

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE MUNIB AKHTAR  
MR. JUSTICE YAHYA AFRIDI  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI  
MRS. JUSTICE AYESHA A. MALIK

**Constitution Petition Nos.24, 25, 26, 27 & 28 and  
30 & 35 of 2023**

UNDER ARTICLE 184(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISTAN, 1973

**And**

**CM Appeal Nos.80, 108, 117, 124, 130, 131 & 145  
of 2023**

**And**

**CMA Nos.9040 to 9048 of 23**

Jawwad S.Khawaja v. Federation of  
Pakistan, etc

*In Const.P.24/2023*

Aitzaz Ahsan v. Federation of Pakistan  
thr. Secretary, M/O. Law and Justice and  
others

*In Const.P.25/2023*

Karamat Ali and others v. Federation of  
Pakistan through the Secretary, Ministry  
of Law and Justice, Islamabad and others

*In Const.P.26/2023*

Zaman Khan Vardag v. The Federation of  
Pakistan, etc

*In Const.P.27/2023*

Junaid Razzaq v. Federation of Pakistan  
through, Secretary, Ministry of Law and  
Justice and others

*In Const.P.28/2023*

Supreme Court Bar Association of  
Pakistan, through its Secretary,  
Islamabad v. Federation of Pakistan  
through Secretary Ministry of Law and  
Justice and others

*In Const.P.30/2023*

Supreme Court Bar Association of  
Pakistan, through its Secretary,  
Islamabad and others v. Federation of  
Pakistan through Secretary, Ministry of  
Law and Justice Islamabad and others

*In Const.P.35/2023*

Imran Ahmed Khan Niazi v. Federation of  
Pakistan through Ministry of Defence  
through its Secretary and others

*In C.M.Appeal.80/2023  
IN Const.P.NIL/2023*

Karamat Ali and others v. Federation of Pakistan through the Secretary, Ministry of Law and Justice, Islamabad and other

*In C.M.Appeal.108/2023  
IN C.M.A.NIL/2023  
IN Const.P.26/2023*

Hafeezullah Khan Niazi v. Federation of Pakistan through Secretary Ministry of Law and Justice and others

*In C.M.Appeal.117/2023  
IN Const.P.NIL/2023*

Lt. Col. (R) Inam-ul-Rahiem v. Registrar, Supreme Court of Pakistan, Islamabad

*In C.M.Appeal.124/2023  
IN Const.P.NIL/2023*

Naeemuddin Qureshi and another v. Federation of Pakistan through Secretary Ministry of Law and Justice and others

*In C.M.Appeal.130/2023  
IN Const.P.NIL/2023*

Imran Ahmed Khan Niazi v. Federation of Pakistan through Ministry of Defence through its Secretary and others

*In C.M.Appeal.131/2023  
IN C.M.A.NIL/2023  
IN C.M.Appeal.80/2023  
IN Const.P.NIL/2023*

For Petitioners/Appellant(s) : Ch. Aitzaz Ahsan, Sr. ASC  
Khawaja Ahmad Hussain, ASC  
Sardar Muhammad Latif Khan Khosa, Sr. ASC  
Sardar Shahbaz Ali Khosa, ASC  
Mr. Muhammad Vawda, ASC  
  
Zaman Khan Vardag (In person)  
(Via video link, Lahore)  
  
Mr. Salman Akram Raja, ASC  
Syed Rifaqat Hussain Shah, AOR  
  
Ms. Bushra Qamar, ASC  
Mr. Muqtedir Akhtar Shabbir,  
(Members, Supreme Court Bar Association)  
  
Mr. Muhammad Shoaib Shaheen, ASC  
Mr. Ajmal Ghaffar Toor, ASC  
  
Mr. M. Abid Hussain Saqi, ASC  
Ch. Akhtar Ali, AOR  
  
Mr. Salahuddin Ahmad, ASC  
(Via video link, Karachi)  
  
Mr. Ajmal Ghaffar Toor, ASC  
  
Hafiz Abdur Rehman Ansari (In person)  
(Via video link, Lahore)  
  
Mr. Sajid Ilyas Bhatti, ASC  
Mr. Talat Mehmood Zaidi, ASC  
  
For the Federation : Mr. Mansoor Usman Awan,  
Attorney General for Pakistan  
Ch. Amer Rehman,

Addl. Attorney General  
*Assisted by Ibrahim Khan,*  
Associate

For Govt. of Punjab : Mr. Sana Ullah Zahid, Addl. AG, Pb.

For Govt. of KP : Mr. Amir Javed, Advocate General, KP  
*(Via video link, Peshawar)*

Mr. Sultan Mazhar Sher Khan,  
Addl. AG, KP

For Govt. of Balochistan : Mr. Muhammad Ayaz Khan Swati,  
Addl. AG, Balochistan

For Respondent No.9 in CP#25/23: Mr. Uzair Karamat Bhandari, ASC  
*(Via video link, Lahore)*

For Respondent No.10 in CP#25/2023: Mr. Shah Khawar, ASC

For Defence Minister : Mr. Irfan Qadir, ASC  
*(Via video link, Lahore)*

Date of Hearing : 23.10.2023

### **ORDER**

**CMA Nos.9040 to 9048 of 2023.** These applications have been moved on behalf of various individuals for impleadment in the listed petitions. They are not supported by appropriate affidavits as per requirement of the Supreme Court Rules, 1980. The same are accordingly dismissed.

2. **CM Appeal Nos.80, 108, 117, 124, 130, 131 & 145 of 2023.** It appears that the office had raised objections regarding the maintainability of petitions filed by the Appellants. In terms of the Supreme Court Rules, 1980 such appeals are to be assigned to Honourable Judges of this Court in Chambers for appropriate orders. Office has wrongly fixed these CM Appeals directly before the Court. The same

are accordingly returned to the office to do the needful in terms of the applicable Rules.

3. **Constitution Petitions No.24 to 28, 30 & 35 of 2023**. The learned Attorney General for Pakistan has been heard at considerable length. He has concluded his submissions. We have inquired from Mr. Shah Khawar, learned ASC, if he wishes to make any submissions. He submits that the Respondent that he was representing had been impleaded in his personal capacity and is no longer the Federal Interior Minister. As such, he does not wish to make any submissions.

4. The same stance has been taken by Mr. Irfan Qadir, learned ASC, who appeared for the then Defence Minister who had also been impleaded in his personal capacity.

5. Since the arguments have been heard, the hearing of these matters is concluded. The listed petitions are decided in terms of a short order to be announced today.

**Judge**

**Judge**

**Judge**

**Judge**

**Judge**

## **ORDER OF THE COURT**

For detailed reasons to be recorded later, and subject to such amplification and/or explanation therein as is considered appropriate, these petitions are decided in the following terms:

- i. It is hereby declared by Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi and Mrs. Justice Ayesha A. Malik that clause (d) of subsection (1) of Section 2 of the Pakistan Army Act, 1952 (in both of its sub clauses (i) & (ii)) and subsection (4) of Section 59 of the said Act are ultra vires the Constitution and of no legal effect.
- ii. Without prejudice to the generality of the foregoing the trials of civilians and accused persons, being around 103 persons who were identified in the list provided to the Court by the learned Attorney General for Pakistan by way of CMA No.5327 of 2023 in Constitution Petition No.24 of 2023 and all other persons who are now or may at any time be similarly placed in relation to the events arising from and out of 9<sup>th</sup> and 10<sup>th</sup> May, 2023 shall be tried by Criminal Courts of competent jurisdiction established under the ordinary and / or special law of the land in relation to such offences of which they may stand accused.
- iii. It is further declared that any action or proceedings under the Army Act in respect of the aforesaid persons or any other persons so similarly placed (including but not limited

to trial by Court Martial) are and would be of no legal effect.

- iv. Mr. Justice Yahya Afridi reserves judgment as to para (i) above, but joins the other members of the Bench as regards paras (ii) and (iii).

**Judge**

**Judge**

**Judge**

**Judge**

**Judge**

**ISLAMABAD, THE**  
23<sup>rd</sup> October, 2023  
NOT APPROVED FOR REPORTING