

Athar Minallah J. I have had the privilege of reading the judgment of my learned brother, Qazi Fae Isa, CJ and I see no reason for not agreeing with or endorsing his articulate interpretation of the law and the Constitution. However, I felt it necessary to add my additional opinion as well.

2. We have interpreted and held that Article 19A of the Constitution guarantees to every citizen the fundamental right of having access to information in all matters of public importance. The exercise of this right is subject to regulation and reasonable restrictions imposed by law. The expression '*subject to regulation and reasonable restrictions*' does not and cannot confer competence upon the legislature to abridge, impair, restrict or curtail the scope of the constitutionally guaranteed right by granting outright or indiscriminate exclusion to a public entity. The right under Article 19 A is related to access to information in all matters of public importance, including information regarding public bodies. A plain reading of the Right of Access to Information Act 2017 ('**Act of 2017**') shows, *prima facie*, that the Supreme Court has not been expressly excluded from the definition of 'public bodies' under section 2 (ix) *ibid*. The definition of the expression 'public body' in sections 2(i) and 2(h) of the Sindh Transparency and Right to Information Act 2019 ('**Sindh Act**') and the Punjab Transparency and Right to Information Act 2013 ('**Punjab Act**'), respectively, includes the High Courts in both the Provinces to be amenable to the right to access law.

3. It is noted that Article 8 of the Constitution unambiguously declares a law to be void in so far it is inconsistent with the rights conferred under Chapter I. It further expressly bars the State from making any law which takes away or abridges the fundamental rights or has been made in contravention of the explicit command. The State has

been defined in Article 7 and it, inter alia, includes the Majlis-e-Shoora (Parliament) and the legislatures of the respective Provinces.

4. The Majlis-e-Shoora (Parliament), therefore, while promulgating the Act of 2017 could not have intended to take away or abridge the right under Article 19A by an outright and indiscriminate exclusion of the Supreme Court and thus barring a citizen from having access to information relating to its activities of public importance. It appears that the Supreme Court has not been expressly excluded from the purview of the exercise of the right of a citizen under Article 19A. As deference to the principle of trichotomy, the adoption of the principles and rules relating to enforcement of the fundamental right of access to information seems to have been left to the Supreme Court, since it enjoys the status of the final and highest Court in the country to protect and guard against any infringement of the fundamental rights of the citizens. It is vested with extraordinary original jurisdiction under Article 184 (3) of the Constitution to grant writs relating to the enforcement of fundamental rights. Any interpretation of the Act of 2017, having the effect of giving immunity to the Supreme Court from the exercise of the right of a citizen to have access to information would amount to abridging and taking away a constitutionally guaranteed right. In such an eventuality and to such an extent the Act of 2017 would be void because of inconsistency with a fundamentally guaranteed right. On the touchstone of the principles of presumption of constitutionality and saving the law from being declared void, the Act of 2017 ought to be construed as not granting impunity to the Supreme Court nor barring a citizen to exercise the right to have access to information. The Supreme Court exercises the extraordinary and unique power of judicial review to examine the actions of other branches of the State, the Legislature and Executive, on the touchstone of the infringement of fundamental rights. It is inconceivable

that the Supreme Court would abridge or take away the fundamental rights of the citizens. It is also beyond imagination to expect that the highest forum, entrusted with the onerous duty to protect the fundamental rights, would be involved in its abridgment or outright refusal to give effect to or enforce such rights.

5. Public confidence will be eroded and the independence of judiciary undermined if citizens perceive the custodian of fundamental rights to be involved in its abridgment. The Supreme Court has no control over the sword or the purse and its power and strength is solely based on public confidence. No citizen should walk away from the Supreme Court perceiving the refusal to entertain a request for access to information as concealment or suppression of public information. The Supreme Court enforces the fundamental rights by ensuring that actions and decisions of others are transparent and open. The right of access to information is a bulwark against corruption and corrupt practices. It enables the citizen to know how they are being served and how the resources that belong to them are being utilized and spent. It empowers the citizens and promotes democratic values and participatory governance. The internal regulations, information relating to human resource, privileges and perks enjoyed by judges and the employees, the budget allocated to the Supreme Court and its expenditure are some of the areas that are matters of public importance and thus of interest to the citizens. The Supreme Court is presumed to be a model for others to follow regarding financial discipline and implementation of enforced laws and policies of transparency and openness. It is also presumed that the Supreme Court would be enforcing the principles that it enunciates for others to follow more rigorously in its own administrative affairs. There is no reason for the Supreme Court to refuse a request of access to information unless it falls within the exceptions described under the Act of 2017. The

reluctance and refusal justifiably leads to giving rise to suspicions and adverse perceptions, thus eroding the independence of the judiciary. In order to promote the independence of the judiciary, public confidence and trust in the transparency and integrity of the administrative actions, decisions and policies is inevitable. It is critical that the Act of 2017 is rigorously implemented and followed by the administration of the Supreme Court because it enforces the right under Article 19A of the Constitution even though it does not expressly apply to it.

6. To repose the peoples' trust, the Supreme Court has to adopt the principle of proactive disclosure of information by placing all the information of matters relating to public importance on its website or displaying it through other means. There should be no need for a citizen to request information. Proactive disclosure of information is implicit in the fundamental right guaranteed under Article 19A of the Constitution. Transparency, openness and enforcement of the right guaranteed under Article 19A are the tenets of public confidence and an independent judiciary. The Islamabad High Court was also not covered under the Act of 2017, yet it voluntarily provided access to information sought by a citizen vide letter dated 29.07.2021, in response to an order of the Pakistan Information Commission. It does not behove the constitutional courts to withhold or turn down a request of a citizen exercising the right of access to information guaranteed under Article 19A of the Constitution. The Supreme Court, therefore, has to set an example for others by proactively disclosing information, rather be seen as withholding information and thus infringing a guaranteed fundamental right.

The above are additional reasons in support of the interpretation of law and the conclusion recorded by my learned brother, Qazi Faez Isa, CJ in his judgment.

(Justice Athar Minallah)

'APPROVED FOR REPORTING'