

## A CRITICAL ANALYSIS OF THE REVIEW PETITIONS FILED IN THE SUPREME COURT OF PAKISTAN: A PURE DOCTRINAL RESEARCH STUDY

Syed Zaffar Hassan Naqvi<sup>\*1</sup>, Dr. Sadaqut Ali<sup>2</sup>, Dr. Hafiz Ghulam Abbas<sup>3</sup>

<sup>\*1</sup>LL.M Fellow, Bahria University Law School, Bahria University, Islamabad

<sup>2</sup>Assistant Professor, Bahria University Law School, Bahria University, Islamabad

<sup>3</sup>Senior Assistant Professor, Bahria University Law School, Bahria University, Islamabad

<sup>\*1</sup>naqvi.pms@gmail.com, <sup>2</sup>Sadaqut.buic@2bahria.edu.pk, <sup>3</sup>gabbas.buic@2bahria.edu.pk

### ABSTRACT

*This research paper aims to critically analyze the review petitions in supreme court of Pakistan. The concept of a 'review' allows courts to revisit their judgments, a practice debated globally. Within Pakistan's legal framework, the Supreme Court can review its decisions under Article 188 of the constitution of Islamic Republic of Pakistan. However, criticisms arise from inconsistent decisions, delays, and alleged politicization. This research employed doctrinal research methodology and critical analysis method to analyze the review petitions decided by the Supreme Court of Pakistan from 2016 to 2023 and found significant irregularities, deviations from established norms, and arbitrariness, embedding uncertainty in the jurisprudential landscape. It is also observed that exercise of review by the Supreme Court of Pakistan is criticized due to inconsistency in judgments, delay in the adjudication of cases, politicization, and an increase in the backlog of cases. To alleviate these disparities and revitalize the efficacy of the review process, comprehensive reforms including the formulation of explicit review criteria, enactment of responsive legislation, and sustained engagement with stakeholders, are imperative.*

**Keywords:** Review Petition, Supreme Court of Pakistan, Inconsistency, Delay, Backlog of the Cases, Politicization

### INTRODUCTION

The literal meaning of “review” is re-examination of something for the sake of correction or improvement (Choudhury, 2012). In legal proceedings, the term review implies reconsideration or re-adjudication of an already decided case by the same court. The purpose behind investing a court with review jurisdiction is rectification of errors. The courts tend to stand by the judgments rendered by them, as a general principle, in line with the doctrine of *stare decises*. However, in interest of justice, courts across the globe can reconsider their earlier decisions (Kaiarali, 2020). The concept of review is

premised upon the fallibility of human beings that is to say that humans can never be immune to committing errors and mistakes. The doctrine of review therefore permits the courts to rectify such mistakes in order to avoid serious miscarriage of justice (Mrabure & Idehen, 2021). The courts have been appreciating the concept of review even before its incorporation into the formal statute (Salihu, 2020). The ultimate object of the court is to uphold justice therefore when injustice and illegality is bound to perpetuate due to a patent error, a court may not hesitate in reviewing its order. (Choudhury, 2012), Review is therefore an

exception to the general principle that a judgment once pronounced must not be changed. The purpose of review is correction of any mistake in order to uphold the justice (Mehdi Hassan vs. Province of Punjab, 2007).

The doctrine of review is also incorporated in the legal and constitutional framework of Pakistan. However, the review being an exception to the general principle is to be exercised in exceptional conditions which have been laid down in the respective laws and judgments of the courts. Both criminal and civil courts in Pakistan are invested with the power of review though with different scope. In civil proceedings, the review is admissible for correction of mistakes, accidental slips or any other sufficient ground provided under the Law. Section 114 and 152 of Civil Procedures Code along with the Rules made thereunder govern the review procedures. The procedures adopted for the review are similar to those observed for exercise of original jurisdiction. However, the review is to be invoked in exceptional circumstances only. During the course of inspection of civil courts by the judges of high courts, it is to be seen whether the review petitions have been admitted on reasonable grounds. The scope of review is however quite limited under the criminal Law in Pakistan. The criminal courts are not allowed to review their judgments once pronounced. However, review in criminal law can be exercised for correction of clerical mistakes. Review can also be exercised to revise the sentence of whipping in criminal law. The Supreme Court of Pakistan being the apex court in the country is invested with the ultimate jurisdiction. Its decisions are binding upon all other courts subordinate to it under Article 189 of the Constitution Pakistan and all executive authorities are constitutionally obligated to render all necessary assistance to the Court when sought by it under Article 190. Though its decisions cannot be challenged at any other legal forum across the country, however, the Article 188 of the Constitution of Pakistan empowers the

Supreme Court to review its own judgment. The power of review, under the Article 188, is subject to any Law made by the parliament (Majlis-E-Shoora) or Rules made by the court itself. The Parliament of Pakistan has not framed any Law to regulate the exercise of review jurisdiction by the Court. However, “The Supreme Court Rules, 1980” framed by the Court under Article 191 of the Constitution for regulating its procedures and practices contain the provisions for review procedures under Part-IV Order XVI of the said Rules (The Supreme Court Rules, 1980).

However, the exercise of review jurisdiction by the Supreme Court has been subjected to criticism by different quarters in number of cases. (Ahmad, 2018) The grounds of exercise of review powers are not also defined in precise terms (Javed, 2018). Therefore, this study is meant to ascertain the grounds on which the review is accepted or rejected by the Supreme Court, for which, an analysis of the review petitions decided by the court would be made.

## 1- Research Methodology

This study follows the legal doctrinal methodology, also termed as “black letter” methodology, to analyze the legal framework and the judgments given by the Supreme Court of Pakistan in exercise of its review jurisdiction. The doctrinal methodology focuses on the texts of the primary sources including statutes and decisions of the court. The researcher has adopted doctrinal approach while descriptive and critical analysis have been adopted as research methods. The study will rely on primary data in the form of statutes and judgments of the courts. First of all, the constitutional and legal provisions governing exercise of review jurisdiction by the Supreme Court of Pakistan will be examined, following which, the judgments rendered by the court during last five years will be subjected to a detailed analysis to identify the grounds on basis of which the review petitions or accepted or rejected by the Court.

**Table:Summary of Judgments:**

Sr No	Case Title	Review Petition Accepted/Rejected	Grounds of Acceptance/Rejection	Criticism
1	Qazi Faez Isa and Others Vs President of Pakistan and others <b>PLD 2023 SC 661</b>	Accepted	The infringement of the principle of natural justice	Absence of a thorough elucidation on the grounds of review.
2	Hadayat Ullah And Others Versus Federation of Pakistan and Others <b>2022 P L C (C.S.) 1603</b>	Accepted	Review petition under article 188 was converted into a constitutional petition under article 184(3).	Conversion of the review petition into a constitutional petition introduces procedural complexities that might blur boundaries between distinct legal paths,
3	Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi and Another Vs. MSC Switzerland Geneva and Others <b>2023 S C M R 1011</b>	Rejected	Case of minor discrepancies	-----
4	Zaid Shah Alias Jogi Versus The State <b>2020 S C M R 497</b>	Rejected	Want of circumstances and ground necessitating the acceptance of review	.....
5	Sikandar Hayat Versus. The State <b>PLD 2002 SC 559</b>	Accepted	A legal error apparent on the face of the record.	In criminal cases, the Court verdict was grounded in the assessment of facts, and re-examining evidence would have been equivalent to re-hearing an appeal in a decision already made by peers of equal standing.
6	Mst. Mukhtar Mai Versus Abdul Khaliq And Others. <b>2019 S C M R 1302</b>	Rejected	Petitions necessitated a reevaluation of all the evidence, which was not permitted in a review jurisdiction.	.....
7	Moinuddin Vs State <b>PLD 2019 SC 749</b>	Partially allowed	Inherent powers of the Court.	The review was partially accepted in spite of the fact that there was no patent error of record. This ruling in fact expended the scope of review beyond any limitation.
8	Dr. Ahmed Ali Shah and Others Versus Syed Mehmood Akhtar Naqvi and Others. <b>2018 S C M R 1276</b>	Partially allowed	Compassionate Grounds	Review was partially accepted in spite of the fact that there was no patent error of record. The precise ground warranting acceptance for review were also not given.
9	Mst. Sumaira Malik Versus malik Umar Aslam Awan and Others	Accepted	New Evidence	Review jurisdiction can be invoked after surfacing of a new evidence.

	<b>2018 S C M R 1276</b>			
10	Rashid Ali Channa And Others versus Muhammad Junaid Farooqui <b>2017 S C M R 1519</b>	Rejected	Limited scope of review	.....
11	Ex-Lance Naik Mukarram Hussain and Others Versus Federal Government, M/O Defense Through Chief Of The Army Staff And Others <b>2017 S C M R 580</b>	Rejected	Limited scope of review	.....
12	Basharat Ali Khan Versus Muhammad Akbar <b>2017 S C M R 309</b>	Accepted	Substantial aspect of the dispute had indeed been ignored in the judgment under review	Although the anomaly highlighted by the court was justified but this very aspect had been deliberated upon in the original judgment, so the acceptance of review actually constituted re-adjudication of the similar facts.
13	Zakaria Ghani and 4 Others Versus Muhammad Ikhlaq Memon And 8 Other <b>P L D 2016 SC 229</b>	Rejected	New pleas advanced by the petitioner did not justify acceptance of review	
14	Malik Muhammad Mumtaz Qadri Versus The State <b>P L D 2016 SC 146</b>	Rejected	There was no new evidence to warrant acceptance of review.	.....
15	Government Of Punjab And Others Versus Aamir Zahoor-Ul-Haq And Others <b>PLD 2016 SC 421</b>	Accepted	Improper application of law in the original judgment.	Neither there was any fresh evidence placed on the record nor any mistake was ascribed in the original order. It amounted to re-hearing of the case.

## 2- Cases Discussion

### Analysis of Review Petitions Decided by the Supreme Court of Pakistan

The analysis of review petitions decided by the Supreme Court of Pakistan from 2016 to 2023 is given below.

#### 1.1. Qazi Faez Isa Case

This recently decided and highly prominent review case has sparked substantial criticism. The facts of the case are that in 2019, the President of Pakistan, based on the advice of the Prime Minister, filed a reference against Justice Qazi Faez Isa with the Supreme Judicial Council (SJC). The reference alleged that Justice Isa had violated

the code of conduct for judges by failing to disclose his family foreign assets, specifically properties in the UK. The SJC is the only constitutional body that can probe misconduct allegations against superior court judges (The Express Tribune, 2020).

In June 2020, the Supreme Court of Pakistan, quashed a presidential reference against Justice Qazi Faez Isa, citing multiple grounds for the judgment. The court pointed out significant procedural irregularities in the formation and submission of the reference, asserting that necessary due diligence was overlooked and that certain agencies' methods of surveillance and evidence collection against Justice Isa infringed



on his fundamental rights, particularly his right to privacy. Although the properties in question were registered in the names of Justice Isa family and not directly under him, the reference lacked conclusive evidence connecting the judge to any misconduct pertaining to the acquisition of these assets. While the Supreme Judicial Council (SJC) retains the authority to investigate potential misconduct by judges, this reference was deemed deficient in its foundational procedure and substantive evidence. However, the court, recognizing the gravity of the allegations, directed the Federal Board of Revenue (FBR) to independently investigate the foreign properties' acquisition and their related tax implications, instructing the FBR to subsequently report its findings to the SJC. This decision, while addressing the specifics of the reference, underscored the broader principle of upholding and protecting the judiciary independence, emphasizing that attempts to malign reputation of a judge without substantial evidence jeopardize the integrity of the judicial institution.

The Chief Justice presided over the 10-member bench of judges that rendered this decision. This verdict was reached by a majority of seven to three. The seven judges rendering majority judgment included Justice Mr. Umar Ata Bandial, Justice Mr. Manzoor Ahmad Malik, Justice Mr. Faisal Arab, Justice Mr. Mazhar Alam Khan Miankhel, Justice Mr. Sajjad Ali Shah, Justice Mr. Munib Akhtar and Justice Mr. Qazi Muhammad Amin Ahmed while three judges, Justice Mr. Maqbool Baqar, Justice Mr. Syed Mansoor Ali Shah and Justice Mr. Yahya Afridi, dissented with the majority decision. Justice Mr. Qazi Faez Isa and others filed review petition against the original order. The initial bench constituted to hear the review petitions comprised of six judges all of whom had subscribed to the majority judgment with the exception of Mr. Justice Faisal Arab who was not included in the bench due to his retirement. The Constitution of bench was challenged in multiple Civil Miscellaneous Applications (CMA) with the petitioners praying that all the judges who heard the original case including those three judges who dissented with the majority judgment should be made part of the

bench (Qazi Faez Isa and Others vs. President of Pakistan and Others, 2021).

This case also brought to light the lack of a clear cut constitutional and legal provision on the constitution of benches for hearing review petitions, another grey area in the (Qazi Faez Isa and Others vs. President of Pakistan and Others, 2021) constitutional and legal framework governing review of its judgments by the Supreme Court. The court made reference to ORDER XXVI Rule 8 of Supreme Court Rules 1980 which provides that as far as it is practicable, the review petition should be heard by the same bench who delivered the earlier judgment which is being sought to be reviewed.

The court referred to number of earlier judgments to decide this question. In *Zulfiqar Ali Bhutto Case (Zulfiqar Ali Bhutto vs. The State, 1979)* it was held that the judges dissenting the majority judgment should also be made part of the bench hearing review petition. However, the judges who had retired could not be made part of the bench. Reference was also made to another case (*Federation of Pakistan vs. Mian Nawaz Sharif, 2009*) in which it was held that constitution of benches was sole domain of the honorable Chief Justice. Same principle was reiterated in another case (*Mian Muhammad Nawaz Sharif vs. Imran Ahmed Khan Niazi, 2018*). Reference was also made to another case in which the number of the judges hearing review petition was increased from three to five in view of the complex nature of the case. Same principle was reiterated in another case. In yet another case (*Shahzada Aslam vs. Ch Muhammad Akram, 2017*) it was held that the Chief Justice is not strictly obligated to form the same bench for a review petition as the one that heard the initial case, since practical considerations must be taken into account while constituting the benches.

Keeping in view the principles laid down in the judgments referred to above, the court decided that for hearing review petition, the judge who wrote the original judgment should remain on the bench hearing the petition for review; (*Federation of Pakistan vs. Mian Muhammad Nawaz Sharif, 2009*) however, *Fida Hussain vs. The Secretary, 1995*) he is unavailable, another judge can fill in for him. Except for the judge who authored the

judgment being reviewed, the Chief Justice had complete discretion over the composition of the remainder of the bench. The matter was referred to the Chief Justice requesting him to decide the petitions by exercising the discretion vested in him under the Supreme Court Rules 1980.

After the matter was referred to the Chief Justice, he reconstituted the bench to consider petitions for review. The review petition was assigned to the same bench who heard the original case, with the exception of Justice Faisal Arab, who had retired and was thus replaced by Justice Amin ud din Khan.

The review petition was accepted by a majority vote of six in favor and four against. The newly appointed Judge, Mr. Justice Amin ud din Khan, granted acceptance to the review petition, however two other judges, Mr. Justice Mazhar Alam Miankhel and Mr. Justice Manzoor Ahmad Malik, reconsidered their previous judgement and altered their stance.

In the above judgment, the ground for acceptance of review petition, as stated in the judgment, was the infringement of the principle of natural justice and the failure to provide an opportunity for Mrs. Faez Isa, one of the petitioners, to be heard. This had been deemed an "error apparent on the face of the record," prompting the majority of judges to accept the review petition pursuant to Article 188 of the Constitution and Rule 1 of Order XXVI of the Supreme Court Rules, 1980. However, the two justices, Mr. Justice Mazhar Alam Miankhel and Mr. Justice Manzoor Ahmad Malik, did not provide a detailed reasoning for reversal of their earlier decision. While the infringement of natural justice served as the grounds for accepting the review petition, the absence of a thorough elucidation on this critical aspect might lead to ambiguity regarding the principles governing future review decisions.

## **1.2. Hadayat Ullah And Others V. Federation of Pakistan and Others, 2022**

Between 01.11.1993 and 30.11.1996, the Pakistan People Party (PPP) government made thousands of appointments across various government services, corporations, and autonomous/semi-autonomous entities ("employers"). However, in the subsequent 2-3 years, successive governments

reversed many of these appointments. When the PPP returned to power after winning the 2008 General Elections, they used a series of ordinances to reinstate those who had been dismissed. The first such ordinance was put into place to primarily provide reinstatement to a set of individuals ("beneficiary employees") who had been hired by employers between 01.11.1993 and 30.11.1996 but were later dismissed between 01.11.1996 and 31.12.1998.

The Ordinance, however, did not clarify the reasons for granting this relief exclusively to this particular group appointed during the given dates. After issuance of first Ordinance series of a Ordinances issued on 11.06.2009 ("Ordinance II"), 30.10.2009 ("Ordinance III"), and 05.02.2010 ("Ordinance IV"), on the same subject were issued. These subsequent Ordinances closely mirrored the original, with only insignificant modifications that are not pertinent here. To bring a conclusion to this issue and to offer a lasting solution for the beneficiary employees, the PPP eventually introduced the Sacked Employees Reinstatement Bill, 2010. This bill was approved by Parliament and was endorsed by the President on 06.12.2010, becoming the Sacked Employees (Re-instatement) Act, 2010 ("Act").

The Act was however challenged in different High Courts. The petitions were filed by number of petitioners who could be broadly placed under two categories. One who were in regular employment before promulgation of this Act and by virtue of reinstatement of the sacked employees under this Act, their seniority was adversely affected. The second were those who were not extended benefit of this Act in spite of being eligible. The decisions given by respective high courts were challenged in the Supreme Court who stricken down the Act on account of being violative of Articles 4, 9 and 25 of the Constitution of Pakistan in Civil Appeal No.491 of 2012 titled Muhammad Afzal v. Secretary Establishment Division(Muhammad Afzal vs. Secretary Establishment Division, 2021). As a result, whereof, all the benefits caused to the beneficiaries of Sacked Employees (Re-instatement) Act, 2010 were ceased.

Review of the above cited judgment was sought under the instant case. The Supreme Court held

that Review under Article 188 has very limited scope. A review is not justified solely due to a significant mistake in the contested ruling. Rather, a review is permitted only if that substantial error changes the outcome, making the contested ruling faulty (*Mukhtar Mai vs. Abdul Khaliq*, 2019). However the Court converted the review petition under Article 188 into petition under Article 184(3) and Employees who occupied positions between 01.11.1996 and 12.10.1999, which did not necessitate any aptitude, academic, or skill test during their initial dismissal, were ordered to be reinstated to the same roles they held prior to their termination. The employees who were holding positions which required an aptitude, academic, technical or skill test were reinstated but they were also directed to be reinstated but they were required to pass the relevant tests for their positions, administered by the Federal Public Service Commission, within 3 months of the judgment.

In the above case the judgment sought to be reviewed was reversed in actual but for doing so, the review petition under article 188 was converted into a constitutional petition under article 184(3). However, technical nuances aside, the fact remained that the earlier decision was reversed in the review proceedings. The conversion of the review petition into a constitutional petition introduces procedural complexities that might blur boundaries between distinct legal paths, potentially establishing a precedent open to exploitation in future cases, impacting the clarity of legal procedures. Additionally, changing the petition nature raises questions about the commitment to procedural norms, fostering doubts about the consistency and reliability of the legal process.

### **1.3. Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi and Another V. MSC Switzerland Geneva and Others, 2023**

The case involves taxpayers filing erroneous tax returns, leading to proceedings under section 4B of the Income Tax Ordinance, 2001. The Deputy Commissioner, Inland Revenue amended the assessments, leading to appeals. The Appellate

Tribunal in Karachi directed the DC-IR to reduce the imposition of Super Tax by 50%, in accordance with the relevant Double Taxation Treaties. The petitioners filed reference applications, raising questions of law, such as the objective of the Super Tax for the rehabilitation of temporarily displaced persons and the separate nature of Super Tax from Income Tax. The High Court of Sindh dismissed the Income Tax Reference Applications and allowed Constitution Petitions filed by tax payers. The counsel for the petitioners argued that the Super Tax was levied by the Parliament through proper legal procedure and that the legislature is competent to levy multiple taxes on income under the Fourth Schedule to the Constitution.

The Federal Government has the power to enter into tax treaties, such as tax information exchange agreements, multilateral conventions, and inter-governmental agreements, to avoid double taxation or prevent fiscal evasion. These agreements can provide relief from tax payable under the 2001 Ordinance, determine Pakistan-source income of non-resident persons, determine income attributable to operations carried on within and outside Pakistan, determine income attributed to resident persons with special relationships with non-resident persons, and exchange information for preventing fiscal evasion. However, any Pakistan-source income not allowed to be taxed under a tax treaty is exempt from tax under the 2001 Ordinance. The High Court of Sindh dismissed Income Tax Reference Applications and allowed Constitution Petitions filed by tax payers. The counsel for the petitioners argued that the Super Tax, which is separate from Income Tax, was levied by the Parliament through proper legal procedure and that the legislature is competent to levy multiple taxes on income under the Fourth Schedule to the Constitution. The petitioners preferred these review petitions, claiming that the High Court ignored crucial aspects and did not appreciate the question of law raised.

A judgment or order can only be reviewed if there are clear errors that significantly impact the final result (*Muhammad Nazir vs. State*, 1979). This does not mean that a case can be reheard just because there was a thoughtful decision on both



legal and factual aspects (Kalal Khan vs. Misri Khan, 1979). Every judgment made by the courts is viewed as a final decision on all issues presented. Minor discrepancies that do not heavily influence the final verdict do not justify a review. However, if there is a clear error or ambiguity that leads to injustice, then a review can be sought to highlight and rectify the mistake. Still, wanting a rehearing is not a valid reason for a review (Saghir Ali vs. Mehar Din, 1968). Reviews are not the same as appeals. Their purpose is to correct glaring injustices, like misinterpretation of the law, overlooking evidence, or not addressing arguments presented. If the court made a conscious decision, even if someone disagrees, it is not grounds for a review. A review is not an avenue for those unhappy with a decision, nor is it a chance to argue a different perspective (Screening Committee, Lahore and another, 1978). In the above judgment, review was rejected on the ground that a judgment or order could only be reviewed if there are clear errors that significantly impact the final result. However, it was a case of minor discrepancies that do not heavily influence the final verdict and thus did not justify a review. The emphasis on only allowing review for errors significantly altering the final outcome serves to maintain the stability and integrity of judicial decisions, preventing frivolous challenges that could undermine the sanctity of finalized judgments. This stringent standard seeks to preserve the sanctity of legal verdicts, ensuring reviews are reserved for substantial errors that substantially affect the ultimate decision.

#### **1.4. Zaid Shah Alias Jogi V. The State, 2020**

The petitioner was tried in six cases of ransom abduction in 2007 and was initially sentenced to death. However, the death penalty was later converted into life imprisonment with collateral benefits, including concurrent commutation of coordinate charges. After failing his jail petitions, he attempted to review his sentences through jail and later through a counsel for the review of earlier judgments. However, the court ruled that a petitioner cannot maintain a second review petition, as held in cases like Khalid Iqbal and 2 others v. Mirza Khan and others (Khalid Iqbal and

2 others vs. Mirza Khan and others, 2015) and Moin ud Din and others v. The State and others (Moin ud Din and others vs. The State and others, 2019). The court found the plea for concurrent commutation of sentences in all cases unpersuasive due to the lack of a plea in jail petitions or the memo of the first review petition. The court concluded that concurrent commutation should not be granted in isolation to the facts and circumstances of the crime.

In this judgment, the review was rejected for want of circumstances and ground necessitating the acceptance of review. Thus, it can be held that the review was rightly rejected. The refusal of review based on the absence of compelling circumstances or substantial grounds for its acceptance aligns with the principle of preserving the finality of judgments, safeguarding against unwarranted reevaluation that could lead to judicial instability. Consequently, upholding the rejection of the review reinforces the importance of maintaining the stability of judicial system and preventing undue reconsideration absent significant justifiable cause.

#### **1.5. Sikandar Hayat V. The State, 2020**

Sikandar Hayat and Jamshed Ali, who were charged with stabbing Habib-ur-Rehman to death, filed two petitions to review their death sentences. The petitioners, who had been on death row for 25 years, sought to have their death sentences converted to life imprisonment under the Juvenile Justice System Ordinance, 2000. The petitioners faced several hurdles in their applications for special remissions; they were dismissed in the first round, partially accepted in the second, and dismissed again in the third.

The court had challenged the petitioners' legal right to claim special remission. The counsel for the petitioner argued that the fatal injuries inflicted on the deceased were not attributed to the petitioners. He mentioned that the other accused were acquitted, and the motive presented by the prosecution had not been proven. Another Advocate of the Supreme Court, contended that the petitioners were juveniles and should be granted special remission, as contemplated by the provisions of the Ordinance and Government Order.



However, both the counsel for the complainant and the State had strongly opposed the petitioners' arguments, asserting that the review of the judgment confirming the petitioners' death sentences could not be reopened so late, suggesting that the petitioners intentionally prolonged the proceedings.

The court had to address multiple issues in those petitions, including the maintainability of the *Suo Motu* Review Petition filed after a delay of 5844 days, the consideration of insufficiencies and weaknesses in the prosecution evidence during the trial within the *Suo Motu* Review Petition, the sufficiency of the evidence the petitioners produced to prove their birth dates, and the existence of any legal principle that might have benefited the petitioners at that late stage in seeking a punishment milder than the death sentence given by the competent court.

On question of Condonation of delay, the Court held that Article 188 of the Constitution of the Islamic Republic of Pakistan provided that the Supreme Court could review any judgment or order it had rendered, subject to the provisions of any Act of Parliament or rule enacted by the Supreme Court (Muhammad Sadiq vs. Muhammad Sarwar, 1979). The Supreme Court had prescribed the procedure for reviewing any order or judgment it passed, with Rule 2 of Order XXVI mandating that the application for review be lodged within 30 days from the date of the judgment or order being reviewed. Legislators and the Supreme Court seemed to agree that the Supreme Court authority to review its judgments and orders should be based on the merits of each case, without a time limit. Article 9 of the Constitution mandated this to ensure the preservation, protection, and safeguarding of life. The judicial consensus had condoned the delay in reviewing petitions submitted by condemned prisoners, especially those facing the death penalty or extensive prison terms. In the case in question, the petitioners, who had been denied relief in 2002, pursued their remedy of seeking a remission in line with the ordinance. The delay in filing the Petition for Criminal *Suo Motu* Review was thus excused (Ayyaz Baig alias Bau Chuhanwala vs. The State, 2002).

On question of review, the Court held that there was a judicial consensus in our jurisdiction that review could be invoked when there was an obvious error in the record, for the purposes of justice, or to prevent abuse of the court process. The merits of a finalized criminal case could not be reheard or reargued in this jurisdiction. In the case at hand, the petitioner had served one sentence under section 302(b) of the Penal Code and had endured the agony of remaining incarcerated in the death cell for a prolonged period. Under these circumstances, and keeping the principle of abundant caution in mind, the court was of the opinion that the petitioner had made a case for a review of the court previous decision.

In the decision that was being reviewed, the pivotal events leading to the assassination of Habib ur Rehman were described. The court was aware of the judicial hesitancy to positively apply mitigating circumstances in review petitions; however, drawing from the principle articulated by a five-judge bench in another case (Dilawar Hussain vs. The State, 2013), those factors were discussed as they constituted a legal error apparent on the face of the record. In that case, the petitioners also requested a review of the severity of the death sentence that this court had upheld in its prior judgment. All factual and legal issues had been correctly evaluated by the two lower courts, so this Court would not intervene. However, the proceedings that the petitioners initiated to claim their juvenility based on their statutory rights could not be categorically deemed fraudulent and aimed to delay and misuse the legal process. Accordingly, the review was allowed by the Court. However, one of judges, Justice Qazi Muhammad Amin, dissented and observed that The Supreme Court ruling on the finality of a judgment or order was based on clear evidence that it went against the law or Constitution. In criminal cases, the Court verdict was grounded in the assessment of facts, and re-examining evidence would have been equivalent to re-hearing an appeal in a decision already made by peers of equal standing. To acknowledge an error as a basis for review, the error had to be clearly evident in the record, significantly impact the case, be manifest and obvious, not involve a full re-examination of the

entire case, and not meddle with the degree of the sentence in criminal matters. This ensured that the conclusiveness of a legal procedure remained stable and was not influenced by varied opinions and perspectives.

He made reference to a case (Venkata Narasimah Appa Row vs. The Court of Wards, 1886) in which it was held that there was a guiding principle that all high-level courts should have followed the principle of *Interest reipublicae ut sit finis litium*. Adhering strictly to this might have occasionally caused difficulties for individual litigants, but any issues stemming from that were minor compared to the significant problems that would have arisen if there had been uncertainties about the final decisions made by such an authoritative body. In another case (Raja Prithwi Chand Lal Choudhury vs. Sukhraj Rai and others, 1941) it was held that it was unacceptable and highly harmful to the public interest for cases that the Court had once decided to be reopened and reconsidered.

In the above judgment, the review was allowed in spite of very limited scope of review in criminal law. The limited scope of review in criminal law prioritizes finality in criminal judgments to safeguard against re-litigation, emphasizing the gravity of criminal convictions over civil disputes. This approach aims to uphold public confidence in the justice system while preserving the rights of both victims and the accused. This fact was also highlighted by the dissenting judge of the bench.

#### **1.6. Ms. Mukhtar Mai V. Abdul Khaliq And Others, 2019**

Criminal Review Petitions were lodged to review a common judgment from April 21, 2011 concerning Criminal Appeals Nos.163 to 171 of 2005 and SMC No.5 of 2005. The petitioner filed the initial FIR on June 36, 2002, citing multiple sections of the Offense of Zina (Enforcement of Hudood) Ordinance, 1979, the Pakistan Penal Code, 1860, and the Anti-Terrorism Act of 1997. At the conclusion of the trial on August 31, 2002, eight of the fourteen defendants were acquitted, while six were found guilty. At the Lahore High Court, both the state and the complainant appealed the trial court decision. The High Court rejected the appeals for acquittal, accepted the

majority of the appeals for conviction, and partially granted Abdul Khaliq appeal by reducing his sentence. The High Court ruling was subsequently challenged, and a Suo Motu Case was also registered. The Supreme Court heard the appeals and the SMC at the same time, culminating in the dismissal of the appeals and the discharge of the SMC.

The Senior Advocate Supreme Court for the petitioner raised a number of legal questions for review, including questions regarding the required level of corroboration for a rape victim testimony, distinctions between victims based on their marital history, and the use of modern techniques such as DNA in rural areas.

The Supreme Court, however, noted that these formulations necessitate a reevaluation of all the evidence, which is not permitted in a review jurisdiction (Zakaria Ghani and 4 others vs. Muhammad Ikhtlaq Memon and 8 others, 2016). The Court stated that a review is distinct from an appeal and cannot reevaluate the evidence. Review jurisdiction is to be exercised in extraordinary situations to prevent egregious injustice. In this context, the Court concluded that the formulations provided did not justify the application of review jurisdiction. In consequence, the Court dismissed the petitions for criminal review and the associated miscellaneous criminal applications.

In the above judgment, review was dismissed on the ground that the petitions necessitated a reevaluation of all the evidence, which was not permitted in a review jurisdiction. This decision adheres to the established principles governing review, ensuring it remains within its defined scope without encroaching upon the functions reserved for appellate processes.

#### **1.7. Moinuddin V. State, 2019**

This judgment of the Supreme Court pertains to the question of how to treat offenses under the Anti-Terrorism Act, 1997, particularly when the offense of "terrorism" (which is non-compoundable) is committed simultaneously with another offense that might be compoundable. A compoundable offense is one where the complainant and accused can come to an agreement or compromise to have the charges

dropped. The key concerns revolve around how such compounding or compromises in associated offenses might affect the primary charge of terrorism.

Multiple appellants were convicted under various sections, including the Anti-Terrorism Act, 1997. In several cases, after the rejection of their appeals and review petitions, the involved parties sought to reach compromises, primarily for the compoundable offenses.

However, given the nature of the Anti-Terrorism Act and the seriousness of the crime of terrorism, there was ambiguity about whether the compromise in other offenses could affect the non-compoundable charge of terrorism.

The Supreme Court of Pakistan had clarified that its authority was not limited by any constitutional constraint. There was not a single provision in the Constitution that prevented the Court from reconsidering or deviating from its previous rulings (Syed Shabbar Raza Rizvi and others vs. Federation of Pakistan, 2018). Furthermore, the principle of precedent (*stare decisis*) did not hinder the Court, especially when a reevaluation of a judgment was necessary due to its considerable influence on citizens' fundamental rights or for the public benefit (Akhtar Umar Hayat Lalayka and others vs. Mushtaq Ahmed Sukhaira and others, 2018). After examining the mentioned sections, it was evident that the Court had the complete discretion to revisit, review, or overturn its past decisions, leveraging its *Suo Motu* Jurisdiction as per Articles 184(3), 187, or 188 of the Constitution. The Court's ability to utilize this inherent authority was not contingent upon a request from any party. The petitions were partially allowed.

In this judgment, the review was partially accepted in spite of the fact that there was no patent error of record. The court held that it had inherent powers to reconsider its judgment when it was deemed necessary due to its considerable influence on citizens' fundamental rights or for the public benefit. This ruling in fact expended the scope of review beyond any limitation.

### **1.8. Dr. Ahmed Ali Shah and Others V. Syed Mehmood Akhtar Naqvi and Others**

The Supreme Court of Pakistan had previously issued an order in 2012 disqualifying certain members of the Parliament and Provincial Assemblies. The grounds for disqualification were that these members had acquired foreign citizenship and failed to disclose this information in their nomination papers. Additionally, the Court found them guilty of corrupt practices and instructed the Election Commission to initiate legal proceedings against them. These individuals were also directed to refund all monetary benefits they had received during their tenure.

However, the affected parties filed review petitions. They did not challenge the disqualification but sought a reconsideration regarding the initiation of criminal proceedings and the refund of their salaries and other benefits. Their defense argued that there was no malevolent intent or "*mens rea*" behind their actions. They believed they had provided all the required information during the nomination, and there was no specific column in the papers to disclose foreign citizenship. Moreover, they believed that they were legally qualified to run for their positions.

The Court, after reviewing the case, acknowledged that while these individuals had dual citizenship, there was not an evident malevolent intent in their actions. Furthermore, the nomination papers did not explicitly ask about foreign citizenship. The Court felt that multiple penalties, such as disqualification, refund of salaries, and potential legal actions, seemed excessive, especially since these members had actively participated in legislative duties.

Drawing a parallel to a previous case related to Judges' Pensions (Pensionary Benefits of the Judges of Superior Courts, 2013), the Court noted that these petitioners, similar to the judges in that case, acted in good faith and performed their duties. Returning their salaries and benefits seemed unjust, and the directions for criminal prosecution appeared excessively harsh. Given these considerations, the Court leaned towards a more compassionate stance in light of the specific circumstances of these cases. The petitions were partially allowed.

In this judgment, the review was partially accepted in spite of the fact that there was no



patent error of record. The precise ground warranting acceptance for review were also not given. This lack of specific grounds for acceptance raises doubts about the consistency and fairness of the review process, leaving room for subjective interpretations that may challenge the credibility of judicial decisions.

### **1.9. Mst. Sumaira Malik V. malik Umar Aslam Awan and Others**

The judgment under discussion is related to the electoral qualifications of Malik Umar Aslam, who contested the General Election of 2008 for NA-69 (Khusab-I) and was elected. The main dispute revolved around the authenticity of her B.A. degree from Punjab University, which was required to be eligible for the contest. The primary claim against her is that she acquired her degree through impersonation, suggesting someone else sat the exam on her behalf.

The Election Tribunal, after initial deliberation, dismissed the claim and ruled in favor of Malik Umar Aslam. However, on appeal, the Supreme Court reversed this decision based on its own visual comparison of photographs and signatures in the University records with those on Malik Umar Aslam ID cards and election posters. The Court found discrepancies and ruled her degree was obtained by impersonation, thereby disqualifying her from the parliamentary seat.

Malik Umar Aslam subsequently filed a review petition, and a forensic examination of the photographs was ordered. The Punjab Forensic Science Agency conducted the examination and concluded that the photographs in the University records and those of Malik Umar Aslam were of the same person.

In the presented argument, the key contention was the standard of proof applied by the Court in election matters. The judgment suggests that the standard in electoral disputes should be higher than in regular civil matters but less than in criminal cases (Muhammad Siddique Baloch vs. Jehangir Khan Tareen and others, 2016). The judgment critiques the Court initial reliance on its own visual assessment instead of seeking expert evaluation.

The bottom line is that the standard of evidence in election disputes, due to their consequential nature,

should be stringent and affirmative. The initial ruling of the court was considered flawed as it relied on its own non-expert comparison rather than professional forensic verification. Given the findings of the Punjab Forensic Science Agency, the review was accepted thus rectifying this oversight and potentially reinstating Malik Umar Aslam election victory.

In this judgment, the court accepted the review petition in view of a new evidence by Punjab Forensic Science Agency. The court found its initial ruling flawed as it relied on its own non-expert comparison rather than professional forensic verification. It was thus a reasonable ground of acceptance of review. By acknowledging and correcting the initial reliance on non-professional assessment, the court demonstrated a commitment to fairness and justice.

### **1.10. Rashid Ali Channa And Others v. Muhammad Junaid Farooqui**

The Supreme Court of Pakistan delivered a judgment in response to Civil Review Petitions Nos. 125, 130, 137, and 138 of 2017, which emerged from an earlier decision of the Court dated 13.03.2017 in the Suo Motu Case No.18 of 2016.

The counsel argued against the exercise of jurisdiction by the court in the matter under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973. She contended that the respondents in the suo motu case had approached the Court with concealed facts. Jahangir stressed that the review petitioners faced injustice since they were not provided the chance to review certain records before the Court. She argued that while there might have been issues with the appointments of the Chairman and Members of the Sindh Public Service Commission, the review petitioners should not be penalized for it. Jahangir emphasized that many of the petitioners had secured their appointments and gained the status of civil servants, hence their removal by the Court was inappropriate.

Other counsels presented similar arguments. They also referred to certain discrepancies identified by the Court in the earlier judgment, asserting that

these discrepancies should not nullify the entire selection process.

Upon hearing the arguments and reviewing the judgment, the Court decided not to grant the review for several reasons.

The Court had initially taken notice of the matter due to allegations of irregular appointments and corrupt practices by the Chairman and Members of the Commission. When the Court initiated its proceedings, the Chairman and some Members resigned. The Court, upon reviewing the Commission records, found significant irregularities in the examination and results processes. The Court viewed these discrepancies as systematic attempts by the Chairman and Members to favor certain candidates without a clear, transparent process. The Court emphasized that the main concern was the transparency and fairness of the selection process, which they found to be compromised. The de facto doctrine, argued by the petitioners' counsels, was not found to be applicable in this case. However, the Court has taken measures to protect the interests of all candidates who had previously taken the written tests.

In the above judgment, the review was dismissed on the ground that even if alternate conclusions could be reached based on the presented facts, it did not provide sufficient grounds to review the earlier judgment. The Court reiterated that the scope of the review was limited to obvious mistakes or significant errors, none of which were found in this case.

### **1.11. Ex-Lance Naik Mukarram Hussain and Others V. Federal Government, M/O Defense Through Chief of The Army Staff and Others**

The petitioners in this case approached the Supreme Court of Pakistan, seeking a review of a previous judgment dated 1.4.2015. They also submitted an application to file additional documents pertaining to a compromise with the legal heirs of the deceased. The core individuals involved were convicted and sentenced to death by the Field General Court Martial under the Pakistan Army Act, 1952 after exhaustive remedies and several dismissals in lower courts.

The eventual appeal to the Supreme Court marked the climax of their legal journey.

The main contention from the petitioners' side was the sought acquittal, based on the compromise with the legal heirs of the deceased, focusing on the legal provisions of section 1(2), Cr.P.C. The petitioners argued that given the circumstances, a compromise under section 345(2), Cr.P.C. could be accepted. However, the Court was confronted with the jurisdictions and procedural proprieties under various sections of the Army Act, emphasizing the specificity of law and procedure under the said Act.

In this regard, the Court scrutinized whether the provisions of the Code of Criminal Procedure were applicable, considering the Army Act as a Special Law, and if so, to what extent. The Court concluded that the provisions of section 143 of the Army Act strictly elucidated who is empowered to grant pardons, remissions, and suspensions, and under these provisions, the Court could not assume such jurisdiction, particularly in its review jurisdiction.

The arguments from the defense also extended to issues related to jurisdictional overreach and inconsistencies. The court highlighted that it could only justify jurisdiction against orders or actions of the Army Authorities if those were suffering from mala fide, jurisdictional error or were coram non iudice, elements which were absent in the current case (Ghulam Abbas vs. Federation of Pakistan, 2014). The Court was particularly mindful of the legal precedents and the substantial legal limitations embedded in the Constitution and other relevant laws, maintaining that the provisions of the Cr.P.C. would not attract to a case involving an offence dealt with by the Field General Court Martial under the Army Act.

After meticulous evaluation and deliberation on the legal provisions, precedents (Muhammad Naveed vs. Federation of Pakistan, 2013), and the arguments presented, the Court dismissed all listed matters, deeming them meritless. This included the Civil Miscellaneous Application, with the court emphasizing the procedural impropriety of considering a miscellaneous application after the main review petition was dismissed. The conclusion reached showcased the Court commitment to legal precision, adherence

to established legal norms and procedures, and respect for jurisdictional boundaries. The dismissal was in line with the legal doctrines and precedents, focusing on the lack of jurisdiction and the absence of elements of mala fide or jurisdictional errors in the actions of the Army Authorities.

In the above judgment, the review was dismissed on the ground that it was notably restrictive under the constitution. This jurisdiction could only be invoked by this Court when there existed a manifest error on the face of the record that impacts the outcome of the case. This approach maintains the integrity of the judicial process, ensuring reviews are reserved for cases demonstrating clear and substantial errors directly affecting the case outcome, thus preserving the sanctity of finalized judgments.

#### **1.12. Basharat Ali Khan V. Muhammad Akbar**

In this judgment, the Supreme Court of Pakistan reviewed a decision made on 01.12.2015, where a Civil Appeal by the respondent was allowed, and his suit for pre-emption was decreed. The petitioner sought a review, asserting that an important aspect of the case had been overlooked in the original judgment.

In the original judgment, the High Court had reversed a previous dismissal of the pre-emption suit of the respondent, and this reversal was being questioned. The crux of the matter was the failure of the respondent to follow the prescribed mode of service, Talb-i-Ishhad, as detailed under section 13(3) of the Punjab Pre-emption Act, 1991, during the filing of the suit. The petitioner claimed this was mandatory and had not been properly debated or considered in previous hearings.

The petitioner argued that the respondent had not adhered to the stipulated procedure for serving notice; specifically, the notice had not been sent "by registered post acknowledgment due," and there was no evidence presented to verify such notice was received. The respondent had also failed to bring forth witnesses to attest to the delivery of the notice, nor was the acknowledgment due card produced as proof. The petitioner maintained that this failure to meet these conditions impacted the viability of the

respondent pre-emption suit, making the decree of the suit in the original judgment incorrect.

The respondent admitted that he had not specified these objections precisely in his pleadings and these points had not been debated at any prior stage of the proceedings. However, the petitioner argued that the court should have scrutinized and resolved these issues before rendering a verdict on the merits of the case as they were fundamental to the claim.

The Court, after deliberation, noted that the mandates as prescribed by the Act implemented substantive principles of Islamic Law and were deemed obligatory due to their statutory intent, mirroring public policy to exclude procrastination and safeguard the rights of vendees as a class in pre-emption suits. The court concluded that the mode of service specified by the Act could not be renounced, and any flaw in executing Talb-i-Ishhad should not prevent a party from highlighting it at any stage of the proceedings.

Upon detailed review, the Court concurred with the petitioner, highlighting that the original suit was deficient due to a lack of assertions and proof of facts establishing a mandatory condition for the maintainability of his suit, the service of written notice of Talb-i-Ishhad under registered cover "acknowledgment due." Despite this default not being highlighted or articulated before any forum, the Court recognized that the respondent failure to prove the service of Talb-i-Ishhad in the prescribed mode had nullified the maintainability of his pre-emption suit.

The Supreme Court of Pakistan discovered that a significant aspect of the dispute had indeed been overlooked in the original judgment (Muhammad Zubair vs. Muhammad Zia, 2004). This oversight, related to the obligatory condition of service of written notice, was considered a considerable error, which could have affected the decision in the case, and thus constituted valid grounds for the grant of review under Article 188 of the Constitution of the Islamic Republic of Pakistan (Suba vs. Fatima Bibi, 1996). The petition was thus accepted.

In the above judgment, review was accepted on the ground that a substantial aspect of the dispute had indeed been ignored in the judgment under review. There was a patent error of not serving the



notice upon the respondent. Although the anomaly highlighted by the court was justified but this very aspect had been deliberated upon in the original judgment, so the acceptance of review actually constituted re-adjudication of the similar facts. Therefore, the decision to reconsider aspects previously addressed may introduce ambiguity into the purpose of review, undermining the principle of finality and potentially leading to prolonged legal processes.

### **1.13. Zakaria Ghani And 4 Others V. Muhammad Ikhlq Memon and 8 Others**

The Review Petition challenged a previous judgment regarding the sale of three properties belonging to the petitioners. United Bank Limited had initiated the sale due to a decree obtained from the Banking Tribunal. The Banking Court mandated the sale of these properties through sealed bids, advertised in major newspapers, but initially, no offers were received. Eventually, Muhammad Ikhlq Memon made offers for the properties, which were negotiated and finalized to Rs.2,41,00,000. Although the payment was made within stipulated times, there was controversy over the withdrawal and redeposit of 90% of the amount due to delays, consented by both parties. The petitioner did not raise objections at any preliminary stages but preferred Special H.C.A. No. 94 of 2001 against an order dated 26.2.2001. The legal approaches available to the petitioner were detailed under Order XXI, Rule 89 and Order XXI, Rule 90, C.P.C, which if not complied with, affirm the crystallization of the plaintiff statutory right from the decree. The failure of the petitioner to comply with these procedures confirmed the sale and inhibited him from challenging the sale validity at subsequent stages. Subsequently, the petitioner contested that the properties were undervalued, but this claim was refuted upon examination of the statement under Order XXI, Rule 66, C.P.C. Criticism was also levied against the non-adherence to the C.P.C. for sales, which typically require public auction. However, it was clarified that the Banking Court had the authority to determine the method of sale, thus no objection could be made to the order of sale. The court rejected all claims by the petitioner,

including the unjustified objection to Memon withdrawal and redeposit of the sale amount.

The court emphasized that the newly raised pleas of the petitioner, during the hearing of the review petition, were unentertained as they were neither included in the review petition nor in the supporting certificate and were deemed afterthoughts. The Supreme Court found all arguments in the Review Petition to be unjustified and upheld the previous judgment allowing Muhammad Ikhlq Memon acquisition of the properties, underscoring the narrow and limited scope of a review petition, particularly when legal objections were not raised in the initial proceedings. The Court also acknowledged the undue benefit enjoyed by the petitioner during the prolonged proceedings, during which the respondent was denied possession despite payment. The Review petition was thus rejected. In the above judgment, review was rejected on the ground that new pleas advanced by the petitioner did not justify acceptance of review. The court also underscored the narrow and limited scope of a review petition, particularly when legal objections were not raised in the initial proceedings. The court therefore rightly held that emphasizing the narrow scope of review, especially concerning legal objections not previously raised, ensures the preservation of the judicial process's sanctity and prevents unwarranted reevaluation of concluded matters.

### **1.14. Malik Muhammad Mumtaz Qadri V. The State**

The Supreme Court of Pakistan dismissed a series of applications and review petitions within this case. The applicant sought to have their Criminal Review Petition heard by either a full court or a larger bench, asserting that the review petition required the adjudication of significant religious and legal questions, but the application failed to identify any such questions. The Court dismissed this application, noting that the law does not allow a party to claim or demand its case to be heard by a specific number or configuration of judges and that the existing bench was sufficiently qualified to review the case.

A subsequent application aiming to pause the hearing of the main review petition until the

decision on the previous application was dismissed as the original application had already been rejected. The Court found another application, aiming to submit additional documents and materials, as inadmissible. Those documents already on the record could not be resubmitted, and new documents, not claimed to be newly discovered or previously unavailable, were not allowed to be added to the record.

The review petitions questioned the legality of a previous judgment, asserting that the judgment did not consider specific arguments and materials presented about the Islamic concept of blasphemy and its punishment. The Court found these arguments to be misconceived, citing that the petitioner failed to prove through legally admissible evidence that the alleged blasphemy act, which is central to the case, had been committed, hence there was no requirement to delve into the interpretations of Islamic injunctions related to blasphemy.

The Court also responded to criticisms of the judgment passed by the Islamabad High Court, asserting that it had properly addressed them in its own judgment and that the Court had refrained from interpreting the injunctions of Islam related to blasphemy, hence any observation made by the High Court could be treated as obiter dicta.

The Court rejected attempts to reargue the merits of the main case under the guise of review petitions, clarifying that a review is not a rehearing of the main case and that the arguments raised had already been addressed in detail in the judgment under review, with no patent error identified on the face of the record.

Moreover, the Court dismissed a miscellaneous application seeking interim relief regarding the suspension of the execution of the death sentence, citing it had lost its relevance as the main review petitions had been dismissed. In conclusion, the attempts for review and the miscellaneous applications were found to be without merit and were subsequently dismissed by the Court.

In the above judgment, review was dismissed by the court holding that the grounds of review were limited and parties were not permitted under the constitution and law to reargue the case. There was no new evidence to warrant acceptance of review. The court also emphasized the limitation

of review which could be accepted in the event of emergence of new evidence or patent error identified on the face of the record. The court decision, rooted in established legal principles and constitutional boundaries for review, was a necessary step to uphold the sanctity and finality of judicial rulings, ensuring the integrity of the legal system. It maintained the necessary standards to prevent unwarranted review and reaffirmed the importance of adhering to clear grounds for review in the pursuit of justice.

#### **1.15. Government Of Punjab and Others V. Aamir Zahoor-Ul-Haq and Others**

The Supreme Court of Pakistan reexamined consolidated petitions challenging a previous judgment passed on 19-08-2015 relating to the legality of hunting permits of Houbara Bustard issued by the Ministry of Foreign Affairs, Government of Pakistan for the seasons 2013-2014 and 2014-2015. High Courts of Balochistan and Sindh struck down notifications and letters allowing the hunting of the Houbara Bustard as unlawful and inconsistent with provincial wildlife protection legislation, prompting appeals and the consolidated petitions.

The contention revolved around the nature of hunting permissions, legality, and ramifications on wildlife conservation laws, and international conventions like the Convention on Migratory Species of Wild Animals (CMS) and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). Both conventions are aimed at ensuring the conservation and sustainable use of migratory animals and their habitats and preventing further endangerment due to international trade.

Review petitioners posited that the perpetual ban on hunting the Houbara Bustard was not aligned with local wildlife laws nor mandated by international conventions, as the species is allowed to be hunted under a license. They argued the ban seems to overlook the laws permitting regulated hunting and that unless legislation is deemed unconstitutional and is annulled, it remains the law of the land. Furthermore, the learned Attorney General and other counsels highlighted that provincial governments were empowered to regulate and manage wildlife

hunting through laws, creating a balance between conservation and regulated hunting.

Some Provinces explicitly incorporated international treaties like CMS and CITES in their provincial laws, recognizing the importance of managing and conserving wildlife. However, a highlighted issue was the non-ratification of CMS by the Parliament, which makes it unenforceable unless integrated into domestic law. Moreover, counsels argued that the Court role is to interpret the law, not to legislate, and that each organ of the state should operate within its jurisdictional realm. Addressing these contentions, the Court observed the legality of hunting the Houbara Bustard under the provision of provincial laws and international conventions, acknowledging the discretionary power of provincial governments to categorize animals as 'protected' or 'game' species under their respective wildlife legislation, provided they fulfill the statutory objectives of wildlife conservation and management (Al-Jehad Trust through Habibul Wahab Al-Khairi, advocate and 9 others vs. Federation of Pakistan, 1999).

Acknowledging the significant discrepancy in the approach, and given the multifaceted legal, environmental, and constitutional dimensions, the Supreme Court decided to set aside the previous judgment and relist the Civil and Constitution Petitions for a fresh hearing, implying a deep delve into the regulatory measures, their adequacy, legality, and relevance in conserving threatened wildlife species, including the Houbara Bustard, while upholding the legislative intent of wildlife laws. The review was thus allowed.

However, Justice Qazi Faez Isa, a member of the bench dissented the majority judgment. In his dissenting note, Justice Qazi Faez Isa criticized the majority judgment for unconstitutionally enlarging the scope of the dispute to examine the broader objectives of wildlife legislation, involving all vulnerable species including the Houbara Bustard, when reviewing petitions. He also raised concerns about the majority decision to set aside the judgment under review for "hearing afresh," questioning its alignment with the Constitution and Supreme Court Rules, 1980 and stressing that it undermines the legal certainty and authority of the Supreme Court decisions (Mandi Hassan vs. Muhammad Arif, 2015). Further, he

pointed out the illegitimacy of the Code of Conduct for Hunting Houbara Bustard issued by the Deputy Chief of Protocol, Ministry of Foreign Affairs, and highlighted the majority misinterpretation regarding legislative directives in the judgment under review, clarifying that it did not direct legislation in vacuum but to resolve contradictions within provincial laws and their conflict with existing laws, maintaining a hunting ban unless compliance with international conventions was assured. Justice Isa concluded that there were no valid legal or factual grounds for reviewing the initial judgment.

In the above judgment, neither there was any fresh evidence placed on the record nor any mistake was ascribed in the original order. Yet the majority judgment accepted the review petition and the original order was set aside. This in actual amounted to rehearing of case on the same facts and grounds. This very fact was also highlighted by the dissenting judged. This deviation from established review principles risks setting a precedent for the re-litigation of settled matters, potentially undermining the principle of finality in judicial decisions.

## 2. Results and Findings

### 2.1. Grounds of Criticism on Review Jurisdiction of the Supreme Court of Pakistan.

The exercise of review by the Supreme court of Pakistan in criticized on following grounds.

#### 2.1.1. Inconsistency in Judgments

Inconsistency in judgments refers to situations where the Supreme Court of Pakistan delivers differing or contradictory decisions on similar legal issues or cases. This variance can occur due to a range of factors, including differing interpretations of laws, changes in the composition of the bench, evolving societal values influencing judicial perspectives, or even occasional oversights in considering previous precedents (Cheema & Gilani, 2015, for The Politics and Jurisprudence of the Chaudhry Court 2005-2013). Such inconsistencies create uncertainty in legal principles and make it challenging for lawyers, individuals, and lower courts to predict how the law is be interpreted or applied in similar situations (Abbas, 2015, for



Conflicting Judgments of High Courts: The Principle of Legal Certainty and the Ends of Justice).

The Supreme Court of Pakistan has faced criticism for its inconsistent decisions in rendered under its review jurisdiction. It is argued that the fluctuating stance of the court, ranging from a broad to a narrow interpretation of its review powers, creates ambiguity and undermines the principle of finality in the judicial process. For instance, there have been instances where the Court, under the guise of its review jurisdiction, has revisited and substantially altered its original judgments, leading to charges of overreach and deviations from established legal norms (Yasmeen, 1994). Conversely, in other cases, the Court has exhibited pronounced restraint, declining to intervene even when there were compelling grounds for reconsideration (Shamim, 2018, for A Review on Judicial Activism in Pakistan). This inconsistency, according to detractors, not only breeds unpredictability in the legal system but also raises questions about the Court adherence to its constitutional mandate, potentially compromising its integrity and eroding public trust in the institution (Bilal & Khokhar, 2022).

It is also argued that inconsistent rulings can undermine the credibility of the court, sow confusion among lower courts, and make the task of legal professionals challenging. Such inconsistencies can arise from various factors: evolving judicial philosophies, changing compositions of the bench, or the inherent complexity and nuance of the cases brought before the Court (Prosise & Smith, 2001). While it is understood that no institution is infallible and interpretations of law may evolve, critics argue that fundamental principles and rights should not be subject to fluctuating interpretations (Scalia, 2018). Inconsistencies can lead to perceptions of judicial unpredictability, which in turn can erode public trust in the institution. Moreover, when the highest court in the land delivers conflicting judgments, it can leave the legal community without clear precedents to rely upon, potentially stalling the administration of justice (Virk, 2012). While supporters argue that the Court must retain the flexibility to respond to changing societal norms and complex issues, critics emphasize the

need for consistency, clarity, and predictability in the court decisions. Furthermore, inconsistencies in landmark decisions, especially those involving constitutional interpretation or fundamental rights, can erode public trust and raise questions about the court impartiality and independence. While the dynamics of any Supreme Court involve a balance between stability and responsiveness to contemporary issues, consistent legal reasoning is crucial for the credibility and effectiveness of the institution.

The doctrine of "necessity" provides a salient example of this inconsistency (Virk, 2012). The doctrine of necessity, intrinsic to Pakistan judicial and political history, has witnessed varied interpretations by the Supreme Court, resulting in pronounced inconsistencies over the years. Originating as a mechanism to justify extra-constitutional measures, the doctrine was notably invoked to validate military coup in 1977. The court, in this instance, rationalized the military takeover as a "necessary" intervention to ensure state stability and welfare. This stance exemplified the court acquiescence to the doctrine, essentially providing a legal veneer to undemocratic power transitions. However, the turn of the century observed a marked deviation. The same doctrine, once used to endorse military interventions, was later employed to challenge them. The court reticence in 2007 to sanction emergency rule, contrasting sharply with its earlier positions, illuminated the inconsistencies in its application of the doctrine of necessity. These oscillating interpretations not only muddied the jurisprudential waters but also amplified concerns regarding the evolving role of the court in delicate democratic landscape of Pakistan (Idrees & Khan, 2018).

### **2.1.2. Delay in Adjudication of Cases**

The Supreme Court of Pakistan has faced mounting criticism for the inordinate delay in adjudicating review petitions, sparking concerns over the ramifications of such lags on the rule of law and public trust in the judicial system (Bilal & Khokhar, 2021). Prolonged adjudication processes not only create uncertainties for litigants, affecting their socio-economic well-being, but also erode the foundational principle that justice delayed is

justice denied. This sluggishness, often attributed to an overburdened judiciary inundated with a surging backlog of cases and a lack of modern infrastructure, can have substantial economic consequences, particularly when businesses or significant financial stakes are involved (Siddique, 2013). The extensive wait times for decisions have been a deterrent to potential investors, and the uncertain climate may disrupt established businesses, further straining the economic fabric. While the complexity of certain cases might demand extended deliberation, there is a growing consensus on the urgent need for systemic reforms—ranging from procedural overhauls and increased judicial manpower to embracing technological solutions—for a more streamlined and efficient adjudication process. The persistence of such delays, despite their recognized detrimental impact, underscores a broader demand for heightened transparency and accountability in the nation's highest judicial echelons (Chemin, 2007).

Inordinate delays in the adjudication of cases by the Supreme Court of Pakistan can place substantial emotional and psychological strain on litigants ("The Role of Civil Suits' Delay in the Criminal Tendencies among the Litigants: Evidence from Khyber Pakhtunkhwa, Pakistan", 2022). The uncertainty of legal outcomes, coupled with the protracted waiting periods, can exacerbate feelings of anxiety, helplessness, and frustration. This prolonged state of limbo, wherein litigants are unable to obtain closure or move forward, often aggravates mental stress and can impact their overall well-being and quality of life. The extended judicial processes, marked by intermittent hearings and indefinite timelines, can make litigants feel trapped in a never-ending cycle, diminishing their faith in the justice system and potentially affecting their personal and professional decisions (Saeed, 2019).

The protracted delays in the adjudication of cases by the Supreme Court of Pakistan have significantly contributed to an erosion of public faith in the country's justice system. Such extended timelines, often stretching beyond reasonable expectations, feed a perception of inefficiency, lack of prioritization, or even potential bias within the judiciary. For many litigants and observers,

the court's primary function is to deliver timely justice; when this expectation is unmet, the very essence of the judicial system comes into question. The consequential disillusionment is not just limited to individual litigants but can permeate society at large, as the Supreme Court, being the apex institution, is seen as the epitome of judicial integrity and efficiency. As stories of these inordinate delays become widespread, they can foster skepticism and cynicism, undermining not only the court's reputation but also the broader principle of rule of law, essential for the social contract between citizens and the state. In a context where prompt justice is equated with fairness, these extended delays can distort the public perception of justice being both accessible and equitable, potentially diminishing the court's authority and relevance in the eyes of the very populace it serves (Iraqi & Hyder, 2019).

The inordinate delays in the adjudication of review petitions by the Supreme Court of Pakistan carry significant economic implications that reverberate beyond the immediate parties involved. These protracted timelines can stymie economic activity by inducing uncertainties in sectors where legal clarity is paramount, such as property markets, investments, and contractual obligations. When businesses and investors cannot anticipate a prompt judicial resolution, they may become risk-averse, delaying investments, sidelining expansion plans, or even diverting capital to jurisdictions with more predictable legal frameworks (Akhtar, Dr. Qadir Khan, Dr. Adil Kasi, 2022). Furthermore, extended adjudication periods can lead to the stagnation of assets, preventing their optimal utilization or causing them to depreciate, which can directly impact the economy's liquidity and asset valuation. In the broader spectrum, these delays, when perceived as systemic inefficiencies, can tarnish the country's image as an investment destination, potentially leading to reduced foreign direct investments and inhibiting domestic economic growth. Collectively, the indirect economic costs triggered by these judicial delays can cumulatively impede Pakistan's overall economic momentum, restricting opportunities and limiting its potential for prosperity (Acemoglu et al., 2020).

### 2.1.3. Politicization

The Supreme Court of Pakistan, over the years, has been the subject of considerable criticism for its involvement in political cases (Ahmad, 2021). One primary contention has been that such involvement tends to blur the lines between constitutional mandate of the judiciary and political overreach. Courts worldwide, particularly apex ones, derive their legitimacy from being neutral interpreters of the law. When this neutrality is perceived as compromised, the very foundation of judicial credibility is shaken. Engaging in political cases sometimes gives the impression that the Court is more interested in power dynamics than in upholding the rule of law. Another point of contention is the potential encroachment on the domain of other branches of government. The separation of powers is a fundamental tenet of democracy, ensuring that no single branch wields unchecked power. By taking up political cases, especially those which may not have a clear legal underpinning, the Supreme Court runs the risk of overstepping its constitutional boundaries. Such actions can create tensions between the judiciary and other arms of the government, leading to institutional friction and undermining the effective functioning of the state (Ali, 2021).

Moreover, critics argue that when the Supreme Court delves into political matters, it diverts its attention and resources away from other pressing legal issues facing the country. Pakistan, like many nations, faces a backlog of cases, some of which pertain to fundamental rights and social justice. By allocating time and resources to political cases, the Court may inadvertently neglect its primary role of delivering timely justice to the common citizen. This diversion can exacerbate the public perception of judicial inefficiency and further erode trust in the institution (Shabbir, 2013).

Additionally, decisions on political cases often have wide-reaching implications, not just for the parties involved but for the nation political trajectory. These decisions especially if perceived as partisan, can lead to public unrest, skepticism about the Court impartiality, and could even be a flashpoint for larger political crises. The image of the judiciary as an institution above political fray

is vital for its functioning and public acceptance. When it is seen as taking sides in political battles, its reputation as an impartial arbiter gets compromised (Masood, 2018).

Lastly, there is the broader issue of the Court role in shaping the democratic fabric of the country. Historically, judiciaries have played a pivotal role in consolidating democratic norms and practices in many nations. By consistently immersing itself in political cases, the Supreme Court of Pakistan risks being seen not as a guardian of democracy but as a player within its arena. Such a perception can hinder the Court ability to act as a true check and balance in the democratic system, potentially weakening the very pillars of Pakistan democratic structure (Sara, Ansari & Jabeen, 2018).

### 2.1.4. Increase in backlog of cases

The huge pendency of cases in the Supreme Court of Pakistan has long been a significant point of contention, impacting the broader perceptions of the efficiency and effectiveness of the judiciary. One of the most palpable effects of this backlog is the delay in justice delivery (Masood, 2018). For litigants, the delay is not just about the protraction of a legal process but often translates into prolonged suffering, be it in the form of financial hardships, emotional stress, or simply the uncertainty of their legal standing. In many instances, litigants might spend a substantial part of their lives awaiting a resolution, leading to a pervasive feeling of being trapped in a legal limbo (Sara, Ansari & Jabeen, 2018).

Beyond the individual litigants, the backlog has broader societal implications. A delayed judiciary can indirectly foster an environment where potential wrongdoers might feel emboldened, believing that the legal consequences of their actions, if they ever come, can be far off in the future. This could erode the deterrent nature of the law, one of its core functions. In essence, when cases linger in the court system for years, it diminishes the rule of law immediacy and can lead to increased skepticism about the effectiveness of legal recourse (Munir, 2007).

From an economic perspective, the pendency has significant repercussions. Commercial disputes, property issues, and other economic matters that await judgment can hamstring businesses, deter



potential investors, and slow down economic activity. The uncertainty created by such delays can be particularly detrimental for foreign investors, who might perceive the backlog as indicative of an unreliable legal system. For the domestic business community, a slow legal process might mean that capital remains tied up in disputes rather than being invested productively elsewhere (Khan, Ullah & Tariq, 2021).

The massive backlog also places enormous strain on the judges and court staff. The sheer volume of cases means that even with the best of intentions, the judiciary might find it challenging to give each case the thorough consideration it deserves. This could potentially lead to rushed judgments or oversights. Moreover, it creates a scenario where the court is always playing catch-up, focusing on managing the deluge of cases rather than on proactive measures to improve judicial processes or on addressing broader jurisprudential issues (Hassan, Ahmed & Siddiqui, 2021).

Lastly, the public trust in the judiciary is paramount for a functioning democracy. The enormous pendency of cases can erode this trust. When citizens feel that their highest court, which should epitomize the pinnacle of justice delivery, is bogged down by delays, it can lead to a broader crisis of confidence in the institution. Over time, this can lead to skepticism and cynicism, with people questioning the very efficacy of approaching the courts for justice. Such a perception, in the long run, weakens the foundational pillars upon which the rule of law stands in a democratic setup (ALi Khan, 2020).

### 3. Conclusion:

This study examined the different review petitions, the Supreme Court of Pakistan decided between 2016 and 2023, showing a range of differences and inconsistencies in how decisions were made. The study showed a significant uncertainty about whether the same group of judges, or bench, would hear review petitions, leading to unpredictability in the court procedures. It was especially notable in cases where reviews were accepted without explaining the reasons behind the decisions, leaving the court's reasoning unclear. In another unique case, a review was changed into original proceedings under Article

184(3), showing the flexible and dynamic way, the court approaches interpretations and procedures. The Court faces significant criticism, citing inconsistency in decisions, delayed judgments, alleged political involvement, and a backlog of unresolved cases. These concerns weaken public trust and raise doubts about adherence to principles. This highlights a crucial need for clearer, more structured, and more detailed processes in reviewing cases to make the legal system more predictable and trustworthy. The findings of this study are significant, pointing out key areas that need reform and encouraging discussions on improving the balance of legal principles, judge's decisions, and procedural details in Pakistan's highest court. In order to reform exercise of "review" by the Supreme Court of Pakistan, following recommendations are made:

- i. The Supreme Court of Pakistan should outline clear criteria under which a judgment can be reviewed. While the fundamental grounds such as evident mistakes or miscarriage of justice are implicit, there should be an exhaustive list of circumstances under which the earlier judgment can be reviewed. This clarity will prevent misuse of the review provision and ensure it is invoked only in deserving cases.
- ii. Though limitation period of thirty days is prescribed under the Supreme Court Rules, there are number of instances of admission of petitions after the limitation period. Setting a concrete time frame for filing review petitions is essential. A predetermined period will bring predictability into the legal system, reduce undue delays, and promote the concept of finality in judgments. It's a delicate balance between ensuring justice and maintaining judicial efficiency, and a reasonable limitation period can cater to both.
- iii. The system must deter unnecessary review petitions, especially those filed to delay the enforcement of judgments. Stringent norms, and potentially sanctions, for misusing the review process can act as an effective deterrent. This would prioritize genuinely meritorious petitions and reduce the burden on the judicial system.
- iv. Given the distinctive nature of review petitions, the constitution may be amended in such manner that specialized bench, are constituted for hearing review petitions. Like

other jurisdictions, the constitution of a dedicated Special Bench within the Supreme Court can address and reconcile review petitions. This ensures that specialized, consistent benches assess past decisions and prevent undue fluctuations in judgment.

v. Engaging in collaboration with international judicial bodies can be instrumental for the Supreme Court of Pakistan in refining its review mechanism under Article 188 of the Constitution. By connecting with apex courts and legal institutions from other jurisdictions, the Supreme Court can gain insights into globally recognized best practices, innovative methods, and efficient processes. This exchange can involve joint seminars, workshops, and even bench-to-bench dialogues. Incorporating these international benchmarks can not only enhance the efficacy of the review mechanism but also elevate the stature and credibility of the Supreme Court of Pakistan on the global stage. Such collaborations underline the court's commitment to continuous improvement and its aim to align with global standards in judicial practices.

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