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HIGHLIGHTS

9 TL Column

Defining Digital Truth

Constitutional scrutiny of Pakistan's Media Law

10 Int'l Law

Law Without Power

Weaknesses are hollowing out the rules-based global order

11 War

Lawless Firestorm Unleashed

US-Israel joint aggression against Iran

12 Crime

Alpine Death Trial

Austrian Climber faces homicide allegations for partner's death

14 Taxation

Constitutional Reset on Tax

The FCC upheld the super tax, rebuking judicial overreach

16 Mediation

From Adversarial to Amicable

LHC signals party autonomy and disciplined case management

20 Constitution

Anatomy of Constitutional Decay

Revisiting constitutional time theory for transformation

26 Spotlight

Rights Without Reach

Closure of Arshad Sharif case

40 Rights

Indigenous Rights

Coexistence of cultural groups within a society where differences are not tolerated

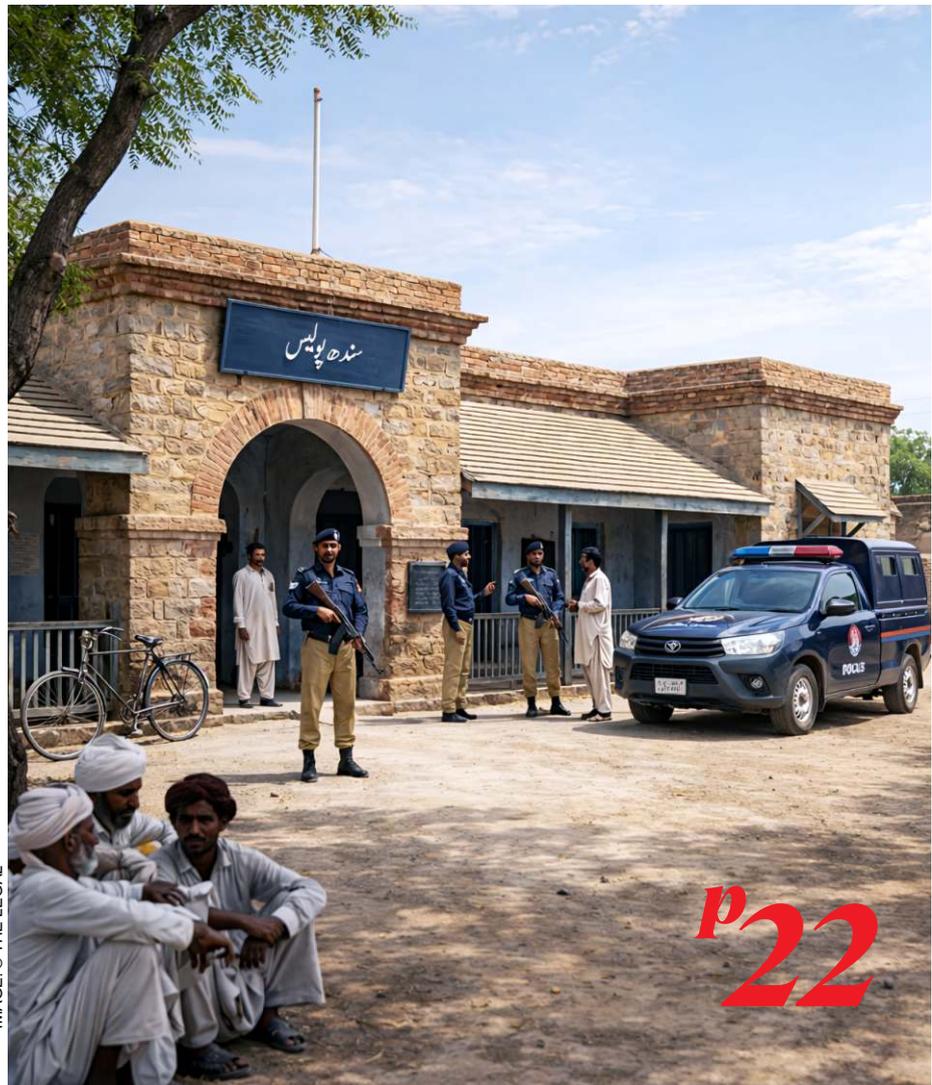


IMAGE: © THE LEGAL

P 22

Stripping Sindh Police of Colonial Lexicon

A transformative ruling by the Supreme Court of Pakistan now seeks to purge this "lexicon of subjugation," mandating a shift to rights-based language and asserting that the State must serve the citizen, not the reverse.

Editor's Note

There are months that test the temper of institutions; this has been one that tests the very grammar of civilisation. Across continents, the cadence of diplomacy has yielded to the drumbeat of force. The conceit that power may substitute for principle has re-emerged with unnerving candour, as though Thrasymachus had been summoned from the pages of *The Republic* to remind us that justice, untethered from restraint, is too often bent to the advantage of the stronger.

The spectacle before us is grim. In Gaza, the mass genocide has shocked the conscience of the world. In Ukraine, sovereignty remains under relentless assault. The abduction of a sitting head of state in South America has further strained the sinews of international comity. Elsewhere, the rhetoric of expansion and coercion grows louder, directed towards Canada, Panama, and Greenland, while sabres rattle ominously in the direction of Iran. From Afghanistan to Pakistan, cross-border violence and proxy entanglements threaten to dissolve what little equilibrium endures.

These are dangerous times not merely because wars are waged, but because norms are discarded. The rules-based order, so painstakingly constructed in the aftermath of cataclysm, appears to wither under selective obedience. Even the authority of the International Court of Justice has been tested when its pronouncements prove inconvenient. Legislation is recast with disquieting haste; constitutional guardrails are treated as negotiable.

And yet, it is precisely in such an hour that the study of law acquires renewed urgency. Law is not a talisman; it is a discipline, textured, evolving, and exacting. To read judgments closely, to interrogate amendments rigorously, to analyse institutional conduct without fear or favour: these are acts of civic steadiness. They allow us to distinguish theatre from doctrine, rhetoric from ratio decidendi.

This month too, the editorial team of *The Legal International* has assembled a considered selection of international and domestic developments, judicial decisions, and critical analyses. We offer them not as mere reportage, but as tools for discernment, resources to fortify your scholarship and professional competence. We invite your letters, articles, and reflections. In unsettled times, serious conversation is itself a form of resistance. Take care!

Aftab Kazmi
Editor in Chief
(aftab.kazmi@gmail.com)



THE LEGAL
RESEARCH
AND DEVELOPMENT

Contacts
mag@the-legal.org
+92 311 3555 503

Office 1, Building 40,
Paradise Commercial, Bahria Town Phase-4,
Islamabad (Pakistan)

THE LEGAL INTERNATIONAL

FOUNDER & CEO

Syed Mohammad Ali, LL.M, AHC
The Legal R&D Pvt. Limited,
Islamabad

HONOURARY PATRON

Syed Ahmad Hassan Shah, ASC
Hassan Kaunain Nafees (HKN)
Legal Practitioners & Advisers,
Islamabad

EDITORIAL

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Marketing & Promotions **Bilawal Ali**
Editorial Secretary **Naseem Bano**

CONTRIBUTORS

Tanveer Ahmed
Emilia Meier (Austria)
Saeed Ahmed
Ibrahim Manzoor, AHC.
Niamat Ullah Bashar
Faryal Fatima, Adv.
A. Hussain
Saleem Altaf
Mark Adgar (UK)
Fajjul Islam (Bangladesh)

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AI Litigation Surge



Judges warn generative technology could flood courts with defective claims, testing capacity, ethics, access to justice and procedural resilience nationwide

British courts are being warned to prepare for a surge of artificial intelligence-generated legal claims that could overwhelm an already pressured justice system.

In a report, *The Telegraph* highlighted the growing concern among senior judges.

The warning was articulated starkly by Sir Geoffrey Vos, Master of the Rolls, who cautioned that AI has the potential to “industrialise” litigation. What once required time, money and legal expertise can now be accomplished in minutes by automated systems capable of drafting pleadings, submissions and appeals that appear convincing, but may be fundamentally flawed.

Judges across England and Wales have already encountered submissions citing fictitious cases, invented quotations and misapplied legislation, classic manifestations of AI “hallucinations”. While such defects are usually identified, the judicial time spent unpicking them imposes real costs. As Sir Geoffrey noted, every hour devoted to a spurious claim is an hour denied to a legitimate one.

The report places particular emphasis on small claims, employment tribunals and data protection disputes, where procedural barriers are low and litigants in person are common. AI tools can embolden individuals to pursue claims they might otherwise abandon, sometimes repeatedly and at scale. In the worst cases, this risks crossing the line from expanded access to justice into abuse of process.

For the legal profession, the issue sharpens existing ethical duties. Regulators have reiterated that lawyers remain fully responsible for material placed before the court, regardless of whether it is drafted by a junior associate or generated by a machine. The judiciary has made clear that ignorance of AI-induced errors will not excuse professional misconduct.

Yet outright prohibition is neither realistic nor desirable. Properly deployed, AI can help unrepresented litigants understand procedures and articulate grievances, particularly as legal aid continues to contract. The challenge lies in containment rather than exclusion. Proposals under discussion include mandatory declarations of AI use, tougher cost sanctions for frivolous filings, and early procedural filters to identify repetitive or defective claims.

As Sir Geoffrey Vos has observed, the courts must adapt quickly. Built for human-paced dispute resolution, they now confront machine-assisted mass litigation. Without clear guidance and structural reform, the justice system risks being submerged, not by merit, but by machines.

Relentless Iranian Dissident



Fresh sentence for Narges Mohammadi highlights Iran's judicial approach to quell the western-supported campaign against the elected Islamic government

Iran's human rights vanguard, Narges Mohammadi, has again been plunged deeper into the Islamic Republic's penal labyrinth, following a Mashhad court's decision to extend her incarceration by more than seven years.

The 53-year-old Nobel Peace Prize laureate, already serving nearly 14 years for her vocal advocacy, now faces a composite sentence for “gathering and collusion” and “propaganda”, alongside internal exile and a travel ban, punitive measures that entrench Tehran's determination to silence the US & Israel-led civil unrest voices.

Mohammadi's story is one of relentless disobedience. A former journalist, she has spent much of the past three decades in and out of Revolutionary Courts and prisons. Since the early 2000s she has campaigned against the death penalty, compulsory dress codes for women, and the alleged systemic gender discrimination, causes that have repeatedly brought her into conflict with the Iranian law.

Her litany of convictions is extensive: multiple arrests, nine trials, more than a decade behind bars and a cumulative tally of decades of sentences and corporal punishment. She has endured solitary confinement, health deterioration and long separations from her twin children, who live in Paris.

Awarded the Nobel Peace Prize in 2023 while incarcerated, Mohammadi has become a potent symbol in Iran's anti-government segment of the civil society. Her tribunes, often delivered through letters smuggled from prison, resonate with protest movements and international human-rights networks.

She is also viewed as a western influenced figure who wants to destabilise peace in Iran to fulfil anti-government agenda although the elected Islamic government enjoys a popular support. Her supporters describe Iran's judiciary as a ‘hard-line’ component of the government.

Judicial Citation Discipline



An Indian high court rebuke, how careless citation of Supreme Court rulings risks eroding institutional discipline and credibility in trial courts

Allahabad High Court has issued a pointed reminder to subordinate courts on the correct manner of citing Supreme Court judgments, warning that casual departures from established convention undermine judicial discipline.

In *Priyank Kumar v State of Uttar Pradesh*, Justice Samit Gopal expressed disapproval of a revisional court's approach in citing an apex court ruling, after it went beyond the accepted practice of referencing the case citation and relied passage, and instead recorded the names of the Supreme Court judges constituting the bench. Such a method, the high court held, was “*totally uncalled for*” and contrary to settled norms.

The criticism arose while the court was examining a criminal revision judgment that relied on a Supreme Court decision reported in 2024 (128) ACC 307. Although the legal outcome itself was not disturbed, the manner in which the precedent was cited drew sharp judicial censure.

“*This system of the revisional court cannot be appreciated,*” Justice Gopal observed, adding that courts are expected to confine themselves to the citation, party names, date of decision and the text relied upon, not the personal composition of the bench.

The judgment situates the lapse within a wider institutional concern. Justice Gopal noted that the high court had previously encountered similar deviations and had already issued directions in January 2025 to reinforce proper citation standards. Those directions were formally circulated by the Registrar General to district courts across Uttar Pradesh, making the present lapse particularly troubling.

The court's intervention reflects a growing sensitivity within the judiciary to procedural rigour. While naming judges may appear innocuous, senior jurists caution that such practices risk fostering unintended hierarchies of authority, detracting from the principle that precedents bind by ratio, not by reputation.

In a further step, the high court directed that the concerned presiding officer be formally reminded of the established protocol and warned against repetition. The Registrar was instructed to circulate the order and secure reports confirming adherence.

Though ancillary to the dispute at hand, the ruling serves as a reminder that judicial writing is itself a constitutional function. Precision in citation, the court implied, is not pedantry but a safeguard of institutional integrity, ensuring that the authority of the Supreme Court is applied uniformly, impersonally and without embellishment.

Indus Waters Impasse

The Hague proceeds with arbitration as New Delhi's suspension of the 1960 treaty threatens regional stability and long-term water security

The fragile architecture of South-Asian hydro-diplomacy faced a defining test when the Permanent Court of Arbitration (PCA) at The Hague confirmed it would proceed with hearings regarding the Indus Waters Treaty (IWT), despite New Delhi's continued refusal to engage.

The impasse centres on the Baglihar and Kishanganga hydropower projects, situated on the western rivers allocated to Pakistan under the 1960 treaty. Brokered by the World Bank, the IWT has long been hailed as a rare triumph of transboundary cooperation, surviving three major conflicts. However, the mechanism was pushed to the brink following the Indo-Pak limited military conflict of May 2025, after which India took the unprecedented step to announce the unilateral suspension of its obligations under the treaty.

In Procedural Order No. 19, issued on 29 January 2026, the tribunal reaffirmed its jurisdiction. It warned that India's absence, and its failure to meet a February 9 deadline for submitting critical reservoir and operational data, could result in “*adverse legal consequences.*” The court noted that because essential technical evidence remains in India's possession, the burden of proof now rests heavily on New Delhi. The tribunal stressed that transparency is essential for resolving such intricate disputes.

The two-day hearing, last month, was attended by Pakistan's attorney general, who argued that the design and capacity of the Indian projects violate the treaty's specific technical constraints. While Islamabad has remained a vocal participant, submitting all required documentation, India has maintained a calculated silence. This strategic withdrawal extends beyond the PCA; UN special rapporteurs reportedly sought clarifications from New Delhi in October 2025 regarding water rights, to which it failed to respond within the stipulated period.

The arbitration panel, chaired by the American scholar Sean D. Murphy and including experts from Australia and Jordan, remains determined to deliver a ruling based on the merits. However, legal observers suggest that India's persistent non-compliance risks undermining its standing in international forums and sets a dangerous precedent for treaty compliance.

As the PCA refers back to its significant August 2025 ruling to justify its current trajectory, the stakes extend far beyond engineering specifications. With the 1960 settlement effectively on life support, the outcome of these proceedings will determine the future of regional water security for nearly half a billion people.



Software for US Apex Court

The Supreme Court of the United States has developed new software designed to assist the justices in identifying potential conflicts of interest, including issues requiring recusal. The system cross-references information about parties and counsel in pending matters against internal lists maintained by individual chambers, creating an additional compliance layer within the Court's existing ethics framework.

The initiative follows the adoption of a revised version of the Supreme Court of the United States's Rules. According to court materials, most of the amendments are technical in nature and are intended to facilitate the operation of the conflict-checking platform.

The project stems from the Court's decision in 2023 to issue a formal Code of Conduct for the justices, a move that followed sustained public scrutiny of judicial ethics standards. In accompanying materials to that code, the justices directed court officers to evaluate whether dedicated conflict-screening software would enhance the Court's internal safeguards.

The software has been built by the Court's Office of Information Technology in collaboration with its Legal Office and Clerk's Office. Officials have indicated that the tool will operate alongside, rather than supplant, existing conflict-review practices conducted within each justice's chambers.

The revised rules are scheduled to take effect on March 16, 2026. They are accompanied by "*Clerk's Comments*," which, while not formally part of the Rules, are intended to assist practitioners in navigating the amendments. Updated filing guidance and technical instructions will be published on the Court's [website](#) in advance of implementation.

'Judicial Murder' of Bhutto Reaffirmed

Supreme Court opinion confronts coercion, due process failures and the legacy of Bhutto's execution



More than four decades after the most controversial and unjust verdict in Pakistan's judicial history, a member of the Supreme Court of Pakistan (SCP) has delivered a pointed reflexion on judicial temperament, and an excoriation of the process that led to the execution of former president and prime minister Zulfikar Ali Bhutto.

In a delayed opinion on the presidential reference concerning the court's 1979 ruling, Justice Muhammad Ali Mazhar said judges must neither be swayed by flattery nor driven by malice. The "*sacred duty*" of dispensing justice, he wrote, demands tolerance that is not "*so fragile or touchy*" as to erupt into annoyance during hearings. A judge who loses patience risks losing the capacity to apply the law dispassionately.

The reference had asked whether the court could revisit the judgment that sent the former prime minister to the gallows, a decision long regarded by the Pakistan Peoples Party and many jurists as a *historic wrong*. On March 6, 2024, the court has concluded that Bhutto's murder trial was *unfair* and marred by violations of due process at both trial and appellate stages.

Justice Mazhar, a part of the reference adjudication bench, delayed his opinion and finally released it early last month. His opinion, however, goes further. He described the appellate court's failure to consider mitigating circumstances, despite material that could have justified acquittal or commutation to life imprisonment, as "*tragic, atrocious and reprehensible*".

In Justice Mazhar's opinion, although appellate courts possess inherent jurisdiction to affirm, set aside or modify sentences, the death penalty was maintained notwithstanding established bias and grave procedural violations.

Particular weight was given to later media interviews by former chief justice Nasim Hasan Shah, who admitted that the decision on Bhutto's appeal had been made under coercion. Such an admission, Justice Mazhar observed, left no doubt that the execution amounted to a "*judicial murder*" and constituted a breach of judicial oath.



India's Two Faces Exposed

The attempt to assassinate Gurpatwant Singh Pannu, a prominent Sikh advocate of Khalistan, has escalated from a covert intelligence matter into a major legal and diplomatic crisis for New Delhi. What began as a criminal prosecution in the United States now threatens to expose uncomfortable questions about the terrorist conduct of India's security establishment overseas.

At the centre of the case is Nikhil Gupta, the alleged intermediary in a purported murder-for-hire scheme, and his suspected handler, Vikas Yadav. According to US prosecutors, Gupta agreed to arrange the killing of Pannu on American soil in exchange for \$100,000, including a \$15,000 advance. American authorities claim to have assembled an extensive evidentiary record, including intercepted calls, encrypted messages and financial transfers.

Investigators reportedly traced the payment trail through the SWIFT

banking system, identifying the source accounts and mapping the movement of funds. This digital and financial evidence forms the backbone of the US indictment, which portrays the operation not as freelance criminality but as an organised terror conspiracy with institutional links.

Yadav, previously identified in court documents as *Co-Conspirator No. 1*, is described by the US Department of Justice as an employee of India's Cabinet Secretariat, which operates under the Prime Minister's Office. While Indian officials have characterised him as a *rogue actor*, the American indictment implies official capacity. Legal observers question whether a mid-ranking officer could independently authorise an international assassination plot or release substantial funds without higher approval.

The political ramifications are profound. Civil proceedings filed by Pannu and reporting in the American

press have suggested that senior figures in India's national security architecture may have had knowledge of the operation. Although no formal charges have been brought against top officials, the case has intensified scrutiny of India's intelligence service, the Research and Analysis Wing (RAW), and the oversight mechanisms governing covert action.

Yadav now faces the prospect of decades in prison if convicted. The United States is seeking his extradition, despite India's assertion that he is no longer in government service and has been detained on unrelated grounds.

The affair also intersects with the killing of Sikh activist Hardeep Singh Nijjar in Canada, whom Gupta allegedly identified as another target. As proceedings advance, the decisive issue will be whether financial records and intercepted communications substantiate a direct chain of command in the Indian state. ■



Adani Empire Under Global Siege

The Adani Group is confronting an escalating legal and financial crisis marked by intensified international scrutiny and asset freezes across multiple jurisdictions. Recent developments indicate that regulatory and banking authorities in Europe have adopted robust compliance measures following allegations of financial impropriety first publicised by Hindenburg Research in early 2023.

In Italy, Intesa Sanpaolo has reportedly frozen two accounts linked to entities associated with the group, containing approximately \$3 billion. The action followed an internal anti-money laundering review into transactions deemed suspicious. The accounts are said to be connected to Nasser Ali Shaban Ali, a UAE national, and Chang Chung-Ling, a Taiwanese national, both alleged by Indian media to be close associates of Vinod Adani, brother of Gautam Adani. The funds are alleged to have been routed through offshore structures.

The Italian intervention mirrors prior measures in Switzerland, where a Swiss bank reportedly froze \$310 million amid suspicions of money laundering and document forgery. Authorities are understood to be coordinating cross-border inquiries into the movement of capital through complex financial vehicles.

Beyond banking investigations, the group faces allegations concerning its energy operations. It is accused of operating an over-invoicing mechanism in coal imports from Australia and Indonesia. According to reports, coal purchased at market rates was allegedly channelled through intermediary entities in Singapore or Dubai, which issued inflated invoices to Indian state purchasers, including the National Thermal Power Corporation. Profits purportedly generated through the pricing differential were allegedly transferred via jurisdictions such as the British Virgin Islands, Mauritius and Cyprus before being reinvested in domestic equities.

In the United States, prosecutors have reportedly initiated proceedings alleging bribery linked to solar energy contracts and sanctions evasion involving the importation of liquefied petroleum gas from Iran through falsified documentation.

Intesa Sanpaolo's compliance review also identified Bermuda-based hedge funds, including Gleneagles Investment Fund, Pangea Fund and Oyster Bay Fund, as vehicles investing in Adani-linked securities, prompting further transaction blocks.

Domestically, the group maintains that it operates lawfully and transparently. However, critics contend that Indian regulators, including the Securities and Exchange Board of India, have not pursued sufficiently transparent investigations. As Swiss and Italian authorities continue information-sharing, the breadth of international enforcement activity suggests sustained regulatory concern. ■

Defining Digital Truth

by **Sulman Ahmad**

Islamabad

Constitutional scrutiny of Pakistan's controversial media law resumes in Islamabad after a year-long hiatus, only to be deferred once more without substantive judicial findings

In the age of information warfare, the definition of "truth" has become a contestable asset, usually hoarded by those with the biggest guns or the loudest megaphones. Last month, in the refined air of Islamabad High Court (IHC), that philosophical struggle collided with the hard realities of legislative overreach.

At the heart of the dispute lies a simple, yet perilous question posed by Justice Inaam Ameen Minhas: who, exactly, gets to decide what constitutes "fake news"?

The hearing, which resumed on February 10, concerns a raft of controversial amendments to the Prevention of Electronic Crimes Act (PECA), 2016. These changes, bulldozed through parliament by the government last January amid fierce opposition, have sparked a constitutional standoff between the state's executive branch and the Fourth Estate.

For the seasoned observer of South Asian jurisprudence, the arguments presented by the petitioners, including Pakistan Federal Union of Journalists (PFUJ) and Islamabad High Court Journalists Association, paint a grim picture of a regulatory framework being weaponised. Mian Samiuddin, counsel for the journalists,



articulated a profound structural anxiety: the amendments have effectively transferred adjudicatory powers from the judiciary to the executive.

This shift is not merely bureaucratic shuffling; it is a fundamental alteration of the legal landscape. Samiuddin argued that a judicial tribunal, appointed in consultation with the Chief Justice of the relative province, should be the arbiter of such matters. Instead, the amended Act paves the way for a "Social Media Complaint Council" and grants authorities sweeping powers to block content. The danger here is obvious: when the executive acts as both prosecutor and judge, due process is often the first casualty.

Perhaps the most Kafkaesque element of the new mechanism is the introduction of third-party complaints. The counsel warned that allowing any "aggrieved person" or their proxy to file a complaint invites misuse. It creates a fertile ground for political vendettas, where proxies can lodge frivolous complaints to silence dissent, regardless of whether actual harm was caused. As Samiuddin astutely noted, misinformation can be a genuine mistake; criminalising it without proving intent or damage is a recipe for authoritarianism.

The implications for press freedom are chilling. The petitioners claim the amendments compel journalists to disclose their sources, a red line for any free press. By potentially endangering these sources, the PECA Amendment Act is framed not as a shield against disinformation, but as a "direct attack" on freedom of expression. The legal challenge rests on the assertion that these changes violate a litany of constitutional protections, including Articles 8, 9, 10-A, 19, and 19-A.

Justice Minhas, displaying the caution typical of the bench when handling legislative matters, declined to issue an interim order to suspend the law immediately. "The matter involved legislation," he observed, noting that the court would render a verdict only after a full hearing. However, his probing questions regarding the identification of fake news and the initiation of proceedings suggest the court is far from convinced by the state's logic.

As the case adjourns until March 6, the legal fraternity and media watchdogs wait with bated breath. If the executive is left to define "fake news" without judicial oversight, the line between regulation and censorship will not just be blurred, it will be erased. ■



IMAGE: © THE LEGAL

Law Without Power

Selective enforcement, American dominance and institutional weakness are hollowing out the promise of a rules-based global order

by **Tanveer Ahmed**

Law Student - Rawalpindi

The post-war promise that all states stand equal before international law is unravelling, eroded not by the absence of rules but by the selective way they are enforced.

International law still exists as a dense architecture of treaties, courts and conventions. Yet its authority is being steadily hollowed out by power politics and uneven compliance. The widening gap between legal ideals and political reality has turned the rule-based order into a system where adherence is often optional for the strong and obligatory for the weak.

Nowhere is this imbalance more visible than in the role of the United States. No longer viewed merely as a sovereign state operating in a shared legal framework, Washington increasingly functions as a system-shaping power whose reach extends beyond traditional notions of nationhood. From its founding, the US has championed equality, democracy, human rights and the rule of law. But contemporary events have raised uncomfortable questions about how consistently those ideals are applied in the realm of international law.

In an era marked by geopolitical, economic and military rivalry, American power occupies a singular, and often decisive, position. Through alliances such as NATO, the US leads a bloc of states bound by strategic and military commitments. Critics argue that this leadership has, at times, translated into military interventions, covert operations and regime-change policies that have caused large-scale civilian suffering and may have breached international humanitarian law.

Facing this axis of power are states with formidable assets of their own, China, Russia, Germany, Japan and India among them, combining population size, industrial capacity, energy resources and economic weight. Yet these countries have largely stopped short of directly confronting the United States. Domestic political constraints, democratic accountability, economic interdependence and fear of diplomatic or financial retaliation have all acted as powerful deterrents.

The selective application of international law lies at the heart of the system's credibility crisis. While treaties, conventions and customary norms remain formally intact, their force depends on enforcement. In practice, enforcement appears weakest precisely where it matters most, in relation to powerful states. The US has repeatedly acted without explicit authorisation from international legal bodies.

NATO's role further underlines this concentration of power. Often described as the world's most formidable military alliance, its operational capacity is overwhelmingly dependent on American

military assets, funding and logistics. Absent US backing, NATO's ability to act as an independent, unified force would be sharply diminished, underscoring Washington's centrality to global security decisions.

Recent developments have deepened anxieties about the erosion of sovereignty and legal restraint. Allegations concerning activities in states such as Venezuela are viewed by critics not as isolated incidents but as demonstrations of power and implicit warnings to others. Meanwhile, inflammatory rhetoric by political leaders calling for extreme measures against neighbouring states or foreign officials points to a troubling normalisation of language that runs counter to the principles of non-interference and peaceful coexistence.

Particularly damaging are reports of pressure exerted on international courts, including the International Court of Justice and the International Criminal Court. When powerful states challenge, threaten or undermine these institutions, especially in cases involving allies, the authority and independence of international justice are placed at risk, reinforcing the belief that law bends under political pressure.

The United Nations, designed as the custodian of global peace and legality, has struggled to arrest this decline. Structural flaws, most notably the veto power held by permanent members of the Security Council, have paralysed its capacity to restrain unilateral action or enforce accountability. The result is an institution that often appears reactive rather than authoritative.

In practice, global decision-making power remains heavily concentrated in Washington. While other major economies wield significant influence, their actions are frequently constrained by domestic politics, public opinion and concerns over democratic legitimacy. These internal limits, absent in an equivalent form for the dominant power, have further tilted the balance, leaving international law increasingly exposed as a principle honoured more in rhetoric than in reality. ■

Lawless Firestorm Unleashed



The world woke on February 28 to scenes that many believed were consigned to history. In a co-ordinated assault, the United States and Israel launched sweeping air and missile strikes on the Iran, hitting Tehran and other major cities. The operation, dubbed “*Operation Lion’s Roar*” in Tel Aviv and “*Operation Epic Fury*” in Washington, has plunged the region as well as the world into a legal and moral crisis.

From Caracas to Gaza, from Greenland to the Gulf, citizens have watched with dread as the rules-based order appears to buckle. The assault on Iran is the latest chapter in what critics call a pattern of unchecked aggression. It has revived memories of the catastrophes that scarred the early twentieth century and the 1940s, when contempt for law led the world into bloodshed.

The legal position is stark. The United Nations Charter is explicit. Article 2(4) prohibits the threat or use of force against the territorial integrity or political independence of any state. Only two exceptions exist: authorisation by the Security Council under Chapter VII, or self-defence under Article 51 in response to an armed attack.

There has been no Security Council mandate permitting force against Iran. Nor has any incontrovertible evidence been produced to show that Iran launched an armed attack immediately preceding the strikes. Article 51 is tightly drawn. It allows force only in response to an actual armed attack, not to conjecture or strategic suspicion. Pre-emptive attacks on a sovereign capital and its leadership fall outside the orthodox reading of the law.

At an emergency meeting of the Security Council, Secretary-General António Guterres warned that the strikes risk wider conflagration and undermine international peace. His words were measured but elusive as he failed to condemn this aggression.

Among the dead are more than 200 civilians. Dozens were innocent school girls at the Shajareh Tayyebah primary school in Minab. Hundreds more have been injured. Civilian districts in Tehran were struck alongside military sites and compounds linked to senior leadership.

Most dramatically, US President Donald Trump has announced the martyrdom of Iranian Supreme Leader, Syed Ali Khamenei, after his compound was hit. The claim has yet to be independently confirmed till the filing of this report. If true, the killing of a sitting head of state in an aerial bombardment marks an extraordinary escalation. It also raises grave questions under international criminal law.

The Geneva Conventions and Additional Protocol I require distinction between combatants and civilians, and impose strict tests of necessity and proportionality. Political leaders may only be targeted if they are direct participants in hostilities. Absent clear evidence of such participation, the strike risks breaching the laws of armed conflict. The reported deaths of children at Minab intensify scrutiny under the prohibition on deliberate or disproportionate attacks on civilians.



Iran has responded with missile and drone strikes against American and Israeli positions across the region. The spiral of retaliation has prompted calls for de-escalation. Yet the legal architecture designed to prevent such crises appears fragile.

In Washington, constitutional questions are mounting. The US Constitution vests the power to declare war in Congress, while the President serves as Commander-in-Chief. The War Powers Resolution requires notification within 48 hours of deploying armed forces and limits engagement to 60 days without congressional authorisation. No formal declaration of war preceded the strikes. Constitutional scholars argue that sustained offensive operations, particularly absent an imminent threat, demand explicit legislative approval. Without it, executive authority may have been exceeded.

International criminal law casts a longer shadow. The Rome Statute prohibits war crimes, including the intentional targeting of civilians. Iran is a party to the Statute; the US and Israel are not. Jurisdictional hurdles remain, but alleged crimes on Iranian territory could, in theory, fall within the reach of the Court, subject to complex procedural questions and any Security Council referral.

Behind the legal arguments lies a deeper charge. The strikes came amid negotiations over Iran’s nuclear and missile programmes, mediated by third parties. Tehran claims the talks were conducted in bad faith and that the assault was aimed at regime change. If so, the prohibition on the use of force against political independence strikes at the heart of the matter.

This is not merely a regional clash. It is a test of whether international law retains meaning when confronted by power. The martyrdom of Ayatollah Khamenei, if confirmed, will resonate far beyond Iran’s borders. So too will the deaths of children in Minab. The world has seen where contempt for law can lead. The question now is whether it has the will to uphold it. ■

Alpine Death Trial

Partner of Salzburg climber who froze on Austria's highest peak rejects negligent homicide allegation and questions rescue response

The public prosecutor in Innsbruck has charged a 36-year-old alpinist with grossly negligent manslaughter following the death of his 33-year-old girlfriend on Großglockner, Austria's highest peak. The woman froze to death on the mountain's exposed summit ridge in the early hours of 19 January 2025 after being left alone, exhausted and hypothermic, roughly 50 metres below the summit cross.

According to the [Staatsanwaltschaft Innsbruck](#) (Innsbruck Public Prosecutor's Office), the defendant (identified by Austrian media as Thomas P) had planned to guide his partner (media also identified her as Kerstin Gurtner,) on a winter ascent of the Großglockner via the Stüdlgrat, a long, technically demanding ridge requiring advanced alpine competence. He is accused of assuming the role of de facto leader of the expedition by virtue of his experience in high-altitude tours, and of committing a series of serious planning and decision-making failures that cumulatively led to her death.

At approximately 2am, prosecutors allege, he left the woman "defenceless, exhausted, hypothermic and disoriented" in extreme winter conditions. She subsequently died of exposure. Temperatures at altitude were around minus 8C, but with wind speeds reaching 74 km/h the wind-chill effect reduced the perceived temperature to approximately minus 20C.

In a detailed charge sheet, the Innsbruck public prosecutor lists multiple alleged breaches of the standard of care expected of a competent mountaineer. Chief among them was the decision to undertake a winter ascent with a partner described as inexperienced in alpine high tours of such length, difficulty and

by *Emilia Meier*
Vienna (Austria)

More than a year after a 33-year-old woman died of exposure high on the Großglockner, her partner has publicly contested allegations of negligent homicide. Through his lawyer, he describes the tragedy as unforeseeable and claims he sought help in time, while questioning why the rescue response was not triggered earlier.

altitude. "Despite her inexperience and the challenging winter conditions, the accused proceeded with the tour," the statement says.

The prosecutor further contends that the defendant scheduled the start of the ascent approximately two hours too late, diminishing daylight margins on a route notorious for its exposure and complexity. He is also accused of failing to carry adequate emergency bivouac equipment, having "not reckoned with an emergency scenario" in his planning.

Equipment choice forms a central plank of the indictment. The woman is said to have used a splitboard and snowboard soft boots, kit prosecutors describe as unsuitable for a high-alpine mixed route in winter conditions. The defendant "allowed" this configuration, according to the charge.

Prosecutors argue that the pair should have turned back no later than the so-called "Frühstücksplatzl", a recognised staging point on the ridge, given the escalating wind and cold. Instead, they pressed on towards the summit. By about 8.50pm they were effectively unable to continue, yet no emergency call was made.

The failure to alert rescuers is treated as particularly grave. Despite a police helicopter overflying the area at around 10.50pm, the defendant allegedly did not signal distress. He is said to have waited until 3.30am before contacting emergency services. Although he telephoned an alpine police officer at 12.35am, the content of that conversation remains unclear; he did not re-establish contact thereafter, having set his phone to silent and stowed it away, missing subsequent calls.

Prosecutors also allege that before leaving his partner he failed to move her to a more sheltered position or deploy available emergency gear, including a bivouac sack and aluminium rescue blankets. Nor did he remove her heavy rucksack and splitboard to reduce heat loss and physical strain.

A forensic medical report, data from both parties' mobile phones and sports watches,

and photographic and video evidence have been examined during the investigation. Witnesses were interviewed and an alpine technical expert produced an opinion synthesising the evidentiary record. The defendant, in written submissions, has denied any wrongdoing.

Under Austrian law, grossly negligent manslaughter carries a maximum sentence of three years' imprisonment.

The case raises difficult questions about the boundaries between individual autonomy and leadership responsibility in high-risk sports. In the tightly knit Austrian mountaineering community, winter ascents of the Großglockner are regarded as serious undertakings requiring meticulous planning and conservative judgement.

A spokesperson for the Innsbruck prosecutor's office said the cumulative errors alleged in this case "constitute a grave breach of the duty of care incumbent upon an experienced alpinist leading an inexperienced partner in extreme winter conditions".

According to Thomas P's defence attorney, [Kurt Jelinek](#), the two climbers were equally capable and planned their climb together. He said that, in his client's view, both he and Gurtner considered themselves "sufficiently experienced, adequately prepared, and well-equipped."

"My client is infinitely sorry about the death of his partner," Jelinek said. "Above all, he wishes to express his deeply felt condolences to the family of the deceased." The defence also disputes the prosecution's narrative that the man bore overriding responsibility for the expedition.

The trial, when scheduled, is likely to test not only the factual matrix of the ascent but also the legal threshold at which misjudgement in the mountains becomes criminal liability. ■

IMAGE: Courtesy foto.webcam.eu


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A Constitutional Reset on Tax

By upholding the super tax and rebuking judicial overreach, the Federal Constitutional Court strengthens fiscal authority while leaving industry to absorb the economic aftershocks

by **Saeed Ahmed**

Islamabad

Pakistan's Federal Constitutional Court has upheld the legality of the super tax, overturning high court rulings and securing Rs310bn in revenue. The judgment reinforces parliament's exclusive authority over taxation and limits judicial intervention in fiscal policy. While easing uncertainty for the government, the decision may prompt production adjustments, price pass-through and renewed scrutiny from domestic and foreign investors.

Pakistan's constitutional architecture has been redrawn in the dry language of tax law. In upholding the legality of the so-called "super tax", the Federal Constitutional Court (FCC) has done more than secure Rs310bn in contested revenue. It has reasserted parliament's exclusive writ over fiscal policy and curtailed the judiciary's appetite for intervention in economic design.

The judgment settles more than 2,200 cases that had lingered across the superior courts. It reverses high court rulings that had struck down or diluted Sections 4-B and 4-C of the Income Tax Ordinance 2001. And it establishes a firm doctrinal boundary: tax rates, slabs and thresholds are matters of legislative competence, not judicial calibration.

At issue was a levy first introduced in 2015 as a one-off solidarity charge. Framed as a response to the fiscal costs of *Operation Zarb-i-Azb*, it imposed an additional 5 percent tax on profits exceeding Rs300m. In 2022 the measure was expanded and deepened, extending to individuals earning above Rs150m annually, with rates rising to 10 per cent. Banks faced a 4 percent charge; other



sectors 3 percent.

Corporate taxpayers argued that the retrospective application of the tax amounted to double taxation. Several high courts were receptive to that reasoning. The FCC was not. In a short order, released late in January 2026, it held the provisions *intra vires* of the constitution and declared that lower courts had strayed into policy terrain. The separation of powers, the bench said, precludes judges from re-engineering fiscal instruments.

The immediate beneficiary is the exchequer. Pakistan's tax-to-GDP ratio remains structurally weak, constrained by exemptions, informality and a narrow direct tax base. The Rs310bn shielded by the ruling is material in a system that struggles to widen its revenue net. For the Federal Board of Revenue, the decision reduces litigation risk and enhances enforceability.

Yet the longer-term economic effects are less straightforward.

The super tax, although labelled temporary, has become embedded in the corporate tax regime. Its persistence underscores a broader pattern in emerging markets: extraordinary levies, once normalised, are rarely reversed. Investors price that institutional memory into risk premia. The FCC's endorsement may strengthen legal certainty, but it also signals that fiscal consolidation will lean on high earners and profitable sectors.

There is a narrow but major exception. Oil and gas exploration companies have been permitted to seek case-by-case relief under the 1948 concessions regime. The court appears to have been sensitive to the sanctity of petroleum concession agreements, and to the risk of international arbitration if agreed tax ceilings were breached. Pakistan's experience in disputes such as Reko Diq has made policymakers wary of exposing the state to large arbitral awards.

This carve-out reveals a tension at the heart of the ruling. On one hand, the court has fortified parliamentary sovereignty in taxation. On the other, it has acknowledged that fiscal power is not exercised in

a vacuum. Contractual commitments to foreign investors carry legal and reputational consequences that transcend domestic statute.

For industry, the behavioural response will be critical. Lawyers representing business groups suggest two likely adjustments. Companies hovering near the profit thresholds may moderate output or defer revenue recognition to avoid crossing into higher tax bands. Others will attempt to pass the additional burden through margins, feeding into consumer prices. In an economy already sensitive to inflation, that transmission channel matters.

The ruling also reshapes the constitutional balance. Pakistan's superior judiciary has historically played an assertive role in public finance, particularly where fundamental rights or procedural irregularities were alleged. By setting aside high court judgments for overreach, the FCC has signalled a more restrained model of review in fiscal matters. Courts may test legality and competence. They may not redesign tax policy.

For foreign investors, the message is mixed but clarifying. The decision reduces uncertainty over the super tax's validity and affirms the durability of money bills passed by parliament. At the same time, it confirms that extraordinary levies can be extended and defended with constitutional backing. Stability, in this context, does not necessarily mean lower taxation. It means predictability in how taxation is authorised and upheld.

The FCC's intervention is less about a single levy than about institutional hierarchy. In drawing a bright line around parliament's taxing authority, the court has prioritised fiscal sovereignty over judicial activism. Whether that strengthens Pakistan's investment climate will depend not on the judgment alone, but on how the legislature now uses the power the court has so emphatically affirmed. ■

Tax Raids

The Federal Constitutional Court (FCC) has affirmed that tax authorities are fully empowered to act within their statutory mandate, including carrying out raids against suspected tax defaulters.

The judgment arose from a petition that challenged a search conducted under Section 175 of the Income Tax Ordinance. The company contended that such enforcement action could only lawfully proceed where there were active, ongoing legal proceedings in place.

However, the FCC firmly rejected that narrow construction of the law. Interpreting the statutory framework, the bench held that the language of Section 175 clearly confers broad authority upon tax officials to enter and search premises for the purpose of enforcing tax obligations, irrespective of whether formal proceedings are pending.

While saying that the power is not unlimited and must be exercised in response to a specific breach of the law, the judges made clear that the judiciary cannot rewrite or dilute unambiguous legislative provisions. ■

Provincial Tax

In another ruling, the FCC also upheld the constitutionality of provincial sales tax on construction services, reinforcing the fiscal authority of the provinces in defined constitutional limits.

The case centred on whether the Khyber Pakhtunkhwa Revenue Authority could lawfully levy sales tax on construction services without encroaching upon the Federal Government's exclusive domain to tax goods. The petitioners argued that the impugned levy effectively overlapped with federal taxation powers.

Rejecting that contention, the Court held that the provincial authority is competent to impose tax on services, provided the measure does not trench upon the Federation's constitutionally protected power to tax goods.

While affirming the validity of the provincial legislation, the judges advised revenue officials to devise clearer mechanisms for bifurcating contracts in construction matters. Such administrative clarity, would minimise the risk of double taxation on materials incorporated into works contracts, said the court. ■

From Adversarial to Amicable

In steering a commercial rent dispute towards structured mediation, Lahore High Court signals that party autonomy and disciplined case management may offer Pakistan's most credible antidote to litigation drift



by **Ibrahim Manzoor**

AHC - Islamabad



IMAGE: © THE LEGAL

Pakistan's commercial dispute culture still defaults to adversarial sequencing: forum battles first, substantive resolution later—if at all. A recent ruling of Lahore High Court signals a departure: as a judge who chose structure over skirmish, and settlement over spectacle.

The decision in *Hascol Petroleum Ltd. v. Additional Rent Controller, Chaklala Cantonment & others* (W.P. No. 1640/2025) disrupts that reflex. Instead of allowing the matter to remain confined to the familiar triangle of rent proceedings, arbitration skirmishes and stay applications, Justice Jawad Hassan redirected the parties towards a structured mediation process anchored in their contract.

The ruling is grounded not merely in pragmatism but in doctrine. It draws on an increasingly coherent body of superior-court jurisprudence affirming alternative dispute resolution as an integral, not peripheral, feature of civil justice. By doing so, it reinforces the principle that party autonomy is not rhetorical ornamentation but an operative commitment capable of judicial enforcement.

Read in full, the judgment exemplifies proactive, yet scrupulously neutral, judicial case management. It identifies the dispute's true centre of gravity, declines to indulge procedural fragmentation, and constructs an enforceable pathway to settlement. In a system prone to litigation sprawl, the message is unmistakable: resolution is not an afterthought but the point.

The parties' agreement contains a sequenced dispute-resolution mechanism. Clause 11.2 mandates "friendly consultations" as the first step; if the dispute remains unresolved within thirteen days

of notice, it is to be finally settled by arbitration. That sequencing is not ornamental. It reflects party autonomy and a contractual preference for calibrated de-escalation before adjudication.

The dispute, however, proceeded in the opposite direction. Hascol invoked section 20 of the Arbitration Act, 1940, seeking the appointment of an arbitrator and commencement of arbitral proceedings. The respondent responded by initiating eviction proceedings under section 17 of the Cantonments Rent Restriction Act, 1963. Hascol, in turn, moved a stay application under section 34 of the 1940 Act before the Rent Controller. That application was dismissed by the impugned order dated April 29, 2025, prompting Hascol to invoke the High Court's constitutional jurisdiction under Article 199.

What followed was the archetypal litigation spiral: parallel fora, procedural contestation, mounting transaction costs, while the underlying commercial controversy remained untouched.

The strain was visible at the apex level. During the pendency of the writ petition, an interim order reached the Supreme Court, which directed the High Court to conclude the matter expeditiously. The signal was unmistakable: delay is not incidental but a structural risk of litigation-first habits.

Justice Jawad Hassan's Intervention

The judgment's defining feature is the Court's method. Justice Hassan does not merely exhort the parties to settle; he engineers settlement-readiness through focused questioning, time for instructions and disciplined process design.

The Court records that it raised specific queries to explore the possibility of amicable resolution, particularly in light of the dispute-resolution clause. On January 20, 2026, it crystallised the real issue: If the dispute is essentially about payment or non-payment under Clause 2.4, why were the parties not making sincere efforts towards friendly consultations or mediation as contemplated by Clause 11.2? This is exemplary judicial discipline. The Court does not pre-judge the merits but identifies what genuinely requires resolution and asks why the contract's de-escalation mechanism has been bypassed.

Equally important is the Court's restraint. Having raised the issue, it afforded counsel time to obtain instructions. Hascol subsequently expressed willingness to explore mediation to avoid protracted litigation or formal arbitration. The respondent did the same. The Court's function here is not to "settle the case", but to create conditions in which settlement becomes rational and institutionally supported, without sacrificing neutrality.

This is precisely the kind of proactive judging that trial forums often avoid. Rent Controllers and civil courts frequently treat their role as confined to adjudicating on the pleadings before them, leaving alternative dispute resolution to the parties' discretion. Justice Hassan's approach demonstrates that courts can remain scrupulously neutral while still managing disputes towards resolution, particularly where the contract itself mandates a consultation-first process.

Mediation Becomes Doctrine

Justice Hassan does not present mediation as a discretionary "soft option". He frames it as a jurisprudentially endorsed mode of dispute resolution, one that the superior courts have repeatedly promoted to reduce avoidable litigation and improve the pace and quality of justice. The judgment states, in direct terms, that the Supreme Court has "consistently emphasized and encouraged" mediation and ADR "to curtail unnecessary litigation and ensure expeditious dispensation of justice".

That proposition is supported by an express line of Supreme Court authority cited by the Court: (i) *Messrs Mughals Pakistan (Pvt.) Ltd. v. EOBI* (PLD 2025 SC 1), (ii) *Province of Punjab v. M/S Haroon*

Company (2024 SCMR 947), and (iii) *Commissioner Inland Revenue v. RYK Mills* (2023 SCMR 1856).

The function of these citations is not to elaborate a detailed doctrinal test; it is to establish the Supreme Court's policy-consistent posture. ADR is no longer peripheral to adjudication in appropriate cases, it is increasingly treated as part of the system's response to congestion and delay.

The doctrinal centrepiece is the Supreme Court's decision in *Muhammad Naseer Butt v. Additional District Judge, Lahore* (PLD 2025 SC 499), which the High Court treats as an authoritative articulation of what mediation is and why courts must take it seriously. The judgment distills the Supreme Court's formulation into a single, decisive proposition: mediation is "not merely an alternative mechanism but a paradigm shift" founded on "collaboration, confidentiality, flexibility and party autonomy".

It further notes the Supreme Court's institutional reasoning: mediation "reduces costs, saves time, alleviates the burden on courts" and can provide "a more practical and interest-based solution" than adversarial litigation.

Crucially, the judgment situates this jurisprudence within a formal legal ecosystem, reinforcing that mediation is not merely a judge-made preference. It records that the Supreme Court took note of the "statutory recognition and legislative framework" under the Alternative Dispute Resolution Act, 2017, as well as the "ADR Mediation Accreditation (Eligibility) Rules, 2023" and the "Mediation Practice Direction (Civil) Rules, 2023", thereby "consolidating mediation as a mainstream dispute resolution tool" within Pakistan's judicial system.

The judgment then demonstrates that this is not confined to the Supreme Court. It states that "the same principle" has been followed by the Lahore High Court in *Faisal Zafar* (2024 CLD 1), *FMO v. Morgah Valley Ltd. & SECP* (PLD 2024 Lahore 315 = 2024 CLD 685), and *Strategic Plans Division v. Punjab Revenue Authority* (PLD 2024 Lahore 545).

Finally, Justice Hassan ties the doctrine directly to commercial adjudication, the context of the Hascol dispute. Relying on *Messrs Sadiq Poultry (Pvt.) Ltd. v. First Habib Modaraba* (PLD 2025 Lahore 57 = 2025 CLD 90), the Court emphasises that disputes involving "financial, commercial and contractual matters ought to be resolved through mediation, where possible", so that "judicial time may be preserved for matters requiring adjudication on merits".

This sentence captures the judgment's underlying logic: courts must reserve adjudication for disputes that truly require authoritative determination. Where the dispute is negotiable in substance, the judicial role includes directing parties towards a structured, consensual process.

The Court also invokes two recent Rawalpindi Bench decisions to demonstrate mediation's operational success and policy utility. First, it cites *Mst. Ghazala Hussain v. Federation of Pakistan* (2025 LHC 8219), noting that a longstanding land acquisition dispute "has successfully been resolved through mediation".

Secondly, it refers to *M/s 5H INSAAT Ve Ticaret Anonim Sirketi v. Secretary & others* (2025 CLD 813 = PLJ 2025 Lahore 738), where the Court promoted mediation rather than "driving the parties towards prolonged arbitration proceedings", particularly in contexts implicating public welfare and foreign investment.

Read together, these authorities do more than merely support mediation. They recast it as a judicially enforceable norm of process, especially in commercial disputes, where the objective is not procedural victory but timely, interest-based resolution.

A frequent weakness in judicial endorsements of ADR is the absence of operational detail. This judgment does the opposite because it designs a mediation process with clear institutional anchors.

The Court appoints Justice (R) Maqbool Baqir as mediator, fixes the first meeting at IBA-ADRIC, Karachi on February 23, 2026, directing completion within four weeks, and sets a fee of Rs1,000,000 to be shared equally between the parties. This is not a vague suggestion. It is a structured order capable of producing a defined outcome within a defined timeframe.

The lesson is concrete. Commercial disputes often do not require



maximal adjudication. They require structured negotiation supported by credible institutional design. Justice Jawad Hassan's method offers a template:

1. treat dispute-resolution clauses as functional commitments rather than boilerplate;
2. identify the real dispute at an early stage, which is often about payment and performance; and
3. where parties are willing, convert mediation from aspiration into a structured process that is neutral, time-bound and accountable.

For counsel, this demands a professional shift. It means preparing mediation briefs with quantified positions and realistic settlement ranges, rather than treating mediation as a last-minute detour. For trial forums, it signals that neutrality is compatible with proactive case management, particularly where superior court jurisprudence has already legitimised mediation as a primary tool of dispute resolution.

W.P. 1640/2025 should be read as a disciplined demonstration of mediation-first adjudication in a commercial setting. Justice Hassan's approach is commendable because it is principled. It honours the party autonomy embedded in Clause 11.2, aligns with Supreme Court doctrine that treats mediation as a paradigm shift, and replaces litigation drift with a structured settlement mechanism that courts and practitioners can replicate.



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Anatomy of CONSTITUTIONAL DECAY

Revisiting constitutional time theory to interrogate democratic erosion and amendment-driven transformation in Pakistan



by **Niamat Ullah Bashar**

Law Student - Lahore

Across decades of upheaval, Pakistan's constitution has bent, fractured and revived. Drawing on theories of constitutional time, the debate frames its trajectory through cycles of erosion, inversion and rupture. Coups, court doctrines and far-reaching amendments reveal how democratic decline rarely arrives with spectacle, but advances incrementally, clothed in legality and institutional form

A constitution is rarely extinguished by a single, dramatic act of regicide. While the world watches for the sudden seizure of power or the thunderous declaration of a coup, the true death of a state's founding document is often a quieter, more insidious affair.

It is a process of "constitutional rot," a slow-moving shadow where the letter of the law survives even as its spirit is hollowed out by institutional fatigue and the "exorcism" of power. In the modern era, the survival of a constitution depends less on its text and more on the "laborious love" of those entrusted to protect it.

A constitution is metaphorically regarded as a living document, a repository for the collective wisdom and ideological identity of a nation. In the case of Pakistan, this includes a complex weave of customary practices, religious injunctions, and social architectures. Yet, like any living organism, it requires constant care. Without the vigilance of lawyers, litigants, and a principled judiciary, these statutes remain lifeless, susceptible to being manipulated until they collapse in actuality, even while their pronouncements remain on the page.

In countries where democracy is derailing, such as Pakistan, constitutional decline depicts a blend of historical disruption, institutional fallout, civil-military frictions, and judicial vulnerabilities that lead to the erosion of constitutionalism, democratic infertility, and the absence of rule of law. At the core of these disruptions, it is the constitution that dies.

To fully understand how a constitution dies in such an ambience, the initiation of the discourse of "constitutional times" by Jack M. Balkin in his book, *The Recent Unpleasantness: Understanding*

the Cycles of Constitutional Time, explains that there are three cycles of change in the American polity: the cycle of the rise and fall of regimes, the cycle of polarisation and depolarisation, and the cycle of constitutional rot and renewal.

This discourse is further theorised by Richard Albert in his article, *How Constitutions Die*. While contemplating three models of constitutional time, the *Sundial model*, the *Hourglass model*, and the *Grenade model*, these must be construed as offering a substantial and analytical interpretive lens. Each, in its substance, represents a distinctive temporal and structural course of decay (erosion, inversion, and rupture) and each resounds with striking clarity when related to the existing constitutional experience of Pakistan.

In Pakistan, the constitution's life, survivability, and death are entwined in a competitive romance between the Hourglass and Grenade models of constitutional time, where the illegitimacy of constitutional development is legalised through amendments.

Primarily, these models, in their academic tone and in relation to Pakistan, can be explained as follows:

- **The Sundial Model:** This is a depiction of the perpetuity of a constitution in its shape, letters, and spirit, where the constitution stands still without any renewal or rupture. Consequently, Pakistan's constitution has experienced historical ruptures from the first and second constitution-making processes; by defying the Sundial model of constitutional times, it means this model cannot be contextualised in Pakistan.
- **The Hourglass and Grenade Models:** These have an interesting preponderance in the constitutional development of Pakistan.

The Hourglass model conceptualises the renewal of a constitution through a legitimate process of voting and consensus-building in response to questions put before the people regarding constitutional changes. There are three basic features of the Hourglass model that advocate for popular generational constitutional reforms: a routinised vote, an option for constitutional reform, and an effect on political elites. Pakistan's constitutional biography is a "competitive romance" between the Hourglass and the Grenade. The judiciary has often been the arbiter of this tension. In the landmark case of *Asma Jilani v. Government of Punjab* (PLD 1972 SC 139), the court repudiated the *Dosso* case.

In a move to prevent total social collapse, the court introduced the doctrine of "condonation." It ruled that while the acts of a usurper are inherently illegal and illegitimate, certain functions must be maintained in the wider public interest. The court held: "Recourse therefore has to be taken to the doctrine of necessity where the ignoring of it would result in disastrous consequences to the body politic... This principle would be called a principle of condonation and not legitimization." (Para. 206.) Critically, the court distinguished this from "legitimation," it was an act of survival, not an endorsement of the "grenade" that had shattered the law. So, the death of a constitution is not merely a legal event; it is a sociological tragedy. When the judiciary is stripped of its power, as the Supreme Court warned in 2000, a country ceases to exist as a free nation. The "spirit" of the law is often shattered long before the "letters" are erased.

As the African proverb suggests: "When death finds you, may it find you alive." For a constitution, "life" is the popular will of the people. If a constitution must change, it should do so through the vibrant, legitimate consensus of the society it serves, rather than the silent rot of institutional decay or the violent burst of the grenade. ■

Stripping Sindh Police of Colonial Lexicon

The Master-Servant Illusion

A judgement of Supreme Court of Pakistan aims to dismantle a century of psychological subjugation by banning the vocabulary of the Raj, but can linguistic reform truly break an institution built for coercion?

For more than 150 years, the police force in Sindh has utilised a specific, subservient vocabulary, labelling citizens as Faryaadi (supplicants) rather than rights-bearing individuals, to maintain a colonial-era hierarchy of domination. A transformative ruling by the Supreme Court of Pakistan now seeks to purge this "lexicon of subjugation," mandating a shift to rights-based language and asserting that the State must serve the citizen, not the reverse. However, as the province remains tethered to the 1861 Police Act, the judgment highlights a profound structural contradiction: the difficulty of instilling constitutional dignity within a legislative framework originally designed for imperial control.

by *Faryal Fatima*
Karachi



In the dimly lit, labyrinthine corridors of Sindh's police stations, the pervasive and enduring ghost of the British Raj has long dictated not merely the procedural protocols of law enforcement, but the very foundational vocabulary of justice itself.

For over a century and a half, a citizen stepping into a precinct to report a crime has been systematically and fundamentally stripped of their constitutional dignity long before a single word of their statement is ever formally recorded by the authorities. Within this entrenched system, individuals are acutely marginalised; they are not viewed as citizens exercising a fundamental democratic right, but rather, they are continuously treated as vulnerable supplicants begging for a state favour.

However, a transformative judgment from the Supreme Court of Pakistan has finally struck at the very heart of this entrenched linguistic subjugation, rigorously exposing how the province's police force continues to wield colonial-era terminology as a potent instrument of psychological control over the populace.

By explicitly prohibiting the continued use of this archaic terminology, the Court effectively recalibrates the foundational constitutional relationship that exists between the individual citizen and the State apparatus. The judgment, aptly described as dismantling the lexicon of subjugation, therefore operates simultaneously and profoundly at doctrinal, institutional, and symbolic levels, actively seeking to transform the nature of policing from an outdated instrument of domination into a genuine public service.

At a much deeper jurisprudential level, the decision officially recognises that language is not merely descriptive of reality, but is, in fact, constitutive of systemic power. The specific terminology employed in official legal and administrative procedures directly reflects underlying, often unexamined assumptions about authority, societal hierarchy, and the very nature of citizenship.

Consequently, the Court's uncompromising insistence upon the use of rights-based language signals a monumental paradigmatic shift away from a colonial framework, a system in which subjugated subjects merely petitioned their rulers for relief—towards a modern constitutional order firmly founded upon the unshakeable principles of human dignity, rigorous equality, and strict due process.

Authored by the distinguished Justice

Salahuddin Panhwar, sitting alongside Justice Muhammad Hashim Khan Kakar and Justice Ishtiaq Ibrahim, the profound judgment delivered in *Criminal Petition No. 1021 of 2021* acts as a precise judicial scalpel upon the body of the legal system. It meticulously dissects the deeply entrenched, pre-colonial, and colonial attitudes that continue to pervade and corrupt the criminal justice system operating in Sindh today.

While the petition brought before the apex court initially concerned a specific murder conviction, the Supreme Court astutely and deliberately pivoted from the singular case to address a much broader systemic rot: the persistent and institutionalised misuse of terminology in criminal proceedings, specifically where the distinct expressions of '*informant*' and '*complainant*' are erroneously used interchangeably by law enforcement personnel.

Through this critical examination, the central and unifying thesis of the judgment emerges unequivocally: the police are fundamentally the servants, and absolutely not the masters, of the people they are sworn to protect. The judicial bench has articulated this foundational democratic principle in unambiguous and forceful terms, stating explicitly that "*it is not the citizen at the service of the Station House Officer, rather it is the Station House Officer at the device of citizen*". Although this vital principle lies at the very heart of functioning democratic governance, it has historically been deeply obscured in South Asian policing methodologies by the heavy, lingering legacy of colonial administrative culture.

The Court's timely intervention deliberately seeks to restore a vital constitutional equilibrium by constantly emphasising that citizens approach the police not as subservient supplicants seeking a discretionary favour from a ruler, but rather as empowered, rights-bearing individuals fully entitled to the absolute protection of the law. To robustly reinforce this necessary recalibration of power, the Court issued a remarkably stern warning to the law enforcement apparatus, declaring that police officers who intentionally delay or obstruct the formal registration of First Information Reports (FIRs) may now incur severe criminal liability, explicitly including prosecution under strict legal provisions relating to the deliberate disappearance or destruction of vital evidence. These decisive judicial pronouncements effectively transform what has too often been casually dismissed as mere administrative inefficiency into a serious matter of strict legal accountability.

A central and highly illuminating focus of the judgment is the Court's vehement objection to the continued, institutionalised use of specific terms such as *Faryaadi*, as well as the deeply subservient phrase *Bakhidmat Janaab SHO*, which directly translates to "*At the service of the Station House Officer*". These are not mere colloquialisms; they are direct, loaded terms that are thoroughly institutionalised in the daily practice of police, particularly within the province of Sindh, and they are quite simply incompatible with the ethos of a constitutional democracy. The Court firmly and unconditionally rejected this subservient phrasing as fundamentally derogatory.

The ruling establishes a crucial legal distinction: if the procedural misuse of the word '*complainant*' constitutes a legal error, then the widespread, accepted use of the term *Faryaadi* represents nothing less than a direct constitutional affront to the citizenry. The Supreme Court perceptively observed that the term *Faryaadi* is predominantly and commonly used within Sindh, whereas the term *Muddai* is the standard utilised in the other federating units of Pakistan. The judgment delves profoundly into the precise etymology of these words to definitively expose their inherent and



IMAGE: © THE LEGAL

deeply damaging power dynamics. The term *Muddai*, which is derived from Arabic, translates in the Urdu language to a claimant or a plaintiff who is actively asserting a legal right. Conversely, the term *Faryaadi* finds its historical and linguistic origins in the Persian word *Faryad*, which translates to a "cry, help or lamentation".

As the Court noted, it is fundamentally a word of profound despair, and certainly not a word of civic empowerment. The Court observed with critical precision that *Faryaadi* "conveys supplication rather than assertion of right". By institutionalising this language and forcing a citizen to adopt the heavy mantle of a *Faryaadi*, the state's police apparatus essentially casts them as a vulnerable, weakened subject desperately begging for the state's mercy, rather than an equal partner in the social contract. In a defining passage, Justice Panhwar wrote, "The description of such a citizen as a 'Faryaadi' is legally misconceived and constitutionally impermissible, as it demeans the citizen by portraying him as a seeker of favour rather than as a rights bearing individual invoking the protection of law".

To comprehensively understand exactly why such subservient and damaging language has survived so stubbornly within the institutions of Sindh, the Supreme Court meticulously traced the province's unique policing culture all the way back to its imperial roots. The judgment delivers a profound and damning historical critique of the institution, noting that the entire police system introduced under the antiquated Police Act of 1861 "was designed as an instrument of control to exercise the authority of the Crown".

Under this rigid colonial framework, the relationship was intentionally skewed; "Citizens approached police authorities not as a matter of right, but as subjects seeking mercy". The judgment correctly identifies these specific terms as the archaic remnants of monarchical courts, echoing an era where subjugated subjects approached absolute sovereigns merely as supplicants. The Court forcefully asserted that "Such terminology reflects a pre-colonial and feudal conception of governance, wholly inconsistent with the constitutional and statutory framework governing criminal justice in Pakistan".

The survival of this oppressive mindset in Sindh is by no means an accidental quirk of history; rather, it is the direct legacy of a deliberate and calculated suppression of civil institutions by the British empire. The judgment extensively recounts the dictatorial tenure of General Sir Charles Napier, a figure who "consciously ruled

Sindh under exclusive martial law, expressly rejecting civil authority, civil courts, and the formulation of any civil or criminal code".

The historical record shows that when advised by Keith Young to establish a proper civil code for the governance of Sindh, Napier fiercely and dismissively rebuked him, stating: "You fancy yourself sent here to form a criminal and civil code of laws. This is an error. Your duty is merely to regulate the proceedings of military courts". This intentional, systemic suppression effectively arrested the normal, organic development of the rule of law and civil liberties in Sindh.

Consequently, the Court noted, "the pre-colonial era has left enduring imprints on legal practices in Pakistan, particularly in Sindh, where many archaic practices continue to shape institutional attitudes and procedures". The Court deeply lamented the tragic reality that "despite the formal departure of British colonial rule, elements of a pre-colonial mindset remain embedded in everyday policing, most visibly in the continued use of the term 'Faryaadi'".

Addressing these historical injustices, the judgment emphatically declares that treating any citizen as a mere supplicant "strikes at the very dignity of the citizen, which stands inviolable under Article 14 of the Constitution, and undermines the concept of equal protection of law envisaged by the constitutional framework". The Court took the crucial step of reminding the entire law enforcement apparatus of its true master: the general public. "Police officers are public servants entrusted with constitutional and statutory duties," the judgment definitively reads.

Expanding upon this, it clarifies that "They are required to serve the public and are remunerated from public funds. Citizens, therefore, approach the police as of right, and not as a matter of charity, grace or indulgence". The Court concluded that the continued use of degrading expressions like *Faryaad* and *Bakhidmat Janaab SHO* are undeniably the "remnants of a colonial and pre-constitutional paradigm" that collectively depict an obsolete and dangerous mindset where "public authorities are perceived as rulers rather than servants of the people".

To permanently remedy this deeply entrenched subversion of justice, the Supreme Court has issued a series of sweeping,

categorical directives aimed at comprehensively purging the colonial lexicon from Pakistan's police stations. The use of the terms *Faryaadi* or *Muddai* in formal police proceedings is explicitly directed to be discontinued immediately to perfectly align everyday police practice with the guarantees enshrined in Articles 4, 9, 10-A, and 14 of the Constitution.

Furthermore, the police must proactively employ "Appropriate and legally accurate alternatives" such as *Itlaah Deendhar* or *Shikayat Kandhar* in the Sindhi language, and *Itlaah Dahinda* in Urdu. The archaic, sycophantic salutation *Bakhidmat Janaab SHO* is actively discouraged by the bench, with the Court ruling sensibly that "a simple addressal as 'Janaab SHO' shall suffice". To ensure compliance beyond the police stations, the District and Sessions Judges across the entirety of Sindh have been legally mandated to ensure that the term *Faryaadi* is absolutely no longer used when calling cases in the lower courts.

However, despite the undeniably progressive nature of the judgment, it simultaneously reveals a much greater, structural contradiction inherent within the policing structure in Pakistan. Although the Court rightly decries the continued use of colonial language as fundamentally incompatible with modern constitutional values, the reality remains that the overarching policing setup still exists within the system of colonial-era laws, with the most prominent and problematic of them being the aforementioned Police Act of 1861.

This specific act was deliberately signed into law shortly after the rebellion of 1857 to help forcefully unify the imperial authority of the British, explicitly instead of encouraging citizens to offer services and ensuring state authorities be accountable. The stubborn continuation of this legislative paradigm has posed a key, unavoidable question for legal scholars and legislators alike: is it truly possible to change the core nature of an institution that was purposefully created to coerce, entirely through the reform of its language only?

Linguistic reforms in the language of justice, however vitally important and symbolically resonant they may be, simply cannot be made in place of a thorough, foundational structural reform of the institutions themselves. Not having an updated, democratically based



policing law on the books may tragically result in making the Supreme Court's enlightened prescription more of an aspirational dream than a concrete reality for the average citizen.

In this profoundly meaningful way, the verdict serves not merely as a judicial correction, but as an urgent call to legislative action. The Court elegantly provides a clear way for future reform since it starkly reveals the glaring discrepancy between the high ideals of the constitution and the persisting institutional organisation of the colonies, but at the exact same time, it pragmatically admits that the judiciary alone can do very little to rewrite the underlying statutes.

The implementation of a new, respectful language system is a key opening to much larger structural transformation in the penal system. Although the bold attempt of the Court to redefine the fundamental terms of use in everyday policing is a highly tangible move in eradicating outdated cultural ways, a stark lack of coordinating legislative and administrative actions will inevitably see these new ideas relegated to relative semantic novelty. Such a failure would inadvertently enable the thriving of deeply harmful old habits whilst operating under a mere semblance of modernity.

Ultimately, the ruling in *Muhammad Bux alias Shahzaib v The State* stands as a major, historic step forward in the crucial process of aligning the policing policies in Pakistan with the core constitutional teaching that focuses uncompromisingly on human dignity, legal equality, and the absolute rule of law. The definitive renunciation of the terms of the colonial era, the vital emphasis placed on the importance of the quick registration of first information reports, and the clear declaration of the absolute responsibility of law-enforcement officials, which the Supreme Court made, has greatly strengthened the foundational assumption that police functions are created explicitly to serve the citizens, and certainly not to dominate them.

Simultaneously, the ruling also outlines the stark constraints of reform attempts based purely on judicial orders in the face of the long-standing existence of colonial law institutions that still continuously dictate policing. The case, therefore, serves a dual purpose: it acts as a much-needed reformative action to address deeply fixed habits, as well as a blaring wake-up bell demanding broad, comprehensive legislative and institutional reform from the state.

The verdict, in its fullest reading, forms a brilliant and unshakeable principle on a constitutional model of policing, one that must forever be based on the unyielding service of the population, the vigorous protection of the rights of all citizens, and strict operation within the absolute limits of the law.

Rights Without Reach

Borders thicker than blood

by *A Hussain*
Islamabad

An enquiry into the Federal Constitutional Court's abdication of its mandate, the abandonment of extraterritorial protection, and the erosion of the Right to Life in the Arshad Sharif murder inquiry

Closure Sparks Concern

The National Press Club (NPC) in Islamabad has condemned the closure of the Arshad Sharif murder case by court order, describing the slain journalist as a symbol of press freedom who consistently spoke out for the truth.

In a statement issued on February 10, NPC president Azhar Jatoi, secretary Nayyar Ali and finance secretary Waqar Abbasi expressed “deep grief and anger” over the judgment. The closure of the case, they said, was “an injustice not only to a journalist but a serious blow to press freedom”.

The office-bearers said key questions in Sharif's murder remained unanswered. “Without making the facts public and bringing the perpetrators to justice, closing the case runs counter to the basic principles of justice,” the statement said.

The decision had generated “grave concern and a sense of insecurity” within the journalistic community, they added, stressing that the state was bound to ensure the safety of journalists and to conduct transparent, independent and comprehensive investigations in such cases.

“Covering up the murder of a journalist like Arshad Sharif is not only unacceptable but will damage Pakistan's image internationally,” the office-bearers said.

The NPC's leadership demanded that the case be reopened immediately and called for an independent inquiry to bring those responsible to justice in accordance with the law. The club said it stood in solidarity with Sharif's family and would continue to advocate for media freedom and the protection of journalists.

T

o stand before the Federal Constitutional Court (FCC) in Islamabad is to witness a profound architectural irony: a structure adorned with the promises of *Article 9* and *Article 19*, the rights to life and free expression, while within its chambers, the judicial spirit that should animate those words appears to have undergone a terminal retreat.

The recent 14-page judgment disposing of the *suo motu* proceedings into the 2022 murder of senior journalist Arshad Sharif represents more than a mere procedural closure. It is a seminal moment of judicial abdication that signals a chilling new era for the rule of law in the country.

By choosing to “satisfy” itself with a stagnant and diplomatically hamstrung investigation, the FCC has not only failed the memory of a state-honoured journalist but has fundamentally narrowed the scope of constitutional protection for every citizen living under its shadow.

The murder of Arshad Sharif in the rugged terrain of Kenya was always going to be a test of whether the Pakistani state's “Right to Life” possessed an extraterritorial heartbeat, yet the court's response suggests that the Constitution is a static shield that ceases to function the moment a citizen is hounded across a border. This judgment, authored by Justice Aamer Farooq, is a masterclass in the art of judicial avoidance, wrapping a refusal to act in the respectable veneer of “restraint” while ignoring the robust, interventionist jurisprudence that defines modern constitutionalism in the democratic world.

To understand the gravity of this failure, one must first confront the sheer vacuity of the “procedural limb” as interpreted by the bench. In the international legal order, the right to life is not merely a negative obligation, a promise that the state will not kill, but a positive, mandatory duty to conduct an effective, independent, and transparent investigation when a life is taken. The European Court of Human Rights, most notably in the landmark case of [Al-Skeini v UK](#), has long established that when a state initiates an investigation into the death of a citizen, even abroad, it enters into a binding jurisdictional contract to see that probe through to a standard of “due diligence.” The FCC, however, appears to have viewed its role through the lens of a colonial-era magistrate rather than a 21st-century guardian of fundamental rights.

By recounting the Kenyan police's narrative of “mistaken identity” without a hint of judicial skepticism, the court has effectively outsourced its conscience to a foreign constabulary that has already been discredited by its own domestic High Court. The omission of the Kenyan judiciary's findings, which previously branded the shooting as unlawful, from the Pakistani judgment is not merely a clerical oversight; it is a deliberate sanitisation of the record intended to facilitate a quiet exit for the Pakistani executive.

The most critical indictment of the judgment lies in its tone of weary exhaustion. The court's query as to “how long” it should be expected to monitor the proceedings is perhaps the most pusillanimous sentence ever penned in a fundamental rights case. A Constitutional Court does not keep time by a stopwatch; it keeps watch by the light of the Constitution. To suggest that a three-year wait for justice is an “indefinite” burden that justifies judicial withdrawal is to admit that the court's patience is shorter

than the reach of the assassins.

Such a statement is a red flag to the international community. It suggests that in Pakistan, the *"Right to Life"* is a conditional luxury, subject to the administrative convenience of a judiciary that has grown tired of the chase. This fatigue is a gift to those who would use violence to silence the press, as it confirms that if a murder is complex enough, and the trail long enough, the highest court in the land will eventually look the other way.

Furthermore, the court's failure to interpret *Article 19* in conjunction with *Article 9* creates a jurisprudential lacuna that will haunt the Pakistani media fraternity for decades. Arshad Sharif was not a random victim of crime; he was a journalist who had been decorated with the *"Pride of Performance"* and subsequently driven into exile by a barrage of state-sponsored litigation and threats. His death was a direct assault on the collective freedom of the press.

By refusing to acknowledge the *"chilling effect"* this murder has had on the media's ability to function, the court has abdicated its duty to protect the democratic process. A robust interpretation would have recognised that the investigation into Sharif's death is a matter of public interest that transcends the grievances of his family. It is a necessary prerequisite for the restoration of a safe environment for free speech. Instead, the court treated the matter as a private tragedy, suggesting that the satisfaction of the state's diplomatic bureaucracy was a sufficient substitute for the public's right to know the truth.

The disparity between the FCC's approach and global standards of *"functional jurisdiction"* is stark. Under the Inter-American Court of Human Rights and the UN Human Rights Committee, the state's obligation to investigate follows the suspects and the evidence. If the conspiracy to kill a journalist originated within the borders of Pakistan, as has been alleged by the victim's family, the crime scene in Kenya is merely a technical detail.

The FCC had the authority to issue a *"continuing mandamus,"*



a legal directive requiring the government to provide periodic, substantive updates on the pursuit of suspects and the execution of Mutual Legal Assistance treaties. Instead, it chose to accept *"progress reports"* that were, in reality, records of stagnation. The court's praise for the Foreign Office's *"diplomatic bridge-building"* is particularly galling when one considers that no actual suspects have been extradited and no high-level accountability has been achieved. It is a judgment that celebrates the process while ignoring the lack of a result, a hallmark of a legal system that has prioritised the comfort of the powerful over the cries of the bereaved.

As the dust settles on this 14-page document, the message to the citizens of Pakistan is clear: your rights are inscribed in marble (in front of the Supreme Court of Pakistan), but they are not written in the hearts of your judges. The FCC was sold to the public as a reformist entity that would depoliticise the judiciary and

focus on the purity of constitutional law. Yet, in its first major test, it has proven to be an instrument of the *status quo*.

By disposing of the Arshad Sharif case, the court has not cleared its backlog; it has cleared the state's conscience. It has signalled that the *"Right to Life"* in Pakistan is a hollow vessel, easily emptied of meaning when confronted with the complexities. For the journalists who continue to report from the frontlines of a fractured democracy, the judgment is a grim reminder that if they fall, the law will not be there to catch them.

It will be there only to document their demise in a neat, 14-page obituary, written in the polite, indifferent language of a court that has forgotten its reason for being. The graveyard of human rights, it seems, has just gained a new and significant monument, and the white marble of Islamabad has never looked colder.

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Judging the Judges

Removed Islamabad judge challenges degree-based disqualification, raising constitutional questions over territorial competence and judicial recusal standards

by **A Hussain**

Islamabad

Former Islamabad High Court judge Tariq Mehmood Jehangiri has petitioned Pakistan's Federal Constitutional Court to overturn his removal in quo warranto proceedings over an allegedly invalid law degree. He contests jurisdiction, due process and judicial bias, arguing the Islamabad bench relied on disputed university action already suspended by the Sindh High Court. The case raises institutional constitutional questions for Pakistan.

When a serving judge is removed from office through quo warranto proceedings, the case rarely remains confined to the technicalities of eligibility. It becomes, almost inevitably, a test of institutional boundaries. So, it is with former Islamabad High Court (IHC) judge Tariq Mehmood Jehangiri, who has now petitioned Pakistan's Federal Constitutional Court (FCC) to overturn the order that unseated him in December.

At issue is an allegedly invalid LLB degree. But the petition, filed through Barrister Salahuddin Ahmed, ranges far beyond the status of a decades-old qualification. It traverses questions of territorial jurisdiction, the legal authority of universities to rescind degrees long after their conferment, and the standards governing judicial recusal where bias, actual or apprehended, is alleged.

The December 18th order of the IHC arose from a quo warranto petition, a constitutional device by which the court inquires “by what authority” a public office is held. In Pakistan, as in other common law jurisdictions, the writ is a powerful mechanism: it allows any person to challenge the legal entitlement of an office-holder to occupy



IMAGE: © THE LEGAL

their post.

Jehangiri's removal was grounded in proceedings said to originate from the University of Karachi, which allegedly cancelled or withdrew his LLB degree. If the degree were invalid, the logic ran, the constitutional qualification for judicial office would fall with it.

The former judge's case before the FCC turns on the proposition that the IHC's quo warranto jurisdiction was improperly invoked and improperly exercised. The petition contends that the entire edifice of the IHC's ruling rested upon university records and proceedings that were both substantively disputed and procedurally defective.

According to the petition, Jehangiri was never confronted with the university material relied upon; the relevant proceedings were conducted “without notice behind his back”. He had already challenged those actions before Sindh High Court (SHC), which,

Jehangiri asserts both actual bias and the reasonable apprehension of bias on the part of the bench that heard the quo warranto case.

critically, had suspended the University of Karachi's declaration cancelling or withdrawing his degree and LLB results, along with all prior proceedings. The university is said to have assented to that suspension.

If accurate, that procedural posture complicates the IHC's decision to proceed. The petition argues that, at a minimum, the Islamabad bench ought to have stayed its hand pending the final determination of the Sindh litigation.

More fundamentally, the petition raises a jurisdictional objection. The University of Karachi is a Sindh-based institution; its impugned proceedings were undertaken in that province. On orthodox principles of territorial jurisdiction, the validity of such proceedings would fall within the remit of Sindh High Court.

"Needless to say," the petition asserts, "Islamabad High Court lacked the territorial jurisdiction to determine the validity of the University's proceedings vis-à-vis the Petitioner. It was only Sindh High Court that could do so."

The argument seeks to draw a sharp distinction between the IHC's competence to determine eligibility for office within Islamabad, and its competence to adjudicate upon the lawfulness of administrative action taken by a provincial university elsewhere. In effect, Jehangiri contends that the IHC could not bootstrap itself into reviewing the Karachi proceedings indirectly through the vehicle of quo warranto.

Such an argument will invite careful scrutiny. Courts exercising quo warranto jurisdiction often consider underlying factual and legal questions that bear upon eligibility. Yet the FCC will have to determine whether the IHC strayed from examining qualification into determining

the legality of an act already sub judice, and suspended, before a coordinate high court.

There is also a substantive administrative law question embedded in the petition: whether the University of Karachi possessed legal authority to withdraw a degree long after it had been awarded.

The petition contrasts the university's position with that of certain other institutions expressly empowered by statute to rescind degrees in defined circumstances. Absent such authority, Jehangiri argues, the withdrawal, especially after the passage of decades and the crystallisation of vested rights, would be ultra vires.

This aspect of the case touches on a broader principle: whether academic bodies retain an inherent power to revisit and revoke qualifications on grounds of fraud or irregularity, or whether such powers must be explicitly conferred. Comparative jurisprudence is divided, often turning on the wording of enabling statutes and the balance between finality and integrity.

For a serving or former judge, the stakes are acute. The legitimacy of judicial office depends not merely on appointment, but on compliance with constitutional qualifications. A retrospective unravelling of those qualifications poses risks both to the individual and to institutional stability.

Perhaps the most sensitive dimension of the petition concerns alleged bias. Jehangiri asserts both actual bias and the reasonable apprehension of bias on the part of the bench that heard the quo warranto case.

The allegation arises from a prior petition filed by Jehangiri challenging the transfer of the

chief justice to Islamabad High Court, the grant of seniority, and his consequent appointment as Chief Justice. In those circumstances, the petition contends, the chief justice was disqualified from hearing Jehangiri's case.

"It was not merely a case of propriety or where the bench had discretion to hear the matter or not," the petition states. "It was a case of disqualification."

The distinction is legally significant. Under established common law principles, reflected in Pakistan's Code of Conduct for Judges of the Supreme Court and High Courts, a judge must recuse where there exists either actual bias or a reasonable apprehension of bias. The latter test is objective: whether a fair-minded observer, apprised of the relevant facts, would conclude there is a real possibility of bias.

If the FCC were to find that the circumstances crossed the threshold from arguable propriety to mandatory disqualification, the consequences for the December 18th order would be profound.

Beyond the fate of one former judge, the case exposes fault-lines within Pakistan's superior judiciary. It raises the perennial tension between judicial accountability and judicial independence; between the imperative to ensure that office-holders meet constitutional standards, and the procedural guarantees owed to them.

The FCC, itself a relatively recent constitutional innovation, is now positioned as arbiter of these competing claims. Its decision will signal how rigorously jurisdictional boundaries between high courts are policed, how strictly recusal standards are applied at the apex of the judiciary, and how far courts may rely on contested administrative determinations in quo warranto proceedings.

For Jehangiri, the litigation is a bid to reclaim office and reputation. For the judiciary, it is a test of process. In constitutional systems, the manner in which a judge is removed can be as consequential as the grounds invoked. ■



Polygamy on Trial

Pakistan's Supreme Court tightens legal consequences for unauthorised second marriages, reinforcing consent, criminal liability and civil accountability in family law

by **Saleem Altaf**
Islamabad

A breakthrough ruling by Pakistan's apex court clarifies that marrying again without mandatory approval is a substantive legal breach, not a procedural lapse. By affirming parallel criminal prosecution and civil remedies, the Supreme Court strengthens statutory protections for women, revives the regulatory intent of Muslim Family Law, and signals a more assertive judicial approach to enforcing marital rights and obligations.



The requirement of prior permission is mandatory in nature and not a mere formality,

- Supreme Court of Pakistan





IMAGE: © THE LEGAL

The Supreme Court of Pakistan has declared that men who contract a second marriage without the consent of their first wife or the approval of the relevant arbitration council expose themselves to both criminal and civil liability, reaffirming that the statutory controls on polygamy are neither symbolic nor optional.

In a [judgment](#) that is likely to recalibrate family litigation across the country, the court held that the procedural requirements under Muslim family law constitute enforceable legal obligations, breach of which may attract penal sanctions, civil consequences, or both. The ruling places renewed emphasis on the protective architecture built into Pakistan's family law regime to regulate polygamy and safeguard the rights of women in marriage.

At the heart of the dispute was the interpretation and enforcement of provisions requiring a husband to obtain prior permission before entering into a subsequent marriage. The petitioner argued that the failure to secure such consent was a technical lapse, insufficient to ground criminal prosecution or substantive civil relief. The court rejected this contention in unequivocal terms.

“The requirement of prior permission is mandatory in nature and not a mere formality,” the judgment states, adding that the law was designed “to prevent arbitrariness, oppression and unilateral decision-making in a relationship that has profound legal and social consequences”.

Pakistan's Muslim Family Laws Ordinance, 1961, introduced a regulatory framework that sought to curb unrestrained polygamy by subjecting it to institutional oversight. A husband intending to marry again must seek written permission from an arbitration council and disclose whether the consent of the existing wife or wives has been obtained. Non-compliance is expressly criminalised.

Over time, however, enforcement has been uneven. Lower courts have frequently treated the violation as a minor offence, often resolved through nominal fines, while civil courts have hesitated to attach meaningful matrimonial consequences to unauthorised second marriages.

The Supreme Court's intervention seeks to reverse that drift. The bench observed that diluting the legal consequences of non-compliance would “defeat the very object of the legislation and render the safeguards illusory”. The court stressed that the ordinance represents a conscious legislative balance between religious permissibility and constitutional commitments to equality and dignity.

Crucially, the judgment clarifies that criminal prosecution for contracting a second marriage without permission does not exhaust the legal consequences flowing from the act. Civil claims, ranging from dissolution of marriage to financial

relief, remain independently available to the aggrieved spouse.

“The commission of an offence under family law does not preclude the availability of civil remedies arising from the same set of facts,” the court noted, adding that the two operate in “distinct yet complementary spheres”.

This articulation is likely to embolden family courts to grant more robust relief, including enhanced maintenance and enforcement of dower obligations, where unauthorised polygamy is established. For legal practitioners, it emphasises the need to assess criminal exposure and civil liability in tandem rather than in isolation. A notable aspect of the ruling is its treatment of consent, not as a ritualistic signature, but as a substantive safeguard. The court cautioned that consent obtained through coercion, concealment, or misrepresentation would fail to meet the statutory standard.

“Consent must be free, informed and real,” the judgment emphasised, warning that any attempt to “manufacture compliance through procedural shortcuts” would invite strict judicial scrutiny. This approach aligns with a broader judicial trend of reading family law through the prism of constitutional values. While stopping short of striking down polygamy itself, the court reaffirmed that its regulation must meaningfully protect women from economic and emotional harm. For family law practitioners, the decision marks a shift towards stricter compliance and heightened risk. Advising clients to proceed with a second marriage without arbitration council approval now carries demonstrable criminal and civil peril. The judgment also strengthens the hand of first wives seeking redress, whether through criminal complaint, civil suit, or both.

The ruling may prompt a surge in enforcement actions, particularly in urban centres where awareness of statutory rights is higher. It may also pressure arbitration councils, often criticised for lax oversight, to perform their statutory role with greater diligence.

Significantly, the court avoided framing the issue as a theological dispute. Instead, it grounded its reasoning firmly in statutory interpretation and constitutional principle. *“The court is not concerned with moral preferences but with legal compliance,” the judgment observed, adding that the legislature had already delineated the permissible contours of polygamy in the legal order.*

In doing so, the Supreme Court has sent a clear signal: family law is not a peripheral domain of soft regulation, but a field of enforceable rights and obligations. The decision reinforces the idea that marriage, even when religiously sanctioned, operates within a framework of public law accountability.

For Pakistan's legal system, often criticised for ambivalence in enforcing women's rights within the family, the ruling represents a sharpened judicial posture. Whether it translates into consistent application on the ground will depend on lower courts and law-enforcement agencies. But as a statement of law, the message is unambiguous: unauthorised polygamy is not merely irregular it is actionable. ■



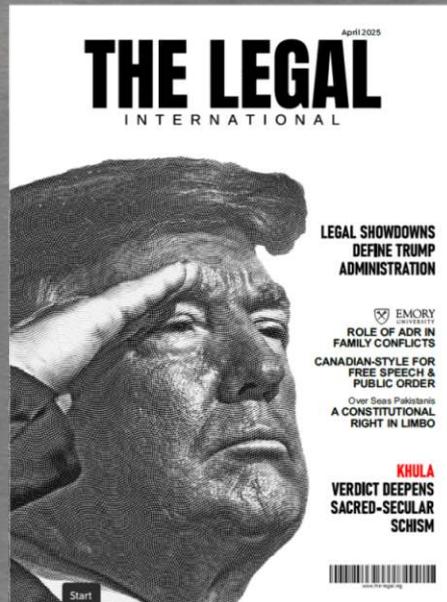
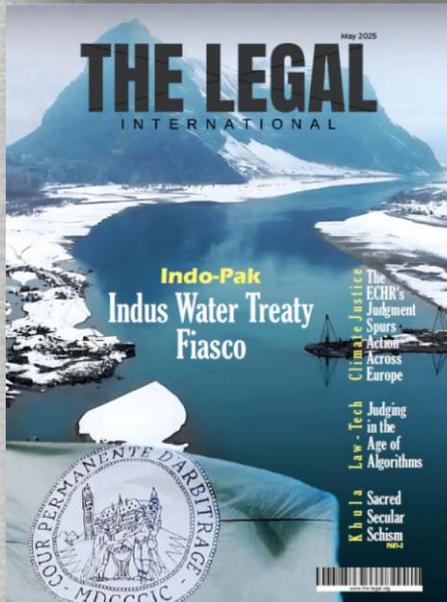
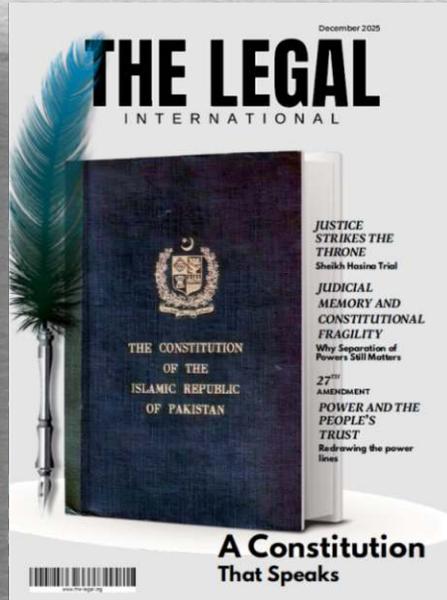
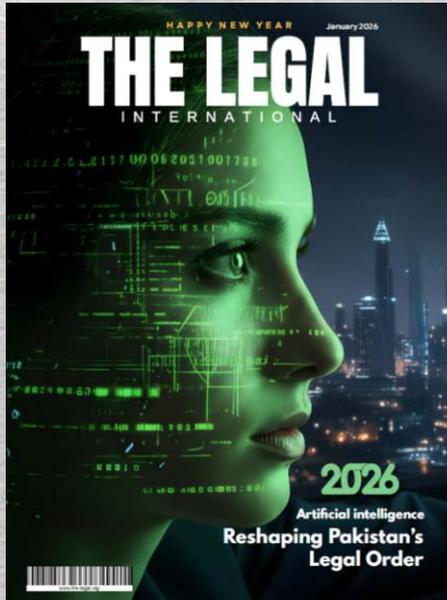
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The Hidden Toll Justice for Victims

Research reveals thousands of women in UK driven to suicide by domestic abuse are being failed by a "broken" legal system

by **Mark Adgar**
London

Britain faces a burgeoning human rights crisis as new data indicates domestic abuse-related suicides far outstrip official estimates. Despite evidence of relentless psychological torment, the criminal justice system consistently fails to secure manslaughter convictions. Activists are now demanding a bespoke law to address this "national scandal", ensuring that those who drive vulnerable women to despair no longer escape accountability.



A woman in an abusive relationship in the United Kingdom is now more likely to take her own life than be killed by her partner. This chilling reality, described by experts as a “national scandal,” sits at the heart of a burgeoning legal and human rights crisis that official statistics are failing to capture. New research suggests that the true scale of domestic abuse-related suicides may be ten times higher than previously acknowledged.



IMAGE © THE LEGAL

While the Domestic Homicide Project, led by the National Police Chiefs' Council (NPCC), recorded 98 suspected suicides following domestic abuse in 2024, data from a suicide prevention programme in Kent suggests a far darker picture. If the Kent findings, where 33 percent, of suicides were linked to domestic abuse, reflect the nation-wide situation, as many as 900 victims may be taking their lives annually.

Tim Woodhouse, the University of Kent academic who led the research, warned that national estimates are currently based on “one researcher’s evidence,” calling the exclusion criteria used by the NPCC “bonkers”. Campaigners argue that this statistical invisibility is mirrored by a criminal justice system that is “not fit for purpose”.

The legal threshold for holding abusers accountable after a victim’s suicide remains almost insurmountably high. In the entirety of UK legal history, there has been only one criminal conviction for manslaughter in such circumstances. That case, the 2017 conviction of Nicholas Allen, followed a relentless stalking campaign against his former partner, Justene Reece. Since then, successful prosecutions have remained non-existent, even when coroners return findings of “unlawful killing”.

The Daily Guardian, which is publishing a series of reports on this crisis, highlighted the case of Georgia Barter. Despite a coroner ruling her death an unlawful killing following a decade of abuse by her partner, the Crown Prosecution Service (CPS) declined to bring charges, citing “insufficient evidence”.

Similarly, the case of Katie Madden illustrates the perceived police indifference. Although her ex-partner admitted in an inquest to giving her a black eye and telling her to “kill herself” hours before her death, no criminal investigation into his role has been launched.

In March 2025, the limitations of the current legal framework were laid bare at Preston Crown Court during the trial of Ryan Wellings. Although Wellings was convicted of assault and coercive control, receiving a sentence of six and a half years, he was cleared of the manslaughter of his former partner, Kiena Dawes. Before taking her own life, Ms Dawes had left a haunting note on her phone stating, “Slowly ... Ryan Wellings killed me”. For legal experts, the case underscores a recurring failure: the justice system’s inability to link the proven trauma of domestic abuse to the eventual act of suicide in a way that satisfies the high bar for a manslaughter conviction.

Legislative reform is now the primary objective for groups like Southall Black Sisters, who have campaigned for over 40 years to have such deaths recognised as homicide. Their proposed amendment to the crime and policing bill, which garnered support from more than 50 MPs, aims to address the unique barriers faced by Black, minority, and migrant women who suffer from “intersecting racism and misogyny”. Frank Mullane, of Advocacy after Fatal Domestic Abuse, argues that a bespoke law is essential to stop defence teams from “exploiting the merest mention of mental health difficulties” to obscure the role of the abuser. By creating a specific offence, proponents believe the Crown Prosecution Service would have the necessary confidence to bring these complex cases before a jury.

Pragna Patel of Project Resist attributes this lack of progress to a “systemic culture of discrimination, arrogance, indifference and apathy” within the police and judiciary. Kate Ellis of the Centre for Women’s Justice noted that many suicides are not investigated as potential homicides from the outset, leading to the loss of vital evidence. ■

Crossing the Line

From Pilgrim to Citizen

An Indian visitor on a 10-day religious visa converts, remarries and defeats deportation to secure Pakistani nationality

by **Rukhsana Anam**

Lahore

The case of Sarbjit Kaur, now Noor Fatima, has unfolded at the uneasy intersection of faith, sovereignty and law. What began as a routine cross-border pilgrimage on a tightly restricted religious visa has culminated in the grant of Pakistani nationality. The decision, shaped by claims of personal liberty and fear of persecution, has stirred legal and diplomatic debate in equal measure.

Sarbjit Kaur, 48, a resident of Jalandhar in Indian Punjab, crossed into Pakistan at the Wagah border on November 4, 2025. She was among some 2,000 Sikh pilgrims travelling to Nankana Sahib to mark the birth anniversary of Baba Guru Nanak. The group was scheduled to return on November 13, under the established pilgrimage timetable.

On November 7, however, Kaur separated from the *jatha*. Days later, she surfaced before a local court in Sheikhupura. There, she declared that she had voluntarily embraced Islam, adopted the name Noor Fatima and entered into a *nikah* with Nasir Hussain, a resident of the district.

Her testimony was unequivocal. She insisted that her conversion was an act of conscience and that her marriage was lawful under Islamic rites. The court recorded her statement.

Yet her marital history immediately became contested terrain. Kaur described herself as a divorcee and the mother of two sons. Counsel for her Indian husband, Karnal Singh, has since asserted that no formal decree of divorce was ever obtained in India. That discrepancy, though unresolved in a Pakistani forum, has fuelled argument over the validity of her remarriage and the legal status of her prior union.

At the centre of the controversy lies the 1974 bilateral protocol governing pilgrimages between India and Pakistan. Under the agreement, visas issued for visits to religious shrines are strictly time-bound and non-extendable, typically valid for ten days.

By remaining in Pakistan beyond November 13, 2025, Kaur was in technical breach of the protocol. In ordinary circumstances, such an overstay would invite administrative action and deportation. Her departure from the *jatha* also prompted concern among Sikh community representatives, who argued that the disappearance of a pilgrim carried reputational and security implications.

Mahendra Pal Singh, a former Parliamentary Secretary for Human



IMAGE © THE LEGAL



Rights, petitioned Lahore High Court seeking her deportation. He contended that her conduct violated the terms of entry and compromised both national security and the standing of the Sikh community.

The petition sharpened a constitutional question: could the state, consistent with its obligations, regularise the status of a foreign national who had entered under a restrictive regime and then renounced her original faith?

Complicating matters were allegations about Kaur's background in India. Advocate Ali Changezi Sindhu stated that three criminal cases were registered against her in Bathinda and other districts. He further claimed that her sons faced eight criminal charges.

These assertions, though not adjudicated in Pakistan, raised obvious concerns. How had she secured security clearance and a visa from Indian authorities? And should alleged antecedents influence a Pakistani court assessing her entitlement to protection or nationality?

No conclusive finding on those allegations has been made public. They nonetheless formed part of the wider narrative advanced by those pressing for her return.

In the weeks that followed, Kaur's circumstances remained fluid. From January 5 to February 11, she was placed in *Dar-ul-Aman*, a state-run shelter, during the pendency of proceedings. Such custody is often described as protective rather than punitive, particularly in cases involving conversion or contested marriage.

She also filed a petition in the Sheikhpura court alleging harassment by the police. The court issued an order restraining the authorities from engaging in such conduct. That intervention underscored the judiciary's supervisory role over executive action in sensitive personal status cases.

Throughout, her position remained consistent: she feared for her life should she be returned to India on account of her conversion to Islam.

The decisive turn came through administrative and judicial channels. Represented by Ahmad Hassan Pasha, Kaur pursued what her counsel described as a "tough procedure" involving the Home Department and the courts.

The central plank of her case was humanitarian. She argued that repatriation would expose her to serious risk because she had changed her religion and married a Pakistani Muslim. That claim invoked principles familiar to asylum and protection law, even if not formally framed within an international refugee adjudication.

Despite the pending deportation petition, it has now been confirmed that she has been granted Pakistani citizenship. The Home Department proceedings are reportedly complete and she is no longer in the state custody. She resides in Sheikhpura with her husband, Nasir Hussain, as a Pakistani national.

The case has not been confined to courtrooms. Indian media outlets have reportedly circulated audio recordings said to cast doubt on her narrative. She maintains that these recordings are fabricated and designed to discredit her.

For Islamabad, the grant of nationality to a former Indian pilgrim marks an unusual outcome under a regime designed to ensure temporary, supervised religious visits. For New Delhi, the episode raises questions about the integrity of bilateral protocols and the protection of Indian nationals abroad.

Legally, the matter may prove significant. It represents a rare instance in which a foreign national entering on a restricted religious visa has secured naturalisation after overstaying. The decision appears to have rested on humanitarian considerations and the perceived threat of persecution in the country of origin, outweighing strict adherence to the 1974 protocol.

Whether this outcome will remain exceptional or signal a broader interpretative shift is uncertain. What is clear is that the case of Sarbjit Kaur (Noor Fatima) has tested the elasticity of administrative discretion, the reach of judicial oversight and the enduring tension between protocol and protection.

In the austere language of law, it is a question of status. In human terms, it is a story of faith, identity and the power of a passport to redraw a life. ■

Indigenous Rights Reckoning

Cultural pluralism says about the coexistence of different cultural groups within a society where differences are not merely tolerated but respected and protected through legal, social and institutional reformation



by **Fajul Islam**

Lecturer of Law, The University of Chittagong - Bangladesh





South Asia prides itself on pluralism. Yet beneath the rhetoric of constitutional equality and the diplomatic embrace of international human rights norms lies a more disquieting truth: the region's indigenous peoples remain among its most systematically marginalised communities.

From land dispossession to the erosion of cultural identity, their rights are too often treated as peripheral to the grand narratives of development and state-building. If cultural harmony is to be more than a slogan, South Asia must reckon, legally and politically, with the place of indigenous rights at the heart of its governance frameworks.

South Asia is one of the most culturally diverse regions in the contemporary world, home to hundreds of ethnic groups, languages, religions, sub-groups and indigenous communities. Historically and in the present day, communities such as the *Adivasis* of Bangladesh and India, the *Janajatis* of Nepal and the *Vedda* of Sri Lanka form an integral part of the region's social fabric and symbolic order. Yet their centrality to the region's cultural landscape has not translated into structural inclusion.

Cultural pluralism, properly understood, demands more than the passive toleration of difference. It requires the active respect and protection of language, religion, traditional knowledge, land rights, customary law, family structures and distinct modes of life. For indigenous peoples in particular, pluralism entails the preservation of collective identity through legal and institutional reform. International law increasingly recognises that indigenous identity is inseparable from

land, culture, customary practice and collective existence; it cannot be reduced to a narrow bundle of individual civil and political rights.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms this normative shift. Article 11 protects the right of indigenous peoples to practise and revitalise their cultural traditions and customs; Article 3 recognises their right to self-determination; and Articles 25 to 28 address rights to lands, territories and resources. Although UNDRIP is not formally binding, it reflects an emerging customary international legal consensus and provides a powerful interpretative framework for states engaging with cultural pluralism beyond mere symbolism.

Yet South Asian states have displayed marked reluctance even at the level of terminology. Governments frequently eschew the term “*indigenous*”, preferring formulations such as “*ethnic minorities*”, “*tribal peoples*” or other administrative classifications. In Bangladesh, Article 23A of the Constitution refers to “*tribes, minor races, ethnic sects and communities*” without expressly recognising indigeneity. In India, “*Scheduled Tribes*” are constitutionally enumerated, but primarily within the architecture of affirmative action rather than as bearers of inherent cultural autonomy and self-determination. Similar patterns may be observed in Nepal and Sri Lanka.

This terminological evasion carries tangible legal consequences. Absent formal recognition as indigenous peoples, communities struggle to invoke international standards relating to land rights, free, prior and informed consent (FPIC) and collective self-determination. Development-induced displacement, militarisation and environmental degradation disproportionately burden indigenous populations. The effects are stark in the Chittagong Hill Tracts of Bangladesh, in the central Indian tribal belt and in resource-rich regions of Nepal, where extractive and infrastructural projects frequently proceed without meaningful consultation.

International human rights law nonetheless provides multiple entry points for protection. Article 27 of the International Covenant on Civil and Political Rights guarantees minorities the right to enjoy their own culture, religion and language. The Human Rights Committee has interpreted this provision to encompass traditional economic activities, land use and community-based practices integral to indigenous life. Article 15 of the International Covenant on Economic, Social and Cultural Rights further recognises the right to participate in cultural life and to benefit from cultural heritage. These guarantees, though framed in general terms, are collective in effect and demand positive state action, including legal recognition of customary law and safeguards against cultural erosion.

The only binding treaty devoted specifically to indigenous and tribal peoples remains the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169). Its provisions on land tenure, consultation and self-governance represent the high-water mark of treaty protection. Yet no South Asian state has ratified it. The omission underscores a persistent gap between international standards and regional practice.

The Chittagong Hill Tracts offer a particularly revealing case study. Home to several indigenous groups, including the *Chakma*, the *Marma* and the *Santal*, the region endured decades of conflict, displacement and militarisation. The 1997 Chittagong Hill Tracts Peace Accord promised to address land disputes and enhance regional autonomy. Nearly three decades on, implementation remains partial. The failure to establish effective land commissions

and to recognise customary tenure systems raises serious concerns under minority rights jurisprudence and the right to an effective remedy. It demonstrates, with uncomfortable clarity, that cultural pluralism cannot subsist without institutional reform.

A further challenge lies in the conflation of national integration with cultural homogeneity. State policies across the region have at times privileged a dominant language, religion or historical narrative, marginalising pluralistic traditions in the name of unity or development. Such assimilationist approaches sit uneasily with international standards. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions affirms cultural diversity as a common heritage of humanity and obliges states to create conditions in which diverse cultures may flourish. Cultural harmony, properly conceived, demands governance models that allow indigenous peoples to define and sustain their own cultural trajectories.

Indigenous rights are increasingly intertwined with environmental protection and climate justice. Traditional ecological knowledge contributes materially to biodiversity conservation and sustainable resource management. Article 8(j) of the Convention on Biological Diversity recognises the importance of indigenous knowledge in the conservation and sustainable use of biological diversity. In South Asia, climate change disproportionately affects communities living in forests, hills and coastal regions. The protection of indigenous cultural practices is therefore not only a human rights obligation but an environmental imperative, central to intergenerational equity.

The path forward requires movement from symbolic accommodation to enforceable rights. Domestic legislation must align with international norms through formal recognition of indigenous status, protection of customary land tenure and

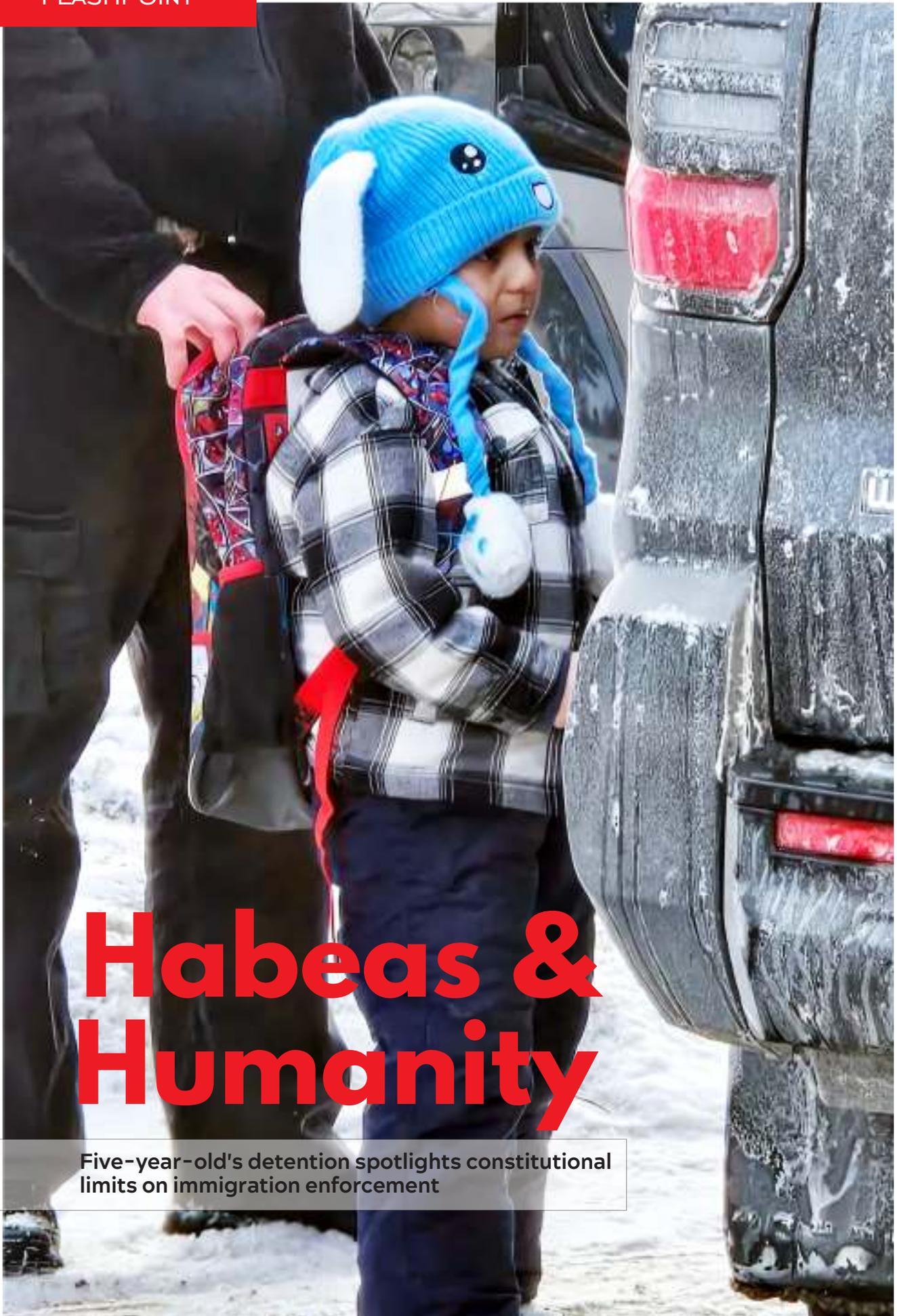
the operationalisation of FPIC in development planning. Courts can play a decisive role, particularly where constitutional guarantees of equality and culture are broadly framed. Judicial engagement with international law, as persuasive authority, offers one avenue for deepening protection.

Regional cooperation, though limited in South Asia, could also furnish a platform for advancing indigenous rights within broader human rights and development agendas. Civil society organisations, academics and legal practitioners bear responsibility for documenting violations, advancing strategic litigation and amplifying indigenous voices in international fora.

The story of indigenous peoples in South Asia is one of enduring resilience set against structural exclusion. The region celebrates its pluralistic heritage, yet cultural justice remains elusive for those whose identities are most intimately bound to land and tradition. International law provides a robust normative architecture. Its transformative potential, however, depends upon political will and domestic implementation. Cultural harmony in South Asia will remain incomplete unless indigenous peoples' rights are recognised not as peripheral grievances but as foundational to legal pluralism, justice and sustainable peace. ■



FLASHPOINT



Habeas & Humanity

Five-year-old's detention spotlights constitutional limits on immigration enforcement

by **Laura Jennifer**
Washington DC

The photograph Liam Conejo Ramos, in a blue bunny hat and Spider-Man backpack as ICE agents detained him, sparked national outrage, igniting protests, absenteeism at his Minnesota school and fierce judicial rebuke. A U.S. federal judge's opinion condemned the practice as a **"perfidious lust for unbridled power,"** highlighting the human cost of sweeping immigration enforcement.

T

he detention of five-year-old Liam Conejo Ramos by U.S. Immigration and Customs Enforcement (ICE) on January 20, 2026 became a defining legal and humanitarian flashpoint in America's immigration debate.

Agents arrested Liam and his father, Adrian Conejo Arias, in Columbia Heights, Minnesota, as part of Operation Metro Surge, a robust federal enforcement push in the Minneapolis–Saint Paul area. The father and son were taken to the Dilley Immigration Processing Centre in Texas, despite both having active asylum claims under U.S. immigration law.

The case drew global attention when images of the child, clad in a blue bunny hat and Spider-Man backpack, circulated widely. Within days, what began as routine enforcement became a symbolic reckoning over immigration authority and children's rights.

Operation Metro Surge was authorised under the current administration's expanded enforcement priorities in the Department of Homeland Security (DHS). Under 8 U.S.C. § 1226(a) and 8 U.S.C. § 1231(a), ICE has broad authority to detain non-citizens pending removal proceedings or after final orders of removal. However, statutory and regulatory provisions, notably the *Flores Settlement Agreement* and corresponding Title 8 C.F.R. § 236.3(b), emphasise the least restrictive conditions for detaining minors, especially when accompanied by family members with pending asylum cases. Courts traditionally interpret these provisions to balance enforcement with due process and humanitarian protections.

In Liam's case, both he and his father had active asylum applications, legal instruments designed to shield individuals from return to persecution. Asylum claims carry inherent protections under 8 U.S.C. § 1158 and due process guarantees under the *Fifth Amendment*, which collectively constrain expansive enforcement actions against families. The government's procedural justification centred on administrative warrants, yet it sparked controversy for detaining a minor without clear statutory exception.

Valley View Elementary School, Liam's school, echoed the broader legal concerns with grave social ones. School leaders, including Superintendent Zena Stenvik, reported that multiple students had been detained in federal operations, with others absent *en masse* in the wake of the arrests. In statements to local media, Stenvik described the situation as *"heart-wrenching and disruptive,"* noting that children were being stripped from their education and support systems without clear parental planning or community consent.

According to school officials, agents separated Liam from his family in a manner that suggested tactical opportunism rather than careful child welfare. Of particular concern was the account that Liam was led to the front door of his home and told to knock so officers could establish whether others were inside, an action described by educators as tantamount to using a child as *"bait."* On January 31, 2026, U.S. District Judge Fred Biery of the Western District of Texas issued a highly critical ruling ordering Liam and his father's release. The opinion, while grounded in legal principles, pierced the political veneer of immigration enforcement. Judge Biery wrote of the case's *"perfidious lust for unbridled power and the imposition of cruelty,"* and stated that the government's actions *"apparently even if it requires traumatizing children."*

In a striking gesture, the judge's order included biblical references, such as Matthew 19:14: "Suffer the little children to come unto me," underscoring a moral rebuke alongside constitutional reasoning. While the text did not supplant statutory law, it served to contextualise the ruling's broader humanitarian tone captured in his language and rationale.

The court's order also restrained the government from removing the family from its jurisdiction while litigation continued, stressing that due process extends beyond mere procedural formality and into humane treatment, particularly for minors.

The enforcement tactics in Minnesota trace back to the Trump administration's disputed immigration policies, which prioritise wide-ranging removal operations and stricter interpretations of "illegal presence" under 8 U.S.C. § 1182(a)(6)(A) and related provisions. Advocates within the administration argue that vigorous enforcement is necessary to uphold sovereignty and deter unlawful entry. Critics, however, contend that such strategies, particularly when applied without nuance to families and asylum seekers, undermine legal protections designed to safeguard vulnerable populations. President Trump's

DHS has consistently defended the operations as both legally justified and essential to restoring law and order at the border and interior.

The emotional and psychological impact on Liam and other detained children was starkly documented. Reports from congressional representatives highlighted inhumane detention conditions, inadequate medical care, freezing temperatures and lack of bedding, and described the child's deteriorating mental and physical health. These accounts resonate with social science research showing that even brief detention can cause long-term trauma in young children.

Furthermore, the broader community effects were profound. At Liam's school, absentee rates spiked, and families expressed fear of attending school events or daily routines. Parents and educators alike noted that the presence of armed federal agents near children's routines violated communal trust and destabilised educational environments.

The Liam case has implications well beyond its immediate factual matrix. Legally, it underscores the tension between executive enforcement discretion and judicial oversight, particularly where fundamental rights and

statutory protections intersect. The judge's scathing language returns to bedrock principles of fairness and proportionality in administrative action.

Societally, this episode has reinvigorated debates over the role of immigration enforcement in everyday American life. It has galvanized advocacy groups and prompted congressional inquiries into detention practices; it has also led some state and local entities to reassess cooperation with federal enforcement actions. The case suggests that the rule of law, often invoked in abstract terms, must accommodate humane treatment, especially for minors, under both statutory text and constitutional norms.

The detention and subsequent release of Liam and his father crystallise a broader conflict in U.S. immigration jurisprudence: the balance between lawful enforcement and the humane treatment of vulnerable individuals. Judge Biery's ruling, sharp in its critique and rich in moral language, may well serve as a touchstone for future litigation and policy discussions.

The case is not merely a legal contest over statutory interpretation; it is a societal mirror reflecting how the U.S. reconciles its immigration laws with deeply held values about family, childhood, and justice. ■



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TL EVENT



Bridging Legal Borders

Aspiring lawyers in the federal capital were given a first-hand look into the complexities of the British legal system during a well-attended seminar featuring the former Deputy Mayor of Luton.

The event, held at Roots IVY Serene Campus, Islamabad, focused on bridging the gap between local academic study and international professional practice.

The seminar, which took place on February 18, 2026, was addressed by Barrister aSummara Khurshid, former Deputy Mayor of Luton, England, alongside Barrister Luqman Bajouri and Abdullah Zafar. Organised by Syed Mohammad Ali, Advocate High Court and Adjunct Faculty of Law, the initiative forms part of the institution's strategy to provide students with direct exposure to global legal experts. Upon their arrival, the guests were formally received by Ismaeel Khan, Head of the Law Department, and Abroo Asad, Head of the Roots IVY Serene Campus.



In her keynote address, Barrister Khurshid provided A Level and university students with a comprehensive introduction to the legal system of UK. She shared practical insights into career pathways and reflected on her unique journey of balancing a legal career with the responsibilities of public office. The session concluded with a vibrant Q&A segment, where students interrogated the realities of leadership and the challenges of the global legal landscape, leaving many inspired to pursue international opportunities.



TL EVENT



Forging Future Litigators

The 3rd Twin Cities Mock Trial Competition 2026 (3rd TCMTC'26), organised by the Law Students' Council, Pakistan, convened some of the region's most promising law students for a rigorous examination of advocacy, legal research, and courtroom strategy.

Structured to replicate authentic trial court proceedings, the competition required participants to apply substantive and procedural law within a dynamic adversarial framework. Across three meticulously planned days, teams advanced through preliminary rounds, quarter-finals, semi-finals, and a fiercely contested final, with judges assessing legal reasoning, clarity of articulation, courtroom decorum, and responsiveness to judicial intervention.

The final round featured a complex international law problem concerning alleged war crimes arising from the atomic attacks on Japan, with teams from Bahria University Islamabad and the International Islamic University, Islamabad delivering compelling prosecution and defence submissions.

Graced by Barrister Zafarullah Khan as Chief Guest, and enriched by a vibrant social evening, TCMTC'26 exemplified advocacy beyond the classroom and the enduring value of experiential legal education in Pakistan.





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