

November 2024

# THE LEGAL

INTERNATIONAL

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**Defection Clause  
Verdict**

**Killing  
the spirit of  
party-based  
democracy**

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**Power Play**

**Executive takes the  
reins of judiciary**

**26th  
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NOVEMBER, 2024 \_ VOL. 01 \_ NO. 06

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12, April 1973, President ZA Bhutto, signing the newly approved constitution, along with Fazal Ilahi Chaudhry, Speaker of the National Assembly.

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INTERNATIONAL

PAKISTAN'S FIRST FULLY DEDICATED DIGITAL MAGAZINE FOR GLOBAL LAW RESEARCH AND DEVELOPMENT

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# The Holy Quran

## A Universal Code of Life

Quran is revered by Muslims worldwide, serving not just as a religious text but as a comprehensive guide for living. Its timeless and universally applicable teachings offer profound wisdom for humanity.

At its core, the Quran promotes justice, compassion, and integrity, encouraging followers to embody these principles in all aspects of life. Its guidance spans social, economic, and ethical dimensions, creating a holistic framework for existence.

A vital tenet of the Quran is the prioritization of knowledge, advocating for continuous learning and self-reflection. This fosters societies that value wisdom and understanding. Additionally, it strongly supports social justice, calling for the protection of the vulnerable and equitable treatment of all, essential for creating a fair society.

The Quran also promotes economic equity, condemning exploitation and advocating for honest trade, aiming to establish a balanced and ethical economic system. Furthermore, it emphasizes ethical conduct, highlighting the importance of honesty, kindness, and respect in interactions, which nurture community harmony and trust.

The relevance of the Quran extends beyond the Muslim community; its universal principles can guide anyone toward a righteous and fulfilling life. By embracing these teachings, individuals contribute to a more just and compassionate world.

In summary, the Quran is a timeless guide that illuminates the path to personal fulfillment and societal well-being. Its wisdom can lead to a harmonious and prosperous existence for all humanity. ■

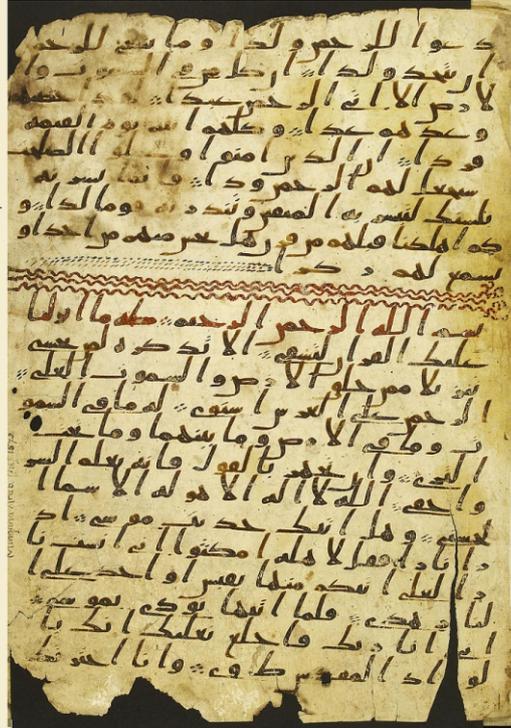


IMAGE: COURTESY Muslimmemo.com

دَعَا لِلرَّحْمَنِ وَلَدَا (٩١) وَمَا يَنْبَغِي لِلرَّحْمَنِ  
 أَنْ يَتَّخِذَ وَلَدًا (٩٢) إِنَّ كُلَّ مَنْ فِي السَّمَاوَاتِ وَأَ  
 لْأَرْضِ إِلَّا آتَى الرَّحْمَنِ عَبْدًا (٩٣) لَقَدْ أَحْصَاهُمْ  
 وَعَدَّهُمْ عَدًّا (٩٤) وَكَلَّمَهُمْ آيَاتِهِ يَوْمَ الْقِيَامَةِ  
 فَرَبًّا (٩٥) إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ  
 سَيَجْعَلُ لَهُمُ الرَّحْمَنُ وُدًّا (٩٦) فَإِنَّمَا يَتَسَوَّاهُ  
 بِلِسَانِكَ لِنُبَشِّرَ بِهِ الْمُتَّقِينَ وَنَتَذَرُ بِهِ قَوْمًا لُدًّا (٩٧) وَ  
 كَمْ أَهْلَكْنَا قَبْلَهُمْ مِنْ قَرْنٍ هَلْ تُحْسِنُ مِنْهُمْ مِنْ أَحَدٍ أَوْ  
 تَسْمَعُ لَهُمْ رِكْرًا (٩٨) =====  
 بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ \* طه (١) مَا أَنْزَلْنَا  
 عَلَيْكَ الْقُرْآنَ لِتَشْقَى (٢) إِلَّا تَذَكَّرَ لَعَلَّ يَخْفَى (٣)  
 تَنْزِيلًا مِمَّنْ خَلَقَ الْأَرْضَ وَالسَّمَاوَاتِ الْعُلَى (٤)  
 الرَّحْمَنُ عَلَى الْعَرْشِ اسْتَوَى (٥) لَهُ مَا فِي السَّمَاوَاتِ  
 وَمَا فِي الْأَرْضِ وَمَا بَيْنَهُمَا وَمَا تَحْتَ  
 الثَّرَى (٦) وَإِنْ تَجَهَّرَ بِالْقَوْلِ فَإِنَّهُ يَعْلَمُ السِّرَّ  
 وَأَخْفَى (٧) اللَّهُ لَا إِلَهَ إِلَّا هُوَ لَهُ الْأَسْمَاءُ  
 الْحُسْنَى (٨) وَهَلْ أَتَاكَ حَدِيثُ مُوسَى (٩) إِذْ  
 رَأَى نَارًا فَقَالَ لِأَهْلِهِ امْكُثُوا إِنِّي آنَسْتُ نَارًا  
 لَا تَأْكُلُ مِنْهَا وَقَدْ أُفْتِيَ مِنْهَا بِقَسْوَى (١٠) فَلَمَّا أَتَاهَا نُودِيَ يَا مُوسَى (١١)  
 إِنِّي أَنَا رَبُّكَ فَاقْلَعُ نَعْلَيْكَ إِنَّكَ بِنَارٍ  
 لَوَّادٍ الْمُقَدَّسِ طَوَى (١٢) وَأَنَا اخْتَرْتُكَ

سورة طه رقم: ٩١ - ٩٨ ~ سورة طه ١ - ١٣

تفقيها: محمد بن شمس الدين

In July 2015, the University of Birmingham announced the discovery of what is believed to be one of the oldest surviving copies of the Quran. Radiocarbon dating, conducted at the University of Oxford, revealed that the parchment folios are approximately 1,370 years old.

Two leaves of the manuscript have been widely exhibited in the UK and internationally. The manuscript had been stored since the 1930s in the vaults of the Cadbury Research Library at the university. Written in Hijazi script, an early form of Arabic, it contains portions of the chapters 18, 19, and 20. University experts have dated the manuscript to between 568 AD and 645 AD.

The 'Birmingham manuscript' is also said to match 16 pages held at the Bibliothèque Nationale de France, suggesting they may originate from the same manuscript. The origin of the manuscript remains under research and investigation. Jamal bin Huwareib, Managing Director of the Mohammed bin Rashid Al Maktoum Foundation, has also claimed that there is evidence that the manuscript was commissioned by Abu Bakr, the first Caliph, for Egypt's oldest mosque, Amr ibn Al-As, in Fustat.

Experts assert that while the manuscript is among the oldest, it is neither the oldest nor the only one of its kind. Nonetheless, it is believed that this manuscript may have been written during the Prophet's lifetime. The Quran, as it exists today, was compiled by the 3rd Caliph Uthman ibn Affan after 653 AD, with previously compiled copies being destroyed under his directive. ■



### Atta Rauf wins SCBA elections

**ISLAMABAD** – In a closely contested election, Mian Muhammed Raof Atta of the Asma Jahangir Group (Independent) has emerged victorious as the president of the Supreme Court Bar Association (SCBA), defeating Munir Ahmed Kakar of the Hamid Khan Group (Professionals).

Salman Mansoor, candidate of Professionals Group for the position of secretary, has also won the seat with quite a high margin against his opponent.

Atta, reportedly having political affiliation with Jamiat Ulama-e-Islam-F (JUI-F), secured 1,270 votes, while Kakar garnered 1,155. The Professionals managed to clinch victories only in Karachi and Quetta. At the time of filing this report, the Independent Group was leading in 14 out of 17 positions, with the Professional Group maintaining a lead in three seats.

The Independent Group, which has consistently supported the current federal government on key issues, did not oppose the 26th Constitutional Amendment and currently holds the majority in the Pakistan Bar Council. In contrast, the Professional Group remains staunchly opposed to the 26th Constitutional Amendment.

### Diyat amount raised

**ISLAMABAD** – The government has announced a significant increase in the *Diyat* (blood money) amount, raising it to Rs. 81,03,955 for the current fiscal year, marking an unprecedented 56 percent hike.

The Federal Finance Ministry issued a notification early last month, stating that the new *Diyat* amount has been effective since 1st July 2024. Previously, the amount stood at Rs. 67,57,902, reflecting an increase of Rs. 13,46,053.

This adjustment aligns with the new price of silver, as *Diyat* represents the compensation payable to victims or their legal heirs in cases of murder, homicide, or injury under the Islamic Law. Its value corresponds to 30,630 grams of silver, as stipulated under Sub-Section 2 of Section 323 of the Pakistan Penal Code (PPC) of 1860. The ministry attributed the increase to the rise in silver prices over the past year.

### Supreme Court's fake hearing

**NEW DELHI** – In a sophisticated scam, Indian textile magnate SP Oswal has been swindled out of \$830,000 through a fraudulent Supreme Court hearing.

The 82-year-old Oswal, chairman of the \$1.1 billion Vardhman Group, which boasts a global presence in over 75 countries, fell victim to an unprecedented con in the northern state of Punjab. While digital and online frauds are becoming more common in India, a senior police official noted that duping someone with a fake Supreme Court session is unheard of. Police have launched an investigation.

Oswal recounted that fraudsters masquerading as federal investigators implicated him in a supposed money laundering case. They orchestrated an online court hearing with an individual impersonating India's Chief Justice DY Chandrachud, compelling Oswal to deposit his funds into a designated account as part of the sham investigation.

"They conducted a Skype call regarding the court hearing... and under a fake Supreme Court directive, I was ordered to transfer funds into a secret supervision account," Oswal tolled to the police.

### Hereditary job quota

**ISLAMABAD** – In a landmark ruling, the Supreme Court has quashed the government's job quota scheme for relatives of low-grade employees, branding it discriminatory and unconstitutional.

The verdict, delivered by a three-judge bench led by Chief Justice Mr Justice Qazi Faez Isa, overturns an April 13, 2021 decision by the Peshawar High Court (PHC) in favour of Mohammad Jalal. The controversial quota allowed the appointment of a widow/widower, spouse, or child of a civil servant, bypassing the standard procedures of open advertisement, competition, and merit.

"These jobs neither are nor can be made hereditary, the order stated, adding that the constitution stipulated that equal employment and economic opportunities must be provided to all citizens," said the supreme court order. The court ruled that any law, policy, or rule falling foul of constitutional commands, being retrogressive in nature, or discriminatory among citizens is subject to judicial review.

It overruled the PHC decision, declaring that any law permitting the appointment of a civil servant's widow, widower, spouse, or child upon the death, permanent disability, invalidation, or incapacity of the civil servant, is "discriminatory and ultra vires" to Articles 3, 4, 5(2), 18, 25(1), and 27 of the Constitution. Federal and provincial authorities have been ordered to revoke such laws, though the judgment will not affect current employees appointed under the hereditary quota, nor will it impact the employment and compensation packages for the heirs of law enforcement personnel and civil servants who died in terrorist attacks.

## Pakistan's legal team

**ISLAMABAD** – Pakistan has assembled an international legal team to defend itself in an arbitration case filed by Iran over delays in the Iran–Pakistan gas pipeline project. To bolster its defence, Pakistan has enlisted three law firms – White & Case, Three Crowns, and Wilkie Farr & Gallagher – along with a prominent Australia-based barrister renowned for his expertise in oil and gas infrastructure litigation.

Details of Pakistan's legal team were submitted to the arbitration court's secretariat in Paris on 18 October 2024. The IP gas pipeline project, which has been stalled since 2014 due to proposed US sanctions, has faced delays extending over a decade. The case follows a final notice issued by Iran to Pakistan in August 2024. A decision is anticipated within a year once the arbitration court is fully established.

### Case pendency

**ISLAMABAD** – Approximately 60,000 cases are currently pending before the Supreme Court of Pakistan, as the apex court embarks on a new case management plan aimed at reducing the backlog.

The figures were disclosed during the Full Court Session on 28 October. Chief Justice Yahya Afridi chaired the session, with all judges in attendance, including Justice Syed Mansoor Ali Shah, who participated via video link from Saudi Arabia. According to the court's registrar, a total of 59,191 cases are pending. To address this, a newly devised one-month plan, based on the Case Management Plan 2023 prepared by Justice Shah, has been launched. The plan involves setting clear standards and leveraging IT to manage all categories of cases effectively.

Progress will be reviewed at the next meeting, scheduled for December 2, 2024.

## Police Challans Submission

**LAHORE** – Lahore High Court has directed Punjab Police to expedite submission of investigation reports (*challans*) in pending criminal cases. This directive follows a revelation that the backlog of such reports had been slashed from 380,294 to 20,979.

Police also presented a detailed report on the submission of *Challans* under Section 173 of the CrPC to Chief Justice Aalia Neelum. The report highlighted several factors causing delay, unidentified accused individuals, changes in investigations, and pending forensic analyses.

## Staggering pendency in Punjab

**LAHORE** – A staggering backlog of over one million cases awaits resolution at the Lahore High Court (LHC) and the district judiciary of Punjab, as disclosed in an official statement issued by the LHC on October 8.

An audit, commissioned by Chief Justice Aalia Neelum, has laid bare the extent of the judicial delay. The interim findings indicate that approximately 103,000 cases remain unresolved within the LHC. Notably, 65,975 of these cases pertain to the principal seat in Lahore, encompassing 11,836 civil cases, 25,312 criminal cases, 26,175 writ petitions, and 2,652 commercial and tax disputes.

Additionally, the report highlights a significant number of pending cases across other benches: 9,703 in Bahawalpur, 22,675 in Multan, and 5,343 in Rawalpindi.

The district judiciary's backlog paints an even grimmer picture, with over 1.4 million cases in limbo, including 1.19 million civil cases and 217,000 session cases.

Moreover, the Lahore High Court is grappling with a shortage of 24 judges, with only 36 of the sanctioned 60 positions currently filled.

## Agricultural Tax

**ISLAMABAD** – Federal Finance Minister Muhammad Aurangzeb has announced plans for a provincial agricultural income tax. Provinces have been instructed to draft and enact the necessary legislation by January next year.

Tax collection will commence in July 2025, marking the start of the new fiscal year. According to the Federal Finance Minister, this agricultural tax is being introduced under the conditions set by the International Monetary Fund (IMF). Speaking to the daily Express News, he said the government was compelled to adopt measures long overdue for the past seven decades. The exemption threshold for income will be set at Rs. 600,000, similar to other sectors, to provide relief to small farmers.

## Contempt of court

**ISLAMABAD** – Pakistan Tehreek-e-Insaf (PTI) has filed a contempt of court petition against the Election Commission of Pakistan (ECP) for not implementing a decision on reserved seats.

Submitted on October 28 by PTI's legal representative Barrister Salman Akram Raja, the petition names the ECP members as respondents. It demands immediate enforcement of the reserved seats decision and calls for contempt proceedings against the commission members for their inaction.

The petition also requests the court to ensure all parties comply with the ruling. The Supreme Court had ruled, on July 12, that PTI qualifies as a parliamentary party and is eligible to get reserved seats.

## Rights for vulnerable groups

**ISLAMABAD** – The Supreme Court has reaffirmed the need to safeguard the inheritance rights of society's most vulnerable members, including women.

In a case heard on October 2, the court imposed a fine of Rs300,000 on the petitioner, Tanveer Sarfaraz Khan, for submitting a frivolous petition and resorting to dishonest tactics. The petitioner was instructed to pay this sum to his sisters, who had been deprived of their rightful inheritance.



IMAGE: © THE LEGAL

**Syed Mohammad Ali, AHC**

*Blockchain and Technology Lawyer*

In the digital age, artificial intelligence (AI) has become a powerful catalyst for economic transformation across various sectors. From healthcare to finance, AI's ability to analyse large data-sets has introduced efficiencies, improved decision-making, and enhanced service delivery. These advancements come with growing concerns about data privacy. As AI systems rely heavily on vast amounts of personal data, the protection of this information has become essential for fostering trust and promoting the responsible use of AI.

As AI continues to shape the global economy, Pakistan stands at a crossroads. By enacting strong data privacy regulations, the country can unlock full potential of AI technologies while ensuring personal data protection. We shall explore the current challenges in Pakistan's data privacy regulations and examine successful models such as the UAE's regulatory framework, proposing a roadmap for reforms.

#### **Data Privacy Challenges in Pakistan's AI Landscape**

Pakistan's legal landscape concerning data privacy is largely shaped by fragmented and outdated laws that fail to address the complexities introduced by AI. The Prevention of Electronic Crimes Act 2016 (PECA), while significant in curbing cyber-crimes, does not adequately cover data privacy in the context of AI's expansive data requirements. Similarly, frameworks like the Right to Information Act 2017, focus on transparency but do not provide sufficient safeguards for personal data. Without strong legal protections, both consumers and businesses are vulnerable to data breaches and misuse, which in turn hampers the adoption of AI driven technologies.

This regulatory gap has a direct impact on innovation and economic growth in Pakistan. For example, in sectors such as healthcare, where AI has the potential to revolutionise diagnostics and patient care, the absence of robust data privacy protections creates reluctance among patients and healthcare providers to fully embrace these technologies. Moreover, international investors are hesitant to engage with Pakistan's AI industry, fearing potential liability arising from data privacy issues. A failure to address these concerns risks leaving Pakistan behind in the global AI race, with significant economic consequences.

#### **The UAE model for Pakistan's data privacy reform**

The UAE (United Arab Emirates) provides a persuasive case of how comprehensive data privacy laws can drive AI innovation while ensuring the protection of personal information. The Personal Data Protection Law (2021) and the UAE National Strategy for Artificial Intelligence 2031 demonstrate a balanced approach, encouraging trust and ensuring that AI technologies are developed responsibly. The UAE's comprehensive legal framework has not only

**By enacting strong data privacy regulations, the country can unlock full potential of AI technologies while ensuring personal data protection.**

attracted significant investments but also positioned the country as a leader in AI driven industries like smart cities, healthcare, and fintech. Girish Nanda, Country Manager for UAE and Pakistan of Mastercard, says: "As the trusted technology partner to the UAE government, Mastercard is proud to play a role in the development of the new data legislation laws. We appreciate the government's commitment to adopt a consultative approach and integrate global best practices throughout the process. In the journey towards digital transformation, cybersecurity and privacy measures have become more important than ever before in protecting the interests of the governments, businesses and

**Key factor in UAE's success is the alignment of its data privacy laws with international standards.**

individual data subjects alike."

Pakistan can learn valuable lessons from the UAE's proactive approach to regulating AI and data privacy. A key factor in the UAE's success has been the alignment of its data privacy laws with international standards, such as the General Data Protection Regulation (GDPR), which ensures compatibility with global business practices. By establishing a clear regulatory framework for AI, the UAE has built a foundation of trust, which is crucial for encouraging both local and international stakeholders to participate in the AI ecosystem.

#### **Roadmap for reforming Pakistan's data privacy laws**

To fully realise the benefits of AI and foster economic growth, Pakistan must prioritise the enactment of comprehensive data privacy legislation tailored to the unique challenges posed by AI technologies. The final draft of the Personal Data

Protection Bill (2023) is a step in the right direction, but it requires further refinement to address specific AI issues. The law must provide clear guidelines on how personal data can be collected, stored, and processed by AI systems, ensuring the protection of individuals' privacy rights.

Additionally, public awareness and education campaigns are critical to building trust in AI technologies. Businesses and consumers need to understand the importance of data privacy in AI and how these regulations can benefit them. Engaging the private sector in the development of these laws will ensure that they are both practical and effective, balancing innovation with privacy protection.

Finally, Pakistan must foster international cooperation in

the realm of AI regulation. By aligning its data privacy laws with global standards and best practices, Pakistan can strengthen its position in the international AI community and attract foreign investments. Collaboration with AI-leading countries, such as the UAE, can provide valuable insights into how Pakistan can create a robust regulatory framework that both protects data and promotes AI innovation.

Learning from successful models like the UAE, Pakistan has the opportunity to build a legal framework that fosters innovation, attracts investment, and positions the country as a leader in the AI-driven economy. The time for action is now – Pakistan must prioritise data privacy reforms to secure its place in the future AI and technology driven economic growth. ■


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# The Judiciary's role as a guardian of the constitution and rule of law

Pakistan's judiciary is essential for upholding the constitution and the rule of law. Despite facing numerous challenges, it has remained resilient and independent in preserving constitutional standards and protecting fundamental rights.

In a democratic society, the judiciary serves as a check against the excesses of the executive and legislative branches. In Pakistan, the courts have had to navigate a complex and often turbulent political landscape characterised by military dictatorship, political instability, and societal unrest.

Ensuring judicial independence, combating corruption, and increasing efficiency are all critical elements toward strengthening the judiciary's position within the country's democratic system. The judiciary's capacity to deal with the intricate interplay of legal, political, and social pressures will continue to influence Pakistan's constitutional and legal framework.

As Pakistan progresses as a democratic nation, the judiciary's responsibility in protecting the constitution and upholding the rule of law remains crucial. Building a just and equitable society requires strengthening the judiciary through fundamental reforms, improving access to justice, and fostering a culture of legal respect. The judiciary's dedication to upholding constitutional values and defending individual rights will be pivotal in shaping Pakistan's future as a democratic and inclusive nation.

This article summarises a research paper by **Ayesha Aftab** and **Dua Manzoor**, which evaluates the judiciary's role in upholding constitutional duties, safeguarding fundamental rights, and promoting the rule of law. By critically analysing judicial decisions, legislative frameworks, and political contexts, the paper reveals a complex landscape where the judiciary has significantly contributed to democracy and human rights, despite

## Staff Report

facing political interference, institutional weaknesses, and judicial activism.

The study examines key cases and controversies that have shaped the judiciary's role, such as the doctrine of

necessity, judicial review of constitutional amendments, and the enforcement of fundamental rights. It also explores how political and institutional factors, including the military, political parties, and the legal community, influence judicial decision-making.

The research argues that while the judiciary is crucial for

strengthening democracy and the rule of law in Pakistan, reforms are necessary to improve institutional capacity, ensure judicial independence, and foster a constitutional culture. It contributes to ongoing discussions about the judiciary's role in advancing democratic values and human rights in Pakistan, offering insights for policymakers, legal professionals, and scholars interested in constitutionalism and the rule of law. The findings underscore the importance of a strong and independent judiciary in protecting Pakistan's constitution and the rule of law. ■



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**Defection Clause Verdict**

# Killing the spirit of party-based democracy

–by **Aftab Kazmi**, Editor-in-Chief

The Supreme Court's review ruling on Article 63A facilitated the passage of the 26th Constitutional (Amendment) Act, as the government effectively leveraged it to secure differential votes from opposition parties.

The ruling, delivered by a bench led by former Chief Justice Qazi Faez Isa on October 3, ignited significant controversy, with political opposition and much of the legal community deeming the judgement as *mala fide*.

Bilawal Zardari, Chairman of the Pakistan People's Party Parliamentarian (PPPP), who disclosed the ruling alliance's plan to use 'brute force,' paid tribute to Justice Isa upon his retirement, stating: "The 26th Constitutional Amendment would not have been possible if Qazi Faez Isa was not the Chief Justice."

The ruling was anticipated from the time of the bench's controversial formation. Predictions abounded that the court would reverse its decision, allegedly to pave the way for the amendment bill. It was also expected to primarily cause political instability by permitting dissenting votes, resulting in a fragmented parliament.

The ruling was also seen as undermining the democratic essence of the 14th Amendment (1997), which introduced Article 63A into the constitution, born from political parties and parliamentarians' prolonged and arduous experiences with horse-trading and floor-crossing. Eminent lawyer Latif Khossa said: "The essence of the 14th Amendment was to put an end to the destabilising practices of floor-crossing, '*lotacracy*,' and deception. This spirit of the amendment was reaffirmed by the Supreme Court in the Justice Bandial judgement."

In refined democracies, the constitution stands as the ultimate law governing society and its institutions. For the greater good, laws are not moulded or interpreted for selfish gains or the rulers' advantages. Similarly, parliaments are formed by members elected on party tickets, with voters choosing them based on specific political agendas, manifestos, or ideologies. Without party affiliation, the concept of a parliamentarian becomes absurd. In the party-based political system, it is obvious, when a parliamentarian gets disqualified for going against his/her party lines or policy, the vote he/she casts holds no validity as the person who cast it no longer remains a member of the parliament.

Pakistani democracy, as established by the constitution of 1973, is fundamentally rooted in party politics. However, to bolster their authoritarian rule, military dictators tampered with this concept, introducing individuals' role as parliamentarian, which was theoretically non-existent within party-based democratic norms.

## Article 63A

"If a member of a Parliamentary Party comprised of a single political party in a House votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relation to (i) election of the Prime Minister or the Chief Minister or (ii) a vote of confidence or a vote of no-confidence or (iii) a Money Bill or a Constitution (Amendment) Bill, he may be declared in writing by the Party Head to have defected from the political party and the Party Head may forward a copy of the declaration to the Presiding Officer and the Chief Election Commissioner and shall similarly forward a copy to the member concerned."

## The Bench

The verdict was given by a five-member bench, led by Chief Justice Mr Justice Qazi Faez Isa, and included Mr Justice Aminuddin Khan, Mr Justice Jamal Khan Mandokhail, Mr Justice Naeem Akhtar Afghan, and Mr Justice Mazhar Alam Khan Miankhel. The bench was formed through a new court committee established under an ordinance.

The senior puisne judge, Mr Justice Syed Mansoor Ali Shah, refused to participate in the committee, and the author of the previous decision, Mr Justice Munib Akhtar, was replaced by the Chief Justice with Mr Justice Amiruddin Khan.

Objections were raised on the timing of the decision, the motives behind reversing the earlier ruling, the amendment ordinance of the Supreme Court (Practice and Procedure) Act 2023, and the hasty formation of the new Supreme Court committee.

General Ayub Khan and General Zia-ul-Haq both held nonpartisan elections, with General Ayub Khan being the first to ban all political parties and introduce party-less 'basic democracies' in 1960, ostensibly to enforce authoritarian rule under the guise of democratic principles. General Pervez Musharraf's regime also manipulated the constitution, continuing this trend of undermining party-based politics.

After years of battling against the machinations of dictators and their remnants, the PPPP – a remnant of the PPP (Pakistan People's Party), managed to insert the article 63A into the constitution to set the true course of democracy and ZA Bhutto's 1973 Constitution. It is, however, surprising to see Zardari's party supporting the new interpretation of Article 63A. This, regrettably, reveals how the PPPP is gradually drifting away from the core ideology of its parent party and making compromises to gain power. Political commentators suggest that the recent fervent campaign by the PPPP for

constitutional amendment aims to preserve the current setup, ultimately paving the way for Bilawal Zardari to become the next prime minister.

Article 63A, at its core, seeks to prevent rulers from exploiting parliamentarians through horse-trading, beyond internationally recognised democratic norms. Former Chief Justice Umar Ata Bandial's five-member bench upheld the true spirit of the legislation in their interpretation. On May 17, 2022, the court ruled that any vote cast contrary to parliamentary party lines under Article 63A of the Constitution should not be counted.

Justice Bandial termed defection as a "serious menace" in the parliamentary politics. "For the progress of the country, a stable government is needed," the chief justice said, adding that "the [game of] musical chairs that has been taking place for power since the 1970s must end. We have to protect the Constitution and that is the reason we are hearing the reference for the interpretation of Article 63A."

A review of the provisions on the qualification and disqualification of parliamentarians reveals that Articles 62 and 63 have been repeatedly amended over the years, primarily by military dictators seeking to control the political landscape to suit their agendas. In the constitutions of 1956 and 1962, these provisions were objective in nature, dealing primarily with factors such as age, solvency, citizenship, and the mental capacity of the individual concerned. These provisions were subsequently adopted in the 1973 Constitution.

General Zia-ul-Haq, the dictator who obstructed all avenues of genuine political leadership in the country, added five new clauses to Article 62 and twelve new clauses to Article 63 to manipulate the constitution and to fit in his concept of *Sadiq* (truthful) and *Ameen* (honest). General Pervez Musharraf also inserted three provisions into the disqualification clause through the Legal Framework Order,

## The Verdict

The Supreme Court, on October 3, 2024, allowing the review petitions of the Supreme Court Bar Association (SCBA) and others, unanimously, set aside the court's previous majority judgment on Article 63A of the Constitution.

The court, in its May 17, 2022 verdict, had declared that votes cast against the parliamentary party lines in four instances outlined in Article 63A should not be counted, including – the election of prime minister and chief minister; a vote of confidence or no-confidence; a constitutional amendment bill; and budget. The verdict was given in 2022 in response to a presidential reference.

President of Pakistan Dr Arif Alvi, in view of the no-confidence vote against former prime minister Imran Khan on March 21, 2022, had filed a reference under Article 186 seeking interpretation of Article 63A of the Constitution. The bench passed its judgement on May 17, 2022. The SCBA filed a review petition that was languishing within the court for 26 months. Chief Justice Isa listed the petition for hearing and announced the judgement.

2002.

The legacy of defection and individualism left by dictators was brought to an end by the 14th Amendment. The credit for this courageous move goes to Benazir Bhutto who twice lost her government due to floor-crossing.

It was peculiar to see the Supreme Court Bar Association (SCBA) criticising and challenging Justice Bandial's ruling as being against 'parliamentary democracy'. The SCBA claimed that the court's interpretation of Article 63A amounts to rewriting or reading into the constitution. However, this was neither the case of rewriting nor of undermining democracy as envisaged by the 1973 Constitution. Justice Qazi's decision, on the other hand, appears to be rewriting the constitution to keep the so-called dictatorial democracy alive and effectively killing the spirit of Article 63A. ■

## THE AMENDMENT

## Power Play

# Executive takes the reins of judiciary

## But can a Litigant Claim the Right to Bench of his Choice?

Staff Report

After a month-long marathon, the government has successfully amended the Constitution of Pakistan, steering the course in its desired direction. Politicians and the executive have appointed the new Chief Justice (CJ), while retaining the power to control the judiciary.

Barely had the dust settled from this politico-legal tussle when rumours began circulating that the ruling alliance is pushing forward with another amendment to further tighten its grip on the system. Law Minister Azam Nazir Tarar, though, dismissed the speculation, possibility of further amendments cannot be ruled out, particularly in the Supreme Court's Practice and Procedure Act.

The Constitutional (Amendment) Act, 2024 (the 26th Amendment), has reshaped the judiciary and its functioning, handing over its reins to the state by altering the spirit of the 1973 Constitution of Pakistan. The act has changed the procedure for the appointment of the CJs, fixed the post's tenure, and formed the constitutional bench.

The rejoicing Prime Minister Shahbaz Sharif said at the parliament that "this is a great day in the history of Pakistan as the legislation has avowed that the parliament is supreme." In reality the constitution is supreme that governs every institution in the country.

The victory, according to the opposite camp, has been achieved through the 'brute force,' and it rests upon compromised judicial independence and a divided bar and bench. The critics called the October 21 a 'black day' and the amendment as a ticket to a 'free ride' for the Prime Minister and politicians from the judicial check and balance.

The disdain for a fully functional judiciary, or at least certain judges, was so pronounced that the Prime Minister did not hesitate to criticise the superior judiciary directly. He remarked that some judges had convicted former prime ministers in the 'Aqama' (residency permit) case, sent two prime ministers home, and acted as they pleased. The "dangers dangling overhead to rain in are dissipated," he noted. Rana Sanaullah, Prime Minister's Adviser on Political and Public Affairs, openly admitted that the 26th Constitutional Amendment has obstructed Justice Mansoor Ali Shah's path to becoming chief justice.

For some critics, the hasty amendment marks the beginning of 'judicial anarchy.' The first judge to face this new reality is the Chief Justice Yahya Afridi. He, however, appeared to be in firm control

**Judicial Commission, while having a role of evaluation and appointment of judges, will set up the constitutional bench.**

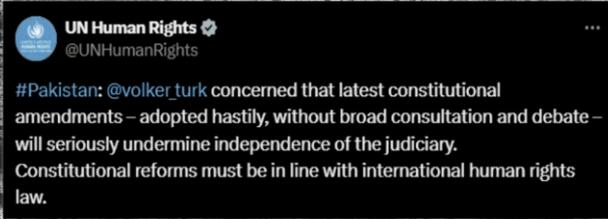
IMAGE: © THE LEGAL



Chief Justice Yayha Afridi

Justice Yayha Afridi is the 30th Chief Justice of Pakistan, marking the third instance of a chief justice superseding his senior colleagues. Historically, the principle of appointing the senior-most judge as Chief Justice was first disregarded in 1954 when Governor-General Ghulam Muhammad elevated Justice Muhammad Munir over Justice Abu Saleh Muhammad Akram. Similarly, in 1994, Prime Minister Benazir Bhutto appointed Justice Sajjad Ali Shah to the highest judicial post, bypassing the seniority tradition. Justice Shah assumed the position following the retirement of Justice Nasim Hasan Shah, overlooking three senior judges—Justice Saad Saud Jan, Justice Abdul Qadeer Chaudhry, and Justice Mian Ajmal. Justice Afridi's appointment is, however, supported by the new constitutional amendment.

on October 28, as all the brother judges attended the full court session in which plan was set in motion to reduce the case pendency. The session showed complete unity and business proceeded smoothly. Politicians, on the other hand, are now working to establish the constitutional bench, with efforts already underway. The majority of the legal fraternity believes that Supreme Court judges should have the prerogative to form a bench. However, this right has now been transferred to a parliamentary committee, which will form a judicial commission to set up the bench, effectively placing the decision-making power in the



## Monument of Fundamental Rights



A 'Fundamental Rights Monument', costing Rs. 12 million, has been inaugurated on the premises of the Supreme Court of Pakistan. Former Chief Justice Qazi Faez Isa unveiled the monument on his final working day, October 25. The structure features 13 marble walls, designed and crafted by the National College of Arts. Critics have labelled the project a 'waste of taxpayers' money', arguing that the information is already available in books, and it is the role of the courts and judges to uphold these rights. Here are some revealing facts about the justice system:

- In the 'World Justice Project 2024', Pakistan ranks 140th out of 142 countries in the list of the worst law and order countries.
- It ranks 106th in the 'Open Government' with restricted access to information.
- Pakistan hold 125th position in the world in 'Fundamental Rights'.
- In the countries having 'Weak Regulatory Enforcement', Pakistan ranks 127th.
- The 'Civil Justice System' of Pakistan ranks at 128th internationally.
- Rampant corruption puts Pakistan at 120th among the most corrupt countries in the world.

”  
***An anxious government along with its nervous political allies rushed through changes to the Constitution in the name of 'parliamentary supremacy', which fundamentally eroded the independence of the judiciary and made it subservient to the executive. The constitutional principle of the separation of power was seriously undermined.***

- Dr Maleeha Lodhi

hands of politicians and the executive. “This is interference in the internal working of the Supreme Court,” said Munir A Malik, former President of the Supreme Court Bar Association of Pakistan, noting that it is a direct attack on the independence of judiciary.

Amid the prevailing tense situation, Malik said that if the judges remain honest to their oath, sooner or later they will come to an honest conclusion on the Constitutional (Amendment) Act 2024. The chief justice has to view the balance of power between legislative, executive, and judiciary. He has to maintain the balance as well as protect the independence of judiciary. Malik said that the chief justice has taken the oath to preserve, to protect, and defend the constitution, if something has been added in the constitution that contradicts its basic structure and spirit, he is duty bound to strike it down.

Malik strongly objected the way the constitutional benches are being set up. Under the new Act, a Judicial Commission - while having a role of evaluation and appointment of judges - will set up the constitutional bench. “This is something unheard of. We have heard that you cannot have bench of your choice.” It is a precedent, he said, that no litigant can claim a right to bench of his choice.” The biggest litigants in the country are the federation and the provinces. It means the state is the biggest litigant, i.e. Ahmed Khan vs the State. How come this litigant will constitute benches of its choice? If it happens, the constitutional bench will then only be a state-controlled court of its own choice, he added.

“The question is, where this matter can be raised. The regular court or the constitutional bench? If there are procedural faults or duress or coercion, the matter can be taken to the regular court as its does not constitute the question of constitutional interpretation,” he added.

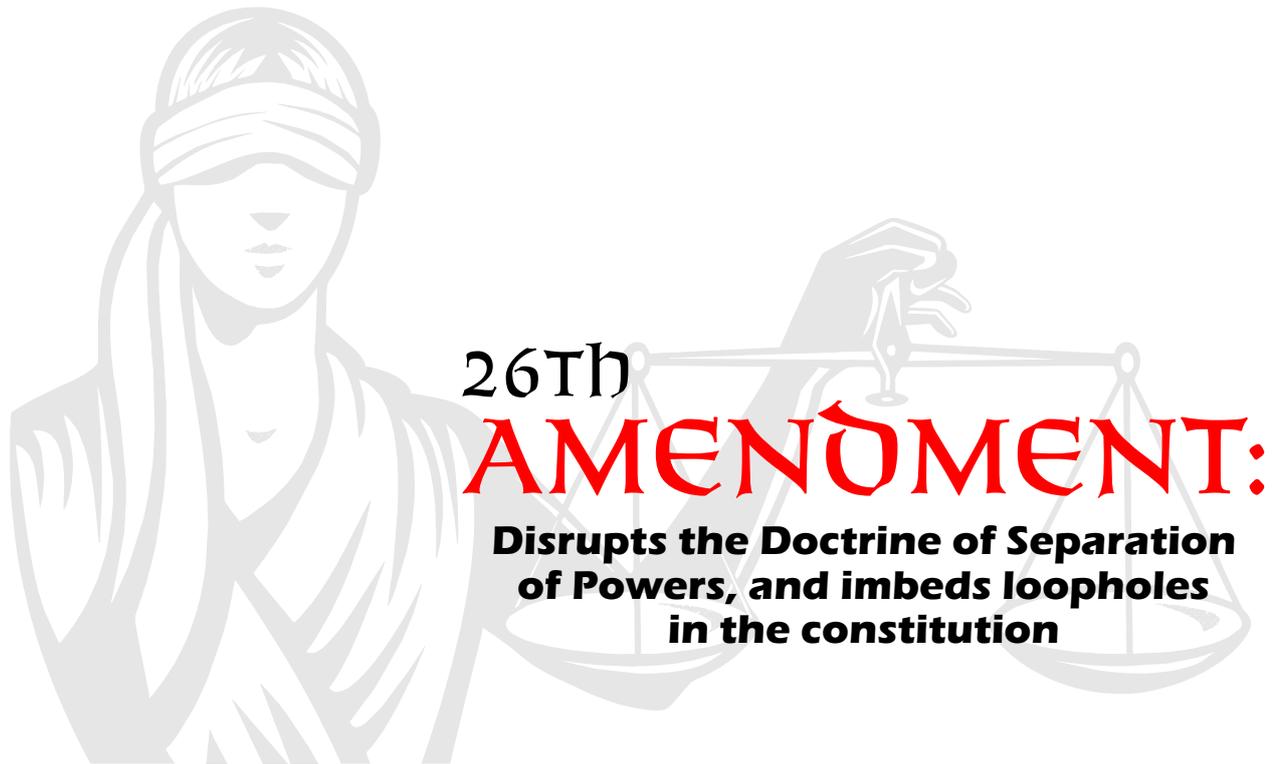
The 26th Amendment has already been challenged in different courts. ■

### A Man for all Seasons

”  
***I think that when statesmen forsake their own private conscience for the sake of their public duties, they lead their country by a short route to chaos.***”

Justice  
Syed Mansoor Ali Shah

”  
***We often forget, when in power, people of this country are watching our actions and that history never forgives.***”



## 26Th AMENDMENT:

### Disrupts the Doctrine of Separation of Powers, and imbeds loopholes in the constitution

by **Eesha Arshad** AHC

Instigating critical changes, the 26th Constitutional Act of 2024 has fundamentally altered the structure and functional dynamics of Pakistan's judicial system.

passed on October 21, the amendments have significantly disrupted the Doctrine of Separation of Powers, swiftly rendering the Parliament superior to the Constitution. This appears to contravene democratic principles and represents a blatant violation of Article 14 of the International Covenant on Civil and Political Rights (ICCPR). The article stipulates:

“States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them.”

The Judiciary is set to interpret the amendment, but the amendments raise several critical legal concerns. It remains either silent on or contradicts other constitutional articles. Broadly speaking, this amendment appears to be at odds with the foundational democratic principles and the parliamentary system outlined in the Preamble of Pakistan's Constitution, leading to confusion.

Article 2A of the Objective Resolution, an essential component of the constitution, unequivocally mandates the full safeguarding of Judicial Independence. Yet, the 26th Amendment seems to be in stark contradiction. Is it a judicial reform, or does it contradict the preamble's assertion of an independent judiciary? It is a question that remains unanswered.

Article 175A regarding the appointment of Chief Justice has been completely overhauled. Previously, president appointed the most senior Supreme Court judge as the Chief Justice. The 26th Amendment, however, stipulates that the Chief Justice of Pakistan will be appointed by a Special Parliamentary Committee (SPC) consisting of eight National Assembly members and four Senators. The SPC will select one from the top three senior Supreme Court judges.

The amendment, however, remains silent on the criteria or grounds for this selection. The procedure and the basis for the SPC's assessment are not clearly defined, leaving the appointment process vague. Furthermore, the amendment states that the SPC must send the nomination with a two-thirds majority but does not address what happens if this majority is not achieved. No alternative method for selecting the chief justice is provided.

Additionally, Article 175A specifies that Article 68 will not apply to the SPC's proceedings, casting doubt on the very existence of the Article 68.

Article 186(3), which empowered the Supreme Court with *suo motu* authority

**The amendment swiftly rendered the Parliament superior to the Constitution of Pakistan.**

**The amendment fails to propose an alternate remedy for addressing public issue via suo motu.**

on matters of public importance concerning fundamental rights as stipulated in Chapter 1, Part 2, has been rescinded. The amendment fails to propose an alternative remedy for addressing the issues of public importance relating to fundamental rights. Curtailing these powers is inadvisable without introducing a substitute mechanism.

Similarly, the same authority has been removed from the High Courts with the addition of a new clause in Article 199. Furthermore, Article 186A enables the Supreme Court to transfer any pending case, appeal, or proceeding to any high court or to itself. The amendment appears to bypass the established due process and hierarchical procedure.

A new Article 191A has been introduced, establishing Constitutional Benches within the Supreme Court. All constitutional petitions, appeals, and cases will now be transferred to these benches. Additionally, only these benches can exercise original jurisdiction under Article 184, appellate jurisdiction under Article 185, and advisory jurisdiction under Article 186. This has sparked confusion, creating the impression that the Constitutional Bench might supersede the Supreme Court itself.

Moving forward, Article 290 with regards to the powers of the Supreme Judicial Council, mentions that the judge in high courts and Supreme Court can be removed from his office if he is “inefficient” in performing his duties. The grounds of inefficiency, however, are not defined. This is a legal loophole that may hinder the interest of justice and fair play. ■



IMAGE: THE LEGAL

*Prime Minister Shehbaz Sharif signs the advice for presidential assent on the Amendment Bill, on October 21, 2024.*



## 26th constitutional **Amendments** a blow to the independence of the judiciary

The 26th Constitutional Amendment makes significant institutional changes in the structure and functioning of Pakistan's judicial system, particularly with respect to the Supreme Court and High Courts.

"These changes bring an extraordinary level of political influence over the process of judicial appointments and the judiciary's own administration," said Santiago Canton, ICJ's Secretary General.

"They erode the judiciary's capacity to independently and effectively function as a check against excesses by other branches of the State and protect human rights."

The Senate passed the 26th Constitutional Amendment within hours following its introduction before it in the evening of Sunday 20 October. It was then introduced in the National Assembly, Parliament's Lower House, where it was passed early this morning, Monday 21 October. Shortly afterwards, it also received the assent of the President and was officially published in the Gazette.

Draft amendments were kept secret, and there were no public consultations on the proposals before they were introduced in, and passed by, the Parliament.

"It is alarming a Constitutional Amendment of great significance and public interest was passed in such a secretive manner and in less than 24 hours," added Canton.

"The core principle of the rule of law and the separation of powers according to which citizens and their freely chosen representatives have the right to participate in the legislative process

culminating in the adoption and enactment of laws was flagrantly violated in this case."

The ICJ is particularly concerned about the following changes introduced by the 26th Constitutional Amendment since they seriously undermine the independence of the judiciary by unduly subjecting it to executive and Parliamentary control:

### 1. The composition of the Judicial Commission of Pakistan

The Judicial Commission of Pakistan (JCP) nominates judges for the Supreme Court and High Courts for appointment. Before the 26th Constitutional Amendment, the JCP comprised a majority of judges. However, the amendment has changed the composition of the JCP to also include two members of the National Assembly, two members of the Senate and one woman or non-Muslim member, to be nominated by the Speaker of the National Assembly. The Law Minister, the Attorney General of Pakistan, and a representative of the Bar were already members of the JCP and remain so.

These changes in the JCP's composition allow for direct political influence over it, and reduce the JCP's judicial members to a minority. For the appointment of Supreme Court judges, for example, only five out of 13 JCP's members are required to be judges (namely, the Chief Justice of Pakistan, the most senior judge of the constitutional benches, and the three most senior Supreme Court judges).

### 2. Administrative powers of the Judicial Commission of Pakistan

In addition to nominating judges for appointment, the JCP has been given the



power to determine and nominate “constitutional benches” within the Supreme Court and High Courts. These benches shall have exclusive jurisdiction over matters involving interpretation of the Constitution and enforcement of fundamental rights.

Such power allows the JCP – a body subject to direct political influence in its decision-making – to create tailored-made judicial benches to hear specific cases, including cases of political significance. As a result, there is serious concern that these JCP-appointed benches will not be independent and impartial.

The 26th Constitutional Amendment has also made similar amendments to the jurisdiction of High Courts, where matters involving the writ jurisdiction of High Courts have been transferred to “constitutional benches” nominated by the JCP.

The amendments also provide that all pending petitions, appeals and reviews that relate to matters falling under the jurisdiction of “constitutional benches” be transferred to them.

### **3. Appointment of the Chief Justice of Pakistan**

Prior to the 26th Constitutional Amendment, the most senior judge of the Supreme Court was appointed the Chief Justice of Pakistan (CJP). The Executive or the Parliament had no say in this appointment. The 26th Constitutional Amendment has amended the Constitution to give a “Special Parliamentary Committee” (SPC) consisting of eight members of the National Assembly and four members of the Senate the power to nominate the CJP from among the three most senior Supreme Court judges.

The 26th Constitutional Amendment outlines no grounds or criteria on the basis of which the SPC is to nominate the CJP, while providing that its meetings shall be held in camera.

### **4. Removal on the ground of “inefficiency”**

The amendments provide the Supreme Judicial Council (SJC) – a judicial body responsible for recommending judges for removal – may recommend judges of the Supreme Court and High Courts for removal if it finds they “may be inefficient in the performance of the duties” of their office. With respect to this, the 26th Constitutional Amendment does not define “inefficiency”, nor does it establish a threshold or criteria for “inefficiency”. Earlier, the grounds for removal by the SJC were incapacity or misconduct.

These amendments directly violate Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to equality before courts and tribunals and to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 10A of Pakistan's Constitution also recognizes the right to a fair trial.

The UN Human Rights Committee, an independent body of experts mandated by the ICCPR to interpret and apply its provisions, has authoritatively held that such a right is “an absolute right that is not subject to any exception” and a “situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.”

“The ICJ understands that some reforms to the existing judicial system may have been needed to make the courts more efficient and accountable, and the judicial appointment process more transparent and inclusive,” said Santiago Canton.

“But these amendments are an attempt to subjugate the judiciary and bring it under the control of the executive, betraying fundamental principles of the rule of law, separation of powers and the independence of the judiciary.” ■

# GILGIT-BALTASTAN

## Legal Framework & the Limbo

Pakistan's Gilgit-Baltistan (GB) region is renowned worldwide for its stunning and towering mountain peaks, attracting climbers from across the globe. However, the region has a complex history of governance, which significantly impacts its status and judicial system. It is a federally administered area with a unique system of courts and justice. Given that the region's constitutional status has remained uncertain for nearly seven decades, the future of its inhabitants is in a state of limbo. **Faryal Fatima**, a law student in Karachi, reviews the legal history of GB for critical analysis.

Gilgit-Baltistan (GB), formerly known as the Northern Areas, is a rugged mountainous region in the north of Pakistan with a long and complex history of governance. Following a series of conquests, the region came under the dominion of the Dogra and British rulers in the mid-19th century. The British gave the status of 'agency' to this region. They administered the Gilgit Agency under a lease agreement from 1935 that was abruptly terminated in August 1947 as their rule over the subcontinent drew to a close.

In the power vacuum that ensued, the Dogra Maharaja regained control only to be ousted by a local paramilitary force - the Northern Areas Scouts - led by Major Brown, who declared Gilgit-Baltistan an independent and sovereign region on November 1, 1947. The independence was, however, short-lived as the region acceded to Pakistan sixteen days later. The Karachi Agreement of 1948, signed between Pakistani and Kashmiri representatives, formally incorporated Gilgit-Baltistan into Pakistan, albeit without granting it full constitutional status or representation. The region has since remained under the federal control, sparking ongoing debates about its constitutional status.

The GB has substantial geo-strategic and geo-economic significance due to its historical background and strategic location. Situated at a critical junction connecting Central Asia, South Asia, and Middle Asia, the region shares borders with major powers like China,

IMAGE: COURTESY 500px BY JUNGSHIK LEE



## The Supreme Court of Pakistan ruled that GB residents have the same rights as Pakistani

India, and Pakistan. It serves as the gateway for the China-Pakistan Economic Corridor (CPEC), which is a cornerstone of China's Belt and Road Initiative. The region is also endowed with vast natural resources, minerals, mountains, and lakes. It is, also, crucial for Pakistan's security and economic interests and plays a vital role in shaping regional geopolitics.

### Legal status under Pakistan's Constitution

- I. Article 257 and 258 of Constitution of Pakistan, 1973

Article 257 of the Constitution of Pakistan 1973, which deals with Jammu and Kashmir's potential accession to Pakistan, has implications for Gilgit-Baltistan's status. Most GB residents do not consider themselves a part of Kashmir. Also, in accordance with the Karachi Agreement of April

28, 1949, the administrative control of GB had been taken over by the Government of Pakistan.

Article 258 empowers the President of Pakistan to govern territories outside provinces, including the GB, through executive orders. Thus, GB has primarily been governed through presidential orders, with the federal government exercising control over its administration, laws, and governance without formally integrating it as a province within Pakistan's constitutional framework.

### II. The GB Order, 2009

The Al-Jehad Trust judgment paved the way for the 2009 Gilgit-Baltistan (Empowerment and Self Governance) Order, which aimed to grant the region autonomy and sovereignty over its resources. The Supreme Court of Pakistan ruled that Gilgit-Baltistan residents have the same rights as Pakistani citizens, but the region is not a formal province.

The 2009 Order established a judicial system, but the GB courts lack judicial review power, and important matters are still handled by Pakistani courts. Additionally, Gilgit-Baltistan has limited

negotiating power with the federation, with a separate council that excludes key areas like foreign affairs and defence.

### III. The GB Order, 2018

The 2018 Gilgit-Baltistan Order, which replaced the 2009 Empowerment and Self-Governance Order, granted the GB Assembly legislative powers over key sectors, but was met with widespread resistance from residents who demanded provincial status.

In 2018, the Gilgit-Baltistan Supreme Appellate Court suspended the order, prompting the government to appeal to the Supreme Court of Pakistan. In the same year, a three-judge bench, led by Chief Justice Mr Justice Saqib Nisar, subsequently restored the order, emphasising the government's responsibility to ensure equal treatment for the GB citizens, on par with those in other parts of the country.

### The 2018 Legal Framework Order

The Gilgit-Baltistan Order of

**Karachi Agreement incorporated GB into Pakistan in 1948.**

contentious aspects of the order is its definition of a 'citizen', which is overly broad and problematic. By defining a citizen of Gilgit-Baltistan as anyone who is a citizen under the Pakistan Citizenship Act, 1951, the order effectively allows anyone from Pakistan to claim citizenship in the region, thereby diluting the rights of local residents.

The fundamental rights enshrined in the order are inadequate, with Part II of the document taking a restrictive and security-driven approach. The safeguards against arbitrary arrest and detention, as outlined in Article 9(1)(2), are particularly concerning, as they permit detention without trial

**The GB status as an integral part of Pakistan is unequivocal, yet its inhabitants live in limbo.**

for up to three months. Furthermore, the order's concentration of power in the Prime Minister's office is a cause for concern, as it enables the Prime Minister to unilaterally make laws, thereby undermining the Legislative Assembly's autonomy and reducing its role to a mere formality.

Moreover, the Government of Pakistan's insertion of provisions that exclude local judges from consideration for the post of Chief Judge of the GB is a blatant example of discrimination. The requirement that the Chief Judge must have previously served as a judge of the Supreme Court of Pakistan or a Chief Justice of a High Court under the Constitution of Islamic Republic of Pakistan is a significant barrier to the career advancement of local judges, who have historically been excluded from these positions. This provision perpetuates the marginaliation of the region's legal fraternity and undermines the region's autonomy.

**Judicial oversight**

The Supreme Appellate Court of Gilgit-Baltistan is the apex judicial institution in the region,

comprising a chief justice and two additional judges. Established in 2009 under the provisions of the Gilgit-Baltistan (Empowerment and Self Governance) Order, this esteemed court possesses jurisdictional powers commensurate with those of the Supreme Court of Pakistan. Furthermore, it enjoys parity of status with the Supreme Court of Azad Jammu and Kashmir.

The Supreme Appellate Court is vested with original, appellate, review, and advisory jurisdictions, as enshrined in the Government of Gilgit-Baltistan Order, 2018. Specifically, Articles 75, 76, 80, and 92 of this order empower the court to adjudicate cases within its various jurisdictions.

In addition to the Supreme Appellate Court, the Gilgit-Baltistan Chief Court serves as the court of appeals in the region. The decisions rendered by this court are subject to appeal before the Supreme Appellate Court. Notably, the Gilgit-Baltistan Chief Court operates under the aegis of the 2009 Gilgit-Baltistan Empowerment and Self-Governance Order and enjoys equal status with the high courts of Pakistan.

The GB's status as an integral part of Pakistan is unequivocal, with a bond that is as essential as the head is to the body. Yet, the region's constitutional standing has languished in uncertainty for nearly seven decades, leaving its inhabitants in a state of limbo.

In light of the prevailing circumstances, it is imperative that Gilgit-Baltistan be granted provincial status, which is in line with the aspirations of its people. This move would ensure the human security of the region's inhabitants. Therefore, it is essential that the national leadership addresses this issue with a sense of urgency and prioritises its resolution.

Despite being overlooked, Gilgit Baltistan's significance cannot be overstated due to its crucial location as an entry point to the China-Pakistan Economic Corridor (CPEC), rich mineral resources, and the continuous tourism growth. To give a voice to the marginalised people of Gilgit Baltistan, the government must work to address their concerns by empowering them and collaborating closely with the GB government. ■

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## Future of dispute resolution in Pakistan: Is ADR the Answer?

Alternative Dispute Resolution (ADR) is being promoted as a quick, cost-effective fix for the legal system. Advocates argue that litigation is to blame for the heavy backlog of court cases. While ADR offers speed and lower costs, litigation has its own strengths such as thoroughness and legal precedent. However, it is unfair to scapegoat litigation alone for the inefficiencies, corruption, and systemic bottlenecks plaguing the judiciary. These deeper issues require comprehensive reforms beyond just promoting ADR. A senior lawyer has taken a closer look at both methods, evaluating their merits and shortcomings. The lawyer's analysis aims to diagnose the real problems within the legal system, suggesting that a balanced approach, incorporating both ADR and litigation, might be necessary. By addressing the root causes of inefficiency and corruption, the legal system can become more effective and just for everyone involved.

by **Tariq Aziz** ASC



IMAGE: © THE LEGAL

In recent years, the discourse surrounding Alternate Dispute Resolution (ADR) has gained substantial momentum in Pakistan. Even judges of superior courts, who are paid hefty salaries and enjoy luxurious perks from public exchequer, are propagating for ADR.

The Supreme Court of Pakistan has also established a committee, comprising judges from the supreme court, high courts, and district judiciary, to explore and promote these alternatives. Members of this committee frequently attend various seminars, both domestically and internationally, to discuss ADR's merits.

The term ADR is employed to describe a range of processes that, we are informed, assist parties in resolving disputes without resorting to court proceedings. ADR includes several methods, the most prevalent being negotiation, mediation, and arbitration. Here is a brief overview of each:

1. **Negotiation:** This is the most informal method where parties directly communicate to reach a mutually acceptable agreement. It allows for flexibility and the possibility of creative solutions.
2. **Mediation:** In this process, a neutral third party, the mediator, facilitates discussions between the disputing parties to help them reach a resolution. The mediator does not make decisions for the parties but assists them in finding common ground.
3. **Arbitration:** This involves a neutral third party, the arbitrator, who listens to both sides and makes a binding decision. While more formal than

**The Supreme Court has established a committee to explore to explore and promote alternatives.**

mediation, arbitration typically resembles a court proceeding, but it is typically quicker and less expensive. [In Pakistan regulated by Arbitration Act, 1940.]

#### Perceived Benefits of ADR:

- **Cost-effective:** ADR processes are generally termed as less expensive than traditional litigation.
- **Timesaving:** They can be resolved more quickly than court litigation.
- **Confidentiality:** ADR proceedings are usually private, unlike court cases, which are public.
- **Control:** Parties have greater control over the process and the outcome, especially in negotiation and mediation.
- **Preservation of Relationships:** ADR can help maintain relationships between parties, as it encourages collaborative problem-solving.
- **Broad Application:** ADR can be utilized in various fields, including family law, commercial disputes, employment issues, and international disputes.

In practice, it is being seen that even litigation is being discouraged by imposition of unjustified heavy costs without reason except that there is a backlog of cases. This backlog is frequently attributed to judicial inefficiencies, such as frequent adjournments and the prioritisation of political cases over routine matters. In family laws of Pakistan, ADR is used in the shape of pre- and post-trial reconciliation proceeding.

However, unless legal frameworks are amended in Pakistan, decisions reached via ADR require court confirmation and execution, leading to further delays and increased costs.

Laws relating to execution of decrees and remand of cases by the superior court needs comprehensive revisions and amendments. It is only if ADR succeeds that its decision is implemented. Otherwise, which results in increase of costs manifold and time for dispute resolution essentially enhanced. For instance, I am currently pursuing an execution of a decree in the Islamabad

## Law relating to execution of decrees and remand of cases needs comprehensive revision and amendments by the superior courts.

High Court, which has been pending since December 2006. In this case, arbitration award was given in 1997 and was made Rule of Court in October 2004 after objections to the award were withdrawn. To quote just another example, Islamabad High Court in July 2024 set aside an order of civil court for appointment of umpire and referred the matter

back to the arbitrators in compliance with the Arbitration Act, 1940 – resulting in arbitration still pending since 2016. One must wonder what is the benefit of Arbitration/ADR in Pakistan?

Instead of solely promoting ADR, I believe in strengthening the existing judicial system. This could involve increasing the number of Judges and equally distributing the case load among them. Moreover, promotion of judges should be performance based. Performance should not be based on number of cases decided, but on quality of judgments delivered and upheld by the superior courts.

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

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**CAUTION****PRESIDENTIAL PARDON AHEAD**

# Presidential pardon

*The last possible escape from the noose*

In contemporary Pakistan, the issue of presidential pardons sparks significant debate, particularly regarding their alignment with *Shariah* law. Under Islamic law, specifically in cases of *Qisas* (retribution), only the victim's heirs possess the authority to pardon the convicted individual. Contrarily, Article 45 of Pakistan's Constitution grants the President the prerogative to issue pardons, commute sentences, or remit punishment. For the Islamic principle to prevail, a constitutional amendment would be essential. Until such a modification occurs, the President retains full authority to grant pardons in any circumstance. The writer provides a critical examination of the issue in this article.



by **Malik Mohammad Ali**,  
Law student at Bahria  
University Law School,  
Islamabad.

The compulsion on President of Pakistan to act on the advice of the Prime Minister, enshrined in the Article 48 of the constitution, renders the presidency as a ceremonial office. Though there is a modicum of matters in which the constitution grants discretion to the President, as also recognised in the Article 48(2). The President is authorised to grant pardons under Article 45, a prerogative that aligns with the constitutional and judicial frameworks of many nations. This power is purportedly exercised for public welfare, which is considered the ultimate purpose of any punishment, to uphold mercy and public morality. Nevertheless, this concept often faces criticism for being contrary to Islamic principles. Additionally, in Pakistan, certain provisions of the

Criminal Procedure Code (CrPC) of 1898 and the Pakistan Penal Code (PPC) seek to limit its scope. The text of Article 45 of the Constitution of Pakistan reads as follows:

“The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.”

#### Islamic Perspective

Presidential pardon is often debated for being against the laws of Islam and *Shariah*. Especially in cases of *Qisas*, Islam only allows the heirs of the victim to pardon the convict. No other person including the Head of the State has this right to grant pardon, according to *Shariah*. Here it should be understood that *Qisas* is the individual right of the victim or his heirs that can be simply explained as 'eye for

an eye'. Whereas *Ta'zir* are the punishments pronounced by the state on its discretion and *Hadd* are the punishments expressly provided in Quran and *Sunnah*. Justice Abdul Shakurul Salam while expressing his opinion on Article 45, in the case of **Hakim Khan vs. Government of Pakistan** (PLD 1992 SC 595), observed that the President of Pakistan had no such power to commute the death sentence awarded in matters of *Hudood*, *Qisas* and the power of pardon in such cases only vests with the heirs of the deceased. He

**The power is purportedly exercised for public welfare.**

also mentioned that the head of state could exercise this power only in the cases in which the punishment falls in the category of *Tazir*.

Though the Article 2A and Article 227 require all laws to be in conformity with the injunctions of Islam and declare any law inconsistent with such injunctions void but these provisions are not supra-constitutional. Which means that they are not a touchstone for the other constitutional provisions and an article of the constitution, as in this case Article 45, cannot be declared void for being inconsistent with another constitutional provision. This principle has been adopted by the judiciary in various constitutional cases, some of which are *State vs. Zia ur Rehman* (PLD 1973 SC 49) and *Hakim Khan vs. Government of Pakistan* (PLD 1992 SC 595). And by virtue of this very principal Article 45 still stands valid.

#### Subordinate legislations

The Section 401 and 402 of the CrPC deal with pardon and remission or commutation of sentences. The Section 402-C restricts these powers of the President in terms of the sentences passed under any of the sections in the Chapter XVI of the PPC. As it says,

“Notwithstanding anything contained in Section 401, Section 402, Section 402-A or Section 402-B, the Provincial Government, the Federal Government or the President shall not, without the consent of the victim, or as the case may be of his heirs suspend, remit or commute any sentence passed under any of the sections in the Chapter XVI of the Pakistan Penal Code.”

Chapter XVI of the Pakistan Penal Code specifically deals with the offences affecting the human body. Furthermore, according to the Section 55-A of PPC the President can grant pardons and remit or commutate sentences but again not without the consent of the victim or heirs in sentences passed under the Chapter XVI of Pakistan Penal Code. As it reads as,

“Nothing in section fifty-four or section fifty-five shall derogate from the right of the

## President of Pakistan had no powers to commute death sentence awarded in matters of Hudood, Qisas and power of pardon in such cases.

President to grant pardons, reprieves, respites or remissions of punishment.

Provided that such right shall not, without the consent of the victim or, as the case may be, of the heirs of the victim, be exercised for any sentence awarded under Chapter XVI.”

But there is a huge question mark on the constitutional validity of both above-mentioned provisions as there is no such embargo in Article 45. Conversely, the Article 48 (2) of the constitution also says that anything done by the President in his discretion shall not be called in question on any ground whatsoever. While it is a known fact that all legislation is subordinate to the constitution.

The case of *Haji Bismillah vs. Government of Balochistan* (PLD 2004 Quetta 1) is worth mentioning in this regard. In this case it was held that the scope and powers of the President under Article 45 are discretionary in view of the provisions of Article 48 (2) and no embargo whatsoever has been placed on them and the exercise of such discretion cannot be assailed before any forum including a court of law. It was also affirmed that the

**Legislation is subordinate to the Constitution of Pakistan.**

President in his exercise of powers under Article 45 can grant remissions or pardon to any prisoner who has been convicted and sentenced in any offence. And that the constitution overrides the provisions of Pakistan Penal Code or Code of Criminal Procedure.

This principle was reiterated by the Supreme Court in the case *Nazar Hussain vs. The State* (PLD 2010 SC 1021). In this judgment, it was observed that the President's power to grant remissions in respect of offences is unfettered by any subordinate legislation and being a constitutional dispensation, the remissions, reprieve or pardon granted under Article 45 shall prevail over any subordinate legislation.

Therefore, the power of the President to grant pardons, remission, commutations or respites under Article 45 is absolutely unrestricted as the Constitution is the supreme law of the state. If there has to be a limitation or if the above-mentioned Islamic concept is to be enforced, then there shall be an amendment in this article. Because any subordinate legislation or another constitutional provision, as all constitutional provisions stand on the equal footing, cannot override this prerogative. Until such an amendment is made, the President is fully empowered to pardon anyone in any case whatsoever. Thus, this is the last possible escape from the noose. ■



# Immigration CANADA

*A cherished dream for skilled South Asians*

Canada is currently a hotspot for immigration and refugee resettlement. Many law firms are actively assisting aspiring migrants in their pursuit. **Nabiha Nasir** from Saudi Arabia writes on Canadian immigration, with a focus on laws and the Pakistani perspective.

**F**or at least a few decades now, Canada has been heralded as an open, inviting country to immigrants from around the world. While immigration and refugee resettlement in Canada is not immune to being an extensive, laborious venture, Canada's procedural models have been known to be followed by numerous other countries.

According to reports, the Canadian government aims to attract 500,000 migrants by next year to ensure the country's economic and social progress. This is a notable aspect of Canadian immigration laws and policy. For people from third-world countries, including Pakistan, it presents another option. Many of them use Canadian immigration as a stepping stone to reach their desired country of residence. The change of passport allows them to move on to any other country they wish to. Additionally, Canada's harsh weather does not allow all immigrants to settle down easily. In many cases, they move on to other countries after acquiring Canadian nationality, thus making it a never-ending saga of immigration for this North American nation.

As can be inferred, no matter what the Canadian public's reactions may be to waves of newcomers to the nation, the government has maintained that immigration to the country brings prosperity in various ways, especially economically and culturally.

Canada's welcoming attitude toward global expatriates and refugees has also helped fortify the nation's image as a diverse and multi-cultural nation. Some of the most prevalent pros of Canadian society are the higher standard of living, occupational opportunities, and a safer environment to live in. Quality education, internationally envied healthcare, and an abundance of social services are the main attributes of Canada's standard of life. Many law firms assisting immigration and resettlement shifted their work from the USA to Canada, especially after the stringent immigration policies of former US President Donald Trump. A large number of South Asians availed themselves of the opportunity to migrate. The population of Canadian residents of Pakistani descent exceeded 303,260 as of 2021 alone.

## Immigration Laws

The principal legislation for the Canadian approach is the Immigration and Refugee Protection Act (IRPA) 2002, which is enforced by the Immigration and Refugee Board of Canada. The Act provides rules and regulations covering multiple aspects of the pre- and post-immigration processes, such as documentation, admissibility and inadmissibility, residence, and litigation. The Board also hosts a wealth of resources on policy and tribunal



IMAGE: © THE LEGAL



## Canadian residents of Pakistani descent exceeds 303,260 as of 2021.

decisions, as well as outlines on procedures to facilitate the immigration process.

Various rules guide applicants depending on the type of immigration or resettlement. For example, under the current rules, Express Entry candidates must be under thirty years old, hold at least two Bachelor's degrees or one Master's degree, be proficient in English and/or French at a Canadian Language Benchmark (CLB) Level 9 or higher, and have at least three years of work experience. However, rules for those wishing to move to Canada through other programmes, such as the Federal Skilled Worker Programme, require only one year of work experience in the past ten years in a skilled occupation as per the required National Occupational Classification, a Level 7 CLB proficiency in English and/or French, equivalency granted to one's foreign academic credentials if they lack a Canadian credential, at least 67 points on Immigration, Refugees and Citizenship Canada's selection factors, and enough funds for oneself and one's family to move to Canada.

### Pakistani Immigrants

When it comes to the advantages posed to the Canadian economy and the country's work and social landscape, Pakistani expatriates are in a strong position to settle in Canada due to the fact that many Pakistanis pursuing resettlement are impressively proficient in the English language, and have adequate educational and work-related experience in the fields they wish to pursue in Canada, according to the findings of Cohen Immigration Law.

Pakistanis have also contributed significantly to Canada's politics, with many becoming elected members of Parliament and the House of Commons, such as Shafqat Ali and Iqra Khalid. Now more than ever, the Pakistani-Canadian

community is a valued asset to Canadian life and culture.

According to Total Law Immigration Lawyers, the greatest number of Canadians of Pakistani descent live in Toronto, the nation's capital, with the next-highest populations in Alberta, Québec, and British Columbia. This is understood to be a comfort to Pakistani candidates for immigration to Canada who may find solace in homes away from home, and is expected to encourage even more Pakistanis to come to Canada. This definitely adds to the multi-cultural landscape of Canada as well, as Pakistanis are known to bring with them their diverse languages, cuisine, fashion, history, and art.

Pakistanis have proven themselves to be incredibly adept in certain industries and fields, including the medical, engineering and tech, and legal areas of occupation. Canada's minimum wage, higher than that of Pakistan, is a motivator for Pakistanis wishing to resettle there.

Canadian immigration firms have taken advantage of the favourable situation regarding immigration from Pakistan, and have facilitated their move to the North American country for decades. Not only do the law firms gain considerable profit and success, but they also help guarantee it for the prospective expatriates they aid alongside the Canadian government. All in all, Canada's generous immigration legislation and the firms putting it into practice continue to contribute to promising futures for Pakistanis wishing to reside and work abroad. ■

### CORRECTIONS & AMPLIFICATIONS

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We regrettably mentioned wrong contact number of Raja Jameel Haider in the last issue's Lawyers' Listing. The entry has been re-entered this month with the correct number.

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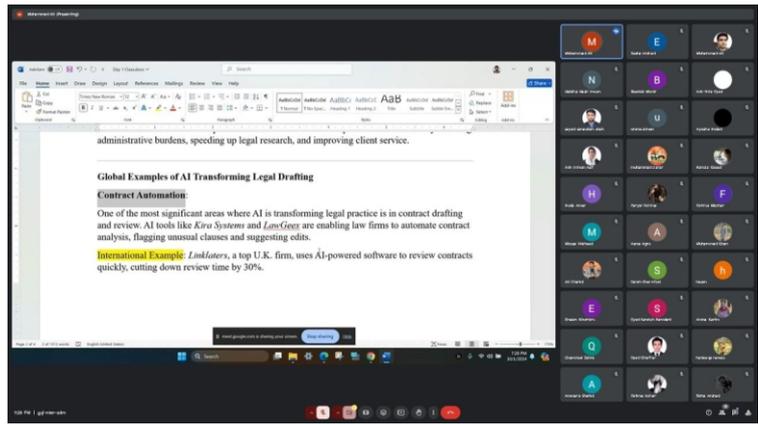
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Course  
Workshop

# Legal Drafting Through AI

## Staff Report



The Legal Academy, an innovative educational initiative by The Legal Research & Development (The Legal R&D), recently launched its first virtual course, titled "Legal Drafting Through Artificial Intelligence". Conducted by Syed Mohammad Ali, Blockchain and Technology Lawyer, this five-day intensive course provided participants with a comprehensive understanding of Artificial Intelligence's (AI) role in legal drafting, equipping them with practical tools and hands-on experience to integrate AI into their legal practice.

The course spanned over five days, October 1 to October 5, under the auspices of Syed Ahmad Hasan Shah, Advocate Supreme Court of Pakistan and Honorary Patron of The Legal R&D, and Adil Aziz Qazi, Advocate of Supreme Court and Vice Chairman of Islamabad Bar Council. The course was structured to cover essential aspects of AI in legal drafting, including practical applications, ethical considerations, and challenges in integrating AI tools in professional settings. Each day was dedicated to specific areas of learning, offering participants an in-depth perspective on the future of legal drafting.

The course covered essential areas of AI-driven legal transformation. Day 1 introduced AI's role in legal research, automation, and contract review, while day 2 focused on AI ethics and data privacy laws, including GDPR and Pakistani regulations.

On day 3, a hands-on Chat-GPT workshop allowed participants to draft legal documents. Day 4 tackled problem-solving in drafting, such as managing clause inconsistencies and complex legal terminology, with both international and Pakistani examples.

Concluding on day 5, the course highlighted future AI integration in legal practice, empowering participants to apply AI in their own professional settings.

Response from the participants was overwhelming, with many commending the course for its practical approach and relevance to modern legal challenges. The hands-on session using Chat-GPT was particularly well-received, as it enabled participants to apply their knowledge directly to real-world scenarios, gaining confidence in their ability to use AI tools effectively.

A participant noted, "This course was a game-changer. It not only introduced me to the technical side of AI in legal drafting but also provided a strong ethical foundation, which is crucial in our field."

Success of the course demonstrates The Legal R&D's commitment to delivering high-quality education and empowering legal professionals with essential technological skills. With The Legal Academy, The Legal R&D aims to bridge the gap between traditional legal practices and emerging digital solutions, preparing legal professionals to lead in an evolving industry.

The Legal Academy is set to offer more specialised courses, expanding into other areas of legal-tech and digital law. This initiative aligns with The Legal R&D's vision of fostering a well-informed, innovative, and globally connected legal community.

The Legal Academy welcomes legal professionals eager to stay ahead in the digital age and invites everyone to join future sessions, exploring AI's profound potential in shaping the future of law. The participants were issued certificates from The Legal R&D. ■

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