms, likely to create headaches for already overburdened superior courts.

argued in the Supreme Court that there is no clarity on what term "subversive activity" is and or means for this clause. The usage of this vague term has every potential to criminalise protest, difference of political opinion or even intellectual debate. There is also another new concept has been introduced in the BNS "encouraging feelings of separatist activities." Experts believe that this is couched in such broad terms that could include a lot of political speech and literature even if it does not lead to any violence against the state.

This new inclusion has also been strongly criticised by Citizens for Justice and Peace (CJP), a human rights organisation in India, which pointed out procedural irregularities in passing the three laws in December 2023. There are concerns that these laws will increase the volume of litigation, as existing cases may need re-evaluation, thus adding to the judiciary's backlog.

The Citizens for Justice and

DEDICATION OF THE SUCCESSFUL IMPLEMENTATION OF THE NEW CRIMINAL LAWS TO THE NATION

by
Hon'ble Prime Minister
Shri Narendra Modi

3 December, 2024
Chandigarh

IMAGE: © THE LEGAL



Peace (CJP) has pointed out that the new laws retain 80 to 90 per cent of the older provisions. To truly shed the legacy of colonialism and a controlled police state, it is essential to align with internationally accepted norms of justice. Critical questions remain: Is the police force autonomous or independent? Is the Central Bureau of Investigation (CBI) autonomous? Do these institutions possess integrity, or are they merely tools and weapons in the hands of the government?

PK Malhotra, former Union Law Secretary, remarked, "The three laws were passed hastily, at a time when 25 per cent (140) of the Lok Sabha members were suspended and had no opportunity to participate in the debate. More consultation with various stakeholders would have allowed the government to rectify some of the

deficiencies, which are now becoming a cause for concern."

Sumit Gehlot, an advocate, stated, "In the new criminal laws, law enforcement agencies have been given unfettered powers without checks and balances, and safeguards and safety provisions have been ignored, making them prone to misuse. Under the new criminal laws, there will be potential violations of civil liberties. For instance, the sedition law under Section 150 of the BNS has been made draconian," he said.

The legal fraternity in India is questioning why the government remains silent on another significant piece of colonial legislation that grants draconian powers to the police – the Indian Police Act of 1861. It is evident that the police do not act as public servants, as they operate under an act influenced directly by the 1857 revolt against British rule, serving as a colonial measure to maintain control and crush future rebellions. Why has no government repealed the Police Act? It is because this law places the entire supervision of the police in the hands of the political executive, who use it as a tool to suppress dissent and control opponents. There is an urgent need to change the police's attitude towards the people.

The BJP government is notorious for such actions rather than addressing the real issues. Contrary to claims, India has not embarked on a transformative journey by overhauling its colonial-era criminal laws with the Bharatiya Nyaya Sanhita 2023. This is merely an illusion and will further confuse the system. ■

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The Real Bhartiya Legal Philosophy

Under the BJP administration, the populace has grown disillusioned with the prospect of justice, as the government has been overtly endorsing Hindu extremism in India, targeting minorities such as Muslims, Christians, Sikhs, and Dalits. The principles of law and justice are being undermined, with the extremists' agenda being imposed in what is purported to be a secular democratic nation.

Recently, Justice Shekhar Kumar Yadav, a sitting judge of the Bhartiya superior judiciary, revealed the true nature of the Modi-led justice philosophy. He stated, "I have no hesitation in stating that this is Hindustan, and this country will function according to the wishes of the majority (Hindus) living here. This is the law."

During a function on December 8, organised by the legal cell of Vishva Hindu Parishad—an extremist Hindu outfit—Justice Yadav also used the term "Katmullah," a derogatory slur against Muslims. He remarked, "... These Katmullah... are harmful to the country... they are detrimental, against the nation and people who incite the public."

These comments were met with strong criticism from minority communities, who were appalled by the extremist views of a sitting judge of the Allahabad High Court (AHC). Various opposition parties also condemned the speech as "hate speech." In response to public outcry, the Supreme Court of India reportedly sought details from the AHC, but expectations for action remain low, as seen in the Ram Janmabhoomi-Babri Masjid case. Justice Yadav's remarks are yet another example of the Hindu legal philosophy currently influencing the Indian executive and judiciary.

Former Supreme Court judge, Justice RF Nariman, recently expressed disappointment over the top court's verdict in the Babri Masjid case. He described it as "a great travesty of justice" and criticised the judgments for not giving secularism its due. Referring to various orders passed by the apex court, he highlighted the final verdict delivered on November 9, 2019, by a five-judge bench.

Justice Nariman expressed deep concern over the handling of the Babri Masjid demolition case, pointing out inconsistencies in the Supreme Court's approach to secularism across multiple judgments related to the dispute.

He disagreed with the court's reasoning in granting the disputed land for the Ram Mandir, despite acknowledging the illegality of the mosque's demolition. He emphasised the clear stipulation of the Places of Worship Act of 1991, which freezes the religious character of all places of worship as of August 15, 1947. He argued that any legal attempt to revise this status should be dismissed. ■



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Arbitrary Use of Legal Power

The Myth of 'Rule of Law'

The inherent morality of the rule of law is to protect individual rights and ensure fair justice. The concept is often manipulated to suppress dissent and justify government actions.



by **Niamat Ullah Bashar**, Law Student
Loralai

The phrase "Rule of Law" is frequently used by politicians, journalists, judges, writers, students, and even laymen to rationalise the current state of affairs in Pakistan. It has become a beloved term, often cited without true understanding or adherence. This highlights that its concept exists only in name, not in spirit.

The concept is, contrarily, often manipulated to suppress dissent, dismantle opposition through the government's discretionary use of law, and infringe upon citizens' fundamental rights. This includes alleged abductions, forced disappearances, bans on civil rights movements, and the mishandling of protesters exercising their constitutional rights. To fully grasp this issue, it is crucial to examine it through the lenses of various jurists.

We have adopted, much like the other laws and concepts, the notion of rule of law as a rationalised myth. The rule of law is globally upheld as the supreme authority, governing both government actions and individual behaviour. It functions as a prism through which both government entities and citizens are compelled to comply with the law.

Scholarly discourse surrounding the definition and essence of the rule of law spans from ancient Greek philosophers to contemporary thinkers. These discussions are often marked by disagreements over its meaning, elements, requirements, and usage, whether as a safeguard or tool, and its limitations. Despite the absence of a unified or universal definition, international organisations such as the World Justice Project have outlined universally accepted principles, including Accountability, Just Law, Open Government, and Accessible and Impartial Justice.

Tom Bingham, a distinguished British judge who held titles such as Master of the Rolls, Lord Chief Justice, and Senior Law Lord, outlined eight principles of the rule of law in his book "Rule of Law." These principles include the accessibility of law, rule by law rather than discretion, equality before the law, proper exercise of power, protection of human rights, effective dispute resolution, fair trials, and the application of the rule of law in international legal orders.

On the other hand, John Finnis, an eminent Australian jurist and philosopher, proposed a threshold or test in his work "Natural Law and Virtue of Law" to determine what can be considered law. This threshold includes governance by law, laws that are reasonably clear, stable, publicly accessible, general in nature, and applied prospectively rather than retrospectively.

IMAGE: © THE LEGAL

According to the World Prison Brief (WPB), 70 per cent of the prison population in Pakistan consists of pre-arrest detainees and remand prisoners.



RULE OF LAW

The law, possessing a monopoly on violence, is granted a veneer of legitimacy. This aspect is often used to enforce compliance with laws that are inherently questionable.

It can be gathered from this brief discussion that fundamentally the rule of law is a system that ensures everyone, regardless of status, is governed by the same laws and legal procedures, enforced equally and impartially.

The rule of law can be likened to a prism: two sides are transparent, representing the welfare and protection of citizens, while the third side is the darkest, used to justify government actions and inactions through interest-based interpretations. The law, possessing a monopoly on violence, is granted a veneer of legitimacy by this third side. In Pakistan, this darker aspect of the rule of law is often wielded to enforce compliance with laws that are inherently questionable. Also, strict adherence to laws can sometimes produce adverse effects, as evidenced by colonial-era legislation. Such laws, like the sedition laws and the Rowlatt Act, were wielded to suppress the populations they governed.

The accessibility of law in Pakistan is hindered by the legacy of colonial-era statutes and regulations, which emerged from legislative and bureaucratic frameworks devoid of popular representation. These laws are often written in complex, inaccessible language that laymen struggle to understand. With Pakistan's literacy rate at 62 per cent, a significant portion of the population finds legal language incomprehensible. The legal realm's use of complex terminology, principles, and maxims—often rooted in Latin or Greek—further exacerbates this issue.

In Pakistan, laws are often applied discretionarily under the guise of public maintenance and national security, with the government enacting new laws in aggressive ways. This is evident in the recent 26th Amendment, where Senators of the Balochistan National Party (BNP) were allegedly abducted, and opposition parliamentarians' support was secured through 'horse trading'. Dissenting voices, critical of the government's intentions to suppress public opinion, were trivialised. This discretionary power is also evident in the

dismantling of public protests, the banning of certain organisations, and the listing of numerous human rights activists under the Anti-Terrorism Act, 1997.

In his article for the Pakistan Institute of Development Economics (PIDE), Saddam Hussain discusses Justonomics, illustrating that the average annual income of a Pakistani citizen is Rs427,944, with 90 per cent of this spent on living expenses. The average cost of a civil case stands at Rs117,000, while average savings are just Rs37,008, necessitating borrowing to pursue litigation.

Moreover, a recent amendment to Article 185(2)(d) of the Constitution has raised the value of the subject matter from fifty thousand to one million rupees, permitting appeals to the Supreme Court only for cases worth a million rupees or more. This change effectively undermines the principle of accessible justice, making it a luxury out of reach for the poor in Pakistan.

Human rights violations remain a significant issue in Pakistan, with the right to a fair trial (Article 10A of the Constitution) often being breached, denying individuals due process of law. According to the World Prison Brief (WPB), 70 per cent of the prison population in Pakistan consists of pre-arrest detainees and remand prisoners. These individuals are supposed to be presented before a magistrate within 24 hours and tried for either conviction or acquittal, but they are left at the mercy of a flawed system. It is particularly distressing that such violations occur in a country that is a signatory to the United Nations conventions.

Joseph Raz, a distinguished member of the Columbia Law School faculty and renowned legal philosopher, aptly remarked: "The rule of law is akin to the sharpness of a knife; it can be used both to protect and to kill." The inherent morality of the rule of law is fundamentally about safeguarding individual rights, curbing arbitrary and dictatorial use of legal power, and ensuring justice is delivered in a fair and accessible manner. Unfortunately, this holistic application is largely absent in the context of Pakistan. ■

Pakistan's Prison System

A Call for Modernisation and Human Rights

Justice Afridi's ambitious jail reform initiative aims to overhaul the nation's prison system, establishing a National Jail Reform Policy to bring transformative changes and ensure humane conditions.

Faryal Fatima - Karachi

Pakistan's criminal justice system remains entrenched in its colonial legacy. Over the past seven decades, efforts to amend or repeal outdated laws have been ongoing. However, reforms that could significantly improve prisoners' living conditions have lagged behind. As we progress through the 21st century, Pakistani prisons, housing the 23rd largest prison population globally, continue to grapple with overcrowding, and inmates suffer from inadequate healthcare, unhygienic food, poor education, and lack of recreational activities.

Under the Constitution of Pakistan, the administration of prisons falls under provincial jurisdiction. Nevertheless, a comprehensive policy at the federal level could provide valuable guidance for the provinces. This policy should be formulated as soon as possible to

alleviate the suffering of prisoners.

Recently, Chief Justice of Pakistan (CJP) Yahya Afridi has launched an ambitious jail reform programme to overhaul the nation's prison system. This comprehensive plan aims to establish a National Jail Reform Policy that adheres to international standards, heralding transformative changes for Pakistan's correctional facilities. Justice Afridi's initiative seeks to comprehensively overhaul the country's prison system. The plan aims to align with international standards, ushering in transformative changes to Pakistan's correctional facilities.

The initiative was announced during a consultative meeting in Lahore, chaired by the CJP. He stressed the need for a humane and effective prison system to uphold the legal rights and duties of all individuals, stating, "The fair and legal rights and duties require a humane and effective prison system."

The CJP said that a survey by the Law and Justice Commission of Pakistan (LJCP), which provides legal consultancy to prisoners, highlighted the dire conditions in Pakistan's prisons. It revealed that 108,643 detainees are crammed into facilities meant for just 66,625 inmates, underscoring the urgent need for reform. In Punjab, the situation is particularly dire, with the prisoner-to-capacity ratio standing at a staggering 67,837 inmates in a facility meant for just 36,365. A closer look reveals that out of these 70,509 prisoners, 36,128 are under-trial, many of whom have languished in jail for over a year. This, as Chief Justice Afridi pointed out, underscores a significant concern for the justice delivery system.

Chief Justice Afridi's reform plan seeks to address longstanding issues within the prison system, aiming for meaningful and lasting improvements. The commitment to aligning with international standards represents a significant step forward in ensuring that Pakistan's correctional facilities are both humane and effective. This initiative is



IMAGE: © THE LEGAL

poised to bring about the much-needed overhaul of the nation's beleaguered prison system, reflecting a broader push for legal and social reform within the country.

The discussion also touched upon the establishment of a Jail Reforms Committee, aimed at coordinating efforts to formulate measures for decongesting the overcrowded prisons, ensuring better treatment of inmates, and expediting the processing of cases. Beyond Punjab, the condition of prisons in Balochistan, Sindh, Khyber Pakhtunkhwa, Gilgit-Baltistan, and Azad Kashmir is equally dire and demands immediate attention. In all federating units, outdated colonial laws such as the Prisons Act of 1894 and the Prisoners Act of 1900 continue to dominate the legal framework. These antiquated statutes perpetuate punitive treatment and are deeply rooted in colonial-era repression, depriving prisoners of their rights.

The Sindh government has reconstituted the Committee for Welfare of Prisoners (CWP), appointing Siddique Memon, a former chief secretary of the province, as the new chairman, following the tenure of retired Supreme Court Justice Nasir Aslam Zahid. The CWP was established in 2004 by the provincial government on an experimental basis, in collaboration with Justice Zahid's non-governmental organisation, the Legal Aid Office, with the aim of improving conditions for prisoners.

Recently, the Sindh Human Rights Commission (SHRC) visited the Central Prison and Correctional Facility in Khairpur, as well as the district jails. Led by Board Member Sukhdev Assradas Hemnani, the delegation included legal advisors from the SHRC. Their primary aim was to assess the living conditions of the inmates

The Justice Project Pakistan's 2023 report indicates that some prison cells are holding more than twice their intended capacity.

The Origin

The Evolution of Pakistan's Criminal Justice System

Pakistan's criminal justice system is significantly influenced by British colonial rule in South Asia. Core legislation remains rooted in the Prisons Act of 1894, the Prisoners Act of 1900, the Penal Code of 1860, and the Code of Criminal Procedure of 1898. A noteworthy post-independence shift occurred in the late 1970s and early 1980s under the regime of General Muhammad Zia ul-Haq. He sought to blend religion with law, aiming to reshape Pakistan into an "Islamic state". This era saw the establishment of Sharia law enforcement agencies empowered to repeal or amend any legislation deemed un-Islamic. The controversial Hudood Ordinances, addressing issues like adultery and usury and criticized for discriminating against non-Muslims and women, were also introduced.

Many of Pakistan's civil laws bear similarities to those in India, reflecting their shared colonial heritage. However, India's legal system is relatively more secular compared to Pakistan's. The process of Islamisation of Pakistani laws continues, while reforms that could significantly improve prisoners' living conditions progress at a slow pace.

and the basic amenities provided within the prisons. During these visits, Hemnani underscored the Sindh government's commitment to upholding prisoners' rights and welfare.

The Khairpur facility, which has a total capacity of 1,175, currently houses 1,065 prisoners, including 744 under-trial prisoners, one foreigner, and 321 convicts. The Ghotki facility, designed to hold 250 inmates, presently accommodates 294 under-trial inmates.

All things considered, a substantial advancement has been the Sindh government's formation of a ministerial committee dedicated to the welfare of prisoners. The introduction of the Sindh Prisons and Corrections Services Act 2019, a forward-thinking piece of legislation, marks a major reform in Pakistan's approach to prison management. This progressive law has replaced the colonial-era South Asia Prisons Act, representing the first instance of a provincial statute mandating a re-evaluation of prison management practices. However, controversies over federal resource allocation to the province have resulted in chronic underfunding of prisons, exacerbating the already dire conditions and further deteriorating standards.

One of the key issues in Pakistan's prison conditions is

overcrowding. The Justice Project Pakistan's 2023 report indicates that some prison cells are holding more than twice their intended capacity. This situation is exacerbated by the challenges in implementing and ensuring basic human rights within the prison system. The World Justice Project's latest 2023 index, which ranks Pakistan 130th out of 142 countries on the rule of law, highlights systemic inequalities, including biases in convictions and a flawed criminal justice system that fails to deliver justice to those it imprisons.

Addressing these issues necessitates a comprehensive reform of Pakistan's prison laws to ensure alignment with international human rights laws. Pre-trial detention should be limited, and overcrowding should be eliminated. Additionally, prison facilities must provide essential services such as clean healthcare, hygienic food, education, and leisure activities. Vocational training for inmates is crucial as it aids their reintegration into society upon release. However, the most vital change required is a shift in attitude and spirit, focusing on reform rather than retribution. Inmates should not be viewed as the dregs of society, but as individuals deserving another chance. Only with this mindset can we establish an effective, just, and humane prison system fundamentally aimed at preventing recidivism. ■



Rs7.4 Billion Model Jail

to Set New Standards in Correctional Facilities

In Islamabad, a model jail is currently under construction with an ambitious budget of Rs7.4 billion, designed to meet international standards in inmate facilities. This modern correctional facility is poised to revolutionise the prison system in Pakistan, with its completion targeted for January 31, 2025.

To date, between 70 and 80 per cent of the administrative block is already finished, as reported by a senior official from the Capital Development Authority (CDA) during a briefing to the Senate's Standing Committee on Housing and Works on December 20.

However, the project faces a funding gap. An additional Rs3.64 billion is required to finalise Phase II. The committee learned that the initial Project Cost-1, originally estimated at Rs3.9 billion, has since escalated to Rs7.4 billion, with Rs3.75 billion already allocated to ongoing construction efforts.

In parallel developments, Chief Justice Yahya Afridi has championed the establishment of new prison complexes in Rahim Yar Khan and Lahore. During his visit to Rahim Yar Khan prison on December 20, he engaged with inmates and assessed their conditions firsthand. This visit underscores his commitment to significant reforms within the criminal justice system, with prisons playing a pivotal role. According to a statement, the Chief Justice's tour was driven by his resolve to introduce substantial improvements within the system.

Moreover, Chief Justice Afridi directed the district judiciary to utilise the Law and Justice Commission's resources for paying fines of convicted prisoners and providing legal aid to deserving inmates. He emphasised the urgent need for new prison facilities in Rahim Yar Khan and Lahore, highlighting the broader objective of addressing and remedying the inadequacies in Pakistan's prison infrastructure.

In essence, these combined efforts signal a transformative phase in the country's approach to incarceration, aiming to enhance the living conditions and rehabilitative opportunities for inmates. ■

Scabies Outbreak

Highlights Overcrowding Crisis in Quetta Prison

In a troubling revelation, over 200 inmates at Quetta District Jail have succumbed to skin diseases, most notably scabies, casting a stark spotlight on the dire conditions within the prison walls. Sources from the Balochistan government confirmed the outbreak on December 12, attributing it to severe overcrowding, inadequate hygiene practices, and substandard nutrition.

A report from the Justice Project Pakistan (JPP) as of November 2023 paints a bleak picture of Balochistan's prison system. The province houses 11 correctional facilities, which include five central jails and six district jails, collectively accommodating 2,874 inmates. Alarming, these prisons are operating at 105.3 per cent of their designed capacity, with a staggering 62.9 per cent – amounting to 1,809 individuals – awaiting trial.

Particularly concerning are the conditions at Gaddani Central Jail and Quetta District Jail, which are operating at an alarming 183.0 per cent and 216.9 per cent of their capacities, respectively. This acute overpopulation exacerbates the already deplorable living conditions, making the spread of diseases like scabies almost inevitable.

The demographic composition of Balochistan's prison population is overwhelmingly male, with 2,838 men and a mere 36 women incarcerated. This imbalance further strains the facilities, already buckling under the pressure of more inmates than they were designed to handle.

The recent outbreak underscores a critical need for urgent reforms and improvements within the prison system. Without immediate intervention, the health and wellbeing of inmates will continue to deteriorate, casting a long shadow over the province's penal infrastructure and raising pressing questions about the adequacy of inmate care and the fundamental human rights afforded to these individuals. ■





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Tax Law (Amendment) Act 2024

Exorbitant Appeal Fees Undermine Access to Justice, Impacting Vulnerable Taxpayers and SMEs

Tax Cases Amounting to Rs2.7 Trillion are Pending in Courts

A Hussain - Islamabad

A troubling scenario has unfolded within the nation's tax and revenue collection sector, exposing the federal government's reliance on counterproductive measures to achieve its targets. With sceptical sign of improvement, the government has been reeling under the pressure of International Monetary Fund (IMF).

The current budget's heavy taxes and duties have exacerbated the public's woes and hindered the government's efforts to meet revenue targets. The Federal Board of Revenue (FBR) has reportedly fallen short by Rs356 billion of its 'ambitious' target as of November 30, 2024.

The country, grappling with an ailing economy and political instability, has been borrowing from the IMF and other international lenders but has yet to address internal corruption. Prime Minister Shehbaz Sharif admitted on November 29, 2024 that "trillions of rupees worth of tax evasion" were occurring in collusion with tax officials, as reported by the national media. He acknowledged that "it would take time before the issues are resolved." Conversely, on December 18, 2024, his government came out with yet another amendment to grant more sweeping powers to tax authorities.

People are, however, lamenting the soaring prices, escalating inflation, and the government's draconian measures. In an attempt to satisfy IMF conditions, the government imposed Rs1.5 trillion in new taxes on consumer goods, including medical tests, stationery, vegetables, and baby milk. This includes an 18 per cent tax on milk and fruits, and a 10 per cent tax on stationery, medical tests, buns, and rusks. The fee hikes, introduced through the Tax Amendment Act 2024, are also causing significant distress to taxpayers. The government's empty promises to expedite the resolution of tax litigation are exacerbating the situation, with tax cases amounting to Rs2.7 trillion still pending in courts.

Meanwhile, the corrupt machinery continues to enjoy all possible perks and privileges. Foreign-funded consultancy services, such as those from McKinsey, a global management consulting firm, financed by grants from the Bill & Melinda Gates Foundation, have been hired without yielding significant positive results.

The government, besieged by the situation, has yet to demonstrate its will and ability to find a solid solution to the country's burgeoning economic woes, apart from borrowing money or selling national assets under the guise of privatisation.



Industry is gradually vanishing, unemployment and pollution are on the rise, and corruption and crime are hitting hard. The government continues to sing the same old song of expanding the tax net, while even beggars and the jobless are paying taxes.

In a manner reminiscent of the 26th constitutional amendment and numerous other laws, the authorities ruthlessly introduced the Tax Law (Amendment) Bill 2024 in the National Assembly as a Government Bill on 24 April 2024. It appeared in the 'Order of the Day' but was flawed due to the absence of the Notice of the Bill, as required under Rule 120(1). The certificate, indicating whether it is a money bill or





not, as envisaged under Rule 120(2), was missing. The procedure outlined under Rule 120(4) was ignored, and the Statement of Objects and Reasons was non-speaking.

The bill was swiftly passed by the Parliament and received presidential assent on May 4, 2024. Thus, a draft bill became law within ten short days. Amendments to taxing statutes are typically introduced through money bills, which are well-debated across the country as a practice. The amended law significantly altered the tax dispute resolution system, shifting jurisdiction from the Commissioner (Appeals) to the high court's advisory

jurisdiction on tax matters.

The Pakistan Tax Bar Association (PTBA) has expressed serious concern, stating that the Tax Laws (Amendment) Act 2024 is a total failure and that taxpayers have lost confidence in the dysfunctional Appellate Tribunal Inland Revenue (ATIR).

The act introduced significant amendments to overhaul the two-tier appeal system, incorporating pecuniary jurisdiction across the entire appeal framework under the Income Tax Ordinance 2001, Sales Tax Act 1990, Federal Excise Act 2005, and Customs Act 1969. This overhaul was promised to expedite the disposal of an estimated Rs 2.7 trillion in pending tax litigation.

The PTBA highlighted that the government has markedly raised the appeal fees, accompanied by assurances that the number of benches will be augmented and new members, who are highly competent and possess strong ethical values, will be recruited. "What has happened in fact is the number of benches has decreased: as an example in Karachi Appellate Tribunal Inland Revenue, instead of six

Benches that were normally functioning, now three benches are functioning and there are serious complaints from our members about the benches of the Appellate Tribunal Inland Revenue which were highlighted in our letter quoted supra. Taxpayers and their councils are losing confidence in the Income Tax Tribunal and this is very disturbing", said the PTBA.

This situation reveals that taxpayers have been specifically targeted by the new law amendments. It requires a taxpayer to file an appeal or tax reference when challenging an order. For such appeals fee has been increased from 100 per cent to 300 per cent and in certain cases, it is up to 49900 per cent. Previously, the appeal fees were Rs2,500 for individuals and Rs5,000 for companies. Under the amended laws, these fees have risen to Rs5,000 for individuals and Rs20,000 for companies.

If a taxpayer's appeal is rejected by the ATIR, he must then file a reference in a high court against the decision. Previously, the fee for the reference was Rs100, but it has now been increased to Rs50,000, an astronomical rise of 49,900 per cent. The new law demands, according to the PTBA, a mandatory payment of 30 per cent if the stay is to be sought and Rs50,000 reference fee on the filing. This increase is being criticised as a gross abuse and an obstruction of justice.

Tax lawyers argue that these amendments have severe consequences for taxpayers, particularly those who are financially vulnerable or already under significant stress. Many taxpayers are unable to file an appeal or reference due to the exorbitant fees, forcing them to accept decisions against them, even if they are unjust. The changes are particularly challenging for small and medium-sized enterprises (SMEs).

Access to justice is a fundamental right of every citizen, but under this law, it has been relegated to those who are financially well-off. The fee increase is deemed unfair and detrimental not only to taxpayers but also to the entire economic system. ■

The overhaul of the tax laws was promised to expedite the disposal of an estimated Rs 2.7 trillion in pending tax litigation.

40 Years of Ban

Supreme Court Set to Reconsider Decades-Long Student Union Ban

The review would address critical issues of constitutional principles, executive overreach, and the safeguarding of democratic spaces in educational institutions of Pakistan.

Muhammad Farooq - Karachi

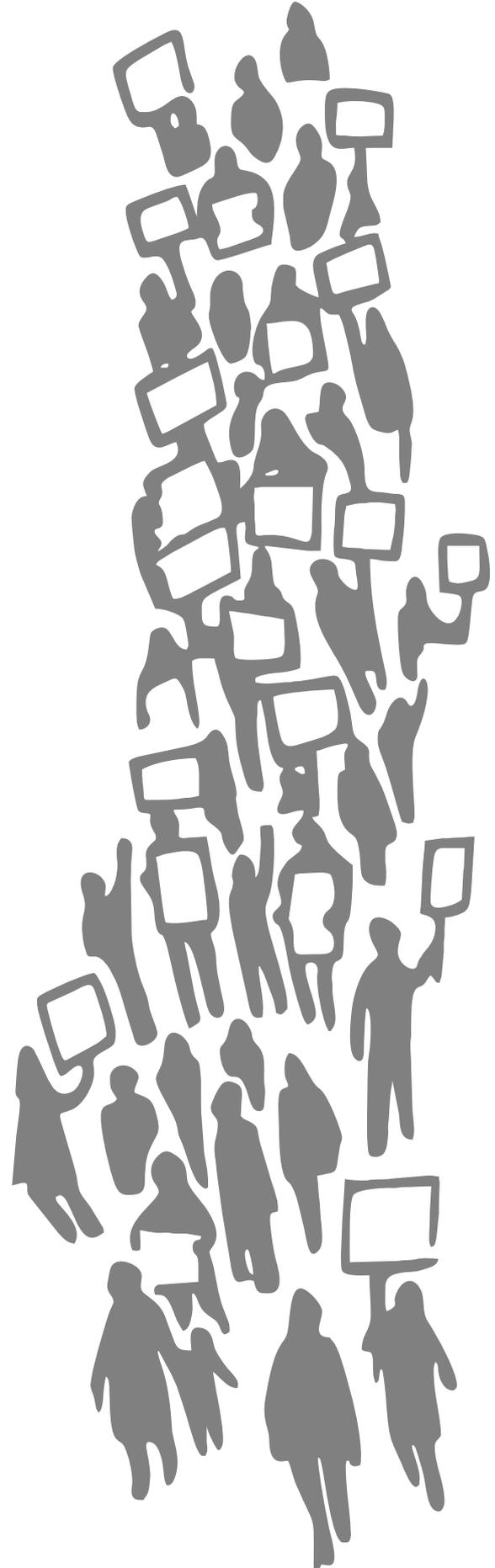
The Constitutional Bench of the Supreme Court of Pakistan has taken up petitions, early last month, challenging the ban on student unions – a restriction imposed some 40 years ago and often cited as a root cause of the country's leadership crisis.

The approval marks a pivotal moment in Pakistan's democratic and legal journey, prompting a reassessment of the role of student bodies in cultivating future leaders. It reignites the debate over balancing the need for discipline in educational institutions with the fundamental constitutional rights of freedom of association and expression.

The ban was imposed by military dictator General Zia-ul-Haq in 1984, but the apex court legitimised it in a 1993 verdict in the *M Ismail Qureshi vs Islami Jamiat-i-Talaba (IJT) secretary general M. Owais Qasim* case. In the ruling, the court prohibited student groups from affiliating with political parties and barred students from holding positions in university statutory bodies.

Two identical recent petitions have been filed by Barrister Zafarullah Khan, on behalf of the IJT, and Barrister Umer Ijaz Gilani, representing Hamza Khawaja – a student leader from Lahore University of Management Sciences (LUMS). The petitions were, initially, returned with objections that were later removed and the court admitted them for regular hearing.

The bench has requested guidance from the attorney general's office on the current legal stance and status of student union activities in the country. Notices have been issued to the law ministry, the Higher Education Commission (HEC), and provincial governments, instructing them to present their responses at the next hearing.



The case underscores the enduring importance of constitutional safeguards



IMAGE: © THE LEGAL

Historically, student unions have played a crucial role in fostering political awareness and civic responsibility among young individuals in Pakistan. The broader implications of this legal challenge extend beyond the immediate question of student unions. It raises critical issues about the role of judicial review in ensuring that state actions conform to constitutional principles, especially in cases where such actions disproportionately affect marginalised or under represented groups.

By addressing the ban on student unions, the judiciary has an opportunity to reaffirm its role as a guardian of fundamental rights and a check on executive overreach. As the hearings proceed, the public and stakeholders will closely watch the judiciary's approach to balancing the competing interests of security, governance, and rights. This case underscores the enduring importance of constitutional safeguards in protecting democratic spaces and the responsibility of state institutions to uphold these principles. ■

Key points of the petitions

- Petitioners invoked the Supreme Court's original jurisdiction under Article 184(3).
- They urged the court to revisit the 1993 verdict banning student politics, citing campus violence as a pretext.
- The court has been requested to declare that the affidavit prohibiting students from "indulging in politics" is vague and of no legal effect.
- The petitions asked the court to affirm that the fundamental right to form associations or unions under Article 17(1) cannot be curtailed except by a law enacted by a competent legislature.
- Petitioners claimed the ban on student politics violates the constitutional right to form associations guaranteed by Article 17.
- The petitioners argued that the ban is irrelevant to the current circumstances, as campus violence has reportedly declined.
- They noted that constitutional amendments have lowered the voting age from 21 to 18 years, questioning how students legally entitled to vote can be barred from unionising or political association.
- That campus politics is essential for nurturing democratic values and cultivating future leadership.
- Significant public importance of the matter was highlighted as the ban affects students nationwide.
- Petitioners represent diverse academic institutions and political beliefs, underscoring the broader relevance of the issue.
- They pointed out that the ban was implemented by the Supreme Court, leaving no recourse elsewhere, as apex court decisions bind all subordinate judicial bodies, including high courts.



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