

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C. P. Nos. D-5484 & 5323 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Fresh Case

1. For orders on CMA No.24137/2024 (Exemption).
2. For orders on CMA No.24138/2024 (For formation of FB).
3. For hearing of main case.

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Dated 31.10.2024

Mr. Ali Tahir, Advocate for the petitioners in C. P. No. D-5484 of 2024 and Mr. Ebrahim Saifuddin, Advocate for the petitioner in C. P. No. D-5323 of 2024 a/w M/s. Mohammad Hashim Sairani, S.M. Ali Jafri and Abdul Ahad Khan Advocates.

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These two petitions brought us a challenge to the 26th Amendment, to the Constitution, resurrecting some of the Articles therein, to the tune of legislature's wisdom. We are cognizant of the fact that in terms of the amendment such questions are to be brought before the Constitutional Benches, however, the challenged amendments suggest that the application of Article 202A that enabled the formation of Constitutional Benches for the provinces could only be kicked in once the province / provinces have passed such resolution for onward carving out Constitutional Benches. In the absence of such resolution and Constitutional Benches, we are exercising our jurisdiction per roster assigned to different Benches.

The petitions while challenging 26th Amendment brought us a question and in such attempt the counsels have argued that this amendment in particular the Articles which are related to the dispensation of justice has shaken such structure. It has been amended in such a way that a litigant such as Federation / Province is seen to pick and choose Benches for their own cause and for their own litigation. This has ignored a universal principle that justice should not only be done but seen to have been done. It is argued by the learned counsels that it has been shown to the public that the Parliamentarians have conquered the Judiciary by empowering their decisive strength in the judicial process and one of such process is the formation of the Judicial Commission. It is

argued and claimed that the executives have stamped down the Court by introducing such amendment and resurrecting such Article to their desire and wisdom. It is argued that a litigant cannot be allowed to evaluate the Judges' performance so as to "bully" and "threaten" future Benches and thus judiciary is rendered subservient.

We are also cognizant of the fact that Article 239(5) & (6) limits the jurisdiction of this Court, however, it has been explained that such limit could not overshadow or eclipse the fundamental rights guaranteed under the Constitution. It is argued that individuals may or may not matter but the matter of concern is the executives' invasion into the regime of independent judiciary.¹ It is claimed that it is one such fundamental right that is the independence of judiciary which is compromised and which is otherwise ensured later also in terms of the introduction of Article 10A of the Constitution of the Islamic Republic of Pakistan but certainly not limited to it alone. The preamble also guarantees the safeguard of the fundamental rights. It is further argued that the District Bar Association Rawalpindi case² provided a mechanism as to how the fundamental rights could be secured while remaining within the frame of Article 239(5) & (6) of the Constitution.

Points raised require consideration. Since some of the Articles through a recent amendment via 26th Amendment of the Constitution have been challenged, therefore, it requires a notice to the Attorney General for Pakistan as well in terms of Order XXVII-A CPC. Order accordingly. Also issue notice to all the respondents as well and to the office of Advocate General Sindh for a date in about two weeks' time.

CHIEF JUSTICE

JUDGE

Asif

¹ PLD 1996 S.C. 324 (Al-Jehad Trust & others vs. Federation of Pakistan & others)

² PLD 2015 S.C. 401 (District Bar Association Rawalpindi vs. Federation of Pakistan)