SUPREME COURT OF PAKISTAN

(Review Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Maqbool Baqar
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Sajjad Ali Shah
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Munib Akhtar
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Amin-ud-Din Khan

C.M.A No.1243 of 2021 in Civil Review Petition No.296 of 2020.

(For livestreaming and broadcasting the court-proceedings)

Justice Qazi Faez Isa

...Petitioner

VERSUS

The President of Pakistan and others

...Respondents

For the petitioner(s)	:	Mr. Justice Qazi Faez Isa (in-person) Assisted by Barrister Kabir Hashmi. *(in CRP.296/2020)* Mrs. Sarina Faez Isa (in-person) *(in connected CRP.298/2020)* Mr. Hamid Khan, Sr. ASC. Syed Rifaqat Hussain Shah, AOR. *(in connected CRP.299, 300, 301 & 308/2020)* Mr. Rasheed A. Rizvi, Sr. ASC. *(through Video Link from Karachi).* *(in connected CRP.297 & 309/2020)* Syed Rifaqat Hussain Shah, AOR. *(in connected CRP.509/2020)*
For Federation of Pak.	:	Ch. Aamir Rehman, Addl. AGP.
For President, PM & AGP.	:	Mr. Sohail Mahmood, Addl. AGP.
Dates of hearing	:	02, 03, 08, 17 & 18 March 2021.

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ORDER

Maqbool Baqar, Mazhar Alam Khan Miankhel and Syed Mansoor Ali Shah, JJ.-

Preface

This application raises the questions, whether the time has come to open our court-room and allow public access to judicial proceedings through live audio-video streaming. "Sunshine is said to be the best of disinfectants"[1]; we need to ask ourselves whether the traditional closed architecture of our court-room needs to be redesigned to allow sunshine of public access through live audio-video streaming ? Should we embrace technology and align ourselves with the modern

[1] Justice Brandeis famously remarked in a 1913 *Harper's Weekly* article titled "What Publicity Can Do", to bring transparency in bankers' commissions and profits, specifically to avoid corrupt practices that were prevalent at the time. His quote was later applied to all government actions in general, in the U.S., by the judges believing that a transparent and accountable government better serves the people.

judiciaries of the world by giving online access to the public to our court proceedings? And do we wish to make our justice system more transparent by holding judicial proceedings in public gaze ?

2. This Court being at the apex of the judicial hierarchy of the country is often the final arbiter of the constitutional questions having a profound effect on all and sundry. The cases involving questions of public importance with reference to the enforcement of fundamental rights of the citizens, which are heard by this Court in its original jurisdiction under Article 184(3) of the Constitution, have a distinct characteristic: the Court, in these cases, acts as the first and the final arbiter. The uniqueness of this jurisdiction exercised by the Court at times invites criticism of judicial overreach.[2] Would not the openness of the Court to public through live streaming be an effective restraint on the possible misuse of judicial power under this jurisdiction ?

3. "Democracies die behind closed doors…When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation."[3] Openness serves to ensure the durability of democracy. No organ of the State, however, has remained a greater mystery to people than the Judiciary. Live-streaming of the court proceedings could demystify the Judiciary and make it truly a public institution. Would it not give the people a better understanding of the working of the Court, and reassure them that their fundamental rights are being protected and enforced by the Court in its jurisdiction under Article 184(3) of the Constitution?

Prayer of the petitioner

4. The petitioner, Justice Qazi Faez Isa, has prayed that this Court may order live-streaming of the court proceedings of his case (review petitions), and direct the State-owned Pakistan Television Corporation (PTV) to broadcast live proceedings of his case and the Pakistan Electronic Media Regulatory Authority (PEMRA) to issue written instructions to all private television channels that they cannot be restrained in any manner whatsoever from broadcasting the proceedings.

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[2] See Maryam S. Khan, Genesis and Evolution of Public Interest Litigation in the Supreme Court of Pakistan: Toward A Dynamic Theory of Judicialization (2015), and Asher Asif Qazi, A Government of Judges: A Story of The Pakistani Supreme Court's Strategic Expansion (2018).

[3] Judge Damon Keith, writing for a unanimous panel of the Sixth Circuit Court of Appeals, remarked in the famous case of Detroit Free Press v. Ashcroft 303 F.3d 681.

Factual background

5. Before describing the assertions of the petitioner made in the present application, it would be proper to give a brief background of the case, to comprehend the context of the prayer of the petitioner. A Reference under Article 209 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")** was filed by the President of Pakistan on the advice of the Prime Minister of Pakistan against the petitioner in the Supreme Judicial Council of Pakistan **("Council")**, alleging commission of misconduct mainly on the basis of his non-disclosure of certain foreign properties of his family members in the declaration of his assets filed with the annual income tax returns. The Council commenced proceedings against the petitioner on the said Reference. The petitioner, and many Bar Councils and Bar Associations of the country, challenged the action of the President, of filing the said Reference and also the proceedings of the Council commenced on the basis thereof, in this Court invoking its original jurisdiction by filing constitution petitions under Article 184(3) of the Constitution. Those constitution petitions were allowed by this Court: the Reference filed against the petitioner was quashed and the proceedings before the Council were declared abated. However, the Court also made certain directions to the officers of the Federal Board of Revenue, Pakistan to initiate proceedings against the petitioner's family members under the Income Tax Ordinance, 2001 and to submit a report regarding determination made in those proceedings to the Council, and the Council was asked to consider the matter in exercise of its *suo motu* powers, for such proceedings in relation to the petitioner as it may deem appropriate. It is against these directions of the Court that the petitioner, his spouse, and some Bar Councils and Bar Associations have filed the review petitions. And before arguing on his review petition, the petitioner has filed the present application.

Assertions of the petitioner

6. The petitioner has asserted in the application that immediately after the President of Pakistan sent the Reference against him to the Council, the contents of the Reference were leaked to the media, and the same were broadcast on television channels and published in newspapers. An unrelenting false propaganda campaign was launched against him. He, as a Judge of the Supreme Court, was

handicapped to hold a press conference to rebut or respond to the allegations, while the official respondents with their iron grip on the media ensured that the contents of his reply filed in the Reference were neither broadcast nor published. The Law Minister sensationalized the matter by making false statements to the media, and the President of Pakistan, in his three television interviews, elaborated upon the Reference when the matter was pending adjudication before this Court in the constitution petitions. The tactics of the official respondents formed a negative public opinion about the petitioner and his family, and whether he survives as a Judge or not, his reputation has been tarnished by the negative propaganda. Although the irreparable harm already caused to him cannot be undone; however, to restore a semblance and to correct the public perception, all future proceedings in his case may be directed to be broadcast live and/or live-streamed. Broadcasting and/or live-streaming of the court proceedings would be an affirmation of the Fundamental Rights of the petitioner and of the public, and would also be a testament to accountability and transparency.

Stance of the other parties

7. Learned counsel for the petitioners in the other connected review petitions supported the prayer of the petitioner, while the learned Additional Attorneys-General who appeared before the Court on behalf of the some of the respondents, i.e., Federal Government, President of Pakistan, Prime Minister and the Attorney-General for Pakistan **("contesting respondents")**, opposed it mainly on the ground that the prayer of the petitioner made through a miscellaneous application, and that too, filed in a review petition is not maintainable, besides there is no fundamental right of the public to have access to information of the court-proceedings through livestreaming or broadcasting of the same. They contended that the Court could take up and decide the questions involved in the present application only on a separate and independent petition under Article 184(3) of the Constitution.

8. After hearing the arguments of the petitioner and the contesting respondents at length, we disposed of the application of the petitioner, for the reasons to be recorded later, vide our short order dated 13.04.2021 in the following terms:

Short order

(i) Article 19-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") creates an obligation on State institutions, including the Judiciary, to take the necessary measures to ensure realization of the fundamental right of citizens to have access to information in matters of public importance. Cases under Article 184(3) of the Constitution, including review petitions and other matters arising therein, are matters of public importance, and the public has a right to know and see how proceedings in these cases are conducted and concluded by the Court. We, therefore, hold that Live Streaming (audio and video) of court hearings of these cases should be made available for information of the public through a link on the official website of this Court, and for this purpose the Registrar of this Court should take steps to provide for the requisite technological infrastructure and make arrangements for necessary amendments in the Rules under Article 191 of the Constitution to regulate its practice and procedure in this regard;

(ii) Keeping in view the current state of technological infrastructure available in this Court and the fact that the review petitions filed in the case are fixed for hearing, we direct the audio recording of the proceedings of the court hearings of the said review petitions to be made available to the public through a link on the official website of this Court. The Registrar of this Court shall ensure that the un-edited audio recording of the proceedings of the court hearing of the review petitions is made available to the public on the official website of the Court on the same day soon after the hearing and before the close of the working hours.

In this discourse, we undertake to describe our reasons for the above order.

Questions for determination

9. At the outset, we want to make it clear that although the *pro* and *contra* arguments were advanced as to the broader concepts of 'open trial' and 'open justice' and 'live-streaming' of all cases in all courts of the country, we being cognizant of the procedural aspect of the principle of judicial restraint that requires "if it is not necessary to decide more, it is necessary not to decide more"[4], restrict ourselves only to the determination of the questions that are necessary for decision on the prayer made in the present application, *viz*:

> (i) Whether it is the fundamental right of the public to have access to information as to the court-proceedings of the cases heard by this Court in its original jurisdiction under Article 184(3) of the Constitution, including review petitions and other matters arising therein.

[4] PDK Labs. v. Drug Enforcement Admin. 362 F. 3d 786 (CADC 2004) per John Roberts, J.

(ii) If so, whether there is any obligation of this Court to provide the public the access to information of the court-proceedings of such cases through livestreaming.

There is a serious "risk of error or misconception which inevitably attends judicial efforts to declare the law at large and in general terms outside of the points really raised by the facts of the case."[5] It would, therefore, be appropriate to examine the broader question of live-streaming of all cases heard by this Court or of all cases heard by all courts of the country, in some case where this matter is agitated as a main question, and not as an ancillary one raised in a miscellaneous application. We, therefore, leave this broader question to be examined and decided in some other appropriate case.

Objection as to maintainability of prayer through a miscellaneous application

10. Before embarking upon the discussion on the above questions, we would like to deal with the preliminary objection of the contesting respondents. We find that the objection of the contesting respondents as to the maintainability of the prayer made through a miscellaneous application filed in a review petition is misconceived. The misconception, we think, has partly occurred due to the submissions made by the parties during arguments on the application, which were not restricted to the prayer made in the application rather were expanded to the broader questions of 'open trial' and 'open justice' and 'live-streaming' of all cases in all courts of the country, which we have decided to not take up in the present case. These questions can only be taken up and decided on an independent petition under Article 184(3) of the Constitution filed only for this purpose, and not on a miscellaneous application like the present one, filed as an ancillary matter to the main case agitating some other grievance.

11. But the prayer made in the present application for livestreaming and broadcasting on PTV and other television channels, the court-proceedings of this case can be decided only by this Bench in this case, and cannot be agitated through filing a separate constitution petition under Article 184(3); for such a petition, if filed, may then be entrusted to and heard by any other Bench of this Court. Needless to say that each Bench of this Court, whether small or large, exercises the

[5] Scott v. Scott 1913 AC 417 per Earl Loreburn.

judicial powers vested in the Court, and a decision rendered by it, irrespective of its numeric strength, is considered the decision of the Court. Thus, one Bench of this Court cannot deal with an ancillary or incidental matter pertaining to a case being heard by another Bench. This legal position may be elucidated by a presumptive question: If this Bench decides to either allow or disallow the prayer made in the present application, whether any other Bench of this Court can reverse such order of this Bench, on a separate petition under Article 184(3) of the Constitution, and can direct this Bench to livestream, or restrain it from livestreaming, the court-proceedings of this case. The answer is a clear-cut "No", and for reaching this answer, one does not need to do any intense brainstorming. There is no such jurisdiction conferred on this Court by the Constitution, or by or under any law, in terms of Article 175(2) of the Constitution. Even, this Bench also cannot review its order made on the present application, on a separate petition filed under Article 184(3) of the Constitution. For the original jurisdiction of this Court under Article 184(3) of the Constitution, as authoritatively held by a 7-member Bench of this Court by a unanimous decision in *Shabbar Raza v. Federation*[6], "cannot be exercised as a parallel review jurisdiction", and a judgment or an order of this Court "can never be challenged by virtue of filing independent proceedings under Article 184(3) of the Constitution"; such course is "absolutely impermissible". It is thus only this Bench, and no other, that can decide on the prayer made in the present application, that too only on a miscellaneous application as the present one, and not on a separate and independent petition under Article 184(3) of the Constitution. The objection of the contesting respondent is found meritless and is therefore rejected.

12. Now, we proceed to deal with the substantive question (i), above cited, as to the claimed fundamental right of the public to have access to information of the court-proceedings of the cases heard by this Court in the exercise of its original jurisdiction under Article 184(3) of the Constitution and of the review proceedings in such cases. However, before commencing the discussion thereon, we would like to clarify that we have specifically included the "review proceedings" in the question, as when a Court sits to review its judgment it does not sit in appeal over its own judgment but proceeds to have a fresh look at it within the limits of the review jurisdiction and for this purpose, it invokes the very same

[6] 2018 SCMR 514.

jurisdiction which it exercised earlier, whether it be appellate or original, and can modify its judgment in the exercise of that very jurisdiction. The review jurisdiction only provides a mode to re-invoke the jurisdiction earlier exercised, and thus takes colour from the nature of the jurisdiction exercised by the Court in passing the judgment under review; it cannot be said to be some independent jurisdiction other than the jurisdiction exercised by the Court when the judgment under review was passed.[7]

(i) Fundamental right of the public to have access to information of the court-proceedings of cases heard under Article 184(3)

(a) Reliance on Article 19A of the Constitution

13. To establish that the public has a fundamental right to have access to information as to the court proceedings of the cases heard by this Court under Article 184(3) of the Constitution, the petitioner has referred to the right to access to justice comprised in the fundamental right to life and liberty guaranteed under Article 9, the right to a fair trial guaranteed under Article 10A, the right to freedom of expression and freedom of the press guaranteed under Article 19 and the right to information guaranteed under Article 19A of the Constitution. We find that rights guaranteed under Articles 9, 10A and 19 of the Constitution may be relevant for determination of the broader question of live-streaming of all cases heard by this Court or of cases heard by all courts of the country, which we have left to be determined in some other appropriate case, but for the questions being considered for the decision of the prayer made in the present application, the provisions of Article 19A of the Constitution that guarantees right to information, appear to us, to be the most significant, which are reproduced hereunder for ready reference:

> **19A. Right to information:** Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.
>
> *(Emphasis added)*

Article 19A was added to the Constitution by the Constitution (18th Amendment) Act, 2010. Since then, it has been a subject of discussion and interpretation by the constitutional courts of the country in several

[7] Reliance Industries v. Pravinbhai Patel AIR 1997 SC 3892.

cases. Observations made in some of those cases, which are relevant for the present case, are briefly cited here.

(b) Overview of the previous opinions of Constitutional Courts on Article 19A of the Constitution

13.1 Probably for the first time, the addition of this Article in the Constitution was noted by a division bench of the Lahore High Court in the case of *Atta Ullah v. Federation*[8], in the year 2010; one of us (Syed Mansoor Ali Shah, J.) speaking for the bench observed that "Article 19A of the Constitution is a recent and welcome addition to the chapter of fundamental rights under the Constitution…Right to information is another corrective tool, which allows public access to the working and decision making of the public authorities. It opens the working of public administration to public scrutiny…Article 19A empowers the civil society of this country to seek information from public institutions and hold them answerable."

13.2 In the same year, i.e., the year 2010, this Court also noticed the then-recent addition of Article 19A in the Constitution in the case of *Shahid Masood v. Federation*,[9] hearing two constitution petitions filed under Article 184(3) of the Constitution, that had agitated the grievance as to the breach of the fundamental rights alleging closure and suspension of broadcasting and transmission of some T.V. Channels by the licensed T.V. Cable Operators. The Court observed that the importance and weight attached to the obligations of the Cable T.V. Network Operators to offer undisturbed distribution of service "is not far to find as the same stems out of the fundamental rights of freedom of speech, expression and of press as guaranteed by Article 19 of the Constitution and equally importantly, if not more, the right of every citizen to have access to information in all matters of public importance as guaranteed by the recently inserted provisions of Article 19-A of the Constitution." Ensuring accountability, transparency and good governance by optimizing the free flow of information was highlighted by the Court as one of the objects of the promulgation of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, 2002.

[8] PLD 2010 Lah. 605 decided on 10.06.2010.
[9] 2010 SCMR 1849 decided on 13.08.2010.

13.3 In the case of *Muhammad Masood v. S.M. Corporation*,[10] very important observations were made by a division bench of the Sindh High Court as to the scope and extent of the right conferred by Article 19A of the Constitution. The division bench observed: "A perusal of the Article [19A] indicates that every citizen has been conferred a right to have access to information in all matters of public importance, however, subject firstly to regulations and secondly to reasonable restrictions by law. There is no disagreement that no such regulations have been framed. Non-framing of the regulations cannot have effect of rendering the right guaranteed by Article 19-A as nugatory. Therefore, even if no regulations are framed this right is available to all the citizens. In the absence of regulations and in the absence of restrictions task will be thrown to the Court to determine whether request for information in a particular case or denial of information in a particular case is reasonable."[11]

13.4 The significance of the insertion of Article 19A in the Constitution was underlined by Justice Jawwad S. Khawaja, the then Judge of this Court, in the case of *Watan Party v. Federation*[12] by describing it to be a "major constitutional change". His lordship observed that "the people of Pakistan have been, at times, disserved by a non-inclusive governance paradigm where information critical to them has been withheld from them. Pakistan has faced many crises of public importance…but the citizens of Pakistan, the most direct affectees, have remained clueless and uninformed as to the causes or the progenitors of the multiple crises in our history…The people in quest of the truth have mostly been left with conjectures, rumours and half-truths. Concealment of information has, in turn, led to a distorted history of the country and to a destabilizing division in the polity." He noted: "This paradigm has shifted through the recent incorporation of Article 19A in the Constitution. By virtue of the said Article the right of a citizen to have information 'in all matters of public importance' is made a fundamental right which is guaranteed by the Constitution…Article 184 (3) read in conjunction with Article 19A has empowered the citizens of Pakistan by making access to information a justiciable right of the People rather than being largesse bestowed by the State at its whim. Article 19A has thus,

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[10] PLD 2011 Kar. 177.
[11] Emphasis added.
[12] PLD 2012 SC 292.

enabled every citizen to become independent of power centres which, heretofore, have been in control of information on matters of public importance…This provides for and makes good a crucial missing element of responsible State governance in our Constitutional scheme."[13]

13.5 A full bench of the Lahore High Court made an exhaustive discussion in the case of *Province of Punjab v. Qaisar Iqbal*,[14] on the scope of Article 19A of the Constitution by referring to the previous cases of our jurisdiction as well as of foreign jurisdictions. The full bench, in that case, was hearing intra court appeals against the judgment passed by a single bench of that court, whereby the single bench had directed the Government of Punjab to provide a copy of the report of the Inquiry Tribunal appointed under the Punjab Tribunal of Inquiry Ordinance 1969, to the petitioners. The full bench not only maintained the judgment of the single bench, rather made further direction that the inquiry report of the Tribunal should also be published by the concerned authorities for public information. The full bench observed: "Under clause [*sic*: Article] 19-A of the Constitution, every citizen shall have the right to have access to information in matter of 'public importance'. The word 'public importance' used in Article 19-A of the Constitution is not defined term. However, term public importance according to dictionary meaning could be defined that 'question which affects and has its repercussions on the public at large and it also includes the purpose and aim in which the general interest of the community…is directly or widely concerned'….The reasons recorded by Government itself in its letter dated 17.06.2017 for holding inquiry, when [is] juxtapose[d] with the definition of 'public importance' narrated above, it can safely be concluded that the inquiry report of a Tribunal is a matter of public importance and every citizen has right under Article 19-A to have excess to this inquiry report, indeed subject to reasonable restrictions imposed by law. Even otherwise under section 3 of the Ordinance 1969, inquiry could only take place in [a] definite matter of public importance."[15]

(c) Right conferred by Article 19A is operative and justiciable

14. Survey of the above cases shows that the constitutional courts of the country have appreciated the addition of Article 19A in the

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[13] Internal double quotation mark converted into single.
[14] PLD 2018 Lah. 198.
[15] Internal double quotation mark converted into single.

Constitution, as its addition in the Constitution has embedded and guaranteed responsible State governance in the Constitutional scheme. The provisions of Article 19A do not contain an abstract guiding principle, rather confer a justiciable right. The right to have access to information in all matters of public importance conferred by this Article is a corrective apparatus, which allows public scrutiny to the working of the public authorities and institutions, and makes them answerable to the public. It, thus, ensures transparency and accountability in the functioning of all public authorities and institutions. The right conferred by Article 19A is effective in operation and extensive in scope: it is though subject to, but is not dependent for its effectiveness upon enactment of, a law that may provide for the regulation of, and reasonable restrictions on, such right and it comprehends all matters of public importance undertaken by all State institutions.

(d) Meaning of the expression "matters of public importance"

15. The expression, "public importance", though has been used in Article 19A, but the same has not been defined therein. Earlier to the addition of Article 19A, the expression, "public importance" was already there in the provisions of Article 184(3), 186(1) and Article 212(3) of the Constitution. The provisions of Article 184(3), being the most relevant for the present matter, are reproduced hereunder for ease of reference:

> **Article 184(3)**
> Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.
> *(Emphasis added)*

The Constitution did not define the expression "public importance" used in Article 184(3) also; this expression had, therefore, been a subject of judicial interpretation since the very promulgation of the Constitution in the year 1973, and this Court had defined it in several cases heard under Article 184(3). A judicial definition of this expression was, thus, in field when the new Article 19A was added in the Constitution, in the year 2010. It appears that the Legislature being content with the judicial definition did not feel the need to provide the definition of the said expression while enacting the new Article 19A. Therefore, the judicial definition of the expression "public importance" which was in field till the year 2010 is relevant for determining what the Legislature intended to

mean by using the said expression in Article 19A, as it is a well-settled principle of interpretation of statutes that ordinarily the same meaning is attached to an expression used in different parts of a statute unless the context in which the expression appears suggests otherwise.[16]

16. The expression, "public importance" used in Article 184(3) came up for interpretation before this Court, for the first time, in the case of *Manzoor Elahi v. Federation*[17]. Anwarul Haq, J., explained it thus:

> Now, what is meant by a question of public importance. The term "public" is invariably employed in contradistinction to the terms private or individual, and connotes, as an adjective, something pertaining to, or belonging to, the people; relating to a nation, state, or community. In other words, it refers to something which is to be shared or participated in or enjoyed by the public at large, and is not limited or restricted to any particular class of the community. As observed by the Judicial Committee of the Privy Council in Hamabai Framjee Petit v. Secretary of State for India-in-Council I L R 39 Bom. 279 while construing the words public purpose such a phrase, whatever else it may mean must include a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned". This definition appears to me to be equally applicable to the phrase "public importance."..... In order to acquire public importance, the case must obviously raise a question which is of interest to, or affects, the whole body of people or an entire community. In other words, the case must be such as gives rise to questions affecting the legal rights or liabilities of the public or the community at large, even though the individual, who is the subject-matter of the case, may be of no particular consequence.

This interpretation of the expression was approvingly referred to by the full court bench of this Court in the case of *Benazir Bhutto v. Federation*,[18] and it was further explained thus:

> Lastly is the consideration of the connotation of the expression "public importance" which is tagged to the enforcement of the Fundamental Rights as a pre-condition of the exercise of the power. This should not be understood in a limited sense, but in the gamut of the constitutional rights of freedoms and liberties, their protection and invasion of such freedoms in a manner which raises a serious question regarding their enforcement. Such matters can be viewed as of public importance, whether they arise from an individual's case touching his human rights of liberty and freedom, or of a class or a group of persons as they would also be legitimately covered by this expression.

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[16] See Muhammad Rashid v. State PLD 1960 SC 168; Muhammad Nazeef v. Gulbat Khan 2012 SCMR 235.
[17] PLD 1975 SC 66 per Anwarul Haq, J.
[18] PLD 1988 SC 416 (11-MB).

This interpretation made of the expression "public importance" in the cases of *Manzur Ilahi* and *Benazir Bhutto* was later-on followed by this Court in several cases.[19] Therefore, as per the said judicial definition, the expression "matters of public importance" used in Article 19A means the matters that pertain to and affect the public at large, a whole community, and not an individual or a small group of individuals; in other words, it includes the matters in which the general interest of a whole community, as opposed to the particular interest of individuals, is directly and vitally concerned. The adjective "public" necessarily implies a matter relating to the people at large, the nation, the State or a community as a whole; if a matter in which only a particular individual or group of individuals is interested and the people at large or an entire community have no interest, that cannot be treated as a matter of public importance.

(e) Cases heard under Article 184(3) are "matters of public importance"

17. Section 3 of the Punjab Tribunals of Inquiry Ordinance, 1969 empowers the Government of Punjab to appoint a Tribunal for the purpose of making an inquiry into any definite matter of public importance. For making direction that the inquiry report of the Tribunal should be published for public information, the full bench of the Lahore High Court reasoned, in *Qaisar Iqbal case,*[20] *inter alia* that the inquiry report of the Tribunal is a matter of public importance because under Section 3 of the Ordinance 1969 inquiry can only take place in a definite matter of public importance. We approve this reasoning of the Lahore High Court and adopt it for holding that the cases heard by this Court in its original jurisdiction under Article 184(3) of the Constitution are matters of public importance, as for invoking the original jurisdiction of this Court under Article 184(3) of the Constitution two conditions are necessary to be fulfilled: (i) the matter should be for the enforcement of any of the fundamental rights; and (ii) with reference to the enforcement of such fundamental right, the question involved should be of public

[19] See Shahida Zahir v. President of Pakistan PLD 1996 SC 632 (3-MB); Zulfiqar Mehdi v. PIA Corporation 1998 SCMR 793 (2-MB); Asad Ali v. Federation PLD 1998 SC 161(10-MB); Watan Party v. Chief Executive/President of Pakistan PLD 2003 SC 74 (5-MB); Javed Jabbar v. Federation PLD 2003 SC 955 (5-MB); Shahbaz Sharif v. Federation PLD 2004 SC 583 (3-MB); APNS v. Federation PLD 2004 SC 600 (3-MB); Muhammad Siddique v. Govt. of Pakistan PLD 2005 SC 1 (3-MB); PML(N) v. Federation PLD 2007 SC 642 (7-MB); Watan Party v. Federation PLD 2012 SC 292 (9-MB); Tahir-Ul-Qadri v. Federation PLD 2013 SC 413 (3-MB); Abdul Wahab v. HBL 2013 SCMR 1383 (6-MB).

[20] Province of Punjab v. Qaisar Iqbal PLD 2018 Lah. 198.

importance.[21] These are the essential conditions for the exercise of the jurisdiction vested in this Court under Article 184(3).

18. In the present case also, this Court held in the judgment[22] under review that "examination of the jurisprudence of this Court makes it clear that in order to invoke its original jurisdiction under Article 184(3) of the Constitution, the impugned action must be shown to involve a matter of public importance arising from the breach of a fundamental right which affects the public at large."[23] The Court referred to and quoted the following observations made in the case of *Al-Jehad Trust v. Lahore High Court*[24]:

> "11: ...unless the matter is of public importance relating to the enforcement of any of the fundamental rights conferred by Part II, Chapter 1 of the Constitution (Articles 8 to 28), the jurisdiction of the Court under Article 184(3) of the Constitution, cannot be invoked. The mere importance of a matter, without enforcement of any fundamental right or reference to a fundamental right without any public importance, will not attract the jurisdiction of this Court under Article 184(3) of the Constitution."[25]

The Court concluded that the "fundamental right of the general public which is claimed by the petitioner to be under threat is the derivative right of the independence of the judiciary. This right is an essential prerequisite for the enjoyment of, *inter alia*, the principal fundamental right to access justice which is guaranteed to the people of Pakistan by Articles 4, 9 and 10-A of the Constitution"[26] and further held that "the petitioner has alleged that there have been serious violations of Article 209(5) of the Constitution in the preparation of the Reference against him...[I]nfringements of Article 209 erode the independence of the judiciary which is directly connected with the right to access justice. Therefore, the present petition satisfies the two-fold requirement of Article 184(3) of the Constitution."[27]

19. Thus, there remains no difficulty to conclude that the cases heard by this Court in its original jurisdiction under Article 184(3) of the Constitution, including review petitions and other matters arising therein, are matters of public importance within the meaning and scope

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[21] See cases mentioned at FN 17, 18 and 19.
[22] Majority judgment, para 13 (Reported in PLD 2021 SC 1).
[23] Emphasis added.
[24] 2011 SCMR 1688.
[25] Emphasis added.
[26] Majority judgment, para 14.
[27] Majority judgment, para 16.

of that expression used in Article 19A of the Constitution, as it is only when the “question of public importance" is involved that this Court can exercise its jurisdiction under Article 184(3) to make an order for the enforcement of any of the fundamental rights. The public, therefore, has a fundamental right under Article 19A of the Constitution to have access to information as to the court proceedings of the cases heard by this Court in its original jurisdiction under Article 184(3) of the Constitution, including to know and see how the court-proceedings in these cases are conducted and concluded by the Court.

(ii) Obligation of the Court to provide access to information of the court-proceedings of cases heard under Article 184(3) through livestreaming

20. Now we turn to question (ii). Opposing the prayer for livestreaming the court-proceedings of this case on behalf of the contesting respondents, the learned Additional Attorney-General submitted that the right of the public to have access to information as to the proceedings of cases heard by this Court under Article 184(3) is fulfilled as the doors of the Court are open for everyone, and anyone from the public can come in the Court and see the court-proceedings, and can also obtain the certified copy of the final decision made by the Court in such cases. The questions arise: whether this is sufficient enforcement of the fundamental right to have access to information so far as the proceedings of the cases heard under Article 184(3) are concerned, or whether there is any obligation on this Court to do something more for making enforcement of the said right.

(a) Article 19A creates a positive obligation

21. The Constitution has conferred fundamental rights in positive as well as in negative language. Article 19A has been couched in positive language: it guarantees to all citizens as a fundamental right that they shall have the right to have access to information in all matters of public importance. The negative language of a fundamental right imposes a limitation on the power of the State and declares the corresponding guarantee as to the entitlement of the people to that right. The positive language of a fundamental right not only operates as a limitation on the power of the State but it also requires affirmative State action to protect and fulfill the right conferred. In view of this difference of language, the fundamental rights are sometimes classified into

negative and positive rights[28]: a negative right generally obliges inaction, a positive right requires action. The holder of a negative right is entitled to non-interference, while the holder of a positive right is entitled to the provision of some service. A negative right places a duty on the State not to interfere in certain areas where the citizens have the right to act in a certain way or the other and have their freedom of choice within the existing right; the State cannot encroach upon such freedom. A positive right, on the other hand, places an obligation on the State to take certain actions and measures to give effect to that right.

22. The positive language in which the right to information has been conferred by Article 19A makes it fall in the category of positive rights. This right, therefore, not only operates as a limitation on the power of the State to act in a manner that would negate the right of the citizens to have access to information in all matters of public importance, but it also requires the State to take some affirmative action to fulfill this right. The State is an abstract entity, which acts through its organs: the Legislature, the Executive and the Judiciary. The State's obligation with regard to the fundamental right conferred by Article 19A of the Constitution is, therefore, to be fulfilled by all its organs within the sphere of their authority and competence as prescribed under the Constitution and law. We, thus, find that Article 19A of the Constitution creates a positive obligation on all State organs, authorities and institutions, including the Judiciary, to take the necessary measures to ensure the realization of the fundamental right of citizens to have access to information in matters of public importance.

23. The contention of the learned Additional Attorney-General, as aforesaid, is that the right of the public to have access to information guaranteed by Article 19A is fulfilled, for the doors of the Court are open for everyone, and anyone from the public can come in the Court and see the court-proceedings. Pakistan’s current population is estimated as more than 200 million people as per the provisional summary results of the 6th population census of 2017.[29] The obligation of this Court, under Article 19A, to give access to the public (people of Pakistan) to information of the court proceedings in the cases heard by it under Article 184(3) cannot be said to be fulfilled by allowing permission to

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[28] See Province of Sindh v. M.Q.M. PLD 2014 SC 531 per Tassaduq Hussain Jillani, C.J.

[29] Available online at https://www.pbs.gov.pk/content/provisional-summary-results-6th-population-and-housing-census-2017-0.

come to the court-room and see the court-proceedings, as this facility may be availed of only by a few of the public who can afford travelling to the courthouse and are lucky enough to have a seat in the court-room, there being a very limited space. We are, therefore, not impressed by the said contention of the learned Additional Attorney-General; it appears to us to be misconceived and amounts to taking a very restrictive approach to the import, extent and scope of the provisions of Article 19A.

(b) Progressive and dynamic approach to interpret fundamental rights

24. The approach of this Court to the interpretation of the fundamental rights guaranteed by the Constitution has been progressive, liberal and dynamic since its very establishment and promulgation of the first Constitution of Pakistan, in 1956. As back as in 1957, Chief Justice Muhammad Munir made the observation that it is a fundamental canon of construction that a Constitution should receive a liberal interpretation in favour of the citizen.[30] Chief Justice Muhammad Haleem said in the year 1988 that "the Constitution is not an imprisonment of the past but is also alive to the unfolding of the future."[31] Chief Justice Nasim Hasan Shah held in 1993 that "[w]ith the passage of time and the evolution of civil society great changes occur in the political, social and economic conditions of society. There is, therefore, the corresponding need to re-evaluate the essence and soul of the fundamental rights as originally provided in the Constitution. They require to be construed in consonance with the changed conditions of the society and must be viewed and interpreted with a vision to the future."[32] Justice Shafi-ur-Rahman said that "[t]he Fundamental Rights guaranteed in any Constitution, an organic instrument, are not capable of precise or permanent definition. They cannot be charted on a piece of paper delineating their boundaries for all times to come."[33] And Justice Ajmal Mian held that "[a] Constitutional provision containing Fundamental Right is a permanent provision intended to cater for all time to come and, therefore, while interpreting such a provision the approach of the Court should be dynamic, progressive and liberal keeping in view ideals of the people, socio-economic and politico-cultural values (which in Pakistan are

[30] Jabendra Kishore v. East Pakistan PLD 1957 SC 9.
[31] Benazir Bhutto v. Federation PLD 1988 SC 416.
[32] Nawaz Sharif v. President of Pakistan, PLD 1993 SC 473.
[33] Ibid.

enshrined in the Objectives Resolution) so as to extend the benefit of the same to the maximum possible."[34]

25. With the said progressive and dynamic approach this Court, earlier to the insertion of Article 19A in the Constitution, had interpreted the provisions of Article 19 of the Constitution that guarantees the right to freedom of expression to include the right to receive information.[35] The right to receive information which was thus interpreted as a penumbra to the right to freedom of expression has now been recognized as a separate and independent fundamental right by the addition of Article 19A in the Constitution. We are, therefore, to interpret the provisions of Article 19A of the Constitution with the progressive, liberal and dynamic approach with which this Court has been interpreting the other fundamental rights[36] and to explore the modern means of enforcement of the right guaranteed by this Article, which have been made available by the latest technology of the day.

(c) Right of Access to Information Act, 2017 and Article 19A of the Constitution

26. The Right of Access to Information Act, 2017 ("Act") has been enacted by the Federal Legislature[37] in pursuance of the provisions of Article 19A of the Constitution. It appears that the Act is not applicable to this Court as Section 2(ix)(e) thereof has included only "any court, tribunal, commission or board under the Federal law" in the definition of "public body" for the purposes of that Act while this Court is established under the Constitution and not under any Federal law. While this question may be decided authoritatively in some other appropriate case, it *prima facie* appears that the Legislature has left to this Court the matter of regulating and imposing reasonable restrictions as to the right to have access to information in matters of public importance dealt with by, and relating to, it by making rules under Article 191 of the Constitution, which empowers this Court to make rules for regulating its practice and procedure. Such rules when made would, no doubt, be a "law" within the scope of this expression used in Article 19A but, as we

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[34] Ibid.
[35] See Nawaz Sharif v. President of Pakistan PLD 1993 SC 473, per Muhammad Afzal Lone, J.; Independent Newspapers Corporation v. Chairman, Fourth Wage Board 1993 SCMR 1533.
[36] See Shehla Zia v. WAPDA PLD 1994 SC 693; General Secretary v. Director Industries 1994 SCMR 2061; Arshad Mehmood v. Govt. of Punjab PLD 2005 SC 193; Watan Party v. Federation PLD 2012 SC 292; Re Contempt Proceedings Against Chief Secretary, Sindh 2013 SCMR 1752; Re Petition Regarding Miserable Condition of The Schools 2014 SCMR 396.
[37] Provinces have also enacted their separate laws on the subject.

have already observed, the right conferred by Article 19A is operative and justiciable even without making of the law envisaged therein for regulating and imposing reasonable restrictions on this right. Nevertheless, the general and broader principles, as to the enforcement of the fundamental right guaranteed under Article 19A of the Constitution, contained in the Act being the expression of the legislative wisdom of the Parliament of Pakistan, deserve due consideration and weight while determining the scope of the provisions of Article 19A and assessing the obligation of this Court thereunder until this Court makes the rules under Article 191 of the Constitution, in this regard.

27. Section 3(2) of the Act states that the Act is to be interpreted so as to advance its purposes as set out in the preamble, and (a) to promote the right of access to information and (b) facilitate and encourage promptly the disclosure of the information at the lowest and reasonable cost[38]. The preamble of the Act containing purposes of its enactment is cited below, for ready reference:

> WHEREAS Government believes in transparency and the right to have access to information to ensure that the people of the Islamic Republic of Pakistan have improved access to records held by public authorities and promote the purposes of making the Government more accountable to its people, of improving participation by the people in public affairs, of reducing corruption and inefficiency in Government, of promoting sound economic growth, of promoting good governance and respect for human rights;
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> AND WHEREAS it is expedient to provide for a law which gives effect to the fundamental right of access to information, as guaranteed under Article 19A of the Constitution of the Islamic Republic of Pakistan and international law, whereby everyone shall have the right to have access to all information held by public bodies subject only to reasonable restrictions imposed by law, and for matters connected therewith or incidental thereto;[39]

To promote the right of access to information, and to facilitate and encourage promptly the disclosure of the information at the lowest and reasonable cost, the Act has prescribed, in its Sections 5 and 8, the use of the latest information technology. Section 5 of the Act provides for uploading of the specified categories of information on the internet in a manner which best ensures its accessibility, and Section 8 thereof mandates each public body to ensure that all the record accessible under

[38] Underlined for emphasis.
[39] Emphasis added.

the Act is computerized and made available online for facilitation of the public's access to such records.

(d) Live-streaming of court-proceedings on the Court's website

28. This Court, even before the promulgation of the Act, has set up its official website and commenced sharing data on several matters of its working, including the information as to the roster of benches, cause lists, judgments approved for reporting and reports regarding pendency, institution and disposal of cases, on the website for public information. In view of this already functioning website of the Court, the disturbing issues are: why can the Court not live-stream on its official website the court-proceedings of cases heard under Article 184(3) which, we have hereinbefore held, are matters of public importance and the public has a right to know and see how the proceedings in these cases are conducted and concluded by the Court. If anyone from the public, who can afford it, can come to the Court and see the proceedings of such case, then what is the impediment in live-streaming these proceedings on the official website of the Court for information of all public including those who cannot meet the expense of travelling to Court. The facility of entry to the Court and seeing the court proceedings, in this context, appears rather discriminatory, available only to the affluent and thus, offending Article 25 of the Constitution.

29. A very few of the public, as afore-observed, can afford to reach the Court and see the court-proceedings while a large section of the people of Pakistan, who are more than 200 million, cannot avail their right to see the court-proceedings due to time, distance and financial constraints. They, thus, depend on the information reported in print and electronic media. When the reporting is accurate and comprehensive, it fulfills their right to information; but when it is inaccurate or incomplete, it thwarts the right. The gavel-to-gavel live-streaming of the court-proceedings would give the public a more direct sense of what occurs in these proceedings than second-hand information given to them by the media through reporting the event in a summarized form. The latest technology and internet facility have made it possible to reach out to the masses, in the language of the Legislature used in the Act, "to promote the right of access to information, and to facilitate and encourage promptly the disclosure of the information at the lowest and reasonable cost."

30. Live-streaming is the fastest method of communication and is the most suited for directly connecting to geographically dispersed people of the country. We firmly believe that the time has come to let some sunshine in our courts and, for this purpose, this Court being at the apex of the judicial hierarchy of the country should take a leading step. This Court has often held for other organs of the State that their functioning should be open and transparent; it is, therefore, all the more necessary for the Court itself to abide by that principle and take progressive steps to demystify its own functioning. Law develops gradually, and technology is often far ahead of both the legislature and the judiciary. However, both these institutions are not etched in stone and they should recognize the technological advances, in developing law. Live-streaming of the court proceedings, in the present age, can easily be made through the latest technology, and that too, at the lowest and reasonable cost. It would make the public to be virtually present in the courtroom and enable them to see, in real-time, how the court-proceedings are conducted and concluded.

(e) Practice in other major common law jurisdictions

31. We have also explored the practice around the globe in other jurisdictions to satisfy ourselves whether live-streaming of court-proceedings by this Court would be a strange or novel thing in the judicial system. We find it otherwise: we are lagging behind the world on this matter. Almost all major common law jurisdictions of the world broadcast their court-proceedings in some way or the other, for public information. The Supreme Court of Canada has allowed broadcast and live-streaming of its proceedings since 1994, and has also started broadcasting/webcasting live video streams of court hearings on its website since 2009.[40] The Supreme Court of the United Kingdom has allowed for hearings to be live-streamed on its website since 2010.[41] The High Court of Australia has made available on its website audio-visual recordings of all full-court hearings since 2013.[42] The Supreme Court of the United States has been posting written transcripts of oral arguments since 2000[43] and the audio recording of oral arguments since 2010,[44] at

[40] https://www.scc-csc.ca/case-dossier/info/webcasts-webdiffusions-eng.aspx
[41] https://www.supremecourt.uk/live/
[42]https://www.hcourt.gov.au/index.php?option=com_acymailing&ctrl=archive&task=view&listid=%206-judgment-delivery-notification&mailid=28-media-release
[43] https://www.supremecourt.gov/oral_arguments/argument_transcript/2020
[44] https://www.supremecourt.gov/oral_arguments/argument_audio/2020

its website and has also allowed live broadcast, on media, of oral arguments heard by telephone conference during COVID-19 pandemic since 2020.[45] The International Courts and Tribunals, namely, the European Court of Human Rights (ECHR),[46] the International Criminal Court (ICC),[47] and the International Criminal Tribunal for the former Yugoslavia (ICTY)[48] also broadcast court proceedings on their official websites.

32. The contesting respondents argued that the Indian Supreme Court while deciding a similar matter, in *Swapnil Tripathi v. Supreme Court of India,*[49] though recognized that the court-proceedings ought to be live-streamed but did not make any order or direction in this regard and left the matter to be regulated on administrative side by making amendments in the Supreme Court Rules. We have carefully gone through the Indian case referred to. In that case, the petitioners had agitated the matter of live-streaming proceedings of all those cases heard by the Indian Supreme Court that have constitutional importance and impact on the public at large and had not prayed for the live-streaming of a particular case. The Court, therefore, examined the prayer in the broader perspective of the right of access to justice, right to open justice and public trial, right to justice at the doorstep and right to know the developments of law. The Court generally agreed with the live-streaming of court proceedings but observed that the project of live streaming of the court proceedings on the internet, radio and/or TV through live audio-visual broadcasting/telecasting universally by an official agency having exclusive telecasting rights and/or official website/mobile application of the Court, should be implemented in a progressive, structured and phased manner, and before the commencement of the project, formal Rules should be framed by the Court.

33. It appears that the Indian Supreme Court did so as there is not a specific fundamental right to have access to information in matters of public importance in their Constitution, like Article 19A of our Constitution, nor is there any class of cases of public importance specifically so mentioned in their Constitution, like Article 184(3) of our

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[45] https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-30-20
[46] https://www.echr.coe.int/Pages/home.aspx?p=hearings&c
[47] https://www.icc-cpi.int
[48] http://icr.icty.org
[49] AIR 2018 SC 4806 = (2018) 10 SCC 639

Constitution. Therefore, the Indian Supreme Court took up the matter of 'live-streaming' of all cases heard by it and by other courts of the country in the context of concepts of 'open trial' and 'open justice' and other constitutional rights stated above, which we have left to be decided in some other appropriate case. Against this backdrop, the Indian Supreme Court disposed of the case and left the matter of live-streaming of all cases heard by it, including the cases of constitutional importance having an impact on the public at large, to be regulated by making amendments in their Rules. The position under our Constitution is different: Article 19A, as above held, confers an operative and justiciable right which is not dependent upon the promulgation of any law or making of any Rules by this Court. In view of this difference of provisions in the Constitutions of both the countries, the reference to the said Indian case for determination of the questions under consideration in the present case, is not apt or relevant.

34. We may observe that any transplant of a rule from a foreign jurisdiction to ours should be made after considering closely and thoroughly the difference of the constitutional scheme. The similarities and differences between the constitutional dispensation in that foreign jurisdiction and our Constitution are to be deeply evaluated. Any doctrine, principle, rule and precedent in the foreign jurisdiction must be viewed through the prism of fundamental rights guaranteed by our Constitution and other constitutional values.

(f) Question of livestreaming court-proceedings is a matter of law, not of policy

35. The contesting respondents argued it also that question of live-streaming of the court-proceedings is a policy matter and should be decided by the Court on the administrative side. We are afraid the argument is not well-founded, especially in the context of court-proceedings of cases heard under Article 184(3) which is under consideration, before us, in the present matter. We have found, as afore-mentioned, that proceedings in such cases are "matters of public importance" within the meaning of that expression used in Article 19A and the public has a fundamental right to know how these proceedings are conducted; the question of enforcement of this right is a legal matter to be decided judicially and is not a policy matter for decision on the administrative side. In the context of the rule that justice should be

administered in open court and power of a court to direct a case to be heard with closed doors in exceptional circumstances, Earl Loreburn remarked in *Scott v. Scott*,[50] that it "is not to be considered…as a matter of policy, but as a matter of law". We respectfully subscribe to his lordship's view and adopt it for the matter under consideration.

(g) Live-streaming court-proceedings would reflect a responsive image of the Court

36. "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."[51] The foundational constitutional value of accountability, responsibility and openness applicable to other organs of the State, the Legislature and the Executive, is attracted to the functioning of the third organ, the Judiciary, also. The cases involving questions of public importance with reference to the enforcement of fundamental rights of the citizens, which are heard by this Court in its original jurisdiction under Article 184(3) of the Constitution, have a unique characteristic: the Court, in these cases, acts as the first and the final arbiter. The uniqueness of this jurisdiction sometimes invites criticism of judicial overreach, on the Court. Foundations of the judicial institution stand on, and its real strength lies in, the public trust which gives to its decisions legitimacy and public acceptance. A court cannot buy support for its decisions by spending money or using force. A court's power lies in its legitimacy, a product of substance and perception, that shows itself in the people's acceptance of the court as the best forum to determine what the law means and decide their disputes accordingly. Without such public trust and public acceptance, the judiciary loses the legitimacy and independence it requires to perform its functions. To maintain and boost up the public trust in the Court's working, it is essential to make the public aware of how the Court deals with cases under Article 184(3) and to be reassured that it always functions within the terms of the Constitution and law independently, impartiality and fairly. Live-streaming of the court-proceedings would reflect a responsive image of the Court acknowledging that it is accountable to the public for whom it functions, and promote the public confidence in its functioning.

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[50] 1913 AC 417.
[51] Richmond Newspaper v. Virginia 448 US 555 (1980) per Chief Justice Burger.

37. This Court, being the guardian of the fundamental rights of the people of Pakistan against encroachments made by other public authorities and institutions, is to enforce the fundamental right of the public relating to its own proceedings with more fervor and commitment than others. We are enlightened in this respect by the remarks of Fletcher Moulton, L.J., and quoted by Earl Loreburn in *Scott v. Scott,*[52] that "courts of justice, who are the guardian of public liberties, ought to be doubly vigilant against encroachments by themselves." After profound and thorough deliberations, we are unable to see any legal impediment in live-streaming the court-proceedings of cases heard under Article 184(3) on the official website of this Court and find it a positive obligation of this Court, under Article 19A, to do this for enforcement of the right of the public to have access to information of these proceedings.

Access of public to the court-proceedings of cases of public importance and the democracy

38. At the heart of democracy lie the rights to freedom of expression and to have access to information in matters of public importance. These mutually supporting rights ensure transparency and accountability in public institutions, which results in good governance, especially in a flourishing democracy. These rights uncover the wrongdoings and transgressions of the public authorities and institutions. The informed public opinion is therefore considered the most potent of all restraints upon bad governance in a democracy. The rights to freedom of expression and to have access to information in matters of public importance are thus not only useful but are indispensable to the proper functioning of a democratic system. The oft-quoted, old dictums are that "let the people have the truth and the freedom to discuss it and all will go well"[53], and that "in the darkness of secrecy, sinister interest and evil in every shape have full swing."[54] Not all information in matters of public importance, however, is readily revealed by the Government, and an environment of secrecy is maintained. Access of the public to the court-proceedings in cases under Article 184(3) can expose information as to the matters of public importance that may otherwise not be possible for the public to have; as in most cases under Article 184(3), it is the Government, or any of its

[52] Remaks of Fletcher Moulton, L.J. quoted by Earl Loreburn in Scott v. Scott 1913 AC 417.
[53] William Blackstone cited it in his commentaries.
[54] Bentham said, and Lord Shaw approvingly quoted in Scott v. Scott, 1913 AC 417.

departments or instrumentalities, which is alleged to have infringed the fundamental rights of the public and the Court is called upon to enforce them. The information as to the court-proceedings in such cases would be a vital avenue for public information about what the Government does and why the Court interferes. The access of the public to the court-proceedings in cases heard under Article 184(3) through live-streaming would, thus, serve the democracy as much as it would make the exercise of judicial power by the Court in such cases transparent.

Conclusion

39. The above discussion leads us to conclude and hold that live-streaming (audio and video) of the court-proceedings in cases heard by this Court, on a petition or *suo motu*, under Article 184(3) of the Constitution should be made available for the information of the public through a link on the official website of the Court, in the enforcement of the fundamental right of the public, and for the fulfillment of the obligation of the Court, under Article 19A of the Constitution. However, this Bench of the Court can make an order to live-stream the court-proceedings of this case only as per the prayer made therein, and cannot direct the other Benches of this Court that are, or would be, hearing such cases, to live-stream their court-proceedings. We believe that the general practice in this regard can be enforced only by making rules under Article 191 of the Constitution.

40. However, until such rules are made by the Court on the administrative side, it lies in the discretion of each Bench of the Court hearing such a case to order, or not to order, in the exercise of powers of the Court, live-streaming of its court-proceedings and to regulate that live-streaming, if ordered. Because the right conferred by Article 19A, as aforesaid, is operative and justiciable even without the enactment of a law that may provide for the regulation of, and reasonable restrictions on, such right. Needless to reiterate that this Court under its rules of practice and procedure made under Article 190, namely, the Supreme Court Rules 1980, ordinarily sits in Benches, and not *en banc* as a full-court, and each Bench irrespective of its numeric strength exercises the jurisdiction and powers vested in the Court.

41. In the circumstances of the present case, we are inclined to exercise our discretion in favour of ordering livestreaming of its court-

proceedings; however, we have been apprised that in the current state of technological set-up available in this Court such an order, if made, could not be executed. Courts do not make in-executable orders; we, therefore, abstain from making an order for live-streaming the court-proceedings of the present case. However, we direct the Registrar of this Court to take steps to provide for the requisite technological infrastructure for live-streaming the court-proceedings, so that any Bench of this Court may, if so decides, order for live-streaming the court proceedings of a case being heard under Article 184(3) of the Constitution, in future. The Registrar shall also place the matter before the Court, on the administrative side, for considering amendments in the Supreme Court Rules 1980, in order to livestream court-proceedings of all cases heard under Article 184(3) and to regulate the practice and procedure in this regard.

42. Facility of live audio-hearing of the court-proceedings of all Benches of this Court is currently available to all the Judges of this Court in their Chambers as well to their staff, and audio recording of the court-proceedings is also sometimes made. Therefore, keeping in view the current state of technological infrastructure available in this Court and the fact that the petitioner's case (review petitions) is already fixed for hearing, we direct that the audio recording of the proceedings of the court-hearings of the petitioner's case shall be made available through a link on the official website of this Court, for public information. The Registrar of this Court shall ensure that the unedited audio recording of the proceedings of the court-hearings of the present case is uploaded on the official website of the Court on the same day soon after the hearing and before the close of the working hours.

43. So far as the prayer of the petitioner to the extent of directing the State-owned Pakistan Television (PTV) Corporation to broadcast live the proceedings of his case is concerned, we think such a direction would breach the freedom of expression and press guaranteed by Article 19 of the Constitution as both kinds of direction, *viz*, to broadcast or not to broadcast something, are tantamount to interference into the freedom guaranteed by the Constitution, unless such act or omission of PTV breaches any legal right of someone or any of its legal obligations and it is also made a party to the proceedings initiated thereon.[55] Likewise, the

[55] Aslam Saleemi v. PTC PLD 1977 Lah 852; Fatehyab v. PBC/PTC NLR 1991 Civil 46; Ammanullah v. M.R.C. 1995 SCMR 202.

prayer of the petitioner that the Pakistan Electronic Media Regulatory Authority (PEMRA) may be directed to issue written instructions to all private television channels that they cannot be restrained from broadcasting the proceedings, appears to us to be not entertainable, as none of the private television channels has agitated its right (if any) to broadcast the court-proceedings of cases heard by this Court under Article 184(3), and we leave the determination of the question as to their such right (if any) to be made in a case where they would agitate the same and claim enforcement thereof.

Signing or recording the detailed reasons by a retired Judge of this Court

44. The above are the reasons for the short order dated 13.04.2021 made by us and our learned brother, Justice Manzoor Ahmad Malik (since retired). Although we have attempted, to the best of our ability, to record these reasons as discussed and agreed to by us and our learned brother, Justice Malik, at the time of making the short order, the human susceptibility to err demands us to have the concurrence of our learned brother in correctly recording the reasons for which he joined us in the short order. Therefore, following the precedents of *Al-Jehad Trust v. Federation* (PLD 1996 SC 324) and *CJP Iftikhar Muhammad Chaudhry v. President of Pakistan* (PLD 2010 SC 61), the office is directed to send a copy of these detailed reasons to his lordship for his consideration.. The office shall annex the response received from his lordship, with these detailed reasons.

45. Here, we consider it appropriate to state why we earlier offered, and are now offering the detailed reasons to our learned brother, Justice Malik (since retired), to consider whether or not he agrees that it correctly records the reasons for which he joined us in the short order, despite having the advantage of reading the note recorded by one of our learned brothers and agreed to by other three, in addition to their detailed reasons[56] recorded in support of their short order dated 26.04.2021, expressing their reservations on our sending, as well as on signing by Justice Malik, the detailed reasons recorded in support of our short order dated 26.04.2021.

46. First and foremost, we and our learned brother, Justice Malik, followed the precedent of a 13-Member larger Bench of this Court,

[56] In CRP No.296/2020, reported as Justice Qazi Faez Isa v. President of Pakistan PLD 2022 SC 119.

which is binding upon us while sitting in a smaller Bench of 10 Members. Our learned brothers have treated, and dealt with, the observation made in para 206 of the judgment delivered in the *CJP Iftikhar Muhammad Chaudhry case* taking it as the opinion of one Hon'ble Judge, namely, Justice Khalil-ur-Rehman Ramday, despite the fact that his lordship was speaking for a Bench of 13 Members and the judgment authored by him (including para 206) was signed by other 6 sitting Hon'ble Judges of this Court. None of those 6 Hon'ble sitting Judges took any exception to any observation made in the judgment while signing and becoming party thereto; therefore, each and every word written in the said judgment, including para 206 thereof, is to be taken as of all 7 sitting Hon'ble Judges of the 13 Member Bench. Futher, the judgment, including para 206 thereof, having been signed by majority of the 13-Member Bench had become the judgment of the Court, i.e., the judgment of a 13-Member Bench of the Court, and did not remain to be only of those 7 sitting Hon'ble Judges or of 10 Hon'ble Judges including the 3 retired Hon'ble Judges who joined in the judgment (detailed reasons of the short order). We have already explained this concept in our detailed reasons[57] released 29.01.2022 (See para 9 thereof) recorded in support of our short order dated 26.04.2021. The 3 retired Hon'ble Judges thus signed, and one of them also recorded his additional note, in pursuance of the observation and action of the 7 sitting Hon'ble Judges forming majority of the 13-Member Bench. With profound reverence to the view of our learned brothers, we are unable to understand how 4 or all 10 Judges of a 10-Member Bench can declare the observation made, and the action done in pursuance thereto, by a 13-Member larger Bench to be an error in law, even if it may be so. Ignoring the sanctity and authority of a precedent of a larger bench may pass for judicial arrogance and lead to judicial chaos.

47. Although it is not our function to supply the reasons in support of the said precedent of a 13-Member Bench, or to exmine any possible arguments contrary to the opinion of our four learned brothers, in the present case. It can be done, in our view, only by a Bench larger than a 13-Member Bench, but we think it proper to note just some of the

[57] Ibid.

points in this regard, to show that the precedent of the 13-Member Bench is based on sound wisdom.

48. No one can dispute that the short orders are made and announced by this Court, after due application of the judicious mind to, and after due consideration of, the pleadings of the parties and their arguments in the light of the material available on record of cases for definite "reasons" that are present in the mind of the judges at the time of making those orders. Short orders are made due to paucity of time to record detailed "reasons" and due to the urgency of the matters involved. That is why the detailed reasons recorded later in support of the short orders always bear the date of the short order, not the date of recording those reasons. The expression used in the short orders, "for the reasons to be recorded later", clearly means that it is the act of recording reasons that is postponed to a later time, and not the act of creating or searching for the reasons. The latter meaning, if given, to the expression "reasons to be recorded later" would completely shatter the legal sanctity and validity of the short orders, and unsettle the well-settled legal position according to which the short orders made by this Court are fully operative orders, executable forthwith, and a party feeling aggrieved thereby is to avail his legal remedy of review within the prescribed period of limitation computing from the date of the short order, and not from the date of release of the detailed reasons recorded in support thereof.

49. Further, we observe it very respectfully and humbly that one of our four learned brothers had vacated the office of a Judge of this Court when they released their detailed reasons on 04.02.2022 and assumed the office of the Chief Justice of Pakistan, but has recorded the detailed reasons, and signed the additional note, in his capacity as a Judge of this Court which he had on 26.04.2021 when the short order was made, and not in his present position and capacity as the Chief Justice of Pakistan, and their detailed reasons also bears the date of 26.04.2021, the date when the short order was made, and not the date when these detailed reasons were recorded. We, with great respect, say that our learned brother has so done as per the above said settled practice of this Court. Needless to mention that the office of the Chief Justice of Pakistan and the office of a Judge of this Court are two

different offices under the Constitution; one stands vacated on assuming the other. Similarly, a judge of this Court who has vacated his office on retirement joins the detailed reasons recorded by any of his colleagues in support of the short order made by them jointly or records his own reasons, in his status, capacity and authority he had on the date when that short order was made.

50. Another important fact, which also depicts a settled practice of this Court, deserves to be noted. Our learned brothers as well as we have mentioned the presence of our learned brother, Justice Malik, under the heading "Present" for showing the *coram* and constitution of the Bench, in our respective detailed reasons recorded in support of our short orders dated 26.04.2021 and 13.04.2021 (both released after his retirement). This fact also shows that it is the status of a judge of this Court on the date of making the short order that is relevant at the time of recording the detailed reasons in support thereof and determines his authority to record such reasons. Otherwise, the fact of mentioning his presence in the *coram* of the Bench that records the detailed reasons would become a false statement and a patent contradiction in itself amounting to blowing hot and cold in the same breath; as, on the one hand, we would show him as a Member of the Bench that records the detailed reasons but on the other hand, say he is not and cannot record the detailed reasons.

51. From the said settled practices of this Court, according to which the detailed reasons recorded in support of a short order always bear the date of the short order, not the date of recording them, and the status and capacity of the judges as on the date of the short order, it is not hard to discern that it is the status, capacity and authority of a judge of this Court as on the date of the short order under which he records, after retirement, his reasons for making the short order or joins in the reasons recorded by some other judge if he finds that they are the same for which he made the short order. These and other points can be examined by a Bench larger than a 13-Member Bench when they arise before such Bench, however for present, we follow the 13-Member Bench and act upon it.

52. We may, with great respect, also express our concern on adjudicating by some Members of a Bench the precedential effect and value of the opinion of other Members of the same Bench, in their judgment delivered in the same case. We have never seen such practice in our jurisdiction as well as in any of the foreign jurisdictions. Members of the same Bench differ on issues and strongly express their respective opinions, as well as make comments on the opinion of each other highlighting the reasons for which they think other Member(s) has erred in his opinion, but do not adjudicate upon the precedential effect and value of each other's opinion. We believe the question of extracting *ratio decidendi* and determining precedential effect and value of the opinion of some Members of a Bench of this Court expressed in a judgment delivered in one case, can be examined only in other cases where such a judgment is cited as precedent, and that can be done not only by a Bench of this Court but even by a court lowest in the judicial hierarchy; nevertheless, it is in no way a domain of the Members of the same Bench to make this exercise in their respective judgments rendered in the same case.

(Maqbool Baqar)
Judge

(Mazhar Alam Khan Miankhel)
Judge

(Syed Mansoor Ali Shah)
Judge

Islamabad,
13.04.2021.
Approved for reporting.

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