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- Facilitate the exchange of ideas and experiences among legal scholars, practitioners, and judicial officers
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Editorial Foreword

The Federal Judicial Academy (FJA) is pleased to present Federal Law Journal (FLJ), Volume-4, Issue-2 (December 2025), with promising mission to promote scholarly work based on extensive legal research. This issue reaffirms our commitment to engaging readers with contemporary legal developments, doctrinal inquiry, and the challenges confronting legal systems.

The peer-reviewed section opens with research on emerging field of AI and its impacts on legal system. It examines the adequacy of traditional doctrines of *actus reus* and *mens rea* and attribution of criminal liability for autonomous decision-making systems. A significant contribution is added through jurisprudential analysis of the Indus Waters Treaty, examining evolving interpretative approaches in international dispute resolution and their implications for treaty interpretation. Children are the foundation of a society and child protection is a continuous challenge. Stolen Childhoods: "A study of systemic enforcement failure across child protection regimes" critically examines Pakistan's child protection framework, highlighting institutional gaps between legislative objectives and effective enforcement.

The Draft Arbitration Bill, 2024, analyses its departure from the Arbitration Act, 1940 and its alignment with contemporary international arbitration standards, focusing on party autonomy, procedural efficiency, and judicial intervention. The role of constitutional courts in advancing environmental justice in Pakistan is meticulously evaluated in Environmental Justice and Superior Courts of Pakistan.

The non-peer-reviewed section discusses a recent judgement of the Supreme Court of Pakistan on the custody of a minor child, explaining child-centric approach, related constitutional principles and relevant international legal norms.

The Editorial Board extends its sincere appreciation to the contributing authors, reviewers, and editorial team for their

invaluable efforts and steadfast support in upholding the Journal's academic integrity.

Hayat Ali Shah
Chief Editor

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Artificial Intelligence and the Future of Criminal Liability: Doctrinal and Ethical Challenges

Sidra Gull[1]

Abstract

Artificial Intelligence (AI) is rapidly transforming social, economic, and legal landscapes, raising unprecedented questions about criminal liability. Traditional criminal law is grounded in human agency, requiring actus reus and mens rea, but AI systems often act autonomously beyond direct human control. Globally, debates range from holding programmers and users liable to recognizing AI as a separate "legal person." The European Union, United States, and international bodies have begun exploring frameworks, while Pakistan's Penal Code and the Prevention of Electronic Crimes Act 2016 remain limited to human conduct. This article examines theoretical foundations, international developments, and the Pakistani context, highlighting emerging risks in autonomous technologies. It proposes policy reforms, including AI-specific liability clauses, insurance schemes, and judicial training, to harmonize Pakistan's legal system with evolving global standards.

Keywords:

1. Artificial intelligence and criminal liability
2. AI criminal responsibility
3. Mens rea and AI systems
4. Actus reus in artificial intelligence
5. Autonomous systems legal accountability
6. AI regulation and criminal law
7. Negligence and AI-related offences
8. Pakistan Penal Code and AI
9. Ethical challenges of artificial intelligence

[1] Civil Judge-cum Judicial Magistrate, Multan

10. Human rights and AI liability
11. Electronic crimes

Introduction

Artificial intelligence (AI) has rapidly migrated from research labs into everyday infrastructures, transport, finance, health, policing, warfare and online platforms. The speed and scale of deployment have outpaced criminal law doctrine, which was built on human agency and intention. While legislators worldwide are racing to craft rules and regulations, most notably the European Union's Artificial Intelligence Act (2024)[2], the first comprehensive, horizontal AI regulation. Though questions remain about criminal responsibility when harm is caused by systems that adapt, learn, and act with limited or no real-time human control.[3] In parallel, non-binding guidelines such as the OECD AI Principles urge human-centric, rights-respecting uses of AI, but they do not answer the question of who should be held criminally responsible.[4] Together these developments frame a new challenge for criminal justice systems: how to apply centuries-old concepts of culpability to modern complex AI systems.

The problem is not merely theoretical. Real-world incidents already expose gaps between technical capability and legal accountability. In the United States, the National Transportation Safety Board (NTSB) found that a 2018 fatal crash in Mountain View, California involved limitations of Tesla's Autopilot and ineffective driver-engagement monitoring, compounded by driver distraction. That fact pattern makes it hard to clearly assign culpability between the company that built the system and the person using it.[5] These cases

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2 https://www.ey.com/content/dam/ey-unified-site/ey-com/en-gl/insights/public-policy/documents/ey-gl-eu-ai-act-07-2024.pdf

3 Regulation (EU) 2024/1689 (Artificial Intelligence Act), OJ L 12 July 2024 https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng

4 OECD, "OECD AI Principles" (adopted May 2019) https://www.oecd.org/en/topics/sub-issues/ai-principles.html

5 NTSB, "HWY18FH011—Mountain View, California, March 23, 2018" (probable cause finding and

illustrate how partial automation can cause "automation complacency," blurring responsibility in ways unfamiliar to traditional criminal law.[6] For prosecutors and courts, the evidentiary record now includes computer codes, sensor logs, training data and human-machine interaction metrics, not just eyewitnesses and physical traces.

Criminal liability, in Pakistan as elsewhere, conventionally requires an unlawful act (actus reus) accompanied by a guilty mind (mens rea). Pakistan's Penal Code (PPC) embodies this structure across offences that hinge on intention, knowledge or recklessness; for example, theft expressly requires a "dishonest intention" to take property.[7] The challenge arises when an AI system starts or completes the chain of events, such as steering a car, sorting medical cases, identifying a suspect, or choosing targets on its own. In such situations, it is unclear how to assign mens rea to a human. If designers could not reasonably foresee a system's emergent behaviour, if a user followed manufacturer guidance, or if outputs arose from complex and hidden model dynamics, then proving intention or knowledge becomes difficult.

Global legal responses are diverging. The EU's AI Act uses a risk-based model, with bans on some uses, strict rules for high-risk systems, and requirements for testing, transparency, and incident reporting. These duties will indirectly affect criminal responsibility by setting standards for how AI must be designed and managed. The United Kingdom, after multi-year Law Commission reviews, has moved toward a purpose-built allocation of responsibilities for automated driving, distinguishing a "user-in-charge" from an "authorised self-driving entity (ASDE)" with compliance duties,

summary). https://www.ntsb.gov/investigations/Pages/HWY18FH011.aspx view on 27.09.2025

6 NTSB, Highway Accident Report on the Mountain View crash (2018) (post-crash Autopilot changes and driver-engagement facts). https://www.nytimes.com/2020/02/25/business/tesla-autopilot-ntsb.html view on 27.09.2025

7 Pakistan Penal Code, (XLV of 1860), s. 378 (theft requires "intending to take dishonestly"); PPC

clarifying who bears liability when a vehicle drives itself.[8] These frameworks point to hybrid models that combine product-safety style obligations with criminal liability for serious or reckless conduct.

International humanitarian and disarmament fora are likewise debating on autonomous systems. Within the UN Convention on Certain Conventional Weapons (CCW), States have affirmed guiding principles for lethal autonomous weapons systems (LAWS), including the continued application of international humanitarian law and the need for human responsibility and accountability throughout a weapon's life-cycle.[9] Although focused on armed conflict, these principles reinforce a baseline that autonomy does not nullify accountability. This idea can also guide domestic criminal-law debates about civilian harms caused by AI.

Pakistan's statutory landscape is only beginning to touch these issues. The Prevention of Electronic Crimes Act 2016 (PECA) targets human misuse of information systems (e.g., unauthorized access, data interference, cyberstalking), not harms independently caused by autonomous systems.[10] Core Pakistani criminal-procedure and fair-trial guarantees, such as Article 10-A of the Constitution of Pakistan, 1973, apply to persons, and assume human defendants and witnesses.[11]

As AI and automated systems spread into transport, health, finance, and policing, Pakistan will need to decide how to handle liability. Options include: adapting mens rea rules to focus on what

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8 Law Commissions of England & Wales and Scotland, "Automated Vehicles: Joint Report" (2022); https://www.scotlawcom.gov.uk/files/4616/4313/7041/Automated_vehicles_joint_report_cvr_24-01-22.pdf

9 CCW, "Guiding Principles affirmed by the Group of Governmental Experts on LAWS" (Annex III to CCW/MSP/2019/9). https://ccdcoe.org/uploads/2020/02/UN-191213_CCW-MSP-Final-report-Annex-III_Guiding-Principles-affirmed-by-GGE.pd

10 Prevention of Electronic Crimes Act, 2016

11 Constitution of the Islamic Republic of Pakistan, Article 10-A (Right to fair trial).

could reasonably be foreseen; creating new duties for organisations that deploy or develop AI; or even giving some autonomous systems limited legal status, similar to companies, with compulsory insurance and registration.

This article suggests a balanced approach: keep human accountability where negligence or recklessness can be proven, but also create forward-looking regulatory duties for developers and deployers. These duties should carry criminal penalties for wilful or serious violations. The argument builds on EU, UK, and UN models, and connects them to the existing structure of the PPC and PECA to outline a practical path for Pakistan.

2. Theoretical Foundations of Criminal Liability

Criminal law rests on two classical pillars: the physical act (actus reus) and the mental state (mens rea).[12] Together, they embody the moral and legal assumption that punishment is justified only when a person performs a wrongful act with a guilty state of mind. This framework, which shapes Pakistan Penal Code as well as Anglo-American criminal law traditions, becomes strained when applied to artificial intelligence (AI) systems that act without consciousness or intent.

2.1 Mens Rea and the Challenge of AI

Mens rea doctrines i.e. intention, knowledge, recklessness, and negligence, are essential to prove criminal guilt.[13] In Pakistan, as in other systems, certain crimes require a specific state of mind. For example, theft under Section 378 of the PPC requires a dishonest intention.[14] But AI systems make decisions through algorithms, training data, and probabilistic inferences, not conscious thought. To impute intention to an AI itself is metaphysically impossible.

12 Andrew Ashworth & Jeremy Horder, Principles of Criminal Law (9th edn, OUP 2019) https://books.google.com.pk/books/about/Ashworth_s_Principles_of_Criminal_Law.html?id=Wt-RDwAAQBAJ&redir_esc=y

13 Ibid, 81–96 (discussion of intention, recklessness, negligence)

14 Pakistan Penal Code, 1860, s. 378 (theft requires dishonest intention)

The key question then is: who should be held responsible—the programmer, the company that built it, the organisation that deployed it, or the end user? And on what grounds?

The legal theory distinguishes between direct intention (a conscious aim to bring about a result) and oblique intention (a result foreseen as virtually certain).[15] In AI contexts, neither category fits well: the machine lacks awareness, while human actors may not foresee every emergent behaviour of a self-learning system.

2.2 Actus Reus and Causation

Actus reus refers to the prohibited conduct, result, or circumstance, means an act that a reasonable person would know was likely to subject another person to a risk of bodily harm etc.[16] It requires establishing causation, linking the defendant's act to the prohibited harm.[17] Courts usually use the "but-for" test and the "proximate cause" test to decide this. But with AI, many people may be involved, such as designers, data curators, deployers, and regulators. The AI system itself stands between human actions and the harmful result. This spread-out chain of causes makes it harder to decide who should be held criminally responsible.

2.3 Analogies from Corporate and Vicarious Liability

A useful comparison is corporate criminal liability. In modern law, corporations, though they are not natural persons, can still be held criminally responsible through the actions of their agents or under specific legal duties.[18] In Pakistan, corporations may be prosecuted under PPC and Cr.P.C. provisions, even though they lack minds of

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15 R v Woollin [1999] 1 AC 82 (HL) (oblique intention test) https://www.lawteacher.net/cases/r-v-woollin.php

16 Mitra Javan Mardi V Her Majesty the Queen and Attorney General of Quebec 2020 SCMR 541 Supreme Court of Canada

17 Glanville Williams, Textbook of Criminal Law (2nd edn, Stevens 1983) https://www.scirp.org/reference/referencespapers?referenceid=2364361

18 Mukhtiar Begum V Karachi Transpory Corporation 1992 MLD 1711 Karachi High Court Sindh

their own.[19] Similarly, doctrines of vicarious liability hold employers liable for the acts of employees committed in the course of employment.[20] These comparisons suggest pathways for AI: either treating AI systems as akin to a "legal person," or holding the people and organisations that control them accountable.

2.4 Strict and Negligence-Based Liability

Another approach is to impose strict liability, where fault is not required but responsibility attaches to the occurrence of harm. Critics argue this offends principles of moral blameworthiness.[21] A softer alternative is negligence liability, did the developer or deployer exercise reasonable foresight and precautions?[22] Courts worldwide increasingly consider due diligence obligations in emerging technology contexts, an approach that could be imported into AI criminal law.

2.5 Doctrinal Tensions

In sum, the traditional model of crime presumes a conscious actor. AI disrupts this symmetry. Corporate and vicarious liability analogies, as well as negligence standards, offer partial bridges, but they do not resolve the fundamental tension between unconscious machine actions and human moral culpability. For Pakistan, where the PPC is firmly intention-centred, any AI-related liability regime will require doctrinal innovation.[23]

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19 Mirza Ishtiaq Hussain V Syed Abdul Qadeer 1982 PCRLJ 463 Lahore High Court Lahore

20 Pakistan Television Corporation V Noor Sanat Shah 2023 SCMR 616 Supreme Court

21 R A Duff, "Strict Liability, Legal Presumptions and the Presumption of Innocence" in A P Simester (ed), Appraising Strict Liability (OUP 2005) https://academic.oup.com/book/5022/chapter/147531199

22 Law Commission of England and Wales, Criminal Liability in Regulatory Contexts (Law Com No 195, 1996). https://archive.clls.org/storage/2013/06/Criminal-Liability-in-Regulatory-Contexts-506183928-2.pdf

23 Chairman Pakistan Telecommunications Corporation V Konish Enterprise PVT (LTD) 2020 SCMR 261 Supreme Court

3. International Developments

3.1 European Union

The European Union has taken the most ambitious step with its Artificial Intelligence Act (AI Act) 2024, which creates a comprehensive regulatory framework for AI across member states.[24] It adopts a risk-based approach, prohibiting certain AI uses outright (e.g., social scoring) while imposing strict obligations on "high-risk AI systems" (such as biometric identification, autonomous vehicles, and healthcare AI).[25] Although not a criminal code in itself, the AI Act establishes ex ante obligations, testing, transparency, incident reporting, that can later ground criminal liability if willfully violated.

Scholars within the EU have debated whether AI systems should be granted a form of "electronic personhood" to bear responsibility in limited contexts.[26] While the European Parliament rejected full legal personhood for AI in 2017, the conversation persists as a possible solution for assigning liability when no human intent is clearly traceable.[27]

3.2 United States

The United States has resisted creating a single AI-specific statute, relying instead on existing liability doctrines. In practice, criminal responsibility is addressed through product liability, negligence, and strict liability frameworks.[28] A prominent illustration is the

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24 Regulation (EU) 2024/1689 (Artificial Intelligence Act), OJ L 12 July 2024 https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng

25 European Commission, "Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence" COM(2021) 206 final https://merlin.obs.coe.int/article/9203

26 Robot as Legal Person: Electronic Personhood in Robotics and Artificial Intelligence. https://pmc.ncbi.nlm.nih.gov/articles/PMC8734654/ viewed on 29.09.2025.

27 European Parliament, Resolution of 16 February 2017 on Civil Law Rules on Robotics (2015/2103(INL)). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017IP0051

28 Cary Coglianese & David Lehr, "Regulating by Robot: Administrative Decision Making in the Machine-Learning Era" (2017) 105 Georgetown Law

Tesla Autopilot crashes, where investigations by the National Transportation Safety Board (NTSB) highlighted failures in design (driver engagement monitoring) and operator behaviour (driver distraction).[29] While most consequences have been regulatory or civil, the potential for criminal charges (e.g., reckless endangerment, negligent homicide) remains alive, depending on prosecutorial discretion.

Another field of U.S. concern is algorithmic policing, where predictive policing systems and facial recognition tools have led to wrongful arrests due to bias in datasets.[30] While prosecutions against the state are rare, constitutional litigation has pushed for accountability, raising the possibility of criminal liability for deliberate misuse of flawed AI systems.

3.3 United Kingdom

The UK Law Commissions (England & Wales and Scotland) conducted an extensive review of automated vehicles, resulting in their 2022 Automated Vehicles: Joint Report.[31] They proposed a dual framework: the "user-in-charge" (a human supervisor when automation is engaged) and the "authorised self-driving entity (ASDE)" (the manufacturer/deployer with responsibility for ensuring compliance).[32] This split clarifies accountability: human

Journal 1147. https://www.law.upenn.edu/live/files/6329-coglianese-and-lehr-regulating-by-robot

29 NTSB, "Highway Accident Report: Collision Between a Sport Utility Vehicle Operating With Partial Automation and a Crash Attenuator" (Mountain View, California, March 23, 2018) https://www.ntsb.gov/investigations/AccidentReports/Reports/HAR2001.pdf

30 Andrew Ferguson, The Rise of Big Data Policing (NYU Press 2017) https://www.researchgate.net/publication/342578195_Ferguson_Andrew_Guthrie_The_Rise_of_Big_Data_Policing_Surveillance_Race_and_the_Future_of_Law_Enforcement

31 Law Commission of England and Wales & Scottish Law Commission, Automated Vehicles: Joint Report (Law Com No 404 / Scot Law Com No 258, 2022) https://www.scotlawcom.gov.uk/files/4616/4313/7041/Automated_vehicles_joint_report_cvr_24-01-22.p

32 Ibid, para 3.26–3.35

users may be shielded from liability when the vehicle drives itself, shifting responsibility to the ASDE. In serious failures (e.g., knowingly releasing unsafe software), the ASDE could face criminal charges. This model represents a pragmatic middle path between attributing liability to human operators and recognizing organisational duties.

3.4 International Humanitarian and Criminal Law

Debates on autonomous weapons systems (AWS), or so-called "killer robots," illustrate the criminal liability problem on the battlefield. Within the United Nations Convention on Certain Conventional Weapons (CCW), states have affirmed principles that international humanitarian law continues to apply, and human accountability must be retained throughout a weapon's life cycle.[33] Reports by the UN Secretary-General have warned that AWS raise serious concerns under principles of distinction and proportionality.[34]

In terms of international criminal law (ICL), attribution is complex. If an autonomous drone unlawfully targets civilians, who bears responsibility, the programmer, the commander, the deploying state, or the machine itself? Current doctrine suggests responsibility will attach to commanders and states under doctrines of command responsibility,[35] but the debate underscores the inadequacy of existing liability frameworks for autonomous systems.

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33 CCW, "Guiding Principles affirmed by the Group of Governmental Experts on Lethal Autonomous Weapons Systems" (2019) Annex III to CCW/MSP/2019/9. https://documents.unoda.org/wp-content/uploads/2020/09/CCW_GGE.1_2019_3_E.pdf

34 UN Secretary-General, "Autonomous Weapons and International Security" Report A/75/321 (2020). https://research.un.org/en/docs/ga/quick/regular/75

35 Rome Statute of the International Criminal Court, Articles 28 (command responsibility) and 30 (mental element) https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf

3.5 Empirical Case Studies Illustrating AI-Related Harm

While doctrinal debates explain the difficulty of attributing criminal liability in cases involving artificial intelligence, empirical experience shows that these challenges have already arisen in practice. Several well-documented cases demonstrate how algorithmic or semi-autonomous systems have caused harm affecting liberty, safety, and procedural fairness, while exposing limits of traditional criminal accountability.

3.5.1 Algorithmic Risk Assessment and Sentencing Decisions

A prominent example is the use of algorithmic risk-assessment tools in sentencing. In State v. Loomis, the Wisconsin Supreme Court considered the COMPAS algorithm, used to estimate recidivism risk.[36] The defendant argued that reliance on an opaque, proprietary system violated due-process guarantees by preventing meaningful challenge to the basis of sentencing.

Although the court allowed its use with cautionary directions, subsequent empirical studies showed that the algorithm disproportionately classified minority defendants as higher risk.[37] The case illustrates non-physical harm in the form of liberty deprivation influenced by probabilistic and non-explainable assessments, raising questions of criminal responsibility where judicial actors rely on automated outputs beyond their control or comprehension.[38]

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36 State v. Loomis, 881 N.W.2d 749 (Wis. 2016). https://harvardlawreview.org/print/vol-130/state-v-loomis/

37 Julia Angwin et al., "Machine Bias," ProPublica (2016). https://www.antoniocasella.eu/nume/Angwin_2016.pdf

38 Berkman Klein Center, Algorithms in the Criminal Justice System (2017). https://dash.harvard.edu/entities/publication/73120379-010a-6bd4-e053-0100007fdf3b

3.5.2 Automated Welfare Systems and Wrongful Criminalisation

The Dutch Childcare Benefits scandal provides another instructive example. Automated risk-profiling systems used by tax authorities falsely identified thousands of families as welfare fraudsters, often without meaningful human review, leading to criminal investigations and severe financial consequences.[39] Parliamentary inquiries later concluded that algorithmic profiling and institutional over-reliance on automated indicators were central to the injustice.[40]

Although administrative in origin, the scandal demonstrates how automated systems can generate wrongful suspicion and quasi-criminal consequences without identifiable human intent, highlighting complex issues of institutional accountability.[41]

3.5.3 Facial Recognition Technologies and Erroneous Arrests

Law-enforcement use of facial recognition technology has produced documented instances of wrongful arrest, where individuals were detained based primarily on algorithmic facial matches lacking sufficient corroboration.[42] Subsequent review revealed erroneous identifications, resulting in dismissal of charges.

These incidents illustrate the evidentiary risks of treating algorithmic outputs as proof rather than investigatory aids, and

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[39] Dutch Parliamentary Inquiry on Childcare Benefits Affair (2020). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)073-

[40] Council of Europe Report on Automated Welfare Systems (2021). https://ecnl.org/sites/default/files/2021-04/CAHAI%20Survey_ECNL%20Answer%20Guide_0.pdf

[41] UN Special Rapporteur on Extreme Poverty, Digital Welfare States (2019). https://www.srpoverty.org/2019/10/27/digital-welfare-states-and-human-rights/

[42] ACLU, Facial Recognition and Wrongful Arrests (2020). https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1080&context=wlro

raise questions regarding the responsibility of state authorities deploying technologies with known accuracy and bias limitations.[43]

3.5.4 Safety-Critical Automation and Organisational Responsibility

The Boeing 737 MAX crashes illustrate how autonomous or semi-autonomous software in safety-critical systems can cause catastrophic harm. Investigations found that the MCAS system repeatedly intervened without adequate pilot awareness, based on faulty sensor inputs.[44] Regulatory reviews later identified design failures and organisational shortcomings in certification and disclosure.[45]

Although not resulting in a conventional criminal conviction, the case demonstrates how liability concerns shift from individual operators to corporate and organisational actors when automated systems dominate operational control.[46]

3.5.5 Technology-Driven Wrongful Prosecutions

A further example is the United Kingdom's Post Office Horizon litigation, where faulty accounting software generated inaccurate records relied upon in criminal prosecutions for fraud and theft.[47] Courts initially treated computer-generated data as reliable,

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43 Georgetown Law Center on Privacy & Technology, The Perpetual Line-Up (2016). https://www.law.georgetown.edu/privacy-technology-center/publications/the-perpetual-line-up/

44 FAA Joint Authorities Technical Review, Boeing 737 MAX (2019). https://www.faa.gov/sites/faa.gov/files/2021-08/Final_JATR_Submittal_to_FAA_Oct_2019.pdf

45 US House Committee on Transportation and Infrastructure, Final Report (2020). https://www.corporatecrimereporter.com/wp-content/uploads/2020/11/Summary-Committee-Report-Boeing-737MAX-9-20.pdf

46 US Department of Justice, Boeing Deferred Prosecution Agreement (2021). https://www.justice.gov/criminal/criminal-fraud/case/united-states-v-boeing-company

47 Bates v Post Office Ltd [2019] EWHC 606 (QB). https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf

leading to numerous convictions, which were later quashed once the system's defects were established.[48]

The episode highlights how unquestioned reliance on technological systems can distort evidentiary assessment and produce miscarriages of justice that surface only years later.

3.5.6 Implications for Criminal Liability Doctrine

Collectively, these cases demonstrate that AI and automated systems diffuse causation, obscure mens rea, and complicate evidentiary evaluation. Harm may arise not only through physical injury but through algorithmic decisions affecting liberty and legal status. These experiences support the need for hybrid liability frameworks combining traditional criminal doctrines with regulatory duties and institutional accountability, rather than exclusive reliance on intention-based models.

4. Pakistan's Context

4.1 Existing Legal Framework

Pakistan's substantive and procedural criminal law is codified primarily in the Pakistan Penal Code 1860 (PPC) and the Code of Criminal Procedure 1898 (CrPC). Both codes presuppose human actors capable of intention (mens rea) and action (actus reus).[49] Offences such as murder (s. 302 PPC), theft (s. 378 PPC), and fraud (s. 415 PPC) explicitly require proof of intention, knowledge, or dishonesty.[50] The PPC does not contemplate liability for autonomous systems, nor does it contain analogies for "electronic persons."

To some extent, Pakistani criminal law already contains doctrinal foundations that can be applied to harms arising from artificial

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48 Hamilton v Post Office Ltd [2021] EWCA Crim 577 https://www.judiciary.uk/wp-content/uploads/2022/07/Hamilton-Others-v-Post-Office-judgment-230421.pdf

49 Pakistan Penal Code 1860 (Act XLV of 1860), Preamble and General Explanations.

50 PPC ss. 302 (punishment of qatl), 378 (theft), 415 (cheating).

intelligence and autonomous systems. Sections 320 and 322 of the Pakistan Penal Code recognise liability for death caused by rash or negligent acts, employing the term "whoever," which allows responsibility to be attributed on the basis of causal and supervisory involvement rather than direct physical action alone. Section 318 PPC further reflects an early form of risk-based liability by attaching criminal responsibility to acts done with knowledge of their likely fatal consequences, even in the absence of a specific intention to cause death. The definition of "voluntarily" under Section 39 PPC broadens attribution by focusing on foreseeability and awareness of consequences, enabling liability where autonomous systems are deliberately activated or deployed despite known risks.[51]

Although the PPC does not expressly address artificial intelligence, Section 45 PPC demonstrates a degree of conceptual flexibility in its understanding of "life," while Section 290 PPC provides a mechanism to address ongoing or systemic harms to public safety through the law of nuisance. Taken together, these provisions suggest that, while not designed for autonomous technologies, Pakistani criminal law is not entirely ill-equipped and already offers limited doctrinal entry points for addressing AI-related harm through careful judicial interpretation.[52]

The Prevention of Electronic Crimes Act 2016 (PECA) was enacted to address offences involving information systems, hacking, cyberstalking, identity theft, and data interference.[53] While PECA broadened liability to misuse of digital tools, it assumes a human perpetrator. Autonomous harms, such as an AI system generating defamatory material or a self-learning algorithm executing a

51 PPC ss. 318. Qatl-i-khata, 320. Punishment for qatl-i-khata by rash or negligent driving, 322. Punishment for qatl-bis-sabab.

52 PPC ss. 45. "Life", 290. Punishment for public nuisance in cases not otherwise provided for

53 Prevention of Electronic Crimes Act 2016, s. 3–22. https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Jvbp8%253D-sg-jjjjjjjjjjj

fraudulent transaction, are not comprehensively addressed within its current statutory framework.

In constitutional law, Article 10-A of the Constitution of Pakistan guarantees the right to a fair trial.[54] This presumes a human defendant entitled to procedural safeguards, creating challenges if liability is extended to AI systems directly.

4.2 Institutional and Doctrinal Challenges

A major challenge for Pakistan is weak forensic and evidentiary standards. Even in ordinary cases, prosecutions often depend on eyewitness accounts and confessions, sometimes obtained under pressure e.g. extra judicial confessions[55], rather than scientific or technical proof. Adding AI evidence, such as sensor logs, algorithm outputs, or learning records, will be even harder for courts to handle. Without reforms in forensic capacity and digital evidence handling, Pakistani courts will struggle to fairly adjudicate AI-related harms.

Pakistan's criminal justice system is not institutionally devoid of mechanisms for dealing with scientific and digital evidence. Forensic science agencies[56], established through statutory frameworks and functioning for years, have strengthened investigative capacity by introducing DNA analysis, digital forensics, and electronic data examination. Similarly, large-scale initiatives such as the Safe City Projects increasingly rely on automated surveillance systems and algorithm-assisted monitoring, often operating with minimal real-time human intervention. The Qanun-e-Shahadat Order 1984 already accommodates electronic records, digital documents, photographs, and video evidence, subject to strict standards of authenticity and reliability, and Pakistani courts have historically demonstrated a

54 Constitution of the Islamic Republic of Pakistan 1973, Art. 10-A.

55 Rehmatullah V State 2024 SCMR 1782 Supreme Court ; Lutaf Ali V State 2025 YLR 604 Karachi High Court sindh (criticism of reliance on retracted confessions).

56 The Punjab Forensic Science Agency https://pfsa.punjab.gov.pk/

cautious but adaptive approach when integrating new forms of technological evidence into criminal trials.

However, despite these existing structures, the evidentiary and doctrinal challenges posed by artificial intelligence are qualitatively different. AI-generated outputs, algorithmic decision-making processes, and self-learning systems raise issues of opacity, interpretability, and causal attribution that extend beyond traditional digital evidence. Consequently, while Pakistan's forensic, evidentiary, and institutional frameworks are operational and evolving, they remain insufficient on their own to fully address the complex challenges of criminal liability and proof arising from autonomous and AI-driven technologies, as discussed in this article.

Another challenge is judicial training. Judges and lawyers are used to anthropocentric liability frameworks. Concepts like algorithmic opacity ("black box"), probabilistic decision-making, and data bias are alien to routine courtroom practice. Without judicial capacity-building, courts risk misapplying doctrines or acquitting due to lack of comprehension.

A third difficulty is Pakistan's strong focus on intention. Unlike some Western systems that rely more on negligence or strict liability, Pakistani courts usually require clear proof of intention or knowledge.[57] This makes it difficult to regulate harms that come from unpredictable AI behaviour.

4.3 Potential Risk Areas

1. Autonomous Vehicles: As ride-hailing services and logistics firms adopt semi-autonomous technologies, liability questions will emerge in traffic accidents. In the absence of specific legislation, prosecutions will likely fall under negligence provisions of the PPC (sections 279–280 on rash

[57] Shahbaz Khan Alias Tippu V Special Judge Anti-Terrorism Court No. 3 Lahore 2016 PLD 1 Supreme Court ; Ali Raza V The State 2022 PCRLJ 1466 Lahore High Court Lahore.

driving), making drivers responsible even if the accident was caused by an AI malfunction.[58]

2. Military and Security Applications: Pakistan has invested in drone technologies for surveillance and counter-terrorism. If autonomous systems are deployed in kinetic roles, attribution of criminal responsibility for unlawful targeting will raise sensitive constitutional and international law issues.[59]
3. Banking and Financial Technologies: AI-powered fraud detection and loan approvals are emerging in Pakistan's banking sector. Discriminatory or wrongful decisions, such as denial of credit based on biased algorithms, could constitute offences under fraud provisions of the PPC, but attribution would be difficult where no human consciously directed the outcome.[60]
4. Healthcare and Medical AI: With diagnostic tools increasingly reliant on machine learning, misdiagnoses caused by biased datasets could expose hospitals and software providers to liability under PPC provisions on negligence (s. 322, Qatil-bis-Sabab).[61]

5. Models of AI Criminal Liability

As artificial intelligence increasingly performs autonomous functions, jurists worldwide are exploring how to allocate liability for criminal harms. Four principal models have emerged: (i) manufacturer or programmer liability, (ii) user or operator liability, (iii) AI as a legal person, and (iv) hybrid/shared liability systems. Each has strengths and limitations, and each would require adaptation to fit Pakistan's legal and institutional landscape.

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58 PPC ss. 279–280 (rash and negligent driving)

59 https://www.stimson.org/2024/india-and-pakistans-development-of-drones-implications-for-strategic-stability/ viewed on 30.09.2025.

60 The Pakistan Development Review 64:1 (2025) pp. 1–23 DOI: 10.30541/v64i1pp.1-23https://file.pide.org.pk/pdfpdr/2025/1-23.pdf viewd on 30.09.2025.

61 P.P.C. s. 322 (qatl-bis-sabab – death caused by rash or negligent act)

5.1 Manufacturer / Programmer Liability

One approach assigns liability to those who design and produce AI systems. The rationale is that developers are best placed to anticipate risks and embed safeguards.[62] This resonates with doctrines of product liability and defective design, which in some jurisdictions carry criminal consequences where negligence or recklessness is proven.

However, AI presents a challenge: developers cannot fully predict emergent behaviours of systems that continuously "learn" from new data.[63] Holding programmers strictly liable risks stifling innovation and punishing unforeseeable outcomes.

In Pakistan, liability could be analogized to PPC offences of criminal negligence (s. 322, Qatil-bis-Sabab) or to statutory duties under regulatory frameworks (e.g., PECA). But in practice, weak regulatory oversight and limited technical expertise of courts would hinder effective enforcement.

5.2 User / Operator Liability

A second model places responsibility on the user or operator of the AI system. This treats AI as a tool: if a driver enables autonomous mode in a car, or a hospital deploys an AI diagnostic system, the operator assumes responsibility for outcomes.[64]

The UK's "user-in-charge" framework for automated vehicles embodies this approach, while shielding users in cases where the

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62 Matthew Scherer, "Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies" (2016) 29 Harvard Journal of Law & Technology 353-400. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2609777

63 Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard UP 2015). https://www.jstor.org/stable/j.ctt13x0hch

64 Ugo Pagallo, "Robots in the Cloud with Privacy: A New Threat to Data Protection?" (2013) 3 Computer Law & Security Review 271. https://law.stanford.edu/wp-content/uploads/2019/12/weng_ho_wp48.pdf

system is genuinely self-driving and under manufacturer responsibility.[65]

In Pakistan, users could be prosecuted under PPC provisions on negligence (e.g., rash driving) or under PECA for misuse of information systems.[66] But where an AI acts in ways beyond the operator's reasonable control, liability risks becoming unjust.

5.3 AI as a Legal Person

A more radical proposal is to recognize AI systems as "electronic persons" with limited legal personality, similar to corporations.[67] Supporters say this would allow AI to hold assets (e.g., insurance funds) and bear responsibility directly, instead of placing all the blame on humans.

This approach draws inspiration from corporate criminal liability, where non-natural persons are held accountable through fines or sanctions.[68] The European Parliament has debated, but not adopted, this model.[69]

In Pakistan, this would require statutory reform, as the PPC and CrPC only recognize natural persons and corporations as legal subjects. Though the idea of this enactment would be a bit controversial for people of our society, where usually moral culpability is tied to human agency. However, traditional Islamic law has long recognised that liability and responsibility may arise

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65 Law Commission of England and Wales & Scottish Law Commission, Automated Vehicles: Joint Report (Law Com No 404 / Scot Law Com No 258, 2022) https://www.scotlawcom.gov.uk/files/4616/4313/7041/Automated_vehicles_joint_report_cvr_24-01-22.pdf

66 PPC ss. 279–280 (rash/negligent driving); PECA 2016, s. 3–22.

67 European Parliament Resolution of 16 February 2017 on Civil Law Rules on Robotics (2015/2103(INL)). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017IP0051

68 Celia Wells, Corporations and Criminal Responsibility (2nd edn, OUP 2001). https://scholar.google.com/citations?user=5ps54igAAAAJ&hl=en

69 European Commission, "Report on Civil Law Rules on Robotics" (2017).https://www.europarl.europa.eu/cmsdata/130181/public-consultation-robotics-summary-report.pdf

even where harm is caused by non-human agents, such as animals or dangerous instrumentalities, with responsibility allocated through human control, ownership, or failure of precaution rather than moral culpability of the causing entity itself.

5.4 Hybrid / Shared Liability

The most practical option may be hybrid liability, spreading responsibility among developers, deployers, and users depending on the degree of control and foreseeability.[70] This mirrors trends in EU and UK law, where compliance duties are imposed on manufacturers while operators remain responsible for misuse.

Hybrid liability also aligns with Pakistani precedent on joint criminal liability (s. 34 PPC), where multiple actors are held liable for a shared act.[71] By analogy, courts could apportion liability between human actors at different points in the AI lifecycle.

5.5 Evaluating Models for Pakistan

Based on above discussion and literature on the subject, we can make the following evaluation:

i. Manufacturer liability may falter due to unpredictability and weak regulatory capacity.
ii. User liability risks unfairness when systems act beyond human control.
iii. AI personhood would require radical statutory reform.
iv. Hybrid models appear most feasible, combining regulatory duties with traditional criminal doctrines.

Given Pakistan's limited technical infrastructure and strong reliance on intention-based offences, a hybrid negligence

70 Cary Coglianese & David Lehr, "Regulating by Robot" (2017) 105 Georgetown Law Journal 1147. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2928293

71 PPC s. 34 (Acts done by several persons in furtherance of common intention).

framework, supplemented with clear statutory duties for developers and deployers, may be the most incremental approach.

6. Human Rights and Ethical Concerns

6.1 Fair Trial and Due Process

Criminal law is anchored in the right to a fair trial, a principle guaranteed under Article 10-A of the Constitution of Pakistan and Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).[72] Both frameworks assume the accused is a human person, capable of understanding charges, defending themselves, and facing punishment. Extending liability to artificial intelligence (AI) raises profound challenges: an AI cannot comprehend proceedings, mount a defence, or suffer punishment in a meaningful sense.[73]

Thus, proposals for AI "electronic personhood" clash with due process. If AI systems were treated as defendants, the trial would become symbolic, undermining the procedural fairness designed for human beings.[74]

6.2 Risk of Scapegoating

Another ethical concern is the scapegoating problem: attributing blame to human actors (programmers, users) who neither intended nor could reasonably foresee the harm caused by an AI system.[75] Such prosecutions risk violating the presumption of innocence

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72 Constitution of the Islamic Republic of Pakistan 1973, Art. 10-A; ICCPR, adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171, Art. 14(1).

73 Andrew Ashworth & Jeremy Horder, Principles of Criminal Law (9th edn,OUP 2019) https://books.google.com.pk/books/about/Ashworth_s_Principles_of_Criminal_Law.html?id=Wt-RDwAAQBAJ&redir_esc=y

74 Joanna Bryson, "Robots Should Be Slaves" in Y Wilks (ed), Close Engagements with Artificial Companions (John Benjamins 2010) https://benjamins.com/catalog/nlp.8.11bry?srsltid=AfmBOoqvVzSxMkQ8RjFtp-wK2cBN8xmTVZbYaURxmUjCb_R3IjTrKlN3

75 Michael Da Silva, "When to Fill Responsibility Gaps: A Proposal" (2024) https://www.researchgate.net/publication/384697907_When_to_Fill_Responsibility_Gaps_A_Proposal

under Article 14(2) ICCPR, which protects individuals from liability without culpability.[76]

Conversely, failing to hold any actor accountable may undermine public trust and victims' rights to remedies. Striking a balance between accountability and fairness is therefore key to maintaining legitimacy.

6.3 Proportionality of Punishment

Punishment in criminal law serves deterrence, retribution, and rehabilitation. AI systems cannot be rehabilitated or morally condemned because AI systems, lacking consciousness, intention, and normative understanding cannot be regarded as morally blameworthy in this juridical sense. Punishing human actors for autonomous system failures may also breach the principle of proportionality, recognised in both Pakistani constitutional jurisprudence[77] and international human rights law.[78]

For example, if a hospital deploys an AI diagnostic tool in good faith but a patient dies due to unforeseen algorithmic bias, convicting the hospital administrator of criminal negligence (s. 322 PPC) might exceed proportional fairness, unless negligence in oversight is clearly established. This also raises the relevance of a shared-responsibility model, in which informed user consent and clearly defined disclaimers may allocate certain operational risks between users and service providers, without absolving developers or deployers from liability arising from design defects, inadequate safeguards, or negligent oversight.

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76 ICCPR, Art. 14(2) (presumption of innocence) https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

77 Muhammad Nasir Ismail V Government of Punjab through Secretary Law and Parliamentary Affair Division, Lahore, 2025 SCMR 708 Supreme Court.

78 Human Rights Committee, General Comment No. 29 on States of Emergency (2001) para. 4 (proportionality principle) https://digitallibrary.un.org/record/451555?ln=en

6.4 International Human Rights Obligations

Pakistan is a party to the ICCPR and thus bound to uphold due process, non-discrimination, and access to remedies.[79] AI systems can perpetuate algorithmic bias that disproportionately affects women, minorities, or marginalised groups, a problem documented internationally in predictive policing and facial recognition.[80] If such systems are used in Pakistan, wrongful arrests or discriminatory decisions could amount to violations of both domestic constitutional guarantees (Article 25 equality clause) and ICCPR obligations.

6.5 Ethical Dimensions

Ethical critiques emphasise that AI lacks moral agency and therefore cannot be a subject of blame.[81] Instead, responsibility lies with human actors to ensure design transparency, oversight, and accountability. The UNESCO Recommendation on the Ethics of Artificial Intelligence (2021) underscores values of human dignity, fairness, and accountability as guiding principles for AI governance.[82]

For Pakistan, adopting such ethical guidelines alongside legal reforms would ensure that criminal liability frameworks are human-centred and rights-respecting.

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79 Pakistan ratified the ICCPR on 23 June 2010.

80 Joy Buolamwini & Timnit Gebru, "Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification" (2018) Proceedings of Machine Learning Research. https://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf

81 Luciano Floridi & Mariarosaria Taddeo, "What is Data Ethics?" (2016) 374 Philosophical Transactions of the Royal Society A 1. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2907744

82 UNESCO, Recommendation on the Ethics of Artificial Intelligence (adopted 23 November 2021). https://www.unesco.org/en/articles/recommendation-ethics-artificial-intelligence

7. Policy Recommendations for Pakistan

While Pakistan's legal system already contains relevant statutory provisions within the Pakistan Penal Code and the Prevention of Electronic Crimes Act 2016 that can be applied to certain technology-related harms, these frameworks were not designed with autonomous or self-learning artificial intelligence systems in mind. Existing provisions on negligence, causation, and misuse of information systems offer only partial coverage and leave significant gaps in addressing accountability, foreseeability, and proportionality in AI-related harm. To address the emerging challenges of artificial intelligence (AI) and criminal liability, Pakistan requires a multi-tiered strategy, statutory, institutional, and ethical, aligned with global developments yet tailored to domestic realities.

7.1 Legislative Reforms

1. AI-Specific Statutory Framework

Enact an "Artificial Intelligence Regulation and Liability Act" modelled partly on the EU AI Act, but adapted to Pakistan's constitutional and criminal law traditions.[83]

Define categories of AI systems (e.g., high-risk, prohibited uses) and assign obligations to developers, deployers, and operators.

2. Amendments to PECA 2016

Expand PECA to cover harms caused autonomously by AI systems, not just human misuses.[84]

Introduce liability clauses for negligent use of high-risk AI (e.g., autonomous vehicles, biometric identification).

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83 Regulation (EU) 2024/1689 (AI Act); see also European Commission, COM(2021) 206 final. https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng

84 Prevention of Electronic Crimes Act 2016, s. 3–22.

3. Integration with PPC

Amend the PPC to incorporate negligence-based offences for AI-related harms (e.g., wrongful death caused by malfunctioning autonomous vehicles).[85]

Consider limited corporate-style liability for AI systems, backed by insurance rather than symbolic criminal convictions.

7.2 Institutional Reforms

1. Judicial Training

While judicial training programmes, digital forensic capacity, and regulatory oversight mechanisms are already in place and evolving within Pakistan, these initiatives were not originally designed to address the technical and evidentiary complexities posed by artificial intelligence e.g. autonomous AI systems etc. Targeted enhancement and coordination of existing judicial academy modules, forensic institutions, and sectoral regulators are therefore required to ensure effective oversight, evidentiary reliability, and accountability in AI-related cases.

Judicial academies, both federal and provincial, should introduce training modules on AI, algorithmic bias, and digital evidence.[86] Collaborate with international organisations (UNDP, OECD, UNESCO) should be established to obtain technical support.

2. Forensic Capacity

Strengthen the Punjab Forensic Science Agency (PFSA)[87], National Forensic Agency (NFA)[88], Federal Federal Investigation Agency's (FIA) cybercrime wing[89] to handle AI-generated evidence. Set up accredited digital forensic labs capable of auditing AI systems.

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85 PPC s. 322 (qatl-bis-sabab), adaptable for AI-related negligence.

86 E.g., Federal Judicial Academy, Islamabad ; Punjab Judicial Academy, Lahore

87 https://pfsa.punjab.gov.pk/

88 https://nfa.gov.pk/

89 https://complaint.fia.gov.pk/

3. Regulatory Authority

Create a National AI Commission to oversee certification, compliance, and liability allocation. This body could serve as Pakistan's equivalent of the EU's "notified bodies" for high-risk AI.

7.3 Accountability Mechanisms

1. Insurance Schemes

Mandate compulsory liability insurance for deployers of high-risk AI systems, such as autonomous vehicles or medical diagnostic tools.[90] Ensure victims are compensated even where if proving fault is difficult.

2. Shared Liability Model

Codify a divided liability approach, where manufacturers bear responsibility for design defects, operators for negligent use, and deployers for oversight failures. Analogize to s. 34 PPC (acts done by several persons in furtherance of common intention) to ground shared accountability.[91]

7.4 Human Rights Safeguards

1. Non-Discrimination

Mandate audits to detect algorithmic bias, particularly in policing, banking, and healthcare applications.[92] Ensure compliance with Article 25 of the Constitution (equality before law) and Pakistan's ICCPR obligations.

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90 UK Law Commission, Automated Vehicles: Joint Report (Law Com No 404, 2022), recommending insurance schemes. https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/12/Automated-vehicles-joint-report-cvr-03-02-22.pdf

91 PPC s. 34 (common intention).

92 Joy Buolamwini & Timnit Gebru, "Gender Shades" (2018) Proceedings of Machine Learning Research 81:77-91 https://www.scirp.org/reference/referencespapers?referenceid=3614756

2. Transparency and Explainability

Make "explainable AI" mandatory for high-risk uses, allowing courts and affected parties to understand how decisions were made.[93] This supports due process and fair evidentiary rules.

7.5 International Cooperation

1. Engagement with Global Bodies

Take part in UN CCW debates on autonomous weapons.[94] Join OECD and UNESCO forums on AI ethics. Align domestic laws with global standards to avoid isolation.

Pakistan may benefit from closer cooperation with Asian jurisdictions where AI is already being deployed extensively in governance and law enforcement. Countries such as China, Japan, South Korea, and Singapore have advanced practical experience with AI-assisted policing, administrative decision-making, and digital courts, while regional initiatives under platforms like WAICO[95] on AI governance provide relevant policy models. Drawing selectively on these Asian experiences, alongside global standards, would allow Pakistan to adopt context-sensitive and operationally tested approaches rather than relying solely on Eurocentric regulatory paradigms.

2. Bilateral Learning

Learn from the best practices of the EU's AI Act, UK (user-in-charge and ASDE model), and US sector-based regulation. Adapt lessons to Pakistan's legal and cultural context.

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93 Cary Coglianese & David Lehr, "Regulating by Robot" (2017) 105 Georgetown Law Journal 1147. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2928293

94 CCW, "Guiding Principles on Lethal Autonomous Weapons Systems" (2019); UNESCO https://press.un.org/en/2023/sc15359.doc.htm

95 https://en.chinadiplomacy.org.cn/2025-07/30/content_118003645.shtml

8. Conclusion

Artificial intelligence is reshaping legal systems as profoundly as it is transforming economies and societies. For criminal law, the challenge is acute: traditional doctrines of actus reus and mens rea presuppose a conscious human actor, yet AI operates autonomously, unpredictably, and without moral awareness. Global debates, whether on autonomous vehicles in the United States, the EU's risk-based regulation, the UK's dual model of user-in-charge and authorised self-driving entity, or the UN's discussions on lethal autonomous weapons, demonstrate that no jurisdiction has fully solved the puzzle of AI criminal liability.

For Pakistan, the challenge is even sharper. The Pakistan Penal Code remains intention-focused, while PECA 2016 is oriented toward human misuse rather than autonomous harm. Without reform, courts risk either unfairly scapegoating innocent operators or leaving victims uncompensated. A hybrid liability framework, combining negligence-based duties for developers and operators with regulatory oversight and compulsory insurance, offers the most workable path.

Yet legal reforms alone will not suffice. Pakistan must invest in judicial training, forensic capacity, and rights-based safeguards to prevent algorithmic bias and ensure accountability. As a party to the ICCPR and other human rights instruments, Pakistan bears international obligations to align its laws with principles of fairness, proportionality, and non-discrimination.

Ultimately, the question of AI criminal liability is not only doctrinal but also ethical: it asks whether a society can preserve human dignity, fairness, and accountability in an age where decision-making is increasingly ceded to machines. For Pakistan, the time to legislate is now, before autonomous harms move from hypothetical to routine.

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Treaties of Text, Purpose, and Stability: Doctrinal Evolution of the Indus Waters Jurisprudence

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Abstract:

This paper traces the doctrinal evolution of Indus Waters Treaty (IWT)[2] interpretation from *Baglihar's*[3] textualism through *Kishenganga's*[4] purposive balancing to the Permanent Court of Arbitration's August 2025 Award[5], which crystallises the IWT as a 'stability-first' allocation treaty. Situating the Award within the Treaty's institutional design and early disputes, this paper analyses how the PCA reconciled textual fidelity, *travaux preparatoires* and restrained teleology to preserve both Pakistan's headline entitlements and India's narrowly defined exceptions. This paper further explains why evolutive readings appropriate in some treaty regimes are ill-suited to detailed apportionment treaties like the IWT. It argues that the Award produces a layered jurisprudence in which prior neutral-expert and arbitral outcomes gain cumulative authority, and it projects a future of measured adaptation. The IWT's durability, the paper concludes, will rest on preserving the 1960 compromise's predictability while allowing limited, jurisprudentially guided accommodation of pressing technical and environmental challenges.

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[2] Indus Waters Treaty 1960, Between the Government of India, the Government of Pakistan and the International Bank for Reconstruction and Development, signed at Karachi on 19 September 1960, 419 U.N.T.S. 126. The Treaty entered into force on 12 January 1961, with retroactive effect from 1 April 1960.

[3] Baglihar Hydro-electric Plant (Pakistan v. India) Neutral Expert Proceedings 2005.

[4] Indus Waters Kishenganga Arbitration (Pakistan v. India) PCA Case No. 2011-01 2010.

[5] Indus Waters Western Rivers Arbitration (Islamic Republic of Pakistan v. Republic of India), PCA Case No. 2023-01, Award on Issues of General Interpretation of the Indus Waters Treaty dated 8 August 2025.

Introduction

The August 2025 Award of the Permanent Court of Arbitration (PCA) marks the latest and perhaps most consequential moment in the jurisprudence of the Indus Waters Treaty (IWT). Beyond settling a technical dispute, it revisits fundamental questions of interpretation under one of the most carefully drafted water-sharing treaties in international law. To fully appreciate its significance, the Award must be situated within the broader historical and legal trajectory of the IWT and the disputes that have shaped its operation, before turning to the Award itself.

The first part of the paper is divided into two sections. The first outlines the historical background of the IWT, with attention to its allocation of rivers and institutional design as well as its adjudicatory framework. The second turns to the first generation of disputes under the IWT, particularly the *Baglihar* (Neutral Expert) and *Kishenganga* (PCA) cases, which tested the scope of Indian rights over the western rivers and clarified interpretive ambiguities in Annexure D.

The second part of the paper likewise comprises two sections. The first provides a detailed analysis of the Award, with particular attention to Part VIII on Article III and Annexure D, examining the interpretive questions it raised and the Court's reasoning. The second steps back to offer broader doctrinal reflections, tracing the Award's implications for treaty interpretation in international law while situating its significance within the evolving jurisprudence of the Indus Waters Treaty.

Part-1

The Treaty in Context

I. Origins of the Treaty

Signed in 1960 between India, Pakistan, and the World Bank, the Indus Waters Treaty (IWT) emerged from the post-Partition canal waters dispute of 1948, when India cut supplies to Pakistan's Punjab. After failed bilateral talks, World Bank mediated negotiations began in 1952, culminating in an agreement that allocated the three eastern rivers (Sutlej, Beas, Ravi) to India and the three western rivers (Indus, Jhelum, Chenab) to Pakistan[6] whilst also granting India limited rights over the western rivers.[7]

Materially, the Treaty, comprising a Preamble, twelve Articles, and eight Annexures, established a detailed framework for water use, hydropower, and dispute resolution. Its geographic scope, defined in the Preamble, Article I, and Article XI, extends to all six rivers of the Indus system, their tributaries, and associated lakes. Unlike the UN Watercourses Convention of 1997 (UNWC)[8], which adopts a basin-wide and multi-riparian approach, the IWT is confined to India and Pakistan, with the World Bank joining only in respect of financial and dispute-settlement obligations. This introduced a distinctive third-party role absent from most other water treaties.

With regard to the substantive allocation regime, Articles II and III form its core by delineating the respective entitlements of India and Pakistan over the eastern and western rivers. Under Article II, India received exclusive rights over the three eastern rivers, subject to a transitional period and compensation arrangements, while Pakistan retained unrestricted use of the western rivers under Article III. India's rights on the latter are, however, narrowly circumscribed: limited agricultural use as per Annexure C; domestic and non-consumptive uses; hydropower generation subject to design criteria under Annexure D, such as limits on pondage, dead and live storage levels, turbine discharge rates,

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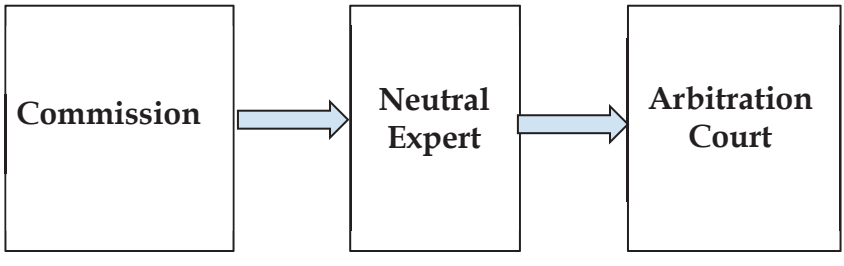
6 Uttam Kumar Sinha (2021), 'Sixty Years of the Indus Water Treaty: The Past and the Future', (Indian Foreign Affairs Journal Vol. 16, No. 1, pp.1). https://www.jstor.org/stable/10.2307/48720472

7 n2, Annex D para. 15 (iii).

8 UN Convention on the Law of the Non-Navigational Uses of International Watercourses (adopted 21 May 1997, not yet in force) UN Doc A/RES/51/229, 36 ILM 700 (1997).

spillway and intake design and operating pool constraints, and; small-scale storage under Annexure E.

Whereas for procedural and institutional mechanisms, they are established by Articles V–VIII, reinforced by Annexures C-E. These include arrangements for financing transitional works, the exchange of hydrological data, and cooperative monitoring. Recognizing that a treaty of such technical complexity required a standing body for day to day implementation and confidence-building, Article VIII established the Permanent Indus Commission. A bilateral body that has met regularly since 1960, even during armed conflicts, has provided an institutional backbone to the Treaty. This backbone is further calcified by Article IX, which establishes a three-tiered dispute-resolution framework. 'Questions' go first to the Commission, unresolved matters, or 'differences', to a Neutral Expert, and residual legal 'disputes' to a Court of Arbitration.



Normatively, this dispute-resolution mechanism closely parallels Article 33 of the UNWC[9], which likewise provides a graduated menu of negotiation, mediation, conciliation, and, ultimately, binding procedures.[10] Yet, the irony is that both India and Pakistan abstained from the UNWC's adoption in 1997 precisely over their contrasting views of Article 33's compulsory character: Pakistan dismissed it as non-binding, while India criticized it as too mandatory.[11]

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9 ibid.

10 Wouters, P. K., Vinogradov, S., Allan, A., Jones, P., & Rieu-Clarke, A., (2005), "Sharing transboundary waters– an integrated assessment of equitable entitlement: The legal assessment model", IHP-VI Technical Document in Hydrology Series No. 74. Paris: UNESCO.

11 UN General Assembly adopts Convention on Law of Non-Navigational Uses of International Watercourses (21 May 1997), Press Release UNGA 9248, pp.3-4).

Cumulatively, the IWT's design reflects three distinctive doctrinal choices: the adoption of rigid apportionment over equitable utilization, the incorporation of a limited but pivotal third-party role, and the creation of a tiered dispute-resolution framework. These elements have given the Treaty unusual resilience, but they have also generated recurring interpretive tensions, particularly as India has pursued hydroelectric development on the western rivers.[12]

II. Testing the Treaty: The *Baglihar* and *Kishenganga* Disputes

For the purposes of this paper, two aspects of the IWT's early disputes are central to the August 2025 Award and hence will be solely focused on. First, the *Baglihar* dispute tested the limits of India's hydropower rights under Annexure D, crystallizing the balance between permissible development and Pakistan's downstream security. Second, the *Kishenganga* dispute clarified the interplay between Article III's guarantee of Pakistan's unrestricted use of the western rivers and India's right to divert waters for run-of-river projects, raising interpretive issues that directly resurfaced before the PCA earlier this year.

(i) Baglihar: Textualist vs. Contextualist Approach to Interpretation

Built by India on the Chenab River in the Doda District in Jammu and Kashmir, the Baglihar Dam is a 450-megawatt power plant that posed a water security threat to Pakistan ever since its construction began in 1999. According to Pakistani experts, the Dam would deprive Pakistan of about 7,000 cubic feet per second (cusecs) of water.[13] Following a grueling five-year series of bilateral talks and negotiations, the Pakistani government finally approached the World Bank for a Neutral Expert determination under Article IX (2a) of the IWT. Following a detailed consultative period as per the

[12] Muhammed Siyad (2005), "Indus Waters Treaty and Baglihar Project: Relevance of International Watercourse Law", Economic and Political Weekly, pp.3145–54).

[13] Ijaz Hussain (2006), Dimensions of Pakistan-India Relations, (Lahore: Heritage Publications), pp.233.

terms of Annexure F of the IWT, Professor Raymond Lafitte, a Swiss engineer, was picked as the Neutral Expert.[14]

Though material objections and counter-objections were technical in nature, both Pakistan and India invoked the principles of treaty interpretation under Articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969 (VCLT).[15] Summarily, Article 31 stipulates that the interpreter of a treaty is under an obligation to assign ordinary meaning to the terms of the treaty in a contextualised light of its object and purpose. In the event such interpretation leads to a manifestly absurd or unreasonable result, or leaves the meaning ambiguous, Article 32 provides recourse to supplementary means of interpretation, which includes the preparatory work (*travaux preparatoires*) of the treaty and the circumstances of its conclusion. At first glance, Article 31 embodies a textualist method of interpretation, while Article 32 reflects a contextualist approach focused on *travaux préparatoires* and negotiating history. In this dispute, India aligned itself with the former, while Pakistan advanced the latter, a historically grounded reading that would later give way to a more overtly purpose-driven stance in *Kishenganga*.

Although both parties advanced several arguments, the issue of developmental rights and downstream security will be examined here through the lens of the two interpretive approaches outlined above. India's primary contention to this end was that according to Article III (2) and Annexure D of the IWT, Pakistan's unfettered rights over the Western Rivers were contingent upon India's right to produce hydroelectric power through run-of-river dams on those rivers as this was an integral part of the IWT.[16] Further, it was contended that this right to generate hydroelectric power should be given a wide interpretation as this was a basic principle enshrined in the preamble of the IWT. Relying on the statement of Sir Gerald Fitzmaurice, the International Law Commission's Special Rapporteur on the Law of Treaties[17], and the ICJ's ruling in *United*

14 Ijaz Hussain (2017), "Indus Waters Treaty", (Oxford University Press), pp.240-242.

15 Vienna Convention on the Law of Treaties, Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, pp. 331.

16 n14, pp.246.

17 Sir Gerald Fitzmaurice (1957), "The Law and Procedure of the International Court of Justice: Treaty Interpretation and Other Treaty Points", (British Yearbook of International Law Vol. 33.), pp.228.

States Nationals in Morocco[18], India submitted that it is indeed the preamble which contains an express general statement of the treaty's objects and purposes. Pakistan outrightly rejected this argument, stating that the preamble is not a substantive part of the IWT; India's attachment to the expression 'the complete and satisfactory utilisation' of the Indus Rivers was subservient to the substantive limitations laid out in Annexure D.[19] However, Professor Lafitte sided with India's textualist approach; a preamble does define in general terms the considerations that led to the conclusion of a treaty and so it carries important indications about its objects and purposes.[20]

This ruling confirmed that even interpretive reliance on the preamble could expand India's development space, a signal of how textualism might privilege upstream interests within the rigid allocation scheme.

(ii) Kishenganga: A Teleological Turn in Treaty Interpretation

The Kishenganga Hydro-Electric Project (KHEP) was built by India on a tributary of the Jhelum, one of the Western Rivers Pakistan has unrestricted rights over under Article III of the IWT. Around the same time, Pakistan was planning its own hydropower project, the Neelum-Jhelum Hydro-Electric Project (NJHEP). Objecting to the KHEP, Pakistan argued that the project would decrease the flow of water downstream, reducing the NJHEP's power generating capacity.[21] Having failed to resolve the dispute by agreement, Pakistan initiated arbitration proceedings in the Permanent Court of Arbitration (PCA) on May 17, 2010.[22]

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18 ibid, supra note 46, pp.221.

19 The Baglihar Hydroelectric Plant, Memorial of the Government of Pakistan, 14 August 2005, para. 15.

20 Baglihar Hydroelectric Plant, Expert Determination, Lausanne, Switzerland, 12 Februrary 2007, paras. 12-16.

21 Jasmine Moussa (2015), "Implications of the Indus Water *Kishenganga* Arbitration for the International Law of Watercourses and the Environment", (ICLQ Vol. 64), pp.699. https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly

22 Indus Waters Kishenganga Arbitration (Pakistan v. India), Pakistan's Request for Arbitration dated 17 May 2010.

One of the issues before the Court was whether India's proposed diversion of the Kishenganga/Neelum River breached the IWT. The Court held that India could divert water from the Kishenganga/Neelum River for power generation since it constituted a Run-of-River Plant for the purpose of Paragraph 15 of Annexure D.[23] However, the Court was careful to restrict India to design the KHEP in such a way that always maintained a minimum flow of 9 cumecs of water in the Kishenganga/Neelum River.[24] In reaching this conclusion, it appears the Court refrained from adopting the textualist approach the Neutral Expert had taken in the *Baglihar* dispute. Instead, the Court adopted a teleological approach to the interpretation of the IWT, that is, it read into the object and purpose of the treaty instead of ascertaining its ordinary meaning or the intentions of the parties.[25] In doing so, the Court conducted a balancing exercise between the varying definitions of 'object and purpose' put forth by Pakistan and India. Whereas Pakistan claimed the object and purpose of the IWT was to guarantee undiminished flow of water to Pakistan, India rebutted that it was rather the optimum utilisation and cooperative development of the watercourse.[26] On plain reading of Article III (2), in conjunction with Annexure D, Pakistan submitted that India could not utilise a tributary of the Jhelum to generate hydropower for use in areas *outside* that river's drainage basin. Contrarily, India argued, relying on contextualist reasoning, that Pakistan had misinterpreted the *travaux préparatoires* of the IWT: while it required power generation to occur within the drainage basin, it placed no restriction on the subsequent transmission of that power beyond it.[27] The Court chose not to literally interpret the text of Article III (2). Instead, it simply ascertained what it believed to be the object and purpose: there was no restriction on the use of electricity envisioned in the IWT.

Hence, the *Kishenganga* arbitration shifted the interpretive centre of gravity: it moved away from *Baglihar's* textualism toward a purposive balancing of rights that directly anticipated the 2025 Award. What neither dispute resolved, however, was the deeper

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23 *Kishenganga* Partial Award, Pt. V.

24 *Kishenganga* Final Award, Pt. V.

25 M Fitzmaurice (2014), "The Practical Working of the Law of Treaties" (MD Evans, International Law (4th edn), OUP) pp.179.

26 n24.

27 ibid.

doctrinal question: should the IWT remain tethered to its rigid text, or evolve through purposive interpretation to accommodate changing hydro-political and environmental realities?

It is into this unresolved space that the August 2025 Award intervened.

Part II

From Text to Purpose

I. The August Award

(i) Background

The August 2025 Award arose from Pakistan's long-standing objections to India's development of hydro-electric projects on the Western Rivers, particularly the Kishenganga and Ratle plants. Pakistan argued that the design and operation of these run-of-river projects departed from the strict criteria of Annexure D and, in practice, conferred on India a degree of control over the Western Rivers beyond that envisaged by the Treaty, thereby undermining Article III's guarantee of Pakistan's unrestricted use. India, by contrast, declined to participate in the proceedings, maintaining that a neutral expert, rather than a Court of Arbitration, was the proper forum.[28] The political backdrop was further complicated in April 2025, when India declared that the Treaty would be held in abeyance pending Pakistan's renunciation of support for cross-border terrorism.[29] Pakistan rejected this position as legally ineffective, and in June 2025, the Court confirmed in a Supplemental Award on Competence that India's unilateral suspension could not affect the Court's jurisdiction or its duty to proceed.[30] These developments followed the Court's *earlier* Award on Competence of July 2023[31], which had already affirmed its authority to hear the case notwithstanding India's non-participation and the parallel neutral expert process.

With the issue of competence thus settled, the Court proceeded in a phased manner, with the first phase addressing questions of general interpretation rather than the specifics of either project. It is this First Phase on the Merits, particularly Part VIII of the Award, that is most relevant for the purposes of this paper, as it clarifies the interpretive framework governing the IWT, namely, the balance between textual, contextual, and teleological methods, and the binding effect of earlier dispute-settlement decisions.

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28 Award on Issues of General Interpretation of the Indus Waters Treaty dated 8 August 2025, para. 8.

29 ibid, para. 105.

30 Supplemental Award on the Competence of the Court dated 27 June 2025.

31 Award on the Competence of the Court dated 6 July 2023.

(ii) Part VIII: Interpretive Framework

At the heart of it, the fundamental question the Court had to answer was how Article III and Annexure D, Part 3 of the IWT should be read in relation to India's hydro-electric projects on the Western Rivers. Pakistan's position could most aptly be described as strictly textualist in this matter. It argued that Article III established a 'headline rule' of its exclusive and unrestricted use, with India's role confined to narrow and tightly constrained exceptions under Annexures D and E.[32] Further, Pakistan contended that the object and purpose of the IWT *compel* such a restrictive interpretation of the exceptions to the Article III obligations, including those in Annexure D.[33] On the other hand, India maintained that Annexure D functioned as an enabling framework that gave it significant latitude to design and operate run-of-river plants, subject only to broadly defined criteria and evolving practices.[34]

The Court first approached the issue of interpretation from a textualist angle; it read Article III (1), which establishes Pakistan's right to unrestricted use of the waters of the Western Rivers, together with Article III (2), which contains several exceptions. [35] However, in interpreting Annexure D, which embodies a general 'let flow' rule in Pakistan's favour, the Court turned to the *travaux preparatoires* of the IWT, particularly its negotiating history.[36] Notably, this reliance was confirmatory rather than foundational: the Court had already endorsed a strict construction of Annexure D and its provisions governing India's permissible uses of the Western Rivers, with the *travaux preparatoires* serving to reinforce that conclusion.[37] At the same time, the Court underscored two additional points. First, Article III and Annexure D could not be treated as "evolutive" in nature; stability and predictability in the generation of hydro-electric power was a key object and purpose of the Treaty.[38] Second, the provisions could not be interpreted so rigidly as to strip India of the capacity to generate electricity from

32 Pakistan's Memorial, paras. 9.10 and 9.94.
33 ibid, para. 9.98.
34 Indus Waters *Kishenganga* Arbitration (Pakistan v. India), PCA Case No. 2011-01, Counter-Memorial of the Government of India dated 23 November 2011, paras. 1.25, 4.14, 7.56.
35 n28, paras. 441.
36 ibid, para. 445.
37 ibid, para. 448, 451.
38 ibid, para. 455.

run-of-river plants built in conformity with the Treaty. While the "let flow" rule favoured Pakistan, the Court stressed that its exceptions in favour of India were equally integral to the balance of rights, and Pakistan's entitlements could not be read in a manner that nullified those exceptions.[39]

Ultimately, the Court in Part VIII of the Award carefully balanced textual fidelity, historical confirmation and purposive restraint. Even though there was greater inclination towards a rigid textualist interpretation, the Court ensured the exceptions enumerated in Article III and Annexure D retained their operative force. This subtle yet significant doctrinal turn in IWT interpretation has not only reshaped the balance between Pakistan's headline rights and India's limited exceptions but it also opened the door to deeper reflections on the evolving doctrines of treaty interpretation and international water governance.

II. Beyond the Award

The PCA essentially rejected a fully evolutive approach in the August Award, privileging stability and predictability over flexibility. This evolutive approach, in modern times, has been used to incorporate customary international law through dynamic treaty interpretation.[40] Through this approach, terms and concepts in a treaty are examined by *subjective* interpretive means, which may include ascertaining the principles of good faith and reasonableness. Such was the view of the ICJ in *Gabcíkovo-Nagymaros*, where the Court opined that the concerned Treaty was not static and was open to adapting to emerging norms of international law.[41] However, it is crucial to preface that the Court made such observations in light of the fact that the dispute centred around grave environmental risks. A more 'pragmatic' middle ground, as was adopted by the PCA in the August Award, is teleological in nature. The contention then arises as follows: to what extent is the object and purpose of a treaty to be interpreted? India consistently argued leading up to the August Award that the object and purpose were to be interpreted broadly; the object and purpose, as per India, was essentially to provide for the maximum

39 ibid, para. 456.

40 U Linderfalk (2011), 'The Application of International Legal Norms over Time: The Second Branch of Intertemporal Law', (58 NILR 147).

41 Gabcíkovo-Nagymaros Project (Hungary v Slovakia) Judgment [1997] ICJ Rep 7, para. 112.

development of resources by one Party or the other.[42] In his concurring opinion, Professor Minear addressed this question of broad interpretation of the object and purpose of the IWT. Importantly, he viewed the crux of treaty negotiation to be a "compromise that balances the competing interests of the treaty partners".[43]

Where a Court may interpret a treaty broadly would be if it is necessary to do so to ascertain its object and purpose. So was the case in the *Iron Rhine* arbitration, where the PCA held that the treaty's unlimited duration required its object and purpose to encompass modernization and adaptation of the railway. By defining that purpose broadly, it interpreted otherwise static terms in light of contemporary technical developments.[44] However, *Iron Rhine* is clearly distinguishable from the present dispute: water treaties with detailed allocation regimes, like that of the IWT, may resist evolutive readings, precisely because of their political sensitivity. In his partly dissenting opinion in the August Award, Judge Al-Khasawneh tacitly corroborates this principle when he states that a "primary object of such treaties is the achievement of stability and finality."[45] Had the object and purpose of the IWT been construed as broadly as India sought, it would have had the net effect of rendering both the parties' obligations unpredictable. Subsequently, this would have reduced the object and purpose of the IWT as indeterminate, whereas the reality is on the contrary. In the *Temple of Preah Vihear,* the ICJ underscored why treaties of allocation are often conceived as 'stability-first' instruments.[46] In resolving the boundary dispute, the Court observed that when two States establish a frontier, "one of the primary objects is to achieve stability and finality," cautioning that any frontier liable to constant revision would be "completely precarious." The principle animating this reasoning was that the international legal order

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42 n28, para. 408.

43 Concurring Opinion of Professor Jeffrey P. Minear, Indus Waters Western Rivers Arbitration (Islamic Republic of Pakistan v. Republic of India), PCA Case No. 2023-01, para. 17.

44 Iron Rhine Arbitration (Belgium/The Netherlands) Judgment (2005) 140 ILR 103, para. 91.

45 Partly Dissenting Opinion of Judge Al-Khasawneh, Indus Waters Western Rivers Arbitration (Islamic Republic of Pakistan v. Republic of India), PCA Case No. 2023-01, para. 12.

46 Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962, pp. 34.

values certainty and predictability in territorial or resource divisions more highly than the pursuit of technical perfection or adaptability. By affirming that stability itself is a central object of boundary treaties, the Court privileged the settled allocation, even if imperfect, over any attempt to reopen it in light of later objections. This logic resonates strongly with the PCA's approach in the August 2025 Award under the IWT. Just as the ICJ treated stability and finality as the essential object of a frontier regime, the PCA refused to read Article III and Annexure D of the IWT as evolutive, holding instead that their strict allocation scheme was designed to provide predictability across time. In both cases, stability was not merely an incidental effect of treaty-making but an intrinsic object, deliberately chosen to prevent the very uncertainty that evolutive interpretation might invite.

Conclusion

Thus, as the IWT stands now, it has come out unscathed out of a textualist storm in *Baglihar,* only to be tempered by the purposive winds of *Kishenganga* and ultimately steadied by the August 2025 Award as a 'stability first' treaty. This trajectory underscores how successive disputes have not undermined the Treaty but refined its interpretive grammar. The August Award is pivotal in this respect: it resists the pull of an evolutive method, which in other contexts, allowed treaties to absorb emerging norms and technical change. Instead, by grounding its reasoning in text and confirming it with *travaux preparatoires*, the Court emphasized stability and predictability as the IWT's core object. Looking ahead, the jurisprudence of the IWT is likely to proceed within this stability-oriented framework. Future tribunals will be cautious in expanding its object and purpose beyond the compromises struck in 1960, treating its rigid allocations as sacrosanct. This does not mean that the IWT is immune to change; rather, adaptation will occur through incremental adjustments and not wholesale reinterpretation. In this sense, the IWT will continue to evolve by way of *measured teleology*. Its endurance will therefore lie not in elasticity but in resilience, preserving finality while accommodating only those adaptations essential to sustain the bargai

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Stolen Childhoods: A Legal and Social Study of Child Protection in Pakistan

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Abstract

Child protection in Pakistan remains one of the most important, yet inadequately addressed area. Despite legislative development, millions of children continue to face challenges i.e. early marriages, online exploitation, forced religious conversions, practice of *Bacha bazi* and child labour. The harmful socio-cultural practices, such as Vani, Swara, Watta Satta, and Pait Likhai across rural communities are still dominant leaving such girls to go through lifelong traumas. In the current digital age, online child sexual exploitation, cyberbullying, and grooming have emerged as growing dangers. Although, Pakistan has enacted various child protection laws and established agencies such as the FIA, NCRC, and provincial child welfare bodies but weak enforcement and social acceptance of harmful customs continue to weaken these efforts. This study discusses the social, legal, and technological threats and related measures for child protection in Pakistan. The study aims to highlight the gaps between impact of law and enforcement. It further emphasizes the essential need for stronger implementation, awareness, and institutional accountability.

Keywords: *Vani*, *Swara*, *Watta Satta*, *Pait Likhai*, online child sexual exploitation, Bacha bazi, forced religious conversion, monsoon brides.

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1. INTRODUCTION

Children are the most important as well as the most vulnerable members of any society, and how a nation treats its children usually indicates its moral and social norms. In Pakistan, the reality remains deeply disturbing and worrying. Despite constitutional guarantees, legislation on child protection laws and international commitments millions of children continue to live under various threats, be it early and forced marriages, online sexual exploitation, forced religious conversions, practice of *Bacha bazi* or exploitative labour conditions. These kinds of abuse are largely interconnected with economic disparity, gender inequality, and strong patriarchal norms that normalize violence against children.

Early marriage is common across Pakistan's rural and tribal regions. Traditional practices such as Vani, Swara and Pait Likhai that young girls are exchanged to settle disputes or compelled to be in a marriage even before their birth, are still prevailing. Recent socio-economic pressures that include climate-induced disasters, have also given rise to practice of "monsoon brides," indicating how poverty and displacement force families into marrying off their daughters for survival. Furthermore, in recent years, the technological sphere has created another wave of vulnerability by adding the growing access to the internet among youth which has resulted to an alarming rise in online child sexual exploitation, cyberbullying, and blackmailing of this vulnerable sector of society. The emergence of artificial intelligence and dark web platforms have made it even harder to track the actual perpetrators. Cases from Muzaffargarh and Lahore reveal the working of organized networks that exploit children for profit, leaving a deep impact on their lives. Although amendments in the *Prevention of Electronic Crimes Act (PECA) 2016* have strengthened this law with enhanced enforcement coordination, but the conviction rates are still minimal.

In addition to this, the continued practice of child labour in domestic and non-domestic settings reflects a continuing cycle of

poverty, negligence, and weak governance. Reported cases of child labour such as Zohra shah and Fatima continue to paint a bleak picture in the newspapers of the Pakistan. Meanwhile, the abuse regarding forced religious conversions of young girls underscores the lack of protection afforded to religious minorities. The Human Rights Commission of Pakistan HRCP reports that about 12 or more young girls are forcibly abducted and converted in Sindh. Another alarming practice of Bacha bazi, which though is attempted to be justified in the name of pride and cultural tradition, reflects the gaps in the application of rule of law and deeply damages the social fabric of Pakistan.

This research article examines these overlapping issues through combining legal analysis with social and technological perspectives. It indicates essential question that despite of various laws, policies, and international commitments, the lives of Pakistani children remain marked by violence, exploitation, and silence. This research article attempts to identify the gaps in the legislation encompassing these acts by referring insightful examples from other countries. It further elaborates on societal reluctance and negligence of enforcement agencies in reporting and prosecuting the perpetrators of offences against children.

2. EARLY MARRIAGE IN PAKISTAN

Pakistan is ranked as the sixth most dangerous country for women globally**,** and the fourth worst when it comes to economic inequality, discrimination, and threats arising from cultural, religious, and traditional practices.[3] Pakistan faces a serious challenge with child marriage, as nearly 19 million girls in the country were married before turning to18, which indicates that one in every six young women is a victim of early marriage. The issue is far more common in rural areas, where about 21.6% of girl**s** marry before 18, compared to 12.5% in urban regions. In 2018 alone,

[3] 'Factbox: Which Are The World's 10 Most Dangerous Countries For Women?' *Thomson Reuters Foundation* (26 June 2018) available at: https://www.reuters.com/article/us-women-dangerous-poll-factbox-idUSKBN1JM01Z accessed 1 June 2022

around 4.6 million girls were married before the age of 15.[4] Early marriage is commonly accepted phenomenon through various cultural and customary practices.

This issue is common due to practices including Vani, Swara, or Watta Satta, where girls are exchanged to settle disputes or family debts. In one of the practices called Pait Lekhi a girl is being promised in marriage even before her birth or while still in her mother's womb.[5] Another example is "monsoon brides" demonstrating how environmental crises intensify social vulnerabilities.[6]

2.1 Cultural Practice of Vani or Swara

Vani or swara is the common practice in certain rural parts of Pakistan. A girl, often the sister or daughter of the offender usually a minor is handed over to the victim's family as settlement.[7] This exchange serves as compensation for the loss of life that allows perpetrator to avoid formal punishment. The practices are known as swara among the Pashtun communities and vani in Punjab and Sindh. It continues to impact many families despite being condemned as a violation of human rights under Pakistani law.[8] It is known by various names depending on local customs and

4 UNICEF. (n.d.). *Child marriage country profile: Pakistan*. https://www.unicef.org/pakistan/media/4151/file/Child%20Marriage%20Country%20Profile.pdf U

5 Shabbar, S. Z., & Manzoor, A. (2022). An analytical study on early marriage in Pakistan: Impact on education and health. *Pakistan Journal of Educational Research, 5*(2). https://doi.org/10.52337/pjer.v5i2.515

6 Al Jazeera. (2025, March 8). *'My childhood just slipped away': Pakistan's monsoon brides.* Al Jazeera. https://www.aljazeera.com/features/2025/3/8/my-childhood-just-slipped-away-pakistans-monsoon

7 Khalid, I., & Nasir, M. (2020). *Early marriages in Pakistan: Causes and consequences*. SSRN Electronic Journal. https://doi.org/10.2139/ssrn.3641315

8 Incidents of vanī and sawāra are quite often reported in the national press of Pakistan. See www.jang.com.pk/jang/jun2012-daily/01-06-2012/u108745.htm and www.dawn.com/2012/03/16/ two-girls-saved-from-vani last visited 4th November 2012

linguistic traditions, such as "Vani", "Sakh", "Sawara", "Sharam", "Khoon Baha", and "Sang Chatti".[9]

In Balochistan in 2008, a jirga resolved a tribal dispute, which had started over the killing of a dog, by forcing 15 underage girls into marriage as part of the settlement[10]. Data collected by the Madadgar National Helpline after the enactment of the 2005 and 2013 laws reveal a disturbing reality: around 406 women were forced into marriage, and 176 cases of Vani were recorded across Pakistan. Shockingly, 77% of such marriages were consummated, indicating the persistence of these inhumane traditions. According to reports, these figures represent merely 10% of the actual cases.[11] Despite legal prohibitions, this inhumane practice continues to be part in rural areas of KPK and tribal regions. The recent case of Bhagwani Shumali, Adil, a poor barber, allegedly took his own life after being compelled by a tribal council (*panchayat*) to give his 11-year-old daughter as *vani*. The incident began when Adil's nephew allegedly spoke to the daughter of an influential man. He was tortured and forced to sign a document agreeing to the *vani*, even after paying compensation. Before his suicide, Adil recorded an audio message indicating the perpetrators and pleading for justice and protection for his family.[12] Another recent case of Dera Ismail Khan, an eight-year-old girl was allegedly married under the vani custom. The incident took place after two suspects reportedly raped a 12-year-old boy. To resolve the matter, a four-member panchayat, including the local mosque's cleric, decreed that the

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9 Vani Verdic, (2021). The Tribune. Pakistan Law Commission Report, Banning the Tradition of Vani (Giving Female as Consideration for compromise). Child Marriage: 12 year Old Girl Given in Vani to 85 Year Old. The Tribune, Pakistan (October 1, 2011).

10 Declan Walsh, '15 Child Brides Used to Settle Pakistan Feud' *The Guardian* (5 June 2008) available at: https://www.theguardian.com/world/2008/jun/05/pakistan.humanrights accessed 1 June 2022.

11 Madadgar National Helpline. (2013). *Annual report on forced and early marriages in Pakistan*. Karachi, Pakistan: Madadgar Helpline

12 Khan, I. A., & Gabol, I. (2025, March 10). Dera Ismail Khan man dies by suicide after panchayat decision in Vani case. *Dawn*. https://www.dawn.com/news/1896861

sister of one of the accused be handed over in vani and married to the victim. A local nikahkhwan subsequently performed the marriage ceremony.[13]

2.2 Cultural Practices of Watta satta and Pait likhai

The practice of watta satta (exchange marriage) is also common in the rural areas of Pakistan. In watta satta, marriages are often arranged long before the actual marriage age. As per report around 94% of *watta satta* marriages involve at least one brother-sister pair, in 72% cases both sides exchange siblings whereas, about 16% arrangement includes uncle-niece exchange. [14]

Studies indicate that around 36% of marriages in rural areas follow this bride-exchange system. In many cases, one or both of the girls involved are too young to legally or socially marry[15]. A study in 2018 indicates 66-78% watta satta marriages in Sindh and 44-47% in Punjab[16]. In the Federal administered Northern areas, the ratio is 17.5%, Balochistan (12.5%), whereas, the North West Frontier Province/Federally Administered Tribal Areas (12%), and Azad Jammu and Kashmir (8.5%)[17]. These reciprocal arrangements create social pressure, if one marriage in such exchange fails, the other couple is usually pressured to dissolve their marriage as well.

13 Khan, I. A. (2025, May 28). Five held as Dera girl married off under vani custom. *Dawn*. https://www.dawn.com/news/1913746 Dawn

14 Jacoby, H. G., & Mansuri, G. (2007). *Watta Satta: Bride exchange and women's welfare in rural Pakistan*. American Economic Review, 97(2), 1804–1825. https://doi.org/10.1257/aer.100.4.1804

15 Hanan, J. & Mansuri, G. (2007). Watta Satta: Exchange Marriage and Women's Welfare in Rural Pakistan, Washington DC: World Bank Policy Research Working Paper RetrievedfromURL:https://www.researchgate.net/profile/Ghazala_Mansuri/pu blicatio.

16 Van Veen, S., van Moorten, R. and Durani, W. (2018) Marriage Decision-Making: A Family Affair. OXFAM, p. 27.

17 Y. Zaidi and S. Farooq, 'Women's Economic Participation and Empowerment in Pakistan: Status Report 2016' (2016) UN Women Pakistan, p.18. Available at: <https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2016/05/PK-WEE-Status-Report-lowres.pdf> accessed 1 June 2022.

Another reason is facilitation to reduce the economic strain on both families, as due to reciprocal arrangement it considerably help the either family to reduce the dowry costs. However, in rural Pakistan, dowries are generally modest (around 12% of annual household consumption) and typically controlled by the bride rather than given directly to her in-laws.[18]

In Pait likhai or sung-chitti, the girls may be promised in marriage before birth, this happens during infancy, or even while she is still in the womb, this concept of reciprocity has also become an accepted social norm. As per reports from Sindh, these marriages are extremely difficult to cancel, as cancellation can create serious disputes and violence between the families and within the wider *beradri* (kinship community).[19] A survey conducted in Pakistan shows, more than 58.7% were Watta-Satta / Pait Likhai cases.[20]

2.3 Practice of monsoon brides

Monsoon brides indicate young brides in Pakistan, specifically from flood-affected regions like Sindh, who are married off during or after monsoon seasons due to economic hardship caused by climate-induced disasters. These early marriages are often arranged by families seeking financial relief or to reduce the number of dependents during the time of crisis.

According to the UNICEF reports extreme weather such as the 2022 floods, are associated with an 18% increase in child marriage rates, effectively reversing five years of progress. According to Niaz Ahmed Chandio, coordinator of the local NGO Child Rights Committee, 45 cases of child marriage were officially registered in

18 Hanan, J. & Mansuri, G. (2007). Watta Satta: Exchange Marriage and Women's Welfare in Rural Pakistan, Washington DC: World Bank Policy Research Working Paper.

19 Shaheed, F. et al. (2019) Humsathi: Empowering Girls to Become Their Own Advocates and Boys as Allies to End Early Child and Forced Marriage. Final Technical Report. Lahore, Pakistan: Shirkat Gah-Women's Resource Centre.

20 Rehan, N., & Qayyum, K. (2017). Customary marriages in rural Pakistan. *Medical Journal of Malaysia,* Vol 72 No 3, *72*(3), 175–179. https://www.e-mjm.org/2017/v72n3/customary-marriages.pdf

Dadu city over the past year, while dozens more were not reported[21]. Moreover, a recent UNDP study examining climate and politico-economic stressors in Pakistan found that in flood-affected areas, girls are 25% more likely to drop out of school and enter early marriage[22].

The Al Jazeera article comments *on Pakistan's monsoon brides* as a grave concerning trend in Pakistan, where catastrophic flooding results in a surge in child marriages. It highlights the story of Asifa, a 13-year-old girl from Sindh province, whose family was devastated by the 2022 floods. They arranged her marriage as a means of economic survival. Her parents saw this as their only option to alleviate financial strain as they lost their crops and savings. Asifa, now 15 and a mother, reflects on the loss of her childhood and the harsh realities she faces.[23]

2.4 Troubling Impacts of Early Marriage

Early marriages often result and rise a grave psychological and physical challenges, including symptoms of post-traumatic stress disorder (PTSD) and depression. At such a young age, a girl's body is typically not ready for childbirth. According to the *Pakistan Journal of Educational Research,* the mental impacts of early marriage are severe, 83.5% of women face postpartum depression, 10% experience memory loss, and 6.5% suffer from chronic migraines[24]. This physical immaturity increases the risk of miscarriage, postpartum hemorrhage, and obstetric fistula. When girls between 12-16 years become mothers, their bodies are still in a developing stage, specifically the pelvis and birth canal, as they are not fully

21 Deutsche Welle. (2024, October 8). *Extreme weather drives surge in Pakistan child marriages*. https://www.dw.com/en/extreme-weather-drives-surge-in-pakistan-child-marriages/a-70112459

22 Nguyen, V. (2025, March 8). *Washed away*. Dawn. https://www.dawn.com/news/1896579

23 Al Jazeera. (2025, March 8). *"My childhood just slipped away": Pakistan's "monsoon brides"*. Al Jazeera. https://www.aljazeera.com/features/2025/3/8/my-childhood-just-slipped-away-pakistans-monsoon

24 Pakistan Journal of Educational Research (PJER, Vol. 5, Issue 2, 2022)

mature before 18, leading to severe complications during and after pregnancy.[25]The rate of miscarriages is also high in the case of early marriages. In Punjab, an estimated 304,000 more children die when their mothers marry before 18, about 18% higher than the average. In Sindh, child marriage is linked to 118,000 additional deaths, a 25% rise. In Khyber Pakhtunkhwa, it causes around 36,000 extra deaths (12% higher), while in Balochistan, the impact is most severe, with 33,000 more child deaths, nearly a 49% increase.[26] Sindh's Pregnancy-Related Mortality Ratio (PRMR) accounted for 345 deaths per 100,000 live births in case of early marriages[27], making it the second highest in the country after Balochistan and far above the national average of 251. National figures show that girls aged 15–19 are nearly twice as likely to die from pregnancy-related complications compared to those aged 20–24, indicating how early marriage endangers the lives of young brides.

Early marriage is also associated with poor sexual and reproductive health. Child brides are usually naïve in hygiene matters making them easily susceptible to sexually transmitted infections, including HIV, and putting them at higher risk for early pregnancy[28] . This leads to increased fertility and population growth as discussed in the Fertility and Population growth section. Evidence from the data shows that 10% or more women who got

25 Sezgin, A. U., Punamäki, R. L. (2020). Correction to: Impacts of early marriage and adolescent pregnancy on mental and somatic health: The role of partner violence. Archives of Women's Mental Health, 23, 167–166.

26 Bari, F., Farooqui, A. Z., Khan, M. S., Khan, S. A., & Kureishi, A. (2021). *Costing study on child marriage: A country level report 2020-21*. UN Women Pakistan & National Commission on the Status of Women. https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2021/06/Child%20Marriage%20Costing%20Study%20Report-Pakistan-Final.pdf UN Women Asia and the Pacific

27 Pakistan Maternal Mortality Survey, 2019. Available at: https://dhsprogram.com/pubs/pdf/PR128/PR128.pdf, p. 22

28 UN Women (2013). The Costs of Violence: Understanding the Costs of Violence Against Women and Girls and its Response: Selected Findings and Lessons Learned from Asia and The Pacific. Bangkok, Thailand: United Nations Entity for Gender Equality and the Empowerment of Women, Regional Office for Asia and the Pacific. Gender Scoping Stud

married below 18 did not want to get pregnant at the time of their marriage.[29]

Another bitter consequence of early marriage is discontinuation of education. Number of young females are compelled to discontinue their education due to restrictions imposed by their husbands or in-laws, expecting them to complete the household responsibilities along with dealing with their early pregnancies[30]. Nationwide data revealed that 37% of respondents never attended school, while only 46% of those did completed matric or below. According to *The Costing Study on Child Marriage in Pakistan's Flash Survey (2019–2020)*, the educational cost of early marriage is substantial. In Punjab, with a 21% incidence rate, around 66,000 girls were not able to complete secondary education; however, completion rates could have risen by 20% without early marriage. Similarly, 294,000 young brides across Pakistan were unable to finish higher secondary education, indicating a potential 24% increase if they had not married early. In Sindh (23% incidence), 90,000 girls were affected; in Balochistan (36.2%), 24,000; and in KP (32%), around 47,000. [31]

In the essence, depriving a major portion of population from proper education, consequently impacts the country's economic development. According to World Bank statistics, Pakistan's economy loses an estimated USD 0.8 billion or 0.42% of total GDP due to the overall incidence of child marriage.[32]

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29 Bari, F., Farooqui, A. Z., Khan, M. S., Khan, S. A., & Kureishi, A. (2021). *Costing study on child marriage: A country level report 2020-21*. UN Women Pakistan & National Commission on the Status of Women. https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2021/06/Child%20Marriage%20Costing%20Study%20Report-Pakistan-Final.pdf UN Women Asia and the Pacific

30 Stark, L. (2018). Poverty, consent, and choice in early marriage: Ethnographic perspectives from urban Tanzania. Marriage & Family Review, 54, 565–581.

31 *The Costing Study on Child Marriage in Pakistan's Flash Survey (2019–2020)*,

32 Bari, F., Farooqui, A. Z., Khan, M. S., Khan, S. A., & Kureishi, A. (2021). *Costing study on child marriage: A country level report 2020-21*. UN Women Pakistan & National Commission on the Status of Women. https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ES

2.5 Legislative and judicial approach regarding early marriage

In Pakistan, there are many child restraint acts; however, it lacks the proper enforcement. Recently, the Child Marriage Restraint Act, 2025 was passed in May 2025 that sets the minimum legal age of marriage at 18 for both males and females in the Islamabad Capital Territory (ICT). The violation falls under the ambit of cognizable offence, and it imposes penalties including imprisonment and fines[33]. However, this bill has also faced severe criticism from other parties, by stating this bill as against the principles of Islam.[34] Sindh is the first province to introduce an Act that sets 18 years of age for marriage for both men and women, and labeling it as a cognizable offence. Anyone over 18 who marries a minor will face imprisonment of two to three years in prison, a fine, or both. The same punishment applies to anyone who arranges, performs, or helps conduct such a marriage. Officials who fail to confirm the couple's age without valid justification can also be penalized or held in contempt of court.[35] In Punjab, the Act keeps the girl's *marriageable age* to 16, while *male* as 18 age for marriage, but it is non-cognizable offence until a complaint is made by union council, which is also a major loophole in this act.[36]

The province of KPK mostly follows Child Marriage Restraint Act (1929), the legal age for marriage is 18 for boys and 16 for girls. After the 18th Amendment in the Constitution, the law became outdated, and a new KP Child Marriage Restraint Bill has been pending since 2014. The draft bill of 2019, led by the Social Welfare Department, proposes increase in the marriage age for girls to 18, with stricter

EAsia/Docs/Publications/2021/06/Child%20Marriage%20Costing%20Study%20Report-Pakistan-Final.pdf UN Women Asia and the Pacific

33 Section 5, 6 and 7 of Child Marriage Restraint Act, 2025 https://pakistancode.gov.pk/pdffiles/administratorecc8e12e1de9dfa4925e655c9cd5a385.pdf

34 Ali, K. (2025, May 29). *Clerics warn president against signing child marriage bill*. Dawn. https://www.dawn.com/news/1913987

35 Sindh Child Marriages Restraint Act- 2013

36 The Punjab Child Marriage Restraint (Amendment) Act 2015 (XII of 2015).

punishments up to three years and Rs. 40,000 fine and making the offence a non-bailable and non-compoundable. It also requires birth, CNIC, and marriage registration. However, despite provincial consensus, the PTI-led KP government has not tabled the bill[37]. Balochistan does not have their own provincial law on child marriage, it is implementing Federal laws related to marriage, such as Child Marriage Restraint Act, 1929 include Criminal Laws Amendment (Anti-Women Practices) Act, 2011.[38] As per reports in 2023 Balochistan set a final a draft (Balochistan Child Marriage Prohibition Act) aimed to protect child marriages; however, Press reporting indicates a draft existed, but enactment and full gazette notification were reported as pending[39]. Despite Sindh's strict child marriage law, it has largely failed in practice. From 2018 to 2024, Sindh Police reported 272 FIRs, but only 30 convictions. Mostly in Hyderabad, while Karachi and Sukkur were reported none[40]. Moreover, Khyber Pakhtunkhwa recorded only three cases, while Balochistan reported none, indicating the severe underreporting.

Despite having the law in place in all over Pakistan, according to the SSDO 2024 report, the conviction rate stayed zero across all provinces, and child marriage is among the least reported offence, despite its grave impact on children's rights and health.[41]

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37 UNFPA Pakistan & The Population Council. (2022, December 20). *Child marriage in Khyber Pakhtunkhwa: A political economy analysis and policy options*. UNFPA Pakistan. https://pakistan.unfpa.org/sites/default/files/pub-pdf/child_marriage_kpk_book_1_0.pdf (pakistan.unfpa.org)

38 UNFPA & Population Council. (2021, December). *Child marriage in Balochistan: A political economy analysis*. UNFPA Pakistan / Population Council. https://pakistan.unfpa.org/sites/default/files/pub-pdf/unfpa_pea_balochistan_report_final.pdf (pakistan.unfpa.org)

39 Khan, N. I. (2023, March 22). Draft law finalised to outlaw child marriage, Balochistan govt informs Shariat Court. *Dawn*. https://www.dawn.com/news/1743539

40 Malkani, S. (2025, June 6). *Criminalising child marriage*. Dawn. https://www.dawn.com/news/1915735; The Express Tribune. (2025, March 11). *Conviction rate low in child marriage cases*. The Express Tribune. https://tribune.com.pk/story/2568202/conviction-rate-low-in-child-marriage-cases

41 Sustainable Social Development Organization (SSDO). (2024). *Mapping study on violence against children in Pakistan: A provincial analysis of physical and sexual*

Undoubtedly the superior courts have played a leading role to address this issue in a strict manner through various landmark judgments and legal reforms. For instance, in *Sakeena Bibi v. Secretary Law, Government of Pakistan* (2021), the Federal Shariat Court declared the Swara (Vani), as un-Islamic, unconstitutional, and illegal custom. The Court emphasized on the 25th Constitutional Amendment (2018), and Section 310A of the Pakistan Penal Code (1860)[42] that makes Swara a punishable offence.[43]

Similarly, in *Ashraf Ali v. Badar Munir* (2024), the Sindh High Court upheld the lower courts' decision and declared marriage null and void under the Sindh Child Marriage Restraint Act, 2014**.** As per facts of the case, a teacher was allegedly married to his 16-year-old student. The Court directed NADRA to expunge the marriage record, and stated it as violation of Section 2(a) of the 2014 Act that defines a child as anyone below 18 years of age.[44]

Furthermore, in *Mumtaz Bibi v. Qasim* (2022). The Court highlighted the object of marriage that is two individuals enter into the contract primarily for procreation and compared this with the provisions of rape under Section 375(3), which penalizes sexual intercourse with minor girl and provide no exception even where such conduct occurs pursuant to a contract of marriage. Therefore, a contract of marriage with a minor, even with her consent, is void. The Court also mentioned Pakistan's obligations under the UN Convention on the Rights of the Child (UNCRC) and relied on amendments made

abuse, kidnapping, child trafficking, child marriage, and labor. National Commission on the Status of Women / SSDO. https://ngdp-ncsw.org.pk/storage/6865729cf1528.pdf

42 310A. Punishment for giving a female in marriage or otherwise in badal-e-sulh, wanni or swara

43 Federal Shariat Court of Pakistan. (2021, October 25). *Judgment on Swara (Shariat Petition No. 01-I of 2017)* [PDF]. Islamabad: Federal Shariat Court of Pakistan.

44 Sindh High Court. (2024, March 27). *Ashraf Ali v. Badar Munir (C.P. No. S-982 of 2020)*. Karachi: Sindh High Court

in Protection of Women (Criminal Laws Amendment) Act 2006 and the Criminal Law (Second Amendment) Act 2016.[45]

Although these judgments and legal statutes have symbolized the significant progress in recognizing and prohibiting child marriages. Nonetheless in reality Pakistan continues to face grave challenges in enforcement of child marriage laws and achieving convictions.

Mainly the causes which fail the case are inadequate evidence, disappearance of witnesses and long proceedings, which ultimately results in the acquittal of the accused.[46] The Director of Sustainable Social Development organisation (SSDO) also pointed out that weak investigations, ineffective prosecution, and insufficient survivor support results in a lack of public trust in the law enforcement and the judiciary.[47]

3. ONLINE CHILD SEXUAL EXPLOTIATION AND ABUSE

Over half of the world's population has access to the internet. Globally, one in three internet users is in the 18-year age group[48]. The Internet offers a number of benefits for children, including learning personal and professional skills, creativity, and participation in the community. However, the notion of online violence is also present, which includes online bullying, sharing explicit images, spreading false rumors, or digitally recording sexual activity that occurs offline and forwarding this kind of stuff

45 Mumtaz Bibi v. Qasim, PLD 2022 Islamabad 228

46 Mehmood, A. (2025, December 17). *Child abuse cases rise in Punjab as convictions remain at just 1%. The Express Tribune.* https://tribune.com.pk/story/2582529/child-protection-collapses-under-impunity The Express Tribune

47 The Newspaper's Staff Reporter. (2025, November 11). *Over 270 cases of violence against children reported in Islamabad: report. Dawn.* https://www.dawn.com/news/1954318

48 Livingstone S, Carr J, Byrne J. (2016). One in three: Internet governance and children's rights

online. This type of abuse is particularly linked to the technology, thus rapidly increasing.

The real perpetrators behind violence against children often remain hidden. Many children stay silent because of fear, stigma, shame, or simply because they have nowhere to turn for help. Research from six countries across Africa, Asia, and Latin America shows just how rarely children open up: only 23% to 54% tell a friend or family member, just 1% to 25% actually seek help, and as few as 1% to 11% manage to access formal support.[49]

The National Commission on the Rights of the Child (NCRC) released a report stating the situation of children in Pakistan, facing online harassment, inappropriate content, and sexual exploitation risks. It highlights how perpetrators are utilizing video/audio functions to contact children.[50] It further states different types of Online Child Sexual Exploitation and Abuse (OCSEA).

3.1 Forms of Online Child Sexual Exploitation and Abuse (OCSEA)

Cyberbullying, often referred to as internet bullying, involves the dissemination of harmful, false, sexual jokes or negative content by individuals, or groups through digital platforms[51]. It has become especially common on social media platforms like Facebook, Twitter, and Instagram, where children spend much of their time[52]. A study was conducted among 25 countries where Pakistan stood on 22nd place for the highest rate of cyberbullying. Pakistan has been included in the list of fastest-growing countries that are using

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49 Pereira A, Peterman A, Neijhoft AN, Buluma R, Daban RA, Islam A, et al. (2020). Disclosure, reporting and help seeking among child survivors of violence: a cross-country analysis. BMC public health.

50 National Commission on the Rights of Child & UNICEF. (2024). *Situation analysis of child online protection in Pakistan*. UNICEF. https://www.unicef.org/pakistan/media/5546/file/Situation%20Analysis%20of%20Child%20Online%20Protection%20in%20Pakistan.pdf

51 Rezayi, S., Balakrishnan, V., Arabnia, S., & Arabnia, H. R. (2018, December). Fake news and cyberbullying in the modern era. In 2018 International Conference on Computational Science and Computational Intelligence (CSCI) (pp. 7-12). IEEE.

52 "Cyberbullying." Cyberbullying - National Bullying Prevention Center, www.pacer.org/bullying/info/ cyberbullying. Accessed 27 Dec. 2022.

the internet. Such fast growth in this sector has certainly its own grave consequences resultantly a rapid increase in cybercrime."[53]

Some of the reasons for rapid increase are lack of proper knowledge to use internet technology, safeguarding privacy and unawareness of cybercrimes and related laws. Research was conducted on Lahore's youth indicated that cyberbullying affects nearly half of them, with girls facing more harassment than boys. As a matter of fact, most cases go unreported such as almost around 71% of students say bullying isn't reported, and 85% avoid informing parents due to fear. Another concern in this regard is that, many parents neither monitor online activity nor openly talk about this issue. In terms of awareness, over 80% of students don't have awareness about cybercrime laws, and nearly 90% want schools to provide awareness on it. The impact is grave, with 88% reporting mental health struggles.[54]

3.2 Case studies regarding online children's rights violation

The recent cases regarding the selling of such materials on the dark web are Muzaffargarh 2025, The National Cyber Crime Investigation Agency (NCCIA), with assistance from law enforcement, rescued 10 children and arrested two suspects, while four others remain at large. Six children were placed under the Child Protection Department's care.

Furthermore, the cases of blackmailing, in April 2022, the FIA's Cybercrime Cell uncovered a gang in Lahore that was exploiting children and selling such material. At least 10 children were victimized, lured with money, raped, and filmed. The perpetrators then blackmailed the victims, repeatedly forcing them into abuse and threatening to release the videos online. A case was registered under Sections 20, 21, and 22 of the Prevention of Electronic Crimes

53 Kanza, K. (2021, 05 11). The Nation. Bullying in Pakistan.

54 Jamal, R. (2020). *Effects of cyber bullying on the youth: A case study of Lahore students*. Global Digital & Print Media Review, 3(1), 29–43. https://doi.org/10.31703/gdpmr.2020(III-I).03

Act (PECA) 2016, and Section 109 of the Pakistan Penal Code (PPC).[55] The case of a teenager, a Grade 8 student, explained as a witness that his friend introduced him to the offender, who later took pictures, and over time, he tricked the victim and took nude images of him and blackmailed him.[56]

The Victims of child sexual abuse often face re-victimization throughout their lives, knowing that images and videos of their exploitation may remain online forever[57]. Many suffer lasting psychological harm, including disrupted sexual development, disturbed self-image, and difficulties in forming trusting relationships.[58]

3.3 Legal Framework and institution regarding online children's rights violation

The current legal framework in Pakistan regarding the children protection is extensive and quite well equipped. Such as *Pakistan Penal code (PPC) 1860*[59]*, The Prevention of Electronic Crimes Act*

55 'Gang Involved in Child Pornography Busted | the Express Tribune. The Express Tribune, 2 Apr. 2022, tribune.com.pk/story/2350667/gang-involved-in-child-pornography-busted.

56 Sighted by MSK v. The State [2022] Islamabad High Court, Criminal Appeal No. 151/2020

57 "Child Pornography." Child Pornography, 26 May 2015, www.justice.gov/criminal-ceos/child pornography.

58 Ibid

59 Sections 292A, 293, and 294 address the sale, distribution, and public exhibition of obscene materials, exposure to seduction of children, and obscene acts or songs, Section 292A specifically criminalizes seducing a child or exposing them to sexually explicit material, including films, videos, or computer-generated images, Section 293 prohibits the sale, distribution, or exhibition of obscene objects to persons under 20, Section 328A deals with cruelty to a child, including assault, neglect, or acts causing physical/psychological harm, Section 377A criminalizes sexual abuse of children, including groping, fondling, voyeurism, or obscene acts with persons under 18, Section 377B prescribes punishment for sexual abuse, Sections 371A and 371B criminalize the sale or purchase of persons for prostitution, Section 366A criminalizes the procuration of minor girls under 18 for illicit sexual intercourse Of PPC;

(PECA) 2016[60] *,Prevention of Trafficking in Persons Act 2018*[61]*, Islamabad Capital Territory Child Protection Act 2018, Khyber PakhtunKhwa Child protection and Welfare act 2010*[62]*, Balochistan Child Protection Act 2016*[63]*, Sindh Child Protection Authority Act 2011*[64]*,*

60 Section 20 addresses offenses against the dignity of a person, including spreading false or harmful information online, Section 21 criminalizes online child abuse and offenses against the modesty of minors, Section 22 deals with child pornography, prescribing 14–20 years , Section 22A targets online grooming, solicitation, and enticement, Section 22B criminalizes commercial sexual exploitation of children, Section 22C addresses using information systems for kidnapping, abduction, or trafficking minors for sexual abuse, Section 24 and 24A address cyber stalking and cyberbullying, Sections 30–30D govern investigation procedures, victim and witness protection, in-camera trials, Section 34 facilitates international cooperation in investigating offenses. Section 43 declares offenses under Sections 10, 21–22C as non-bailable, non-compoundable, and cognizable. Section 43A provides a complaint mechanism specifically for cybercrimes against children, Section 45A mandates the government to establish support mechanisms for victims PECA;

61 Section 3(1)of the PTPA 2018 indicates that any individual who is involved in activities such as recruiting, harbouring, transporting, providing, or obtaining another person for compelled labour or commercial sex acts through the use of force, fraud, or coercion commits this offence.

62 Section 2(e)(vi) defines child pornography, Section 35 criminalizes deceiving or defrauding a child to engage them in activities harmful to their physical, mental, emotional, economic, or social well-being, Sections 36 and 37 address violence against children causing or intending to cause harm, pain, suffering, or humiliation, Section 40 defines offenses broadly, while Section 48 prescribes punishment for child pornography, Section 50 criminalizes exposing a child to seduction or sexually explicit material with intent to involve them in sexual acts, Section 53 addresses sexual abuse of children;

63 Section 2(1)(w) defines sexual abuse and exploitation to include: (i) coercing a child into unlawful or psychologically harmful sexual activity, (ii) using children for commercial sexual exploitation, (iii) using children in audio or visual images depicting sexual abuse, and (iv) child prostitution, sexual slavery, trafficking, sale for sexual purposes, and forced marriage**.** Section 2(1)(t)(vii) further expands the concept of mental violence to cover psychological harassment of children via information technology, internet, or cyber devices;

64 Child Protection Units District Level – Sindh Child Protection Authority. scpa.sindh.gov.pk/child protection-units-district-level. Accessed 26 Nov. 2022.

Sindh Children Act 1955[65]*, Punjab Destitute and Neglected Children Act 2004*[66]*, and Punjab Protection of Women Against Violence Act 2016*[67].

In 2023, Pakistan took a positive step by updating the PECA 2016, broadening its coverage to better address crimes related to online child sexual exploitation. Moreover, the judiciary has adopted a stringent approach towards the violations of PECA 2016. The case of *Umar Khan vs. The State*[68] is exemplary in this regard, where the accused was not granted post-arrest bail even though the offence[69] did not fall under the non-prohibitory clause of Section 497 CrPc. The Supreme Court ruled that the nature of offence, and its impact on the society must be kept in view while granting bail.

Another notable example is the case of *Farhan Kamrani vs. The State,*[70] where the High Court of Sindh rejected his post-arrest bail, and the Trial Court convicted him for online harassment,[71] awarding him fine of One Million rupees. The convict was a professor of psychology at a reputable university, yet he committed the crime. Through this precedent, the court signaled that educational qualifications do not mitigate the commission of heinous crimes. While these examples do reflect a positive change in cybercrimes cases, the root of issue and the dangerous spread of the crime still remain largely unaddressed.

There are multiple agencies such as, Federal Investigation Authority (FIA), Cyber Crime Wing (CCW), Pakistan Telecommunication Authority (PTA), Police, Child Protection

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65 **S**ection 56 criminalizes inducing or promoting seduction, immoral behavior, or prostitution of girls under 18, Section 57 addresses seduction or outrage of modesty, making it an offense for anyone engaging in immoral conduct to seduce a girl under 18

66 Section 3(k) defines a destitute and neglected child, including children who are or may be abused or exploited for immoral, illegal, or unconscionable purposes

67 Section 2(1r) to include sexual violence, psychological abuse, stalking, and cybercrime

68 2022 SCMR 216

69 Prevention of Electronic Crimes, 2016 §§ 22(1)

70 2018 YLR 329

71 The Prevention of Electronic Crimes Act, 2016 §§ 20 & 21

Agencies (ICT and Provincial), National Human Rights Institutions (NHRIs), National Commission on the Rights of Child (NCRC), United Nations Children's Fund (UNICEF), International Telecommunication Union (ITU), International Criminal Police Organization (INTERPOL), We Protect Global Alliance, and other non-government Organizations that helped in the enforcement of the laws regarding Children. However, despite government efforts to block websites containing pornographic material, such content remains accessible through new platforms or VPNs. Additionally, there is no law that protects children from criminal liability if they are forced to share abusive material. This gap can discourage children from reporting abuse, as they may fear being prosecuted, while perpetrators could exploit this loophole to blackmail or manipulate victims[72].

Moreover, the conviction rate of cybercrimes is comparatively very low[73]. The real cause of problem lies in the failure of establishing separate tribunals for such crimes. Although PECA 2016 addresses various forms of online abuse that affects individuals irrespective of gender or age. However, Chapter V of the Act confers the jurisdiction in Magistrates of the existing courts. It is a well-established fact that subordinate judiciary is already over-burdened with the pendency of cases and the outdated procedural practices including non- registration of FIRs, late submissions of Challan, inadequate investigations, and lengthy adjournments are persistently present. In such case the rapid spread, and severe impact of cybercrime on the society requires the establishment of separate tribunals with the presiding officers who have sufficient training in information technology and possess AI-centric knowledge to swiftly manage the case flow and adjudge the cases accordingly. Although the PECA 2016 provides the assistance of

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72 National Commission on the Rights of Child & UNICEF. (2024). *Situation analysis of child online protection in Pakistan*. UNICEF. https://www.unicef.org/pakistan/media/5546/file/Situation%20Analysis%20of%20Child%20Online%20Protection%20in%20Pakistan.pdf

73 Ali, K. (2025, January 15). Cybercrime conviction rate 'very low'. *Dawn*. https://www.dawn.com/news/1885210

amicus curiae,[74] it is neither practical nor feasible to appoint amicus curiae for every case. When the presiding officer himself would be equipped with such technical knowledge, trials could proceed more expeditiously and conviction rate could significantly improve.

4. CHILD LABOUR

Children are considered most active human beings among all age groups, but it is regrettable when their activity turns into labour. The outcry against child labour is not new; however, each time it is discussed, the threshold reaches new heights. Child labour remains one of the prominent issues in the South Asia region.[75] It is important to understand that Article 3 of the Convention recognizes child begging as a form of child labour.[76] Pakistan, being a signatory to this Convention, openly violates it by failing to curb child begging.[77]The Survey reports[78] released in 2022 and 2024 by the Provincial Governments regarding child labour reveals concerning figures of child labour, emphasizing the practice is a deep rooted in Pakistan. The report from Punjab alone submits that about 16.9 % children start child labour from the tender ages like 5 to 8 years. Children aged around 10-14 years often engage in hazardous forms of labour, posing risk to their health. In Khyber Pakhtunkhwa (KPK), around 73.8% children are engaged in

74 The Prevention of Electronic Crimes Act, 2016 Sec 43.

75 UNICEF. (2018, April). *Child labour and exploitation*. UNICEF South Asia. Retrieved from https://www.unicef.org/rosa/what-we-do/child-protection/child-labour-and-exploitation

76 International Labour Organization. (2017). *Normlex – Comment ID: 3298621*. Retrieved September 29, 2025, from https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3298621

77 Hashmi, S. V. U. N. (2022). *Inquiry into the plight of street children in ICT – challenges & way forward* (p. 21). Wafaqi Mohtasib (Ombudsman)'s Secretariat. https://www.mohtasib.gov.pk/

78 National Commission on the Rights of Child, & UNICEF. (2024). *The state of children in Pakistan 2024 report* (p. 99). National Commission on the Rights of Child.

hazardous occupation[79] while in Sindh, over 50.4 % children faces harsh conditions like extreme labour, long hours of work, unsafe work environment, and tools.[80]

Child begging is not appreciated by local public in Pakistan. However, Pakistan is a religious country, children who are disabled and beg near a Pir' haveli or religious shrines are often perceived as holy men.[81] For example, in Gujarat, Pakistan, there are famous child beggars locally known as *Daulah Shah ke Chua*.[82] They are usually known for their small heads, which occurs due to a medical condition called microcephaly.[83] It have been reported that infertile women would visit the shrine for treatment and are required to gift their first child to Daulah shah, believing the child will become a chua who begs and bless visitors.[84] However, the controversy arose when each firstborn child was surviving with microcephaly which is a rare condition.[85] In any case, these children are exploited because of their disability, which is itself controversial. Moreover,

79 National Commission on the Rights of Child, & UNICEF. (2024). *The state of children in Pakistan 2024 report* (p. 99). National Commission on the Rights of Child.

80 Dawn.com. (2025, October 10). *Over 1.6m children in Sindh trapped in child labour, survey finds*. Dawn. https://www.dawn.com/news/1922115

81 Hussain, M., Rasheed, A., & Zia, M. A. (2024). A qualitative analysis of health among microcephalies (Shah Daula community): Narratives from Gujrat, Punjab, Pakistan. *Journal of Political Research and Social Sciences (JPRSS), 11*(1) (P. 285)

82 Rajpal, S. (2020, December 17). *Indigenous traditions, modernity, and madness*. In *Curing madness? A social and cultural history of insanity in colonial North India, 1800–1950s*. Oxford University Press. https://doi.org/10.1093/oso/9780190128012.003.0006

83 Hussain, M., Rasheed, A., & Zia, M. A. (2024). A qualitative analysis of health among microcephalies (Shah Daula community): Narratives from Gujrat, Punjab, Pakistan. *Journal of Political Research and Social Sciences (JPRSS), 11*(1), 247.

84 Miles, M. (1996). Pakistan's microcephalic chuas of Shah Daulah: Cursed, clamped or cherished? *History of Psychiatry, 7*(28), 571–589. Taylor & Francis. Retrieved from http://www.independentliving.org/miles201005.html

85 Ingles, G. (2021, September 17). Primary microcephaly and the beggars of Shah Daula. *The Borgen Project*. Retrieved from https://borgenproject.org/primary-microcephaly/

the disheartening reality is they denied medical treatment[86] and are forced to beg for the rest of their lives.

Apart from begging, child labour also includes work in transport departments, factories, local eateries, waste-picking[87]automobile repair shops,[88] and other sectors. These environments remain unsafe for the children due to possibility of sexual abuse,[89] and recruitment in drug production or trafficking.[90]

The children who work in such harsh conditions are mostly illiterate and poverty-ridden.[91] They face health risks; such as research finds the children working in workshops had chronic backache, cough, watery eyes, skin lesions, and fatigue.[92] For instance, the case of Muhammad Adnan vs. State[93] highlights the apprehension of abuse of children in transport department. The appellant was sentenced under S: 9(c) [94]because he was driving a rickshaw in which narcotics

86 Hussain, M., Rasheed, A., & Zia, M. A. (2024). A qualitative analysis of health among microcephalies (Shah Daula community): Narratives from Gujrat, Punjab, Pakistan. *Journal of Political Research and Social Sciences (JPRSS), 11*(1), 282–283

87 International Labour Organization. (2023). *Rapid assessment of child labour in waste-picking in Pakistan*. International Labour Organization. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-islamabad/documents/publication/wcms_887600.pdf

88 International Labour Organization (ILO). (2023). *Rapid assessment of child labour in automobile repair workshops in Pakistan*. https://www.ilo.org

89 ECPAT International. (2025). *Case study: Child Rights Group of the Pakistan Paediatric Association, Pakistan* (p. 11). ECPAT International.

90 International Labour Organization (ILO). (1999). *Worst Forms of Child Labour Convention, 1999 (No. 182)*. https://www.ilo.org

91 Rehman, M. A. (2023, December 19). *How Pakistan's socioeconomic problems are leading to child labour*. Research Society of International Law (RSIL). https://rsilpak.org/2023/how-pakistans-socioeconomic-problems-are-leading-to-child-labour/

92 International Labour Organization (ILO). (2023). *Rapid assessment of child labour in automobile repair workshops in Pakistan* (p. 10). https://s3.eu-central-1.amazonaws.com/.../wcms_887599.pdf

93 Muhammad Adnan v. The State, PLD 2018 Supreme Court 823

94 Narcotics Controls Act 1997

substance was found. The TC treated the 10-year old juvenile as an adult and sentenced him to life imprisonment. The matter eventually reached to Supreme Court, where the appellant was finally released but only at the expense of 11 years of legal battle.

4.1 The legal position of child labour:

Pakistan has taken multiple actions to curb the curse of child labour. The parliament actively identifies and drafts new laws, while the executives and judicial branches also play an important part in safeguarding children' rights. The efforts have resulted in numerous laws aimed for the protection of children from child labour such as, *Section 328 of Pakistan Penal Code 1860, Punjab Prohibition of Child Labour at Brick Kilns Act, 2016, S; 2(e), National Commission on the Rights of Child (NCRC) Act, 2017, S; 15 & 17. Article 11 (3) and Article 35 of Constitution of Pakistan 1973, Employment of Children Act, 1991, Pakistan Bonded Labour System (Abolition) Act, 1992, Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015; the Punjab Restriction on Employment of Children Act 2016; the Sindh Prohibition of Employment of Children Act, 2017; the Islamabad Capital Territory Prohibition of Employment of Children Act, 1991 (schedule of occupations amended in 2020), and the Balochistan Employment of Children (Prohibition & Regulation) Act, 2021.*

However, legislation only becomes fruitful when it is implemented in its strictest sense. For that, laws shall be drafted in that context, for example, apart from Section 328, PPC 1860, *Pakistan Bonded Labour System (Abolition) Act, 1992,* & *Punjab Restriction on Employment of Children Act 2016* other Acts have not made the offences cognizable. This hampers the ability of the police to investigate and instantly curb a violation on sight by arresting the culprits without warrants. The courts[95] have repeatedly recognized the need for reforms and stated that merely providing free

[95] Syed Nazeer Agha vs. Government of Balochistan, PLD 2014 Balochistan 86 (Pakistan).

textbooks will not ensure the attendance of students.[96] The Action Plan for Human Rights for the promotion and protection of human rights was introduced in 2016 to eradicate child labour and implement Article 25-A of Constitution of Pakistan.[97] Another notable example is the successful eradication of child labour in the Sialkot soccer-ball industry in 2004.[98] The efforts are not rewarding enough because of lack of strict enforcement. Many Acts refers provisions where Police officers can lodge complaint when they are witnessing child labour crossing the prohibited parameters[99]. The legislative intent behind this is exceptional, since police officers have accessibility and a legal cover for their safety when dealing with such crimes. Yet, there is no mechanism which can ensure how many complaints are registered by police officers monthly and hence such omissions allow these crimes to spread.

Moreover, the delay in the trial proceedings can result in life-altering consequences, as happened in the case of *Naseebullah v. The State.*[100] The Peshawar High Court dismissed an appeal against the judgement of juvenile Court, where the appellant had been arrested under section 9 of the Control of the narcotics and substance Act, 1997 for possessing three Maunds of Charas and was sentenced to life imprisonment. The appellant contended that he was not granted a relief under Section 11 of Juvenile Justice System ordinance, 2000 by the Trial Court because, when the trial was

96 Rehman, M. A. (2023, December 19). *How Pakistan's socioeconomic problems are leading to child labour*. Research Society of International Law (RSIL). https://rsilpak.org/2023/how-pakistans-socioeconomic-problems-are-leading-to-child-labour/

97 Hashmi, S. V. U. N. (2022). *Inquiry into the plight of street children in ICT – challenges & way forward* (p. 36). Wafaqi Mohtasib (Ombudsman)'s Secretariat. https://www.mohtasib.gov.pk/

98 Dawn.com. (2004, November 27). Sialkot: *Eradication of child labour hailed – Global Forum for Sports and Environment*. Dawn. https://www.dawn.com/news/375336/sialkot-eradication-of-child-labour-hailed-global-forum-for-sports-and-environment

99 Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 §§16, the Sindh Prohibition of Employment of Children Act, 2017§§ 17, the Balochistan Employment of Children (Prohibition & Regulation) Act, 2021. §§ 19, Employment of Children Act, 1991 §§ 16

100 PLD 2014 Peshawar 69

concluded, he had attained the age of 18 to 19 years. The Court concurred with the TC's judgement and reasoning.

Another concerning issue is with poor management of the case by investigation and prosecution which cost an innocent child laborer 11 years of his childhood. In the case of *Muhammad Adnan v. The State*[101] the accused was driving a Rickshaw when he was arrested & sentenced under Narcotics Act[102] for possessing drugs. At the time of arrest he was not even a teenager, but a child of tender age; however, the court failed to consider this fact. Furthermore, the police report was submitted after two years on special direction of Trial Court. The prosecution witnesses in that case were not present at the spot where the vehicle was seized. The Supreme Court, while deciding the appeal, observed that due to an inept investigation and prolonged proceedings, a child remained incarcerated for eleven years and attained majority in jail.

5. THE PRACTICE OF BACHA BAZI

Bacha Bazi, or as per its literal translation, "boy play," is another form of abuse directed towards young boys aged 8 to 18 in Pakistan. It is a practice in which men from Northern areas keep adolescent boys with them for entertainment and sexual purposes.[103] This practice has historical roots in Uzbek communities of Afghanistan[104] and continues openly in markets of Afghanistan to this day.[105] Those who engaged in it consider this

101 PLD 2019 Supreme Court 82

102 Control of the narcotics and substance Act, 1997 sec 9

103 Jones, (2011). The invisible man: The conscious neglect of men and boys in the war on human trafficking. Utah Law Review, 2010(4), (pp. 1143–1165).

104 Baldauf, I, (1990), (pp. 10-32). Bacabozlik: Boylove, folksong and literature in Central Asia. Paedika, 2(2), 10–32.

105 Coleman, K, (2010, June 19). *Bacha Bazi documentary uncovers horrific sexual abuse of Afghan boys. Care2*. https://www.care2.com/causes/help-the-dancingboys-of-afghanistan-escape-the-world-of-bacha-bazi.html

abhorrent practice a matter of pride,[106] when interviewed, a man said, "*Women are for children, and boys are for pleasure.*[107]

Bacha Bazi is a not widely reported or publically condemned but is quietly endured and impliedly accepted by the residents of northern areas of Pakistan. As a result, this issue does not receive the attention it requires. A study published by ECPAT identified poverty as primary cause behind the boys being sold to older men.[108] These boys used for indecent practices, such as seductively dancing at parties attended by older men, and tortured, if they refuse the requests of their masters, locally called as Bacha baz. They suffer from serious health issues if comply with the request.[109] Boys who have escaped this hell reported serious health complications and physical injuries as broken limbs etc.[110]

Their sexual enslavement lasts till they attain puberty or turn 19 and leave their pre-pubertal features, which became a curse for them.[111] This abuse is endured both voluntarily and forcibly. Bacha Baz can also kidnap these boys and torture them for the pre-pubertal features. One case entails the disturbing details where a fatherless young boy was kidnap in the pretext of helping the mother and child. He was kept locked in a room somewhere near Peshawar and sexually abused by several Bacha Baz for 40 -50 rupees, until one of them took pity on him and adopted him for

106 de Lind van Wijngaarden, J. W., & Rani, B,, (2011). *Male adolescent concubinage in Peshawar, Northwestern Pakistan. Culture, Health & Sexuality.* Advance online publication. https://doi.org/10.1080/13691058.2011.599863

107 U.S. Army Human Terrain Team (HTT) AF-6,(2010). *Research update and findings: Pashtun sexuality.* https://www.scribd.com/doc/39111225/Pashtun-Sexuality

108 ECPAT International, (2025), *Case study: Child Rights Group of the Pakistan Paediatric Association, Pakistan.* Bangkok, Thailand: ECPAT International. *(P. 07*).

109 United Nations Human Rights Council, (2016), *A/HRC/31/NGO/X*. United Nations. *(P. 2*).

110 United Nations Human Rights Council, (2016), *A/HRC/31/NGO/X*. United Nations. *(P. 2*).

111 Jones, S. V, (2015). *Ending bacha bazi: Boy sex slavery and the responsibility to protect doctrine. Indiana International & Comparative Law Review, 25*(1). (pp. 63–92)

Bacha Bazi. The boy was kept under false hope of being reuniting with his mother, a reunion that never occurred.[112]

5.1 Legal framework regarding Bacha Bazi

Astonishingly and unfortunately, the legal framework addressing this practice is insufficient. Although, Pakistan's state religion is Islam, [113]and such desires or acts are penalized[114]. In spite of strong religious, moral, and cultural stance on the issue, there is lack of specific laws which can address this practice and punish accordingly. On Federal level, an attempt was made to include child pornography in the list of crimes, but it was never added in Pakistan Penal code, 1980.[115] Moreover, in Khyber Pakhtunkhwa, KPK, the hub of Bacha Bazi, a comprehensive law was enacted against the sexual abuse of children. This represents a significant attempt in penalizing the pedophiles, as it also covers the crimes such as exposure to seduction and sexual abuse.[116] It also prohibits the offenders from traveling in local transport, obtaining employment by recording their names in registers of sexual offenders.[117] The offences are cognizable, non-bailable, and non-compoundable.[118] The Act also places a responsibility on police to maintain a register of sexual offenders which will be published on the website of Child protection and welfare commission.[119] The Act came into force in 2010 and till date there is no record of sexual offenders on website. This indicates that Bacha Bazi is still not reported by either of listed persons. The combination of insufficient

112 De Lind van Wijngaarden, J. W., & Rani, B, (2011). *Male adolescent concubinage in Peshawar, Northwestern Pakistan. Culture, Health & Sexuality.* Advance online publication. (p. 4). https://doi.org/10.1080/13691058.2011.599863

113 Constitution of the Islamic Republic of Pakistan, art. 2 (1973).

114 Pakistan Penal Code, § 377 (Act No. XLV of 1860).

115 National Assembly of Pakistan. (2014). *The Criminal Law (Amendment) Bill, 2014.* https://www.na.gov.pk/uploads/documents/1393407574_724.pdf

116 Khyber Pakhtunkhwa Child Protection and Welfare Act, §§ 50 & 53 (2010).

117 Khyber Pakhtunkhwa Child Protection and Welfare Act, §§ 55(b), 55(c), 55(e) (2010).

118 Khyber Pakhtunkhwa Child Protection and Welfare Act, §§ 54 (2010)

119 Khyber Pakhtunkhwa Child Protection and Welfare Act, §§ 55(d) (2010)

laws and weak enforcement mechanism and cultural acceptance continues to fuel the practice of Bacha Bazi.

6. FORCED CONVERSIONS OF MINORS

The condition of children in Pakistan presents a devastating tale. While children of similar ages pray for snacks or favourite stationeries, many children in Pakistan are kidnapped, influenced, questioned about their faith, and left confused about the institution of religion and belief. Pakistan's two provinces, Sindh and Punjab are home to non-Muslims and hence, a hub of forced religious conversions.[120] However, it is particularly alarming that this act only happens with young girls. The most frequently targeted communities are Hindus in Sindh and Christians in Punjab.

Forced religious conversion is a taboo topic in Pakistan. Therefore, it is neither openly studied, nor discussed or reported by main media outlets or governmental agencies. Hence, the reports on this issue are comparatively fewer than those addressing other acts of abuse towards children. The Human Rights Commission reported that in 2022, on average 1,000 women and girls from Non-Muslim communities were abducted, forcibly converted to Islam, and married off to their abductors.[121] The Human Rights Commission of Pakistan (HRCP) displayed an alarming figures, reporting that approximately 20 or more Hindu girls are abducted and converted each month in Sindh.[122] The situation of Punjab is comparatively less critical than that of Sindh, with only about 30% of such cases are originating from Punjab.[123]

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120 National Commission on the Rights of Child. (2021). *Policy brief on forced conversion with recommendations after analysis of Arzoo case* (p. 8). Government of Pakistan.

121 United Nations Human Rights Council. (2022). *Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development* A/HRC/51/NGO/192, (p. 2). United Nations.

122 United Nations Human Rights Council. (2023). *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development* A/HRC/53/NGO/109, (p. 2). United Nations.

123 National Commission on the Rights of Child & UNICEF. (2024). *The state of children in Pakistan 2024* (p. 95). Government of Pakistan.

6.1 Case studies regarding forced religious conversions.

These figures are formed with the disheartening stories of young girls such as the case of Manisha Kumari from Sindh, a 14-year-old Hindu girl was abducted and married off with his abductor after conversion to Islam.[124] Or the case of four minor and major victims from the same family, who were abducted and converted to Islam.[125] The cases of Punjab display more violent crimes such as, the victim, a 12-years old Christian girl, was abducted, raped for 08 months, when she finally called her parents after escaping from the rapist, the group of rapist produced a marriage and conversion certificate through a religious group in Police Station showing her as legally married to one of the rapist.[126] A report mentions that underage girls are first abducted, threatened for dire consequences and their thumb impression are then taken to marriage and conversion certificates.[127]

6.2 The legal landscape of forced conversions:

The heinous way of converting minor girls is devastating and must be recognized as a crime against the entire community. The number of such violations increases each year[128] due to the absence of specific laws. The Constitution of Pakistan 1973 safeguards rights of minorities through Articles[129] and Principle of Policy.[130]

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124 National Commission on the Rights of Child. (2021). *Policy brief on forced conversion with recommendations after analysis of Arzoo case* (p. 13). Government of Pakistan.

125 Global Forum for Divestment, Disinvestment, and Sanctions (GFoD). (2025, June 24). *No consent, no childhood: Forced conversions and the collapse of minority rights in Pakistan*. GFoD. Retrieved from https://globalforumcdwd.org/no-consent-no-childhood-forced-conversions-and-the-collapse-of-minority-rights-in-pakistan

126 Asian Human Rights Commission. (2011, October 10). *The state of human rights in ten Asian nations* (p. 345). AHRC.

127 The Newspaper's Staff Reporter. (2022, December 11). 100 Christians faced faith conversion, child marriage in three years: report. *Dawn*. Retrieved from https://www.dawn.com/news/1725714

128 Gul, A. (2023, January 16). UN to Pakistan: Curb forced conversions, marriages of religious minority girls. Voice of America (VOA). Retrieved from https://www.voanews.com.

129 Article 20 & 21

130 Protection of minorities.

However, the inclusion of fundamental right in the Constitution and penalizing an act violating that right, are two distinct matters. The Supreme Court of Pakistan has failed to consider this simple distinction by asserting that there is no need to enact Anti-Conversion laws in the presence of Article 20 of Constitution of Pakistan, 1973.[131] Although, Pakistan has laws against child marriage, namely, Child Marriage Restraint Act 1929 and Sindh Child Marriage Restraint Act 2013, but they are not designed for the forced conversion, whether it occurs before or after marriage.

The issue of forced conversion accommodates two crimes simultaneously: child marriage and forced conversion of faith. The laws are required for forced conversions of minors, and the judgement of Lahore High Court in the case of *Nasira v. Judicial Magistrate and 5 others*[132] proves this necessity. In that case, the Court granted custody of a 14-years old Christian girl to her natural guardian in accordance with the Guardian and Wards Act 1890[133], yet refrained from invalidating her conversion, citing it a matter of heart.[134] This judgement and including many others depict two things; confusion and judicial reluctance. The confusion arises when the court considers a child rational enough to decide her religion and not rational enough to live without her parents. The judicial reluctance manifest judge's safe approach in dealing with conversion matters due to its religious-sensitive nature and sentiments of mob. Each time, the efforts to enact laws against forced conversion are obstructed by the extremist elements in Pakistan. These bills are *Protection of Minorities Bill Sindh 2015, The Protection of Persons against forced Religious Conversion Bill, 2019,* [135]and even the child Restraint Marriage Act, 1929 was termed as

131 Nasira v. Judicial Magistrate and 5 others, PLD 2020 Lahore 489, para. 25.
132 PLD 2020 Lahore 489, para. 25.
133 Article 19 clause b.
134 Nasira v. Judicial Magistrate and 5 others, PLD 2020 Lahore 489, para. 62.
135 National Assembly Secretariat. (2019, May 8). *Orders of the Day* (National Assembly meeting). Retrieved from https://www.na.gov.pk/uploads/documents/8-5-2019.pdf

un-Islamic.[136] Pakistan is not a secular state; however, this fact does not grant any entity of state to crumble the minorities of the country. The example of Malaysia can become a great learning for curbing forced conversions of minors. In Malaysia, although Islam is the religion of federation,[137] the Government has introduced Mykad cards for children over the age of 12. These cards can store personal information regarding name, religion, and parent's information of the child in order to control the abuse.[138] Moreover, in 2018, the highest Court of Malaysia ruled that parent's consent is necessary for the religious conversion of minor.[139]

Meanwhile in Pakistan, a commendable bill was drafted that outlined a comprehensive procedure for religious conversion of an adult. Under this law, the medium of conversion will be the Session Court which will give time to applicant for reconsidering the decision and learning Islamic ideologies. This bill had no provision for the conversion of minors, which specifies that minors are not deemed capable for making the decision of religious conversion at such a tender age. However, this bill's destiny was no different from others and therefore, it still rests in parliament, awaiting approval.[140]

7. CONCLUSION AND RECOMMENDATIONS

7.1 Conclusion

In Pakistan, children's rights' violation is not just a legal issue; but a moral and social one too. Several laws are enacted and institutions

136 Centre for Social Justice. (2019). *Tackling the uncomfortable truth of forced conversions* (Working Paper Series No. 10, Centre for Social Justice. (p. 10).

137 Constitution of Malaysia.. Article 3. Retrieved from https://www.malaysia.gov.my/portal/search?key=constitution%20of%20malaysia

138 U.S. Commission on International Religious Freedom. (2019). *2019 Annual Report* (p. 06)

139 U.S. Commission on International Religious Freedom. (2019). *2019 Annual Report* (p. 04)

140 Guramani, N. (2021, October 13). Parliamentary panel rejects anti-forced conversion bill amid protest by minorities' lawmakers. *Dawn*. Retrieved from https://www.dawn.com/news/1651813

are established, but the lives of many children still remain trapped in the cycles of abuse, exploitation, and silence. Girls are still being married off under customs of *vani*, *swara*, and *watta satta* and young children continue to work in homes, workshops, and factories. Moreover, the internet, instead of being a space for learning new skills and education, has become potential threat towards children. These horrific realities emphasize on the fact that Pakistan has made development only on paper; whereas, the actual state of affairs is different. The actual hurdle to overcome is changing social mindsets, breaking cultural and traditional taboos. Inclination towards protection of children indicates protecting the future of the nation, and that cannot be possible until every child feels safe, valued, and free from fear and threat.

7.2 Recommendations

I. To make children feel safer and more protected, it is essential to start by implementing comprehensive child protection policies and Committees in every school. These should include clear measures to address and prevent bullying and harassment, including those facilitated through digital technologies. A whole school safety approach is needed, one that enforces strong anti-bullying policies, encourages positive behavior, and actively deters harmful conduct.[141] The recent instance of the Lahore High Court issuing the direction to the Punjab school education secretary to assemble a committee to curb physical bullying, cyberbullying, and harassment of children in educational institutions[142] is the best example for such implementation.

[141] Schools must define clear reporting methods, including online channels, with trained staff to handle reports and maintain strong links to community and external systems and services. They should also develop and implement policies, procedures, and accountability mechanisms to manage the use of EdTech and all digital communication tools. See further: UNICEF, Child protection in digital education: Policy brief and technical note, 2023.

[142] Khan, I. A., & Gabol, I. (2024, October 30). LHC seeks report on steps against bullying in schools. *Dawn*. https://www.dawn.com/news/1868512

II. FIA is the leading enforcement agency for OCSEA. The FIA may collaborate with internet service providers (ISPs) to make alert systems that mark attempts to access child abuse material through search engines linked to the dark web. There are several good international examples to learn from. In the UK, for example, Microsoft partnered with the Child Exploitation and Online Protection Centre (CEOP) to introduce a "red panic button" on internet browsers[143], which upon clicking immediately notifies the National Crime Police and opens a page where users can report suspected online sexual abuse. Microsoft introduce easy access safety tool with user friendly application for parents, so that parents can educate their children about online safety mechanism. Parents should give their child confidence so that a child feels comfortable talking to them, in case any misfortune happens. Similarly, the European Commission has started a Child Sexual Abuse Anti-Distribution Filter for ISPs, which is now in use across several European countries, including Denmark, Finland, Italy, Malta, Norway, and Sweden. This system helps block the distribution of abusive material and provides extra level of protection for children online.[144]

III. Regarding early marriage in Pakistan, efforts should be taken beyond legislation. Moreover, the government should provide economic assistance to families in climate-affected areas. It will help them to reduce the pressure to marry off their daughters. Reporting of such crimes should be made easier & safer for the informants. There should be governmental program that rewards informants while ensuring their safety. The informants should notify the Union Council of the area and the Union Council, with the assistance

[143] "Microsoft, CEOP Adds Panic Button to IE8 to Fight Online Child Abuse." ZDNET, www.zdnet.com/article/microsoft-ceop-adds-panic-button-to-ie8-to-fight-online-child-abuse. Accessed 15 Dec. 2022.

[144] Legal and Technological Approaches to Tackle Online Child Abuse - Courting the Law. Courting the Law, 16 Mar. 2021, courtingthelaw.com/2021/03/16/commentary/legal-and-technological-approaches to-tackle-online-child-abuse.

of Police, shall prosecute the culprits. Moreover, for effective enforcement, the program should include submission of biannual reports to Civil Judge/Judicial Magistrate by Union Councils with conclusive measures to be taken in case those are found fake.

IV. To combat child labour, the mafias behind these must be dismantled. Alongside enforcement, the use of AI in traffic laws has demonstrated positive results; similarly, it can be used for monitoring vagrants and children who are employed or pushed into begging by their parents. The AI-enabled cameras should identify vagrants and monitor their activity for a period of six months. If the vagrant is found to be begging for six months, an automated report shall be sent to District Magistrate and the SHO of the concerned area. This will put the law in motion, as begging is a cognizable offence under the vagrancy ordinances.

V. To prevent forced religious conversions, a proper mechanism of conversion should be introduced similar to the bill pending in senate. Prominent scholars should educate general public regarding these laws and teaching of Holy Prophet (PBUH) should be taught and implemented.

VI. The practice of Bacha Bazi shall be eradicated from its roots by prosecuting the perpetrators or Bacha Baz through special Acts such as Zainab Alert response & Recover Act 2020. Awareness programs should highlight the health, social and religious implications of this practice. Additionally, the parents of such children should also be prosecuted who willfully use their children in order to run their poorly planned family.

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Contours of Reform: Reading and Rethinking the Draft Arbitration Bill, 2024

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Abstract

This research study examines the Draft Arbitration Bill, 2024 of Pakistan by analyzing its provisions in comparison with the existing Arbitration Act, 1940 and relevant international arbitration models. It argues that the draft legislation makes a decisive departure from the existing legislative framework which adopts an interventionist approach and grants courts extensive powers, undermining arbitral autonomy. In contrast, the Bill 2024 is designed to enhance party autonomy, restrict judicial intervention, and empower arbitral tribunals with greater control over the proceedings, thereby aligning domestic arbitration law more closely with contemporary arbitral standards, such as the UNICTRAL Model Law. The Bill 2024 attempts to codify the pro-arbitration bias of New York Convention, particularly by incorporating into statutory text the progressive legal principles articulated in recent domestic judicial decisions. The study also identifies legislative gaps in the proposed bill, by underscoring potential deficiencies and aspects requiring further amendment to secure a more effective arbitral framework.

Keywords: Draft Arbitration Bill, 2024, Arbitration Act, 1940, Judicial Intervention, Arbitrability, Competence-Competence, Separability, Public Policy, Party Autonomy.

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1.1 Introduction

After independence, Pakistan adopted the Arbitration Act of 1940 (hereinafter 'Act, 1940') modelled on the English Arbitration Act of 1934.[4] While English law was continuously updated and finally replaced with the Arbitration Act of 1996, Pakistan had chosen to retain the colonial laws without any meaningful reform.[5] The reason for this pronounced delay lies not in a lack of awareness of international developments but in the marginal importance successive political governments accorded to arbitration as an instrument of economic and legal development.[6]

The legal gridlock has entailed far-reaching implications. The Act, 1940 provides for an arbitration regime that is excessively court-supervised instead of being party-driven, lacking the pro-enforcement bias that characterizes modern arbitral statutes.[7] It gives courts the powers to intervene at virtually every step of the arbitral proceedings, thereby significantly reducing arbitral autonomy. For instance, the Act, 1940 gives courts broad powers of judicial review on merits under the pretext of public policy.[8] The

4 Anuja BS and AR Nair, 'International Commercial Arbitration and Indian Law – Need for Reforms' (2021) <http://14.139.185.167:8080/jspui/bitstream/123456789/446/1/LLM_0220019_CAL.pdf> accessed 6 October 2025.

5 Ikram Ullah, 'Chapter 1: Introduction' in 'Arbitration Law of Pakistan' (2021) (Kluwer Law International), pp. 3 <https://www-kluwerarbitration-com.ezp.sub.su.se/document/TOC-Ullah-2021> accessed 6 October 2025.

6 Ibid.; A Basit Khan, 'Is Alternate Dispute Resolution (ADR) a Valid Mechanism to Overcome Trust Deficit of Investors in Pakistan' (2025) 3(2) Law Research Journal 41–55 <https://lawresearchreview.com/index.php/Journal/article/view/81/78> accessed 6 October 2025.

7 Hassan Raza, 'Foreign Arbitration Laws – An Appellate Adventure of Pakistani Courts' <https://courtingthelaw.com/2018/03/03/commentary/foreign-arbitration-laws-an-appellate-adventure-of-pakistani-courts/> accessed 6 October 2025.

8 Vesselina Shaleva, 'The "Public Policy" Exception to the Recognition and Enforcement of Arbitral Awards in the Theory and Jurisprudence of the Central and East European States and Russia' (2003) 19(1) Arbitration International 67–93 <https://doi.org/10.1093/arbitration/19.1.67> accessed 6 October 2025.

cases of *HUBCO*[9] and *Reko Diq*[10] are classic examples of how domestic courts erred by effectively re-litigating the underlying dispute, instead of confining themselves to basic questions of enforceability.

Excessive judicial interventions lead to legal uncertainty and discourage recourse to arbitration, which in turn increases domestic litigation, reduces contract enforcement and undermines the prospects of foreign investment in Pakistan.[11] Indeed, between 2013 and 2022, Pakistan's net foreign direct investment remained largely stagnant rising only marginally from USD 1.33 billion to USD 1.42 billion, a trend to which the unreliability of dispute resolution mechanisms was not an insignificant contributor.[12]

In pursuit of legislative overhaul, an Arbitration Law Review Committee ('ALRC') was formed in 2023 to review the Act, 1940 and propose suitable reforms. Under the aegis of Law and Justice Commission of Pakistan, the ARLC prepared the Draft Arbitration Bill of 2024 (hereinafter 'Bill 2024'), which currently awaits parliamentary approval. The Bill 2024 seeks to progressively transform the legal framework of arbitration in Pakistan by aligning it with UNCITRAL Model Law (hereinafter 'MAL') and other modern arbitral frameworks.

Interestingly, this initiative reflects a global trend of arbitration reform. Across the world, countries are revisiting their arbitration laws to meet the demands of contemporary commerce.[13] For

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9 Hub Power Company Ltd. (HUBCO) v. Pakistan WAPDA, PLD 2000 SC 841, wherein the majority view was that public policy required a finding about alleged criminality; the matter was, therefore, not referable to arbitration.

10 Maulana Abdul Haque v Government of Baluchistan (PLD 2013 SC 641), wherein court declared the CHEJVA and related agreements void ab initio on grounds of illegality and public policy, rendering the arbitration clause inoperative.

11 José Lopez-Calix and Irum Touqeer, Revisiting the Constraints to Pakistan's Growth (Policy Paper Series on Pakistan PK 20/12, World Bank, June 2013) 47 <https://documents1.worldbank.org/curated/en/991471468284107784/pdf/862570NWP0Worl0o0Pakistan0s0Growth.pdf> accessed 6 October 2025.

12 Ali Khizer, Efficiency-Seeking FDI in Pakistan (Pakistan Business Council, 2024) 7 <https://www.pbc.org.pk/wp-content/uploads/Efficiency-Seeking-FDI-in-Pakistan.pdf> accessed 6 October 2025.

13 Christian Dargham, Dylan McKimmie, Matthew H Kirtland and Katie Connolly, 'A Global Round-Up – Developments in International Arbitration Rules and Laws' (Norton Rose Fulbright, October 2018)

example, the Arbitration (Amending) Act 2025 was recently enacted in the United Kingdom to introduce rules on the governing law of arbitration agreements, reinforce arbitrator immunity, enable summary disposal, and further narrow jurisdictional challenges.[14] In India, the Draft Arbitration and Conciliation (Amendment) Bill, 2024 contemplates innovations, such as, the recognition of emergency arbitrators and digital arbitration procedures.[15] Similarly, in China, the Draft Arbitration Bill, 2024 and CIETAC's 2024 reforms collectively expand online proceedings and third-party funding, albeit with a somewhat conservative approach to competence-competence and interim measures.[16]

It is against this backdrop of international reform that Pakistan's initiative must be understood. By finally addressing an eighty-four-year-old legislative gap, the Bill 2024 represents not simply statutory housekeeping but an attempt to recalibrate the domestic arbitration system.

1.2 Legislative Context of Bill 2024

The Bill 2024 proposes the repeal and replacement of the Act, 1940. In recent years, the superior judiciary of Pakistan has issued several pro-arbitration judgements. However, they primarily relate to the enforcement of foreign arbitral awards under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (hereinafter '2011 Act'). The primary objective of the Bill 2024 appears to be the extension of this pro-enforcement and arbitration-friendly approach to domestic and domestically

<https://www.nortonrosefulbright.com/en-419/knowledge/publications/b5739f47/a-global-round-up-developments-in-international-arbitration-rules-and-laws> accessed 7 October 2025.

14 'The Arbitration Act 2025 Enters into Force in the UK' <https://www.globalarbitrationnews.com/2025/08/04/the-arbitration-act-2025-enters-into-force-in-the-uk/> accessed 6 October 2025.

15 Shreya Jain, Mrinali Komandur & Shweta Kabra, '2024 Year in Review: Arbitration in India – Reset or Rewind?<'https://legalblogs.wolterskluwer.com/arbitration-blog/2024-year-in-review-arbitration-in-india-reset-or-rewind/> accessed 6 October 2025.

16 Saloni Khanderia, 'Major amendment to Chinese Arbitration Act after three decades' (18 September 2025) <https://conflictoflaws.net/2025/major-amendment-to-chinese-arbitration-act-after-three-decades/> accessed 6 October 2025.

seated foreign arbitrations.[17] It is largely based on MAL but also draws inspiration from the Indian Arbitration and Conciliation Act, 1996 and arbitral statutes of the United Kingdom, Singapore and Malaysia.[18]

1.3 Key Features of the Draft Arbitration Bill 2024

The article selectively analyzes provisions that constitute notable improvements over the Act, 1940.

1.3.1. Arbitration Agreements

The identification of an arbitration agreement is the initiation point of any arbitral process. Section 2(a) of Act, 1940 provides a formalistic and rigid definition of an arbitration agreement,

> *'arbitration agreement means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.'*

The definition suffers from several deficiencies when measured against contemporary developments in arbitration law. Firstly, the definition implies that arbitration can only arise out of contractual disputes and disregards the inclusion of non-contractual matters, arising not directly under the agreement but sufficiently connected to the underlying commercial relationship governed by the arbitration agreement, such as unfair enrichment, tortious claims, and statutory claims. Secondly, section 2 is textually silent regarding arbitration clauses, however section 7 recognizes their enforceability against insolvent parties. The courts have operationally remedied this omission by consistently invoking the doctrine of separability to enforce arbitration clauses.[19] Thirdly, the

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17 Mian Sami ud Din and Feisal Naqvi, 'Pakistan's Draft Arbitration Bill 2024: Change After 84 Years?' (Kluwer Arbitration Blog, 31 May 2024) <https://arbitrationblog.kluwerarbitration.com/2024/05/31/pakistans-draft-arbitration-bill-2024-change-after-84-years/?output=pdf> accessed 6 October 2025.

18 Ibid.

19 Raja Muhammad Sarwar Khan v. The Federation of Pakistan, PLD 1958 (W. P.) Karachi 224; Sezai Turkes Feyzi Akkaya Construction Company v. Crescent Services, 1997 SCMR 1928; Province of Punjab v. Industrial Machine Pool, PLD 1978 Lahore 829; Hitachi Limited v. Rupali Polyester, 1998 SCMR 1618; Lakhra Power Generation Company Limited (LPGCL) v. Karadeniz Powership Kaya Bey, 2014 CLD 337.

Act, 1940 requires arbitration agreement to be in writing and does not recognize inference of such an agreement from communication between the parties, let alone electronic exchanges. Consequently, courts have again stepped in and held that the intent to arbitrate may be inferable from communications or related documents.[20]

Section 8 of the Bill 2024 follows the pattern of Article 7 MAL to provide a comprehensive definition of an arbitration agreement. This significantly removes the deficiencies outlined above. Therein, an arbitration agreement is defined as an agreement between parties to submit all or certain disputes, present or future, arising in respect of a defined legal relationship, whether contractual or not, to arbitration.[21] As per travaux préparatoires of MAL, the term '*defined legal relationship, whether contractual or not,*' is to *"be given a wide interpretation so as to cover all non-contractual commercial cases occurring in practice (e.g. third party interfering with contractual relations; infringement of trademark or other unfair competition)*".[22] It recognizes arbitration clauses as well as submission agreements[23], allows agreements to be inferred from pleadings[24] or conduct[25] or by reference to other documents[26], and accepts electronic communication[27] as satisfying the writing requirement. The new definition sufficiently widens the scope and enforceability of arbitration agreements.

1.3.2. Law Governing Arbitration Agreement

The law of the arbitration agreement determines the scope, validity, termination and interpretation of the arbitration agreement.[28] It can be different from the law governing the main contract.[29] Section 8(9) of the Bill 2024 stipulates that the law of the arbitration

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20 Shamim Akhter v. Najma Baqai, PLD 1977 SC 644; Shan Muhammad v. Nawab & 3 Others, PLD 2001 Lahore 239.

21 Section 8(1) of Draft Arbitration Bill, 2024.

22 UNCITRAL, Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration, under Article 7, para. 4 (A/CN.9/264) <http://www.uncitral.org/uncitral/en/commission/sessions/18th.html> accessed 6 October 2025.

23 Section 8(2) of Draft Arbitration Bill, 2024.

24 Section 8(6) of Draft Arbitration Bill, 2024.

25 Section 8(4) of Draft Arbitration Bill, 2024.

26 Section 8(7) of Draft Arbitration Bill, 2024.

27 Section 8(5) of Draft Arbitration Bill, 2024.

28 Ikram Ullah (n 5) Chapter 2, page. 20.

29 Ibid., page. 13.

agreement shall follow the law of the main contract, except where parties agree to the contrary. This amendment seeks to codify, rather than reform, the existing approach developed by courts in Pakistan.[30] While this provision eliminates interpretative ambiguity, it does not recognize the separability of the arbitration agreement from the substantive contract which may potentially lead to procedural incoherence.[31]

Application of seat law to the arbitration agreement is widely considered a more appropriate approach to bring procedural certainty in the process of arbitration.[32] The choice of a specific seat reflects the parties' deliberate decision to submit their disputes to a particular legal system, and it makes the law of seat more closely connected to the arbitration agreement than the law of main contract.[33] The seat is a legal construct.[34] It determines *lex arbitri*, which regulates the procedure of arbitration, therefore, applying the same law to the arbitration agreement creates a more coherent legal framework.[35] This consistency is particularly crucial because the courts at the seat exercise supervisory control over the process of arbitration, including the constitution of tribunals, anti-suit injunctions, challenges to awards and other procedural directions.[36]

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30 Spacecom International, LLC vs. Wateen Telecom Limited, 2025 CLD 241 Lahore-High-Court-Lahore; China International Water and Electric Corporation (CWE) P.R. China vs. National Highway Authority, 2023 CLD 1400 ISLAMABAD; Hitachi Ltd., Ors. Vs. Rupali Polyester, Ors., 1998 SCMR 1618.

31 Klaus Peter Berger, 'Re-examining the Arbitration Agreement: Applicable Law – Consensus or Confusion?' in Albert Jan van den Berg (ed), International Arbitration 2006: Back to Basics? (ICCA Congress Series No 13, Kluwer Law International 2007) 301–334, 319 <https://www.trans-lex.org/100680> accessed 6 October 2025.

32 Section 6A in the English Arbitration Act, 1996; Section 6 of the Scotland Arbitration Act, 2010; Section 48 of Swedish Arbitration Act, 1999.

33 Katharina Plavec, 'The Law Applicable to the Interpretation of Arbitration Agreements Revisited' (2020) 4 University of Vienna Law Review 82–127, 106 <https://doi.org/10.25365/vlr-2020-4-2-82> accessed 6 October 2025.

34 Hill J, 'Determining the Seat of an International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements' (2014) 63 International and Comparative Law Quarterly 517, 520 <https://doi.org/10.1017/S0020589314000293> accessed 10 October 2025.

35 Katharina Plavec (n 33), page. 107.

36 Giulia Carbone, 'Interference of the Court of the Seat with International Arbitration' (2012) J Dispute Resolution 2012, 218 <https://scholarship.law.missouri.edu/jdr/vol2012/iss1/9> accessed 10 October 2025.

It enables the parties to rely on a single legal framework for both substantive and procedural validity of arbitration, in consistency with the seat approach adopted under the default rule of Article V(1)(a) of the New York Convention.[37]

The Hitachi[38] case aptly illustrates the problems which emanate from the contract law approach. In this case the Supreme Court held that because the main contract was governed by Pakistani law, the arbitration, though seated in London under ICC Rules, was also governed by Pakistani law. Consequently, the domestic courts of Pakistan claimed concurrent jurisdiction over challenges to appointments of arbitrator, validity of award and other aspects of arbitration, even while English courts exercised curial oversight over the procedural matters. This led the parties to litigate identical issues of arbitration concurrently in Karachi or Lahore and in London, giving rise to conflicting orders and procedural uncertainty. It constituted a jurisdictional overstep by granting jurisdiction to Pakistani courts over an arbitration that is seated outside Pakistan.

Similarly, the question in Taisie Corporation[39] case was whether the Singapore seated ICC arbitration award was domestic or foreign. Pakistani courts followed the contract law approach and proceeded with the award as domestic, whereas the Singaporean courts preferred seat or territorial approach and decided the matter accordingly. It led to years long litigation that finally ended in 2024 when the Supreme Court of Pakistan[40] finally deferred to a territorial approach by stating that the seat determines the nationality i.e., domestic or foreign., of the award, which in the given case was Singapore, and that factors like governing law of the underlying contract or the nationality of the parties are irrelevant.[41]

The express codification of contract-law approach raises uncertainty as to whether courts can interpret the law governing

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37 Ibid. pp. 108; *Article V* (1). Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked..... proof that: (a) The parties to the agreement referred to in article II were, ……. failing any indication thereon, under the law of the country *where the award was made.*

38 Hitachi Ltd., Ors. v. Rupali Polyester, Ors., 1998 SCMR 1618

39 Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd., PLD 2012 Lahore 455.

40 Taisie Corporation v. A.M. Construction Company (PVT.) Ltd., 2024 SCMR 640.

41 Ibid., para 12.

the arbitration agreement in accordance with the seat theory without contravening the statutory text. Courts may, nonetheless, continue to adhere to the seat theory in determining the law governing the arbitration agreement, where the choice of seat or institutional rules is construed as an *'express agreement to the contrary'* under section 8(9), as in English-seated[42] or LCIA-administered[43] arbitrations where such choice may itself determine the law governing the arbitration agreement. Courts may also invoke the validation principle, as adopted in *Sulamérica* case, to preserve the application of the seat law where following the contract-law approach would undermine the validity or effectiveness of the arbitration agreement.[44]

1.3.3. Arbitrability

An essential precondition to any arbitration is that the dispute in question must be legally capable of resolution through arbitration. This is termed as arbitrability of a dispute.[45] The New York Convention and MAL refrains from defining the designated scope and meaning of the concept and leave it to the discretion of member states.[46] There are two distinct aspects of arbitrability. Subjective arbitrability *(ratione personae)* concerns the legal *ability/authority* of a party to submit a dispute to arbitration. In this context, it is distinct from the legal *capacity* of a party to enter into an arbitration agreement which is something that relates to the validity of the agreement itself.[47] The parties may have full contractual capacity yet be precluded or qualified by law from arbitration. For instance,

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42 Section 6A of the English Arbitration Act, 1996.

43 Rule 16.4 of London Court of International Arbitration Rules, 2020.

44 Sulamérica CIA Nacional de Seguros SA v. Enesa Engenharia SA [2013] 1 WLR 102, [9] (Moore-Bick LJ), para 30.

45 Eleni Bakalarou, 'Arbitrability' (Jus Mundi, 15 May 2025) edited by Dr Andrew Willcocks <https://jusmundi.com/en/document/publication/en-arbitrability> accessed 9 October 2025.

46 Bas van Zelst, 'The Concept of Arbitrability under the New York Convention: The Quest for Comprehensive Reform' in Maxi Scherer (ed), Journal of International Arbitration (2020) 345–70, at 347–8 <https://www-kluwerarbitration-com.ezp.sub.su.se/document/kli-joia-410304> accessed 6th October, 2025.

47 Traian C. Briciu, 'Chapter 3 - §3.01 The Arbitrability of Disputes' in Crenguta Leaua and Flavius-Antoniu Baias (eds), Arbitration in Romania: A Practitioner's Guide (pp. 85–96, Kluwer Arbitration 2015) 94 <https://www-kluwerarbitration-com.ezp.sub.su.se/document/KLI-KA-Leaua-2015-Ch03_1> accessed 6 October 2025.

upon filing for bankruptcy, notwithstanding the full capacity of an insolvent party his legal ability to arbitrate is suspended by operation of automatic stay until the receiver elects to adopt the arbitration agreement.[48]

Moreover, objective arbitrability *(ratione materiae)* determines whether a particular category of disputes is suitable for arbitration under a given legal system.[49] The Act, 1940, unlike the proposed legislation[50], neither entails any substantive provision regarding arbitrability nor makes it a ground for setting aside an award. Consequently, the type of disputes that cannot serve as the subject of arbitral proceedings has been exclusively defined by the courts. For instance, family disputes[51], criminal matters[52], banking disputes[53], constitutional cases[54], and rent matters[55] have been declared as non-arbitrable by the domestic courts of Pakistan. An important principle which had been established through this judicial exercise was that the matters regarding which jurisdiction was granted to a special court were deemed to be non-arbitrable, because special laws prevail over general arbitration provisions.[56] However, the Supreme Court has recently chosen to depart from this principle. In *Kausar Rana Resources*[57] case, the court expansively interpreted the definition of 'civil courts' used in section 2(c) of Act, 1940 to include courts of special civil jurisdiction such as Banking Courts, Consumer Courts and Company Bench of a High Court whenever these courts have jurisdiction over the subject matter of an arbitration agreement.[58] It was ruled that a special law giving

48 Section 7 of Arbitration Act, 1940.

49 Florian Haugeneder, 'A 05 – Objective Arbitrability' in Vienna International Arbitral Centre of the Austrian Federal Economic Chamber (ed), VIAC Selected Arbitral Awards, Vol 1 (2015) 396–399, 396 <https://www-kluwerarbitration-com.ezp.sub.su.se/document/kli-ka-viac-vol1-0069> accessed 6 October 2025.

50 Section 39(2)(b)(i) of Draft Arbitration Bill, 2024.

51 Nadir Khan v. Zeenat Bibi, 1990 CLC 293.

52 Sughran Bibi v. Jalla, 1990 MLD 1455.

53 Allied Bank Ltd. v. Golden Eagle Enterprises, 1999 MLD 64.

54 Ameer Khan & Co. v. Government of the Punjab, PLD 2010 Lahore 443.

55 Zehra Begum v. Pakistan Burmah Shell Ltd., 1983 CLC 1592.

56 Naseer Ahmed v Rent Controller, 2018 YLR 29.

57 Kausar Rana Resources v Qatar Lubricants Company, 2025 SCMR 517.

58 Ibid., para 15.

exclusive mandatory jurisdiction to a court or authority does not by itself mean that those disputes are not arbitrable.[59]

To settle the law on this point, Section 11 of the Bill 2024 clearly states that all matters are arbitrable with two exceptions. Firstly, a dispute becomes non-arbitrable if it offends public policy as defined in section 39(3) of the bill, because such disputes involve essential state functions such as criminal prosecution, tax collection, and regulatory enforcement which require transparency, accountability, and democratic oversight that can only be ensured by public judicial forums.[60] Secondly, a matter will be non-arbitrable if it is expressly made non-arbitrable through a law.[61] The silence in a statute regarding arbitration shall not imply prohibition. The legal provision in sub-section 2 is designed to expand the scope of matters in which arbitration is permissible, and which were previously declared as non-arbitrable by courts. It follows the English[62] and Indian[63] approach with respect to arbitrability, making all disputes arbitrable unless expressly prohibited.

Although section 11 adopts a presumptively broad conception of arbitrability, it expressly subjects arbitrability to public policy, providing that disputes may be arbitrated unless doing so is contrary to public policy. Its practical application by Pakistani courts therefore remains uncertain. Given the judiciary's historically interventionist approach in arbitral disputes, courts may be reluctant to cede or even share adjudicatory authority with arbitral tribunals, and may continue to favor a restrictive approach to arbitrability. In practice, this may occur through an expansive use of public policy under section 39(3), enabling courts to recharacterize disputes as non-arbitrable notwithstanding their express inclusion under section 11(2).

1.3.4. Separability and Competence-Competence of Arbitral Tribunal

Separability and Competence-Competence, though distinct legal concepts, are sufficiently interconnected to require a collective

59 Ibid., para 13.
60 Section 11(1) of Draft Arbitration Bill, 2024.
61 Section 11(2) of Draft Arbitration Bill, 2024.
62 Section 81(1)(a) of the English Arbitration Act, 1996
63 Section 2(3) of the Arbitration and Conciliation Act, 1996

discussion. The doctrine of separability considers an arbitration clause, embedded in the main contract, as a distinct and independent contract, in a manner that it remains valid regardless of the invalidity or termination of the underlying contract.[64] It seeks to preserve arbitration as an independent mechanism for dispute resolution, even when the main contract is either void or contested. The Act, 1940 lacks an express mention of the doctrine of separability therefore it is recognized only through judicial precedents.[65]

Competence-Competence (also known as ***"Kompetenz-Kompetenz"***) empowers an arbitral tribunal, prior to any judicial determination, to rule on its own jurisdiction including challenges to the existence, validity, or scope of the arbitration agreement.[66] It ensures that the tribunal is the primary judge of its own jurisdiction by preventing any undue court intervention.[67] The doctrine of competence-competence can be characterized as a natural extension of the doctrine of separability.[68] The separability principle protects the validity of an arbitration agreement which enables the tribunal to independently determine its own jurisdiction through that agreement alone without relying on the main contract.[69]

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64 S M Schwebel, L Sobota and R Manton, 'The Severability of the Arbitration Agreement' in International Arbitration: Three Salient Problems (Hersch Lauterpacht Memorial Lectures, Cambridge University Press 2020) 7 <https://doi.org/10.1017/9781139015691.003> accessed 6 October 2025.

65 Pakistan Mobile Communication Ltd. Mobilink Islamabad v. Naimatullah Achakzai (CLC 2012 12); Crescent Steel and Allied Products Ltd. v. Sui Northern Gas Pipeline Ltd. (2013 MLD 1499); Sports Star International Ltd. v. Shalimar Recording and Broadcasting Company Ltd. (2018 CLC 1892).

66 Gary B Born, 'Chapter 7: International Arbitration Agreements and Competence-Competence (Updated November 2023)' in International Commercial Arbitration (3rd edn) 1144 <http://www-kluwerarbitration-com.ezp.sub.su.se/document/kli-ka-born-2021-ch07?q=competence/competence> accessed 6 October 2025.

67 Komal Anwar, 'Orient Case and the Doctrine of Competence-Competence' (CIICA, September 2021) <https://ciica.org/orient-case-and-the-doctrine-of-competence-competence/> accessed 6 October 2025.

68 Laurence Shore, 'Now Virtually Complete? The Doctrines of "Separability" of the Arbitration Agreement and "Compétence de la Compétence"' (Journal of International Arbitration, 115–122) 1 <https://www-kluwerarbitration-com.ezp.sub.su.se/document/ipn11689> accessed 6 October 2025.

69 Robert H Smit, 'Separability and Competence-Competence in International Arbitration: Ex Nihilo Nihil Fit? Can Something Indeed Come from

Under the Act, 1940, the power to determine the competence of a tribunal is exercised by the courts.[70] However, the judicial practice is fairly inconsistent on this issue. Some courts have held that an arbitral tribunal lacks exclusive authority to determine its own jurisdiction absent parties' express consent[71], yet have simultaneously ruled that parties cannot exclude the courts' supervisory jurisdiction in such matters.[72] Such jurisprudence has contributed to unhelpful and premature court intervention, significantly undermining the autonomy of a tribunal to determine its own jurisdiction. As far as the disputes arising under foreign arbitration agreements are concerned, the tribunal's authority to rule on its own jurisdiction is well recognized.[73]

Section 18(1) of the Bill 2024 explicitly recognizes the doctrines of separability and competence-competence. It vests tribunals with absolute power and autonomy to rule on their own jurisdiction with limited court intervention. A contesting party may bring a twofold challenge, alleging that either the tribunal lacks substantive jurisdiction[74] or that it has exceeded its authority.[75] The tribunal may decide such a matter either as a preliminary question or as part of the final award on merits.[76]

If a challenge to jurisdiction is accepted then an immediate appeal to court can be filed under section 42(2)(a), and in case the challenge

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Nothing?' (2002) 13 Am Rev Int'l Arb 19, 19 <https://scholarship.law.columbia.edu/faculty_scholarship/4670> accessed 10 October 2025.

70 Section 31(2) & (3) and 33 of the Arbitration Act, 1940.

71 Water and Power Development Authority v. Abdul Razzaq Muhammad Iqbal, PLD 1955 Lahore 5; Lahore Stock Exchange Ltd. v. Federick J. Whyte Group (Pakistan) Ltd., PLD 1990 Supreme Court 48; Port Qasim Authority, Karachi v. Al-Ghurair Group of Companies, PLD 1997 Karachi 63.

72 Abdul Hameed v. Additional District Judge, Dera Ghazi Khan, 2014 CLC 11; Province of West Pakistan v. Fakir Spinning Mills Ltd. [1962] PLD (W.P.) Karachi 386; Avari Hotel Limited v. Hilton International Co., Karachi All Pakistan Legal Decisions 425 (1985); Karachi Development Company Limited v. IM Technologies Pakistan (Private) Limited, 2017 CLCLN 157 Sindh.

73 Karachi Dock Labour Board v. Messrs Quality Builders Ltd., PLD 2016 Supreme Court 121; Dallah Real Estate and Tourism Holding v. Government of Pakistan, 2010 UKSC 57; Sui Northern Gas Pipelines Limited v. Orient Power Company (Private) Limited, 2021 SCMR 1728.

74 Section 18(2) of Draft Arbitration Bill, 2024.

75 Section 18(3) of Draft Arbitration Bill, 2024.

76 Section 18(5) of Draft Arbitration Bill, 2024.

is rejected the aggrieved party is required to wait until the final award to raise this ground in set aside proceedings under section 39.[77] The appeal mechanism is likely to entail a de novo review of jurisdictional questions, whereas the post-award challenge is confined to the limited grounds provided for setting aside an award. In this way, section 18(6) goes a step further than section 16(3) of the MAL, which permits judicial challenges even when the tribunal upholds its jurisdiction. The draft legislation articulates a pro-arbitration legislative mandate, as it provides for an immediate judicial recourse through appeal when tribunals decline jurisdiction preventing parties being left remediless, while simultaneously precluding any such court intervention when tribunals assert jurisdiction. It also prevents parallel intervention by courts during the arbitral proceedings, which is used as dilatory tactics to fragment the arbitral process and often lead to repetitive jurisdictional challenges.[78]

Nevertheless, it raises a potential concern that in case a tribunal errs in its initial determination of jurisdiction, such an error would not be subject to correction until the set-aside stage. This may lead to unnecessary delay, uncertainty and additional costs, which is likely to undermine the arbitral efficiency that the bill is intended to achieve.

1.3.5. Interim Measures

Interim measures refer to protective measures that provide provisional and immediate protection to the rights or properties of parties involved while the dispute in question is being arbitrated on its merits.[79] The purpose of such measures is to prevent the parties from frustrating the final award.[80]

Interim measures preserve the efficacy of the arbitral process by ensuring that the eventual award is capable of meaningful enforcement.[81] Section 41(b) read with the Second Schedule of Act,

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77 Section 18(7) of Draft Arbitration Bill, 2024.

78 Saad Mir, 'Court Intervention in Arbitration: Pakistan's Perspective' (2016) <https://www.pljlawsite.com/2016art8.htm> accessed 6 October 2025.

79 Ikram Ullah (n 5) Chapter 9, page. 145.

80 Marianne Roth, 'Interim Measures' (2012) Journal of Dispute Resolution 2012(2) 425, 430 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jdisres2012&div=20&id=&page=\> accessed 7 October 2025.

81 Ibid., page. 427.

1940 grants courts exclusive powers to issue interim measures, effectively depriving arbitrators of any such competence.[82] There are several other shortcomings in the existing framework. Firstly, the remedy of interim measures is not available before the formal commencement of arbitral proceedings, and is usually invoked after the filing of an arbitral award in circumstances where a party tries to prevent the execution of the award.[83] However, judicial attitude is now evolving, as reflected in *Ovex Technologies (Private) Limited v PCM PK (Private) Limited and others*[84], where the court held that the power to grant interim measures may be exercised before the commencement of arbitral proceedings, during their pendency, and even after the arbitral award has been rendered. Secondly, even if the party tries to obtain interim relief after the initiation of proceedings, the process is highly technical, lengthy and cumbersome, offending the actual purpose of such measures, which is to provide immediate and urgent protection.[85] Thirdly, there is also a significant risk of courts delving into the merits of the dispute while adjudicating interim relief.[86] This effectively disincentivizes parties from pursuing arbitration.

The Bill 2024 broadly follows the statutory pattern of MAL with domestic adaptations to revamp the framework of interim measures in terms of scope, stage and institutional forums empowered to grant them. Article 17(2) MAL stipulates four functions of interim measures namely; maintaining status quo, protecting arbitration process, preserving assets and preserving evidence.

It is important to note that this list is non-exhaustive, however, it does clarify the scope and objective of interim measures.[87]

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82 Island Textile Mills Ltd. Karachi v. Techno expert, 1979 CLC 307 Karachi.

83 Ikram Ullah, 'Interim Measures in Arbitration under the Pakistani Legal Regime' (2013) 29(4) *Arbitration International* 653, 660 <https://doi.org/10.1093/arbitration/29.4.653> accessed 2nd January, 2026.

84 2020 CLD 15 Islamabad

85 Shafi Corporation Ltd. v. Government of Pakistan Through Director-General of Defence Purchase, Ministry of Defence, Karachi, PLD 1994 Karachi 127.

86 Khalid Rasheed Qureshi v. Institution of Engineers Pakistan, 1999 CLC 288 Karachi.

87 Roth, Marianne, 'UNCITRAL Model Law on International Commercial Arbitration', in Frank-Bernd Weigand (ed.), Practitioner's Handbook on International Commercial Arbitration, 2nd Edition (2009; online edn, Oxford Law Pro) 1031 <https://doi.org/10.1093/law/9780199534869.003.0014>, accessed 9 October 2025.

However, the Bill 2024 prescribes a longer list of interim measures in sections 10 and 19, which not only cover the four categories of MAL but also include;

a. preservation of status quo[88]
b. protection of arbitral process[89]
c. preservation of assets[90]
d. preservation of evidence[91]
e. Additional categories, including guardianship, interrogatories, discovery, confidentiality, receivership.

The draft legislation grants both the competent court and the arbitral tribunal powers to issue interim measures, albeit at different stages. Under section 10, courts can exclusively issue interim measures *before* the constitution of the tribunal and *after* the making of an award but prior to the filing of an enforcement application under section 41, as in the former stage the tribunal is yet to be constituted, and in the latter, it has become *functus officio*, and therefore lacks the competence to grant such measures, thus requiring recourse to courts. Courts are also exclusively competent to grant interim relief in support of foreign-seated arbitration proceedings.[92] Nevertheless, *during* the arbitral proceedings, courts and tribunals exercise concurrent jurisdiction, although the court's powers are secondary to those of the arbitral tribunal, similar to Article 17J of MAL. There are only two instances where the court intervention is permitted *during* the proceedings:

a. If the tribunal cannot legally provide adequate interim relief[93]
b. For the enforcement of the tribunal's interim measures, because tribunals per se lack the compulsive power of enforcement as traditional courts.[94]

Section 19 gives primary powers to the tribunal to issue interim measures *during* the arbitral proceedings, including the power to issue ex-parte preliminary orders preventing the defendant from frustrating the purpose of the measure before issuance. The

88 Section 10(b)(vi) and 19(1)(vi) of Draft Arbitration Bill, 2024.
89 Section 10(b)(viii) and 19(1)(viii) of Draft Arbitration Bill, 2024.
90 Section 10(b)(ii), (vii) and 19(1)(ii), (vii) of Draft Arbitration Bill, 2024.
91 Section 10(b)(iii) and 19(1)(iii) of Draft Arbitration Bill, 2024.
92 Section 3(2)(a) of Draft Arbitration Bill, 2024.
93 Section 10(3) of Draft Arbitration Bill, 2024.
94 Section 19(4) of Draft Arbitration Bill, 2024.

provision mirrors Article 17B of MAL and Section 38 of the English Arbitration Act, 1996.

Furthermore, in order to prevent procedural misuse, arbitral proceedings must commence within ninety days if interim relief is granted before the constitution of the tribunal.[95] Once the tribunal is constituted, its order supersedes the court's granted interim measure.[96] The 90-day commencement requirement under s.10(2)(a) is difficult to enforce in practice due to the backlog of approximately 2.2 million cases as of 2024, which is why the court retains the power to extend the prescribed time period. While such extensions prevent the automatic lapse of interim relief, repeated extensions may significantly delay the initiation of arbitral proceedings. Although extensions function as a remedial stop-gap to prevent procedural lapse, they do not address the persistent problem of judicial inertia. These structural constraints are further compounded at the enforcement stage where overloaded dockets, understaffing, inadequate training, and infrastructural deficits in District Courts impede enforcement of section 19 interim measures, allowing respondents to dissipate assets or temper with evidence. An incapacitated judicial system reduces the efficacy of interim relief and jeopardizes the enforceability of final awards.

Section 2(e) of the Bill 2024 recognizes arbitral tribunal to include an emergency arbitrator under institutional rules which provide for its appointment. It can effectively substitute the court's role in granting interim relief prior to the tribunal's constitution, thereby confining the court involvement to enforcement only. It can also provide an expeditious and more flexible means of obtaining interim measures, which is essentially free from technicalities and delays inherent in traditional court processes.[97]

Similarly, in a recent landmark judgement[98], the Supreme Court of India has recognized the mechanism of emergency arbitration by expansively interpreting the phrase 'arbitral tribunal' in Section

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95 Section 10(2)(a) of Draft Arbitration Bill, 2024.

96 Section 10(2)(b) of Draft Arbitration Bill, 2024.

97 Yash Raj, 'Impact of Interim Measures on the Speed and Outcome of Arbitration Proceedings' (2024) 5 Jus Corpus LJ 499, 505 <https://heinonline.org/HOL/P?h=hein.journals/juscrp5&i=500> accessed 13 October 2025.

98 Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., 2022 1 SCC 209.

17(1) of the Arbitration and Conciliation Act 1996 to include an emergency arbitrator and held that such an order is enforceable as a court decree under subsection 2.[99] This progressive interpretation has also been included into the proposed Indian arbitration bill 2024.[100]

1.3.6. Anti-Suit Injunctions

Section 34 of the Act, 1940 vests courts with the power to stay judicial proceedings which have been initiated in breach of an arbitration agreement.[101] Courts have primary jurisdiction to determine the existence and validity of an arbitration agreement and the power to grant anti-suit injunctions is secondary to such jurisdiction.[102] These interconnected powers are court-dominated under the Act, 1940, and the tribunal has virtually no authority to determine the existence and validity of arbitration agreement.[103] Moreover, the statutory language of the provision stipulates two sets of conditions which must be satisfied before the court is to exercise powers under section 34. Firstly, the applicant must file the application for stay either *before submitting a written statement* or *before taking any other step in the proceedings*. Second, the court must be satisfied both that there is no sufficient reason to deny arbitration and that the applicant is ready and willing to submit to arbitration. The first set of conditions are disjunctive, i.e. one must be satisfied, while the second set of conditions are conjunctive, meaning both must be fulfilled.

Furthermore, the statutory language used in Section 34 is undefined and ambiguous. The phrases such as '*no sufficient reason*' and '*taking any other step in the proceedings*' are open-ended, and have led to inconsistent judicial interpretations over time. The absence of settled interpretative standards has particularly enabled

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99 Ibid., para 10.

100 Section 9A of Indian Draft Arbitration and Conciliation (Amendment) Bill, 2024.

101 David Altaras, 'The Anti-Suit Injunction: Historical Overview' (2009) 75 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 327, 328 <https://www.kluwerarbitration.com/document/kli-ka-amdm-75-03-004-n\> accessed 8 October 2025.

102 Section 33 of Arbitration Act, 1940; *See also*, Hakimuddin Harmusji & Sons v. Ghafoor Textile Mills, PLD 1978 Karachi 152.

103 Cotton Export Corporation of Pakistan (Pvt.) Limited Karachi v. Karim Sons Cotton Ginners and others, 1996 CLC 796; Farid Virani v. Feroz Virani, 2013 CLD 1361.

the courts to exercise an almost arbitrary discretion whilst defining these terms. For example, there is no set definition of *'sufficient reason'* with courts even extending it to instances where the nominated arbitrator is considered incapable of acting fairly, the dispute involves a complex question of law, or the applicant is unwilling to pursue proper arbitration.[104]

Similarly, seeking court adjournments are deemed as *'taking any other step in proceeding'* but there is no certain standard as to how many adjournments amount to a step in proceedings. Courts have given varied rulings by holding that three adjournments[105] or six adjournments stretched over a period of six months[106], may constitute a step in the proceeding. Surprisingly, on another occasion the court held that three consecutive adjournments do not constitute a step in the proceedings.[107] Judicial efforts of constructive interpretation, while admirable, do not offer the requisite level of clarity. Courts have defined the expression *'step in the proceedings'* as any *'step which unambiguously manifests the intention to proceed with the suit……or doing something in aid of the progress of suit, or submitting to the jurisdiction of court for adjudication of the merits of the controversy in a suit'*.[108] In the same case, the appellate court specifically held that where an adjournment for filing a written statement is granted by the court *suo motu*, without any request from the defendant, it does not constitute a step in the proceedings[109], and further clarified that the filing of an application under Order VII, Rule 10 of the CPC, 1908 is merely an objection to the maintainability of the suit and likewise cannot be regarded as a step in the proceedings[110]. Moreover, a routine adjournment by the court to file a power of attorney or a written statement may also amount to a step in the proceedings *'if the defendant fails to take corrective steps and inform the court without any delay about their intention to seek the stay of suit'*.[111] Therefore, the court held that the objection to the court proceedings should be raised *'before taking any*

104 Tradesman International (Pvt.) Ltd. v. Federation of Pakistan, 2005 MLD 541.
105 Muhammad Farooq v. Nazir Ahmad, PLD 2006 SC 196., para 9.
106 Infospan (Private) Limited v. Telecom foundation, 2017 CLC 131., para 17.
107 Waqas Yaqub v. Adeel Yaqub, 2024 CLD 990., para 12.
108 Hajvairy Associates v. PCC Ltd., 2024 CLD 1507., para 18.
109 Ibid., para 27.
110 Ibid., para 24.
111 Government of the Punjab v. Muhammad Asad & Co., 2021 CLC 2135.

steps' or *'at earliest'* and *'at first opportunity'* particularly *'before seeking adjournment(s) for filing written statement'*.[112]

Section 9 of the Bill 2024 substantially addresses these shortcomings. Firstly, under section 9(4), a court shall grant a stay if it finds that *prima facie* a valid arbitration agreement exists. It limits the judicial inquiry to three basic considerations, specifically the determination of the existence of arbitration agreement, suit relating to the subject matter agreed to be referred to arbitration, and the dispute is covered by the arbitration agreement.[113] The substantive or detailed examination of existence, validity, and scope of an arbitration agreement is left to be determined subsequently by the arbitral tribunal, by reason of competence-competence.[114] Secondly, as discussed above in detail[115], section 8 of the Bill 2024 provides an inclusive and expansive definition of arbitration agreement, which can make it relatively easier to identify and prove the existence of an arbitration agreement, and allow parties to resolve a broader range of disputes through arbitration. Thirdly, section 9(3) prescribes only a single condition, similar to MAL[116], that can preclude a stay application i.e. the contending party submits the *'first statement on the substance of the dispute'* before filing a stay application. The first substantive submission includes the written statements as well as all such pleadings in which a party addresses the actual issues and merits of the controversy. It excludes those *'pleadings'* that challenge the court's jurisdiction to adjudicate the matter. It also removes additional requirements such as, *'taking any other steps in the proceedings'*, *'sufficient reason'*, and *'reluctance of the applicant to pursue arbitration'*. Lastly, section 42(1)(a) of the proposed legislation only provides right to appeal against a court order refusing to refer the matter to arbitration, as opposed to Section 39(v) of Act, 1940 that provided right to appeal against both refusal and grant of anti-suit injunction.

The proposed law reduces interpretative ambiguities, prescribes a single condition for grant of anti-suit injunction, reinforces arbitral

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112 Ibid., para 8 & 9.
113 Satellite Public Co. Case, 2016 YLR 2322., para 33.
114 Section 18 of Draft Arbitration Bill, 2024.
115 See 1.3.1 Arbitration Agreements *infra*
116 Section 8(1) of UNCITRAL Model Law, 2006.

powers in determining existence, validity, and scope of the arbitration agreement and precludes appellate intervention.

1.3.7. Finality of Arbitral Award

Under the Bill 2024, the enforcement of arbitral awards is designed to operate in a streamlined and quasi-automatic manner. An award is enforceable as of right, unless the award has been set aside under Section 41(1)(b) or the court has stayed its operation. The award also becomes automatically enforceable, where a party has failed to file a set-aside application within the prescribed statutory period of ninety days.[117]

The enforcement of an award may only be stayed by a court order under section 41(2) and mere filing of a set-aside application does not, in itself, suspend the enforceability of the award.[118] This can dissuade parties from filing meritless set-aside applications to prevent the enforcement of final awards. The stay order is only issued on valid grounds, such as where either an appeal has been instituted against a decision in set-aside proceedings[119], or a set-aside application is pending before the competent court. Also, the grant of a stay is subject to an additional requirement that the applicant deposit the full amount determined by the tribunal as payable under the award.[120] Overall, these provisions reinforce finality and efficiency of the arbitral process.

The enforcement of award, under the Bill 2024, no longer requires a court judgement/decree to be entered in terms of an award as mandated by section 17 of Act, 1940. The entry of judgement on arbitral award has permitted courts to re-examine the merits of the dispute[121] by '*determining the legality, maintainability and question of executability, even if no objection is filed*'.[122] In addition to it, the court cannot make a valid judgement before the expiration of the limitation period i.e. thirty days to file an application to set aside

[117] Section 39(5) of Arbitration Act, 1940.
[118] Section 41(1)'s Explanation of Draft Arbitration Bill, 2024.
[119] Section 42(c) of Draft Arbitration Bill, 2024.
[120] Section 41(2)'s proviso of Draft Arbitration Bill, 2024.
[121] Trading Corporation of Pakistan v. Amanullah Khan, 2017 CLC 588; National Highway Authority v. Zarghoon Enterprises (Pvt.) Ltd., 2015 MLD 746.
[122] Federal Government Employees Housing Foundation v. Javaid Iqbal, 2020 YLR 2306

the award.[123] In other words, the award has no independent legal effect until the court issues a decree after the limitation period has elapsed.[124] Contrastingly, the Bill 2024 has made the enforcement largely automatic and self-executing. An award becomes immediately enforceable countrywide as a court decree, and an application for its enforcement operates as an independent execution petition before any district court with jurisdiction over the award-debtor or its assets, obviating the need for inter-court decree transfers. Importantly, the ninety days limitation period to file set aside applications does not defer enforcement but merely prescribes the time frame within which parties may challenge an award.[125]

1.3.8. Public Policy Exception

The public policy exception in the proposed legislation has been formulated with due caution. It is stipulated that "*a determination as to whether an award is in conflict with the public policy of Pakistan shall not entail a review on the merits of the dispute.*"[126] In the past, the higher courts of Pakistan have adopted an expansive reading of public policy, using it as a basis to conduct de novo review of the merits of disputes already decided by arbitral tribunals.[127] This approach was evident in cases such as *HUBCO* and *Reko Diq*, where awards were set aside on allegations of corruption pertaining to the main contract, without any regard for the principle of separability.[128] A further difficulty consisted in the absence of a statutory definition of public policy in the Act, 1940, which led to inconsistent, unpredictable and disparate judicial interpretations, making the enforcement of awards challenging to predict.[129] The draft

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123 First Schedule, Third Division, Entry no. 158 of Limitation Act, 1908.

124 Muhammad Siddique v. Muhammad Abdullah, 1989 MLD 54.

125 Section 39(5) of Draft Arbitration Bill, 2024.

126 Section 39(3)'s Explanation of Draft Arbitration Bill, 2024.

127 kram Ullah (n 5) Chapter 12, page. 209

128 Ali Shouzab, 'From Fluidity to Clarity? Pakistan's Arbitration Act of 2024 and the Future of Public Policy' (Kluwer Arbitration Blog, 6 March 2024) <https://legalblogs.wolterskluwer.com/arbitration-blog/from-fluidity-to-clarity-pakistans-arbitration-act-of-2024-and-the-future-of-public-policy/\> accessed 8 October 2025.

129 Zafar Kalanauri, 'Law of Arbitration in Pakistan' (Courting the Law, 16 January 2017) <https://courtingthelaw.com/2017/01/16/commentary/law-of-arbitration-in-pakistan/\> accessed 8 October 2025.

legislation in Section 39(3) has made a formidable attempt to define the contours of public policy, constituting:

A. An award induced or affected by fraud or corruption, or
B. Material breach of the rules of natural justice occurred
   (i) during the arbitral proceedings; or
   (ii) in connection with the making of the award; or,
C. It is in conflict with the most fundamental norms of morality and justice

Admittedly, the statutory language uses broad and ambiguous terms like *'rules of natural justice'* and *'most fundamental norms of morality and justice'* which may lead to interpretative challenges. It ought to be interpreted with extreme judicial restraint because the tendency for its misuse is significant. The courts can potentially interpret the rules of natural justice to treat *'any'* rule perceived as fundamental to the rule of law or justice as a ground for annulment, for instance the right to adduce particular evidence, the form or number of hearings, tribunal's disclosure obligations, and cross-examination methods. Therefore, a balanced approach would be to strictly confine its interpretation to only material or substantial procedural irregularities. Furthermore, in Pakistan, public policy is deeply rooted in constitutional principles and Islamic injunctions, particularly Articles 2, 2A, 227 which collectively mandate that no law shall be repugnant to the injunctions of Islam and traditionally, under the influence of these provisions, *'morality'* has been interpreted in the context of the Shariah.[130] Consequently, an award could be challenged on the basis that it offends Islamic moral precepts, such as usury prohibitions or gender-based evidentiary rules, despite the legislature's intention to limit judicial review of merits.

Nevertheless, the courts in Pakistan have now begun to adopt a more restrictive interpretation of public policy. The Supreme Court of Pakistan in *Orient Power* Case[131] held that '*the public policy exception should not be used as a back door to review the merits of an award*' and non-enforcement on the basis of it is only justified if content or subject matter of the award involves such a serious

[130] Ghulam Ali v. Ghulam Sarwar Naqvi, PLD 1990 SC 1; Grosvenor Casino Limited v. Abdul Malik Badruddin, PLD 1998 Karachi 104

[131] Orient Power Company (Private) Limited v. Sui Northern Gas Pipelines Limited (2021 SCMR 1728)

illegality that non-enforcement is the only viable remedy.[132] Subsequently in Taisei Corporation case[133], the Court avoided an expansive construction of public policy because it could *'vitiate the Convention's basic effort to remove pre-existing obstacles to enforcement'*.[134] The court relied on an earlier precedent to remark:

> *'Public policy ground cannot be used to examine the merits of a foreign arbitral award or to create more grounds of defense that are not provided for in the Convention, such as misapplication of the law of Pakistan by the arbitrator in making the award or the arbitrator's decision being contrary to the law of Pakistan'*.[135]

Similarly, when the Indian apex court affirmed that an award could be challenged if it contravened public policy, it intentionally restricted the definition of public policy by clarifying that it constitutes *'fundamental policy of Indian law'*, which would include factors such as: *'a) disregarding orders of superior courts; b) judicial approach, which is an antithesis to an arbitrary approach; c) principles of natural justice; d) decision of arbitrators cannot be perverse and irrational in so far as no reasonable person would come to the same conclusion'*. [136] It was emphasized that a court, while applying the public policy test to an award, does not act as a court of appeal and consequently *'errors of fact'* cannot be corrected unless the arbitrator's approach is *'arbitrary or capricious'*.[137]

1.3.9. Appeal

The scope of appeal particularly under Section 42(c) of the Bill 2024 is limited to the questions of law arising only from set-aside proceedings, with no express power to alter/modify the terms of the award. Under the Act, 1940, Section 39(1)(iii) allowed courts to modify the award in appellate stage[138], but the proposed legislation

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132 Ibid., para 15.

133 Taisie Corporation v. A.M. Construction Company (PVT.) Ltd. (2024 SCMR 640)

134 Ibid., para 41.

135 Parsons and Whittemore v. Societe Generale, 508 F.2d 969 (2d Cir.1974), and Orient v. SNGPL 2021 SCMR 1728.

136 Associate Builders vs. Delhi Development Authority, 2014 (4) ARBLR 307(SC)

137 Ibid.

138 Ascon Engineers (Pvt.) Ltd. v. Province of Punjab, 2002 SCMR 1662.

has made it the exclusive competence of the arbitral tribunals[139]. The judicial inquiry in appeal is restricted to the determinations of the lower court particularly on whether the court decree is in accordance with the award.

The draft act has also restricted the instances where an appeal can be filed, eliminating appeal against correction orders[140], filing or refusing to file an arbitration agreement[141], interpretation of an award[142], and supersession of an arbitration by court[143]. However, where there is no appeal provided in the statute, a revision is maintainable on the grounds enumerated in section 115 of Civil Procedure Code (CPC), 1908.[144] The application of CPC is not barred by virtue of Section 51(1)(a) of the Bill 2024.

The remedy of revision is not available against an unavailed right of appeal.[145] The proposed legislation only bars the remedy of revision against an appellate order, but allows it by implication against all other orders of the tribunal not expressly listed in section 42.[146] Resultantly, parties may invoke judicial intervention indirectly through revisions. In that case the very limited grounds of revision can act as a failsafe against any misuse of this implied remedy. In contrast, the Act, 1940 permits revision both against unlisted orders of tribunal and at appellate stage.

1.3.10. Post Award Challenge

The Act, 1940 prescribes broad powers of judicial review over arbitral awards. Section 14 allows the filing of the final award before the court for parties to make objections over it, which can either be overruled or modified by the court[147], set-aside[148], remitted to the tribunal for reconsideration[149]. The court can also direct the tribunal to make an additional award with respect to

139 Section 38(1)(a) of Draft Act, 2024.
140 Section 13(d) of Arbitration Act, 1940.
141 Section 20 of Arbitration Act, 1940.
142 Section 13(b) of Arbitration Act, 1940.
143 Section 19 of Arbitration Act, 1940.
144 Tribal Friends Co. v. Province of Baluchistan, 2002 SCMR 1903.
145 S.H. Malik v. Additional District Judge, and others, 1990 MLD 1924.
146 Section 42(3) of Draft Arbitration Bill, 2024.
147 Section 15 of Arbitration Act, 1940.
148 Section 30 of Arbitration Act, 1940.
149 Section 16 of Arbitration Act, 1940.

undetermined matters and then submit it to the court within the fixed time.[150] Furthermore, section 13(b) authorizes arbitrator(s) to request post-award interpretation through courts, which later becomes part of the award.[151] The Act, 1940 also specifies limited appealable orders, while prohibiting second appeals, except for recourse to the Supreme Court.[152]

It is a settled principle that broad scope of judicial intervention is inimical to the process of arbitration because it dilutes party-autonomy.[153] While the Act, 1940 allows usurpatory court intervention, the courts have attempted to restrict scope of post-award challenges. For instance, it has held that the court while examining the validity of an award does not act as a court of appeal and observed, '*court hearing the objection to the award cannot undertake reappraisal of evidence recorded by the arbitrator in order to discover the error or infirmity in the award*'.[154] The Court has also affirmed that the arbitrator is the final judge on the law and facts and it is not open to a party to challenge the decision of the arbitrator, if it is otherwise valid.[155] Additionally, while considering the objections under Sections 30 and 33 of the Act, 1940, the court is not supposed to scrutinize the award and fish for latent errors in arbitration proceedings.[156] To reduce judicial intervention, the Supreme Court has consistently held that courts may only set aside the award if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is incorrect etc.[157] and that any invalidity must appear on the face of the award[158]. Recently, in another case, instead of setting aside the award under Section 39(1)(vi), the court exercised its

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150 Section 16(1)(a) & (2) of Arbitration Act, 1940.

151 Section 14(3) of Arbitration Act, 1940.

152 Section 39 of Arbitration Act, 1940.

153 Didas M Kayihura, John Mwemezi Rutta, et al, 'Striking a Balance Between Assistance and Interventionism: The Role of Courts in Rwanda-Seated Arbitrations' in Maxi Scherer (ed), Journal of International Arbitration 143, 156–157<https://www.kluwerarbitration.com/document/kli-joia-370106\> accessed 8 October 2025.

154 M/S Joint Venture KG/RIST vs. Federation of Pakistan, PLD 1996 SC 108.

155 Pakistan Steel Mills Corporation, Karachi vs. M/s Mustafa Sons (Pvt.) Ltd., Karachi, PLD 2003 SC 301., para.17.

156 Federation of Pakistan vs. M/s Joint Ventures Kocks K.G./Rist, PLD 2011 SC 506., para.3.

157 Injum Aqeel vs. Latif Muhammad Chaudhry, 2023 SCMR 1361., para.7.

158 Ibid.

power under Section 26-A (2) to remit the award to the arbitrator for providing sufficient reasons or clarification on identified issues.[159] This approach marks a departure from earlier judicial practice, where courts would effectively assume the role of the tribunal by scrutinizing and substituting arbitral reasoning rather than remitting the matter for clarification.[160] These precedents emphasize the judiciary's growing reverence for arbitral finality and restrictive interpretation of setting-aside powers.

The Supreme Court of India has also ruled that Section 34 of the Indian Arbitration Act provides for highly constricted power of the civil court to interfere with an arbitral award.[161] The reason was deemed obvious; when parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum.[162] Similarly, under Section 68 of English Arbitration Act 1996, courts may intervene to set aside an award only on limited statutory grounds, requiring both a *'serious irregularity'* and *'substantial injustice'*, with a high threshold to prevent re-litigation of tribunal decisions and uphold the finality of awards.[163]

The Bill 2024 seeks to limit the scope of judicial review through statutory language. Firstly, unlike Section 15 of the Act, 1940, courts are no longer empowered to modify an arbitral award, instead limited post-award corrective powers are vested with arbitral tribunals under section 38(1)(a), or a court may remit the award to tribunal for rectification of its defects under section 39(8). It substitutes the court's supervisory role with the arbitral tribunal by exclusively empowering them to correct the award or address its defects upon remission. Secondly, the draft act consolidates post-award challenges majorly in terms of Sections 39 and 42, mirroring the approach of Article 34 MAL and Sections 34 and 37 of the Indian Arbitration Act. Section 39 affords a recourse to the competent

159 Pak Gulf Construction (Pvt) Ltd v. Godwin Austen Johnson (2024 CLD 1451-Islamabad)

160 Raja Karam Dad Khan v. Faiz Ahmad, 2017 CLC 1720 LAHORE-HIGH-COURT-LAHORE

161 K.Sugumar and Another vs. Hindustral Petroleum Corporation Limited and Another, (2020) 12 SCC 539., at para. 2.

162 Ibid.

163 Terna Bahrain Holding Co YJJ v. Bin Kamel Al Shamzi [2013] 1 Lloyds Rep 86.

court for setting aside an award on grounds analogous to Article V of New York Convention, whereas section 42 is an appellate remedy available in limited instances, thoroughly explained in section 1.3.9 of this article. Thirdly, the bill abandons the 'special case procedure' of award interpretation through courts and empowers tribunals under section 38(1)(b) to issue interpretation on specific points or parts of the award. Fourthly, whereas under the Act, 1940 courts can remit an award to the tribunal to decide undetermined issues, the draft act allows parties to directly request the tribunal to make an additional award within 30 days of the receipt of the original award.[164]

For domestic awards, the draft legislation contains an additional ground of set-aside, i.e., *patent illegality on the face of the award*.[165] It fails to comprehensively adopt the mandate of MAL which limits post-award challenges to tribunal jurisdiction, narrow review of public policy and procedural irregularities.[166] Although courts define patent illegality as an error that is specific and apparent on the face of the award, permitting judicial interference only to the extent that it does not require scrutiny beyond the award itself, it may nonetheless enable courts to invalidate awards that are found to manifestly contravene the substantive law of the seat.[167] Courts may also read procedural irregularities as amounting to illegality in certain instances where award is beyond the scope of reference, arbitration agreement is void, arbitrator awarded damages on black market price, or award was given after superseding of arbitration.[168] In practice, dissatisfied parties can frame routine errors of law as patent and this may lead to extensive judicial second-guessing of arbitral reasoning by re-adjudication on merits of the dispute.

1.3.11. Judicial Intervention

Courts have extensive supervisory powers over arbitration proceedings under the Act, 1940. Courts can appoint arbitrators[169],

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164 Section 38(4) of Draft Arbitration Bill, 2024.
165 Section 39(4) of Draft Arbitration Bill, 2024.
166 Section 34 of UNICTRAL Model Law, 2006.
167 Saeeda Jillani v. Malik Sheraz Zafar, 2025 CLC 181 Islamabad.
168 Gerry's International (Pvt.) Ltd. v. Aeroflot Russian International Airlines, 2018 SCMR 662 Supreme-Court.
169 Section 8 of Arbitration Act, 1940.

make a reference to arbitration[170], enlarge the time of award[171], modify the award[172], remit the award[173], pronounce judgment in accordance with the award[174], issue interim measures[175], and even set aside award on broad grounds incompatible with the pro-enforcement bias of New York Convention[176]. Section 39 provides appeals against a wide range of court orders related to arbitration proceedings, which further expands judicial oversight.

The scope of judicial intervention is significantly limited in the Bill 2024.[177] Section 6 stipulates that no court or judicial authority shall intervene except where so provided in this Act in matters governed therein. This provision is in *pari materia* with Section 5 of Indian Arbitration and Conciliation Act 1996 and follows the model of Article 5 of MAL. Accordingly, Indian jurisprudence can provide a valuable interpretative guidance in terms of the scope and application of this legal provision.

The Supreme Court of India observed that the *non obstante* clause in Section 5 of the Indian Arbitration Act signifies an intentional legislative insertion to curtail judicial intervention in arbitral proceedings and, as such, other provisions of the act are required to be construed accordingly to reflect this intent.[178] It was held that the provisions contained in Part I of the Indian Arbitration Act ought to be given *''full effect and operation irrespective of any other law for the time being in force'*.[179] The Indian apex court bifurcated Section 5 of the Indian Arbitration Act into two facets, i.e. positive and negative, and clarified that the positive facet *'vests judicial authorities with jurisdiction over arbitral proceedings in matters expressly allowed in or dealt under the Arbitration Act'*[180] , while the negative aspect prohibits judicial authorities from *'intervening in arbitral proceedings*

170 Section 20 of Arbitration Act, 1940.
171 Section 28 of Arbitration Act, 1940.
172 Section 15 of Arbitration Act, 1940.
173 Section 16 of Arbitration Act, 1940.
174 Section 17 of Arbitration Act, 1940.
175 Section 41(b) read with Second Schedule of the Arbitration Act, 1940.
176 Section 30 of Arbitration Act, 1940.
177 Mian Sami ud Din and Feisal Naqvi (n 17).
178 In re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899 [2023] INSC 1066 (SC), para 82.
179 Ibid., para 75.
180 Ibid., para 80.

in situations where the Arbitral Tribunal has been bestowed with exclusive jurisdiction'.[181]

It would not be incorrect to presume that Section 6 of the Bill 2024 should be interpreted in a similar manner as Section 5 of the Indian Arbitration and Conciliation Act 1996, given their identical wording and shared legislative intent. The draft legislation, like its Indian counterpart, restricts the role of courts to interim measures[182], appointment of arbitrator[183], set aside proceedings[184], enforcement of awards[185] and appeal[186] and even these powers are subject to statutory limitations. For instance, arbitral tribunals have also been vested with primary rather than merely concurrent powers to issue interim orders during the proceedings.[187] Similarly, the power to appoint arbitrators can only be exercised in limited situations, where the parties fail to appoint.[188] It is also pertinent to reiterate that the power of court to modify an award has not been retained in the draft act. Courts have no authority to amend or supplement an arbitral award under any circumstances; their role is confined to remitting it to the tribunal for correction, clarification, additional award or any other appropriate remedy.[189]

1.3.12. Party autonomy

Party autonomy is regarded as a cornerstone of international arbitration.[190] Under the Act, 1940, judicial oversight takes precedence over party autonomy, reflecting a litigation-oriented approach to arbitration rather than a party-driven model.

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181 Ibid

182 Section 10 of Draft Arbitration Bill, 2024.

183 Section 13 of Draft Arbitration Bill, 2024.

184 Section 39 of Draft Arbitration Bill, 2024.

185 Section 41 of Draft Arbitration Bill, 2024.

186 Section 42 of Draft Arbitration Bill, 2024.

187 Section 19(1) & 10(3) of Draft Arbitration Bill, 2024.

188 Section 13(4), (5) & (6) of Draft Arbitration Bill, 2024.

189 Section 39(8) of Draft Arbitration Bill, 2024.

190 Zaver Petroleum Corporation (Pvt.) Limited vs. Saif Energy Limited, PLD 2025 Islamabad 219; *See also,* Maxi Scherer, 'The Fate of Parties' Agreements on Judicial Review of Awards: A Comparative and Normative Analysis of Party-Autonomy at the Post-Award Stage' in William W Park (ed), Arbitration International 437, 437 <https://www.kluwerarbitration.com/document/kli-ka-ai-2016-03-003\> accessed 8 October 2025.

Nevertheless, the Bill 2024 has sought to solidify party autonomy in categorical terms. The phrases like *'the parties have agreed'*, *'the parties may agree'*, or refers to an *'agreement of the parties'* ought to be interpreted to include the party designated arbitration rules.[191] It means that the procedures and rights set out in chosen arbitration rules are legally considered to be the part of the parties' agreement and govern the process alongside the act. Furthermore, the party is free to authorize any person, including an arbitral institution to exercise autonomy or perform obligations on its behalf.[192]

The Bill 2024 provides that the seat[193] and venue[194] of arbitration is determined by parties to the arbitration agreement failing which, it shall be determined by an arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.[195] There is also no legal bar on domestic parties to select a foreign seat of arbitration.[196] No such provision concerning the seat of arbitration existed in the previous statute.

The Act, 1940 heavily relies on court intervention in appointing arbitrators and parties have minimal control over the process of appointment and removal.[197] However, the draft act seeks to ensure procedural autonomy of parties in the process of appointment and removal of arbitrators. The parties are free to agree upon the procedure for appointing[198] and challenging[199] arbitrators, without any limitation of nationality.[200] The bill also enables the parties to delegate the function of appointment to arbitral institutions or other designated authorities.[201] The High Court acts only in absence or failure of party-agree mechanisms.[202]

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191 Section 3(8) of Draft Arbitration Bill, 2024.
192 Section 3(7) of Draft Arbitration Bill, 2024.
193 Section 2(m) & 22(1) of Draft Arbitration Bill, 2024.
194 Section 22(3) of Draft Arbitration Bill, 2024.
195 Section 22(2) of Draft Arbitration Bill, 2024.
196 Zaver Petroleum Corporation (Pvt.) Limited vs. Saif Energy Limited, PLD 2025 Islamabad 219.
197 Section 9's proviso, 11 and 12 of Arbitration Bill, 1940.
198 Section 13(2) of Draft Arbitration Bill, 2024.
199 Section 15(1) of Draft Arbitration Bill, 2024.
200 Section 13(1) of Draft Arbitration Bill, 2024.
201 Section 13(6) of Draft Arbitration Bill, 2024.
202 Section 13(4) & (5) of Draft Arbitration Bill, 2024.

Besides this, the following provisions of the draft legislation reflect the principle of party autonomy;

- Determining and regulating the procedure of arbitration[203]
- Determining the language of arbitral proceedings[204]
- Consolidating related arbitrations, and convening concurrent hearings[205]
- Determining the law applicable to the substance of the dispute[206]
- Determining the law governing arbitration agreement[207]
- Determining the powers exercisable by tribunal as regards final relief[208]
- Cost-allocation in international commercial arbitration[209]
- Extending the period of award-making for another twelve months[210]
- Encouraging settlement during arbitration through mediation, conciliation or any other appropriate procedure[211]
- Ensuring the confidentiality of arbitral proceedings[212]

1.4 Conclusion

The enactment of the Bill 2024 will be a significant milestone in the legislative reform of arbitration law in Pakistan. The afore-mentioned research elucidates that the pro-arbitration jurisprudence developed by superior courts, while commendable, has ultimately been limited by the rigid confines of the Act, 1940 which is designed for judicial control rather than arbitral autonomy. Judicial decisions promoting arbitral autonomy have largely been driven by necessity and call of the times, but they are not a suitable alternative for systemic legislative reform. It is now incumbent upon Parliament to grant final approval to the draft legislation, taking into account the proposed reforms discussed above, so as to facilitate the alignment of Pakistan's arbitral

203 Section 21(2) of Draft Arbitration Bill, 2024.
204 Section 24(1) of Draft Arbitration Bill, 2024.
205 Section 23(2) & (3) of Draft Arbitration Bill, 2024.
206 Section 30(2)(a) of Draft Arbitration Bill, 2024.
207 Section 8(9) of Draft Arbitration Bill, 2024.
208 Section 34(1) of Draft Arbitration Bill, 2024.
209 Section 36(2) of Draft Arbitration Bill, 2024.
210 Section 32(2)(b) of Draft Arbitration Bill, 2024.
211 Section 33(1) of Draft Arbitration Bill, 2024.
212 Section 48(1) of Draft Arbitration Bill, 2024.

framework with contemporary models and international best practices.

In concrete terms, the Bill seeks to modernize Pakistan's arbitral framework by (i) strengthening party autonomy in matters of procedure, seat, arbitrator appointment, and applicable law; (ii) reallocating primary authority over jurisdiction, interim measures, and post-award correction to arbitral tribunals; and (iii) narrowing post-award challenges and public-policy review in line with the UNCITRAL Model Law and leading arbitration statutes, including those of the UK and India. At the same time, the Bill leaves certain unresolved gaps and contradictions, including the contract-law approach to determining the law governing the arbitration agreement, the introduction of 'patent illegality' as an additional ground for setting aside domestic awards, the broad and indeterminate definition of public policy, and the risk of indirect judicial review through revision petitions over non-appealable orders under Section 42, all of which may permit expanded court intervention than ordinarily contemplated under the Model Law.

Nevertheless, legislation on paper cannot by itself guarantee the success of reform, which depends, in particular, on effective judicial and institutional implementation. Courts must exercise their powers restrictively, without supplanting the authority of the arbitral tribunal, particularly confining set-aside grounds under section 39 and public-policy review under section 39(3) strictly to procedural defects rather than the merits, guided by principles of arbitral autonomy, minimal judicial intervention, and pro-arbitration bias. It also remains to be seen whether Pakistan's legal system has the institutional capacity to absorb, adapt and apply such a radical transformation, and whether courts are adequately trained to interpret this proposed law without reverting to old habits of intervention and expansive review. In order to ensure effective implementation, judicial training on Model Law standards, systematic monitoring of post-award case law for interventionist drift, and investment in professional capacity-building for arbitrators and institutions will be indispensable to realizing the objectives of the Bill 2024.

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The Role of Constitutional Courts in Administering the Environmental Justice System in Pakistan

Dr. Mahboob Usman[1]

Abstract

Since the beginning of civilization, individuals have played crucial roles in protecting the environment surrounding them. Every citizen is under an obligation to protect the environment, without any exemption. Protection of environment is not only a global phenomenon which must be followed by all; our religion also dwells upon us the protection of environment as a sacred part of Islamic teaching and make certain actions harmful to the environment such as the cutting of trees during wartime are explicitly prohibited. At the same time this global phenomenon compels every individual to follow the rules and regulations of the State. In this context, it is vital to observe how the judiciary serves as an essential institution within society, significantly contributing to its development and sustainability. This paper is discussing and interpretating the Judicial decisions, particularly those of superior courts, which have dealt with violation and far-reaching consequences of environmental law. This paper also unveils that how even minor deviations from established legal norms and principles may lead to substantial harm. Through the discussion itaper aims to examine the principal role of superior courts of Pakistan in environmental protection and to examine how their decisions have played a vital role in promoting environmental sustainability.

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I. Introduction

Constitutional courts are the ultimate authority to decide fate of any dispute either by petition filled by aggrieved person or by exercising *suo moto* powers.[2] Similar, is the case with environment issues, where in number of cases the courts decided to take up the matter by its own, in other cases the case was brought before the courts to adjudicate upon the issue. Keeping in view the importance of matter, the courts while taking cognizance, responded in quick manner for decision of the cases at the earliest.

Merely drafting and enacting laws is insufficient; their effective implementation is paramount. Recognizing this, Pakistan's judiciary has taken proactive steps to ensure environmental protection through the establishment of 'green benches'. These specialized benches are dedicated to hearing cases related to environmental issues, thereby streamlining the legal process and emphasizing the importance of environmental justice. The initiative to create green benches was a direct response to the recommendations of the 2012 Bhurban Declaration, titled 'A Common Vision on Environment for the South Asian Judiciaries', which emerged from the South Asian Conference on Environmental Justice. This conference was convened with the support of Supreme Court of Pakistan (SCP). In line with this vision, all high courts across the country including the Supreme Court of Azad Jammu and Kashmir (SC AJK), constituted green benches to address environmental matters.

For instance, the Lahore High Court (LHC) established both a green single bench and a green division bench, with designated judges assigned to these benches. Similarly, the Sindh High Court (SHC), Peshawar High Court (PHC), and Balochistan High Court (BHC)

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2 Article 184-188 of the Constitution of the Islamic Republic of Pakistan, 1973.

took comparable measures, ensuring that environmental cases were handled by specialized courts. These green benches have not only facilitated the adjudication of environmental disputes but have also played a pivotal role in enforcing environmental laws and regulations.

Moreover, the BHC introduced the 'Green Courts Project', which began with the symbolic act of each judge planting a tree. This initiative aimed to raise awareness about climate change and promote environmental consciousness among the public. In *Maple Leaf Cement Factory Ltd. v. Environmental Protection Agency*, the LHC held as under: -

> …all matters before courts…. shall be resolved… to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment...[3]

In Pakistani history, *Shehla Zia*[4] case was the landmark decision on environment where the Supreme Court of Pakistan interpreted Article 9 of the Constitution to covers all facts of human existence. While dilating on it the court held that "in the quest of economic development one has to adopt such measures which may not create hazard to life, destroy the environment and pollute the atmosphere."[5] Further, the court extended the concept of life to 'such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally'. Therefore, every person is entitled to the 'protection of law from being exposed to hazards of electromagnetic fields.'[6]

In *Imrana Tiwana v. Province of Punjab*[7] case, a Full Bench of LHC held that 'EIA is nature's first man-made check post…. It is through the tool of EIA that EPA gets to regulate and protect the

3 *Maple Leaf Cement Factory Ltd. v. EPA,* PLD 2018 Lahore 255.

4 *Shehla Zia v. WAPDA,* PLD 1994 SC 693. WAPDA proposed construction of grid station in section F.6/1, Islamabad, therefore, the petitioner filled the human right case before SUPREME COURT OF PAKISTAN challenging the construction of grid station near residential area due to hazards attached to the electromagnetic fields which was decided on 12th February, 1994.

5 *Shehla Zia v. WAPDA,* PLD 1994 SC 693.

6 Ibid.

7 *Imrana Tiwana v. Province of Punjab*, 2015 CLD 983.

environment and as a result the life, health, dignity and well-being of the people who inhabit the environment…'

In Islamabad, the Capital Development Authority (CDA) leased a plot of land in violation of law. Subsequently, this action was challenged in the IHC, which upheld the cancellation of the lease, affirming its violation of legal provisions. The court's decision underscores the imperative for public authorities to adhere strictly to legal frameworks in land allotments, ensuring transparency and accountability in urban development.[8] In another case, LHC directed the government to remove encroachment on graveyard land.[9]

In the province of Punjab, a petition was filled in the LHC where the court passed certain directions for controlling air pollution.[10] Similarly, the LHC in respect of construction of poultry farm held that "…poultry farms are a source of odor and smell as well as flies, rodent and other pests. These can give rise to diseases such as cholera, typhoid, malaria and dengue. Furthermore, improper disposal of wastewater can pollute the water and soil..."[11]

Land meant for amenities, parks and playground cannot be allotted to any person[12] besides amenity plot cannot be allotted for commercial activities.[13] The SC always protected the environment for deciding the cases at the earliest, therefore, the court declared the construction of restaurant in F.9 Park of Islamabad in violation of constitution of Pakistan.[14] In *Islamuddin v. Ghulam Muhmmad* case,[15] for creating the nuisance in the vicinity, the SC stopped the workshop from working despite the fact that the owner had the permission and license from relevant authorities to operate and manage the workshop.

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8 *BNP Pvt Ltd. v. Capital Development Authority*, PLD 2017 ISB 81.
9 *Miani Sahib Graveyard v. Encroachers*, PLD 2019 Lahore 216.
10 *Syed Mansoor Ali Shah v. Government of Punjab*, 2007 CLD 533.
11 *Muhammad Shahid v. Punjab Environmental Tribunal*, PLD 2018 Lahore 356.
12 *Niamatullah Khan v. Federation of Pakistan*, 2022 SCMR 171.
13 *Province of Sindh v. Kabir Bokhari*, 2016 SCMR 101.
14 *Action taken on news clippings regarding, Fast Food outlet in F-9 Park Islamabad,* PLD 2010 SC 759.
15 *Islamuddin v. Ghulam Muhmmad,* PLD 2004 SC 633.

In respect of Brick Kilns, for not following the law, the LHC held that an "act or omission, damaging environment is a recurring damage, effecting general public globally" therefore, the concerned agency may take action as per law.[16] The IHC in a case held as under: -[17]

> Saving parks and urban green spaces means safeguarding the environment and indeed saving the environment from further destruction and degradation should be a top priority and must take precedence over the interests of a few. It is the larger public interest that must prevail and protecting the environment is definitely the most important public interest…..

This article examines landmark judgments by Pakistan's superior courts concerning environmental issues such as water, wildlife, parks, nuclear and hospital waste, forests, and trees. These rulings have been instrumental in safeguarding the nation's natural heritage and upholding citizens' environmental rights.

II. Water

Water is essential for human survival, and its scarcity poses a significant threat to humanity. Therefore, it is imperative to preserve natural and man-made water reservoirs, as well as underground water sources, to ensure a sustainable water supply for current and future generations. In Khewara Mine case[18] the petitioner challenged the pollution of water supply source and the Supreme Court of Pakistan after hearing concerned parties decided that the petitioner basically seeks to enforcement of the right of the residents to have clean and unpolluted water. Wherein the court held that "Water has been considered source of life… due to famine and sacristy of water, civilization have vanished, green lands have turned into deserts and arid zones completely destroying the life….

16 *Nemat Ullah Khan v. Province of the Punjab*, 2023 CLD 261; PLJ 2023 Lahore 334.

17 *Yasmin Haider v. Capital Development Authority,* PLD 2019 Islamabad 558.

18 *General Secretary, West Pakistan Salt Miners Labour Union (CBA), Khewra v. the Director, Industries and Mineral Development Punjab,* 1994 SCMR, 2061.

Therefore, if (water is) polluted, or contaminated, (it) will cause serious threat to human existence." [19]

Thus, the court directed that the location of mine be shifted at a safe distance from the stream that the stream is not polluted.[20] Similarly, in Islamabad, Rawal Dam was being contaminated, therefore, SC took *suo moto* and declared that clean drinking water is a right and directed the government to take immediate steps for installation of water treatment plant to avoid discharge of solid waste and liquid into the Rawal Lake.[21] Likewise, in a similar matter, Shahab Usto, Advocate filed a constitutional petition in SC for provision of clean water and disposal of sewerage and solid waste protecting the environment of Province of Sindh, the SC after analyzing the bad governance directed the provincial government to make arrangement for clean drinking water and for improvement of environment.[22]

Similarly, the IHC in *Shahzada Sikandarul Mulk v. The Capital Development Authority*[23] emphasized on the importance of protection of environment from damage, particularly Rawal Lake and its surrounding area and declared clean water as fundamental right. The same view was reiterated after three years in another case of *Zeenat Salim v. Pakistan Naval Farms*.[24] The IHC further held that 'Availability of clean water and keeping the environment free from pollution has a direct nexus with the fundamental right guaranteed to every person under Article 9 of the Constitution.'[25]

With the fear of non-availability of any proper plan by the Government to conserve water, Mr. Asghar Leghari filed a writ petition[26] in the LHC for preparation of water strategy by the

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19 Ibid.
20 Ibid.
21 *In the matter of contaminated water to Rawalpindi from Rawal Dam*, 2013 SCMR 591.
22 *Shahab Usto v. Government of Sindh*, 2017 SCMR 732.
23 *Shahzada Sikandarul Mulk v. The Capital Development Authority*, PLD 2019 Islamabad 365.
24 *Zeenat Salim v. Pakistan Naval Farms*, PLD 2022 Islamabad 138.
25 Ibid.
26 W.P. No. 25501/2015 which was decided on 25th January, 2018.

Government which was decided after detailed hearings and the court directed as under: -

> … Water is life. Water is a human right and all people should have access to clean and affordable water. …..Water justice refers to the access of individuals to clean water.... Water justice demands that all communities be able to access and manage water for beneficial uses, including drinking, waste removal, cultural and spiritual practices, reliance on the wildlife it sustains, and enjoyment for recreational purposes..……..[27]

The SC considered the importance of water reservoirs and held that 'right to life is a fundamental right and without water there can be no existence of life. The establishment of water reservoirs is, therefore, not a question of just quality of life rather the very existence thereof.'[28] Further, the SC directed the government to establish dams and also encouraged the public to use rational use of water to avoid drought.[29]

At Rawalpindi city, many illegal hydrants were installed for extraction of water from the earth, therefore, to seek direction from the High Court, for the relevant departments, a Writ Petition was filed[30] in which the High Court directed the authorities, *inter alia*, to educate the citizen about water sanctity. The superior courts of Pakistan had considered clean water as a fundamental right and also passed certain direction for its preservation. Had this not been done, then the Pakistan must have faced serious issues.

III. Protection and Preservation of Wildlife

On 18th September, 2009, the Ormara Fisheries authorities found Abdul Hameed fishing within four nautical miles from the Ormara coast while using the prohibited fishing nets (locally known as *gujja*), therefore, he was arrested and an F.I.R was registered against

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27 *Asghar Leghari v. FoP,* PLD 2018 Lahore 364.
28 *Zafarullah Khan v. Federation of Pakistan*, 2018 SCMR 1621.
29 *Zafarullah Khan v. FoP*, 2018 SCMR 2001.
30 *Usman Ghani v. Rawalpindi Metropolitan*, Writ Petition No. 2046/2022.

him.[31] Before the trial court,[32] the accused plead guilty and the trial court sentenced the accused to pay fifteen thousand rupees and confiscated the prohibited nets in favor of state. Being dissatisfied, he challenged the order before Additional Sessions Judge, Gwadar, who also maintained the trial court decision, which was assailed before the BHC[33] and the court after examining the entire case held that: -

> … illegal fishing and resorting to unnecessary killing and catching of juvenile fish ruptures the ecological web, results in the decline of marine resources and damages the sea and the coast, bringing with it untold suffering to the communities living along the coastal areas who are dependent upon fishing both to feed themselves as well as to provide them with much needed livelihood. The greed of a few imperils all.[34]

Further, the BHC in this case held that 'it is our duty to ensure …….large scale capture and killing of juvenile fish [be] avoided.'[35]

A writ petition[36] was filed in the LHC for protection of endangered species of black bucks and deer which were getting extinct. Therefore, the High Court appointed the commission[37] who submitted a detailed report regarding preservation of endangered species. High court, after examining the Black Bucks Commission endorsed[38] the same and directed the Provincial Government of Punjab to protect and preserve the black buck deer in compliance

31 First Information Report (F.I.R) No. 3/2009.
32 Judicial Magistrate Pasni, Gwadar.
33 Criminal Miscellaneous Quashment No. 36 of 2010.
34 *Abdul Hameed v. Judicial Magistrate*, PLD 2011 Quetta 11.
35 Ibid.
36 W.P. No. 35700/2016 which was heard on 31st October, 2019.
37 Black Bucks Commission.
38 This case has been reported as *Ali Imran v. Forest Wildlife and Fishery Department*, PLD 2020 Lahore 24.

with the provision of the Act, 1974.[39] Thereafter, the HC after relying upon the *Province of Punjab*[40] case held that:-

> …It has now been scientifically established that if the earth becomes bereft of birds, animals, insects, trees plants, clean rivers, unpolluted air and soil, it will be the precursor of our destruction/extinction. The black buck deer is one of the endangered species and protection of such species is not only fundamental duty of government but of every citizen to ensure right to life guaranteed under Constitution.[41]

On 6th September 2009 under various sections[42] of Balochistan Wildlife Act,[43] different FIR were registered for illegal possession and transportation of cranes which enjoyed a protected status under this Act. All the accused plead guilty before the trial court,[44] and the trial court fined rupees one thousand each and allowed to retain 190 cranes in their possession. However, the BHC imposed fine of rupees five hundred against each crane and emphasized the protection of animal in the light of Holy Qur'an and Sunnah.[45]

Likewise, on 29th September, 2008, a complaint was filed under various sections of the Balochistan Wildlife Protection Act, 1974 for hunting and killing two female Markhors. After the trial, 1st class Magistrate of Dashat convicted and awarded six-month imprisonment to each accused and imposed a fine of three thousand rupees on each person. On appeal,[46] however, Sessions Judge, without recoding reasons, reduced the sentence awarded to the petitioner. Thus, criminal revision was filed in the BHC,[47] and the High Court restored Magistrate's original order of

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39 Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 (Act No. II of 1974).

40 *Province of Punjab v. Lal Khan,* 2016 SCMR 48.

41 *Ali Imran v. Forest Wildlife and Fishery Department*, PLD 2020 Lahore 24.

42 Sections 10, 27 and 30.

43 Balochistan Wildlife Protection Act, 1974 (Act No. XIX of 1974).

44 Judicial Magistrate Zhob.

45 *Ikramullah v. the State*, PLD 2012 Balochistan 16.

46 Criminal Appeal No. 7 of 2009.

47 *Ghulam Dastagir v. State,* PLD 2014 Balochistan 100.

imprisonment of six months. Nevertheless, honorable High Court, instead of sending accused to jail, directed the release of accused on probation and plantation of trees. The relevant part is reproduced as under: -

> Probation shall be for the minimum period of one year. A condition of probation and of the bond would be for the petitioners to render community service by planting twenty five trees each and to take care of them for the period of their probation. In case any tree does not survive it shall be replaced by another. It is estimated that the time spent on planting and nurturing one tree for a year would be four hours, therefore, the duration of community service to be rendered by each offender in respect of 25 trees comes to 100 hours of community service.

The government of Sindh issued a notification under section 40 (1) of the Sindh Wildlife Act, 1993, dated 21st October 2014 granting permission to foreigners to hunt Houbara Bustard. The said notification was challenged in the SHC and Court after setting aside the notification allowed the petition.[48] Thereafter, the Sindh Government challenged the decision of High Court in the Supreme Court[49] and the SC rejected the petition upholding the decision of SHC as the houbara bustard was protected species which cannot be permitted for hunting because under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and Convention on Migratory Species of Wild Animals (CMS) is protected and the Pakistan is signatory to these conventions. But, against this decision a review petition and Supreme Court of Pakistan after setting aside its earlier' order,[50] held that the 'Government can only exercise its powers …(under the) Ordinance to advance the objective of the law, which was

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48 *Lal Khan Chandio v. Federation of Pakistan*, Constitutional Petition no. D-5806/2014 decided on 02.01.2015.

49 *Province of Sindh v. Lal Khan Chandio*, 2016 SCMR 48.

50 *Government of Punjab v. Aamir Zahoor-ul-Haq*, PLD 2016 SC 421. This is the majority decision in which the earlier decision of supreme court was set aside, however, dissenting note was also added by the Qazi Faez Isa, which is worth reading and have strong reasoning.

enacted for the preservation, conservation and management of wildlife; its decision must be based on sound ecological principles and taken after a proper assessment of the population of the species...'[51]

IV. Smog, Hospital and Nuclear waste etc

In the province of Khyber Pakhtunkhwa, hospital waste was not properly disposed of which was causing serious health problems, therefore, Saifullah Muhib Kakakhel[52] advocate filed a writ petition[53] in the PHC to seek direction for implementation of laws for disposal of hospital waste and save the environment from infections and other allied diseases. After the hearing, the PHC directed the D.G. EPA to carry out the inspection of public and private hospital. Subsequently, D.G. EPA, after visiting the hospital submitted the report which was not satisfactory, therefore, the court directed that Director General Health shall devise "Health Care Standards" for all hospitals; to organize training workshops for waste management; all the hospital to have waste management plan; all hospital to put in place waste treatment through double chamber incinerator; all liquid waste to be treated within the hospital premises before disposal into sewerage; all hospitals/clinics should make proper arrangements for disposal of their waste; government to earmark landfill site for disposal of toxic waste; and D.G. EPA to regularly monitor the arrangements of hospital for disposal of waste.

Every year, the province of Punjab faces acute issue of smog, thus, the LHC established a commission, which *inter alia*, took steps for the proper conservation and utilization of water and protection of environment. The LHC also passed certain direction of control of smog and mandatory "implementation of M-Tag on Motorways to prevent vehicular congestion and excessive emissions."[54] In another case, the Supreme Court of Pakistan held that "To dump waste materials…would not only be a hazard to the health of the

51 *Province of Sindh v. Lal Khan Chandio,* 2016 SCMR 48.

52 *Saifullah Muhib Kakakhel,* PLD 2018 Peshawar 94**.**

53 W.P. No. 387-P/2017 which was decided on 26th October, 2017.

54 *Haroon Farooq v. Government of the Punjab*, W.P No.227807/2018, order dated 29.12.2023

people but also to the environment and the marine life in the region… if nuclear waste is dumped on the coastal land of Balochistan, it is bound to create environmental hazard and pollution.'[55]

Air pollution is the greatest environmental threat to human health; therefore, the Supreme Court of Pakistan directed the government 'to shut down and seal the operations of stone crushing plants.'[56]

V. Forests and trees

Parks, open spaces and trees provide health benefits. Whereas parks facilitate physical activity. If the parks are permitted to be enclosed it will make it difficult for trees to grow properly due to obstruction of sunlight. Similar view was taken by the BHC when two Constitutional Petition[57] were filled challenging the decision of Quetta Development Authority (QDA) for allotment of land for construction of shops around the park. However, the High Court did not allow construction of shops around the park and held as under: -

> ….the poor who do not have access to private gardens or clubs; thus, when impediments are placed to fully enjoy the Park it is these weaker and vulnerable members of society who would suffer the most. Moreover, availability of parks for enjoyment, recreation, walking, jogging and exercise constitute a basic necessity.[58]

Sheikh Asim Farooq Advocate also filed a Writ Petition[59] in the LHC for seeking a writ of *mandamus* for the implementation of

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55 *In re: Human Rights Case (Environmental Pollution in Balochistan),* PLD 1994 Supreme Court 102.

56 *Amer Ishaq v. The Province of Khyber Pakhtunkhwa*, C.P No.4 and 14 of 2021, Order dated 11.07.2024.

57 Constitutional Petition No. 790/2010 was filled by the Chamber of Commerce and Industry Quetta and Constitutional Petition No. 164/2011 was filled by 29 shopkeepers.

58 *Chamber of Commerce and Industry v. Director-General, QDA*, PLD 2012 Balochistan 31.

59 W.P. No. 192069/2018 which was decided on 30th August, 2019.

laws,[60] policies[61] and constitutional provisions for the protection of forest and other natural resources and sought direction and a roadmap for implementation of laws and policies. After many hearing, this case was decided,[62] and various directions were issued for the implementation of all the applicable laws and polices including the directions of higher judiciary shall be implemented in letter and spirit. In brief the directions are for the protection and preservation of forest; all the stakeholders to enlarge the forest cover; all the competent authorities to impose penalty for cutting of trees; cooperative authorities shall issue directions to cooperative societies for planting of trees in front of houses and imposition of penalty for cutting of trees. In addition to that the concerned authorities to keep the record of trees; public awareness through print and electric media for plantation of trees; all concerned authorities to define a mechanism for urban forestation; appointment of an officer for the purpose and designation of an area for forestation. The educational institutions are directed to make policies for plantation of trees in open spaces and all the departments to make laws for imposing penalty for cutting, removing and damaging any tree without permission of competent authority.

In the province of Sindh, Gulzar Ahmed Advocate filed a Writ Petition[63] in the SHC for seeking directions, *inter alia*, to issue writ against the respondents[64] for cutting[65] of valuable trees near Begum Nusurat Bhutto Sukkur to be null and void *ab initio*; and respondents may be restrained no to cut more trees from the said area; and direction may be issued to preserve forest land and trees planted in the city and outside the city. After hearing the parties, the Sindh High Court directed the respondents to 'refrain from

60 Forest Act, 1927 (Act no. XVI of 1927) and the Punjab Plantation and Maintenance of Trees Act, 1974.

61 National Climate Change Policy, 2012; National Forest Policy, 2015; Forest Policy Statement, 1999; Punjab Forestry Sector (Forests, Watershed, Rangelands and Wildlife), Policy 1999.

62 *Asim Farooq v. Federation of Pakistan,* PLD 2019 Lahore 664.

63 W.P. No. D-1913/2017 which was decided on 30th March, 2019.

64 There were 19 respondents, among them are the Pakistan Air Force (PAF), and Civil Aviation Authority, (CAA).

65 As per the para-wise comments of CAA, it transpires that 57 old trees were cut down by the PAF.

cutting or removing any grown-up trees either on the subject road or on any of the main roads in the entire Sukkur city.'[66]

The provincial government of Punjab passed an Act[67] for the development of 'New Murree' where more than 4000 cutting of trees were involved, which had serious implications for environment including the water for Simly and Rawal Dams. When the matter was brought before the Supreme Court, *suo moto* was taken,[68] meanwhile the project was disbanded and the SC disposed of the case.[69] However, later on, a new project under the name of New Murree Project was started but the same was stopped on the intervention of Supreme Court.[70]

The Provincial Government of Punjab decided to widen the canal road, Lahore. An application was submitted by the Lahore Bachao Tehrik (LBT) to Chief Justice of Pakistan (CJP) asserting that the widening the canal road would entail the cutting of trees on both side of the canal and the greenbelt area would be encroached which would result in environmental hazards. This application was converted into *suo moto* case[71] and *inter alia*, various directions were passed by the Supreme Court such as the green belt on both sides of the canal is public trust and same shall be treated as Heritage Urban Park; and government will ensure 'minimum damage is caused to the green belt and every tree cut would be replaced by four trees.'[72] After some time, the government filed an application for further widening of the said project and the LBT filed contempt case against the government. After hearing the parties, the Supreme Court decided that the government has not violated the earlier judgment and hence not committed any contempt and allowed further extension of canal road being within the limits prescribed by the Supreme Court.[73] Similarly, the trees were being cut for

66 *Gulzar Ahmed v. Province of Sindh,* PLD 2019 Sindh 697.
67 New Murree Development Authority Act, 2004 (Act No. I of 2004).
68 *Suo moto* case no. 10/2005, decided on 31st July, 2009.
69 *Suo Moto Case No. 10 of 2005,* 2010 SCMR 361.
70 *Muhammad Asjad Abbasi v. Iqbal Muhammad Chauhan*, 2018 SCMR 2051.
71 SMC No. 25/2009.
72 Cutting of trees for canal widening project, Lahore, 2011 SCMR 1743.
73 *Lahore Bachao Tehrik v. Iqbal Muhmammad Chauhan,* 2015 SCMR 1520.

construction purposes, the Supreme Court stayed "expansion or construction work…..in the Margalla Hills.[74]

Wall-chalking is common phenomena in Pakistan, many people used to express their ideas, religious and political, through paining of walls, trees, and building. Therefore, in the province of Balochistan an Ordinance[75] was promulgated to punish this offence. However, this Ordinance was not being implemented by the concerned authorities, thus, the petitioner filed petition[76] in the BHC for enforcement of said Ordinance and the High Court, *inter alia*, passed the order that the Municipal Corporation 'should also plant sufficient trees and protect both new and old plantation, and in this regard it may avail of the assistance of the concerned government department, including the Forest department.'[77]

VI. Parks and amenity plots

The Supreme Court of Pakistan[78] in respect of park held that the 'use of the Park involves enjoyment of life which is covered by the word life employed in Article 9 of the Constitution…' In another case, the Supreme Court has observed and held that "...the public parks, playing fields and graveyards are to be developed and maintained by the CDA.… if a piece of land has been earmarked for purpose of Public Park, same cannot be leased out and CDA itself is bound to develop the same.'[79]

In Gulberg society of Lahore, a plot was vacant, and the people were using it for recreational purposes, however, the management changed the nature of the said plot and converted it to shopping mall and cinema. The matter was brought before the Supreme Court and the Court declared that the conversion of public park,

74 Human Right Case No. 318 of 1993 vide order dated 19 May 2020.
75 Balochistan Prohibition of Expressing Matters on Walls Ordinance, 2001 (No. LI of 2001).
76 Constitutional Petition No. 250 of 2010 decided on 18th August, 2014.
77 *Imdad Shah v. Secretary Forest and Wildlife Department*, 2015 YLR 318.
78 *Ardeshir Cowasjee v. Karachi Building Control Authority,* 1999 SCMR 2883.
79 *Moulvi Iqbal Haider v. CDA,* PLD 2006 SC 394.

without observing the legal requirements, into shopping mall and setting up of cinema illegal.[80]

In *Zahida Sultana v. Defence Housing Authority*,[81] the Lahore High Court restrained the DHA to construct parking plaza on amenity plot.[82] The Islamabad High Court in *Muhammad Raza v. Jammu and Kashmir Cooperative Housing Society,*[83] also declared the conversational of parks and amenity plots into commercial and residential plots illegal and directed the society to restore the original layout plan. In another case, Mst. Roshan Bano and others challenged the allocation of open plot for petrol pump and requested the Sindh High Court to grant the stay, but the same was declined due to permission of conversion of open plots into commercial plots.[84] In the instant case, there was no park, therefore, there was no issue for rejection of application for stay. In *Young Doctors Association v. Government of Pakistan*,[85] the petitioners challenged the widening of road due to environment impacts, however, the Lahore High Court, just allowed the reallocation of certain facilities of hospital for widening of road. Whereas, in *Imrana Tiwana v. Province of Punjab*,[86] the petitioners approached the Lahore High Court for stoppage of signal free corridor for violation of environmental law, thus, the Lahore High Court directed the authorities to stop the project. Thereafter, this decision was assailed before the Supreme Court of Pakistan, and the said court allowed the construction of signal free corridor.[87]

The Supreme Court, in the case of *Karachi Circular Railway's*[88] case directed the Karachi Development Authority (KDA) to restore the Kindly Hill Park as per original master plan of Karachi and

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80 *Shehri-CBE v. Lahore Development Authority*, PLD 2012 Lahore 362.

81 *Zahida Sultana v. DHA*, PLD 2013 Lahore 663.

82 Amenity plots include parks, gardens, schools, hospitals, mosques, library, sewerage treatment plant, or such other places of public use.

83 *Muhammad Raza v. Jammu and Kashmir Cooperative Housing Society,* PLD 2013 Islamabad 49.

84 *Mst. Roshan Bano v. Pakistan Defence Officers Housing Authority*, PLD 2016 Sindh 445.

85 *Young Doctors Association v. Government of Pakistan*, PLD 2015 Lahore, 112.

86 Ms. *Imrana Tiwana v. Province of Punjab,* PLD 2015 Lahore, 522.

87 *Lahore Development Authority v. Ms. Imrana Tiwana*, 2015 SCMR 1739.

88 *Karachi Circular Railway and Local Train in Karachi's,* 2020 SCMR, 82.

dismissed the application of housing society. When the Supreme Court was informed about the allotment/lease of Kindy Hill Park, the Supreme Court directed the Commissioner KMC to 'examine each and every case of allotment and lease of the land of Kidney Hill Park and on such perusal, he shall issue notices to all illegal allottees/lessees for removal of their respective houses and all constructions whatsoever and restore the Kidney Hill Park of 62 acres as park...'[89]

This order was complied with and the Kidney Hill Park was restored,[90] however, there was an old masjid and school, therefore, directions[91] were issued to remove the school from the park premises.[92] Later on, the Supreme Court directed the authorities to remove the mosque from the park and further held that the house adjacent to the park do not have easementary right in the park land to use for opening of their gates inside the park.[93]

Similar, instructions were issued in the same order[94] regarding, Hill Park, Bagh Ibn-e-Qassim, Civil Aviation Authority land, Benzair Park, Shahrah-e-Quaideen, P&T Colony, Kachi Abadies, PIA marriage Hall, Karachi Port Trust and DHA were directed to remove all illegal constructions and restore the land for which the same is allotted.[95] In respect of encroachments of Karachi Infrastructure Development Company Limited (KIDCL), the Supreme Court directed that the 'Company is doing construction work, it shall not be allowed to occupy or to make construction or to interfere with any of the existing parks, playgrounds or amenity spaces...'[96]

In *Niamatullah Khan v. Federation of Pakistan*,[97] case when the Secretary Railway informed about the development and relocation of the encroachers of the Railway land, the Supreme Court

89 *Niamatullah Khan v. FoP*, 2020 SCMR 153.
90 Ibid.
91 Order dated 10th August, 2020.
92 *Niamatullah Khan v. FoP*, 2020 SCMR 1474, 1482.
93 *Niamatullah Khan v. FoP*, 2022 SCMR 238.
94 Order dated 6th and 7th February, 2020.
95 *Niamatullah Khan v. Federation of Pakistan*, 2020 SCMR 513.
96 Ibid., 522.
97 Ibid., 160.

particularly directed that 'proper consultation with city planners and developers should be obtained in advance so also all engineering concerns as well as the environmental authorities be taken on board.' Further, the Supreme Court while considering the historical aspects of this city observed that "It is no more a city of lights which is being portrayed by the city administration nor is this city of gardens. There are no trees, greener, no parks, no playgrounds, no roads, no hospitals, no universities, no schools, no colleges…."[98] When it was informed about the encroachments of paths and open spaces the Supreme Court directed the KMC to remove such encroachments, 'The open spaces and service streets and roads occupied by the commercial organization, shops, hotels shall be removed and restored their use.'[99]

In Karachi, on public parks marriage halls, marquees, officers clubs, markets, shopping malls, apartments, petrol pumps, CNG stations were constructed and parks land was encroached and converted for residential and commercial purpose, thus, the SC on 22.01.2019, in *Abdul Karim v. Nasir Salim Baig*,[100] directed the SBCA to restore all plots to original position and remove all illegal and unlawful construction on such plots. Further, the SC in the instant case also prohibited (complete ban) the SBCA to convert or allow the conversions of amenities to commercial and residential purposes. Even, in this case the SC also banned the pending case for approval of conversion. An officer club was also built by the KW & SB on park land, therefore, in particular, the SC directed the KW & SB to demolish the club building or any other construction. Therefore, on 24.01.2019, the Managing Director KW & SB submitted a report in SC in compliance of the order dated 22.01.2019, that the Officers Club constructed on KW &SB has been demolished.[101]

YMCA ground was being used for commercial purposes such as marriage hall; thus, the SC directed the Commissioner to remove the construction and restore it for in its original purpose,[102] in compliance of the directions of SC, the operation was carried out

98 Ibid., 162.
99 Ibid., 163.
100 *Abdul Karim v. Nasir Salim Baig,* 2020 SCMR, 111.
101 Ibid., 121.
102 *Niamatullah Khan v. Federation of Pakistan*, 2020 SCMR 153, 166.

and the ground was restored by playing of hockey. Similarly, roads of the Karachi were occupied by the encroachers and the SC directed[103] as follow: -

> The land on to both sides of Mai Kolachi Road was full of mangroves at one time with passage of sea water, now there is barren land and passage of sea water has been blocked. The Chairman [Karachi Port Trust] shall ensure that plantation of mangroves is made on both sides of Mai Kolachi Road and flow of sea water is restored touching the Bath Island area.[104]

During the war of 1971, the Argentine government stood for the support of Pakistan in the United Nations General Assembly (UNGA) and United Nations Security Council (UNSC). In recognition and acknowledgment of support of Government of Argentine, a park with the name of "Argentine Park" was established at G.6, Islamabad. This park was converted for extension of hospital which was challenged before the IHC in writ petition,[105] and the High Court declared the conversion of park for the extension of hospital illegal.[106]

Islamabad High Court in *Yasmin Haider v. Capital Development Authority,*[107] held as under: -

> In view of the critical situation regarding climate changes and environmental degradation, there is an urgent and greater need to protect and safeguard open spaces, play grounds and parks rather than converting them to buildings made from brick and mortar. Parks and urban green spaces have multiple benefits besides providing areas for recreational facilities. The existence of parks in urban areas inevitably impacts positively on human health and

103 Order dated 9th May, 2019.
104 *Niamatullah Khan v. Federation of Pakistan*, 2020 SCMR 153, 167.
105 W.P. No. 1003/2015 which was decided on 5th July, 2019.
106 *Yasmin Haider v. Capital Development Authority,* PLD 2019 Islamabad 558.
107 Ibid.

> well-being. It helps in social cohesion and promoting tourism. It promotes biodiversity, reduces urban heat and protects ecosystems. The elimination or extinction of a park thus violaties the fundamental right guaranteed under Article 9 of the Constitution…...

In Margalla Hills National Park Islamabad restaurants were being run which were damaging the environment of park, therefore, the Supreme Court held that park area must be protected and all restaurants operating within it to be vacated within three months. However, Kiosks in the National Park were directed to obtain licence and remove all garbage they generate for disposal outside the National Park, and those with stoves must have fire extinguishers.[108] As per SC decision, even parks and green areas cannot be converted to residential use or allotted to anyone.[109] The SC directed that "it must be ensured that the National Park remains a protected area and all concerned are directed to ensure its preservation."[110]

Amenity plots, designated for public welfare, cannot be converted for commercial use, nor can their land use be altered in ways that infringe upon the rights of other residents to enjoy public parks or amenities. Engaging in such transactions is unlawful because the general public is a key stakeholder in these spaces.[111] In a latest decision of SC the court held that parks and green areas cannot be converted into residential use, nor it can be allotted to anyone.[112]

VII. Conclusion

From ensuring water resources to preservation of Wild life, and from directions to demolish the encroachments on green belts, parks to protect the society from environmental nuisances in all aspects, Pakistan's higher judiciary has consistently worked as a

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108 The Monal Group of Companies, Islamabad v. Capital Development Authority, C.P.L.A.304/2022 decided on 11-06-2024

109 *Mohammad Aslam Khaki v. Khawja Khalid Farooq Khan*, 2023 SCMR 1208.

110 *Bilal Haque v. Kamran Ali Afzal*, Crl.O.P. No. 19/2024 order dated 25.10.2024.

111 *Mall Developers (Pvt) Ltd v. Barrister Waleed Khanzada*, 2022 SCMR 2080.

112 *Mohammad Aslam Khaki v. Khawja Khalid Farooq Khan*, 2023 SCMR 1208.

driving force in directing the concerned authorities to act in accordance with the law. Wherever violations were identified, the courts have played a vital role and issued specific directions, compelling the executive to cease environmentally harmful activities. Pakistan's Judiciary has actively taken actions for safeguarding the environment and have not remained passive on matters related to environmental issues. Through the judicial decisions of superior courts are playing a massive role for environmental protection yet a lot of work is required to be done which includes stricter laws, proper planning permission mechanisms before any utilization of land, and strict public policies to avoid the deterioration of environment. Despite facing numerous challenges, the judiciary has acted promptly to protect the environment. It is now the responsibility of all citizens and institutions to adhere to the directions of the superior courts and implement their decisions in letter and spirit, ensuring a cleaner and healthier environment for present and future generations.

NON-PEER REVIEWED SECTION

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Case Comment

Dr. Muhammad Asif v. Dr. Sana Sattar and Others
(Review Jurisdiction) Supreme Court of Pakistan
(C.R.P. No. 458/2024 in C.P.L.A. No. 2514/2024)

Dr. Muhammad Naveed Khan[1]

Abstract

This case note examines the landmark decision in a case titled '*Dr. Muhammad Asif v. Dr. Sana Sattar*' (decided on May, 16, 2024) rendered by the Supreme Court of Pakistan. In this seminal case, custody of a minor child was involved, which led to the jurisprudential shift from the patriarchal concept of "welfare of the minor" under the Guardians and Wards Act, 1890 towards a rights-based and the participatory standard, more aligned with the provisions of United Nations Convention on the Rights of the Child (CRC) 1990. The Court, while elucidating the scope of the Articles 3 and 12 of the Convention, emphasised the necessity of directly hearing from the minor child in order to harmonize Section 17 of the Act, 1890 with constitutional guarantees i.e., dignity, equality, and child protection. It also signified in unequivocal terms that the mother's employment in no way can be a ground of disqualification from the right of custody of the minor. The judgment integrated the international human rights obligations into the domestic law on a way to redefining the scope of judicial discretion in custody disputes. This case note also analyses the factual dimensions of the situations, the judicial reasoning and doctrinal innovations by the Court, towards the child-centred justice in Pakistan.

Introduction

The Guardians and Wards Act, 1890 (a colonial legislation) is the primary law in Pakistan for deciding custody disputes. Although,

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family laws in Pakistan have deep roots in the Islamic jurisprudence yet colonial legislations have great influences in the setting of the standards for determining the custody of the child. The law has given mandate to the courts to decide the custody matters by keeping prime the standard of 'welfare of the minor.' This welfare standard has been interpreted by the courts in a discretionary and adult-centric manner, in which most of the time, voice of the child is marginalized. Whereas after the ratification of Convention on the Rights of Child (1990) the constitutional guarantees provided under Articles 9, 14, 25, and 34 of the Constitution of Pakistan, 1973 a more rights-oriented approach has been emerged.

The present case has seamlessly been selected by the Supreme Court of Pakistan to reconcile domestic statutory provisions with the global jurisprudence pertaining to child rights. In fact, the Court extended the doctrine of '*updating construction*' typically called '*always speaking*' to family law, and thereby transformed the simple meaning of '*welfare of a child*' into a more dynamic concept *'best interests of the child*.'

Facts of the Case

In the facts of this case; the petitioner Dr. Muhammad Asif is a father, who has sought custody of the minor children (aged 8 and 7 years) from the respondent mother Dr. Sana Sattar. The spouses are professional physicians and have remarried but they are still hanging in legal battle to get custody of the minors over and above the visitation rights. Initially, the minors were in custody of the father. It was the mother, who filed a custody case before the Family Court in Layyah where her claim did not succeed and she was granted merely the visitation rights. The mother appealed against the declining order while the father appealed against the order of visitation rights. However, the appellate court allowed the claim of custody in favor of the respondent mother while father's appeal impugning the visitation rights was dismissed.

The petitioner father was aggrieved of such order, then he invoked the constitutional jurisdiction before the Lahore High Court, Lahore; however, the same was dismissed. In consequence

whereof, he approached the Supreme Court under Article 185 (3) but the same was also dismissed. Hence, the instant review petition was filed. The claim of petitioner father hinges upon the facts that he is a child specialist, owner of a hospital and his professional expertise place him in a better position to care for the special-needs child. He had remarried and had a one-year-old child from his second marriage so the minor will have a family life in the house.

On the other hand, the respondent mother was also a medical doctor employed in the government service defended the claim of custody arguing that she being mother of the minor children is entitled to retain their custody for their education and therapy in Lahore. Although, she remarried, her spouse's adult children did not live with them; therefore, the minors would face no difficulty, deprivation or hardship.

Legal Issues

The case raised multiple questions of law and principle, which are as follows: -

- How should Section 17 of the Act, 1890 be interpreted in light of provisions of Convention on Rights of Child and Constitutional guarantees?
- Does the right of a child as to hearing him constitute a binding judicial obligation on the court in custody matters under the provisions of CRC?
- To what extent should parental circumstances (such as remarriage, employment, extended family support) influence the determination of the welfare of the child or the child's best interests?
- Should the Alternate Disputes Resolution (ADR) mechanisms, particularly mediation, be preferred in custody disputes as a child-sensitive alternative to adversarial proceedings?
- How can the courts in Pakistan maintain a balance between the colonial legislations and adherence to the evolving constitutional and international standards?

Grounds of the Decision

The Court referred to the words of James Baldwin in Essays: The Nation (1980): -

> *'the children are always ours, every single one of them, all over the globe; I am beginning to suspect that whoever is incapable of recognizing this may be incapable of morality.'*

The Court made a comparative analysis of the laws, pressed a need for alignment in law and practice, also considered living conditions of both the competing parents in the case. Regarding the best interest of the minor children; the court held a comprehensive discourse covering the following areas: -

Harmonization between Guardian and Wards Act and Convention on Rights of Child

The Court undertook an in-depth study of the provisions of the Act, 1890, the provisions of Convention on the Rights of Child (1990) and the precedent law on the subject of custody to underscore the inconsistency between the legal frameworks and the judicial practice. Although Pakistan is form of state under the international law which needs codification of the internationally agreed provisions in the domestic law rather than their per se application pursuant to the international convention or treaty at international level. The Supreme Court of Pakistan considering the essential and significant aspects of the participation and choice of the ward made a doctrinal shift by construing Section 17 of the Act, 1890 through the doctrine of '*updating construction*'.

The Court candidly observed that the word '*welfare*' of the child mentioned in the law was embedded in its colonial sense, which was vague and adult-centric, thus needs to be harmonized with Article 3 of the Convention on the Rights of Child. The article has been articulated in a well-structured way involving the participatory standard to consider the '*best interests of the child*.' The Court implied that interpretations inviting the participatory role of the ward, especially in custody matters would ensure that the provision remains a '*living law*,' more flexible and adaptive, and

thus consistent with contemporary international, constitutional and domestic norms.

Choice of the Ward

As per the provisions of the Convention on the Rights of Child, the Court is required to hold a meeting with the minor children. During the case proceedings, the Court held such meeting and interacted with the minor children in a friendly manner, excluding the formal and rigorous decorum of the court room to find out their free choice of parent for custody. In result thereof, the elder child expressed his desire to live with both parents while the younger could not articulate his preference, perhaps due to undeveloped maturity. However, the Court emphasized that listening to the children before deciding their custody matter should not be taken in routine as a formality or of symbolic character rather it is essential and sine quo non to protect their dignity and legality of the judicial outcomes.

Gender and Non-Discrimination

Argument of the petitioner that mother's professional employment in the government sector would deprive her from the custody of the Ward was also rejected based on her inalienable right to development and growth. The Court also referred to the early decisions of the Supreme Court of Pakistan, where it was already held that employment of mother shall have no bearing on the custody matter. The Court further observed that treating her employment as an embargo to her right to custody of the minors would not only perpetuate discrimination against the women but also be tantamount to a denial of international obligations. The Court rendered custody of mother as suitable despite her professional employment finding it in conformity with Article 11 and 16 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

Alternative Disputes Resolution (ADR) in Family Disputes

Considering the essence of CRC principles, which require the participation of minors and minimisation of adversarial harm to the stakeholders, the Court emphasised '*mediation*' as a preferred mode

to settle family disputes. The Court found it child-sensitive and voluntarily excepting undue psychological burdens and other formalities on the wards. More so, the settlement reached through *'mediation'* would not only foster the relations between the parted parents but also close the doors for any further legal battle. It was also commented that custodial arrangements based on mutual understanding would better reflect the best interest of the children, making them more sustainable and helping the minor children in developing their personality and grooming. For these reasons, the Court in a postscript directed all family courts in Pakistan to ensure that the child's voice is heard in custody and guardianship matters and same is duly recorded and made part of the record.

The discussion has highlighted the import of doctrinal development from a narrow approach of '*welfare of the child*' to the broad term of '*best interest of child*'. The interpretative tool of '*updating construction*' typically applied in the commercial and constitutional issues has now been extended to the interpretation of family laws and their disputes. The word '*welfare*' had an established position in the guardian and custody matters, which has been anchored with another threshold of '*best interest*' of the child. It is not merely a shift from discretional principle of '*welfare of the child*' to the participatory role of the minors rather it has brought the law and practice in conformity with the international law obligations holding the children rights holder than passive objects.

In this case, the Court reinforced the rights of women by invoking provisions of the Convention on the Elimination of all Forms of Discrimination against Women and thereby dismissed the patriarchal biases against the working women, especially mothers. The Court elucidated and redefined the terms of custodial capability, not merely the availability at home, but rather considered it inclusive of emotional, psychological, and developmental support to the ward under custody. Therefore, this case law is likely to have a great influence on future decisions by the family courts involving professional women, and same would ensure nondiscrimination in the adjudication of custodial and guardianship matters. Hence, by referring to and embedding the

provisions of CRC and CEDAW principles into domestic jurisprudence, the Supreme Court of Pakistan, in fact, reinforced the constitutional commitment to dignity, equality, and protection of childhood.

Practical Challenges

The Court did not lose sight of the ground realities and practical hardships, where the best interests of the child can hardly be realised due to infrastructural deficiencies. The Court further observed that a conducive environment is necessary for the minor children to choose the most viable option and highlighted the following items to be made available: -

Child-Friendly judges and Courtrooms

In order to Implement the directions contained in the judgment, it calls for substantial reforms, where judges must be imparted trainings in the subject of *child psychology* to enhance their capacity to observe and adopt a child-centric approach. The courtroom environments must also be adapted and reshaped to help in relieving their pressure and stress, thereby enabling them to make their best choice.

Establishment of Court Annexed Mediation

Recently, mediation centers have been established in the family courts of Pakistan, where the mediation services have begun to be provided in the family matters. For sake of reference, in the Islamabad district, the services of a highly learned Civil Judge, namely Raja Farrukh Ali Khan, who has already received master training with accredited mediation experience, have been dedicated for the mediation center for both the East and West districts, where he has already commenced mediation proceedings in the family matters.

Conclusion

The Supreme Court's decision in a case titled '*Dr. Muhammad Asif v. Dr. Sana Sattar*' is a landmark in the jurisprudence of child custody and guardianship matters in Pakistan. It signals a decisive departure from colonial welfare paternalism towards a rights-

based paradigm grounded in the Convention on the Rights of Child and the Constitution of Pakistan. This judgment is of great import concerning the voice of the child as essential component for the determination of his guardianship and custody, reinforcing gender equality in custodial claims and encouraging the alternative dispute resolution mechanisms especially the mediation, which has marked a revolutionary direction in the practice.

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