July 2025

# THE LEGAL

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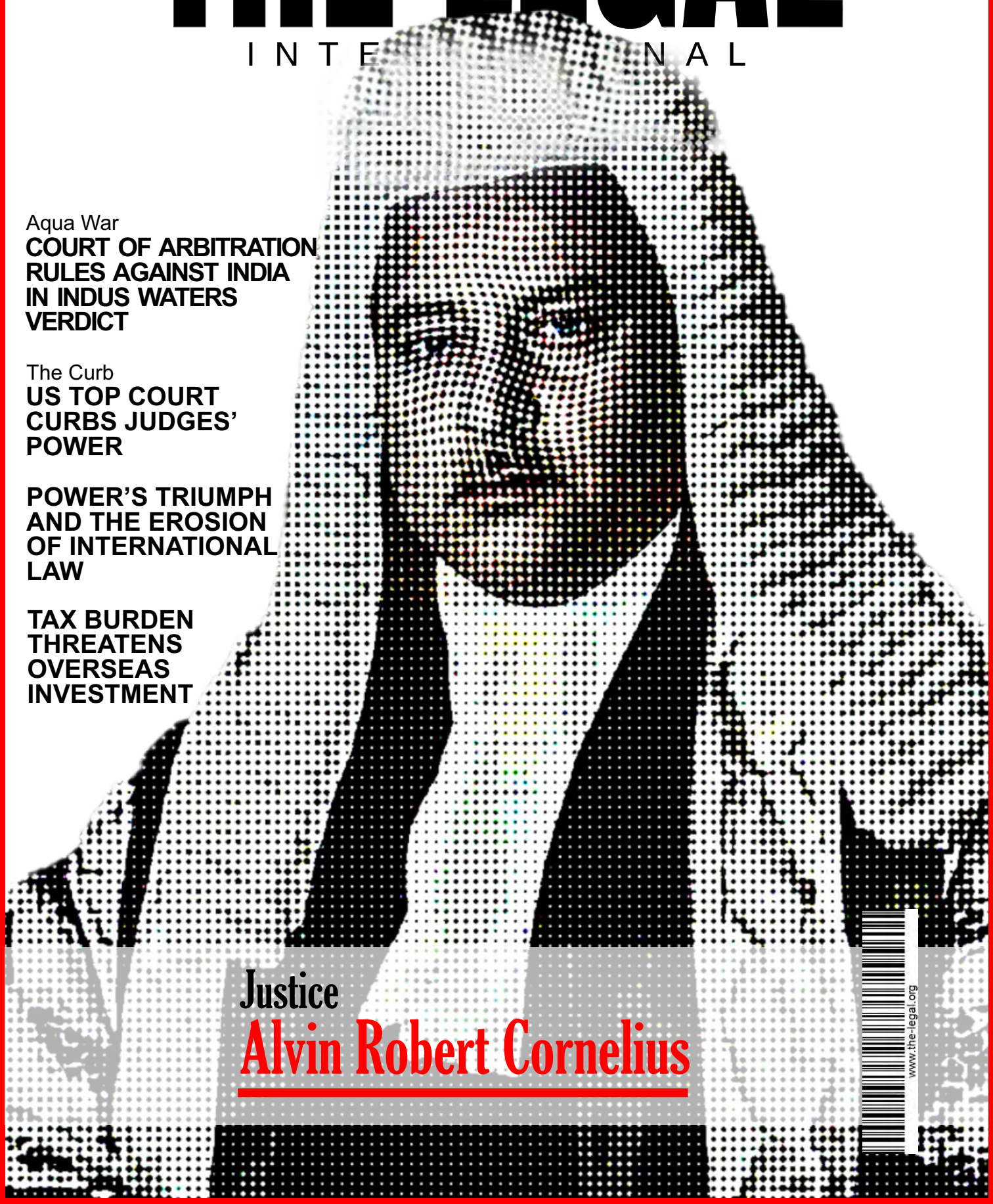

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**POWER'S TRIUMPH AND THE EROSION OF INTERNATIONAL LAW**

**TAX BURDEN THREATENS OVERSEAS INVESTMENT**

Justice

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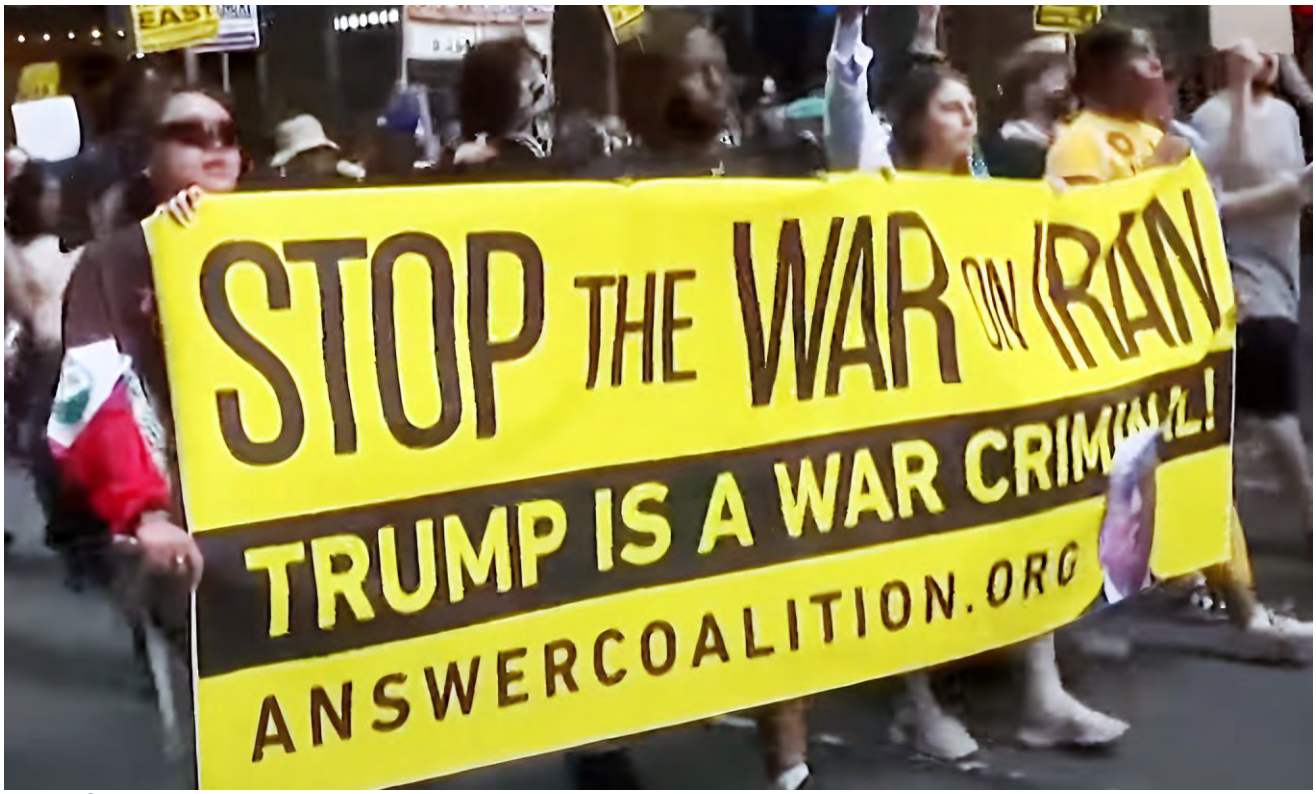


IMAGE: © The Legal

## Crisis Without Conscience

The West's silence in the face of unprovoked aggression against Iran has further eroded the moral authority of the international order. Even within the United States, citizens have taken to the streets in protest against the war. Page 16

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# Editor's Note

At The Legal International, we hold firm to our founding ethos: we are beholden to no political cause or faction. Our allegiance lies solely with the law, with justice, and with those who practise, study, or explore it through scholarship. While individuals may naturally carry their own leanings, our pages remain open to all, provided discourse does not descend into partisan posturing.

In these polarised times, it takes both fortitude and humility to consider dissenting viewpoints. No one holds a monopoly on truth. As the saying goes in our part of the world, no man is *Aql-e-Qul* (a master of all wisdom). It is in the thoughtful weighing of pros and cons that sound judgement is shaped. Our commentary, however modest, is meant to stir reflection, not decree verdicts.

This month, we draw quiet encouragement from the Bombay High Court's ruling in the Khadija Sheikh case. Against the rising tide of religious majoritarianism, the bench, composed of Justices Gauri Godse and Somasekhar Sundaresan, upheld the primacy of liberty and expression. Their courage has, sadly, drawn ire from extremists blinded by ideology. Yet their judgement rekindles hope in the judiciary's role as guardian of fundamental rights.

Towards the close of the month, the Pakistan's politico-legal landscape was shaken by two pivotal judgments, one concerning the transfer of judges and the other pertaining to the allocation of reserved parliamentary seats. Both verdicts carry profound legal and political implications.

However, five judges of the High Court - Justice Mohsin Akhtar Kayani, Justice Tariq Mehmood Jahangiri, Justice Babar Sattar, Justice Sardar Ijaz Ishaq Khan and Justice Saman Rafat Imtiaz - have challenged the decision via an intra-court appeal.

In a parallel development, the Constitutional Bench of the Supreme Court set aside its earlier ruling on the matter of reserved seats delivered on July 12, 2024. The latest judgment effectively paves the way for the government to attain a two-thirds majority in the National Assembly.

Beyond courtrooms, the world reeled from the so-called '12-Day War' between Iran and Israel, a grim episode marked by blatant violations of sovereignty and international law. The spectre of regional escalation loomed large, but a reckoning, however bruising, stemmed further calamity.

Despite the sombre backdrop, this edition presents a rich array of voices and issues from across the legal landscape. May you find in its pages both insight and quiet solace.

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# News Briefing

## Reserved Seats Reversed

**Islamabad –** In a ruling with major political consequences, the Supreme Court of Pakistan has set aside its previous judgment granting the Sunni Ittehad Council (SIC) dozens of reserved seats in the National and Provincial Assemblies.

By a 7-2 majority, the Court allowed several review petitions filed by the Pakistan Muslim League (N), Pakistan People's Party Parliamentarian (PPPP), and the Election Commission of Pakistan (ECP), reinstating the earlier decision of the Peshawar High Court.

The case centred around the February 2024 elections, in which PTI-backed independent candidates joined SIC and claimed entitlement to women and minority reserved seats. That position was earlier upheld by the Supreme Court, but the verdict sparked legal and political backlash.

The 13-member constitutional bench initially hearing the case saw Justices Ayesha A. Malik and Aqeel Ahmed Abbasi dismiss the petitions on the first day, while Justice Salahuddin Panhwar later recused himself. The reconstituted bench ruled that the earlier July 2024 majority judgment was flawed and dismissed SIC's civil appeals.

Justice Jamal Khan Mandokhail partially agreed, allowing the review regarding 41 seats while maintaining 39. Justices Muhammad Ali Mazhar and Syed Hasan Azhar Rizvi supported the review but ordered the ECP to conduct a fresh examination of nomination papers and affiliations of all 80 returned candidates within 15 days.

The ruling delivers a significant blow to SIC and a boost to mainstream political parties, reaffirming the Election Commission's authority in overseeing seat allocations and ensuring constitutional compliance in post-election proceedings. A detailed judgment will follow.

## Judicial Rebuke: Student Freed

**Mumbai –** Bombay High Court on May 27, sharply criticised the Maharashtra government over the arrest of 19-year-old engineering student Khadija Sheikh, who was jailed for her social media post critical of Operation Sindoor. The court denounced the authorities for treating her like a "hardcore criminal" and ordered her immediate release.

A vacation bench comprising Justices Gauri Godse and Somasekhar Sundaresan described the arrest as "absolutely shocking," noting that police officers and Sheikh's college appeared intent on ruining her future. The court suspended her rustication and instructed the institution to issue her a hall ticket, allowing her to sit her upcoming semester examinations.

Sheikh, a second-year IT engineering student at Pune's Sinhgad Academy of Engineering, was detained on May 9, after sharing and swiftly deleting critical Instagram posts related to the Indo-Pak hostilities. Despite her apology, she was booked under multiple sections of the Bharatiya Nyay Sanhita, 2023, with state and national agencies involved in the probe.

The court rebuked both the government and the college, asserting that students should be given opportunities for reform rather than being criminalised. “Someone is expressing their opinion, and this is how you ruin her life? A student's life has been ruined,” the court said. When additional government pleader P P Kakade argued that the girl's post was against the national interest, the court remarked, "How can the state arrest a student like this? Does the state want students to stop expressing their opinions? Such a radical reaction from the state will further radicalise the person." It also condemned the institution's approach, stating that discipline must be practiced before being preached.

Observing that Sheikh had deleted the post within two hours and apologised after receiving threats, the court questioned why she was arrested at all. It warned that the state's radical response could lead to further alienation. The bench also criticised the college for failing to give her a fair opportunity to explain before issuing the rustication order.

The girl had approached the High Court to challenge her college's decision to rusticate her. Her lawyer, Farhana Shah, filed a petition seeking the quashing of the FIR and bail. In her plea, she argued that the college's decision was arbitrary and constituted a gross violation of her fundamental rights. She requested the court to overturn the rustication, reinstate her, and permit her to sit her semester examinations, scheduled to commence on May 24.

## BNP Files Case

**Dhaka –** The Bangladesh Nationalist Party has filed a case implicating 19 former officials—including ex-Prime Minister Sheikh Hasina and three past chief election commissioners—for allegedly manipulating elections from 2014 to 2024. The BNP accuses them of violating constitutional norms, facilitating electoral fraud, and silencing opposition through coercion. Hasina, ousted and in exile since August, is alleged to have retained power using state institutions. Interim leader Muhammad Yunus has called for accountability over the alleged systemic malpractice.

# News Briefing

## Provincial Justice Liaisons

**Islamabad –** The Law and Justice Commission of Pakistan (LJCP) will appoint senior representatives in each province to enhance coordination with bar associations. These officials, based within the respective provincial High Courts, will act as dedicated liaisons.

Their responsibilities include raising awareness of LJCP initiatives among district bar associations, identifying local justice sector priorities, and supervising grassroots-level projects. The decision was finalised during a high-level meeting chaired by Chief Justice of Pakistan Yahya Afridi at the Supreme Court's Lahore registry.

Chief Justice Afridi, also LJCP Chairman, emphasised the need for synergy. He urged bar representatives to actively inform their associations about the new system and engage in the reforms. He further directed the federal government to streamline its support and facilities provided to bar associations, eliminating duplication and ensuring efficiency.

The Chief Justice also called upon provincial departments to work closely with the LJCP's Resident Additional Secretary. This collaboration aims to ensure the timely and effective implementation of district-level projects recommended by coordination committees headed by District and Sessions Judges.

Expressing concern, the Chief Justice highlighted significant infrastructure deficits – including lack of solar power and digital integration – in less developed districts, stressing the necessity for targeted interventions in these areas.

## Protests Pile Up

**Warsaw –** Poland's Supreme Court has received nearly 1,400 formal protests against the recent presidential election, with thousands more expected. Judge Aleksander Stepkowski stated that up to 3,000 additional complaints may arrive after Corpus Christi, potentially pushing totals close to 2020 levels, when 5,800 objections were lodged. The protests follow the June victory of Karol Nawrocki, who secured 50.89% of the vote against Rafal Trzaskowski's 49.11%. Most submissions cite alleged irregularities, though many lack substantive evidence. Some, however, point to issues like voting rights documentation errors. Identical protests will be reviewed collectively, with decisions based on the nature of the allegations. According to Stepkowski, "what matters are the substantive allegations." The Supreme Court may dismiss protests on procedural grounds or rule on whether irregularities significantly impacted the results. Final tallies and decisions are expected in the coming weeks, amid growing scrutiny over electoral transparency and fairness.

## Petition Review Looms

**Bangkok –** The Constitutional Court is set to begin preliminary examination of a petition seeking the removal of Prime Minister Paetongtarn Shinawatra.

Filed by a group of senators, the petition is under initial scrutiny to verify signatures and assess constitutional grounds. If the process is completed swiftly, deliberation may begin quickly. No court session is currently scheduled, though an extraordinary meeting could be held in early July. A temporary suspension could see Deputy PM Phumtham Wechayachai assume the role. The review coincides with political turbulence and may signal broader institutional shifts, according to legal analysts.

## Family Law Overhaul

**Rawalpindi –** The Rawalpindi Bench of Lahore High Court's has directed the federal government to undertake a comprehensive consultative process on a proposed amendment to the Muslim Family Laws Ordinance, 1961. This marks a pivotal step in the evolution of Pakistan's family law framework.

The directive was issued during a hearing on a constitutional petition filed by Saima Shafi concerning family matters. Justice Jawad Hassan, presiding over the case, underscored the necessity of engaging legal experts and the public before finalising the Muslim Family Law (Amendment) Act, 2024—a private member's bill tabled by Senator Barrister Ali Zafar.

The bill introduces key legal concepts such as "husband's asset," "matrimonial asset," and "wife's asset" into Pakistan's legal framework governing family law. Barrister Zafar, acting as an amicus curiae, was joined by legal experts Huma Ejaz Zaman and Barrister Faiza Asad in assisting the court.

The proceedings incorporated references to global matrimonial property laws from Egypt, Malaysia, Turkey, and the UAE, along with notable rulings from India, Ghana, and Singapore. The case has garnered nationwide attention, particularly due to its implications for women's property rights following marital dissolution. Justice Hassan highlighted past judicial interventions that have spurred legislative reforms.

He referenced the landmark 2022 ruling in *Mst Sana Khursheed v. Government of Punjab* (PLD 2022 Lahore 346), which contributed to the passage of laws such as the Punjab Domestic Workers Act, 2019, and the Punjab Empowerment of Persons with Disabilities Act, 2021. Citing Rule 3(3) and Rule 4(2) of the Federal Rules of Business, 1973, the court reaffirmed the constitutional responsibility of the Ministry of Law and Justice in drafting and scrutinising legislation.

Law Review

# LHC Forms Panel to Vet Contentious Matrimonial Property Law Amendments

IMAGE: © The Legal

***TL Report***
*Islamabad*

The highly contested proposal to introduce Section 10A on matrimonial property rights into the Muslim Family Laws Ordinance is now under judicial scrutiny, as Lahore High Court's Rawalpindi Bench has ordered the formation of an eight-member expert committee to examine the amendments in detail. The court's intervention comes amid an intensifying debate on gender equity within marriage and the constitutional boundaries of judicial oversight in legislative matters.

The directive was issued by Justice Jawad Hassan in the case *Mst Saima Shafi vs. Additional District Judge,* which revolves around reform proposals tabled by Senator Barrister Syed Ali Zafar. Central to these proposed amendments are the formal legal definitions of "husband's asset", "matrimonial asset", and "wife's asset" — terms which, if codified, could profoundly reshape Pakistan's legal understanding of marital property, hitherto governed by customary norms and fragmented statutory provisions.

The committee, to be chaired by the Federal Secretary for Law and Justice, will draw its membership from an array of institutions, including the law departments of all four provinces, the Council of Islamic Ideology (CII), the National Commission on the Status of Women, the Pakistan Bar Council, the Federal Ombudsperson Secretariat, and academia — specifically Professor Muhammad Mushtaq, Head of the Law Department at Shifa Tameer-i-Millat University.

In its report to the court, the Ministry of Law and Justice voiced strong reservations against judicial scrutiny of proposed legislation, warning that such interventions could infringe upon the prerogatives of Parliament and undermine democratic norms. The ministry emphasised that the Constitution already entrusts bodies such as the CII and parliamentary committees with the duty of ensuring that laws conform to Islamic precepts, under Articles 227 and 228.

Justice Hassan, however, asserted that the judiciary bears an inalienable duty to safeguard constitutional principles, particularly those enshrined in Articles 2A (the Objectives Resolution), 20 (freedom of religion), 25 (equality before law), and 227 (conformity with Islamic injunctions). He further stressed the relevance of Pakistan's international obligations under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (Cedaw), arguing that gender justice must form a central pillar of any reform.

The committee's mandate is expansive and multi-dimensional. It is charged with conducting inclusive public consultations, analysing comparative legal frameworks — with Malaysia's Islamic Family Law model cited as a key reference — assessing the practicality and enforceability of the proposed provisions, recommending necessary procedural reforms to family courts, and devising gender-sensitivity training modules for judicial officers.

The panel's inaugural meeting was scheduled on June 24, with a final report to be submitted to the court under the "Doctrine of Continuing Mandamus", a legal principle allowing for sustained judicial supervision to ensure compliance with constitutional standards over time.

To bolster transparency, Justice Hassan ordered that minutes and summaries of the committee's meetings be made publicly accessible, save for deliberations deemed confidential or sensitive. Additional Attorney General Haseeb Shakoor Paracha will coordinate the process alongside amici curiae Barrister Faiza Asad, Huma Ejaz Zaman, and Adil Chattha, who have been invited to contribute their legal expertise to the deliberations.

The committee's findings, including any dissenting notes, will be presented before the Court for further directions — a process that may well shape the trajectory of family law reform in Pakistan for years to come. ■

THE JUDGEMENT

**Short Order:**

# Supreme Court Backs Judges' Transfer, Leaves Seniority to President

*TL Report*

*Islamabad*

Constitution Petitions No. 22, 20, 25 to 28 & 30 of 2025
Supreme Court of Pakistan – Short Order dated 19th June 2025
Citation: 2025 SCP Const.Ps. No.22,20,25-28 & 30

**Case Title:**

Justice Mohsin Akhtar Kayani & Others v. The President of Pakistan & Others

**Court:**

Supreme Court of Pakistan (Original Jurisdiction) Constitutional Bench

**Coram:**

- Justice Muhammad Ali Mazhar
- Justice Naeem Akhter Afghan
- Justice Shahid Bilal Hassan
- Justice Salahuddin Panhwar
- Justice Shakeel Ahmad

**Summary of the Case:**

This case challenged the constitutionality of the Presidential Notification dated 1st February 2025 regarding the transfer of certain judges to the Islamabad High Court (IHC). The petitioners, including senior bar associations and individual judges, contended that such transfers, executed under Article 200 of the Constitution, were unconstitutional without the Judicial Commission of Pakistan's (JCP) involvement as mandated by Article 175A. The matter also touched upon the interpretation of the Islamabad High Court Act, 2010, and issues surrounding seniority and administrative powers post-transfer.

**Facts of the Case:**

On 1st February 2025, Notification No. F.10(2)/2024-A.II was issued by the President of Pakistan, transferring several judges from various High Courts to the Islamabad High Court. This triggered a spate of constitutional petitions under Article 184(3), filed by Justice Mohsin Akhtar Kayani and others including the Lahore High Court Bar Association, Lahore Bar Association, Karachi Bar Association, and individual litigants. The core legal contention was that these transfers, in effect, bypassed the Judicial Commission's involvement as required for fresh appointments under Article 175A.

The petitions sought the declaration of the Presidential Notification as illegal and unconstitutional. Alongside, several Civil Miscellaneous Applications sought interim relief including stay orders.

TL IMAGE: Video Grab

In a closely split verdict, Pakistan's Supreme Court has ruled that the transfer of three judges from provincial high courts to the Islamabad High Court (IHC) does not violate the Constitution. The decision was made by a 3-2 majority of the court's Constitutional Bench.

The transfers — of Justices Sardar Mohammad Sarfraz Dogar, Khadim Hussain Soomro, and Muhammad Asif from the Lahore, Sindh, and Balochistan High Courts, respectively — had been challenged by five IHC judges, the Karachi Bar Association, and the IHC Bar Association. Petitioners argued the transfers disrupted the seniority structure within the IHC.

The controversy intensified when Justice Dogar, post-transfer, was made senior puisne judge, positioning him as acting Chief Justice following Justice Aamer Farooq's elevation to the Supreme Court.

Delivering the short order, Justice Muhammad Ali Mazhar, who led the five-member bench, affirmed that the transfers — formalised on February 1, — were "within the framework of the Constitution and cannot be declared ultra vires".

While the court upheld the legality of the transfers under Article 200, it stopped short of ruling on the seniority issue. Instead, it referred the matter back to the President of Pakistan, instructing him to determine the relative seniority of the transferred judges based on their service records.

"In normal circumstances," the court stated, "the chief justice of the concerned high court has authority over matters of seniority." However, this case involved transferred judges and thus fell outside the scope of traditional intra-court hierarchies.

The bench clarified that since no unified seniority list exists across high courts, it is the President's prerogative to decide how seniority is to be interpreted following transfers.

Justice Dogar will remain acting IHC Chief Justice until the President resolves the matter. However, the decision was not unanimous. In a dissenting note, two judges expressed concern that crucial information had been withheld during the transfer process and suggested the move was carried out with undue haste and may have been legally flawed, raising questions about judicial independence.

The majority ruling emphasised that a judge's transfer is not a fresh appointment and must not be conflated with new judicial appointments that would otherwise require Judicial Commission of Pakistan (JCP) input.

The court reiterated that transfers must be based on available vacancies and must not exceed the sanctioned strength of the receiving high court.

The ruling offers constitutional clarity on judicial transfers but leaves lingering questions around transparency and judicial independence. ▮

## Dissenting Opinion

IMAGE: © The Legal

# Dissenting judges declare Islamabad High Court transfers unconstitutional and procedurally flawed

In a sharply worded dissent, Justices Naeem Akhter Afghan and Shakeel Ahmad of the Supreme Court of Pakistan rejected the majority verdict in a constitutional case concerning the presidential transfer of three judges to the Islamabad High Court (IHC), declaring the move unconstitutional, procedurally defective, and damaging to the integrity of the judiciary.

The dissent came in response to the majority 3–2 decision which upheld Notification No. F.10(2)/2024-A.II issued on February 1, 2025 by the Ministry of Law and Justice. The notification transferred Justice Sardar Muhammad Sarfraz Dogar from the Lahore High Court, Justice Khadim Hussain Soomro from the Sindh High Court, and Justice Muhammad Asif from the Balochistan High Court to the IHC.

While the majority ruled the transfers constitutional under Article 200 of the Constitution, the dissenting judges found that the Constitution allows only temporary transfers. "Clause (1) and Clause (2) of Article 200 must be read harmoniously," Justice Afghan wrote, "and do not permit permanent transfer of judges across High Courts."

The dissent highlighted the Attorney General's courtroom admission that the transfers were, in fact, made on a permanent basis. This, the judges ruled, rendered the action ultra vires and an improper use of presidential discretion. The move also ignored the principle of proportional representation of provinces in the IHC, which could only be ensured via fresh appointments through the Judicial Commission of Pakistan under Article 175A.

Citing multiple constitutional violations — including Articles 2A, 4, and 25 — the dissent criticised the lack of genuine consultation with the Chief Justices of the concerned High Courts and the Chief Justice of Pakistan. The process, they said, suffered from procedural haste, concealment of relevant facts, and lacked any public interest justification. The judgment further warned that such executive overreach could destabilise comity among judges.

Responding to contentions about alleged interference by intelligence agencies, the dissent categorically stated that these agencies have no constitutional mandate to influence judicial appointments or transfers. "Even if assumed to be true," the court noted, "it paints an unacceptable picture of agencies overriding constitutional authority."

The dissent reflects a widening rift within the judiciary over the separation of powers and highlights the ongoing tension between judicial independence and executive control in Pakistan's constitutional framework. ▮

JUDICIAL SERVICE

# Supreme Court Overhauls Judicial Service Rules in India

## Three-Year Practice Rule for Entry-Level Judges Reinstated After Two Decades

***Naresh Kumar***
*New Delhi (India)*

The Supreme Court of India restored the 25% quota for merit-based promotions via LDCE in the judiciary and reintroduced a three-year minimum legal practice requirement for entry-level judges. Aimed at improving judicial competence and career progression, the Court also mandated uniform promotion rules and eligibility standards across all states and High Courts.

In a far-reaching and reformative judgment, the Supreme Court of India has issued a series of binding directions aimed at restructuring the process of recruitment and promotion within the judicial services.

Delivered in the long-pending case of All India Judges Association and Others v. Union of India and Others (Writ Petition No. 1022 of 1989), the verdict reinstates several core principles meant to enhance efficiency, meritocracy, and professionalism across India's subordinate judiciary.

A Constitution Bench led by Chief Justice D.Y. Chandrachud (authored by Chief Justice B.R. Gavai) addressed eight key issues that had arisen through multiple interlocutory applications filed by stakeholders — including High Courts, State Governments, and judicial officers — over the course of more than a decade.

At the heart of the decision is the restoration of the 25% quota for promotions through the Limited Departmental Competitive Examination (LDCE) to the cadre of District Judges. This quota had earlier been reduced to 10% in 2010 due to logistical constraints and poor uptake, leading to a glut of unfilled vacancies in some states. However, with new data indicating that a sufficient number of candidates are now available, the Court found the restoration of the original quota both desirable and necessary.

Restoring the LDCE Quota to 25%

The Supreme Court found that the earlier reduction of the LDCE quota had inadvertently discouraged ambitious and meritorious officers from pursuing accelerated promotion. Referring to its 2002 ruling, the Court reaffirmed the rationale behind the three-tier recruitment structure to the District Judge cadre:

- 50% of posts to be filled by promotion on the basis of merit-cum-seniority;
- 25% via LDCE from amongst Civil Judges (Senior Division) with requisite experience;
- 25% through direct recruitment from the Bar.

The Court noted that with the reduction of the LDCE quota to 10%, the incentive for merit-based progression had effectively been blunted. "Restoring the 25% quota is not merely a structural correction—it is a moral boost for meritorious judicial officers striving for quicker career advancement," the judgment reads.

Significantly, the Court mandated that if eligible officers are not found in sufficient numbers in a given year to fill the LDCE quota, the posts shall revert to be filled through regular promotion in that same year, thereby ensuring no administrative vacuum.

Revised Eligibility Criteria for LDCE

Addressing the problem of insufficient eligibility due to existing service requirements, the Court also reduced the minimum qualifying service for LDCE aspirants. Previously, only Civil Judges (Senior Division) with five years of service could appear for the LDCE. Now, this has been relaxed to three years, provided the officer has accumulated at least seven years of combined judicial service in both junior and senior divisions.

The Court held that the earlier requirement disincentivised younger officers who, under regular promotion channels, were

**The Supreme Court has issued sweeping reforms to the recruitment and promotion framework of the judiciary**

reaching the District Judge cadre at around the same time they became eligible for LDCE. "Such a system neutralises the competitive element intended by LDCE," the bench observed.

New Promotion Avenue for Junior Division Judges

In a novel directive, the Court created a new 10% promotional quota via LDCE from the Civil Judge (Junior Division) to the Civil Judge (Senior Division) level. The eligibility for this pathway has been pegged at a minimum of three years' service. This new avenue is designed to provide early-career recognition to high-performing judicial officers and is in line with the Court's broader aim of fostering a performance-oriented environment.

Suitability Tests for Senior Promotions

The Court went further in calling for uniformity in how promotions are determined based on merit-cum-seniority. While several states already have rules governing this, the Court found discrepancies in methods and criteria. Accordingly, all High Courts and State Governments have been directed to revise or frame new rules that objectively assess a candidate's suitability for promotion based on:

- Legal knowledge and awareness of case law;
- Quality of judgments delivered;
- Annual Confidential Reports (ACRs);
- Rate of case disposal;
- Interview (viva voce) performance;
- Communication skills and general temperament.

The ruling also mandates that such suitability assessments must be conducted annually and with consistency across jurisdictions.

Calculating Vacancies Based on Cadre Strength

Resolving a longstanding procedural ambiguity, the Court ruled that all quotas—LDCE and otherwise—should be calculated on the basis of total cadre strength rather than vacancies arising in a particular year. The Court emphasised that this method allows for better planning, uniformity, and reduction in subjectivity, and has already been adopted by a majority of states.

Restoration of Practice Requirement for Entry-Level Judges

Perhaps the most contentious and philosophically charged part of the ruling is the restoration of the requirement that candidates for the Civil Judge (Junior Division) examination must have at least three years of practice as an advocate. This requirement, which had been removed in the 2002 All India Judges Association decision, had since allowed fresh law graduates to enter the judiciary without any courtroom experience.

The Court, citing evidence from High Courts and bar associations across the country, observed that this policy had failed. "The appointment of raw graduates has led to behavioural and procedural issues on the bench, causing friction with court staff, litigants, and bar members," the judgment noted.

The ruling mandates that the three-year practice must be post-enrolment with a Bar Council and may include time under provisional enrolment.

**The apex court has also restored the requirement of a minimum of three years' legal practice for entry into the lower judiciary, reversing a 2002 ruling.**

However, the Court introduced safeguards to ensure authenticity: candidates must obtain certification of actual practice from a senior advocate (10+ years) and the principal district judge of their jurisdiction. Experience gained as a law clerk will also be counted toward this threshold.

Implementational Timelines

In its concluding section, the Court gave all State Governments and High Courts a fixed deadline to amend their service rules in accordance with the new directives. These include:

- Restoring the LDCE quota to 25%;
- Reducing LDCE eligibility to three years in senior division and seven years in total;
- Creating a new LDCE path from junior to senior civil judge level;
- Reintroducing the three-year practice rule for new recruits;
- Implementing cadre-strength-based vacancy calculations;
- Ensuring suitability tests are uniformly applied.

A Judicial Renaissance?

Legal experts have hailed the decision as a watershed moment in judicial reform. "This is a bold and necessary recalibration of our judicial machinery," said retired Justice M.B. Lokur. "For years we've seen stagnation in judicial promotions and questions about preparedness at the lower bench. This ruling deals with both fronts robustly."

Bar councils and law universities have also expressed support, albeit with some reservations regarding the potential impact on fresh graduates. "We need to ensure law students are aware early on that the judicial service is a long game, and this may even encourage them to engage more meaningfully with litigation," said Prof. Aarti Singh of the National Law School of India University.

As India continues to grapple with an overburdened judicial system and delayed justice delivery, the Supreme Court's sweeping directions may well herald a new era — one that places merit, experience, and integrity at the heart of the judicial career path. ▮

AQUA WAR

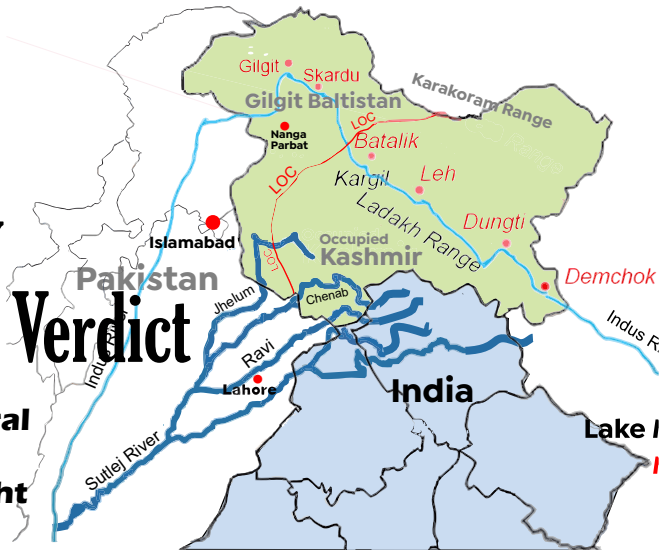

IMAGE: © The Legal

**Permanent Court of Arbitration**

# Rules Against India's Treaty Suspension in Indus Waters Verdict

***The Hague Tribunal declares India's unilateral 'abeyance' of Indus Waters Treaty unlawful, reasserting jurisdiction in arbitration brought by Pakistan***

*by* ***Irum Naqvi***

*Political Scientist*
*Murree*

In a resounding affirmation of international legal order, the Permanent Court of Arbitration (PCA) has ruled, on June 27, that India's unilateral suspension of the Indus Waters Treaty lacks legal standing, thereby reaffirming the Court's jurisdiction to hear Pakistan's claims regarding India's hydroelectric projects on the Western Rivers.

The verdict, delivered by a five-member tribunal in The Islamic Republic of *Pakistan v. The Republic of India* (PCA Case No. 2023-01), marks a decisive moment in a long-standing water dispute between the two nuclear-armed neighbours. The ruling addresses not only the legality of India's "abeyance" declaration but also the broader principle that treaty obligations cannot be set aside unilaterally.

The arbitration, triggered by Pakistan in August 2016 under Article IX of the 1960 Indus Waters Treaty, centres on the design and operation of India's Kishenganga and Ratle hydro-electric plants. Pakistan contended that these projects violated design constraints set out in Annexure D of the Treaty. Simultaneously, India initiated a separate Neutral Expert process, citing technical disagreements.

Matters escalated in April 2025, when, following an alleged terrorist attack in Indian occupied Kashmir, India declared the Treaty to be in "abeyance", linking its reactivation to the alleged Pakistan's purported cessation of cross-border militancy. India formally communicated this through a Note Verbale dated April 24. Pakistan challenged this stance, asserting that it constituted an unlawful suspension of treaty obligations and requested the PCA to reaffirm its authority.

The tribunal, comprising Chair Professor Sean D. Murphy, Professor Wouter Buytaert, Professor Jeffrey P. Minear, Judge Awn Shawkat Al-Khasawneh, and Dr Donald Blackmore, unanimously held that:

- The Indus Waters Treaty remains binding and in force.
- The Court's competence was established through the initial consent of both states at the time of treaty ratification.
- India's subsequent "abeyance" declaration has no bearing on the Court's jurisdiction.
- Any suspension or withdrawal from the Treaty must occur by mutual agreement, in accordance with Article XII(4).

Citing precedents such as the ICAO Council Case (India v. Pakistan, 1972) and Nicaragua v. Colombia (2016), the ruling reaffirmed international norms that discourage states from evading treaty-based dispute resolution by unilateral means.

Pakistan's submissions stressed that the term "abeyance" holds no weight under either the Treaty or customary international law. It argued that India's manoeuvre was a strategic attempt to bypass legal scrutiny under the guise of combating terrorism. India did not formally participate in the proceedings, but its views were inferred through public statements suggesting a fundamental change of circumstances and breaches by Pakistan.

The decision reasserts the doctrine of kompetenz-kompetenz, which empowers arbitral tribunals to determine the scope of their own jurisdiction. More broadly, it reinforces the sanctity of water-sharing treaties in an increasingly climate-stressed geopolitical context.

Experts observe that the PCA's ruling could become a touchstone for future transboundary water disputes, particularly where regional tensions threaten to undermine established legal frameworks. It serves as a cautionary tale against politicising treaty arrangements and diluting multilateral commitments through untested terminology and unilateral assertions.

As the world watches the evolving dynamic between India and Pakistan, the Court's ruling places the weight of international law firmly behind adherence to treaty-based obligations, no matter how tempestuous the political tides. ■

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Focus

# Call for Regional Maritime Tribunal Amid Rising Tensions in Asian Waters

by ***Faijul Islam***
*Lecturer of Law, Prime University*
*Dhaka - Bangladesh*

This article advocates for the establishment of a dedicated regional maritime tribunal by comparing jurisprudential trends in Bangladesh and Southeast Asia. It explores how a regionally grounded institutional design could enable more timely and effective justice in maritime disputes through collaborative regional efforts.

In the 21st century, maritime spaces have emerged not merely as strategic frontiers but as contested zones of sovereignty, resource exploitation, and environmental protection. In many regions, such as South and Southeast Asia — where the seas play a vital role in trade, livelihoods, medicine, and identity — unresolved maritime disputes continue to threaten regional stability and undermine sustainable development.

Against this backdrop, the proposal to establish an Exclusive Maritime Tribunal that reflects the legal, social, geopolitical, and economic realities of South and Southeast Asia is both timely and necessary. It represents a viable way to address these pressing challenges.

**Bangladesh's Legal Achievements in Maritime Disputes**

Bangladesh has made remarkable upliftment in resolving maritime disputes through international adjudication in previous time. The 2012 case before the International Tribunal for the Law of the Sea (ITLOS) against Myanmar and the 2014 arbitral award under Annex VII of UNCLOS against greater India which resulted in a peaceful demarcation of the Exclusive Economic Zone (EEZ) and continental shelf boundaries collectively in the Bay of Bengal belt.

In Bangladesh v. Myanmar (ITLOS Case No. 16), the tribunal declared Bangladesh is a significant portion of its claimed maritime zone including equitable principles over strict equidistance principle. Similarly, in Bangladesh v. India (PCA Case No. 2010-16), the special tribunal also allotted 19,467 sq. km of most disputed area to Bangladesh in describing new piece of Justice named equity and proportionality in law of the sea.

These judgments made two critical themes:

1. The potential of international law to resolve complex disputes Between two states
2. The constraints of depending only on distant, slow, time consuming and expensive forums.

Notably, while Bangladesh succeeded in asserting its maritime rights, smaller coastal nations with limited legal resources might not be able to sustain such high-stake litigation. On the other hand A regional tribunal would allow for faster, less costly, effective and more context-sensitive prone adjudication.

**Southeast Asia's Legal and Geopolitical Complexities**

Southeast Asia presents a contrasting narrative, where maritime disputes have often escalated despite the availability of international legal mechanisms. The South China Sea dispute — marked by overlapping claims from the Philippines, Vietnam, Malaysia, Brunei, and China — exemplifies the limitations of existing adjudicatory frameworks.

The landmark 2016 arbitration (Philippines v. China, PCA Case No. 2013-19) ruled that China's expansive "nine-dash line" had no legal basis under UNCLOS. However, China's non-compliance exposed the lack of enforcement and binding authority of international tribunals, as well as the geopolitical vulnerability of Southeast Asian states.

Moreover, regional organisations such as ASEAN have proven largely ineffective in enforcing maritime norms due to their consensus-based decision-making process and the doctrine of non-interference. As legal scholar Robert Beckman observes, "ASEAN's approach in maritime disputes remains cautious and consultative, lacking a robust legal framework for binding dispute resolution" (Beckman, 2017).

**Comparative Insights and the Case for a Regional Maritime Tribunal**

Both Bangladesh and Southeast Asian states share several common challenges:

- Maritime boundary overlaps and contested rights;
- Illegal, unreported, and unregulated (IUU) fishing by third parties;
- Exploitation of marine resources;
- Environmental degradation in EEZs and the high seas.

While Bangladesh has demonstrated legal foresight through international engagement, Southeast Asia highlights the geopolitical limitations of legal enforcement. An Exclusive Maritime Tribunal for South and Southeast Asia could bridge these


gaps by offering:

1. ***Regional Expertise***
   A tribunal composed of judges and experts with deep knowledge of the hydrographic, socio-economic, rhetorical, and political contexts of the Bay of Bengal and South China Sea would ensure more nuanced interpretations of international maritime law.
2. ***Legal Accessibility***
   The cost and procedural barriers of global tribunals are often prohibitive. A regional court would democratise access to legal remedies — especially for smaller states such as the Maldives, Timor-Leste, and Sri Lanka — ensuring timely justice in disputed maritime zones.
3. ***Dispute Prevention***
   Beyond adjudication, the tribunal could play a preventive role by offering advisory opinions, early warning mechanisms, and conflict mediation — similar to the Caribbean Court of Justice within its regional integration context.
4. ***Norm Development***
   A regional body could gradually codify customary regional norms and principles in maritime law, incorporating local practices, environmental ethics, and indigenous usage, thereby contributing to the broader evolution of international maritime law.
5. ***Strengthening Blue Economy Governance***
   As sustainable marine resource management gains prominence, the tribunal could offer regulatory guidance on marine biodiversity, seabed mining, and coastal infrastructure disputes—particularly for economically vulnerable nations currently deprived of their maritime rights.

**Institutional Feasibility and Strategic Alignment for a Unified Tribunal**

Critics may argue that regional fragmentation and political tensions could inhibit the formation of a unified maritime tribunal. However, promising frameworks already exist:

- ***BIMSTEC***
  The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) — which includes Bangladesh, India, Myanmar, Sri Lanka, Thailand, Nepal, and Bhutan—could host the tribunal. Given BIMSTEC's existing cooperation, this is a viable platform for institutional development.
- ***IORA and ASEAN Maritime Forums***
  The Indian Ocean Rim Association (IORA) and ASEAN Maritime Forums can provide technical and diplomatic collaboration. ASEAN, while limited in enforcement, plays a critical role in dialogue and conflict resolution among South and Southeast Asian nations.
- ***Track II Diplomacy and Legal Academia***
  Institutions such as the Asian Society of International Law could lead the drafting of a model statute. With proper engagement from resourceful authorities, this initiative could inspire the creation of a powerful and credible regional maritime tribunal.

Importantly, the tribunal need not begin as a supranational court. It could start as a non-binding or advisory arbitral body, gradually gaining legitimacy and authority as states opt into its jurisdiction under UNCLOS Article 287.

**Lessons from Other Regional Courts**

Examples such as the Inter-American Court of Human Rights, the ECOWAS Court, and the East African Court of Justice demonstrate that regional courts — although initially weak — can evolve into influential norm-setting institutions.

The East African Court of Justice, for instance, initially focused on trade but later expanded into human rights and environmental governance. Similarly, a regional maritime tribunal could progress from handling technical disputes to addressing marine biodiversity, climate adaptation, and resilience issues.

**Conclusion and Recommendations**

Bangladesh's leadership in peacefully resolving maritime disputes, combined with Southeast Asia's urgent need for enforceable legal mechanisms, creates a strong case for institutional innovation. A South and Southeast Asian Exclusive Maritime Tribunal could transform regional dispute resolution by making it more affordable, accessible, authoritative, and aligned with local norms and legal systems.

To realise this vision, three essential steps are recommended:

- ***Legal Scholarship and Drafting***
  A working group of legal experts should develop a draft statute with flexible opt-in jurisdiction, supported by academic research to ensure legitimacy and transparency.
- ***Pilot Arbitration Cases***
  The tribunal could begin by hearing advisory or pilot cases involving technical issues such as fisheries management or environmental harm.
- ***Diplomatic Consensus-Building***
  States must be brought into dialogue, emphasising shared priorities in marine security, trade, environmental protection, and climate resilience. Conferences and diplomatic forums can facilitate this collaboration.

As the blue economy becomes central to development in South Asia, the legal architecture governing the seas must evolve accordingly. An Exclusive Maritime Tribunal is not merely a judicial innovation — it is a geopolitical necessity and a testament to regional legal maturity. ▮

THE CURB

# US Supreme Court Curbs Judges' Power to Block Government Policies Nationwide

***Universal Injunctions Banned: The Supreme Court ruled federal courts lack authority to issue "universal injunctions" – orders halting government policies for everyone, not just plaintiffs in a case. Such injunctions, increasingly used against recent presidential actions, exceed historical limits on judicial power.***

***Laura Jennifer***
*Washington*

The US Supreme Court has dramatically limited federal courts' power to block government policies nationwide, ruling that judges cannot issue "universal injunctions" halting enforcement for all citizens – only for the plaintiffs directly involved in a lawsuit.

The 6-3 decision, led by Justice Barrett, came in emergency challenges to President Trump's 2025 executive order stripping birthright citizenship from children born in the US to certain non-citizen parents. While not ruling on the order's constitutionality, the Court held that sweeping injunctions barring enforcement beyond the specific plaintiffs (states, individuals, and advocacy groups) "likely exceed the equitable authority" granted to courts under the 1789 Judiciary Act.

The majority emphasised historical practice: English and early US courts never issued such broad relief, reserving injunctions for named parties. Justice Sotomayor's dissent, joined by Justices Kagan and Jackson, warned the ruling "renders constitutional guarantees meaningless" for those unable to sue quickly, calling Trump's order "patently unconstitutional" and an assault on the 14th Amendment.

The decision forces lower courts to narrow existing injunctions against Trump's citizenship order solely to protect the plaintiffs. Future challenges to federal policies must rely on class actions (governed by strict Rule 23 requirements) or risk leaving non-parties exposed to potentially unlawful rules during litigation.

Justice Kavanaugh, concurring, acknowledged the ruling may spur more class-action requests for nationwide relief but stressed the Supreme Court would remain the "ultimate decider" of major policies via emergency appeals. Justice Jackson's standalone dissent condemned the majority for enabling "intermittent lawlessness," arguing courts must retain power to compel the Executive to follow the law universally. ∎

## Key points of the decision

***Core Holding***

- Universal Injunctions Invalid: Federal courts lack statutory authority under the Judiciary Act of 1789 to issue "universal injunctions" (orders blocking government policies for all citizens, not just case plaintiffs).

***Legal Reasoning***

1. Historical Equitable Limits:
   - Universal injunctions lack founding-era precedent in English/U.S. equity courts, which only granted party-specific relief.
   - Modern remedies must be "analogous" to those traditionally available (Grupo Mexicano standard).
2. Rule 23 Safeguards:
   Universal injunctions circumvent class-action requirements (numerosity, commonality, etc.), creating "de facto class actions" without procedural protections.
3. No Policy Justification:
   Policy arguments for/against universal injunctions are irrelevant; the statutory grant of equitable power is determinative.

***Impact on Pending Cases***

- Partial Stay Granted:
  - Injunctions against Trump's birthright citizenship order (Exec. Order 14160) are narrowed to protect only named plaintiffs (states, individuals, organizations).
  - Lower courts must reassess if narrower relief (e.g., state-specific bans) suffices for plaintiffs' injuries.
- No Merits Ruling:
  The Court did not evaluate the order's constitutionality under the 14th Amendment.

***Concurrences***

- Thomas/Gorsuch: "Complete relief" must be narrowly tailored; cannot revive universal injunctions.
- Alito: Warns against exploiting third-party standing or class actions to evade the ruling.
- Kavanaugh: Confirms class actions (Rule 23) and APA "set aside" remedies remain viable for broad relief.

***Dissents***

- Sotomayor/Kagan/Jackson:
  - Ruling enables executive lawlessness by denying courts power to fully halt unconstitutional policies.
  - Birthright citizenship is "patently unconstitutional" under the 14th Amendment (Wong Kim Ark).
- Jackson: Courts must compel universal Executive Branch compliance with the law to prevent "zones of lawlessness."

CONFLICT

**The Twelve-Day Reckoning:**

# Power's Triumph and the Erosion of International Law

***In the aftermath of a brief yet consequential conflict, the global legal order confronts a sobering truth: justice bends where might asserts itself***


IMAGE: Courtesy Social Media

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

Power, not principle, now governs global affairs. The Iran–Israel conflict exposes the West's moral duplicity, as international law falters beneath hegemonic ambition. Trump, Netanyahu, and their ideological predecessors pursue strategic domination cloaked in false nuclear pretexts. The UN's impotence heralds a dangerous shift — where justice is performative, accountability evanescent, and the dream of a lawful world ever more remote.

One must either accept the West's self-professed veneer of civilisation or concede the brutal reality that power — not law or principle — reigns supreme. The performative theatre of nuclear non-proliferation appears, for now, to have reached its denouement. The principal casualties of this brief yet consequential 'Twelve-Day War' are international law and the broader human conscience.

The Trump and Netanyahu regimes, at least on this occasion, failed in their objective to unseat Iran's legitimate government. Contrary to their stated claims, uranium enrichment was not the central issue. The true agenda, rooted in ideological antagonism, finds its genesis in the presidency of George W. Bush — another Republican — whose policies appear to have been inherited and reignited under Trump.

General Wesley Clark, former NATO Supreme Allied Commander Europe, previously alleged that a senior Pentagon official informed him in November 2001 of a sweeping Bush-era plan to initiate military interventions across seven nations: Iraq, Syria, Lebanon, Libya, Iran, Somalia, and Sudan. These revelations surfaced in The Clark Critique, wherein he argued that the post-9/11 security narrative was strategically exploited to advance broader geopolitical ambitions across the Middle East.

Framed against this backdrop—and coupled with Netanyahu's antagonistic rhetoric towards Pakistan — the assault on Iran was far from an isolated manoeuvre. It formed part of a wider strategic continuum. In May, mere weeks before Israel's offensive against Iran, India launched a strike against Pakistan. Reports suggest Israeli military advisers were active in India, assisting efforts to neutralise Pakistan's air defences and disable its air force capabilities. Such a campaign would have paved the way for coordinated strikes, mirroring those later carried out in Iran.

It may be inferred that President Trump was cognisant of the Indian plot — his remark that India and Pakistan have been fighting for a thousand years suggests a studied passivity. He said, "...they've had that fight for 1,000 years in Kashmir. Kashmir has been going on for 1,500 years, probably longer than that... but I am sure they'll figure it out one way or the other." Yet when circumstances shifted unfavourably, he intervened with uncharacteristic swiftness to facilitate a ceasefire — ostensibly to spare India, just as he had done in the Iranian theatre to shield Israel.

In light of emerging threats, Pakistan must now embark upon a robust internal security operation aimed at unearthing and neutralising dormant terrorist networks and sleeper cells potentially aligned with foreign interests.

The Iran–Israel conflict has laid bare the duplicity of the United States and several Western powers, who notably refrained from censuring the unprovoked aggression by the Netanyahu regime. Their silence has rendered them bereft of moral authority and has severely compromised their credibility on the global stage. Even the International Atomic Energy Agency failed to condemn the strikes on a signatory's nuclear facilities—an omission that risked precipitating a catastrophe of potentially unprecedented proportions. Regrettably, the United Nations and its Security Council increasingly appear as instruments deployed to suppress the dissent of nations challenging hegemonic agendas.

In a flagrant violation of international law, Israel launched unprovoked aggression against the sovereign state of Iran. The United States and Israel have both sought to justify this act by invoking Iran's nuclear programme. Yet their argument is underpinned by a spurious allegation—that Iran is on the brink of acquiring nuclear weapons. This claim is directly contradicted by the March intelligence assessment issued by US Director of National Intelligence Tulsi Gabbard, who unequivocally affirmed that there is no evidence of Iran pursuing nuclear armament. Indeed, the broader American intelligence community, relying on verified information, concurs that Iran is not engaged in the manufacture of nuclear weapons.

In the face of such asymmetries, the international community is confronted with a profound dilemma: how might faith be restored in institutions ostensibly built to uphold justice, when their conduct appears beholden to power rather than principle?

The United States — historically a dominant influence within the UN — has itself been accused of flouting international law. Reports indicate that Israel's deployment of US-supplied weaponry in Gaza likely breached humanitarian law, yet the Biden administration has refrained from initiating substantive action. The Trump administration, likewise, has faced criticism for undermining global institutions and disregarding legal norms. This erosion of accountability has emboldened states to act with impunity, jettisoning the principles upon which the United Nations was founded.

The implications of these failures are far-reaching. The international legal order, painstakingly constructed in the aftermath of 1945, is now being systematically dismantled. Institutions such as the International Criminal Court and the International Court of Justice — once bastions of moral recourse — have been relegated to the sidelines, as powerful states openly disregard their mandates. The continued expansion of Israeli settlements, the targeting of diplomatic missions, and the indiscriminate use of force all constitute violations of established legal frameworks. Yet the architects of these transgressions face no meaningful repercussions.

The UN's inability to prevent war and enforce international law is not merely symptomatic of institutional fragility — it signals a tectonic shift in global power dynamics. As traditional mechanisms of accountability falter, the world risks descending into an era where might once again dictates right, and legal norms are reduced to performative gestures.

If the United Nations is to reclaim its relevance, it must undergo sweeping reforms — ensuring that its institutions are no longer beholden to the interests of a select few, but serve instead the collective good of humanity. Until then, the desecration of international law shall persist, and the promise of a just and peaceful world will remain a distant illusion. ▮

TL Legend

# The Unwavering Legacy
# Justice Alvin Robert Cornelius

## Upholding Justice in Turbulent Times

***A Hussain***
*Islamabad*

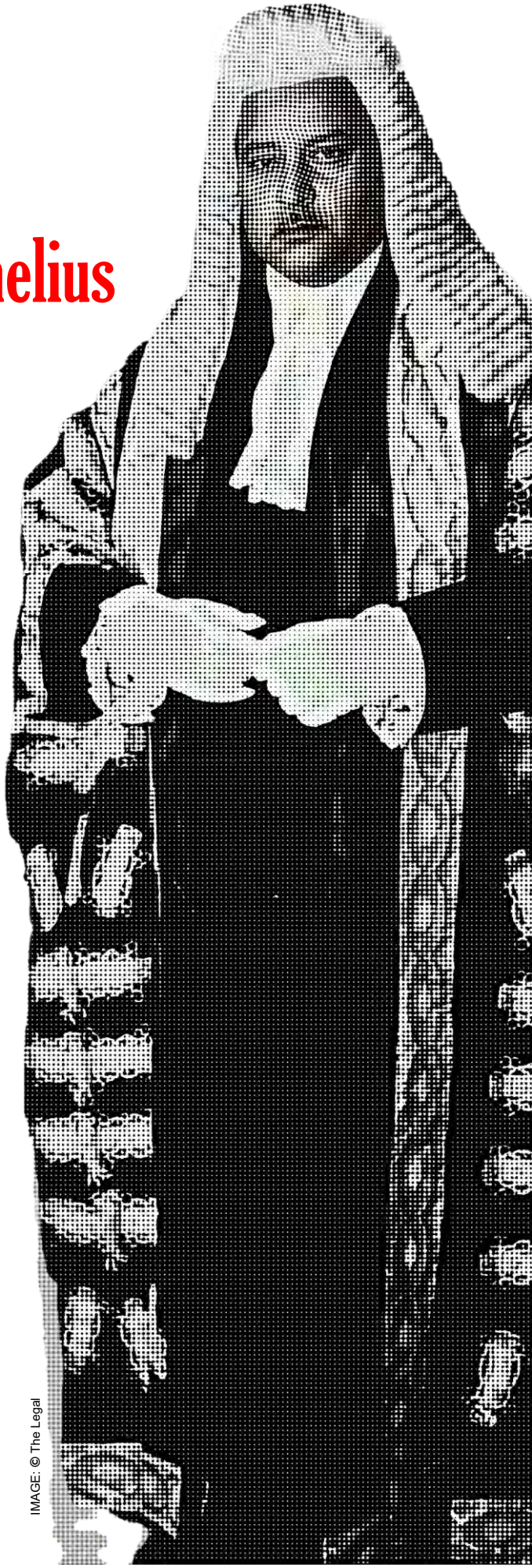


IMAGE: © The Legal

Justice Alvin Robert Cornelius (1903-1991) stands out as a prominent figure in the judicial history of Pakistan. He symbolises honesty, fairness, and integrity during the early struggles for democratic, constitutional, and ethical values in a politically turbulent era.

His life and career remind us that the pursuit of justice and defence of constitutional principles are timeless endeavours deserving of the highest respect and admiration. In the realm of judicial history, few names resonate with the same reverence as that of Justice Cornelius.

Serving as the 4th Chief Justice of Pakistan from 1960 to 1968, Justice Cornelius demonstrated an unwavering commitment to the rule of law, a steadfast stance on justice, and a dedication to upholding constitutional supremacy.

Born in Agra on May 8, 1903, to an Urdu-speaking Anglo-Indian Roman Catholic family, he was the son of Professor I J Cornelius and Tara D' Rozario. Cornelius graduated from Allahabad University and Selwyn College at Cambridge University, UK, where he earned his LLM in law and justice. He joined the Indian Civil Service in 1926, starting his career in Punjab. He later served as a District and Sessions Judge until 1943, after which he was appointed as a judge of the Lahore High Court three years later. In November 1951, he became an associate judge of the Federal Court of Pakistan. A leader in Pakistan's Independence Movement, he was the only member of his family to migrate to Pakistan after Partition in 1947. He was married to Ione Francis.

Justice Cornelius was a long-serving Chief Justices of Pakistan from 1960 to 1968. Later, he took on the role of Law Advisor under General Yahya Khan from 1969 to 1971. For his contributions, Cornelius was awarded the Hilal-e-Pakistan.

Cornelius made substantial contributions to the judiciary. His role in the Federation of Pakistan v. Maulvi Tamizzudin Khan case and his challenge to presidential powers in the Dosso case are still recognised and respected within the legal community. On October 24, 1954, Governor General Ghulam Muhammad dissolved the Assembly. Maulvi Tamizuddin, the assembly's president, contested this dissolution in Sindh Chief Court through a writ of quo warranto and emerged victorious. In response, the government appealed to the Federal Court, where the infamous ruling was delivered by Chief Justice Muhammad Munir, who applied Hans Kelsen's theory of legal positivism (the doctrine of necessity), resulting in Maulvi Tamizuddin losing the case. The decision was a majority one, with four judges siding with the government and Justice Cornelius dissenting.

In an article titled "Maulvi Tamizuddin Khan Case and Its

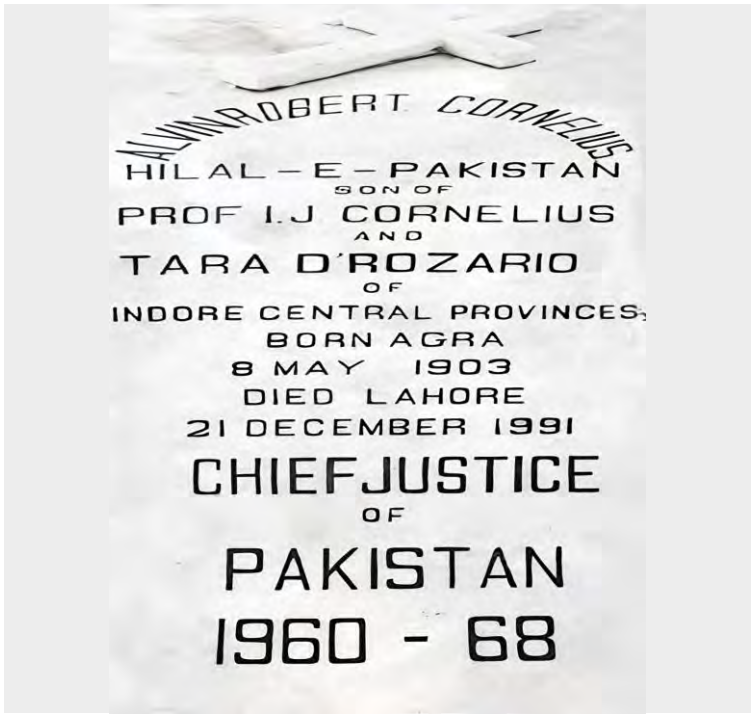
Consequences," Advocate Hashim Khan referenced Advocate Hamid Khan's book "A History of the Judiciary in Pakistan," stating that "Chief Justice Munir conspired with Governor-General Ghulam Muhammad to alter the composition of the Federal Court before the appeal." The bench consisted of five judges: Chief Justice Munir, Justice Shahabuddin, Justice Cornelius, Justice A.S.M. Akram, and Justice Sharif. Munir aimed to exclude Justice Shahabuddin from the bench, aware that both Shahabuddin and Cornelius could persuade Justice Akram to align with them. This would leave Munir in a minority alongside Justice Sharif. To execute this exclusionary tactic, Ghulam Muhammad offered Justice Shahabuddin the governorship of East Bengal, which he accepted after some initial reluctance. Consequently, Justice S.A. Rahman, who was then Chief Justice of the Lahore High Court, was appointed as an ad hoc judge in Shahabuddin's place. This marked the beginning of a troubling chapter in the constitutional and judicial history of our nation, with the repercussions of this decision continuing to shake the foundations of the constitution."

Four years later, the same court upheld the case of the State vs. Dosso against the martial law authorities, with Justice Cornelius writing a concurrent judgment, even though he agreed with the overall decision. He pointed out that fundamental rights are inalienable and cannot be suspended, even under martial law. This perspective was so distinct from the others that it was later regarded as a "note of dissent." Nevertheless, the Dosso case had a significant impact as it legitimised the enforcement of martial law. Justice Cornelius' rulings in other cases also demonstrated a deep respect for human rights and a dedication to justice, regardless of religious or ethnic backgrounds. His judgments laid the groundwork for the introduction of judicial review of administrative actions, due process of law, equality before the law, separation of powers, and the principles of natural justice.

IMAGE: Courtesy Cornelius, Lane & Mufti

One of the most significant aspects of Cornelius's career was his unwavering support for constitutional supremacy. He held a deep respect for the constitution and frequently opposed any efforts to weaken it. During his time as Chief Justice, he delivered a series of judgments that emphasised the importance of constitutional governance and the rule of law.

Justice Cornelius's legacy is defined by his integrity and his dedication to legal principles and liberal values. He envisioned a form of constitutionalism that harmonised the sovereignty of Allah with the protection of fundamental rights, creating a vision that was both progressive and inclusive. His steadfast commitment to the rule of law and his determination to uphold justice have left a lasting impact on Pakistan's legal system. His legacy continues to motivate future generations of legal professionals and stands as a powerful reminder of the importance of justice and constitutional supremacy. ▮



SPOTLIGHT

# Tax Burdens Threaten Overseas Pakistanis' Investment Lifeline

**Expatriates inject billions into Pakistan's economy, yet outdated tax policies and bureaucratic hurdles risk stifling their contributions**

by ***Sarmad Mahmood Chechi***
*Advocate*
*Lahore*

Overseas Pakistanis inject over $30 billion into the economy annually, stabilising Pakistan's financial landscape through remittances, real estate, and entrepreneurial ventures. Yet, mounting concerns over restrictive tax policies threaten to deter further investment from this crucial demographic.

Despite their vital role in sustaining the economy, many expatriates find themselves burdened by bureaucratic inefficiencies and outdated tax policies under the Federal Board of Revenue (FBR). Critics argue that these obstacles undermine constitutional guarantees enshrined in Article 4 of Pakistan's Constitution, which ensures equality before the law and the right to fair treatment.

At the heart of the controversy is the FBR's enforcement of Section 7E of the Income Tax Ordinance (2001), which imposes a 1 per cent tax on the fair market value of immovable property as "deemed income." Legal experts highlight an inherent contradiction within the ordinance, as non-residents are explicitly exempt from taxation on foreign-source income. Overseas Pakistanis—many of whom own property in Pakistan that does not generate rental revenue—argue that this policy unfairly penalises them, stifling investment and economic confidence.

Stakeholders insist that aligning tax policy with the Foreign Pakistanis Foundation Act (2021), which safeguards expatriates' economic rights, is crucial. Experts advocate for an exemption from Section 7E, contending that such a measure would incentivise long-term capital inflows and uphold Pakistan's constitutional commitment to equitable treatment.

Compounding the issue are the withholding taxes under Sections 236C and 236K, which impose a levy of 2–3 per cent on property transactions. Non-residents face dual compliance hurdles, struggling to reclaim deductions amid bureaucratic delays. Simplifying validation through an NTN or a Non-Resident Tax Certificate would eliminate double taxation, align with the Income Tax Rules (2002), and restore trust in Pakistan's real estate market.

Similarly, the punitive SIM-blocking policy, intended to enforce tax compliance, disrupts communication for Overseas Pakistanis. Amending the policy to accept an NTN or a Non-Resident Affidavit as proof of exemption would bring the Federal Board of Revenue's (FBR) practices in line with the spirit of Article 19 of the Constitution, ensuring freedom of speech and access to information.

Roshan Digital Accounts (RDAs), hailed as a breakthrough for mobilising diaspora capital, have attracted $7 billion since 2020. Yet, the taxation of repatriated profits and first-time investments contradicts the State Bank of Pakistan's original pledge of tax-free repatriation. Abolishing these levies and automating profit disbursements via blockchain would boost inflows, positioning Pakistan as a competitive hub for global capital.

Meanwhile, the FBR's 60-day password reset rule exacerbates challenges for overseas filers across time zones. Extending this to 12 months and instituting a 90-day deadline for resolving audit objections—while waiving penalties for first-time errors — would bring Pakistan in line with the World Bank's Ease of Doing Business Index, fostering a climate of efficiency and fairness.

For sectors such as IT and freelancing, extending turnover-tax exemptions until 2030 and establishing Special Economic Zones (SEZs) in Lahore with zero per cent capital gains tax for foreign entities would catalyse innovation, in line with the Foreign Exchange Regulation Act (1947), which emphasises the retention of foreign investment. Meanwhile, overlapping federal and provincial taxes — including Section 4 (Normal Tax), 7E, 7F, and sales tax — deter property developers. Consolidating these into a single 10 per cent transaction tax, as proposed in

IMAGE: © The Legal

the Finance Act (2023), alongside five-year tax holidays for affordable housing projects, would stimulate growth while fulfilling constitutional obligations under Article 38, which requires the state to promote social and economic well-being.

To accelerate foreign investment, a 48-hour visa-on-arrival system and a unified digital dashboard integrating approvals from the Federal Board of Revenue (FBR), the Board of Investment (BOI), and the State Bank of Pakistan (SBP) would mirror Dubai's investor-friendly model, positioning Pakistan as a regional hub. These reforms are not mere proposals but urgent imperatives to uphold the Foreign Pakistanis Foundation Act (2021), which affirms that "the state shall safeguard the economic rights of Overseas Pakistanis and ensure their equitable treatment."

The resilience and contributions of the diaspora are unparalleled. As Dr Reza Baqir, former SBP Governor, remarked, "Our diaspora is not merely a resource; they are the architects of our resilience." Eliminating redundant taxes, modernising dispute-resolution mechanisms, and prioritising automation will transform frustration into empowerment, unlocking job creation and GDP growth. Rhetoric must translate into action — Pakistan's prosperity depends on it. ▮

## LHC's Overseas Pakistanis Cell

Lahore High Court (LHC) has been operating a dedicated Overseas Pakistanis Cell, a unique legal initiative working to safeguard the rights of millions of citizens abroad and resolve their long-standing legal issues back home.

Established within the Court, this special cell serves as a judicial bridge between the homeland and the global diaspora. It is primarily tasked with fast-tracking cases involving overseas Pakistanis, many of whom face land grabbing, inheritance disputes, and other civil or criminal complications due to their prolonged absence from Pakistan.

An introductory brief at the LHC's website outlines the cell's structure highlights its core functions: prioritising court cases of overseas complainants, facilitating legal remedies through swift judicial processes, and maintaining continuous communication with stakeholders. The initiative is also a response to the complaints frequently raised by expatriates about the inaccessibility of justice and the lack of accountability in their legal affairs.

The cell works in coordination with government agencies, police departments, and foreign missions to ensure timely updates and representation in court proceedings when the complainants themselves cannot be present.

A major innovation is the cell's use of digital and virtual systems, allowing overseas Pakistanis to file grievances and monitor their cases remotely. This is part of the wider digitalisation effort of the Pakistani judicial system, aimed at enhancing transparency and accessibility. The cell also acts as a referral point for other courts in Punjab, guiding lower judiciary members on how to handle cases involving overseas Pakistanis with urgency and care.

To further streamline justice delivery, the LHC has issued instructions to district and sessions judges to identify and mark all pending cases involving overseas Pakistanis and submit regular progress reports. This top-down judicial oversight is intended to eliminate delays, reduce procedural hurdles, and ensure that these cases are no longer pushed to the bottom of court rosters.

The cell's success is already drawing attention, with large number of cases having been resolved or expedited due to its intervention. Its proactive stance is seen as a major development in Pakistan's judicial reforms and a hopeful message to millions of Pakistanis living abroad who have long felt disconnected from the legal system at home.— ***TL Report***

GENDER EQUALITY

**Breaking Barriers:**

# Pakistan's Workplace Harassment Law and the Struggle for Gender Equality

IMAGE: © The Legal

by **Syeda Paras**
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The Women's Workplace Harassment Act 2010 safeguards women against workplace violence in Pakistan, ensuring their right to work and promoting gender equality. This article examines the Act's role in advancing women's participation in development, its alignment with international standards, and its effectiveness in preventing harassment, supporting victims, and promoting equal economic opportunities through data from global reports.

# Legal protections strengthened as Pakistan bolsters workplace harassment laws

Pakistan is a highly patriarchal society with regressive norms and socio-religious stigmas that disproportionately affect women. Given the prevalence of sexual harassment in the workplace, the Government of Pakistan has taken significant steps to address this issue, which affects many individuals, the majority of whom are women.

Gender inequality is widely regarded as a key factor contributing to workplace harassment. It restricts women's mobility, undermines their dignity, and hinders their active participation in professional environments.

According to a study, a total of 24,119 cases of violence against women were reported in Pakistan between 2008 and 2010, including 520 cases of workplace harassment. Further statistics from a Human Rights Commission of Pakistan (HRCP) report published in February 2005 reveal that 91% of women working in the domestic sector have faced harassment.

In response to these pervasive issues, the Government of Pakistan enacted the Protection Against Harassment of Women at the Workplace Act 2010, an important piece of legislation designed to provide legal protection for all employees – both male and female – and to promote equal opportunities in employment. The Act aligns with international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and International Labour Organization (ILO) Conventions No. 100 and 111.

In light of the international human rights legal framework, the right to work (Article 23 of the Universal Declaration of Human Rights) is not a single right but a set of interrelated rights and obligations essential to the pursuit of just and favourable working conditions – such as the right to remuneration, the right to human dignity, and protection against forced labour. Article 11 of CEDAW safeguards women's right to work. These conventions comprehensively address women's empowerment and gender equality.

**Amendments to the 2010 Harassment Act expand protections, tackling systemic gender inequality and upholding workplace dignity**

The statement of objects and reasons of the Act states that its objective is to create a safe working environment for both women and men, free from discrimination, abuse, or intimidation. It aims to protect individuals' right to work with dignity, while promoting higher productivity and an improved quality of life. The Act seeks to ensure the active participation of women in the country's development.

It requires organisations to adopt a code of conduct and establish a grievance redressal mechanism, including a three-member inquiry committee, at least one of whom must be a woman. An ombudsman is also to be appointed at both the federal and provincial levels. Through these measures, the Act aspires to promote equality, safety, and respect in the workplace.

The Harassment Act 2010 is a comprehensive legal framework that has offered a glimmer of hope at the end of a dark tunnel for working women in Pakistan. The law applies across the entire country. It defines harassment with a particular focus on sexual harassment, encompassing any unwelcome sexual advance, request for sexual favours, or physical conduct of a sexual nature that creates a hostile or offensive working environment. The Act establishes professional boundaries and sets standards for workplace behaviour for employees, management, and organisations.

The ambiguity in the interpretation of the word harassment made headlines in a landmark case, Nadia Naz v. President of Pakistan (C.P. 4570 of 2019). The Supreme Court of Pakistan ruled on a case filed by a Pakistan Television (PTV) employee, Nadia Naz, against a male colleague under the Harassment Act 2010. The Court held that the Act addresses conduct, behaviour, or acts of a sexual nature carried out with sexual intent, and that any demeaning act, behaviour, or attitude which violates a person's dignity or causes discrimination on the basis of gender does not fall within the scope of the Act as originally framed.

Following this, the definition of harassment was expanded in Section 2(h) to include: "any unwelcome sexual advance, request for sexual favours, or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile, or offensive work environment, or the attempt to punish the complainant for refusal to comply with such a request or making such compliance a condition for employment."

The amendment also replaced the word women with person, thereby extending protection to all genders and including domestic and part-time workers within the definition of employee.

Another major change was the expanded definition of workplace, which now includes open spaces and large geographical areas associated with work or activities conducted outside the office. The 2022 Amendment Act was a significant success, broadening the scope and reach of the harassment law.

One of the most important features of the Act is the establishment of inquiry committees and an ombudsman. Upon receiving harassment complaints, these bodies are mandated to conduct impartial investigations. Their powers include summoning witnesses, collecting evidence, and taking appropriate action against the offender. The inquiry committee is required to maintain confidentiality regarding the statements and evidence of all parties involved, thereby ensuring a safe environment for the complainant.

This provision encourages women to come forward without hesitation, as many victims of harassment remain silent due to

societal stigma and concerns about their dignity. It is also the duty of the inquiry committee to ensure that the complainant is not subjected to any coercion or pressure by the accused to withdraw the complaint.

It is vital that women are aware of the procedures set out in this Act, as well as the harassment policies of their respective organisations. Such awareness empowers them to take appropriate action and safeguards their right to equality and accountability.

The full participation of women in public life and nation-building was a central part of Muhammad Ali Jinnah's vision, the founder of Pakistan. In line with this vision, the government has taken significant steps to empower women, including the enactment of the Workplace Harassment Act 2010. The elimination of violence against women has also contributed to reducing the social stigma associated with gender discrimination.

According to UN Women's National Report 2023, improving women's access to justice is crucial not only for addressing gender inequality, discrimination, and violence, but also for promoting the country's economic development. This progress has led to an increase in the number of reported cases in recent years—cases which might previously have gone unnoticed.

The World Bank's Summary Report on the Role of Women in the Country gives Pakistan a score of 100 on the Workplace Index, which reflects the impact of the 2010 Harassment Act and other laws protecting women from gender-based violence (GBV). The report acknowledges that these laws have influenced women's decisions to participate in the labour force.

Women's involvement in the political and electoral spheres has also accelerated and continues to grow. Equal participation of women in the electoral process is essential to a functioning democracy, as it enhances both its legitimacy and effectiveness. Progress has been made in the areas of education, health, and the social and economic protection of women.

Today, women are more vocal than ever about their rights in all spheres of life and are actively challenging the barriers that limit their right to equal protection and participation in the country.

While the Protection Against Harassment of Women at the Workplace Act 2010 plays a pivotal role in addressing gender inequality and sexual harassment, several challenges remain in the path towards women claiming their rightful place in society. Critics argue that women should be trained in the workplace to handle incidents of sexual harassment, and that the government should initiate awareness campaigns through NGOs, organisations, and social media. Job security for victims must also be ensured, as the fear of losing one's job is a significant factor that discourages reporting. Continued efforts are required from legislators, policymakers, and society at large to dismantle the barriers that restrict women's roles in the workplace and beyond.

The enactment of the Harassment Act 2010, along with its subsequent amendments, marks a significant step by the Government of Pakistan towards promoting gender equality and combating workplace harassment. The Act deserves recognition for aligning with international human rights standards to foster a safe and dignified working environment for all. By redefining the term harassment and broadening the scope to include domestic and part-time workers, the legislation has extended legal protection to a wider group of individuals.

This legal progress has enabled greater participation of women in both the public and private sectors, thereby unlocking their potential and contributing to the country's economic growth and development. The law applies to all forms of employment and has profound socio-economic implications, not only for workers but also for the reputation and productivity of organisations.

Despite the progress made, the need for awareness, training, and job security for victims remains a pressing concern. Further advancement requires sustained societal and institutional efforts to empower women and close the gaps that perpetuate gender inequality in the workplace. The rise in reported harassment cases and the growing presence of women in various fields reflect the positive impact of the law. The government must continue its efforts to overcome existing barriers and achieve true gender parity in Pakistan. ■


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Case Law

***Silent Witness***

# Supreme Court Upholds Death Sentence in Noor Mukadam Murder Case

## *Top Court Declares Digital Evidence as 'Silent Witness' While Affirming Guilt of Zahir Zakir Jaffar*

IMAGE: © The Legal

***TL Report***
*Islamabad*

The Supreme Court of Pakistan upheld the death sentence of Zahir Zakir Jaffar for the brutal murder of Noor Mukadam, citing an unbroken chain of circumstantial and digital evidence, including CCTV footage and forensic reports. The Court recognised modern technology as primary evidence under the "Silent Witness" theory and emphasised the admissibility and growing role of digital forensics in criminal trials.

**Title:** *Zahir Zakir Jaffar v. The State & Others*
**Citation:** Supreme Court of Pakistan, Crl. P. No. 467/2023 et al.
**Coram:** Justice Muhammad Hashim Khan Kakar, Justice Ishtiaq Ibrahim, Justice Ali Baqar Najafi
**Date of Judgment:** 20 May 2025

**Background and Procedural History**

On 20 July 2021, the police registered FIR No. 380 at Kohsar Police Station, Islamabad, following the gruesome murder of Noor Mukadam, daughter of former diplomat Shaukat Mukadam. The incident took place at the Islamabad residence of Zahir Zakir Jaffar. A full trial followed, resulting in multiple convictions against Zahir under various sections of the Pakistan Penal Code (PPC), including Section 302(b) for murder, Section 376(1) for rape, Section 342 for wrongful confinement, and Section 364 for abduction. The trial court sentenced him to death and other prison terms. The Islamabad High Court upheld the convictions and enhanced the punishment under Section 376(1) PPC from life imprisonment to death. Zahir subsequently filed a criminal petition for leave to appeal before the Supreme Court.

**Issues for Determination**

1. Whether circumstantial evidence is sufficient to support capital punishment.
2. The admissibility and evidentiary value of CCTV footage.

IMAGE: © The Legal

3. Whether the prosecution has successfully proven guilt beyond reasonable doubt.

**Petitioner's Contentions**

Zahir's defence revolved around denial and counter-narratives. He alleged that he and Noor were in a consensual relationship and that she had arrived at his house with drugs. He claimed that he lost consciousness due to intoxication and awoke tied up, discovering that Noor had been murdered during a drug party. He attributed the prosecution's narrative to social media pressure and political interference, asserting that the state's machinery had targeted him unfairly.

His counsel, Mr. Salman Safdar, contended that the prosecution's case was solely circumstantial, lacked eyewitnesses, and that the chain of evidence failed to conclusively link Zahir to the murder beyond reasonable doubt.

**Prosecution's Position**

The prosecution, led by Mr. Shah Khawar and supported by the Prosecutor General, maintained that the case was built upon an unbroken chain of circumstantial evidence: the recovery of Noor's body from Zahir's residence, forensic reports, DNA analysis confirming rape, and authenticated CCTV footage. This chain, they argued, left no room for any alternative hypothesis.

**Court's Observations**

The Supreme Court dismissed Zahir's narrative, citing multiple incriminating factors:

- The CCTV footage showed Noor attempting to escape, being dragged and confined by the petitioner, and eventually disappearing into the house—never to be seen alive again.
- The forensic report verified the authenticity of the video, facial recognition confirmed the perpetrator as Zahir, and DNA matched confirmed sexual assault.
- The murder weapon was recovered with the victim's blood on it.

The Court affirmed that circumstantial evidence could legally form the basis of a conviction, provided it established an unbroken and exclusive chain pointing to the guilt of the accused. The Court highlighted that in capital cases, the quality of evidence must eliminate any reasonable doubt.

**Digital Evidence and the "Silent Witness" Doctrine**

The bench provided an extensive discussion on the admissibility of digital evidence, noting its evolution from secondary to primary evidence under Pakistani law, especially after the Electronic Transactions Ordinance, 2002, and the 2023 amendment to Article 164 of the Qanun-e-Shahadat Order.

The Court endorsed the "Silent Witness" theory, which allows authenticated video evidence to speak for itself without requiring an eyewitness. Referencing jurisprudence from the UK, Canada, and the US, including R v. Gubinas, R v. Nikolosvki, and United States v. Rembert, the bench held that modern technology plays a vital role in legal proceedings and that reliable CCTV footage now carries immense evidentiary value.

**Judgment and Sentencing**

The Court concluded:

1. Section 302(b) PPC – Zahir's death sentence was upheld.
2. Section 376(1) PPC – While conviction was sustained, the death sentence was reduced to life imprisonment.
3. Section 364 PPC – Conviction and sentence were set aside, and the petitioner was acquitted of abduction charges.
4. Section 342 PPC – Conviction and sentence of one-year rigorous imprisonment were upheld.

Zahir was found to have killed Noor in a brutal, premeditated manner, including decapitation and multiple injuries. The Court found no mitigating factors warranting mercy.

**Co-accused and Complainant's Petitions**

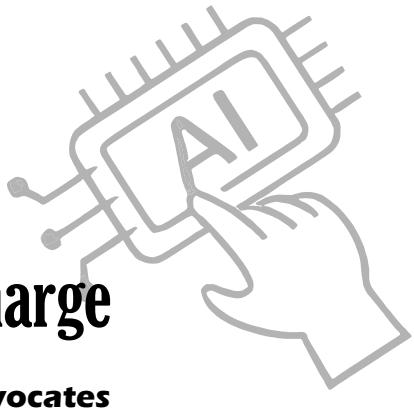
The co-accused, Muhammad Jan (cook) and Muhammad Iftikhar (guard), had their convictions maintained, but their sentences were reduced to time already served, with orders for immediate release if not required in other cases.

The complainant's petitions seeking enhancement of the sentence or challenge to acquittals were dismissed, as the Court found no reason to disturb the High Court's ruling.

**Significance and Conclusion**

This case serves as a landmark in the jurisprudence surrounding digital evidence in Pakistan. The Supreme Court not only reaffirmed the reliability of circumstantial evidence in heinous crimes but also elevated digital forensics to the realm of primary evidence under the "Silent Witness" doctrine. It sends a strong message about the legal system's adaptability to technological evolution and its uncompromising stance on gender-based violence. ▮

OPINION




# Shaping AI's Legal Future Pakistan's Young Lawyer to Take Charge

***From writing articles to organising seminars, young advocates are driving conversations on data protection, ethics, and the future of law in an AI-driven world***

by ***Itisam Ullah***
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As a young Pakistani law student, I argue that youth engagement in governing technology is vital. Tomorrow's judges, legislators, and leaders will emerge from our ranks. Without understanding emerging technologies—like artificial intelligence — we risk rendering ourselves unfit to shape sound policies for society. Ignorance today ensures incapacity tomorrow.

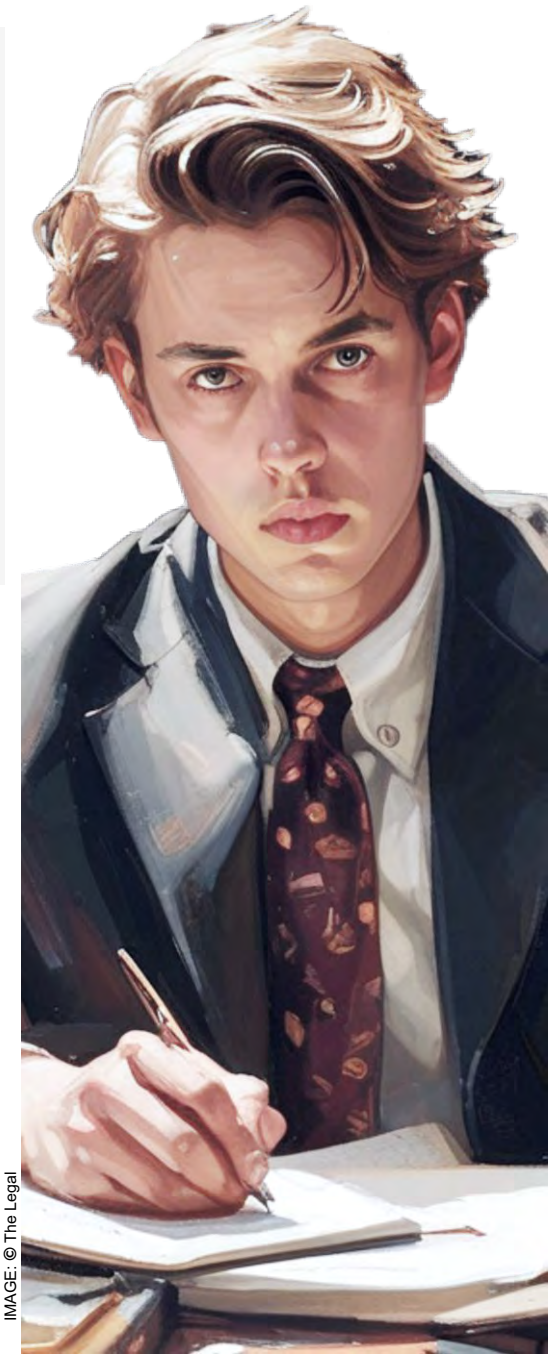

IMAGE: © The Legal

Artificial Intelligence (AI) has revolutionised modern life — reshaping how we communicate, work, and even make decisions. Yet as the technology races ahead, Pakistan's legal frameworks risk falling behind, leaving critical gaps in regulation and accountability.

In Pakistan, a sizable portion of the population is young. More than 60% of Pakistan's population is under 30, according to the United Nations Development Programme (UNDP). This implies that we, as young people, have a significant role to play in shaping the future. However, we are frequently excluded from important debates and decisions, particularly regarding legislation and policy-making.

In addition to studying rights and the law at university, we must also understand how new technologies may impact these rights. Who is accountable, for instance, if an AI system wrongly denies someone a bank loan or a job? Who bears the responsibility — the machine, the software developer, or the company? Young people should be asking such questions.

By engaging in discussions, attending seminars, publishing articles, and raising awareness among our peers and communities, we can truly make a difference. Our opinions matter.

**Pakistani Law and Technology: The Present Situation**

AI and other digital technologies are expanding rapidly in Pakistan. To educate people about AI, the government has

**As artificial intelligence reshapes industries, young voices demand stronger laws to protect rights and ensure accountability.**

launched initiatives such as the Presidential Initiative for Artificial Intelligence and Computing (PIAIC). Additionally, in 2023 and 2024, it introduced the Draft National AI Policy and the Draft Regulation of Artificial Intelligence Act, respectively.

However, several issues persist:

1. Inadequate data protection legislation – As of now, the 2020 Personal Data Protection Bill has not been enacted. This means individuals' personal information may be collected and used without their consent.
2. AI systems lack clear regulations – There is no clarity on accountability when a machine makes an error. No one is held responsible.
3. Ignorance – Most people, including students, remain unaware of how AI impacts their legal rights.

Youth can play a crucial role in addressing these challenges. We can use simple, accessible language to raise awareness. We can engage with our teachers and families, organise events, and publish blogs. People will demand stronger laws if they understand the risks.

**The Significance of Youth Participation**

1. Fresh Perspectives – Young people bring unique viewpoints. We are innovative and not constrained by outdated ideas, which is invaluable when seeking new solutions to contemporary challenges.
2. Tech-Savvy Youth – We use technology daily and are more knowledgeable than most adults about applications, websites, and digital platforms. This enables us to identify issues and propose solutions more effectively.
3. Closer to Societal Issues – As students and citizens, we encounter problems daily—whether in school admissions, online fraud, or job searching. We understand how technology affects everyday life.

By raising our voices, we can help shape fairer, more effective laws that protect everyone.

**What Can Young People Do?**

We can contribute to Pakistan's legislative and technological reforms in several ways:

1. Writing Articles – Anyone with basic writing skills can compose a short blog post or article discussing how technology is impacting people's lives. These can be shared via social media, local newspapers, and school websites.
2. Organising Events – We can arrange online conferences or small seminars within our institutions to discuss issues such as privacy, fairness, and AI regulation.
3. Community Education – Many people in smaller towns or villages are unaware of how technology affects their rights. We can engage with them in their own language and provide clear explanations of their legal protections.
4. Social Media Campaigns – With just a mobile device, we can launch awareness campaigns, using posters, videos, or concise messages to educate the public.

**Connecting with International Networks**

As a law student, I use various social networking platforms, including Facebook, LinkedIn, and Twitter.

These platforms enable young people to: Discuss Pakistan's legal and AI advancements and challenges. Learn how other nations address similar issues. Organise events for students and educators. Contribute to global reports on youth and law.

By engaging with international networks, we can both learn from others and represent Pakistan on the world stage.

**The Balance Between Rights and Innovation**

AI and digital technologies are essential for Pakistan's progress. However, fundamental rights must not be compromised for the sake of advancement. Every Pakistani citizen is entitled to freedom, equality, and privacy under Articles 8 to 28 of the Constitution. These rights must remain protected, even as technology evolves.

To achieve this, we need fair yet robust laws. A delicate balance is required — too little regulation could harm individuals, while excessive restrictions might stifle innovation. This is why youth involvement is essential. We can help lawmakers recognise both the ethical and technological dimensions of the issue.

**Real-World Examples: Where Young People Made a Difference**

Young people are already driving change in several countries:

1. In India, youth activists pressured their government to strengthen data protection laws and raised awareness about digital rights.
2. In Kenya, young lawyers launched blogs on AI and law, which were later incorporated into university curricula.
3. Across Europe, student organisations took part in open consultations regarding the EU AI Act.

These examples hold lessons for Pakistan. Our young people are talented; they simply need encouragement and platforms to amplify their voices.

**Conclusion**

Technology is reshaping the world. AI is not merely about automation — it is about people, rights, and justice. As a law student, I believe young people should not remain passive. We must lead, learn, share, and engage.

Pakistan needs informed citizens, ethical policies, and strong legislation. By advocating for justice, awareness, and accountability, young people can help build this future. If given the opportunity, I will proudly represent my country in international networks such as WAEN and strive to prepare our legal system for the AI era. Together, we can create a Pakistan where justice and technology coexist. ▮

Analysis

# Force Majeure in Global Law: Catastrophe, Contracts, and Control

**From Napoleonic codes to COVID-era courtrooms, the doctrine of force majeure continues to shape how legal systems respond to crises beyond human control**

by **Raja Abdul Ahad Janjua**
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Force majeure is a standard contractual provision excusing performance when extraordinary events beyond the parties' control prevent contractual obligations from being fulfilled. This article explores the etymology and history of force majeure, its codification across legal systems, and key cases and events. It considers civil-law (France, Germany, China) and common-law (UK, US, Asia) perspectives, as well as international instruments like CISG (The United Nations Convention on Contracts for the International Sale of Goods), UNIDROIOT (the International Institute for the Unification of Private Law) and Hague-Visby Rules. It also addresses debates on foreseeability, hardship, and force majeure's role in contemporary law.

The term force majeure—literally "superior force" in French—has long denoted events beyond human control that can excuse contractual non-performance. Its roots stretch back to 17th-century French law and even earlier Roman and medieval concepts like vis maior or casus fortuitus (acts of God). In English law, the idea can be traced to Shelley's Case (1581), though it lacked formal doctrinal structure until much later.

The first full codification came in the French Civil Code of 1804. Article 1148 provided that a debtor would not owe damages if prevented from performing due to force majeure or a fortuitous event. This language formed the basis of civil-law interpretations worldwide. Article 1218 of the current French Civil Code retains this core: events beyond the obligor's control, unforeseeable at contract formation, and unavoidable even with due care.

Civil-law systems typically codify this three-part test. For example, the Louisiana Civil Code (based on French and Spanish law) excuses liability when unforeseeable and unavoidable events make performance impossible. Quebec's Civil Code and China's Civil Code also follow this structure. Japan's Civil Code allows excuse for events not attributable to the obligor. Despite codification, courts in these systems retain discretion to interpret whether specific events meet the criteria.

For instance, Chinese courts held COVID-19 and its restrictions could qualify as force majeure, guided by the Supreme People's Court's 2020 opinion. However, courts may reject the defence if the obligor could still perform with reasonable effort. Economic hardship alone is often excluded. In the U.S., Hurricane Katrina was accepted as force majeure under Louisiana law, but failure must be truly insurmountable.

By contrast, common-law systems do not recognise force majeure unless the contract explicitly includes it. Otherwise, parties must rely on doctrines like frustration (UK) or impossibility/impracticability (U.S.). In Taylor v Caldwell (1863), a music hall lease was voided after the hall burned down; in Krell v Henry (1903), a contract for viewing the king's coronation was voided when the event was cancelled. However, these doctrines are narrowly applied and do not imply force majeure clauses.

U.S. law generally requires a specific clause. Under UCC §2-615, sellers are excused if unforeseeable events like war or embargo make performance impracticable. However, cost increases or market changes are usually insufficient. Courts closely examine whether the clause's language explicitly includes the event. For

instance, New York courts upheld force majeure for COVID-19 only when "epidemic" or "natural disaster" was explicitly listed.

International law provides harmonised guidance. Article 79 of the CISG (1980) excuses liability when non-performance results from an unforeseeable and uncontrollable impediment. UNIDROIT Principles (Article 7.1.7) similarly excuse non-performance under the same three-part test. The Vienna Convention on the Law of Treaties (1969) includes a provision for termination of treaty obligations due to unforeseen impossibility.

Trade organisations and industry clauses offer standardised lists of force majeure events. The ICC's 2020 Clause includes natural catastrophes, war, terrorism, strikes, and government action. Contracts in construction and energy sectors often specify epidemics or pandemics. During COVID-19, many parties invoked such clauses—courts examined whether "epidemic" or similar terms were included. In European Professional Club Rugby v RDA Television [2022] EWHC 50, the clause's mention of "epidemic" was key to the High Court's decision.

Typical force majeure events include hurricanes, floods, earthquakes, fires, volcanic eruptions, war, terrorism, and governmental orders like lockdowns or quarantines. For example, a contract to buy a house destroyed by a tornado would generally be excused. Man-made events such as cyberattacks or power outages may also qualify, depending on the clause's wording.

Global incidents like the Suez Canal blockage in 2021 and climate-related events have prompted debate over foreseeability. Under the Hague–Visby Rules, "acts of God" are exceptions to carrier liability. In insurance, the term is similarly defined.

U.S. courts enforce force majeure clauses by interpreting their exact language and commercial context. New York applies a strict approach, requiring the precise event be named. California takes a more liberal view if the wording is broad. If no clause exists, parties may rely on UCC §2-615 or common-law doctrines, but


IMAGE: © The Legal

only in limited situations.

English courts follow a similar path. If a contract lacks a force majeure clause, the doctrine of frustration applies narrowly. In cases like Rudolph v United Airlines (2020), a vague clause referring to "any unforeseen event" was rejected. Specificity is essential.

In the EU, domestic laws govern. French courts now apply Article 1218 for force majeure and Article 1195 for hardship (imprévision), allowing renegotiation when performance becomes excessively onerous, though not impossible. Germany's BGB §313 plays a similar role. The distinction between force majeure and hardship remains important: the former relates to impossibility, the latter to severe difficulty.

Common-law jurisdictions like Singapore adopt the English approach. In India, Section 56 of the Contract Act mirrors the frustration doctrine. In China, force majeure is statutory, and courts are guided by clear criteria. The Supreme People's Court has affirmed that COVID-19 can justify non-performance where applicable. Japan allows excuses where the obligor is not at fault, without naming force majeure explicitly.

Under the CISG and UNIDROIT rules, arbitral tribunals also apply the three-part test. International conventions such as the Montreal Convention and Hague–Visby Rules also provide force majeure or "act of God" exceptions. Across all forums, courts and arbitrators require proof that the event directly caused non-performance and could not have been mitigated.

Ultimately, force majeure reflects a balance between strict contract enforcement (pacta sunt servanda) and fairness under extraordinary circumstances. It is, above all, a tool of risk allocation. Parties are free to define the events that excuse performance, and courts usually uphold that definition. Still, some critics argue that traditional requirements—especially foreseeability—are too rigid in today's world of recurrent pandemics and climate change.

There are calls to adapt. Should chronic or long-term risks become foreseeable, how should clauses be drafted? Should force majeure extend to economic disruption, or should such cases fall under hardship doctrines? Civil-law systems like China's "three no's" rule (unforeseeable, unavoidable, insurmountable) may need greater flexibility. European scholars distinguish force majeure (objective) from hardship or frustration (subjective fairness) and continue to debate their boundaries.

Another point of contention is government action. During COVID-19, courts diverged on whether lockdowns qualified. Many required the shutdown to directly prevent—not just hinder—performance. Moreover, force majeure often requires mitigation: the non-performing party must prove it took reasonable steps to fulfil its duties.

In sum, force majeure remains a vital doctrine in both domestic and international law. Whether invoked in a courtroom or arbitral tribunal, its success depends on meeting clear criteria: the event must be beyond the parties' control, unforeseeable at the time of contracting, and so disruptive that performance becomes impossible. As global crises become more complex and frequent, clear drafting and thoughtful legal interpretation will be key to managing uncertainty. ■

MATRIMONIAL RIGHT

# Top Court Upholds Women's Dower Rights, Criticises "Patriarchal" Nikahnama Interpretations

***Ambiguous Nikahnama forms must be redesigned, and registrars better trained to prevent misinterpretations disadvantaging***

*TL Report*
*Islamabad*

In a judgment strengthening women's matrimonial rights, Pakistan's Supreme Court has overturned a controversial High Court ruling that made a wife's entitlement to property-based dower conditional upon the non-payment of cash dower by the husband.

The three-member bench, led by Justices Syed Mansoor Ali Shah, Athar Minallah, and Ageel Ahmed Abbasi, delivered a unanimous verdict restoring a wife's unconditional right to both forms of dower recorded in the Nikahnama (Islamic marriage contract), unless explicitly agreed otherwise by the couple.

**Case Background**

The dispute centred on the marriage contract between Mst. Fakhra Jabeen and Wasif Ali, executed in 2005. Their Nikahnama recorded:

- Column 13: A cash dower (Mehr) of Rs. 500,000, payable "on demand" (deferred).
- Column 16: A 10-marla plot as property-based dower.

After marital breakdown, lower courts awarded Jabeen both the cash and the plot. However, the Lahore High Court later ruled in 2021 that the Column 16 property could only be claimed if the Column 13 cash remained unpaid – interpreting the property as being "in lieu of" the cash.

**Supreme Court's Key Findings**

1. Rejection of Conditional Dower:
   The Supreme Court emphatically rejected the High Court's interpretation, declaring that entries in Columns 13 (cash dower) and 16 (property dower) are distinct and independent obligations.

"The property mentioned in Column 16 became the exclusive ownership of the wife upon execution of the Nikahnama... The High Court virtually rendered the right to dower agreed in the form of immovable property redundant," stated Justice Athar Minallah, authoring the judgment.

2. Parties' Intention Overrides Column Headings:
   Criticising "ambiguous" and "misleading" headings in the state-prescribed Nikahnama form, the Court ruled that column titles are "neither conclusive nor sacrosanct". The true intention of the spouses at the time of marriage is paramount.
3. Condemnation of Patriarchal Bias:
   The Court rebuked the High Court's assertion that Nikahnama ambiguities should favour husbands as they "bear the burden":

"Such a declaration was contrary to the fundamental principles of a marriage contract... The bride has an equal right to negotiate terms. Patriarchal tendencies place brides at a disadvantage – courts must interpret ambiguities with utmost care to prevent deprivation of their rights."

4. Validation of Evidence:
   The Court upheld concurrent findings that a certified Nikahnama copy proving Jabeen's entitlement (Ex-P.2) was genuine, while the husband's uncertified copy (Ex-D.6) showed "tampering" in Column 16.

**Wider Reforms Ordered**

Beyond the case, the Court mandated systemic reforms:

- Nikahnama Redesign: Federal and Provincial governments must revise the "vague" Nikahnama form (under the 1961 Rules) to be "user-friendly" and unambiguous.
- Registrar Accountability: Licensed Nikah Registrars must "accurately" record spouses' answers. Breaches incur fines (Rs. 25,000) or jail (up to 1 month).
- Registrar Training: Governments must ensure Registrars are qualified, trained, and audited to prevent cultural norms overriding women's legal rights.

Copies of the judgment were ordered to be sent to the Federal Cabinet Secretary and all Provincial Chief Secretaries for "immediate steps".

**Outcome**

Jabeen's appeal (C.P.L.A 768/2022) was allowed, restoring her right to both the Rs. 500,000 cash dower and the plot. The husband's petition (C.P.L.A 827/2022) was dismissed. ■

TL Event

# Coordinated Climate Adaptation Urged for Food-Water-Agriculture Nexus

***TL Report***

*Islamabad*

The National Disaster Management Authority (NDMA) and the Commission on Science and Technology for Sustainable Development in the South (COMSATS) have jointly called for intensified collaboration and strategic resource mobilisation to address the climate adaptation divide, particularly across the interconnected sectors of food, water, and agriculture.

The call came during a seminar titled "Bridging the Climate-Adaptation Divide Across the Food-Water-Agriculture Nexus", held at NDMA Headquarters to mark World Environment Day 2025. Federal Minister for Climate Change and Environment Coordination, Dr Musadik Masood Malik, attended as Chief Guest, while Lahore High Court's Justice Jawad Hassan delivered the keynote address.

The event brought together over many stakeholders, including diplomats, scientists, policymakers, and civil society leaders. Discussions emphasised equity-driven approaches to enhance climate resilience and the necessity of embedding digital climate tools, farmer-led innovation, and predictive modelling in rural development policies.

Speakers, including NDMA Chairman Lt Gen Inam Haider Malik, COMSATS Executive Director Dr Zakaria, and UNEP Country Director Dr Mushtaq Ahmed Memon, highlighted the urgency of gender-sensitive, nutrition-informed frameworks and sustainable climate finance for long-term infrastructure and ecosystem resilience in Pakistan and the broader Global South. ■



TL Images: Supplied

TL Event


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# "Children Are the Future – And the Present": Justice Shah Calls for Urgent Action at Global Congress

*TL Report*
*Madrid (Spain)*

"A child is not the property of the state or a parent. They are the future – and they will govern our planet." With these powerful words, Justice Syed Mansoor Ali Shah, Senior Puisne Judge of Pakistan's Supreme Court, set the tone for the 5th World Congress on Justice with Children, which concluded in Madrid.

Justice Shah's remarks underscored the urgency of prioritising children's rights not only as a long-term investment in humanity's future, but as a moral and legal obligation in the present. He called on global legal systems to embrace a child-centred philosophy of justice that treats children not as passive subjects of the law, but as full rights-holders deserving dignity, protection, and agency.

As Justice Shah reminded the world: protecting children's rights is not a matter for tomorrow – it is a responsibility we must embrace today. He also highlighted a paradigm shift in Pakistan's family law jurisprudence, pointing to recent Supreme Court rulings that make the "best interest of the child" a binding principle in family court proceedings – reinforcing the judiciary's commitment to a rights-based approach in child justice.

The Congress, held from June 2-4 under the theme "Advancing Child-Centred Justice: Preventing and Responding to Violence Affecting Children in Child Justice Systems", brought together judges, prosecutors, youth advocates, civil society leaders, and international institutions. Organised by the Global Initiative on Justice With Children, in partnership with UNICEF, Terre des Hommes, Penal Reform International, the IAYFJM, and others, the event served as a global platform to share strategies, legal reforms, and lived experiences in reshaping justice systems for children.

The Pakistani delegation featured prominent voices in justice reform, including Syed Farhad Ali Shah, Prosecutor General of Punjab, Rabiya Javeri Agha, Chairperson of the National Commission for Human Rights (NCHR), and Valerie Khan, GEDSI and child rights consultant, alongside representatives from Group Development Pakistan and key UN and diplomatic partners.

The three-day congress featured plenaries, interactive workshops, and child-led sessions exploring issues such as digital justice, child detention, neuroscience-informed legal practices, and responses to children in crisis settings. Delegates reaffirmed their collective commitment to ensuring justice systems uphold the dignity, safety, and voice of every child. ∎

TL Event

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## Top Judge Inspires Law Students

# Justice Begins with a Mindset, Not a Robe

*Justice Syed Mansoor Ali Shah urged future lawyers at IE Legal Clinic to embrace their role as constitutional thinkers and agents of change, stressing that true justice begins not with titles, but with bold minds committed to fairness and dignity.*

***TL Report***

*Madrid (Spain)*


TL Images: Supplied

Judges must be more than mere interpreters of the law — they must be agents of transformation, using the Constitution to expand rights, protect the vulnerable, and modernise legal systems. This was the powerful message delivered by Justice Syed Mansoor Ali Shah, Senior Pusine Judge of the Supreme Court of Pakistan, at a special session at the Legal Clinic of the IE University in Madrid early last month.

Addressing students, faculty, and invited guests, Justice Shah laid out a bold vision of judicial responsibility in the 21st century. He spoke of the judiciary's duty to advance human rights through progressive constitutional interpretation and highlighted how the right to life and dignity could serve as a foundation for addressing urgent issues like climate justice. Emphasising the need for greater access to justice, he also backed institutional innovation, including the use of alternative dispute resolution and mediation.

The event was attended by Zahoor Ahmed, Ambassador of Pakistan to Spain, and Valerie Khan, a leading expert in justice for children and GEDSI () consultant. Their presence emphasised the international significance of the themes discussed.

In a more personal appeal to students, Justice Shah encouraged them to be courageous and curious, urging them to think like philosophers while arguing like lawyers. He reminded them that the fight for justice does not begin with a formal title or courtroom robes — it begins with a mindset rooted in constitutional values and a commitment to fairness.

Casilda Cortés-Puya, Associate Professor at IE Law School and organiser of the event, praised Justice Shah's thought-provoking address, calling it a "powerful reminder of the judiciary's potential to shape a more just world." The IE Legal Clinic, she added, remains dedicated to fostering this kind of forward-thinking legal dialogue through its ongoing projects and academic work. ▮

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