

JURISPRUDENCE OVER THE YEARS
SEMINAL JUDGEMENTS

MR. JUSTICE SYED MANSOOR ALI SHAH

SENIOR PUISNE JUDGE
SUPREME COURT OF PAKISTAN

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1. DIFFERENTLY ABLED PERSONS

- i. In the case of Malik Ubaidullah¹, the petitioner was denied appointment under a disability quota on the pretext of lack of seats calculated therein. He challenged the recruitment process, arguing that the 2% disability quota had been wrongly calculated on the basis of advertised posts rather than the total sanctioned strength.

Held: Emphasizing the inherent dignity of persons with disabilities, the Court asserted that the Constitution of Pakistan guarantees equal rights and freedoms for all individuals, regardless of their abilities. The Court criticized the use of derogatory terms such as "disabled" and "mentally retarded," directing that more respectful language, like "persons with disabilities," be adopted in official communications. Furthermore, the Court not only corrected the technical misapplication of the disability quota but also articulated a progressive jurisprudence of disability in Pakistan, moving from a charity-based approach to a rights-based model grounded in dignity, equality, and reasonable accommodation

Selected Passages:

“Our Constitution, as a whole, does not distinguish between a person with or without disabilities... Every person is entitled to all the rights and freedoms set forth therein, without distinction of any kind. It, therefore, applies equally to persons with disabilities, guaranteeing them full enjoyment of their fundamental rights without discrimination. The triangular construct of the right to life, dignity and equality under the Constitution provides a robust platform for mainstreaming persons with disabilities.

The 2% (and now 3%) Disability Quota is to be calculated on the basis of the total sanctioned posts of the establishment... not on the basis of advertised posts. Filling the Disability Quota on the basis of advertised posts is detrimental to the interest and welfare of the persons with disabilities; is against the letter of the law and offends their fundamental right to life and livelihood and their right to dignity

Words like ‘disabled,’ ‘physically handicapped’ and ‘mentally retarded’ deeply bruise and offend human dignity of persons with different abilities. The Federal and Provincial Governments are directed to discontinue the use of these words... and shift to ‘persons with disabilities’ or ‘persons with different abilities’

¹ PLD 2020 SC 599

2. WOMEN RIGHTS

- ii. In Atif Zareef, the victim was abducted while travelling and gang raped by several men. During cross examination of medical officer, virginity of victim was questioned to shake her credibility.

Held: The Supreme Court declared “two-finger test/virginity testing” unconstitutional, unscientific, and violative of dignity. It reframed rape jurisprudence to reject moral character as legally relevant, affirming that every woman - regardless of sexual history -is entitled to equal protection of the law.

Selected Passages:

“In a criminal trial relating to rape, it is the accused who is on trial and not the victim. The courts should also discontinue the use of painfully intrusive and inappropriate expressions, like "habituated to sex", "woman of easy virtue", "woman of loose moral character", and "non-virgin", for the alleged rape victims even if they find that the charge of rape is not proved against the accused. Such expressions are unconstitutional and illegal.

Dragging sexual history of the rape survivor into the case by making observations about her body including observations like ‘the vagina admits two fingers easily’ or ‘old ruptured hymen’ is an affront to the reputation and honour of the rape survivor and violates Article 4(2)(a) and Article 14 of the Constitution... reporting sexual history... discredits her independence, identity, autonomy and free choice thereby degrading her human worth.

A woman, whatever her sexual character or reputation may be, is entitled to equal protection of law. No one has the license to invade her person or violate her privacy on the ground of her alleged immoral character... The real fact-in-issue is whether or not the accused committed rape on her. If the victim had lost her virginity earlier, it does not give to anyone the right to rape her.”

3. CHILD JUSTICE

- iii. In the case *Muhammad Asif*³, the Supreme Court dealt with a custody dispute between divorced parents over two minor children aged 8 and 7. The father had challenged the custody of the children with the mother.

Held: The Court stressed that maintenance of custody determinations must prioritize the child's welfare, dignity, and agency, guided by Articles 3 and 12 of the UN Convention on the Rights of the Child (CRC) and constitutional guarantees under Articles 9, 14, 25, and 34. Importantly, the Court emphasized that children are rights-bearing individuals who must be heard in custody and guardianship cases. It directed all Family/Guardianship Courts to ensure the child's voice is heard and respected in every case while emphasizing the paramount importance of children's rights in custody disputes, highlighting the necessity of considering the best interests of the child as a primary consideration in all judicial actions rather than a dated, colonially construed doctrine of "welfare" under the Guardian and Wards Act, 1860. The Court further held that a mother's employment cannot be used against her in custody determinations.

Selected Passages:

"The participation of a child in legal proceedings is not a formality; it is fundamental to a justice system that respects the dignity and agency of the child. Listening to the voice of a child gives them a sense of worth, inclusion, and trust in the judicial process"

"Through a dynamic interpretation of 'welfare' using the doctrine of updating construction, courts can incorporate the core elements of the best interest's standard, most notably, the child's right to participation... The phrase 'welfare of the minor' can no longer be confined to its colonial-era meaning. Instead, it must be enriched by the modern, internationally recognized concept of the best interests of the child"

"The journey from the Act to the CRC represents a profound transformation... from a paternalistic, adult-driven notion of 'welfare' to a rights-based, participatory understanding of the 'best interests of the child.'... The CRC reframes the child not as a passive recipient of adult decisions, but as an active rights-holder whose voice must be heard and respected."

³ C.R.P. No. 458/2024

4. CLIMATE JUSTICE

- iv. In *Amer Isbaq*⁴, the Petitioners challenged Khyber Pakhtunkhwa's (KPK) Power Crushers Rules, 2020 (Rule 2(c) & Schedule-IV) as ultra vires, amid complained that stone-crushing plants in Suraj Galli (Khanpur, Haripur) were causing severe air pollution harming nearby residents. A local commission report confirmed extremely high levels of particulate matter (PM10/PM2.5), causing serious risks of asthma, cardiac disease, hypertension, and long-term ecological harm. A Power Crushers Commission formed by the Court also confirmed violations of National Environmental Quality Standards (NEQS) and recommended closure of non-compliant plants, relocation to crushing zones, and upgrading NEQS. The case was treated as one of public importance under Article 184(3) due to its direct nexus with fundamental rights.

Held: The Supreme Court ordered the shutdown of stone-crushing plants in KPK for violating environmental standards and contributing to severe air pollution. The Court framed the issue within the emerging doctrine of environmental constitutionalism, linking environmental protection to constitutional rights and Islamic environmental ethics. The Court emphasized that environmental constitutionalism is now firmly part of Pakistan's jurisprudence, rooted both in international law (UNGA recognition of right to environment, UNFCCC obligations) and Islamic environmentalism (principles of Tawhid, Khalifa, Meezan, Israaf, Adl). It noted that NEQS, last updated in 2010, were outdated, and directed federal and provincial governments to revise NEQS within three months and report compliance. The Court also highlighted that air pollution in Pakistan—among the world's worst—constitutes a public health emergency and ecological crisis, and judicial intervention was necessary to safeguard intergenerational equity. It underscored the need to entrench environmental concerns as supreme constitutional norms, especially in light of Pakistan's alarming air quality crisis.

Selected Passages:

“The triple-planetary crisis of climate change, biodiversity loss and widespread pollution must entrench environmental concerns as supreme constitutional norms... By acting as a method of constitutionally entrenching environmental law and protection at a more enduring or “higher” constitutional level, Environmental constitutionalism entails a transformative approach that relies on constitutions to provide for the architecture of environmental governance.

⁴ PLD 2024 SC 1134

...[t]he protection of environment also emerges from the right to dignity which is inviolable and such protection is an inalienable right and perhaps more fundamental than the other rights. It is in this context that right to life and dignity when read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine

The Quran emphasizes stewardship (Khalifa), balance (Meezan), avoiding waste (Israaf), and justice (Adl)... Climate change disproportionately affects the poor and vulnerable, making it a matter of justice. The principle of Hima (protected areas) demonstrates Islam's recognition of community-based conservation of natural resources

- v. In [*Asgbar Leghari*](#)⁵, a farmer petitioned the Lahore High Court by suing the national government for its failure to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). The petitioner argued that the government should pursue climate mitigation or adaptation efforts, and that the government's failure to meet its climate change adaptation targets had resulted in immediate impacts on Pakistan's water, food, and energy security. Such impacts offended his fundamental right to life.

Held: The Lahore High Court emphasized that climate change leads to increased frequency and intensity of extreme weather events, which in turn exacerbate air quality issues and public health concerns. The Court highlighted the need for effective implementation of the National Climate Change Policy and the Framework for Implementation of Climate Change Policy, which aim to address various environmental challenges, including air pollution. It noted that the government's inaction in implementing these policies directly affects the fundamental rights of citizens, particularly vulnerable populations who are disproportionately impacted by environmental degradation.

Selected Passages:

"From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we have moved on to Climate Justice. Our environmental jurisprudence from Shehla Zia case to Imrana Tivana case (referred to above) has weaved our constitutional values and fundamental rights with the international environmental principles.

⁵ PLD 2018 Lahore 364

Climate Justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the world's resources.

This brings us to Water Justice, a sub-concept of Climate Justice. Water justice refers to the access of individuals to clean water. More specifically, the access of individuals to clean water for survival (drinking, fishing, etc.) and recreational purposes as a human right. 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. Right to life and Right to human dignity under articles 9 and 14 of the Constitution protect and realise human rights in general, and the human right to water and sanitation in particular. In adjudicating water and water-related cases, we have to be mindful of the essential and inseparable connection of water with the environment, land and other ecosystems.”

5. MINORITIES

- i. In *Tabir Naqash*⁶, Petitioners, members of the Ahmadi community, were booked under Sections 298-B and 298-C PPC for styling their place of worship as a mosque, displaying *sha'air-e-Islam* (including the Kalima), and keeping copies of the Holy Qur'an inside. Initially, charges were framed under Sections 298-B and 298-C only. Later, on application of the complainant, the trial court added Sections 295-B and 295-C PPC (defiling the Qur'an; blasphemy against the Prophet Muhammad, peace be upon him). This was challenged.

Held: The Supreme Court while deleting the additional charges against the petitioners reaffirmed the fundamental right to dignity and freedom of religion as enshrined in Article 14 read with Article 20 of the Constitution of Pakistan, emphasizing that every individual, including non-Muslim minorities, possesses inherent equal worth and should be free to profess and practice their religion without obstruction. The Court highlighted that depriving a non-Muslim of their religious beliefs or obstructing their worship is not only against democratic principles but also deeply disfigures human dignity. It reaffirmed that while Ahmadis are declared non-Muslims under Article 260(3), they remain citizens entitled to all fundamental rights, including dignity (Art. 14), freedom of religion (Art. 20), and equality before law (Art. 25). Obstructing their private worship violates constitutional values of tolerance and minority protection. The Court thus distinguished between public propagation (restricted under 298-B/C) and private practice (protected under Art. 20),

Selected Passages:

“To deprive a non-Muslim (minority) from holding his religious beliefs, to obstruct him from professing and practicing his religion within the four walls of his place of worship is against the grain of our democratic Constitution and repugnant to the spirit and character of our Islamic Republic. It also deeply bruises and disfigures human dignity and the right to privacy of a non-Muslim minority

...[t]he constitutional values enshrined in the preamble to our Constitution which require us to be tolerant as a people, believe in freedom, equality and social justice, and respect our minorities and make adequate provisions for them to freely profess and practice their religions and develop their cultures and to safeguard their legitimate interests. All citizens of Pakistan, whether Muslim or non-Muslim, are guaranteed fundamental rights under the Constitution including equality of status,

⁶ PLD 2022 SC 385

freedom of thought, expression, belief, faith, worship subject to law and public morality.

Article 14 of the Constitution guarantees right to dignity to every person. Human dignity encapsulates the notion that every person has inherent equal worth... no one can be dismissed, ignored, mistreated or abused as if their humanity means nothing

Article 260(3)... though declares the Ahmadis/Qadianis as non-Muslim, it neither disowns them as citizens of Pakistan nor deprives them of their entitlement to the fundamental rights guaranteed under the Constitution”

- vi. In [*Ameen*](#)⁷, a Christian petitioner challenged the 1981 repeal of Section 7 of the Divorce Act, 1869, arguing that it unconstitutionally restricted Pakistani Christians to only adultery-based divorce, contrary to global Christian jurisdictions and fundamental/minority rights.

Held: The Lahore High Court declared the 1981 repeal unconstitutional and restored Section 7, thereby making UK Matrimonial Causes Act, 1973 principles (including irretrievable breakdown/no-fault divorce) available to Christians in Pakistan alongside Section 10.

Selected Passages;

“Right to family life is a daughter-right of human dignity. It has been said of this daughter-right that it “is one of the fundamentals of human existence... The impugned amendment limits the choice of a person to divorce and forces a person to lead an unhappy and an oppressive life unless he or she can prove the charge of adultery against the spouse. This limitation perpetuates a dead marriage and impairs the quality of life and curtails the liberty of a person by forcing him to live through an unhappy family life against his free choice.”

⁷ PLD 2017 Lah 610

6. TECHNOLOGY & ACCESS TO JUSTICE

- ii. In *Isbfaq Ahmed*⁸, the dispute of landlord and tenant was pending adjudication for a considerable length of time and hence the Supreme Court observed a considerable delay in these proceedings and discussed scope of AI in context of speedy justice.

Held: The Supreme Court underscored the urgent need for court and case management reforms in Pakistan’s overburdened judiciary and explored the potential of Artificial Intelligence (AI) to enhance efficiency—without undermining judicial discretion, empathy, and constitutional guarantees of fair trial. It also emphasized AI’s limitations in areas like ADR, which require irreplaceable human qualities.

Selected Passages:

“In Pakistan’s overburdened courts, the integration of Artificial Intelligence (‘AI’) presents a promising path to operational reform... AI must serve as a facilitative instrument to expand access to timely justice, provided its adoption remains grounded in principled constitutional limits

It must be unequivocally affirmed that AI is not, and must never become, a substitute for judicial decision-making... Adjudication is a constitutional function rooted in legal reasoning, institutional independence, and human empathy—qualities no automated system can replicate.

Human dignity and compassion must remain central... The rule of law must always prevail over the rule of data, with human judges retaining ultimate authority to interpret evolving legal and moral standards

⁸ C.P.L.A. No. 1010-L/2022

7. RIGHT TO PRIVACY

- iii. In *Justice Qazi Faez Isa*⁹, the case arose when a Presidential Reference was filed against Justice Qazi Faez Isa of the Supreme Court, alleging that he had failed to disclose foreign properties owned by his wife and children in his wealth statements. The Assets Recovery Unit sent a summary to the Prime Minister containing the property and tax records of Justice Isa. These were challenged to have been collected through illegal state surveillance.

Held: Justice Mansoor Ali Shah in his additional note emphasized that unlawful state surveillance violates constitutional rights to privacy, dignity, and personal liberty, framing privacy as essential to human freedom. He warned that unchecked intelligence agencies pose a grave threat to democracy, stressing the need for strict legal compliance to protect citizens and uphold the rule of law.

Selected Passages:

“Privacy therefore affirms the agency and autonomy of the individual and the right of every person to have the freedom and liberty to live a life of dignity. Privacy requires that all information about a person is fundamentally his own, only for him to communicate or retain for himself. The concept of private life includes the right to personal autonomy, personal development and the right to establish and develop relationships with other human beings and with the outside world.

Privacy affirms the agency and autonomy of the individual... ‘Arguing that you don’t care about privacy because you have nothing to hide is no different than saying you don’t care about free speech because you have nothing to say.’ This is a cherished constitutional value

Covert surveillance and interception are offensively intrusive investigative tools... Any unconstitutional intrusion and unlawful collection of reels of unauthorized private data can make any agency a Frankenstein – indestructible and uncontrollable... tricks of a totalitarian State and not the ways of an elected Government of a constitutional democracy

⁹ PLD 2021 SC 1

8. HARRASMENT CASES

- iv. In *Mubammad Din*¹⁰, A lady doctor, lodged a harassment complaint against her driver for persistent misconduct, abusive behavior, spreading defamatory rumors, and unlawfully video-recording her during duty. The Complaint was sent under the *Protection against Harassment of Women at the Workplace Act, 2010*. The Ombudsperson, Punjab found harassment proved and imposed compulsory retirement as major penalty. This was challenged up to the Supreme Court.

Held: The Court stressed that harassment is not about sex but about power, control, and systemic gender inequality—a phenomenon rooted in patriarchal norms and social reinforcement, where even subordinates may harass seniors by exploiting gendered privilege. The Court underscored that workplace harassment violates Articles 9, 14, 18, 25, and 34 of the Constitution, denying women equal participation and dignity. It linked harassment to patriarchal structures that resist women’s leadership, advancing a structural analysis of workplace abuse. It situated Pakistan’s obligations within CEDAW, ICCPR, ICESCR, UDHR, and ILO Convention No. 190, calling for ratification of the latter.

Selected Passages:

“Sexual harassment is not about sex. It is about power... Even a junior employee, through informal power structures, social reinforcement, and gendered privilege, can create a hostile work environment for a senior. Harassment serves as a tool to police and punish women who disrupt male-dominated spaces

The right to a safe, harassment-free workplace for all genders—including men, women, and transgender persons—is rooted in the constitutional guarantees of life, liberty, dignity, and equality. A safe workplace is intrinsically linked to gender justice.

Pakistan’s commitment requires stronger alignment with international frameworks... Ratifying the ILO Violence and Harassment Convention would reinforce Pakistan’s constitutional guarantees of dignity, equality, and nondiscrimination.”

¹⁰ PLD 2025 SC 354

9. ELECTORAL MATTERS

- v. In *Tabir Sadiq*¹¹, the petitioner’s nomination papers for NA-49 (Attock-I) were rejected by the Returning Officer on the ground that he was a “proclaimed offender” in a criminal case. The Appellate Tribunal accepted his papers, but the Lahore High Court reversed and rejected them again. The petitioner approached the Supreme Court

Held: The Supreme Court set aside the High Court’s decision and accepted the petitioner’s nomination papers. It held that the right to vote and contest elections is fundamental under Articles 17(2) and 19 of the Constitution, forming the core of representative democracy. The Court clarified that a person cannot be treated as a proclaimed offender without proper proceedings and proclamation under Section 87 Cr.P.C.. It emphasized that electoral laws must be interpreted in favor of enfranchisement rather than disenfranchisement, ensuring maximum voter choice. The Court reiterated that qualifications and disqualifications must be clearly spelled out in law, not inferred. The Court reaffirmed that the right to vote and contest elections under Article 17(2) is central to political justice and democratic legitimacy, declaring any restriction on these rights as a threat to representative governance

Selected Passages:

“Elections stand as a manifestation of the collective will of a nation, reflecting the diverse voices and choices of its citizens. In this democratic process, individuals exercise their right to vote, contributing to the formation of a representative government. The rights involved are not only of those participating in the elections but also of the public. The courts, in their role as guardians of democracy and fundamental rights, should approach electoral matters with circumspection, ensuring that their interventions uphold the democratic principles upon which the nation thrives and the fundamental rights of citizens to contest elections and vote for the candidates of their choice.

The right to vote freely for the candidate of one’s choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government... Electoral laws must be interpreted in favour of enfranchisement

¹¹ 2024 SCMR 775

rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership

'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'

- vi. In ***Sunni Ittehad Council***, the question before the court was that whether a registered political party — the Sunni Ittehad Council (SIC) — could claim entitlement to reserved seats (for women and non-Muslims) in the National Assembly and Provincial Assemblies despite not having contested general seats in the election, but after independent candidates joined the party post-election. The controversy had arisen out of the general elections 2024 and the denial of proportionate representation-based seats to a major political party of Pakistan on account of the Election Commission of Pakistan holding its members as independents

Held: The Supreme Court set aside the orders of the High Court and that of the Election Commission of Pakistan for refusing to give the SIC the reserved seats. The Court looked at a holistic view of the electoral provisions of the Constitution and outlined the crucial importance of the right to vote linked to democratic governance. The Court laid stress to “doing complete justice” and to ensure that the proper democratic rights of the citizenry are reflected through the electoral and follow up processes in the National Assembly. Laying down an expansive jurisprudence of democratic governance, of the role of an electoral oversight body in a constitutional democracy and the right of proper representation in the National Assembly, the court held that the Pakistan Tehreek-e-Insaf was a political party and was entitled – rather than the SIC – for its share of proportional reserved seats.

Suggested Passages:

“At the core of our democratic Constitution lies the will of the people of Pakistan, with free and fair elections being fundamental to democracy. The principle that ‘the most important political office is that of the private citizens’ underscores the crucial role of the people, whose right to vote is the lifeblood of democratic governance. Democracy thrives on the belief that authority inherently resides in the people, a principle enshrined in the Constitution of every democratic nation, including ours. Our Constitution is not merely a governmental blueprint but a covenant affirming the supreme role of the people in shaping their destiny.

Election authorities, as “electoral management bodies”, are the “guarantor institutions” of democratic processes and are critical to democratic governance, akin to a “fourth branch of government”. Their constitutional role is to ensure the conduct of elections by providing an equal and fair competitive field for all political entities and protect citizens’ rights to vote. As an impartial steward of the electoral process, the Election Commission of Pakistan is not only an administrative body but also a guardian of electoral integrity and democracy’s legitimacy. When election authorities engage in actions that undermine these principles, such as unlawfully denying the recognition of a major political party and treating its nominated candidates as independents, they not only compromise the rights of these candidates but also significantly infringe upon the rights of the electorate and corrode their own institutional legitimacy

The role of the Supreme Court of Pakistan in overseeing electoral integrity is crucial for sustaining public trust in the democratic process, and the Court’s power to do “complete justice” is a critical tool in the constitutional arsenal of this Court, enabling it to prevent democratic backsliding, and protect democracy effectively with a focus on the electorate’s rights. Denying electoral justice and compromising electoral integrity would undermine the very legitimacy of democracy.

Constitutional fidelity as a concept embodies that to be faithful to the Constitution is to interpret its words and to apply its principles in ways that preserve the Constitution’s meaning and democratic legitimacy over time. Constitutional fidelity and legitimacy both are framed in a means-end relationship; legitimacy as the end and constitutional fidelity as a means to that end”

- vii. In [*Arsbad*](#)¹², the residents of union councils and wards had challenged the delimitation of constituencies before the Lahore High Court alleging that the drawing up of constituencies was an exercise in gerrymandering.

Held: The court went back to the fundamentals and looked at how an election is held along with the inter-relation of the election, delimitation and the role of the Election Commission in Local Government Elections as laid down in our Constitution. This was considered by the court in the larger context of representative democracy, political rights, right to participate in the establishment of government, right to vote, political justice, electoral equality and free and fair elections. Touching all these issues and authoritatively laying down the law related to delimitation, the Lahore High Court ruled that provisions of the Punjab Local Governments Act, 2013 was inconsistent with

¹² PLD 2014 Lahore 221

the Constitution of Pakistan, 1973 for limiting the role of the ECP in delimitation matters.

Selected Passages:

“The process of delimitation has to ensure that the voting equality is not disturbed and the vote of one citizen must in no manner be less than the vote of another citizen. Other than population parity, geographical compactness, the homogeneity of interest of the community need to be factored in Setting the parameters of delimitation.

The process of delimitation has to ensure that the voting equality is not disturbed and the vote of one citizen must in no manner be less than the vote of another citizen. Other than population parity, geographical compactness, the homogeneity of interest of the community need to be factored in Setting the parameters of delimitation

The government in power according to the allegations levelled before us have tried to exploit the electoral independence and the right to vote of the people by gerrymandering and re-mapping of the Union Councils and Municipal Committees into Wards, in a manner that best suited their political interests. The veracity of these allegations need not detain us. Our role is to ensure that the constitutional mandate is obeyed and the electoral system envisaged by the Constitution is enforced. Professor Tribe puts in a word of caution: "Democracy," he writes, "envision rule by successive temporary majorities. The capacity to displace incumbents in favour of the representatives of a recently coalesced majority is, therefore, an essential attribute of the election system in a democratic republic. Consequently, both citizens and courts should be chary of efforts by government officials to control the very electoral system which is the primary check on their power. Few prospects are so antithetical to the notion of rule by the people as that of a temporary majority entrenching itself by cleverly manipulating the system through which the voters, in theory, can register their dissatisfaction by choosing new leadership."

10. MEDIATION

- viii. In Mughals¹³, a construction company, entered into a project with EOBI and its subsidiary PRIMACO, leading to disputes over extension of time and encashment of guarantees. The contractor invoked the Arbitration Act, 1940, and a two-member arbitral tribunal passed a unanimous award in its favor, which the Civil Court made the Rule of Court. The Lahore High Court set aside the award, rendering it a nullity. On appeal, the Supreme Court suggested mediation.

Held: The Supreme Court referred both appeals to ADR while encouraging a pro-mediation approach across courts. The Court recognized mediation as a fundamental right, especially in an overburdened justice system, emphasizing its potential to democratize access to justice and restore party autonomy in conflict resolution. The Court linked mediation to constitutional guarantees of access to justice (Art. 9, 10A, 37(d)), procedural fairness, and human dignity, framing it as central to a modern, humane justice system. It recommended that Pakistan ratify the Singapore Convention on Mediation, aligning domestic practice with international norms, and directed the Attorney General to pursue this with relevant stakeholders.

Selected Passages:

“Mediation is not merely an alternative to litigation but a complementary and necessary component of the justice system... It prioritizes restoring relationships, preserving dignity, and finding mutually beneficial solutions over the zero-sum outcomes of litigation.

Mediation must be increasingly seen as a right of the parties within the litigation process. Access to justice includes the right to have disputes resolved in a timely and efficient manner

The courts should not only encourage mediating more and litigating less but also exhibit a pro-mediation bias which connotes a predisposition within the legal system for resolution of disputes through mediation rather than through litigation.

It is significant to underline that there are around 2.22 million cases pending before all the courts in Pakistan... This voluminous and chronic pendency necessitates exploration of new and out-of-box dispute resolution solutions. ADR is therefore the way ahead

¹³ PLD 2025 SC 1),

To promote efficiency and align with the principle that in the future, the traditional trial will be the exception rather than the rule, it is recommended that Pakistan becomes a signatory to the Singapore Convention on Mediation.”