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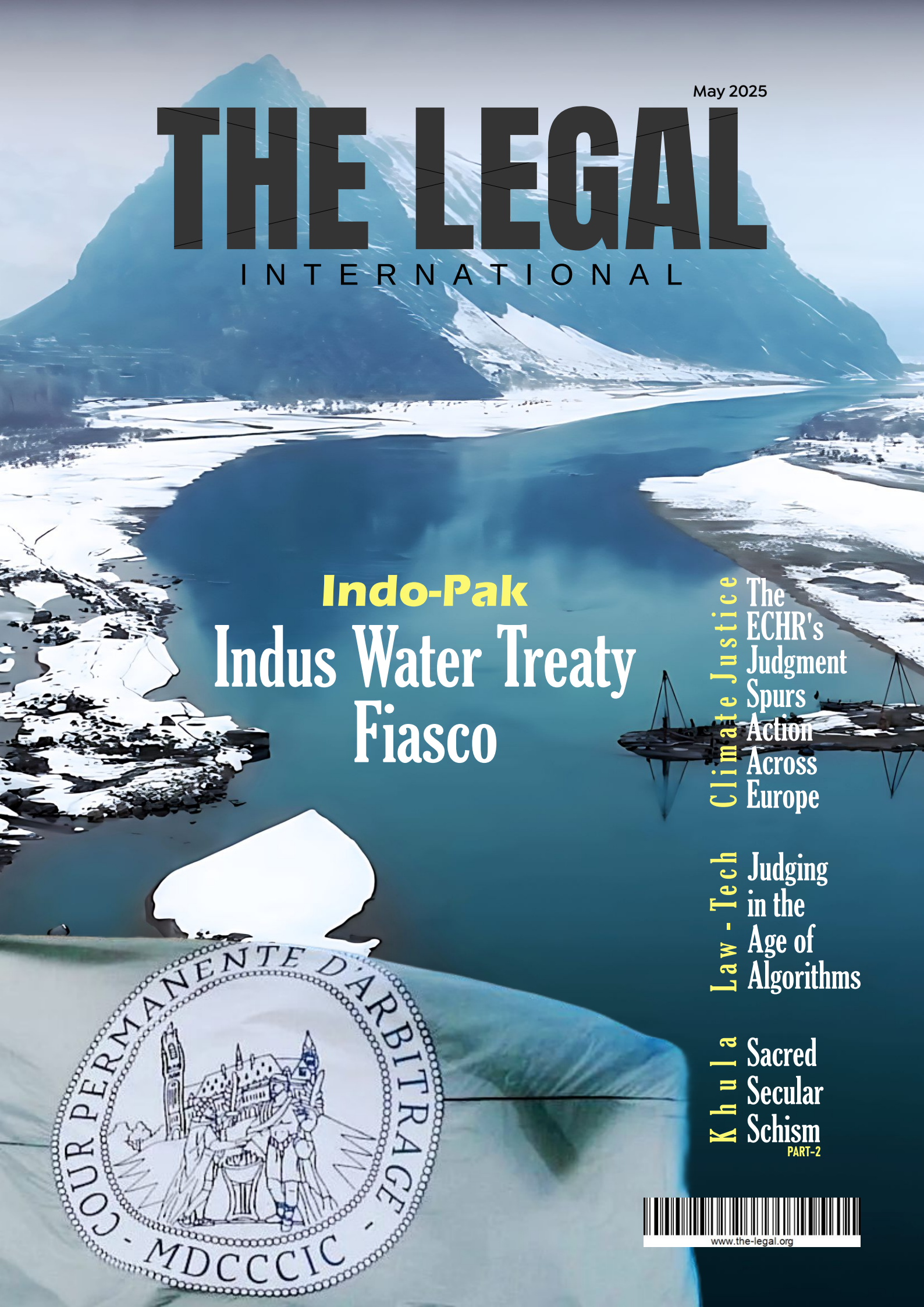

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IMAGE: © The Legal

Sacred-Secular Schism

For legislators and the judiciary to adjudicate divorce and *khula* cases effectively, a thorough comprehension of the fundamental nature of Islamic marriage is essential.

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Editor's Note

Legacies, Progress, Unity

As The Legal International marks its 12th edition, we reflect on a year of fostering dialogue, dissent, and discovery within the global legal fraternity. Next month's anniversary issue is not merely a celebration of our journey but a clarion call for collective contribution. Lawyers, researchers, and students from 70 countries — whose engagement has transformed this publication into a dynamic forum — are invited to shape this milestone edition with articles, critiques, and visions for law's evolving role in an fractured world. From Lagos to Islamabad, your insights have propelled us beyond borders, bridging jurisdictions through LinkedIn, Instagram, Facebook, WhatsApp, and our ever-evolving website. This growth, achieved without political allegiance, is a triumph of substance over sensationalism.

The current issue epitomises this ethos. 'International Law Under Siege' confronts the fraying consensus on multilateralism, while analysis of the ECHR's landmark judgment probes its ripple effects across Europe's human rights landscape. Vigian Arya's unflinching critique of the alleged nepotism and corruption in India's judiciary — a bold addition from a senior colleague — challenges institutions to reclaim integrity. Equally compelling is the second instalment of our Khula report, dissecting the tension between Sharia principles and Western legal frameworks. The plight of Muslim men and women navigating this duality demands urgent, religiously and culturally sensitive solutions. In Pakistan, our examination of judicial overreach underscores a constitutional tightrope: when courts impose rulings conflicting with an individual's fiqh, they risk eroding religious freedoms. Mediation, not coercion, must guide such delicate reconciliations.

Looking ahead, we envision a more interactive, inclusive platform. Plans for multimedia content, regional legal deep-dives, and virtual symposia aim to democratise access. Your suggestions — whether on AI's role in legal research or amplifying Global South perspectives — will steer this evolution.

Yet, our essence remains unchanged: to be a beacon for rigorous scholarship and professional solidarity. As we toast a year of growth, we urge you to join our anniversary issue — share case studies, op-eds, or reform blueprints. Let this edition mirror the diversity and dynamism of our readership.

To our readers: your curiosity fuels this enterprise. Here's to another year of legacies forged, progress realised, and unity sustained through law's boundless potential.

The Legal International thrives because of you. Let the next chapter begin.

Aftab Kazmi
Editor in Chief

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News Briefing

Privacy Battle Intensifies

Washington – A divided federal appeals court has temporarily lifted an injunction, on April 7, that barred Elon Musk and his Department of Government Efficiency (DOGE) from accessing sensitive personal data of millions of Americans.

The data, held by the Treasury and Education departments as well as the Office of Personnel Management, includes Social Security numbers, birth dates, addresses, and veterans' disability benefits.

In a 2-1 decision, the 4th US Circuit Court of Appeals stayed the March 24 ruling by US District Judge Deborah Boardman, allowing the government to continue its appeal. The Richmond-based court also narrowly voted 8-7 against a full bench review of the case.

Critics, including five labour groups led by the American Federation of Teachers and six military veterans, argue that the Trump administration violated federal privacy laws by permitting Musk's team to access this data. A dissenting judge cautioned that this decision risks unleashing a "proverbial genie out of the bottle." The legal battle underscores growing concerns over privacy and government oversight.

Civil Versus Criminal

New Delhi – The Supreme Court of India has criticised the Uttar Pradesh police for converting civil disputes into criminal cases, describing it as a "complete breakdown of rule of law. A bench comprising Chief Justice Sanjiv Khanna, along with Justices Sanjay Kumar and K.V. Vishwanathan, expressed strong disapproval of this practice on April 7.

The judges highlighted the absurdity of turning civil matters into criminal offences and stated that "merely not giving money cannot be turned into an offence." They questioned the rationale behind filing FIRs in civil cases, commenting, "Just because civil cases take long, you will file an FIR and set the criminal law in motion!"

Biological Sex Ruling

London – Judges at the UK Supreme Court have unanimously ruled, on April 16, that the definition of a woman under the 2010 Equality Act is based on biological sex. This decision concludes a lengthy legal battle with far-reaching implications for sex-based rights across Scotland, England, and Wales.

The court acknowledged the stance of the For Women Scotland, a campaign group that argued sex-based protections under the law should apply exclusively to those born female. The Scottish government had opposed this view, contending that individuals with a Gender Recognition Certificate (GRC) should be entitled to the same protections as biological women.

Lord Hodge, delivering the ruling, clarified that the words "woman" and "sex" in the Equality Act refer specifically to biological women and biological sex. He emphasised, however, that the decision should not be viewed as a victory for one group over another, stressing that existing legal protections for transgender people remain intact. These include safeguards against discrimination and harassment related to gender reassignment.

The case centred on differing interpretations of the Equality Act and whether the term "sex" aligns with the biological or legal definition. The Scottish government argued that the 2004 Gender Recognition Act established that obtaining a GRC constitutes a legal change of sex "for all purposes." Campaigners from For Women Scotland advocated for a "common sense" approach, asserting that sex is an "immutable biological state."

Following the ruling, campaigners celebrated outside the courtroom, some visibly emotional. The judgment has intensified discussions on balancing rights and protections under UK equality law.

Hungary Exits ICC

Budapest – Hungary announced its withdrawal from the International Criminal Court (ICC) on 7 February 2025, during Israeli Prime Minister Benjamin Netanyahu's controversial visit to Budapest. Prime Minister Viktor Orbán condemned the ICC as a “political tool” and declared Hungary's exit, stating the court had “lost its legitimacy”. Netanyahu, who faces an ICC arrest warrant for alleged war crimes in Gaza, lauded the move as “bold and principled”, urging other democracies to follow.

The ICC's May 2024 warrant accuses Netanyahu of responsibility for starvation tactics, mass displacement, and inhumane acts during the Gaza conflict. Despite Hungary's obligation as a Rome Statute signatory to detain him, Orbán hosted Netanyahu with a red-carpet reception at Buda Castle, deepening ties with Israel. Budapest's streets display widespread pro-Israel symbolism, including yellow ribbons on a Holocaust memorial honouring Gaza hostages.

Hungary's State Secretary Zoltan Kovacs confirmed withdrawal procedures began on 8 February, aligning with “constitutional and international obligations”.

News Briefing

Supreme Court Appointments

Islamabad – The Judicial Commission of Pakistan (JCP) has nominated Justice Aqeel Ahmed Abbasi and Justice Ali Baqir Najafi to the constitutional benches of the Supreme Court. The decision was made during Thursday's JCP meeting, chaired by Chief Justice of Pakistan (CJP) Yahya Afridi, with eight votes in favour of Justice Abbasi and seven for Justice Najafi.

The constitutional benches have grown to 15 members, following February's expansion from 8 to 13. Justice Abbasi's inclusion addresses pending tax cases.

Some members expressed concerns over procedural rules for judge nominations; they urged the establishment of proper guidelines before proceeding. Notably, Justice Mandokhail and CJP Afridi abstained from voting.

Separately, a Full Court meeting was convened to consider revising legal fees for state-appointed counsel and proposed changes to the Supreme Court Rules 2025. Discussions included recommendations from the Pakistan Bar Council regarding enrolment of former high court judges as Supreme Court advocates, along with the Asset Declaration process and the Right to Access Information.

Judges provided valuable insights, with unanimous agreement to hold further meetings to advance reforms. administer the oath.

Judge Restores AP Access

Washington – A US judge has ordered Donald Trump's administration, on April 8, to reinstate full access for Associated Press (AP) journalists to White House events, ruling that restrictions imposed over a naming dispute violated constitutional free speech protections.

The ruling by District Judge Trevor McFadden, a Trump appointee, mandates the White House to restore the news agency's access to presidential spaces, including the Oval Office and Air Force One. The decision follows AP's lawsuit alleging retaliation after it refused to adopt Trump's rebranding of the "Gulf of Mexico" as the "Gulf of America" in its reporting.

In a 41-page judgement, McFadden stated the First Amendment prohibits the government from excluding journalists based on viewpoint discrimination. "If the government opens its doors to some journalists, it cannot then shut those doors to others because of their viewpoints," he wrote.

The White House had sharply limited AP's access in February, shortly after Trump signed an executive order renaming the Gulf during his second term's inauguration. While the AP acknowledged the administration's push for the change, it continued using the traditional name, prompting the backlash.

Judicial Accountability

Islamabad – Pakistan's National Industrial Relations Commission (NIRC) sentenced three Pakistan International Airlines (PIA) officials, on April 18, to six months' imprisonment for contempt of court due to repeated non-compliance with judicial orders.

Fines of Rs50,000 were imposed on each, with additional imprisonment for failure to pay. Deputy CEO Khurram Mushtaq, Chief HR Officer Athar Hussain, and General Manager Sadiq Muhammad Lodhi were deemed ineligible for future public roles, and their financial privileges suspended.

The case arose from 17 Balochistan-based PIA employees demanding permanent employment under the Balochistan Industrial Relations Act (2010). Their 2012 regularisation ruling, upheld by the Supreme Court, was ignored for over seven years, despite ongoing court directives.

Coup Plot Charges

São Paulo – Brazil's supreme court has unanimously accepted charges against six allies of ex-president Jair Bolsonaro over an alleged coup plot following his 2022 election defeat.

Last month, Bolsonaro and seven others were charged, with the prosecutor general, Paulo Gonet, dividing the accused into five groups based on their roles. Bolsonaro and his closest allies were labelled the "core group," while the second group, reviewed on April 22, held managerial roles. This group allegedly coordinated actions such as mobilising police, monitoring authorities, and drafting a document to justify a state of emergency.

Bolsonaro denies wrongdoing, claiming political persecution. He remains hospitalised after surgery but insists his trial is politically motivated. A coup conviction carries up to 12 years in prison, but combined charges could lead to decades behind bars. Bolsonaro's trial is expected soon.

Law & Faith

هِبَة
HIBA

Islamic Gift Law: Balancing Faith and Rights

Islamic gift law (Hiba) – ensures enforceable property transfers through voluntary, unconditional ownership shifts, rooted in classical texts and modern treatises. The doctrinal clarity bridges faith and legal rigour, upheld by jurists blending courtroom advocacy with scholarly innovation to resolve contemporary disputes, reinforcing trust in Islamic law's adaptability.

by ***Muhammad Bakhsh Meskanzai***

AHC - Quetta

Well-defined legal principles under Islamic jurisprudence are reinforcing the application of hiba (gift-giving) tenets, ensuring such transfers are upheld not merely as doctrinal ideals but as legally enforceable rights in Pakistan.

A number of major decisions in Islamic law have solidified this framework, promoting legal clarity in real estate disputes and defending people's rights to divide their wealth in accordance with the law and religious principles. The system preserves donor autonomy and strengthens confidence in the irrevocability of legal gifts by harmonising theological doctrine with judicial enforcement.

A gift (hiba), according to Islamic law, is an instantaneous, unconditional, and voluntary transfer of ownership from one person to another that is carried out without any kind of payment or benefit in return. Al-Hidāyah: A Commentary on the Islamic Law (Burhān al-Dīn al-Marghīnānī, 12th century), a foundational Hanafi legal text, defines a gift as the conferral of an asset from which the beneficiary may derive benefit. It emphasises the donor's intentional intent and the lack of any contractual obligation. Dinshah Fardunji (DF) Mulla defines a gift in his work 'Principles of Mohammedan Law' as the instantaneous and gratuitous transfer of property from one party to another, as long as the donee or their legal representative duly accepts the transfer.

As per Section 149 of Muhammadan Law, three essential conditions must be fulfilled for a gift to gain legal validity under Muhammadan law. Firstly, there must be an unequivocal and unambiguous declaration of the gift by the donor. Secondly, the donee must accept the gift, either explicitly or implicitly, during the lifetime of the donor. Thirdly, as specified under Section 150, actual or constructive possession of the subject matter must be transferred to the donee. These indispensable elements collectively make sure the transaction is substantive and effective, rather than just nominal. Once these prerequisites are met, the gift becomes absolute and legally implementable.

Remarkably, Muslim law does not authorise the execution of a written instrument or registration to justify a gift, even in cases including immovable property. An oral gift, supported by conclusive evidence of the three vital requirements, is both legitimate and binding. This position is wholly implanted in Islamic jurisprudence and has been steadily upheld by the superior courts of Pakistan.

In instances where a husband bestows immovable property upon his wife, the legal framework adopts a balanced and equitable perspective. Even if the husband continues to reside in the premises or collect its rental income post-transfer, the law infers that he is acting on behalf of his wife, rather than asserting ownership. This presumption maintains the justification of the gift and implies the intimate, nature of marital relationships.

This legal concept was strongly upheld in Civil Petitions No. 552-K of 2021 and 1108-K of 2023, culminating in the landmark decision reported as PLD 2025 SC 339. The Supreme Court of Pakistan held that once a gift is concluded through declaration, acceptance, and delivery of possession, its legitimacy cannot be contested by heirs after the donor's demise unless considerable proof of fraud, force, coercion, or undue influence exists. The constant residence of the husband in the property gifted to his wife was not regarded as unjustified the transfer. The court further held that just because of the absence of documentation or registration does not sabotage a valid hiba, provided the fundamental components are met.

Moreover, under Muslim law, the principle of spes successionis —the mere anticipation or hope of inheritance — is not acknowledged. An expectant heir has no legal authority to challenge the donor's ownership rights during their lifetime. The donor retains absolute freedom to dispose of their assets as they deem fit. Any gift made voluntarily and by the law holds firm legal ground. As emphasised in PLD 2025 SC 339, if the donor consistently affirmed the gift during their lifetime through words or actions, their successors are barred from disputing it posthumously. ▮

MAJOR JUDGEMENT

No More Fixed Sentencing for Revoked Life Parolees

Taiwan's Constitutional Court Finds Fixed Sentencing a Violation of Proportionality and Personal Liberty

*by **Mei-ling** - Taipei (Taiwan)*

Taiwan's Constitutional Court has struck down fixed sentencing provisions for life-sentence parolees whose paroles are revoked, citing violations of proportionality and personal liberty enshrined in Article 8 of the Constitution.

The decision, announced on 15 March 2024 and authored by Justice Jui-Ming Huang, stems from Case No. 109-Hsien-Erh-333. The Court ruled that Articles 79-1, Paragraph 5 of the Criminal Code (as amended in 1997 and 2005), which imposed a mandatory 20 or 25-year sentence on revoked parolees, were unconstitutional. The Court has granted a two-year grace period for legislative amendments.

The provisions, introduced in response to concerns about recidivism, required that life-sentence inmates who breached parole must serve an additional fixed sentence — 20 years under the 1997 amendment (Provision I) and 25 years under the 2005 version (Provision III). Notably, the law did not differentiate between reoffending parolees and those who committed mere technical violations, such as breaches of rehabilitative orders.

The court rules that mandatory 20- and 25-year sentences for revoked life parolees breach constitutional protections, calling for proportional and individualised sentencing.

The Court's reasoning focused on the principle of proportionality, a cornerstone of Taiwan's constitutional jurisprudence. It concluded that enforcing the same fixed sentence regardless of the nature and severity of the parole violation disproportionately infringed upon individual liberty. "Criminal punishment must be the last resort," the judgment stated, adding that sentences must be tailored to individual circumstances.

A total of 36 petitions were consolidated in this case, including appeals from 35 individuals and one from the Supreme Court Criminal Panel No.1. All petitioners had been sentenced to life imprisonment, granted parole, and subsequently had their paroles revoked. Under the disputed provisions, they faced mandatory fixed terms before becoming eligible for re-parole consideration.

The Court highlighted that the revoked parolees' cases warranted nuanced evaluation. Factors such as whether the revocation stemmed from a new criminal offence or a non-criminal breach of parole conditions, the severity of the new offence, rehabilitation progress, and risk of reoffending, were deemed critical. Failure to account for these elements, the Court said, resulted in excessive punishment for certain individuals.

Justice Huang's opinion was joined by three concurring statements and three partial dissents. Justice Tsai-Chen Tsai recused herself from the case.

In response to the ruling, the Court has quashed final judgments in 11 cases and ordered their remand to the Supreme Court. For others, the Prosecutor General may file extraordinary appeals. The Supreme Court is instructed to suspend proceedings during the grace period, resuming only once legislative amendments are enacted — or applying the Constitutional Court's guidelines if the deadline passes.

The Court offered a framework for determining remaining sentences proportionately. For parolees who committed new crimes during parole, the new offence's severity will guide the remaining term—ranging from 10 to 25 years. For those whose paroles were revoked due to procedural breaches without a new offence, a 5-year term may suffice.

Inmates currently serving time under the now-invalidated provisions may challenge their sentences. Courts are instructed to pause such proceedings until amendments are in place, or to decide per the Court's judgment if the deadline is missed. However, the ruling does not allow for compensation, sentence reductions, or claims arising from prior excessive imprisonment.

The Court also addressed the legal mechanism determining which version of the law applies depending on the timing of the parole violation. It upheld the validity of Articles 7-1 and 7-2 of the Enforcement Law, rejecting claims of retroactive application and dismissal of legitimate expectations.

This historic ruling underscores Taiwan's ongoing commitment to safeguarding constitutional rights and marks a significant shift in the treatment of parole revocation for life-sentence inmates, emphasising fairness and proportionality over rigid sentencing. ■

Lawyers' Listing

*This is not an advertisement

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US Court

A Landmark 5-4 Ruling

SCOTUS Backs Injury-Linked Economic Claims Under RICO

The US Supreme Court ruled 5-4 that economic losses tied to personal injuries—like a trucker sacked after using mislabelled CBD oil—can warrant triple damages under anti-racketeering laws, broadening corporate liability despite dissenters warning of "opening litigation floodgates".

Staff Report - *Islamabad*

In a landmark 5-4 ruling, the United States Supreme Court has affirmed that individuals may seek treble damages under civil racketeering laws for economic harms linked to personal injuries, even if those losses stemmed directly from physical harm. The decision in Medical Marijuana, Inc. v. Horn, delivered on 2 April 2025, resolves a contentious legal debate over the scope of the Racketeer Influenced and Corrupt Organizations Act (RICO) and opens new avenues for plaintiffs to pursue compensation for financial losses tied to corporate misconduct.

Case Background: A Truck Driver's Ordeal

The case centred on Douglas Horn, a commercial truck driver who, after a 2012 car accident, turned to a cannabis-derived product marketed as a "natural remedy" containing zero THC—the psychoactive compound in marijuana. The product, Dixie X CBD Dew Drops Tincture, was advertised as federally compliant and safe for those subject to drug testing. However, after using it in October 2012, Horn failed a workplace drug test, costing him his job, wages, and benefits. Independent lab tests later revealed the product contained THC, contrary to its labelling.

Horn sued the manufacturers—Medical Marijuana, Inc., Dixie Holdings, and Red Dice Holdings—in 2015, alleging fraud and civil RICO violations. His case initially foundered in the Western District of New York, where a judge ruled he lacked standing under RICO because his lost earnings were deemed a consequence of personal injury, which the statute excludes. The Second Circuit Court of Appeals later revived his claim, prompting the defendants to appeal to the Supreme Court.

The Legal Question

At issue was whether RICO's provision allowing plaintiffs to sue for injuries to "business or property" (§1964(c)) extends to financial losses flowing from personal injuries. The petitioners argued that Congress intended to exclude all personal injury-related claims from RICO, thereby shielding businesses from lawsuits over physical harm. Horn's legal team countered that the statute's text does not disentangle economic losses from their origins, so long as the damages themselves—such as lost income—are quantifiable as business or property harm.

Justice Amy Coney Barrett, writing for the majority, sided with Horn. "The phrase 'injured in his business or property' does not preclude recovery for all economic harms that result from personal injuries," she asserted. The ruling affirms the Second Circuit's judgment, remanding the case for further proceedings and allowing Horn to pursue treble damages under RICO.

Divisions on the Bench

The decision exposed sharp ideological rifts. Justice Ketanji Brown Jackson concurred but emphasised statutory restraint, warning against judicial overreach. Meanwhile, dissenting justices lambasted the majority for blurring RICO's boundaries.

Justice Clarence Thomas, in a lone dissent, criticised the Court for sidestepping whether Horn's job loss constituted a "personal injury" in the first place. He argued the case was "ill-suited" to resolve the circuit split due to inadequate briefing and urged dismissal of the writ.

Justice Brett Kavanaugh, joined by Chief Justice John Roberts and Justice Samuel Alito, issued a more pointed rebuke. "RICO does not authorise personal-injury suits—period," he wrote, warning that the ruling would unleash a "flood of litigation" by conflating physical harm with economic claims. He accused the majority of disregarding statutory context and inviting "wasteful" disputes

over medical expenses and lost wages.

Implications: A New Frontier for Civil RICO Claims

Legal analysts suggest the judgment could reshape how civil RICO is applied, particularly in cases where corporate malfeasance leads to both physical and financial harm. Victims of defective products, environmental hazards, or fraudulent medical schemes may now find it easier to seek punitive damages under federal racketeering laws, even if their primary injury was physical.

However, critics fear the ruling risks stretching RICO beyond its original intent—to combat organised crime—into broader realms of tort law. "This blurs the line between traditional personal injury claims and economic fraud," said [insert expert name], a professor at [University]. "Businesses may face heightened liability, but plaintiffs gain a powerful tool to hold corporations accountable."

The Road Ahead

For Horn, the decision marks a pivotal victory after a 13-year legal battle. Yet the case's return to lower courts means further litigation looms. Medical Marijuana, Inc. and its affiliates may still contest the extent of damages or argue that Horn's due diligence was insufficient—a point hinted at in oral arguments.

Globally, the ruling may influence how other jurisdictions balance economic and personal injury claims within anti-racketeering frameworks. In the UK, for instance, similar debates surround the misuse of corporate structures to evade liability, though no direct equivalent to RICO exists.

Conclusion

Medical Marijuana, Inc. v. Horn underscores the Supreme Court's role in interpreting statutes amid evolving societal challenges. By aligning civil RICO with contemporary notions of economic harm, the majority has arguably expanded access to justice for individuals ensnared by deceptive practices. Yet, as dissenting voices caution, the decision's long-term impact will hinge on how lower courts navigate the interplay between personal injury and financial loss—a frontier where law and equity remain in tension. ■

LAW-TECH

Judging in the Age of Algorithms

by **Syed Mohammad Ali**

Technology & Crypto Lawyer
AHC - Islamabad

In a recent judgment, the Supreme Court of Pakistan explored AI's role in justice, balancing innovation with constitutional ethics. Justice Syed Mansoor Ali Shah endorsed AI for legal efficiency while stressing its limitations, including empathy and discretion. Advocating a regulated framework, the verdict marks Pakistan as a leader in AI-judiciary integration, emphasising justice's inherently human essence.

IMAGE: © The Legal

In a historic and intellectually rich judgment rendered in *Ishfaq Ahmed v. Mushtaq Ahmed* (C.P.L.A. No. 1010-L/2022), the Supreme Court of Pakistan has taken a profound step forward in exploring the potential of Artificial Intelligence (AI) in judicial systems. Authored by Justice Syed Mansoor Ali Shah, one of the most forward-thinking jurists in the Global South, the opinion doesn't merely resolve a landlord-tenant dispute — it sets a new constitutional discourse on the intersection of AI, justice, and judicial ethics.

The judgment, delivered on 13th March 2025, opens a

new chapter in Pakistan's jurisprudential history by declaring that AI can be a transformative tool for enhancing access to justice, provided it remains within ethical and constitutional boundaries. It is, in the Justice's own words, "a fit case to explore the use of AI by the judiciary in order to actualize the constitutional mandate of Articles 10A and 37(d) of the Constitution."

The Constitutional Call for Innovation

In a judicial landscape often overwhelmed by backlog and delay, Justice Mansoor Ali Shah did not shy away from recognising the systemic crisis. He warned that the current procedural model is inadequate to meet constitutional obligations of fair and expeditious justice. AI, if harnessed responsibly, can assist — not replace — judges in meeting this challenge.

Citing global developments, the judgment references tools like ChatGPT, Judge-GPT, Casetext's CARA AI, and initiatives in Colombia, China, and Singapore. Particularly notable is Pakistan's homegrown innovation, Judge-GPT, developed by the Federal Judicial Academy in collaboration with ETH Zurich and being used by nearly 1,500 judges. The tool is specifically adapted to Pakistan's legal framework — a signal that the future is no longer hypothetical but present and operational.

Justice Shah lays out a comprehensive framework, suggesting AI can aid in:

- Smart legal research,
- Precision in drafting,
- Comparative jurisprudence analysis,
- Judicial workflow optimization,

Courts embrace new AI sway, Tools like Judge-GPT lead the way. Ethics and fairness always stay, Human hearts shape justice's day.

Justice Shah hails AI, Aid to judges, not a sly spy. Efficiency's gain, empathy's tie — Justice: still a human ally.

- Ensuring consistency in precedents.

But he draws a bright red line between assistance and substitution.

"Adjudication is a constitutional function rooted in legal reasoning, institutional independence, and human empathy — qualities no automated system can replicate." — Justice Syed Mansoor Ali Shah

AI Must Remain Human-Centric

What elevates this judgment above a policy paper or a judicial endorsement of tech trends is the deeply constitutional and philosophical foundation on which it rests. Justice Shah warns against "automation bias" and reaffirms the irreplaceable role of judicial discretion:

"The courtroom is not a site for algorithmic governance but a space for reasoned, principled deliberation, attentive to both legal nuance and the lived experiences of litigants."

In many ways, this echoes my own earlier commentary that "Judges must be able to deviate from rigid legal frameworks when necessary to achieve just outcomes, a task that AI, with its programmed adherence to rules, would be ill-equipped to perform". AI may draft, summarize, or even predict — but it cannot empathize. And empathy, as Justice Shah writes, remains "the moral and emotional core" of judicial work. It is the limitations of AI that it cannot dispense justice through conscience, morality, and empathy all of which are beyond the reach of AI which operates purely on logic and data.

The judgment doesn't shy from exposing AI's darker shadows: hallucinations, lack of explainability, and embedded biases. Justice Shah calls for a rigorous, regulated framework grounded in transparency, accountability, and fairness. He references regulatory steps from the EU, UNESCO, and OECD, and calls upon Pakistan's National Judicial (Policy Making) Committee to draft AI guidelines for the judiciary.

His caution is constitutional, not Luddite. He welcomes AI, but not without guardrails. In perhaps the most powerful line of the judgment, he reminds us:

"The dignity of the judicial role lies not in the mechanical generation of outcomes, but in the deliberative process of reasoning, listening, and responding — a task that remains inherently and irreducibly human."

From the Bench to the Bar: A South Asian Leadership Moment

The judgment places Pakistan firmly on the map of AI and law discourse, alongside courts in the US, UK, Colombia, and China. For the Global South, often left reacting to rather than shaping global legal norms, this judgment is a leadership moment. And Justice Syed Mansoor Ali Shah, already respected for his progressive rulings on climate change and judicial reform, now emerges as one of the first Supreme Court judges in the world to craft a constitutional jurisprudence of AI.

As I noted in a recent article, the future of law lies not just in how we adopt AI, but how we govern its adoption. Pakistan's judiciary — under Justice Shah's pen — has taken the bold step of initiating that governance.

Conclusion: Humanity at the Core

Let us not miss the deeper message. Technology may automate processes, but justice is a human institution. The promise of AI is real. But its risks, unless carefully managed, are equally real. Pakistan's judiciary, led by voices like Justice Syed Mansoor Ali Shah, is showing the way: welcome AI — but never without the Constitution in one hand and conscience in the other.

"Judicial reasoning involves not only logic but also humanity." — Justice Syed Mansoor Ali Shah

The future of AI in courts has begun. But its success will depend not on how smart the machines are — but on how wise the humans remain. ■

AQUA WAR

IMAGE: © The Legal

Indus Water Treaty

A Legacy of Strains and the Looming Crisis

by **Irum Naqvi**
Political Scientist
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The Pahalgam incident has strained India-Pakistan treaties, especially the Indus Waters Treaty (IWT). India's allegations against Pakistan lack evidence, evoking premeditation and highlighting its intent to contravene agreements. Pakistan upholds international law, emphasising arbitration and cooperation. The Permanent Court of Arbitration favours Pakistan on India's hydroelectric projects, underlining India's breaches. This scenario threatens peace, demanding global intervention and legal enforcement.

Following the Pahalgam incident, the future of bilateral treaties between India and Pakistan is at risk, emphasising the need for an effective enforcement mechanism in international law. The fiasco has exposed an attitude of might and unilateralism that needs curbing, as it poses a grave threat to international peace, security and human rights.

It started with the allegations, without any investigation or proof, of orchestrating the terror attack of April 22, 2025 in Pahalgam (Occupied Kashmir) on Pakistan in which 25 Indians and one Nepali citizen were killed. India – which has also been facing an arbitration case on the violation of the Indus Water Treaty (IWT) at the Permanent Court of Arbitration (PCA) at The Hague – took drastic measures, including holding in abeyance the IWT. Responding to it, Pakistan, in its top security body meeting on April 24, decided that it would exercise the right to hold all bilateral agreements with India, including but not limited to the Simla Agreement, in abeyance.

The precipitous accusations from India, coupled with its drastic measures, evoke the impression of premeditation. How did India determine Pakistan's culpability in the attack, particularly in the absence of any arrests? The conspicuous absence of Indian security forces from a purportedly high-security area invites

India and Pakistan's decades-long contention over the Indus Waters Treaty underscores the fragility of shared water resources in an era of growing geopolitical tension.

IMAGE: © The Legal

further scrutiny. What emerges with clarity, however, is India's intent to extricate itself from the IWT, leveraging this contrived—or perhaps staged—incident as justification.

New Delhi has a long-standing history of contravening agreements and treaties with Pakistan. That's why the IWT is already under adjudication in the PCA. Pakistan has been levelling accusations against India, asserting that it has breached the IWT through the construction of run-of-river hydroelectric projects. In 2016, Pakistan brought the matter before the PCA. However, the protracted confrontation ultimately culminated in India's failure to achieve the desired outcome through this arbitration.

Similarly, India has breached the Simla Agreement with the occupation of Siachen Glacier in the 1980s. Subsequently, it violated the Agreement once more through the Presidential Order of August 5, 2019, unilaterally abrogating Article 370 of the Indian Constitution. This act fundamentally altered the status of the occupied territory of Jammu and Kashmir (J&K), signalling that Kashmir is no longer a bilateral matter between the two nations. The United Nations itself acknowledged the significance of the issue in the unanimous Resolution 1172, adopted by the Security Council on June 6, 1988, urging the Secretary-General to address the core dispute of the J&K between India and Pakistan.

At The Hague, India lacked any legal justification for its violation of the IWT and thus challenged the jurisdiction of the Permanent Court of Arbitration (PCA). When it does not appear to be working either India formally issued a notice to Pakistan in January 2023, seeking a renegotiation of the treaty. This marked a considerable shift in India's position, indicative of mounting frustration over what it terms Islamabad's persistent objections to Indian infrastructure projects. The move elicited international concern. In response, Pakistan reaffirmed its steadfast commitment to the Treaty, viewing it as a crucial lifeline agreement. Islamabad has consistently advocated for third-party arbitration and mediation, an approach that India has largely resisted in recent years.

The PCA issued a ruling on July 6, 2023, affirming its full competence to adjudicate the disputes raised by Pakistan concerning India's hydroelectric projects on rivers flowing into Pakistan. This decision paves the way for the arbitration proceedings to advance to the substantive phase, representing a pivotal moment in one of the world's most sensitive water-related conflicts. The final judgement of the PCA is anticipated to favour Pakistan. Disconcerted by the expected outcome, India appears to be pursuing a plan to suspend the treaty.

At the PCA, Pakistan voiced its concerns regarding India's construction of run-of-river

hydroelectric projects, notably the Kishenganga and Ratle dams, which Pakistan contends contravene the design limitations stipulated in the treaty. Contesting the PCA's jurisdiction, India argued that the matter ought to be resolved through a Neutral Expert, an alternative dispute resolution mechanism enshrined within the treaty.

The court, however, rejected all six objections raised by India, affirming its jurisdiction under Article IX and Annexure G of the IWT, provisions which permit disputes unresolved by the Permanent Indus Commission (PIC) to be escalated to arbitration. It ruled that, by ratifying the treaty, India had consented to arbitration in such circumstances, and that none of its objections were sufficient to impede the proceedings.

Although India declined to participate in the hearings, the court observed that a party's absence does not invalidate the arbitration process or the binding nature of its outcomes. In stark contrast, Pakistan actively engaged in the process, presenting both written and oral submissions in May 2023.

The PCA, an intergovernmental organisation comprising 122 contracting parties, is overseeing the arbitration. The tribunal is presided over by Professor Sean D. Murphy of the United States and includes four other distinguished legal and technical experts of international repute.

Backdrop: A History of Water-Related Strains

The IWT, brokered by the World Bank and signed in 1960, stands as one of the most comprehensive water-sharing agreements in the world. It allocates the three eastern rivers — Ravi, Beas, and Sutlej — to India, while the three western rivers — Indus, Jhelum, and Chenab — are apportioned to Pakistan. Disputes often arise when India undertakes construction projects on western tributaries, which Pakistan perceives as potentially jeopardising the flow of water into its territory.

The Kishenganga project has long been a contentious issue. In 2013, an arbitration tribunal permitted India to divert water from the Kishenganga for hydroelectric power generation, albeit with specific environmental safeguards and minimum flow conditions designed to protect Pakistan's water rights.

As legal disputes escalate and unilateral actions threaten peace, the world watches closely, knowing the stakes extend far beyond the subcontinent.

In light of these developments, it is abundantly clear that India cannot unilaterally withdraw from the IWT. Recognising this reality, India has employed the term 'held in abeyance' concerning the treaty — a phrase that holds no legal basis for its suspension or abrogation. The treaty provides no authority to either party to unilaterally amend or revoke its provisions. Indeed, both India and Pakistan entered into the agreement voluntarily, without assigning such powers to anyone. India's current position to hold the treaty 'in abeyance' thus constitutes a blatant breach and violation of the IWT.

Should India's suspension of the treaty entail the blocking or excessive utilisation of water — a measure Pakistan has characterised as 'aquatic terrorism' — such an act could also pose a grave threat to the international peace and security. The International Water Law (IWL) provides a legal framework to facilitate cooperation among nations in the management and use of shared water resources, including international rivers and lakes, with the objective of maximising benefits while minimising harm. It encompasses treaties, basin agreements, and established customary practices, all aimed at ensuring equitable and sustainable usage of water resources.

Clause 1 of Article 7 of the UN Watercourses Convention states: "Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States." Under this provision, it is unequivocal that upper riparian states are prohibited from blocking water for lower riparian states; they are permitted only to regulate water flow. If India's declaration of the treaty as 'held in abeyance' implies an intention to block water, it would constitute a direct threat to international peace and security. In such a scenario, the matter would naturally fall under the jurisdiction of the UN Security Council. This development imposes an obligation upon the Security Council and the UN Secretary-General to take cognisance of the issue, particularly as Pakistan regards such actions as tantamount to an 'act of war.'

The situation has compelled Pakistan to assert that it would resort to force should an aqua-war be imposed upon it. Nevertheless, Islamabad retains certain courses of action:

- It may present the case to the UN Security Council under Chapters VI and VII, framing it as a threat to international peace and security.
- The Office of the UN Secretary-General could be approached, as he possesses the authority to intervene under Article 99 of the UN Charter.
- Pakistan could also engage the Counter-Terrorism Committee of the UN Security Council.
- Finally, Islamabad might reach out to the P5 — the five permanent members of the UN Security Council: China, France, Russia, the United Kingdom, and the United States — for intervention.

Pakistan and India are both signatories to multinational treaties and agreements, and the obligations therein are equally binding upon them. This underscores that both nations operate within the ambit of the international legal framework. Should either party have a grievance against the other, it must seek recourse through the appropriate forum to achieve an amicable resolution. In light of the existence of such international mechanisms, India's unilateral decision constitutes a breach of international law. ■

AMENDMENT

Supreme Court Halts Indian Waqf Act Overhaul

Government bows to judicial scrutiny, suspending reforms on non-Muslim roles and property disputes, while opposition decries "assault on religious autonomy"

by ***Abdul Basit*** - *Kolkata (India)*

Following the strong legal opposition and widespread protests, India's central government made a dramatic backward move on April 17, when it promised the Supreme Court that it would not enforce controversial provisions of the Waqf (Amendment) Act, 2025. The action was taken as the court examined amendments that de-notified historic Waqf properties, permitted non-Muslims to serve on Waqf governing bodies, and challenged the authority given to local officials to settle land disputes.

The three-judge panel, presided over by Chief Justice Sanjiv Khanna, noted Solicitor General Tushar Mehta's pledge that properties already designated as Waqf (Islamic charitable endowments) would be safeguarded until the next hearing in May 2025 and that no appointments to state boards or the Central Waqf Council, including non-Muslim members, would be made. The court also halted efforts to de-notify "Waqf by user" lands, where longstanding public use, rather than formal documentation, establishes religious or charitable status.

The amendments, passed by Parliament in April 2025, ignited fierce opposition from Muslim groups and political opponents who argued they undermine the autonomy of Islamic institutions. Critics warned that permitting non-Muslims on Waqf boards could dilute religious oversight, while de-notification threatened to strip centuries-old trusts of protected status. Hindu groups, meanwhile, contested the expansion of Waqf claims, alleging misuse to encroach on non-Muslim properties.

"The government cannot rewrite history," Chief Justice Khanna remarked on April 16, questioning the logic of overturning longstanding Waqf designations. The bench also raised concerns about "Waqf by user" protections, noting many trusts lack formal records but have operated uncontested for generations.

Over 100 petitions challenging the law's constitutionality have flooded the Supreme Court, including from Congress MP Mohammad Jawed, All India Majlis-e-Ittehadul Muslimeen (AIMIM) chief Asaduddin Owaisi, and Ulema bodies like Jamiat Ulema-e-Hind. They argue the amendments violate secular principles and empower district collectors — government officers — to adjudicate Waqf disputes, creating conflicts of interest.

President Droupadi Murmu had granted assent to the Waqf (Amendment) Bill, 2025 on April 5, 2025. The legislation was passed by the Lok Sabha on April 3, 2025 and the Rajya Sabha on the very next day. The Bharatiya Janata Party (BJP)-led governments in Rajasthan, Haryana, and six other states defend the law, insisting it addresses "unauthorised" Waqf claims. Solicitor General Mehta echoed this, stating the Act followed "lakhs of representations" about villages and lands "taken as Waqf." However, the court remained sceptical, with Justice Khanna stressing that states must refrain from board appointments until a final ruling.

With the government granted a week to formally respond, the case will resume on May 5, 2025, for interim orders. The outcome could redefine the balance between religious autonomy and state oversight in India's pluralistic society. For now, the retreat offers temporary relief to critics, but the underlying tensions — between reformist governance and communal identity — remain unresolved, ensuring this legal battle is far from over. ▮

World View

International Rule of Law Under Siege

The rule of law in international law upholds justice, equality, and accountability globally. Core principles include legal supremacy, state equality, access to justice, and clear norms. Challenges include enforcement gaps, sovereignty tensions, political influence, and holding non-state actors accountable under decentralised frameworks.

by **Rola Emad**

Lawyer at The Egyptian General Petroleum Corporation
Cairo - Egypt

The international rule of law, a cornerstone of global peace and justice, is increasingly strained by clashes over state sovereignty and systemic enforcement failures. Amid escalating geopolitical tensions and the rising influence of non-state actors, strengthening multilateral institutions and fostering binding cooperation between nations are now “critical” to preserving the framework's role in addressing 21st-century challenges.

The international rule of law, establishes that all global actors — whether states, institutions, or individuals - are bound by agreed legal norms. Serving as a framework to regulate diplomacy, trade, security, and human rights, it aims to uphold order and accountability across borders.

Crucially, its function diverges sharply from domestic legal systems. Within nations, the rule of law guards against centralised power by ensuring laws are transparent, apply equally to governments and citizens, and treat individuals without bias. States, however, retain significant autonomy to shape their legal obligations. They may selectively adopt treaties, impose reservations, or reinterpret terms based on self-interest, creating a fragmented landscape where commitments vary between nations.

This flexibility — commonplace in global governance — contrasts starkly with domestic expectations of uniformity. For instance, states' ability to tailor international obligations through past conduct or declarations means treaty terms rarely apply equally, undermining the principle of legal parity central to most national systems.

The rule of law in international law is governed by several key principles that ensure justice, equality, and accountability in global governance. One of the foundational principles is the supremacy

Strengthening multilateral institutions and fostering binding cooperation between nations emerge as critical priorities to address escalating challenges in diplomacy and justice.

of law, which asserts that all states and international actors are subject to international legal norms, even when these norms conflict with national interests or sovereignty. No state is above the law, and international legal frameworks, such as treaties and conventions, bind all parties, ensuring that the rule of law applies equally across nations. This ties closely with the principle of equality before the law, which ensures that all states — regardless of their size, power, or influence — are entitled to the same legal protections. Even smaller or less powerful states have the right to have their legal interests upheld, reinforcing the idea that international law should be impartial and fair.

Another key principle is accountability and responsibility, which holds both states and individuals accountable under international law. Institutions like the International Criminal Court (ICC) play a critical role in prosecuting individuals for crimes such as genocide, war crimes, and crimes against humanity. States, too, are held accountable through international bodies like the United Nations (UN), where breaches of peace or human rights violations can lead to sanctions or other forms of intervention. The principle of access to justice ensures that both individuals and states have the right to fair trials and can access legal mechanisms, such as the International Court of Justice (ICJ) or regional human rights courts, to resolve disputes. This is crucial in ensuring that international law remains accessible and equitable for all parties involved.

International law also emphasises legality and certainty, where the rules and norms are clearly defined, offering predictability and stability in global relations. States, organisations, and individuals are expected to operate within established legal frameworks, whether through treaties, customary international law, or general legal principles recognised by the international community. This predictability is vital for the functioning of international trade and cooperation, as exemplified by multilateral agreements like those governed by the World Trade Organization (WTO). Additionally, the separation of powers and judicial review is integral to international law, ensuring that independent and impartial institutions, like the ICJ and ICC, are responsible for interpreting and enforcing legal rules, fostering a system where justice is maintained and disputes are resolved according to law.

The importance of the rule of law in international relations is underscored by its contribution to peace and security, as seen in frameworks like the UN Charter, which promotes the peaceful resolution of disputes and limits the use of force to cases of self-defence or when authorised by the UN Security Council. The rule of law also plays a pivotal role in human rights protection, where international treaties, including the Universal Declaration of Human Rights (UDHR), rely on legal frameworks to safeguard the fundamental rights of individuals across borders. Additionally, international law strengthens international trade and cooperation, where the rule of law ensures that global economic relations are conducted fairly and disputes are resolved predictably, promoting a stable international trade environment.

Despite its importance, the rule of law in international law faces several significant challenges. One major obstacle is the tension between state sovereignty and international law. States may choose to disregard international legal obligations when they perceive these obligations as infringing on their sovereignty or national interests. Furthermore, enforcement of international law is often difficult, as there is no centralised enforcement body with the power to compel compliance. Instead, international law relies on the cooperation and voluntary compliance of states, often using sanctions or military interventions as enforcement mechanisms.

Political considerations also complicate the application of international law. Powerful states may exert influence over international legal bodies or avoid being held accountable for violations, raising concerns about fairness and equality under the law. Another challenge is the increasing role of non-state actors, such as multinational corporations, NGOs, and individuals, in global affairs. Ensuring that these actors are held accountable under international law, particularly in areas like human rights and environmental protection, presents a growing challenge for legal frameworks designed to govern relations between states. ∎

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Special Report

Courting Contention – part 2

Khula Verdicts
Sacred-Secular Schism

IMAGE: © The Legal

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

Marriage, in Islamic tradition, is a sacred institution – the cornerstone of familial and societal cohesion. It upholds modesty and moral integrity, essential for a harmonious social fabric. Islam regards matrimony as a profoundly spiritual covenant, demanding meticulous care to preserve its sanctity. Sustained efforts must be made to safeguard marriages and nurture harmonious households through mutual compassion and respect between spouses.

Yet life inevitably presents challenges, and marital separation remains among the most devastating, inflicting lasting trauma on couples, children, and extended families alike. Rising divorce rates, contested *khula* proceedings, and the persistence of fractured unions risk destabilising society both ethically and economically. Transient disputes – exacerbated by unchecked anger, lingering resentments, familial interference, or petty grievances – often escalate into irreparable breakdowns. Such acrimony frequently culminates in divorce, *khula,* or toxic marital environments that inflict generational harm, leaving society to bear the collective cost.

For legislators and the judiciary to adjudicate divorce and *khula* cases effectively, a thorough comprehension of the fundamental nature of Islamic marriage is essential. This requires an examination of the obligatory preconditions *(arkan)* and formal declarations *(seeghas)* that underpin the marital bond:

- The *seeghas* (nuptial formulae) must be recited in Arabic.
- Both parties, or their appointed agents *(walis),* must demonstrate a clear intention *(qasd al-inshā)* to establish the marital contract.
- Those reciting the *seeghas* must be of sound mind *('āqil)* and adult age *(bāligh).*
- Agents officiating the *seeghas* must explicitly identify the bride and groom by name or unambiguous indication (e.g., gesturing towards them).

Once these conditions are met, the bride declares: *"Ankahtuka*

nafsī 'alal-mahril-ma'lūm" (I pledge myself to you upon the agreed dowry). The groom responds: *"Qabiltun-nikāha linafsī 'alal-mahril-ma'lūm"* (I accept the marriage for myself upon the agreed dowry).

By signing the *Nikā nāma* (marriage contract), the wife explicitly acknowledges that, under Islamic law, the unilateral right of *talāq* (divorce) rests solely with the husband. It is explained in the later half of this report. The dissolution of marriage, from the wife's side, is also permitted, but through the couple's mutual negotiation and husband's consent. It is elucidated in *Sūrat al-Baqarah (2:229),* yet regrettably, interpretations driven by personal desire often emerge through *tafsīr bil-ra'y* (speculative exegesis).

Diverse and *khula,* both are ostracised acts and a sin if not justifiable. Allah, however, permits *talaq* (divorce) in this verse saying: "unless both (husband and wife) of you fear that you would not be able to keep within the limits set by God." Similarly, He permits *khula* again saying: "If you fear you cannot maintain the bounds fixed by God, there will be no blame on either if the woman redeems herself." This permission comes with a stern warning that "do not exceed the limits of Allah, for those who exceed the bounds set by Allah are transgressors." I shall further explain this verse later but its clear that it permits two distinct acts *talaq* and *khula* while remaining within the limits set by Allah amicably. It does not deny the rights of anyone and insists upon justice – necessarily with negotiation and mutual consent.

Thus, neither statutory contract law nor Islamic jurisprudence *(fiqh)* allows the wife, her representatives, or third parties to unilaterally dissolve the marriage. A breach arises solely when mutually agreed terms are violated or when a party is deprived of their rightful entitlement – a principle upheld by both civil law and *Shari'a.* Critics argue that judicial proceedings often exhibit systemic bias. As a family court lawyer observed: "Courts act as a *sasuraal* (in-laws' household) for men, while granting women undue leniency under the guise of Western-inspired 'equality' or presumptions of husbands' inherent cruelty."

Continuing our discussion on the LHC's judgement in *Syed Shouzab Imran Kazmi vs. Syeda Iffat Bukhari and Two Others,* it is

> **"If you fear you cannot maintain the bounds fixed by God, there will be no blame on either if the woman redeems herself.**
> **– Holy Qur'an**

vital that in cases pertaining to *khula,* a specific school of Islamic jurisprudence must be taken into account – due to interpretational differences - alongside the following critical considerations:

- *Khula* represents a mutually agreed resolution to marital disputes across all Islamic schools of thought.
- This consensus, underpinned by Quranic injunctions, Hadith references, and scholarly interpretation, cannot be dismissed or overlooked.
- *Khula* is not a right afforded to women as an equivalent to *talaq.*

A judicial ruling or *ijtihad* that contravenes an individual's adherence to his *fiqh* (jurisprudence) is akin to coercing them into following another school of thought. Such an approach is inherently unconstitutional, as the Pakistani Constitution guarantees freedom of religion. Article 20(a) explicitly states: "Every citizen shall have the right to profess, practise, and propagate his religion." This is enshrined as a fundamental right, further protected under constitutional provisions: "The State shall not make any law which takes away or abridges the rights so conferred, and any law enacted in violation of this clause shall, to

IMAGE: © The Legal

the extent of such contravention, be void."

Moreover, *Shari'a* law is recognised as "the supreme law of Pakistan" under Section 3(1) of the Enforcement of Shari'ah Act, 1991. Therefore, it is a core duty of the State to uphold citizens' dignity, life, liberty, and constitutionally guaranteed rights, ensuring prompt and equitable justice through an Islamic legal framework. The current judicial approach, however, has resulted in the destabilisation of families, compelled individuals into religiously impermissible marital arrangements, and perpetuated the birth and upbringing of children deemed illegitimate under Islamic law. Such practices not only contravene constitutional mandates but also undermine the foundational principles of justice and morality enshrined in *shari'a.*

In the case of *Syed Shouzab Imran Kazmi vs. Syeda Iffat Bukhari and Two Others,* the LHC acknowledged that "not all schools of Islamic thought accept the jurisdiction of a *qazi* (judge) to dissolve a marriage on the basis of *khula* without the husband's consent." However, it subsequently made the contentious assertion that "in rendering judgment on a question of interpretation of the Qur'an, the High Court is not bound by the opinions of jurists, particularly where the plain meaning of the verse is clear."

While Pakistan's superior courts, including the Supreme Court and the Federal Shari'at Court, possess the authority to interpret Qur'an and Sunnah in legal contexts — especially when assessing the repugnancy of laws to Islamic injunctions — the LHC in this instance itself asserted that "the plain meaning of the verse is clear," thereby disregarding the established consensus of *Shari'a* scholarship. This approach constitutes *tafsīr bil-ra'y,* a practice strictly prohibited and condemned within the *Jafa'ri* school of thought.

Grand Ayatollah Naser Makarem Shirazi, a distinguish *jafa'ri fqhi* (jutrist) underscores this tension, citing a hadith from the Prophet Muhammad (peace be upon him): "Whoever interprets the Qur'an according to his own opinion has indeed invented a lie against Allah." He further references Imam Ja'far al-Sadiq (a.s.), who stated: "Whoever interprets a verse of Qur'an according to his own opinion commits *kufr* (disbelief)."

Even within *Ahle Sunnah* traditions, *tafsīr bil-ra'y* remains contentious. As noted in The Beginning and Evolution of T*afsir Bil-Ra'ay*: A Research Review (Dr Muhammad Husnain & Dr Muhammad Mohsin Ali, Al-Wifaq, Vol. 4 No. 1, 2021, p. 185), "Scholars have expressed divergent views regarding *tafsīr bil-ra'y,* with some declaring it *haram* (forbidden) and others deeming it permissible."

The LHC's judgment also conflated the roles of jurists *(fuqaha)* and *mufassireen* (Qur'anic exegetes). In *fiqh Jafa'ria* (Shia jurisprudence), the exclusive authority to interpret Qur'an rests with the Prophet (peace be upon him) and the Twelve *Masoomeen* (infallible Imams). *Jafa'ri* jurists may only elucidate meanings in accordance with the *Masoomeen's* teachings; deliberate deviation from their guidance is deemed *kufr.* They also do not express their own/personal opinion which constitutes *tafsīr bil-ra'y.* Conversely, within *Ahle Sunnah,* jurists — though not infallible — may employ hadith, tradition, and personal reasoning to interpret divine text. The personal reasoning makes divergence permissible from their interpretations, but such latitude does not extend to overriding established jurisprudential consensus *(Ijma).* By dismissing scholarly consensus and engaging in speculative interpretation, the LHC's ruling risks contravening constitutional safeguards for religious freedom (Article 20(a)).

The LHC also devoted considerable time to redundantly scrutinising the validity of *khula* within Islamic *shari'a,* with differences largely limited to procedural nuances in different schools of thoughts. Variations do,

Should the courts disregard jurists' entirely, they would have to redefine Islam and Shari'a

however, exist in other areas such as *Tafseer,* Hadith, and related principles that define the respective jurisprudences. Ignoring these differences, the high court polemically drew upon *Sunni* scholarly exegeses rather than consulting *Ja'fari* juristic interpretations. This oversight disregards the distinctive doctrinal frameworks underpinning Shia matrimonial law.

It is crucial to clarify that while the role of a court cannot be entirely dismissed, its function in such disputes should strictly be that of a mediator. The two hadiths *(khula* demanded by Jamila and Habiba) cited in the judgment illustrate that the Prophet of Islam (peace be upon him) dissolved marriages only with the mutual consent of both parties. Should the courts disregard jurists' interpretations entirely, they would effectively be compelled to redefine Islam and *Shari'a,* thereby necessitating the legislative recognition of a 'judicial *Shari'a*' through parliamentary enactment. This would, in turn, require constitutional amendments to insert the term 'judicial' before *Shari'a* — a notion that plunges the legal framework into profound ambiguity. At present, it remains unclear what the State or judiciary aims to achieve through existing laws and rulings. Are they seeking to impose Western norms on a deeply religious society, or is there another objective?

The role of the Federal Shari'at Court (FSC) also warrants scrutiny. Dr Muhammad Munir, Director-General of the Shari'ah Academy at the International Islamic University, Islamabad, notes that the FSC has upheld Pakistan's current *khula* laws. He observes that even the Council of Islamic Ideology's recommendations on *khula* only partially align with the Qur'an and Sunnah. "Contrary to this," he states, "the majority of jurists grant the husband an absolute right." This stance persists despite the *ummah* (Muslim community) being unanimous on the issue.

Maulana Qari Muhammad Hanif Jalandhari, Naazim Aala of Wafaq al-Madaris al-Arabia Pakistan, articulates the following principles:

- (a) Under the Holy Qur'an and the hadith of the Prophet (peace be upon him), *khula* is valid only when both husband and wife mutually agree and consent.
- (b) By *ijma* of the *ummah,* no court, institution, or individual is authorised to dissolve a marriage — whether through divorce or *khula* — without the husband's explicit permission. Any ruling or order issued without his consent is null and void under *Shari'a,* and the woman remains legally wedded to her husband until he grants divorce or *khula.*
- (c) A woman divorced by an institution or individual without her husband's consent remains in his *nikah* (marriage). If she enters a subsequent union under such circumstances, her second marriage is invalid, condemning her to a life of sin in this world and the hereafter. Moreover, the institutions, individuals, courts, and legislators responsible for such anti-*shari'a* rulings or laws are equally complicit in this transgression.

These assertions underscore the tension between judicial overreach and the foundational principles of Islamic jurisprudence.

Judicial *Ijtihād*

Why is the husband being stripped of his fundamental religious entitlement? To unpack this, a historical and jurisprudential examination is necessary. In the subcontinent, the earliest recorded *khula* case, as noted by Dr Munir, is *Munshi Buzul-ul-Raheem vs. Luteefutoon-Nissa (1861).* Here, the Judicial Committee of the Privy Council (British India) ruled that *khula* was impermissible without the husband's consent under Islamic law. This precedent guided subsequent rulings until 1959, when a full bench of the Lahore High Court (LHC) revisited the established jurisprudence post-Pakistan's independence.

Dr Munir described the court's revised interpretation as 'Judicial *Ijtihād'* (judge-led legal innovation). To justify this shift, the court relied on the opinion of Maulana Abul A'la Mawdudi, who diverged from the majority stance of *fuqaha,* asserting: "A wife's right to *khul' (khula)* is parallel to a man's right of *talaq.* Like the latter, the former too is unconditional. It is indeed a mockery of the *Shari'at* that we regard *khul'* as something depending either on the husband's consent or the *qazi's* verdict. The law of Islam is not responsible for the way Muslim women are being denied their rights in this regard." Mawdudi's stance reflects as an individual reinterpretation, influenced by modern egalitarian ideals incompatible with Islamic principles. This view is, in fact, a

IMAGE: © The Legal

mockery of the *Shari'a.* far from being rooted in Islamic principles, Mawdudi's commentary is actually a *tafsīr bil-ra'y,* demonstrating a superficial grasp of the issue's complexities.

In 2002, the legislature amended Section 10(4) of the Family Courts Act 1964 to facilitate summary dissolution of marriage in *khula* cases, stipulating that 'the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and also restore the husband the *Haq Mehr* [dower] received by the wife in consideration of marriage at the time of marriage.' The Islamic validity of this amendment, particularly the new provision, was challenged in *Saleem Ahmad vs. The Government of Pakistan* before the Federal Shari'at Court. The Court observed:

"With great regard and utmost respect for the scholarship, *'Taqwa'* and deep insight of the eminent *Aimma Ezam* and *Ulema kiram* this Court cannot declare any law or provision of law merely on the basis of views, verdicts and *Fatawa* issued by the honourable scholars whosoever they might be... The courts are there to dissolve [sic resolve] the disputes that arise between the parties. They can decide all type of matters including, admittedly, dissolution of marriage on certain grounds." The FSC's observation in this case remains pivotal to the ongoing debate over judicial reinterpretation versus classical jurisprudence.

This judicial activism raises critical questions, as I mentioned above, and the tension between judicial pragmatism and doctrinal fidelity remains unresolved, perpetuating legal and societal discord.

Judicial Analysis Through the Lens of Modern Legal Practice

To examine this matter through contemporary legal frameworks, it is imperative to recognise that an Islamic marriage *(Aqd al-Nikah)* is fundamentally a civil contract. Under standard contractual principles, four essential elements validate such an agreement:

1. Offer
2. Acceptance
3. Consideration
4. Legality of purpose

An Islamic Aqd al-Nikah necessarily has these elements, called *Ijab, Qubul,* and *Mahr,* and they align with Section 10 of the Contract Act 1872, which stipulates: "All agreements are contracts if made by the free consent of parties competent to contract, for a lawful consideration and object, and are not expressly declared void." Crucially, the Supreme Court of Pakistan affirmed in *Mst Khurshid Bibi vs. Baboo Muhammad Amin (PLD 1967 SC 97)* that "...marriage among Muslims is not a sacrament, but in the nature of a civil contract. Such a contract undoubtedly has spiritual and moral overtones and undertones, but legally, in essence, it remains a contract between the parties."

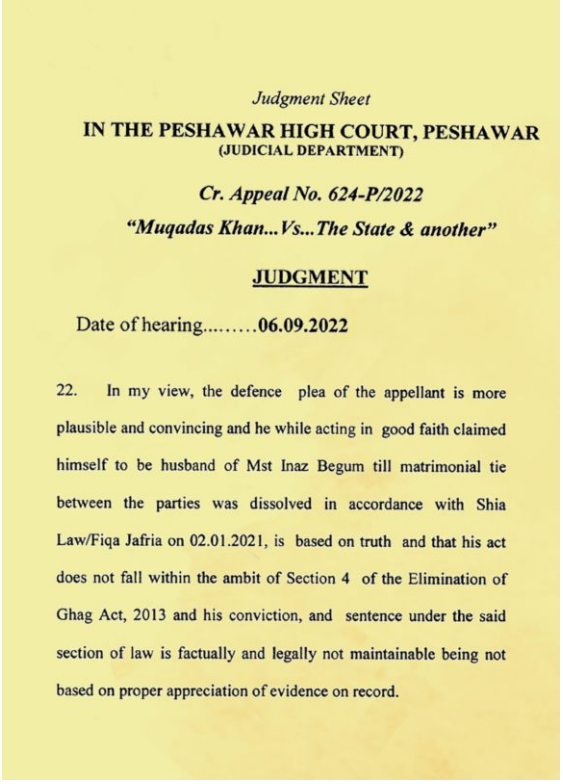
The Central Question here

Can one party unilaterally revoke a contract without the consent of the other? Under general contract law, unilateral termination constitutes a breach, as codified in Section 5 of the Contract Act 1872 which states that a proposal may be revoked at any time before its acceptance is communicated, but not afterward. This means that once a contract is formed (i.e., the offer is accepted), unilateral revocation is generally not permissible. Therefore, a wife cannot terminate Islamic marriage contract *(Nikah)* without the husband's consent.

The contractual nature of *Nikah,* however, acquires distinct dimensions under *Shari'a.* As articulated by Maulana Jalandhari: "Divorce *(talaq),* unlike *khula,* involves the termination of marital ownership or authority, rendering the other party's consent unnecessary." This reflects *Shari'a's* unique framework, where *talaq* is a unilateral right granted to the husband, rooted in religious doctrine rather than conventional contractual parity.

If *khula* is framed as a new contractual arrangement it still necessitates the husband's consent. In such a situation where a wife chooses to disobey her husband and independently proposes *Khula* by offering money or valuables and relinquishing her *Mehr,* it cannot legally bind them into a new contract without the husband's (the other party's) agreement.

While modern legal systems emphasise contractual reciprocity,



Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

Cr. Appeal No. 624-P/2022

"Muqadas Khan...Vs...The State & another"

JUDGMENT

Date of hearing.....**06.09.2022**

22. In my view, the defence plea of the appellant is more plausible and convincing and he while acting in good faith claimed himself to be husband of Mst Inaz Begum till matrimonial tie between the parties was dissolved in accordance with Shia Law/Fiqa Jafria on 02.01.2021, is based on truth and that his act does not fall within the ambit of Section 4 of the Elimination of Ghag Act, 2013 and his conviction, and sentence under the said section of law is factually and legally not maintainable being not based on proper appreciation of evidence on record.

Shari'a introduces nuanced exceptions grounded in religious jurisprudence. Judicial or legislative attempts to reinterpret *khula* as a unilateral right risk contravening both contractual law and Islamic tenets.

Consider the consequences now unfolding around us as a result of the court's rulings on *khula* cases. In a society where religious principles deeply influence familial structures, a *khula* dispute in Hangu (Khyber Pakhtunkhwa) became a flashpoint for legal and theological conflict. The case began when Maqadas Khan, a follower of *Fiqh-e-Ja'fariyya,* rejected a 2016 order from the Kohat Family Court dissolving his marriage to Inaz Begum. The *khula* had been granted without his consent, which Khan contested, asserting that Begum remained his "lawfully wedded wife" under *Ja'fari* principles. He argued that *Ja'fari* jurisprudence mandates strict procedural safeguards for marital dissolution.

The conflict escalated when, after the court-ordered *khula,* Khan allegedly obstructed Begum's remarriage through coercive threats, prompting her brother to file a criminal case under Section 4 of the Elimination of Customs of Ghag Act, 2013 (prohibiting forced marriage declarations) and Section 506 of the Pakistan

Penal Code (criminal intimidation). In June 2022, an Additional Sessions Judge in Kohat delivered a stringent verdict: Khan was sentenced to seven years' rigorous imprisonment with a Rs.500,000 fine for violating the Ghag Act, alongside a concurrent two-year term and Rs.10,000 penalty for intimidation.

Khan later appealed to the Peshawar High Court (PHC) in *Mugadas Khan v. The State and Another (2022).* The PHC upheld his argument that the marriage dissolution contravened Shia jurisprudence. Justice Shakeel Ahmad noted in his judgment that Khan had "acted in good faith, asserting himself as the lawful husband of Mst. Inaz Begum," a claim "grounded in truth" that fell outside the scope of the Ghag Act. Consequently, the PHC overturned Khan's conviction and acquitted him of all charges.

This entire fiasco could have been averted had the *khula* been adjudicated in alignment with *Ja'fari* or the mainstream Islamic jurisprudence. Thousands of such *khula* rulings are now pursued in bad faith, with critics arguing that legal frameworks and judicial decisions are not only eroding religious principles but compelling individuals to live in contravention of their faith. The gravity of the issue is underscored by a Daily Express Tribune report (2023), which revealed that 5,804 family cases were filed only in Rawalpindi's family courts between January 1 and June 30, 2023 alone, with 2,393 dissolutions formally sanctioned in this period.

Conclusion

Contrary to the common misconception, *khula* is not an inherent 'right' vested in women as Mawdudi and the court opined. Rather, it serves as a means of mutually dissolving the marriage under specific circumstances, contingent upon *shari'a* legitimate justification. Pursuing *khula* without valid grounds carries significant spiritual repercussions for women, as emphasised in Islamic teachings. The Messenger of Allah (peace be upon him) cautioned in one Hadith: "The fragrance of Paradise is forbidden to any

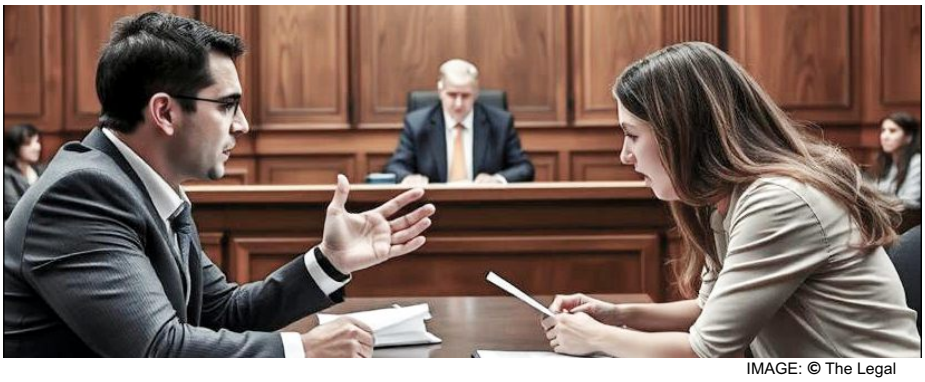


IMAGE: © The Legal

woman who seeks to divorce *(khula)* her husband without just cause." Also, various remedies are available to address instances of a husband's cruelty or mistreatment. Therefore, any judicial or legislative attempt to reframe *khula* as a unilateral right risks undermining both the contractual essence of *nikah* and the doctrinal balance enshrined in *shari'a.*

The interplay between Islamic jurisprudence and statutory law demands meticulous adherence to doctrinal principles. Judicial overreach — whether through misapplied exegesis or imported egalitarian ideals — not only erodes legal coherence but also jeopardises the sanctity of marital covenants. For Pakistan's legal system to uphold justice, it must harmonise modern statutory frameworks with the immutable tenets of *shari'a,* ensuring fidelity to both religious tradition and constitutional obligations. An amicable solution – ADR - is available. Dr Jo D Chitlik, Emory University Atlanta USA, has thoroughly explained in her research published last month in The Legal International, along with the first part of this report.

It is, thus, imperative to recognise the need to reframe the court's role in such matters as a forum for mediation, aimed at facilitating reconciliation or persuading the husband to grant his consent. Such efforts, however, must be exercised without coercion or implicit threat of judicial sanction. ■

OPINION

Judiciary in Flames

Time to Extinguish Corruption and Nepotism

A judiciary chosen by competitive exams will end nepotism, restore accountability, and uphold true justice.

by ***Vigyan Arya***

Senior Journalist
Pune - India

India's judiciary faces criticism for nepotism and lack of accountability, with over 75% of judges hailing from a few families. Advocates suggest introducing a merit-based competitive examination to dismantle elitism, ensuring transparency, fairness, and diversity. This reform promises to enhance judicial integrity, curb corruption, and rebuild public trust by prioritizing competence over inherited privilege and ending backdoor deals.

For too long, India's judiciary has operated as an exclusive club, where judges appoint their successors from a closed circle of families rather than from the most competent legal minds in the country. This undemocratic selection process has created a legal aristocracy, shielding itself from scrutiny while deciding the fate of millions. The only way to restore public trust in the judiciary is to fundamentally change how judges are appointed: through a rigorous, merit-based competitive examination, just like India's bureaucrats, doctors, and engineers.

A judiciary selected through exams will break the cycle of nepotism, bring in fresh talent, and ensure that only the most capable individuals rise to the bench. The current scandal—where stacks of cash were discovered at a judge's residence—only underscores the urgent need for this reform. This is not an isolated case but a symptom of a deeper malaise: an opaque, self-serving system that protects the privileged few while leaving justice vulnerable to corruption.

Nepotism Over Merit: A Judiciary for the Few

The judiciary is supposed to be independent, but in India, it is hereditary. More than 75% of judges come from fewer than 250 families since independence. The collegium system ensures that the power to appoint judges remains in the hands of sitting judges, who predictably favor their own circles. Unlike the civil services, where the Union Public Service Commission (UPSC) exam

IMAGE: © The Legal

ensures merit-based selection, judges are chosen without any standardized assessment of their competence, ethics, or public service orientation.

This has turned India's courts into closed-door institutions, where family networks matter more than legal acumen. A competitive exam for judicial appointments would dismantle this elitist stronghold, allowing talented legal professionals from diverse backgrounds to serve on the bench. It would bring fairness, diversity, and fresh perspectives into our courts—something the current system has failed to do.

Unaccountable and Untouchable: The Flawed Judicial System

Unlike any other institution in the country, the judiciary operates without real accountability. Judges are not required to declare their assets honestly, even though all citizens must disclose their income and taxes annually. Less than a third of judges voluntarily disclose their assets, and even those declarations lack scrutiny. Meanwhile, lawyers and insiders whisper about "deals" being struck in judges' chambers—a damning indictment of how justice is often negotiated, not delivered.

If judges were selected through competitive exams, this entitlement would end. Young, deserving legal minds would replace those who have inherited their positions. The presence of candidates from varied social and professional backgrounds would strengthen accountability and challenge the culture of unchecked power.

The Supreme Court's Role: Investigating Its Own

The latest scandal—where cash was found in a judge's house—only exposes another structural flaw. Instead of an independent probe, the Supreme Court of India has appointed a panel of three judges to investigate the matter. The judiciary is acting as both the investigator and the judge—raising serious concerns about impartiality. This pattern has been seen before: judges protecting their own, ensuring minimal consequences for wrongdoing.

A judiciary selected through open, transparent exams would not just bring fresh talent but also instill a stronger sense of accountability. Judges who rise through merit rather than connections will be less likely to protect a corrupt system.

A Competitive Exam: The Only Way Forward

The appointment of judges must be transformed into a process that reflects true democracy and fairness. A merit-based judicial exam—similar to the UPSC for civil servants—would ensure that judges are chosen based on intellect, integrity, and legal expertise, not nepotism. This would result in:

- A diverse and representative judiciary rather than a hereditary institution.
- Higher standards of integrity, ensuring judges are accountable from the start.
- Increased public trust, as appointments would be transparent and based on merit.
- Elimination of backdoor deals, as selection would be based on examination, not influence.

Conclusion: End the Judicial Aristocracy

Indian judiciary cannot continue to operate like a family-run enterprise. Justice must be upheld by individuals who have proven their competence, not by those who inherit their robes. The recent scandal is a wake-up call, but the real solution is not just outrage—it is reform. If India is to have a truly fair judiciary, it must abandon the collegium system and embrace a merit-based selection process. Anything less is a betrayal of democracy.

It's time for change. The question is: will we allow the flames of corruption to keep burning, or will we build a judiciary that stands strong, untarnished, and accountable? ▮

Climate Justice

A Year On:

The ECHR's Judgment Spurs Action Across Europe

IMAGE: © The Legal

The ECHR's historic ruling against Switzerland for inadequate climate policies has driven widespread legal and political reform across Europe. However, progress remains uneven, as nations balance judicial mandates, urgent climate action, and political resistance in transforming their strategies.

by **Emilia Meier**

Lausanne - Switzerland

"The judgment validated our belief that climate justice is human justice

A year after the European Court of Human Rights (ECHR) delivered a historic judgment in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, European governments are navigating a transformed legal and political landscape. While some governments have accelerated legislative reforms, the overall progress remains uneven and often mired in political resistance.

The ruling, which found Switzerland in violation of human rights due to its inadequate climate policies, marked the first time the ECHR linked state climate inaction to breaches of the European Convention on Human Rights. As activists celebrate the anniversary, scrutiny turns to how nations have adjusted their strategies to meet the court's demands for urgent, science-aligned action.

The case, brought by a group of Swiss senior women arguing that heatwaves exacerbated by climate change threatened their health and lives, set a precedent with global resonance. The ECHR ruled that Switzerland's failure to meet its emissions reduction targets violated Article 8 of the Convention, which guarantees the right to respect for private and family life. Crucially, the judgment obliged all 46 Council of Europe member states — not just Switzerland — to ensure their climate policies are sufficiently "concrete and timely" to protect citizens' rights.

As the respondent state, Switzerland faced the most immediate pressure to act. The Federal Council, Switzerland's executive body, swiftly proposed revisions to its Climate Act in June 2023, pledging to achieve net-zero emissions by 2050 and strengthen its 2030 target to cut greenhouse gases by 50% compared to 1990 levels. The Federal Council, at its meeting on 29 January, 2025, has approved Switzerland's new reduction target in greenhouse gas emissions under the Paris Agreement.

However, climate campaigners argue the measures lack ambition. "Switzerland is still not aligning its targets with the 1.5°C threshold," says Elisabeth Stern, a member of KlimaSeniorinnen. The group highlights that the country's per capita emissions remain among Europe's highest, driven by transport and financial sector investments in fossil fuels.

In a symbolic move, Bern had announced plans to phase out fossil fuel subsidies by 2025 and allocated CHF 3.2 billion (£2.8 billion) to renewable energy infrastructure. Yet legal experts warn that without enforceable deadlines, Switzerland risks further litigation.

Beyond Switzerland

The ruling's influence has reverberated beyond Swiss borders, emboldening activists and shaping policy debates.

The European Union

The EU, though not a direct party to the case, has cited the judgment to justify accelerating its Fit for 55 package, which aims to cut emissions by 55% by 2030. In March 2024, the European Parliament approved stricter methane regulations and a contentious Nature Restoration Law, despite opposition from agricultural lobbies.

Critically, the European Commission is drafting guidelines urging member states to integrate climate vulnerability assessments into human rights frameworks. "This ruling compels us to view climate policy through a rights-based lens," said EU Climate Commissioner

IMAGE: © The Legal

Wopke Hoekstra.

National Initiatives

- Germany updated its Climate Action Law in January 2024, setting binding annual emission reduction targets for sectors like housing and transport. The Constitutional Court cited the ECHR ruling in dismissing a challenge by industry groups, stating that "the state's duty to protect life prevails over economic interests."
- France passed legislation mandating climate risk disclosures in corporate governance, while its Supreme Court ordered the government to revise its carbon budget by June 2024 to ensure compatibility with the Paris Agreement.
- The Netherlands, home to the landmark *Urgenda Foundation v. State of the Netherlands case,* doubled funding for renewable energy projects and announced a phase-out of gas heating in homes by 2035.
- Nordic nations have led in linking climate and rights: Sweden's parliament passed a Climate Democracy Act in December 2023, requiring local councils to involve citizens in climate planning.

Legal Reforms and Rights-Based Litigation

The ECHR verdict has catalysed a wave of rights-based climate lawsuits. In the UK, the High Court referenced the ruling in February 2024 when permitting a case against the government's revised net-zero strategy to proceed. Similarly, Portuguese youths are leveraging the judgment in their pending case against 32 European states.

National courts are increasingly mandating stricter oversight. Spain, for instance, established a Climate Accountability Commission in November 2023 to audit progress, while Italy's Senate approved a constitutional amendment recognising the right to a healthy environment — a move activists call "long overdue."

Cities and regions have emerged as laboratories for innovation. Over 200 European cities, including Barcelona and Glasgow, have adopted "climate emergency" declarations paired with local carbon budgets. In Switzerland, Zurich's regional government has pioneered a climate tax on high-emission vehicles, redirecting revenue to public transport.

Civil society groups report surging membership since the ruling. "The judgment validated our belief that climate justice is human justice," said Clara Bicalho of Climate Action Network Europe.

Challenges and Backlash

IMAGE: © The Legal

Over 200 European cities, including Barcelona and Glasgow, have adopted "climate emergency" declarations paired with local carbon budgets.

Despite advances, obstacles persist. Poland and Hungary have resisted EU-wide climate measures, citing economic costs, while Greece and Bulgaria face criticism for expanding fossil fuel infrastructure. The agricultural sector remains a flashpoint, with farmers' protests in France and Germany slowing emissions reforms.

Industry pushback is also mounting. Lobbyists for airlines and manufacturers have challenged stricter emissions regulations, arguing they threaten competitiveness. "Governments are walking a tightrope between legal obligations and political realities," noted political analyst Matteo Colombo.

The Road Ahead

As nations brace for the ECHR's upcoming rulings on similar cases against France and Norway, the KlimaSeniorinnen precedent looms large. Legal scholars stress that compliance will require not just policy tweaks but systemic shifts.

"States can no longer hide behind vague promises," said Corina Heri, a human rights lawyer. "The court has set a floor, not a ceiling, for climate action."

For the KlimaSeniorinnen, the fight continues. "We won the battle, but the war is far from over," said co-plaintiff Rosmarie Wydler-Wälti. "Our grandchildren's future depends on what happens next."

The legal and policy advances have been signalling a growing recognition of governments' duties. The pace of change, however, lags behind scientific imperatives. As temperatures rise and elections loom, the true test will be whether states can convert judicial mandates into transformative action —before the next heatwave strikes. ■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TL Event

Climate Action Through Law:

Pakistani Judges, Lawyers Urged to Spearhead Climate Justice

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Staff Report

Islamabad

Legal experts at an Islamabad roundtable urged Pakistan's judiciary and lawyers to lead climate action through education and advocacy. Organised by SDPI and IHCBA, the event highlighted Pakistan's pioneering climate jurisprudence and courts' role in enforcing environmental rights. Speakers stressed integrating climate awareness into legal training, leveraging the judiciary's influence for equitable solutions, and fostering global collaboration to address the borderless climate crisis.

Legal professionals in Pakistan must spearhead climate action through proactive mediation, education, and judicial reform, experts asserted during a roundtable discussion organised by the Sustainable Development Policy Institute (SDPI) and the Islamabad High Court Bar Association (IHCBA) on 26 April.

Titled "Bridging the Climate Gap: Mediation and Climate-Conscious Lawyering", the event brought together judges, legal scholars, policymakers, and international delegates to explore the judiciary's evolving role in addressing the climate crisis. Moderated by Barrister Sarah Kazmi of the International Bar Council, the dialogue underscored Pakistan's emerging leadership in climate jurisprudence and the urgent need for legal frameworks to adapt.

Dr Abid Qaiyum Suleri, SDPI Executive Director, opened the session by highlighting his organisation's decades-long advocacy for public rights and its strategic partnership with Pakistan's judiciary. “In an era of rapid technological advancement and artificial intelligence, the judiciary must redefine its role to meet contemporary challenges,” he remarked.

Lahore High Court's Justice Jawad Hassan lauded Pakistan's trailblazing strides in climate litigation, noting that the country's courts have established globally recognised legal precedents. “Pakistan is the first nation to issue binding judgments mandating climate mitigation and mediation,” he said, referencing the 26th Constitutional Amendment's recognition of climate rights. He urged greater public awareness and stricter penalties for parties refusing mediation to foster a “less adversarial” justice system.

Romina Khurshid Alam, the Prime Minister's Coordinator on Climate Change, stressed the universality of the crisis. “Climate change transcends borders, impacting every nation and sector. Lawyers and judges hold the keys to equitable solutions,” she asserted, calling for enhanced climate education within legal curricula.

International perspectives were provided by Justice Sufiyan Rana and Judge Ghazan Mahmood from England and Wales, who contrasted Pakistan's rapid adoption of mediation practices with the UK's post-Woolf Reform mandate. “Pakistani courts have delivered over 15 landmark rulings promoting mandatory mediation in just one year—a remarkable pace,” noted Judge Mahmood.

IHCBA President Syed Wajid Ali Gillani hailed the discussions as a “watershed moment” for collaboration, urging the legal fraternity to “transform into a force for environmental justice.”

The roundtable concluded with a resolve to integrate climate-conscious practices into legal training and policy, positioning Pakistan's judiciary at the forefront of global climate action. ▮

TL Images: Supplied

JUDGEMENT

National Accountability Bureau

Single Judges for NAB Petitions

Critical precedent affirms the procedural hierarchy for NAB-related cases. Court dismantles unjust conventions, upholds litigants' rights to appeal.

IMAGE: Courtesy LHC

Staff Report

Islamabad

Lahore High Court, Rawalpindi Bench, has ruled that constitutional petitions involving the National Accountability Bureau (NAB) must be adjudicated by a Single Judge, rather than a Division Bench. The judgment, given by Justices Jawad Hassan and Tariq Mahmood Bajwa, dismantled entrenched practices of assigning NAB-related petitions to Division Benches, citing a lack of statutory basis and the risk of infringing litigants' appeal rights.

The case, brought forth by petitioners Aamir Nawaz Minhas and others under Article 199 of Pakistan's Constitution, sought judicial intervention to address NAB's alleged delays and procedural irregularities. While challenging NAB's institutional practices, the court also reaffirmed the primacy of procedural fairness and constitutional rights.

Central to the ruling was the Registrar's Office's adherence to a convention of assigning NAB-related petitions to Division Benches, which the court deemed incompatible with Lahore High Court Rules and Orders. Rule 1 explicitly mandates that constitutional petitions be heard by Single Judges unless specified otherwise by law or directive. By bypassing this principle, the Registrar's Office risked creating "remediless" scenarios for litigants, contrary to Articles 4 and 10A of the Constitution.

The court further examined the National Accountability Ordinance (NAO) 1999, highlighting Section 32, which limits Division Benches to hearing appeals against final judgments. Precedents cited in the ruling reinforced the established practice of Single Judges adjudicating NAB matters, barring exceptional appellate jurisdiction.

The order referenced multiple precedents where Single Judges adjudicated NAB-related writ petitions, reinforcing procedural norms. For instance:

- In AZGARD NINE LIMITED vs REGISTRAR OF COMPANIES (2022 CLD 114), a Single Judge issued a writ of mandamus directing regulatory compliance after NAB concluded its inquiry.
- PGP CONSORTIUM LTD. vs SECP (2020 CLD 541) saw a Single Judge approving settlements contingent on financial safeguards for NAB's interests.
- AL-ARABIA SUGAR MILLS LTD vs SECP (2020 CLD 748) involved a Single Judge ordering the registration of financial charges after NAB clarified its stance.

Directives issued as part of the judgment included reassigning the current petition to a Single Judge, ensuring meticulous categorisation of future cases, and disseminating the judgment across High Court benches to standardise practices. The ruling is expected to influence future jurisprudence concerning NAB proceedings and procedural norms in the judiciary.

By unequivocally prioritising statutory and constitutional mandates over institutional conventions, Lahore High Court's decision fortifies access to justice, setting a critical precedent for procedural integrity in Pakistan's judicial system. ■

The court further examined the National Accountability Ordinance (NAO) 1999, which limits Division Benches to hearing appeals against final judgments.

TL Event

Inspiring Legal Insights

Staff Report

Islamabad

Islamabad Bar Association (IBA) hosted an insightful lecture titled "Opportunities in the Legal Profession: Navigating Modern Challenges" for its member legal professionals on April 19, 2025. The event aimed to deepen attendees' understanding of legal ethics, practice principles, and contemporary trends shaping the field.

Syed Ahmad Hassan Shah, a distinguished Advocate of the Supreme Court of Pakistan, delivered the keynote address at the Judicial Complex, drawing over 200 legal practitioners and students.

Ch Naeem Ali Gujjar, President of the IBA, inaugurated the session, applauding Shah's expertise: "Hosting a jurist of his calibre is an honour. His visionary outlook reinvigorates our shared aspirations." He further underscored Shah's "unrivalled contributions to judicial reforms and mentorship, which remain pivotal to Pakistan's legal evolution."

Attendees lauded Shah's practical guidance on burgeoning areas such as digital law and international arbitration, particularly his advocacy for ethical rigour and adaptability. Post-event dialogues highlighted the lecture's transformative impact, with junior advocates dubbing it "a roadmap to thriving in a dynamic profession." ∎

IMAGE: © The Legal

IMAGE: © The Legal

SPOTLIGHT

Empowering Taxpayers

Federal Tax Ombudsman

Advances Accountability and Efficiency in Pakistan

The FTO addresses maladministration, resolves disputes across industries, and ensures tax fairness. Created under strong legal frameworks, the FTO's actions have improved tax administration, secured cash recoveries, and driven reforms that enhance trust in Pakistan's economic landscape.

by **Adil Nawaz**
Law Student - Peshawar

The Federal Tax Ombudsman (FTO), established by the FTO Ordinance, plays a pivotal role in safeguarding taxpayer rights and ensuring accountability within the Federal Board of Revenue (FBR), fostering an environment conducive to economic growth by efficiently resolving industry complaints.

Over time, the FTO has significantly reinforced the principles of accountability and transparency within the tax system, providing taxpayers with a crucial mechanism to seek justice. Its role is to rectify injustices faced by taxpayers and to ensure that tax authorities adhere to fair practices.

Legal Framework and Empowerment

The creation of the FTO under the Federal Tax Ombudsman Ordinance of 2000 is a significant legislative action that empowers the FTO to investigate complaints, make recommendations, and support good governance in tax administration. The FTO operates within a robust legislative framework that includes the following laws:

- The Federal Ombudsmen Institutional Reforms Act of 2013 authorises the FTO to operate independently of the executive branch by granting financial and administrative authority. This autonomy is essential to preserving the FTO's objectivity and efficacy.
- The Investigation and Disposal of Complaints Regulations of 2001 set forth protocols for investigating and handling complaints. These regulations ensure the FTO's ability to conduct thorough investigations and promptly address taxpayer complaints.

Section 9 of the Federal Tax Ombudsman Ordinance, 2000, permits the FTO to investigate complaints of maladministration by federal tax authorities, including federal excise duties, sales tax, customs duties, and income tax.

Function and Jurisdiction

The Federal Tax Ombudsman (FTO) has authority over complaints pertaining to a range of federal taxes, including federal excise duties, sales taxes, customs duties, and income taxes. Taxpayers can file complaints with the FTO if they feel wronged by the acts or inactions of FBR officials. The FTO is authorised to conduct comprehensive investigations into complaints, guaranteeing the protection of taxpayer rights and prompt resolution of any cases of maladministration. The FTO's efficacy in resolving taxpayer issues is demonstrated by the 1,934 complaints it resolved out of 2,236 in 2022 alone. Substantial cash recoveries amounting to millions of rupees, as a result of incorrect or unfair tax assessments, have also been made possible by the FTO's decisions.

Jurisdiction in Different Sectors

Numerous important economic sectors are under the purview of the FTO, each with its own set of tax-related issues.

Safeguarding taxpayer rights, the FTO ensures fair practices, enhancing trust and fostering economic growth.

The Agriculture Sector:

Pakistan's economy is largely based on the agricultural sector, which employs a significant percentage of the workforce and contributes substantially to the GDP. Tax-related concerns in this industry frequently centre on disputes over tax assessments, refund delays, and tax law compliance. To ensure that tax authorities follow fair procedures, the FTO offers a forum for resolving these complaints. The FTO has intervened on multiple occasions to help settle disputes involving overdue tax refunds and inaccurate assessments, providing much-needed respite to farmers and agricultural enterprises.

Sector of Information Technology (IT)

Pakistan's IT industry has rapidly expanded, playing a key role in the nation's economic progress. The industry benefits from various tax breaks designed to encourage technological advancement and export-focused growth. However, IT firms frequently face issues such as delays in processing tax exemptions and disputes over incentive eligibility. The FTO is responsible for investigating complaints related to these matters, ensuring tax authorities adhere to the guidelines, and that the industry receives the intended benefits.

Tourism Sector

Pakistan's tourism industry is burgeoning, with significant potential to boost the country's economy. The FTO handles complaints from businesses such as hotels, tour operators, and travel agents within this sector. Frequent issues include tax assessment disputes and reimbursement delays, which can hinder the growth of tourism-related enterprises. By providing a means to resolve these problems, the FTO contributes to improving the business climate and promotes investment and growth in the tourism industry.

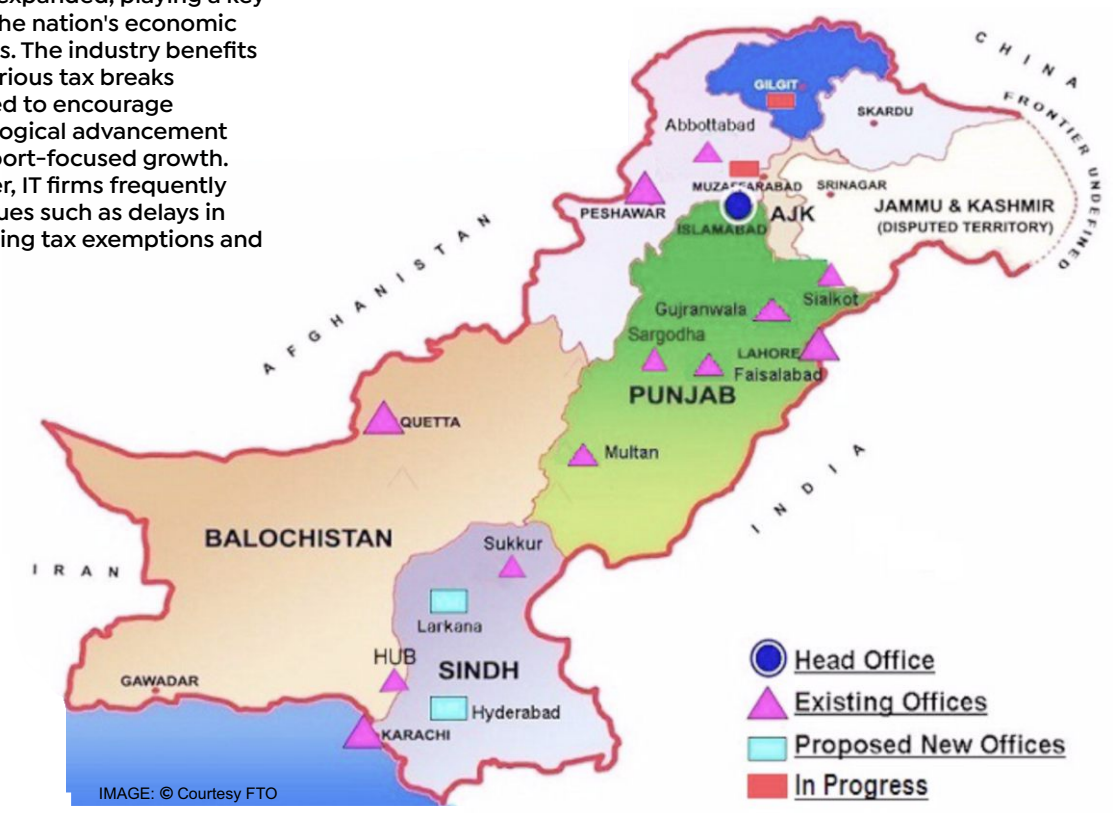
Services Sector

A significant portion of Pakistan's GDP is derived from the services industry, which includes sectors like banking, finance, healthcare, and education. The FTO's role is crucial in ensuring that the complex array of tax laws applicable to this sector are enforced fairly and efficiently. The FTO addresses a wide range of issues in the services industry, such as disputes over tax assessments, compliance with tax regulations, and delays in receiving tax refunds. By holding tax authorities accountable, the FTO contributes to overall economic stability by ensuring the smooth operation of the services sector.

Effect on the Administration of Taxation

Pakistan's tax administration landscape has improved significantly due to the efforts of the FTO. It has resolved many taxpayer complaints, and as a result, multiple representations by the FBR against the FTO's rulings have been rejected. This demonstrates the FTO's power and effectiveness in protecting taxpayer rights despite bureaucratic resistance. According to the 2023 FTO Newsletter, the institution's recommendations have led the FBR to implement several reforms, such as expediting tax refund procedures and reducing procedural delays. The FTO's actions have promoted an accountability culture within the FBR, leading to better practices in tax administration and collection. The rising number of taxpayers seeking the FTO's assistance, with over 60% of complaints related to income tax, further illustrates its impact. ■

FTO Offices



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- CHLOROPHYL X4 WHEAT GRASS

NO Artificial Ingrediants, Chemicals
Color Additives, Preservatives

SCAN ME

BOOST IMMUNE SYSTEM - SKIN NOURISHMENT - IMPROVE DIGESTIVE SYSTEM - FIGHT DIABETES - PROTECTS LIVER

Moringa is its super immune-boosting powers. Maintaining a healthy immune system is essential for helping our bodies stave off infections and illnesses.This is due to Vitamin A and Iron present in it. Moringa contains natural antibacterial, antifungal and antiviral compounds that protect the skin from infections. It also helps in healing bites, burns, viral warts,and wounds. It is a rich source of calcium (24.7% NRV) and contains 24% fibre which contributes to the normal function of digestive enzymes. This will improve the digestionsystem of the human body. The compounds called isothiocyanates that are present in moringa have also beentied to natural protection against diabetes. Moringa protects the liver against damage caused by anti-tubercular drugs and can quicken its repair process. Moringa is use to alleviate headaches. Moreover it ease constipation, stimulate the immune system, promote weight loss, and increase libido Additionally