

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE.
JUDICIAL DEPARTMENT

W.P. No. 50969 of 2025

Fahad Akram Bhatti and Muhammad Imran Fazal Gill

Versus

Federation of Pakistan and 3 others

JUDGEMENT

Date of Hearing:	22.09.2025, 23.09.2025, 24.09.2025, 25.09.2025, 29.02.2025, 30.09.2025, 02.10.2025
Petitioners by:	M/s. Ch. Ishtiaq Ahmad Khan, Hassan Abdullah Niazi, Asad Manzoor Butt, Fahad Akram Bhatti, Muhammad Ishnaq, Ch. Amir Ahmed Rasool, Asif Siddique Chaudhary, Rana Ashfaq Ahmad Shafi, Mian Sardar Ali Gehlan, Adnan Ahmad Ch., Ch. Umar Latif, Ch. Hussain Arshad, Munir Ahmad Malik, Wajahat Ali, Mian Affan Asad Taj, Rana Ishfaq, Ahmed Shafi, Mujahid Iqbal Dasti, Zarish Fatima, Muqadas Tahira, Rao Abdull Jabbar Khan, Syed Khaliq ur Rehman Ansari & Mazhar Hussain Tahir, Advocates
Respondent No.1/ Federation of Pakistan by:	Mirza Nasar Ahmad, Additional Attorney General assisted by Mr. Asad Ali Bajwa, Deputy Attorney General & Mr. Shakeel Ahmad Pasha, Assistant Attorney General
Respondent No.2/ Province of Punjab by:	M/s. Muhammad Osman Khan & Imran Khan, Assistant Advocate Generals, Punjab
Respondent No.3/ Pakistan Bar Council by:	M/s. Muhammad Ahsan Bhoon, Tahir Nasar Ullah Warraich, Advocates
Respondent No.4/ Punjab Bar Council by:	Mr. Javed Imran Ranjha, Advocate

KHALID ISHAQ, J. This judgment shall decide the captioned constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan (the “**Constitution**”), as well as the following petitions:

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| i. W.P. No. 50975 of 2025 | ii. W.P. No. 56585 of 2025 |
| iii. W.P. No. 51397 of 2025 | iv. W.P. No. 52807 of 2025 |
| v. W.P. No. 44189 of 2025 | |

2. The Petitioners have called into question the vires of amendments made in *Legal Practitioners and Bar Councils Act, 1973* (the “**Act, 1973**”) by virtue of the *Legal Practitioners and Bar Councils (Amendment) Act, 2025*, enacted on 29.08.2025 (the “**Amendment Act**”), as well as, the amendments brought about in *Pakistan Legal Practitioners and Bar Councils Rules, 1976* (the “**Rules, 1976**”) through *Pakistan Legal Practitioners and Bar Councils (Amendment) Rules, 2025*, as amended vide Pakistan Bar Council’s notification No.1581/PBC/SEC/2025 dated 08.09.2025 (the “**Amended Rules**”). The Amendment Act and the Amended Rules, shall hereinafter be collectively referred to as the “**Impugned Amendments**”, where the context so requires.

3. Though multiple challenges have been raised by way of the petitions at hand, however, in essence, the Petitioners have argued that the Impugned Amendments:

- i. are discriminatory in nature, hence violative of Article 25 of the Constitution;
- ii. cannot be applied to the Provincial Bar Councils Election, 2025, as the same have neither been enacted with retrospective effect nor any such intendment exists;
- iii. if applied retrospectively would destroy the vested rights of the petitioners and all other equally placed persons, therefore, the alleged retrospective application is sought to be declared illegal and unlawful;
- iv. violate the fundamental rights of the petitioners and thus, the same are sought to be declared *ultra vires* for being *ex facie* arbitrary, against the principles of fairness and reasonableness;
- v. have been brought about in negation of the democratic principles and rights and amounts to disenfranchise the petitioners as well as their voters/supporters;
- vi. are devoid of any rational basis, having been promulgated during the currency of the election year;

4. In a nub, the main thrust of the challenge is directed against the amendments of Sections 5A, 5B of the Act, 1973 and Rules 4, 6, 10-B & 175-K of the Rules, 1976. For the sake of clarity, the relevant provisions under challenge, in pre and post amended form, are reproduced herein below:

<u>The Act, 1973</u>	
<u>PRE AMENDMENT</u>	<u>POST AMENDMENT</u>
<p>5A. Qualifications for membership of a Provincial Bar Council [and Islamabad Bar Council].--A person shall be qualified to be elected as a member of a Provincial Bar Council [and Islamabad Bar Council] if he:-</p> <ul style="list-style-type: none"> (a) is on the roll of advocates of High Court maintained by the Provincial Bar Council [and Islamabad Bar Council], [for not less than five years} and] (b) has, on the day of filing of the nomination paper, been an advocate for not less than [fifteen] years; and (c) has cleared all the dues payable by him to the Provincial Bar Council [and Islamabad Bar Council][;] <p>[Provided that for the first election of Islamabad Bar Council, the qualification required for a candidate for Punjab Bar Council shall apply to the candidate to be elected for Islamabad Bar Council.]</p>	<p>5A. Qualifications for membership of a Provincial Bar Council and the Islamabad Bar Council.— A person shall be qualified to be elected as a member of a Provincial Bar Council and the Islamabad Bar Council if he,—</p> <ul style="list-style-type: none"> (a) is on the roll of advocates of High Court maintained by the <u>concerned</u> Provincial Bar Council and Islamabad Bar Council for not less than <u>ten years</u>; (b) has, on the day of filing of the nomination paper, been an advocate for not less than fifteen years, <u>and has individually conducted not less than thirty decided cases</u>; (c) has cleared all the dues payable by him to the Provincial Bar Council and Islamabad Bar Council; and <u>(d) has been a voter member of a Bar Association falling in the district, or districts in the case of Karachi, from where he is a candidate for a period of not less than five years.</u>
<p>5B. Disqualifications for membership of a Provincial Bar Council [and Islamabad Bar Council].--A person shall be disqualified to be elected as a member of a Provincial Bar Council [and Islamabad Bar Council] if he—</p> <ul style="list-style-type: none"> (a) was dismissed or removed from the service of Government or of a public statutory corporation; or (b) has been convicted for an offence involving moral turpitude; or 	<p>5B. Disqualifications for membership of a Provincial Bar Council and the Islamabad Bar Council.—A person shall be disqualified to be elected as a member of a Provincial Bar Council and the Islamabad Bar Council if he.—</p> <ul style="list-style-type: none"> (a) was dismissed or removed from the service of Government or of a public statutory corporation; or (b) has been convicted for an offence involving moral turpitude, <u>sentenced to imprisonment for a term of not less than two years, except the one released five</u>

	<u>years ago; or</u>
(c) has been found guilty of professional misconduct; or	<u>(c) has furnished false information for the purposes of enrollment with a Bar Council; or</u>
(d) has been declared a tout; or	(d) has been found guilty of professional misconduct; or
(e) is an undischarged insolvent.	(e) has been declared a tout; or (f) is an undischarged insolvent; or (g) <u>is guilty of violating the Code of Conduct for the Bar Councils elections framed under section 55(a) of this Act.</u>

The Rules, 1976

<u>PRE AMENDMENT</u>	<u>POST AMENDMENT</u>
<p>6. (1) At any time before 2 p.m. on a date specified by the Returning Officer any Advocate practicing generally in a district and entered on the [roll of group of districts] [or in ICT] [who is qualified as voter] may by a letter addressed to the Returning Officer propose another such Advocate [qualified as a candidate] for election as a Member of the Provincial Bar Council [from that district] [and of the Islamabad Bar Council from ICT] by delivering at the office of the Returning Officer nomination paper signed by him and accompanied by a statement by the Advocate whose name is proposed that he is willing to serve as Member if elected. A proposal shall relate only to one candidate and shall be invalid if it relates to more than one. The Returning Officer or any other person specifically authorized by him in this behalf shall note on each proposal as soon as it is received, its number as well as the time and the date on which it is received.</p> <p>[10-B. Any violation of Rule 10-A shall be treated as "misconduct" disqualifying/disenitling the prospective and/or contesting candidate to contest election for the Bar Council.]</p>	<p>6. (1) At any time before 2 p.m. on a date specified by the Returning Officer any Advocate practicing generally in a district '<u>who is practicing in such district continuously for five preceding years</u>', and entered on the [roll of group of districts] [or in ICT] [who is qualified as voter] may by a letter addressed to the Returning Officer propose another such Advocate [qualified as a candidate] for election as a Member of the Provincial Bar Council [from that district] [and of the Islamabad Bar Council from ICT] by delivering at the office of the Returning Officer nomination paper signed by him and accompanied by a statement by the Advocate whose name is proposed that he is willing to serve as Member if elected. A proposal shall relate only to one candidate and shall be invalid if it relates to more than one. The Returning Officer or any other person specifically authorized by him in this behalf shall note on each proposal as soon as it is received, its number as well as the time and the date on which it is received.</p> <p>"10-B. (1) The Retuning Officer/Advocate-General may take action on his own or on any complaint filed with respect to the violation of the Code of Conduct or any provisions of the Act and these rules during the whole election process or campaign by a candidate or his supporters.</p> <p>(2) Where such complaint is found</p>

	<p>to be false, frivolous and vexatious, the complaint shall be dismissed forthwith while imposing cost.</p> <p>(3) The Returning Officer/Advocate-General or any law officer authorized by him, as the case may be, may adopt a summary inquiry procedure as deemed appropriate for the expeditious disposal not later than seven days of the receipt of such complaints or cases.</p> <p>(4) No candidate shall be disqualified for violation of the Code of Conduct or any provisions of the Act and rules unless a show cause notice has been issued and a reasonable opportunity of hearing has been afforded to him.</p> <p>(5) <u>Any aggrieved person may file an appeal against the order of the Returning Officer/Advocate-General or any law officer authorized by him, as the case may be, within three working days of the order before the Attorney-General who shall decide the appeal within seven working days and the decision of the Attorney-General thereon shall be final.</u></p> <p>(6) Any violation of the code of Conduct shall be deemed to be a cause of disqualification as duly mentioned in section 5B of the Act.</p>
<p>175-K. Right to vote</p> <p>a. No Member of a Bar Association shall have a right of vote in election unless he/she has completed at least six months of his being Member of the Bar Association concerned. However, in case of transfer of name of a voter/member from one Bar Association to another, the transferee member/voter will be eligible to cast his/her vote in election of the Bar Association to which he/she gets his/her name transferred, only after expiry of two years of such transfer.</p>	<p>175-K. Right to vote</p> <p>a. No Member of a Bar Association shall have a right of vote in election unless he/she has completed at least six months of his being Member of the Bar Association concerned. However, in case of transfer of name of a voter/member from one Bar Association to another, the transferee member/voter will be eligible to cast his/her vote in election of the Bar Association <u>and Bar Council</u> to which he/she gets his/her name transferred, only after expiry of two years of such transfer.</p> <p>(a1) <u>In case of transfer of place of practice of voter membership within the same District for the purpose of Rule 6 his/her period of membership of Provincial Bar Councils shall</u></p>

	<u>also be counted/ considered as valid and in case of transfer of place of practice as voter membership from one District to another District, the period of membership of previous Bar Association shall not be counted.</u>
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[Emphasis Supplied]

5. Mr. Hassan Abdullah Niazi, learned Advocate, while holding brief in W.P. No. 52807 of 2025, argued that by virtue of Impugned Amendments, only a specific class of litigant lawyers has been given undue and arbitrary advantage to contest the elections of the Provincial Bar Councils, resulting discrimination and deprivation of a large segment of legal professionals (transactional lawyers, legal academia, legal practitioners practicing at districts and tehsil levels, law officers, in house lawyers and retired judicial officers etc.); adds that by the dint of Impugned Amendments, the democratic process of the Provincial Bar Councils has unlawfully been tainted with executive's unjust intervention; further submitted that the functions of the Provincial Bar Councils do not exclusively relate to litigant lawyers since the Provincial Bar Councils are regulatory bodies for all lawyers, whereas, the Impugned Amendments are to the effect as if the Provincial Bar Councils only regulate the Advocates of the Superior Courts, therefore, there is no rational basis for imposing such conditions; contended that once the legislation creates a classification without *intelligible differentia*, granting certain privileges to a specified group or class, Article 25 of the Constitution becomes applicable; pleads that the discriminatory conduct in the context of elections needs to be judicially scrutinized, especially when the Impugned Amendments are being introduced just two months before the elections; lastly submitted that the Impugned Amendments impaired the vested rights of several potential candidates and their voters, who seek to contest the elections. While responding to a query by this Court, Mr. Hassan Abdullah Niazi, Advocate submitted that he has not only impugned the enhancement of eligibility threshold to ten(10) years, as supplied under clause (a) of Section 5A of the Act, 1973, but all/any such restrictions, be it five(05) years or ten(10) years; added that merely for the reason that the un-amended provision (supplying for an eligibility threshold of five years) had existed unchallenged on the statute

book, cannot operate as a bar to the petitioner's challenge on the ground that there is no estoppel against the law. Placed reliance upon *I.A. Sharwani v. Government of Pakistan* (1991 SCMR 1041), *Government of Balochistan v. Azizullah Memon* (PLD 1993 SC 364), *Commissioner of Income Tax v. Eli Lily Pakistan* (2009 SCMR 1279), *Javed Jabbar v. Federation of Pakistan* (PLD 2003 SC 955), *Muhammad Nasir Mahmood v. Federation of Pakistan* (PLD 2009 107), *Indian Council of legal Aid v. Bar Council of India* (AIR 1995 SC 691), *Ganga Ram Mooldhandani v. State of Rajasthan* (AIR 1963 SC 268), *J. Pandurangarao v. Andhra Pradesh* (AIR 1963 SC 268), *Arshad Mahmood v. Commissioner* (PLD 2014 Lahore 221), *Al-Samerz Enterprise v. The Federation of Pakistan* (1968 SCMR 1917), *Commissioner Inland Revenue v. Mekotex* (PLD 2005 Lahore 1168), *Muhammad Rafique v. Federation of Pakistan* (PLD 2005 Lahore 150), *Hanif Ahmed Bhatti v. Federation of Pakistan* (PLD 2005 Karachi 364).

6. Ch. Ishtiaq Ahmad Khan, learned Advocate Supreme Court, while advancing his arguments in addition to the above submissions, has argued that there is no object, reason or rationale in the Impugned Amendments, therefore, the same are nullity in the eye of law; while referring to the Amendment Act, learned counsel submits that the same is devoid of any statement of objects or reasons; further argued that the Impugned Amendments tantamount to impose unfair restrictions against right to participate in the elections, therefore, the same are violative of the right to free elections and thus amounts to infringement of fundamental rights; adds that the natural consequence of the Impugned Amendments is the creation of a discriminatory class within the legal profession based on political affiliations, hence offends Article 25 of the Constitution; submits that the real intent and purpose behind the Impugned Amendments is to intrude into the regulatory autonomy of the Bar Councils and thus the same amounts to compromise the independence of legal fraternity; learned counsel has extensively and overwhelmingly argued that the attempt to apply and implement the Impugned Amendments *viz* the upcoming elections, 2025 amounts to retrospective application of the law despite clear position that neither the Amendment Act professes retrospectivity nor it purports any such intendment, therefore, the vested rights of lawyers/petitioners cannot be allowed to be infringed as the Impugned Amendments will work as a blanket

exclusion of large segment of legal professionals without any rational basis; contends that the spirit of the democratic process and institutional autonomy is rooted in an all-inclusive approach and any restrictions must be narrowly tailored and interpreted; added that since the five years statutory tenure of Provincial Bar Councils is fixed by virtue of Section 4 of the Act, 1973, therefore, the inevitable election schedule was meant to be between 01.10.2025 to 31.12.2025, thus, it must be assumed, without any other possible inference, that at the time of promulgation of the Impugned Amendments, the election schedule was in vogue for all intents and purposes. He has also referred to a show cause notice dated 04.07.2025, issued by the learned Advocate General, Punjab/Returning Officer for the election of the Punjab Bar Council, whereby, a candidate was called upon to explain as to why he may not be proceeded against for the violation of the Code of Conduct of the elections 2025. Learned counsel has laid emphasis to the factum of the issuance of code of conduct for arguing that the schedule of the election in issue was very much in existence at the time of promulgation of the Impugned Amendments, therefore, considering the well settled law on the subject that no change(s) in an election process can be made after the issuance of election schedule, the Impugned Amendments are liable to be declared *ultra vires* for the purpose of Provincial Bar Councils Election, 2025. Learned counsel has also argued the notion of '*legitimate expectation*' while submitting that most of the candidates being affected by the Impugned Amendments have extensively campaigned and worked in pursuit of their lawful rights, therefore, the Impugned Amendments are liable to be struck down. Placed reliance upon Javed Jabbar v. Federation of Pakistan (PLD 2003 SC 955), Capt. Muhammad Ali Khan v. Federation of Pakistan through Secretary for Ministry of Maritime Affairs, Government of Pakistan Islamabad and 4 others (2025 PLC (C.S). 221), Muhammad Rafique v. Federation of Pakistan (PLD 2005 Lahore 150), Hanif Ahmed Bhatti v. Federation of Pakistan (PLD 2005 Karachi 364), Raja Amer Khan and others v. Federation of Pakistan through Secretary, Law and Justice Division, Ministry of Law and Justice, Islamabad and others (PLJ 2024 SC 114), Hirst v. the United Kingdom ([2005] ECHR 681/Application No.74025/01)

7. The rest of the learned counsels for the petitioners have adopted the arguments advanced by M/s. Hassan Abdullah Niazi and Ch. Ishtiaq Ahmad Khan, Advocates.

8. While representing the Federation of Pakistan, Mirza Nasar Ahmad, learned Additional Attorney General for Pakistan commenced his submissions by arguing that the petitioners' entire premise that the 'Bar Councils' are democratic bodies, is false; submits that the High Court Bar Associations or the Supreme Court Bar Association are essentially the democratic bodies but the Bar Councils in issue are not; for substantiating his arguments he has referred to entry 11, Part II of the Fourth Schedule of the Constitution to argue that legislative competence to legislate and to regulate the legal profession falls within the legislative competence and authority of the Federation; while explaining the trichotomy of constitutional structure and elaborating the authority and jurisdictional sphere of three organs of the State i.e. legislature, executive and judiciary, learned Additional Attorney General for Pakistan has referred to Articles 90, 97, 98 read with Article 137 of the Constitution and contends that the Bar Councils are only performing the delegated functions of regulating the legal profession as delegatee of the Federal Government; submits that the Federal Government can and has prescribed the eligibility threshold and qualifications for the members of the Bar Councils from time to time, therefore, per learned Additional Attorney Generals for Pakistan, the purported edifice that the Bar Councils being democratic institutions, evolving and existing through democratic process is flawed. He has submitted that though the Amendment Act was introduced as a private member bill but in terms of the constitutional mandate, as enumerated in his foregoing submissions, the irregularity, if any, has been cured by adoption of the bill through assent of the Federal Government in terms of clause (4) of Article 75 of the Constitution. In order to dispel the core submission of discrimination, unreasonable classification without intelligible differentia, learned Additional Attorney General for Pakistan has argued that the submissions made by the learned counsels for the petitioners are misconceived when considered in the context of the mandate of the Provincial Bar Councils as these Bar Councils, by regulating the District and Tehsil Bar Bodies, are merely exercising the executive functions of the Federal Government. While concluding his

submissions he argued that no vested right had come to vest in any of the petitioners or for that matter in any other aspirant who seeks to contest the upcoming elections as neither the schedule of the elections had been issued prior to the Impugned Amendments nor the scrutiny of candidates had taken place at the relevant juncture; while referring to the case of *Muhammad Rafique*¹ *supra*, learned Additional Attorney General for Pakistan submits that the reliance placed on the said judgment is clearly misconceived as the cited precedent is not a precedent for the petitioners and rather operates as a binding precedent against the case sought to be argued by the petitioners; he has specifically referred to paragraphs Nos. 24 to 30 of the said judgment and submits that only a perfected right by acceptance of nomination papers after passing the test of scrutiny and challenges thereagainst, will crystalize into a right in favour of a candidate.

9. Learned counsels for the Pakistan Bar Council, Punjab Bar Council as well as learned Assistant Advocate Generals, Punjab have adopted the arguments of the learned Additional Attorney General for Pakistan. While explaining the issuance of notice dated 04.07.2025 by the learned Returning Officer, learned Assistant Advocate General has argued that the Code of Conduct is a Standing Code, which remains in operation for entire term of the Bar Council.

10. I have heard the learned counsels for the parties at full length, have minutely perused the available record as well as the relevant law on the subject.

11. Since the *vires* of the law and rules are under question, therefore, it would be in the fitness of things to explicate the settled constitutional tests for successful invocation of the power of judicial review of this Court for laying a challenge to the *vires* of a law. This Court, while judicially reviewing the *vires* of the Impugned Amendments shall essentially be concerned with the constitutional validity of the Amendments.

Jurisprudence viz the Scope of Constitutional Challenge to the *vires* of Law

12. Before dealing with the challenge brought by the Petitioners, I have considered the constitutional touchstones for testing the *vires* of a statute. In

¹ *Muhammad Rafique v. Federation of Pakistan* (PLD 2005 Lahore 150)

the first place, as per settled jurisprudence, the power to strike down or declare void a legislative enactment, the jurisdiction must be exercised with great care and caution, in deference to the wisdom of the legislature. In the landmark judgment of the Supreme Court of Pakistan in *Imrana Tiwana*² case, at para 65, after discussing various cases from our jurisprudence as well as comparative jurisdictions, the Supreme Court of Pakistan has authoritatively gleaned the considerations, which must weigh heavy on the mind of this Court partaking such an exercise. The considerations are as follows:

- I. *"There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;*
- II. *Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;*
- III. *In determining the constitutional validity of measures or a provision therein, regard must be had to the real effect and impact thereof on the fundamental rights guaranteed by the Constitution.*
- IV. *If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;*
- V. *The Court will not decide a larger constitutional question than is necessary for the determination of the case;*
- VI. *The Court will not declare a statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;*
- VII. *The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;*
- VIII. *The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;*

² *Lahore Development Authority v. Imrana Tiwana*' (2015 SCMR 1739)

IX. *Mala fides will not be attributed to the Legislature.”*

13. With the above parameters in mind, the constitutional yardsticks that have been developed in our jurisprudence by the Superior Courts are discussed and detailed below in ascertaining the veracity of the challenges raised by the Petitioners:

A) **Abridging of Fundamental Rights**

One of the main grounds for declaring a law void, or for striking it down, is that the law has the effect of abridging or taking away the fundamental rights guaranteed by the Constitution. As per Article 8(2) of the Constitution, the Parliament cannot make any law(s) which takes away or abridges the fundamental rights conferred by Chapter 1 of Part II of the Constitution (Articles 9 – 28)³.

B) **Competence of the Legislature enacting the Law**

While substantive part of the law may be looked into by the Court to determine the *vires* of a statute, another ground for assessing the *vires* of law on procedural grounds is the competence of the legislature, enacting the law in question. The competence of the legislature is usually determined by the entries in the Federal Legislative List of the Constitution, and if a subject is found therein, then the competence to enact laws on that subject lies with the Federal Legislature. For subjects not enumerated in the Federal Legislative List, the power to enact laws on those subjects lies with the Provincial Legislatures. This is the scenario as it stands presently, following the omission of the Concurrent Legislative List by virtue of the 18th Amendment to the Constitution. The Supreme Court of Pakistan has enunciated the law on the subject through its landmark judgments in the cases of 'Sui Southern Gas Company v Federation of Pakistan' (**2018 SCMR 802**), and 'Province of East Pakistan v Siraj ul Haq Patwari' (**PLD 1966 SC 854**).

³ “Jawwad S. Khawaja v Federation of Pakistan” (**PLD 2024 SC 337**); “Muhammad Azfar v Secretary Establishment Division” (**2021 SCMR 1569**), and “LDA v Imrana Tiwana” (**2015 SCMR 1739**)

C) **Legislation is colorable**

Another touchstone upon which the vires of a statute may be assessed is by determining whether the legislation is colorable. A colorable legislation is one where a legislature lacking legislative power or, subject to the Constitutional provision, may frame its legislation so as to make it appear to be within its legislative power or to be free from that constitutional prohibition. Such a law is colorable legislation, meaning thereby that while pretending to be a law in the exercise of undoubted power, it is in fact a law on a prohibited field⁴.

D) **Directly opposed to provisions of the Constitution**

Since the Constitution is the basic documents, governing the relationship between the State and the people, it is an accepted principle of constitutional jurisprudence that the Constitution is always treated to be higher than the other statutes, and whenever a statute enacted by the parliament is in conflict with the Constitution or is inconsistent therewith, to that extent, the same is liable to be struck down. Other than impinging upon the fundamental rights, statutes must also not violate the provisions of the Constitution guaranteeing the independence of judiciary and its separation from the executive. However, and as will be discussed below, certain provisions of the Constitution cannot be made basis to strike down statutes⁵.

E) **Possibility of two constructions and consequent conclusion**

Where the validity of a statute is impugned on the ground that its provisions contravene fundamental rights, two constructions are possible as to the meaning and intention of the legislature; the court should adopt that construction which upholds the validity⁶.

A statute must never be declared unconstitutional unless its

⁴ "Federation of Pakistan v Shaukat Ali Mian" (PLD 1999 SC 1026); "Baz Muhammad Kakar v Federation of Pakistan" (PLD 2012 SC 923)

⁵ "MQM (Pakistan) v Pakistan" (PLD 2022 SC 439); "Younas Abbas v Additional Sessions Judge, Chakwal" (PLD 2016 SC 581); "Zafar Ali Shah v Pervez Musharraf" (PLD 2000 SC 869); "Watan Party v Federation of Pakistan" (PLD 2006 SC 697); "Mehram Ali v Federation of Pakistan" (PLD 1998 SC 1445).

⁶ Interpretation of Statutes by (11th Edition) by N.S. Bindra | published by LexisNexis | p140

invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid⁷;

Grounds not susceptible for laying a challenge to the vires of law

14. The Courts, while developing the jurisprudence on the judicial review of legislative enactments, and particularly in consideration of presumption of constitutional validity attached to the laws, have also settled the factors/grounds, which cannot and must not be looked at while determining the *vires* of the legislative instruments. Some of these factors are discussed below:

A) Mala fides not attributable to the legislature

As a general rule of thumb, the Supreme Court has consistently held that *mala fide* is not attributable to the legislature, and the same cannot be pleaded for assessing the vires of a statute. The *bona fides* of the legislature is presumed, as is the constitutionality of the law, and the purpose and object of the law is to be given weightage⁸.

B) The law possibly or likely to be administered in a discriminatory manner is no ground to strike down the law:

Where a law is not discriminatory *ex facie* but may be applied or administered in discriminatory manner, it cannot be challenged unless it is so administered and actually caused discrimination. The Petitioners in such situations shall have to demonstrate that the law has in fact been administered in a discriminatory manner⁹.

C) Wisdom or Policy of the Legislature - not to be questioned

The Supreme Court of Pakistan has held that it is not the function of the judiciary to legislate or to question the wisdom of the

⁷ *M/s. Chenone Stores Ltd. through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others* (2012 PTD 1815) *Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others* (**PLD 1997 SC 582**) *Mohammad Imran and others v. Province of Sindh through Chief Secretary and others* (2019 SCMR 1132)

⁸ *Sui Southern Gas Company v Federation of Pakistan*” (**2018 SCMR 802**); “*All Pakistan Newspapers Society v Federation of Pakistan*” (**PLD 2012 SC 1**); “*Muhammad Nasir Mehmood v Federation of Pakistan*” (**PLD 2009 SC 107**); ‘*Watan Party v Federation of Pakistan*” (**PLD 2006 SC 697**); ‘*Federation of Pakistan v Shaukat Ali Mian*” (**PLD 1999 SC 1026**); “*Elahi Cotton v Federation of Pakistan*” (**PLD 1997 SC 582**)

⁹ “*LDA v Imrana Tiwana*” (**2015 SCMR 1739**); “*Federation of Pakistan v Shaukat Ali Mian*” (**PLD 1999 SC 1026**); “*Lal Muhammad v State*” (**1991 MLD 2622**); “*East and West Steamship Co. v Pakistan*” (**PLD 1958 SC 41**); “*Muhammad Muzaffar Khan v Muhammad Yusuf Khan*” (**PLD 1959 SC 9**).

legislature in making a law, and the wisdom or policy of the legislature is not open to question in the exercise of power of judicial review¹⁰.

D) **Reasonableness of law not to be looked at to determine its vires**

The reasonableness or otherwise of a law is a matter of legislative policy and it is not for the Court to adjudicate upon the same unless it has infringed any of the Fundamental Rights. Hence, the reasonableness of the law is not a touchstone for assessing the vires of a law¹¹. In pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or unwisdom, the justice to injustice of the law. If that which is passed into law is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a Court may think of it.¹²

15. Hence, the assertions of Petitioners and the challenges directed against the Impugned Amendments are to be considered in the light of the settled jurisprudence, as enumerated above, and consequently, the grounds, which do not meet these legal standards, are liable to be rejected. Accordingly, the merits of the challenges laid by Petitioners are discussed as under.

Discrimination (Articles 25)

16. The stance of the Petitioners is that the Impugned Amendments and their scope have ‘*disparate impact*’ or ‘*adverse impact*’ on the rights of large segment of lawyers. The Petitioners have argued that a separate ‘class of lawyers’ has been created and a preferential treatment has been given to them through the Impugned Amendments, hence, said provisions are discriminatory and thus offend Article 25 of the Constitution. The assertions of the Petitioners are grossly misconceived for the reason that neither any different right,

¹⁰ “Pakistan Lawyers Forum v Federation of Pakistan” (**PLD 2005 SC 719**); “Zaman Cement Company v Central Board of Revenue” (**2002 SCMR 312**); ‘Zulfigar Ali Babu v Government of Punjab’ (**PLD 1997 SC 11**); “Federation of Pakistan v Saeed Ahmed Khan” (**PLD 1974 SC 151**); “Punjab v Malik Khizer Hayat Tiwana” (**PLD 1956 FC 200**).

¹¹ “Federation of Pakistan v Haji Muhammad Sadiq” (**PLD 2007 SC 133**); “Anound Power Generation Limited v Federation of Pakistan” (**PLD 2001 SC 340**).

¹² *Karnataka Bank Limited*, (**AIR 2008 SC (Supp) 1377; 2008 AIR SCW 1021**)

procedure, or standard have been prescribed, nor any different or separate treatment under the law has been meted out to them. The legislature has only prescribed a qualification as an eligibility threshold for the candidates who seek to contest the elections of the Provincial Bar Councils. Considering the scope and mandate of the Provincial Bar Councils, the in-house lawyers, academics, transactional lawyers etc. are not even regulated by the Provincial Bar Councils. The amended qualification of ten (10) years as an Advocate of High Court is in line with the earlier prescribed qualification of five (05) years. The question that as to what should be the touchstone and length of experience is purely a matter within the legislative competence of the legislature and its wisdom in bringing about this change cannot be questioned in view of the settled principles of law adumbrated above. The Impugned Amendment of Section 5A of the Act, 1973 is not discriminatory in nature by any means; instead, it is a simple enhancement of an already existing qualification. It is trite that reasonable classification is permissible and Article 25 of the Constitution is only attracted in an apple to apple comparison¹³. It is also well settled that although Article 25 of the Constitution envisages equality amongst citizens, it also allows for differential treatment of persons who are not similarly placed by virtue of a reasonable classification. However, to justify this difference in treatment, the reasonable classification needs to be 'based on *intelligible differentia*, which has a rational nexus with the object being sought to be achieved¹⁴. Likewise, it is vouched by the respectable authority that the persons may be classified in groups and such groups may be treated differently, if there is a reasonable classification¹⁵. In the instant case, the reasonable classification on the basis of one yard stick of experience of 10 years is quite evident from the Impugned Amendment of Section 5A of the Act, 1973. As regards the reasonableness of such classification, the reliance may be placed upon the well settled exposition of law that a statute or any enacting provision therein must be construed as to make it effective and operative. The Latin legal maxim "*ut res magis valeat quam pereat*" denotes that it is better for a thing to

¹³ Government of the Punjab through Chief Secretary, Lahore and others v. Ch. Abdul Sattar Hans and 29 others (2015 SCMR 915), National Commission on Status of Women through Chairperson and others v. Government of Pakistan through Secretary Law and Justice and others (PLD 2019 SC 218)

¹⁴ Hadayat Ullah and others v. Federation of Pakistan and others (2022 SCMR 1691)

¹⁵ Federation of Pakistan through Secretary Ministry of Communications, Islamabad and another v. Shuja Sharif and others (2023 SCMR 129)

have effect than to be made void or it is better to validate a thing than to invalidate it. The Court should, in so far as possible, avoid that construction which may ascribe or attribute unreasonableness to the will of legislature and while moving into the task of interpretation of any law or provision, the predominant objective should be that the law survives and the presumption, if any, must be in favour of its constitutionality. The Court should not adopt such interpretation which renders the statute or any of its provisions inoperative or unworkable¹⁶.

17. Since much reliance has been placed upon the landmark judgments of the Supreme Court of Pakistan in *Azizullah Memon*¹⁷ and *I.A. Sherwani*¹⁸ cases for advancing the arguments for invocation of Article 25 of the Constitution by the petitioner side, therefore, it is appropriate to consider the said enunciations. As will be explicated below, *I.A.Sherwani* *supra* and many other authoritative judgments have extensively been considered by their Lordships while handing down the judgment in *Azizullah Memon* *supra*. Their Lordships, while discussing the true import of Article 25 of the Constitution have held:

"The, equal protection clause was also considered in Zain Noorani v. Secretary of the National Assembly of Pakistan PLD 1957 Kar. 1. In Malik Muhammad Usman v. The State and another PLD 1965 Lah. 229 sections 8 and 11 of the Frontier Crimes Regulation providing for reference of proceedings to a Jirga were held to offend against Fundamental Right No. 15 of 1962 Constitution for the reason that the Commissioner and the Deputy Commissioner were given uncontrolled discretion to select particular cases and even particular accused in the same case for the discriminatory procedure which was not governed by any settled principle. The observations made in Jibendra Kishoreand Waris Meah were reiterated in East and West Steamship v. Pakistan (PLD 1958 SC 41) that "where a statute is not ex facie discriminatory but is capable of being administered in a discriminatory manner, the party challenging its constitutionality has to show that it has actually been administered in a discriminatory manner". Thus, where the statutory functionary acts mala fide or in a partial, unjust, oppressive or discriminatory manner, his action can be challenged for violation of equality clause of the Constitution. In F.B. Ali's case PLD 1975 SC 506 the challenge to amendments in Pakistan Army Act and

¹⁶ *Federation of Pakistan through Secretary Ministry of Communications, Islamabad and another v. Shuja Sharif and others* (2023 SCMR 129)

¹⁷ *Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and 16 others* (PLD 1993 SC 341)

¹⁸ *Sikandar and 2 others v. Muhammad Ayub and 2 others* (1991 SCMR 1041)

Ordinance IV of 1967 was made inter alia as violative of equality clause of 1962 Constitution. This Court repelled it on the basis of principles laid down in Waris Meah's case and observed that in this case if the Foreign Exchange Regulation Act had set up a Tribunal of exclusive jurisdiction, with a procedure different from the Code of Criminal Procedure, the challenge would not have succeeded as the offenders under the Foreign Exchange Regulation could validly and reasonably be considered a different class from the offenders under the ordinary law. Fauji Foundation's case PLD 1983 SC 457 ruled that legislation in regard to an individual can be made provided it is not discriminatory. In IA. Sherwani's case 1991 SCMR 1041, after considering the judgments in F.B. Ali's case PLD 1975 SC 506, Abdul Wali Khan's case PLD 1976 SC 57, Aziz Begum's case PLD 1990 SC 899,-Shirin Munir and others v. Government of Punjab PLD 1990 SC 295 and several judgments of the Supreme Court of India, the following principles were deduced-

- "(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;*
- (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;*
- (iii) that different laws can validly be enacted for different sexes, persons in different age group, persons having different financial standings, and persons accused of heinous crimes;*
- (iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;*
- (v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;*
- (vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;*
- (vii) that in order to make a classification reasonable, it should be based---*

- (a) *on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;*
- (b) *that the differentia must have rational nexus to the object sought to be achieved by such classification."*

18. In a recent judgment passed by the Supreme Court of Pakistan in the case of *Gul Zarif Khan and others v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others* (2025 SCMR 415), the principles of *intelligible differentia* and applicability thereof has been reaffirmed and it has been held that the persons may be classified into groups and such groups may be treated differently if there is reasonable basis for the difference. It has further been held that the principle of equality does not imply or connote that every law must have universal application to all classes of persons¹⁹.

19. The above settled position of law *viz* the question of invocation of Article 25 of the Constitution, when juxtaposed with the facts and circumstances of the case in hand, leads to an ineluctable conclusion that no case of discrimination is made out and the Impugned Amendment in terms of changes brought about in Section 5A of the Act, 1973 is/are reasonable classification(s) based on *intelligible differentia*, therefore, this argument advanced by the petitioners has no force in law.

Retrospective application & Claim of Vested Right

VESTED RIGHT

20. The second limb of arguments advanced by learned counsels for the petitioners is premised on their assumption that since the petitioners have a ‘vested right’ to contest the upcoming Elections of the Provincial Bar Council, therefore, the Impugned Amendments, which have evidently not been brought about with retrospective operations, either expressly or through necessary intendment, are liable to be struck down or be deferred *viz* the elections, 2025 for the reason that these amendments impinges upon the vested rights of the petitioners. As an alternate submission, it has vehemently been argued that the

¹⁹ *Gul Zarif Khan and others v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others* (2025 SCMR 415)

instant is a fit case for declaring that the Impugned Amendments, even if declared *intra vires*, will not be applicable for the upcoming elections of the Provincial Bar Councils. It has vociferously been contended by the learned counsels for the petitioners that since the tenure of Bar Council is definite by virtue of the provisions contained in the relevant statute and as a necessary corollary, the current year i.e. 2025 is election year, thus, considering the same the petitioners and many others alike have already campaigned extensively; they have attained the status of prospective candidates; the voters have announced their affiliations and aspirations for the candidates, therefore, any change in the threshold eligibility criteria, which tends to oust the potential/prospective candidates, cannot be applied to take away the vested rights of the petitioners and others. In a nub, it is argued by the petitioners that being potential candidates, not only the petitioners but also the voters have acquired a legitimate right of expectation for being treated in accordance with law, as it stood at the time of commencement of the election season.

21. In order to appreciate such contentions in true perspective, this Court has considered as to what is the true import of the notions '*legitimate expectation*', '*right*' or '*vested right*'.

22. Doctrine of legitimate expectation is not part of any codified law rather the same had been coined and designed by the Courts primarily for the exercise of their power of judicial review of administrative actions. It only had nexus to administrative decisions and actions and no one can claim such a right against the legislature's competence to legislate so long as the legislative competence is not in question. There can be no two views about the powers of legislature to legislate any law and to make it applicable prospectively or retrospectively or from any particular date, with clear/express intendment in this regard. However the procedural law, even though not expressly provided for, normally holds its applicability retrospectively as no one can claim vested right in the matter of procedure. There are number of precedents where the law has been so legislated or amended and made applicable retrospectively to destroy the

vested rights of certain individuals and such actions, when challenged, have been upheld by the Courts, to be legal²⁰.

23. The term ‘*vested right*’ was interpreted by the Supreme Court of Pakistan in the case of Nabi Ahmad²¹ in the following terms:

“29. *What is a vested right?* According to the Oxford English Dictionary, "vested" means "clothed, robed, dressed especially in ecclesiastical vestments, vested rights essentially differ from rights which are contingent, that is, completely created . . . vested interests may perhaps be defined as rights based not upon contract but upon custom". A close examination of these meanings and explanations reveals that vested right is free from contingencies, but not in the sense that it is exercisable anywhere and at any moment. There is hardly any right which can be so exercised. There must always be occasions at which and circumstances under which they may be exercised. Those occasions and circumstances do not constitute contingencies, but are the peculiar characteristics of those rights. For instance, the right to cross-examine (not to re-cross-examine) a witness is a vested right, although the occasion for exercising it arises only if the witness says or has said something unfavourable and often after his examination-in-chief is over. The occasion to cross-examine may not arise or may not be exercised-but the right is not to be denied. The following discussion of the connotations of "vested rights" by J. G. Sutherland in his book on "Statutes and Statutory Construction," Vol. 2, Art. 2205, is helpful in clarifying the above thought: -

"It is impossible to assign precise meaning to the term (vested right) for any attempt results only in conflict in the decisions. By 'vested right' can be meant no more than those rights which under particular circumstances will be protected from legislative interference (unless it is clearly intended). But as it is a right which vests upon equities, it has reasonable limits and restrictions : it must have some regard to the general welfare and public policy, it is not a right which is to be examined, settled and depended on a distinct and separate consideration of the individual case, but rather on broad and general grounds which embrace the welfare of the whole community and which seek the equal- and impartial protection of the interest of all."

[Emphasis Supplied]

²⁰ Judges' Pension Case [H.R.C. No.40927-S of 2012 / Constitution Petition No.127 of 2012] (**PLD 2013 SC 829**)

²¹ Nabi Ahmed and another v. Home Secretary, Government of West Pakistan, Lahore and 4 others (**PLD 1969 SC 599**)

24. In the context of Petitioners' line of arguments, the interpretation of the term '*vested right*', as enunciated by the Supreme Court of Pakistan in the landmark judgment of *Mian Rafi-ud-Din*²² is particularly instructive and authoritative. The relevant portion of the said judgment is reproduced herein below:

"A 'vested right', an 'accrued right' or a 'substantive right' does not mean only title to property or office; a right, benefit or an advantage conferred by a statute, if availed of by doing a thing as required by the statute, is also a right of this kind. Again, if a right, benefit or advantage conferred by a statute is dependent on the happening of a contingency, then, the same becomes a 'vested or accrued right' after the contingency -has, happened. This can be illustrated by giving some instances. For example, a co-sharer's statutory right to pre-empt the land transferred by another co-sharer out of the common holding- is a substantive right; this right of pre-emption is the co-sharer's 'vested right' and is capable of being enforced. After the Court has granted pre-emption, the pre-emptor again acquires a 'vested right' in the land itself. Similarly, a mortgagor's right to redeem a mortgage is a 'vested right' and is enforceable. Again, a lessor has a right under section 106 of the Transfer of Property Act to determine a monthly tenancy in respect of an urban property by 15 day's notice to quit. This right conferred by the statute is to be availed of by giving such a notice. After such a notice has been given, the lessor acquires a substantive right to eject the lessee and to get possession of the demised premises. This is the lessor's 'vested right'. If the lessee does not quit pursuant to the notice, the lessor is entitled under the law to recover compensation from the lessee for the unauthorised use and occupation of the premises. The right to recover compensation is yet another substantive right. If the lessor has obtained a decree for compensation in a suit brought for the purpose, then, the decree so obtained by him becomes a property and his right thereto is his 'vested right'."

Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. A vested right is a title to the present or future enjoyment of property, or to the present or future enforcement of a demand or a legal exemption from a demand by another. The right must be immediate, absolute, complete, unconditional and independent of a contingency. Accordingly, a mere expectancy of future benefit or a contingent interest founded on the anticipated continuance of existing laws, does not constitute a vested right. Inchoate rights,

²² *Mian Rafi ud Din and 6 others v. The Chief Settlement and Rehabilitation Commissioner and 2 others* (PLD 1971 SC 252)

which have not been acted upon, are not vested rights. Moreover, a vested right may not arise at a time when there is no possibility of enforcing a claim under the existing law²³. In certain cases, a distinction is drawn between an existing right and a vested right and it is said that the rule against retrospective construction is applied only to save vested rights and not existing rights²⁴. The distinction between what is, and what is not a right preserved by the provisions of section 6 of General Clauses Act, 1897 is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere "hope or expectation of", or liberty to apply for, acquiring a right. A distinction is drawn between a legal proceeding for enforcing a right acquired or accrued and a legal proceeding for acquisition of a right. The former is saved whereas the latter is not²⁵. The expression '*vested right*' means an absolute or indefeasible right. The claim based on the vested right or settled expectation to obtain sanction cannot be set up against statutory provisions. It is a right which cannot be taken away without the consent of the owner. Such rights may arise from contract or statute and from the operation of law²⁶. The right to take advantage of a statute cannot be held to be a vested right²⁷.

25. Applying the above test, the rights claimed by the petitioners may have become vested rights being enforceable under the law once such rights were perfected by virtue of acceptance of nomination papers of the candidate(s) or at least when the election schedule was notified. Mere claim of '*campaign*' for upcoming election does not transform a mere expectancy into a '*vested right*' in any manner. Applying this analogy would lead to an absurd outcome of destroying the legislature's authority to legislate/amend the law at any time since any person can rise and claim, immediately after the swearing in of the Provincial Bar Council(s) that he has worked substantially for contesting the next elections, therefore, vested rights had come to vest in him and any change in law would be detrimental to such '*vested right*'. The rule against retrospective construction is not applicable to a statute merely "because a part of the requisites for its action is drawn from a time antecedent to its passing". If

²³ CORPUS JURIS SECUNDUM ® by Thomson|West, Volume 16A | p15

²⁴ Principles of Statutory Interpretation by G.P. Singh | 13th Edition | p536

²⁵ Principles of Statutory Interpretation by G.P. Singh | 13th Edition | p711-712

²⁶ The Major Law Lexicon by LexisNexis [p.7082]

²⁷ [Mylapore Club v. State of Tamil Nadu, JT (2005) 9 SC 443]

that were not so, every statute will be presumed to apply only to persons born and things come into existence after its operation and such interpretation may well result in virtual nullification of most of the statutes. An amending Act is, therefore, not retrospective merely because it applies also to those to whom the pre-amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior date. But this does not mean that a statute which takes away or impairs any vested right acquired under existing laws or which creates a new obligation or imposes a new burden in respect of past transactions, will not be treated as retrospective²⁸.

RETROSPECTIVE APPLICATION

26. There is no distinction between a retrospective legislation which affects rights and liabilities and that which does not do so. All legislations affect rights or liabilities; the words being used in their widest sense. Legislature either creates a right or takes away a right or restricts or enlarges a right or similarly affects liabilities²⁹. A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past³⁰. According to this definition, the very meaning of a retrospective legislation is one that impairs any vested right or imposes a new obligation in relation to transactions already past. Retrospective is well defined: “*Nova constitutio futuris formam imponere bebet, non prateritis*” i.e. unless there be clear words to the contrary, statutes do not apply to a past, but to a future, state of circumstances³¹. During the course of arguments, the petitioners have continuously referred to case law that just states the said general rule against retrospectivity; they have tried to carve out a situation or exception for themselves by trying to fit themselves in the category of prospective candidates and relied on the argument of ‘Election Year’, which term is alien to the scheme of law, whereas, the term ‘Election’ though has not been defined under the Act, 1973 or Rules, 1976 but the resort

²⁸ **Principles of Statutory Interpretation** by G.P. Singh | 13th Edition | p.534-535

²⁹ “*Mir Ahmad Nawaz Khan Bugti v. Superintendent, District Jail*” (**PLD 1966 SC 357**)

³⁰ **Craies on Statute Law**, Seventh Edition, p. 387; [**Halsbury’s Laws of England (Fourth Edition)** | Volume 44 | p. 570 | Para 921]

³¹ **Maxwell**, Ch. 8, s. 4; **Broom’s Maxims**, Ch. 1, s. 2; **Stroud’s Judicial Dictionary of Words and Phrases** (Eighth Edition) [Published: Sweet & Maxwell, Thomson Reuters] Vol. 3, p. 2587

may be had to its authoritative interpretation by the Supreme Court of Pakistan in ***Javed Hashmi's*** case³² wherein it has been held that the word ‘Election’ connotes a very wide sense; in its wide sense, the process of conducting the election starts with the issuance of the election program and stands completed on the publication of the names of the returned candidates in the official gazette. Thus, these arguments have no legal legs to stand upon in the case in hand as none of the petitioners have been able to establish nor have successfully referred to the fact(s) as to how the Impugned Amendments have any retrospective application *qua* any ‘vested rights’ as discussed and defined above.

27. The term ‘Retrospective’ is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the Courts regard a statute as retrospective, which operates on cases of facts that it affects, even if for the future only, the character or consequences of transaction previously entered into or of other past conduct. While considering the question of whether a statute has retrospective operation, the nature of the right affected needs to be first considered. Where there is a vested right, an amendment will be considered prospective so as to not to affect the vested right³³. "Literally defined, a retrospective law is a law that looks backward or on things that are past; and a retroactive law is one that acts on things that are past: and in this common use, as applied to statutes, the two words are synonymous, and in this connection may broadly be defined as having reference to state of things existing before the Act in question. A retroactive or retrospective law, in the legal sense, is one that takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty or attaches a new disability in respect to transactions or considerations already past³⁴.

PAST AND CLOSED TRANSACTION

28. The petitioners have also sought to argue the ground of past and closed transaction on the notion that since the election year has commenced and the

³² *Election Commission of Pakistan through its Secretary v. Javaid Hashmi and others* (PLD 1989 SC 396)

³³ **Interpretation of Statutes** by (11th Edition) by N.S. Bindra | published by LexisNexis | p420

³⁴ **Interpretation of Statutes** by (11th Edition) by N.S. Bindra | published by LexisNexis | p.421

elections were in the offing, therefore, the rights of the prospective/potential candidates are protected on the notion of '*past and closed transaction*' with regard to the Impugned Amendments. It will be seen that the Supreme Court of Pakistan has extensively expounded the law on the subject while interpreting the notions of '*vested rights*' & '*past and closed transactions*'; some of these pronouncements e.g. *Al-Samrez Enterprise*³⁵ & *Mekotex*³⁶, have also been relied upon by the petitioners. A detailed analysis of the distinction between the two need not to detain this argument any further; it suffices to note that while every past and closed transaction is normally based on or comprises of a vested right, every vested right is not necessarily a past and closed transaction. Indeed, if rights were required to be placed in ascending order, the '*scale*' could be said to comprise of a '*bare*' right, a '*vested right*' and a '*past and closed transaction*'. Ordinarily, a right can be regarded as progressing from a '*bare*' right to become a '*vested right*' and then perhaps even a '*past and closed transaction*'. Of course, some rights only become vested rights, and do not go beyond to become past and closed transactions. Others may vest immediately, as soon as they arise or accrue, and then may (or may not) become past and closed transactions. Some rights (in rare and unusual situations) may even become past and closed transactions once they accrue, i.e., progress to that category straight from being '*bare*' rights. As even this brief account shows, some care must be taken to properly analyze the nature of the right under consideration. This is clearly established by the decision in *Molasses Trading*³⁷. The case was concerned with the grant of an exemption under the Customs Act, 1969. An exemption (which was granted by a notification issued under section 19 of the Act) can be regarded as a '*bare*' right, one that can be availed of by the concerned importer. In the well-known case of *Al-Samrez Enterprise supra*, it was held that if the importer altered his position in reliance on the notification (e.g. by entering into a contract or opening a letter of credit), he acquired a vested right in the exemption, to which he remained entitled even if the exemption itself stood withdrawn by the time the goods arrived in Pakistan. The '*bare*' right, in other words, had been transformed into a vested

³⁵ *M/s. Al Samrez Enterprise v. Federation of Pakistan etc.* (1986 SCMR 1917)

³⁶ *Commissioner of Inland Revenue v. M/s. Mekotex* (PLD 2024 SC 1168)

³⁷ *Molasses Trading and Export (Pvt) Ltd. v. Federation of Pakistan and others* (1993 SCMR 1905)

right. In order to undo the effect of this decision, Section 31A was added to the Customs Act, 1969 (by the Finance Act, 1988), and it was deemed always to have been part of the said Act. The question before the Supreme Court in *Molasses Trading supra* was whether section 31A had retrospectively destroyed the vested rights recognized in *Al Samrez* (the goods in question having been imported before **01.07.1988**). The Supreme Court unanimously held that the answer to this question was in the affirmative. However, by a majority, it was also held that those cases in which the bills of entry had been filed by or before 30.06.1988 (i.e. before the Finance Act, 1988 came into force) had become past and closed transactions, and Section 31A did not apply to them, notwithstanding the absolute terms in which it had, ostensibly, been given retrospective effect. The reason why the rights in those cases had gone from being vested rights to become past and closed transactions was that, in respect of customs duties, the levy of the tax stood crystallized on the date on which the bill of entry was filed. It is well-settled that retrospective statutes affecting vested rights and/or past and closed transactions are to be given the narrowest effect and interpretation that is reasonably possible. Section 31-A, being concerned with undoing the effect of the *Al Samrez* case, was directed towards vested rights, and could not, therefore, affect past and closed transactions. *Molasses Trading* thus nicely illustrates both how rights can move along the 'scale' referred to above, and the distinction that exists between vested rights and past and closed transactions. If the ratio of *Molasses*, *Al-Samrez* and *Mekotex* judgments are applied to the case of the petitioners, the petitioners did not even have a prospective right at the time when the Impugned Amendments were brought about. Since neither the election schedule was announced nor the stage for filing of the nomination papers had come to pass, therefore, the reliance on *Muhammad Rafique's* judgment may rather be placed against the contentions of the petitioners. The relevant paragraph of *Muhammad Rafique's* case would clinch the entire issue as the said binding precedent of a Full Bench of this Court not only settles that at what stage candidates right becomes a vested/perfected right in an election but also settles that right to contest the election of the nature in hand is not a fundamental right guaranteed under Article 17 of the Constitution. The same judgment also sets at naught the inaptness of reliance placed by the petitioner

on Javed Jabbar's case. Following paragraphs of Muhammad Rafique supra are reproduced herein below:

“24. As far as the plea based on infraction of Articles 17 and 25 of the Constitution is concerned, it will be necessary to first examine the nature of the right to elect and to be elected to the Punjab Bar Council. The petitioners have vehemently relied on the observations in the case of Javed Jabbar supra that right to contest an election is a fundamental right. These observations were made in connection with election to the Pakistan Senate and the basis was sub-Article 2 of Article 17 of the Constitution whereby every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party and that right to be a member of a political party includes right to contest an election. Elections to the Parliament are rooted in a number of provisions of the Constitution such as Articles 50, 59, 62, 63, 63-A, 218, 222, 224 and 226. However, it may be observed that Article 17 of the Constitution does not contemplate that right to contest an election to a statutory body created by the statute itself will be a fundamental right.

.....
26. The nature of the right to elect came under consideration of Supreme Court of India in *Jyoti Basu and others v. Debi Ghosal and others* (AIR 1982 SC 983) and the following observations were made:-

"A right to elect fundamental though it is to democracy, is anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

27. The Bar Councils are the creation of the statute and right to elect or to be elected is the creation of the statute. Article 17 of the Constitution does not refer to a statutory right to elect or to be elected: Therefore, the right to elect and to be elected to the Bar Councils being a creation of the statute, could be lawfully regulated by the statute. A salient feature of this case is that the impugned Ordinance was promulgated on the basis of the recommendations of the Pakistan Bar Council which is duly represented by the Provincial Bar Councils. Therefore, the impugned amending Ordinance is not violative of Article 17 of the Constitution.

28. As far as the plea of discrimination is concerned, enhancement of the qualifications as an Advocate of this Court and the standing from 7 to 10 years only regulates the right to be elected. The qualifications were laid down by Act XXXV of

1973 and could, therefore be lawfully altered by the Legislature. Likewise, the electorate had no vested right to the number of seats for which election to the Punjab Bar Council is to be held. Therefore, the amending Ordinance is not ultra vires of Article 25 of the Constitution. Reference to the election to the N.-W.F.P. Bar Council under the old law is out of place as the impugned Ordinance could not be struck down on this ground.

29. As far as the petitioners in the first seven cases are concerned the question left to be determined is whether the amended section 5-A enhancing the qualification from 7 to 10 years standing could be applied to them so as to give retrospective effect to the impugned Ordinance. Our answer to this question is in the negative for the reasons to follow.

30. The revised schedule issued on 6-11-2004 by the learned Returning Officer had the effect of nullifying the valid nominations of the said petitioners. The amendment made by Ordinance No.III of 2004 have become part of the Act itself but even in the scheme of the entire aforesaid Act there is no provision for nullifying a valid nomination already made Right to be elected is the creation of Act No.XXXV of 1973 and as a result of acceptance of the nomination papers and publication of the list of the contesting candidates, the right of the said petitioners to contest the election stood perfected and that right could not be taken away except by express words or unequivocal intendment of the legislature which we were unable to find in section 1(3) of amending Ordinance

[Emphasis Supplied]

29. The above clearly settles that the overwhelming reliance by the learned counsels for the petitioners on the cases Javed Jabbar³⁸, Muhammad Nasir Mehmood³⁹ & Muhammad Rafiq⁴⁰ *supra* is entirely misconceived in the peculiar facts and circumstances of the instant case. Considering the foregoing and in view of the settled law on the subject that a case is only authority for what it actually decides and cannot be cited as precedent for a proposition that may be inferred from it⁴¹, the case law relied upon by the learned counsels for the petitioners is distinguishable in facts and circumstances of the case in hand

³⁸ Javed Jabbar v. Federation of Pakistan (PLD 2003 SC 955)

³⁹ Muhammad Nasir Mehmood v. Federation of Pakistan (PLD 2009 SC 107)

⁴⁰ Muhammad Rafiq v. Federation of Pakistan (PLD 2005 Lahore 150)

⁴¹ “Syed Hammad Nabi and others vs Inspector General of Police Punjab, Lahore and others (2023 SCMR 584), Quinn v Leathem (1901 AC 495); Trustees of the Port of Karachi v. Muhammad Saleem (1994 SCMR 2213); “Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others”(PLD 2009 SC 879) per Ch. Ijaz Ahmed J.;

and would therefore, have no precipitable relevance to the instant case to the extent of the amendments brought about in the Act, 1973 and Rules, 1976.

30. Adverting to the argument of democratic norms and essence *viz* the elections in question, there is much force in the argument advanced by the learned Additional Attorney General for Pakistan on the touchstone of Article 97 of the Constitution. It is unequivocal that Article 97, when read with Entry 11, Part II of the Fourth Schedule of the Constitution, clothes the Federal Government with twin powers and authority i.e. the legislative competence and the executive authority *qua* the same subject. It quite evidently flows from the same that Bar Councils created and functioning under the Act, 1973 and the Rules, 1976, be it Pakistan Bar Council or Provincial Bar Councils, are performing delegated authority of the Federation to regulate the profession of law. Article 97 of the Constitution clearly purports that the power and authority to legislate *viz* a particular subject matter, comes within the executive authority of the federation *qua* the same subject. However, since the cases in hand may be decided on the other narrower grounds, this Court, though tempted enough to ponder further, is not inclined to burden this judgment with more on this issue as this question will be elaborately answered in some other appropriate case, where decision of the case requires such necessary enunciation.

31. For what has been discussed above, the challenge laid to the *vires* of the amendments brought about in the *Legal Practitioners and Bar Councils Act, 1973*, by virtue of the *Legal Practitioners and Bar Councils (Amendment) Act, 2025* is **dismissed** and the impugned amendments thereof are declared *intra vires*.

32. The alternate prayer seeking declaration that the amended provisions are retrospective in nature, therefore, the same may not be implemented for the upcoming elections of the Provincial Bar Council(s) is also **dismissed** being misconceived.

33. Adverting to the submissions of the learned counsels for the petitioners *qua* the Amended Rules, I have minutely perused the Impugned Rules in view of the above settled principles of interpretation and determination of vires. Needless to observe that the Rules, 1976 have been framed while exercising delegated authority, therefore, different criteria applies to the questions of

determination of the vires of delegated legislation when compared with the test of statute itself, out of which such delegated rule making power had flown. Delegated legislation is secondary legislation – it is a law made by a person or body other than the legislature but with legislature's authority. In a recent judgment, *Shams Mehmood Mirza J.*; has authoritatively enunciated the subject while comprehensively considering the settled principles of law in this respect; his Lordship has enumerated the tests determining the vires of delegated legislation. The relevant paragraphs of the law report⁴² are reproduced below:

8. *The Courts have spelt out a number of grounds for laying a challenge to delegated or subordinate legislation. The following tests have been laid down by the Courts for making a vires determination of the delegated legislation.*

- (1) Whether the Rules framed are beyond the power granted by the enabling legislation (*ultra vires*);
- (2) Whether the process for formulating the Rules prescribed by the parent statute was followed (*procedural ultra vires*); and
- (3) Are the impugned Rules consistent with the objective of the parent statute.

These tests are also propounded in judgments reported as Muhammad Amin etc v. Government of Pakistan 2015 SCMR 630, Khawaja Ahemd Hassan v. Province of Punjab 2015 SCMR 186 and Aziz Ahmad v. Provincial Police Officer PLD 2005 Lahore 185.

9. *It is axiomatic that if the provisions of a statute deal with the subject matter in considerable detail, the scope of delegated legislation shall correspondingly become limited. On the contrary, if the statute generally deals with the subject matter, the scope of delegated legislation made under it shall become greater for it is assumed that the legislature consciously decided to leave the detail to be filled out by delegated legislation [see *Muhammad Fahad Malik v. Pakistan Medical and Dental Council etc PLD 2018 Lahore 75* and *Morton v Union Steamship Co of New Zealand Ltd (1951) 83*]. The need for delegated legislation arises to reduce pressure on parliamentary time and to make provision for rapidly changing or uncertain situations which may or may not be in the contemplation of the Parliament. The theory underlying the principle of delegated legislation is that the Parliament is only concerned with general principles whereas the executive and other authorities authorized to make delegated legislation address and deal with matters of*

⁴² “*Jamil Sweets v. Federation of Pakistan*” (2020 PTD 752 = 2020 LHC 617)

administration and detail. O'Connor J. in the decision in Baxter v Ah Way (1909) 8 CLR 626 put forward the rationale for making regulations in the following terms:

Now the legislature would be an ineffective instrument for making laws if it only dealt with the circumstances existing at the date of the measure. The aim of all legislatures is to project their minds as far as possible into the future, and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases, and, therefore, legislation from the very earliest times, and particularly in more modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied.

It is furthermore settled law that grant of power of legislation includes the power to enact incidental or ancillary legislation which power is inherent in the Constitution. It was observed in Edward Mills Co., Ltd., Beawar v. State of Ajmer, (S) AIR 1955 SC 25 ".....it is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power. A legislature cannot strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the legislature itself but delegation may be resorted to as a subsidiary or an ancillary measure." Similarly, in Vasan-lal Maganbhai v. State of Bombay 1961-1 SCR 341, it was held as under:

It is now well established by the decisions of this Court that the power of delegation is a constituent element of the legislative power as a whole, and that in modern times when the legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts.

10. *A survey of the judgment would show that the following principles for interpretation of delegated legislation have been laid down. There is a presumption of validity attached to the delegated legislation. The Rules made under a statutory mandate ought to be read and interpreted in a broad manner which makes them consistent to the parent statute. The Court holding the inquiry does not indulge in assessing the policy merits of the Rules or makes assessment as to whether the Rules would meet the objectives set out by the parent statute. The powers delegated to the Authority for framing Rules generally signify broad discretion reserved for it to make assessment as to what will advance the purposes of the parent statute and also*

the measures required to advance those purposes. It is generally recognized that issues which depend on policy matters involve greater expertise and are thus left to be determined by the delegated agencies. Implicit in this deferential attitude is the acknowledgement that the Courts do not possess policy expertise on such legislation absent the lack of resources to engage in policy analysis for lack of capacity.”

34. While applying the above test, it is evident that the condition of “*continuous practice for five preceding years in such district*”, now sought to be imposed through Impugned Notification, clearly amounts to contradicting, overriding & enlarging the scope of statutory provision as provided under Section 5A(d) of the Act, 1973, which imposes a condition that a candidate simply needs to be a voter member of Bar Association falling in such district for a period of not less than five (05) years. Similarly, the amended clause (a) of Rule 175-K and newly inserted clause (a1) of Rule 175-K of the Rules, 1976 are also not in conformity with the definition of a voter, as couched in Section 2(o) of the Act, 1973. It is well settled that the rules made under an Act or Statute are subservient to the parent Act and such rules cannot contradict, override, add to the clear provision of the parent Statute. It is equally well settled that any rule which is inconsistent or travels beyond the scope of parent statute, is *ultra vires* the parent statute. As per the settled canons of interpretation of statutes, the rules made under a parent statute cannot go beyond the scope of said statute nor can they enlarge the scope of statutory provisions therein as the power of rule-making is an incidental power that must follow and not run parallel to the parent statute⁴³. In view of the above, the amendments brought about through the Impugned Notification in Rules 6 (1), clause (a) to Rule 175-K and clause (a1) to Rule 175-K of the Rules, 1976 are hereby declared *ultra vires*.

35. As regards the amendment made in sub-rule (5) of substituted Rule 10-B of Rules, 1976, to the extent of providing the remedy of appeal to aggrieved person before the Attorney General, against the order(s) of the Returning

⁴³ Farrukh Raza Sheikh v. The Appellate Tribunal Inland Revenue and others (2022 SCMR 1787), Commissioner Inland Revenue, LTO, Islamabad v. M/s Pakistan LNG Limited, Islamabad (2025 SCP 267), Pakistan Electronic Media Regulatory Authority v. Pakistan Broadcasters Association and others (PLD 2023 SC 378), Jurists Foundation through Chairman v. Federal Government through Secretary, Ministry of Defence and others (PLD 2020 SC 1), SUO MOTU CASE No.13 of 2009 (PLD 2011 SC 619), SUO MOTU CASE No.11 of 2011 (PLD 2014 SC 389), Zarai Taraqiati Bank Limited and others v. Said Rehman and others (2013 SCMR 642=2013 PLC (CS) 1223), Mian Zaiuddin v. Punjab Local Government and others (1985 SCMR 365) --- PLD 1995 SC 423), Khawaja Ahmad Hassan v. Govt. of Punjab and others (2005 SCMR 186).

Officer/Advocate General is in violation of settled jurisprudence as well as the very essence of the Act, 1973, which provides for a judicial oversight in the matters which pertain to and are related with the remedy of aggrieved persons. The concept of judicial oversight is well settled in our jurisprudence⁴⁴. In the instant case, the remedy of appeal being provided before the Attorney General against the decision of Advocate General lacks the element of judicial oversight, therefore, sub-rule (5) substituted Rule 10-B of Rules, 1976 is hereby declared *ultra vires* and the matter is referred to the Pakistan Bar Council for reconsidering the same by providing a remedy, which may have some judicial oversight. This Court is sanguine that while doing so, the learned Members of the Pakistan Bar Council will consider the provisions contained in the *Legal Practitioners and Bar Councils Act, 1973*, particularly Section 42 (2) thereof.

36. Having reached the culmination of this judgment, I deem it befitting to acknowledge the invaluable assistance rendered by the learned counsels as well as learned law officers, whose able submissions, conduct and consistent adherence to decorum have significantly enriched the proceedings of this Court.

The above are the detailed reasons for my following short order of even date i.e. 02.10.2025:

“For reasons to be recorded in my detailed judgment to follow, this and connected petitions are decided in the following terms:

- i. *The challenge laid to the vires of the amendments brought about in the Legal Practitioners and Bar Councils Act, 1973, by virtue of the Legal Practitioners and Bar Councils (Amendment) Act, 2025 is dismissed and as a natural corollary, the impugned amendments thereof are declared intra vires;*
- ii. *The alternate prayer of the petitioners, seeking a declaration that the amended provisions are retrospective in nature, therefore, the same may not be implemented for the upcoming*

⁴⁴ *D.G. Khan Cement Company Ltd. v. Government of Punjab through Chief Secretary, Lahore and others* (**2021 SCMR 834**), *Habibullah Energy Limited v. WAPDA through chairman and others* (**PLD 2014 SC 47**), *Sh. Riaz ul Haq and another v. Federation of Pakistan through Ministry of law and others* (**PLD 2013 SC 501**)

- elections of the Provincial Bar Council(s) is also dismissed being misconceived;*
- iii. *The following amendments made in Pakistan Legal Practitioners and Bar Councils Rules, 1976 by virtue of Pakistan Legal Practitioners and Bar Councils (Amendment) Rules, 2025, are hereby struck down being ultra vires:*
- a. *The amendment made in Rule 6 (1) i.e. the addition of words “who is practicing in such district continuously for five preceding years”;*
 - b. *The amendment made in Clause (a) of Rule 175-K i.e. the addition of words “and Bar Council”;*
 - c. *The addition of Clause (a1) in Rule 175-K;*
- iv. *In addition to above, the sub-rule (5) of the substituted Rule 10-B to the extent of providing the remedy of appeal to aggrieved person before the Attorney General, against the order(s) of the Returning Officer/Advocate General is hereby declared ultra vires and the matter is referred to the Pakistan Bar Council for reconsidering the same by providing a remedy, which may have some judicial oversight. This Court is sanguine that while doing so, the learned Members of the Pakistan Bar Council will consider the provisions contained in the Legal Practitioners and Bar Councils Act, 1973, particularly Section 42 (2) thereof.”*

(Khalid Ishaq)
Judge

APPROVED FOR REPORTING.

(Khalid Ishaq)
Judge

Announced on 02.10.2025
Corrected & Signed on 24.11.2025.

