

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

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Amin-ud-Din Khan  
Justice Jamal Khan Mandokhail  
Justice Athar Minallah  
Justice Syed Hasan Azhar Rizvi

**Intra Court Appeals No. 2, 3 and 4 of 2023**

*[On appeal from the judgment dated 15.09.2023  
passed by this Court in Constitution Petition No. 21 of  
2022]*

**AND**

**CMA No. 9264/2023 in ICA No. 02 of 2023**

*Islamic Republic of Pakistan through Secretary M/o  
Law and Justice, Govt. of Pakistan, Islamabad.  
(in ICA No. 2/2023)*

*Zuhair Ahmed Siddiqui.  
(in ICA No. 3/2023)*

*Muhammad Zahid Imran and another.  
(in ICA No. 4/2023)*

*... Appellants/Applicant*

**Versus**

*Imran Ahmed Khan Niazi and another.  
(in ICA No. 2/2023)*

*Imran Ahmed Khan Niazi and others.  
(in ICA No. 3/2023)*

*Federation of Pakistan through Secretary, Law and  
Justice Division, Islamabad and others.  
(in ICA No. 4/2023)*

*... Respondents*

For the Appellant:  
*(in ICA No. 2/23)*

Mr. M. Makhdoom Ali Khan, Sr. ASC.  
Mr. Saad Mumtaz Hashmi, ASC.  
Mr. Anis Muhammad Shahzad, AOR.

For the Appellant:  
*(in ICA No. 3/23)*

Mr. Farooq H. Naek, Sr. ASC.  
Mr. Asad Abbasi, ASC.  
Shiraz Shaukat Rajpar, Advocate.  
M. Waseem Abro, Advocate.

For the Appellants:  
*(in ICA No. 4/23)*

Nemo.

Respondent No. 1 & 3:  
*(In ICA Nos. 2, 3 & 4/23)*

Mr. Imran Ahmed Khan Niazi, In-person.  
*(Through video-link from Central Jail Rawalpindi)*

On Court's Notice:	Khawaja Haris Ahmed, Sr. ASC. Dr. Yasir Aman Khan, ASC. Ms. Zainab Chaudhry, Advocate
For the Federation:	Mr. Mansoor Usman Awan, Attorney-General for Pakistan. Ch. Aamir Rehman, Additional Attorney-General for Pakistan. Malik Javed Iqbal, Additional Attorney-General for Pakistan. Raja M. Shafqat Abbasi, Deputy Attorney-General for Pakistan. Mariam Ali Abbasi, Advocate. Ahmed-ur-Rehman, Advocate. Saad Javid Satti, Advocate. Maryam Rasheed, Advocate.
For the NAB:	Ch. Mumtaz Yousaf, Additional Prosecutor-General, NAB. Mr. Nasir Mehmood Mughal, Deputy Prosecutor-General, NAB. Ms. Amber, Special Prosecutor, NAB. Syed Jalal Hussain, Special Prosecutor, NAB.
For Islamabad Capital Territory:	Nemo.
For Govt. of Sindh:	Nemo.
For Govt. of KP:	Mr. Shah Faisal Utmankhail, Advocate-General, Khyber Pakhtunkhwa. Mr. Shah Faisal Ilyas, Additional Advocate-General, KP. Mr. Kosar Ali Shah, Additional Advocate-General, KP.
For Govt. of Punjab:	Mr. Waseem Mumtaz Malik, Additional Advocate-General, Punjab.
For Govt. of Balochistan:	Mr. Muhammad Ayaz Swati, Additional Advocate-General, Balochistan. Mr. Tahir Iqbal Khattak, Additional Advocate-General, Balochistan.
Dates of Hearing:	14.05.2024, 16.05.2024, 30.05.2024 and 06.06.2024.

### JUDGMENT

**Qazi Faez Isa CJ.**

1. Constitution Petition No. 21 of 2022 ('**the Petition**') was directly filed in the Supreme Court, under Article 184(3) of the Constitution of the

Islamic Republic of Pakistan (**'the Constitution'**) which only permits direct filing provided *'a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II [of the Constitution] is involved.'* The Petition was filed by a former Prime Minister of Pakistan, Mr. Imran Ahmed Khan Niazi (**'Mr. Niazi'**), who challenged the amendments which were made to the National Accountability Ordinance, 1999 (**'the Ordinance'**).

2. The Ordinance was enacted thirty-four days after Army Chief General Pervez Musharraf forcibly assumed power after he was sacked. He overthrew the constitutional-democratic order, and bestowed on himself legislative and executive powers, and removed the judges of the superior courts who did not endorse his take over. The preamble of the Ordinance provided the reason for its enactment, which was, *'to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices.'* However, those politicians who came over to General Musharraf and/or joined the political party sponsored by him were exonerated. The manner in which the provisions of the Ordinance were applied, or were disregarded, lead to the widely held perception that the Ordinance primarily was an instrument of political victimization and political engineering. In the new dispensation of General Musharraf many coveted the baubles, trinkets and pomp, which he offered, and by siding with his dictatorial rule became complicit in the wrecking of the Constitution and the illegal and undemocratic actions that were taken.

3. The following amendments had been made to the Ordinance:

- (1) National Accountability Bureau (Amendment) Act, 2022, which were enacted on 22 June 2022;
- (2) National Accountability Bureau (2<sup>nd</sup> Amendment) Act, 2022, which was enacted on 12 August 2022; and
- (3) National Accountability Bureau (Amendment) Act, 2023, which was enacted on 29 May 2023.

The above amendments are hereinafter respectively referred to as **'the 1<sup>st</sup> Amendment'**, **'the 2<sup>nd</sup> Amendment'** and **'the 3<sup>rd</sup> Amendment'** and collectively as **'the Amendments'**. The 3<sup>rd</sup> Amendment was in the field when the Petition was heard (six hearings took place after its promulgation) yet the impugned judgment did not attend to it and created an anomalous situation.

The 3<sup>rd</sup> Amendment was in respect of matters mentioned in sections 231 and 350 of the Code of Criminal Procedure, 1898 and in section 36 of the Ordinance, which pertained to trials and proceedings before other Courts.

4. The Petition assailing the amendments made to the Ordinance was filed by Mr. Niazi through a Senior Advocate of this Court, the learned Khawaja Haris Ahmed. The Registrar questioned the maintainability of the Petition, however, Mr. Niazi through his counsel filed a chamber appeal challenging the order of the Registrar (Civil Miscellaneous Appeal No. 34/2022), which was heard by Ijaz ul Ahsan, J, and was allowed on 6 July 2022; it was observed that the Petition was maintainable. The Petition was then listed for hearing in Court on 19 July 2022 when notices were issued and after several hearings the Petition was decided on 15 September 2023. Intra Court Appeals No. 2, 3 and 4/2023 were filed against this judgment. When notices were issued to respondents, Mr. Niazi chose not to engage a counsel and conveyed that he wanted to argue the matter himself. Despite the fact that Mr. Niazi was represented by thirteen lawyers when the Petition was heard his request was conceded to *vide* order dated 30 May 2024. We had already appointed on 14 May 2024 learned Khawaja Haris Ahmed to represent Mr. Niazi and had directed the State to pay his professional fee, however, the learned Senior Advocate graciously without claiming any amount from the State agreed to represent Mr. Niazi.

5. During the pendency of the Petition the Supreme Court (Practice and Procedure) Act, 2023 (**'the Act'**) was enacted, on 21 April 2023. The Act states that all cases requiring the interpretation of the Constitution must be heard by not less than five Judges of the Supreme Court. The Petition had stated that the amendments made to the Ordinance offended the Constitution, therefore, to ascertain this the interpretation of the Constitution was required. Syed Mansoor Ali Shah, J, one of the three Hon'ble Judges hearing the Petition opined (on 18 August 2023) that the Petition should *'be taken up for further hearing only after the constitutionality of the Act [which was under challenge in this Court] is finally decided by this Court.'*

6. There were 55 hearings of the Petition. The Petition was finally decided on 15 September 2023 by a majority of two to one, Umar Ata Bandial, CJ, and Ijaz ul Ahsan, J, allowed the petition and Syed Mansoor

Ali Shah, J, dismissed it. These appeals assail the majority decision ('**the impugned judgment**'), which held as under:

- i. The titled Constitution Petition is maintainable on account of violating Articles 9 (security of person), 14 (inviolability of dignity of man), 24 (protection of property rights) and 25 (equality of citizens) of the Constitution and for affecting the public at large because unlawful diversion of State resources from public development projects to private use leads to poverty, declining quality of life and injustice.
- ii. Section 3 of the Second Amendment pertaining to Section 5(o) of the NAB Ordinance that sets the minimum pecuniary threshold of the NAB at Rs.500 million and Section 2 of the 2022 Amendments pertaining to Section 4 of the NAB Ordinance which limits the application of the NAB Ordinance by creating exceptions for holders of public office are declared *void ab initio* insofar as these concern the references filed against elected holders of public office and references filed against persons in the service of Pakistan for the offences noted in Section 9(a)(vi)-(xii) of the NAB Ordinance;
- iii. Section 3 of the Second Amendment and Section 2 of the 2022 Amendments pertaining to Sections 5(o) and 4 of the NAB Ordinance are declared to be valid for references filed against persons in the Service of Pakistan for the offences listed in Section 9(a)(i)-(v) of the NAB Ordinance;
- iv. The phrase 'through corrupt and dishonest means' inserted in Section 9(a)(v) of the NAB Ordinance along with its Explanation II is struck down from the date of commencement of the First Amendment for references filed against elected holders of public office. To this extent Section 8 of the First Amendment is declared void;
- v. Section 9(a)(v) of the NAB Ordinance, as amended by Section 8 of the First Amendment, shall be retained for references filed against persons in the service of Pakistan;
- vi. Section 14 and Section 21(g) of the NAB Ordinance are restored from the date of commencement of the First Amendment. Consequently, Sections 10 and 14 of the First Amendment are declared void; and
- vii. The second proviso to Section 25(b) of the NAB Ordinance is declared to be invalid from the date of commencement of the Second Amendment. Therefore,

Section 14 of the Second Amendment is void to this extent.'

And, as a consequence of the above the impugned judgment held, that:

'49. On account of our above findings, all orders passed by the NAB and/or the Accountability Courts placing reliance on the above Sections are declared null and void and of no legal effect. Therefore, all inquiries, investigations and references which have been disposed of on the basis of the struck down Sections are restored to their positions prior to the enactment of the 2022 Amendments and shall be deemed to be pending before the relevant fora. The NAB and all Accountability Courts are directed to proceed with the restored proceedings in accordance with law. The NAB and/or all other fora shall forthwith return the record of all such matters to the relevant fora and in any event not later than seven days from today which shall be proceeded with in accordance with law from the same stage these were at when the same were disposed of/closed/returned.'

7. Syed Mansoor Ali Shah, J, who was in the minority, dismissed the petition, because:

'...the majority judgment through a long winding conjectural path of far-fetched "in turn" effects has tried hard to "ultimately" reach an apprehended violation of the fundamental rights. The majority judgment has also fallen short to appreciate that what Parliament has done, Parliament can undo; the legislative power of the Parliament is never exhausted. If the Parliament can enact the NAB law, it can also repeal the entire law or amend the same.'

The detailed reasons for the above short order were issued on 30 October 2023, which commenced by stating that:

'Courts must rise above the 'hooting throng' and keep their eyes set on the future of democracy, undeterred by the changing politics of today. Courts unlike political parties don't have to win popular support. Courts are to decide according to the Constitution and the law even if the public sentiment is against them.'

Syed Mansoor Ali Shah, J, stated that, *'only if such a legislation is in conflict and in violation of the fundamental rights or the express provisions of the Constitution, can the courts interfere and overturn such a legislation.'*

8. The Act, save its section 4(2) which provided for retrospective right of appeal of cases decided under Article 184(3) of the Constitution was held

by the Full Court to be in accordance with the Constitution. The Act provided a mechanism for the constitution of Supreme Court Benches in its section 2, which may be considered to be a procedural matter, however, its section 4 stipulated that, '*where interpretation of the constitutional provisions is involved*' a Bench of this Court comprising of '*not less than five Judges of the Supreme Court*' must hear the case. The Petition, however, was heard and decided by a three-member Bench of this Court, which was contrary to what the Act mandated, which required cases such as the Petition, to be heard and decided by not less than five Judges.

9. The learned Additional Prosecutor General representing the National Accountability Bureau ('**NAB**') stated that NAB supports the appeals. Notices were also issued to the Advocates-General of the Provinces and the Islamabad Capital Territory and, except for the Advocate-General of the Khyber Pakhtunkhwa, all supported the appeals. The Attorney-General for Pakistan also supported the appeals.

10. Learned Senior Advocate Mr. Makhdoom Ali Khan, representing the appellant in ICA No. 2 of 2023, formulated the contentions, which were adopted by the learned Senior Advocate Mr. Farooq H. Naek, representing the appellant in ICA No. 3 of 2023. The learned Attorney-General for Pakistan, the learned Advocates-General of the three provinces and of the Islamabad Capital Territory also supported his submissions. The learned counsel supporting the appeals submitted, as under:

- i) The impugned judgment is a nullity in law as it was passed by a Bench of this Court which was not constituted in accordance with sections 2, 3 and 4 of the Supreme Court (Practice and Procedure) Act, 2023 and resultantly it was *coram non judice*. The Act, enacted on 21 April 2023, was challenged but the challenge thereto was rejected by Supreme Court comprising all of its Judges in the reported decision in the case of *Raja Amer Khan v Federation of Pakistan* (PLJ 2024 Supreme Court 114). The Act was specifically brought to the attention of the Judges hearing the Petition, and also by filing an application (CMA No. 7066 of 2023), but the majority by order dated 29 August 2023 rejected the objections, however, they did not dispose of the said application.

- ii) The Petition filed by Mr. Niazi under Article 184(3) of the Constitution was not maintainable because of the eleven-member Bench decision of this Court in the case of *Benazir Bhutto v Federation of Pakistan* (PLD 1988 Supreme Court 416), which had held that when the same matter is pending before a High Court then the Supreme Court should desist from hearing it. And, since a challenge to the Amendments was made in Writ Petition No. 2557 of 2022 filed in the Islamabad High Court by Mr. Shoaib Shaheen the then President of the Islamabad High Court Bar Association, therefore, the Petition should not have been heard. It was submitted that Mr. Shoaib Shaheen and the petitioner's counsel in the writ petition before the High Court, namely, Senior Advocate Mr. Hamid Khan, belonged to Mr. Niazi's political party. Therefore, they should not be permitted to agitate the same matter before two Courts simultaneously. It was further submitted that this Court should have awaited the decision of the High Court, whereafter, if anyone was aggrieved by the decision of the High Court such party could have challenged it before the Supreme Court under Article 185 of the Constitution.
- iii) The amendments made to the Ordinance through the 1<sup>st</sup> Amendment and the 2<sup>nd</sup> Amendment were struck down despite the fact that many of them were borrowed from the ordinances which had been enacted by the Government of which Mr. Niazi himself was the Prime Minister, as under:
  - (a) Ordinance No. XXI of 2019 (**'First Amendment Ordinance'**),
  - (b) Ordinance No. XXVII of 2019 (**'Second Amendment Ordinance'**),
  - (c) Ordinance No. V of 2021 (**'Third Amendment Ordinance'**),
  - (d) Ordinance No. XXIII of 2021 (**'Fourth Amendment Ordinance'**), and



- (e) Ordinance No. XXVI of 2021 (**'Fifth Amendment Ordinance'**) (collectively referred to as **'the Amending Ordinances'**).
- iv) Mr. Niazi did not approach this Court in a *bona fide* manner and his antecedents also prevented him from challenging the Amendments, many provisions whereof were the same as those in the Amending Ordinances, promulgated by the President of Pakistan on his advice. It was submitted that the President's power to enact an ordinance is circumscribed - '*Circumstances exist which render it necessary to take immediate action*' (as stipulated in Article 89(1) of the Constitution) whereas legislation enacted by the National Assembly and Senate does not require the existence of *circumstances which render it necessary to take immediate action*. Mr. Niazi also did not have the requisite *locus standi* since the Amendments neither adversely nor personally affected him. Hearing the Petition was an academic exercise as there was no actual controversy before the Court, and neither any right of Mr. Niazi nor that of any other person was adversely affected by the Amendments which were not *ex-facie* discriminatory.
- v) In the constitutional scheme it is for the Parliament to legislate and for the courts to adjudicate, and courts make every effort to uphold legislation, unless it is clearly unconstitutional. Moreover, if there are two views possible the one in favour of upholding the legislation is always preferred.
- vi) The Amendments had sought to reduce the rigors of the Ordinance, therefore, the same could not be stated to be violative of citizens' Fundamental Rights, which the Supreme Court may enforce under Article 184(3) of the Constitution.
- vii) The impugned judgment misapplied the principle of retrospectivity in Article 12 of the Constitution which prohibits retrospective punishment but it does not prohibit nor restrict the grant of retrospective relief or benefit.

- viii) Certain provisions of the Amendments had implemented the decisions/recommendations of the superior courts, which had not been challenged, yet those have been negated by the impugned judgment.
- ix) The impugned judgment rewrites the Constitution, and also a number of statutes, by creating an artificial distinction between *civil servants* and *public servants* and *elected holders of public office* and *persons in the service of Pakistan*, which the minority opinion had also noted.
- x) The impugned judgment accepted the limit of one hundred million rupees prescribed in the Standard Operating Procedures of NAB ('**SOPs**') in respect of cases which NAB can investigate and send for trial but struck down legislation which had increased the limit to five hundred million rupees. SOPs, which are an administrative measure, cannot be made to prevail over legislation enacted by Parliament.
- xi) The Amendments did not decriminalize any offence. The Amendments only changed what may be investigated by NAB itself and the forum of the criminal trial. No person can be adversely affected with regard to such procedural changes.
- xii) If the legislature could enact the Ordinance it was also empowered to repeal it. In the present case, the Ordinance had not been repealed but only the Amendments had been made to the Ordinance, yet the same were struck down.

11. While the Petition was pending adjudication the Act was enacted almost five months before the Petition was decided. The attention of the learned Judges hearing the Petition was specifically drawn to the Act, which required that the Petition must be heard by '*not less than five Judges of the Supreme Court*', but the objection was rejected through order dated 29 August 2023 passed by Umar Ata Bandial, CJ, and Ijaz ul Ahsan, J. However, the application (CMA No.7066/2023) submitted in this regard was left unattended. Syed Mansoor Ali Shah, J, was correct in stating that

after the promulgation of the Act the Petition could not be heard by a three-member Bench. Had Syed Mansoor Ali Shah, J, disassociated himself from the Bench the Petition could then not have been heard by the remaining two Judges, nor could it have been decided by them.

12. The learned Judges who passed the impugned judgment (Umar Ata Bandial, CJ, and Ijaz ul Ahsan, J) were also part of the Bench which had initially heard Constitution Petitions No. 6 to 8 of 2023, through which the Bill which later became the Act was challenged, and they had suspended its operation. Thereafter, the said petitions were not fixed for hearing, which is contrary to the practice of this Court because once the hearing of a case has commenced it is not discontinued, and particularly when there is no reason to do so. However, these petitions were not listed for hearing for the next 100 days. The petitions which had challenged the Act were next fixed for hearing on Monday, 18 September 2023, after the present incumbent assumed the office of the Chief Justice of Pakistan.

13. Except its section 4(2) the challenge to the Act was repelled by the Full Court through the judgment reported as *Raja Amer Khan v Federation of Pakistan* (PLJ 2024 Supreme Court 114). The Petition, challenging the Amendments made to the Ordinance, was not heard and decided in accordance with the Act, which required that it be heard and decided by a Bench of not less than five Judges of the Supreme Court. Needless to say, if the provisions of the Act had been followed the Petition may have been decided differently. Abiding and following the law would also have saved considerable time of this Court and public resources as well.

14. The impugned judgment is challenged in these appeals, filed under section 5 of the Act which provides for an appeal in respect of an order passed in exercise of the original jurisdiction of this Court under Article 184(3) of the Constitution, before a larger Bench of the Supreme Court. These appeals could justifiably be allowed on the ground that since the Petition was not heard and decided as required by the Act by a five-member Bench the impugned judgment is *coram non judice* and a nullity in law. However, in deference to the learned Judges of the three-member Bench who had spent considerable time in hearing the Petition (55 dates of

hearing) it may not be appropriate to set aside the impugned judgment on this ground alone.

15. We, accordingly, proceed to consider and determine whether the scope the Petition and the challenge made to the Amendments came within the constitutional jurisdiction of this Court which is directly exercised under Article 184(3) of the Constitution. A petition may be filed directly in the Supreme Court provided it raises (a) '*a question of public importance*' and is (b) '*with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II*' of the Constitution.

16. The majority decision states that the Petition was maintainable because it violated the following Fundamental Rights: '*Articles 9 (security of person), 14 (inviolability of dignity of man), 24 (protection of property rights) and 25 (equality of citizens).*' However, there is no discussion in the impugned judgment stating how the Amendments made to the Ordinance contravened these Fundamental Rights. The impugned judgment states, in paragraph 18, that the Amendments are '*ex-facie violating Articles 9, 14, 23 and 24 of the Constitution*'; in paragraph 31, that '*Such blanket immunity offends Articles 9, 14, 23 and 24 of the Constitution*' and that '*It also offends the equal treatment command of Article 25 of the Constitution*'; and, in paragraph 35, that, '*affects the same Fundamental Rights i.e., Articles 9, 14, 23 24 [sic.] and raises the same problems in terms of accountability of elected holders of public office.*' However, these statements made in the impugned judgment are not explained nor are the Amendments analyzed in relation to the stated Fundamental Rights to ascertain and determine whether they were in conflict with them.

17. It does not suffice that the original jurisdiction of the Supreme Court under Article 184(3) of the Constitution is exercised by simply mentioning that one or more Fundamental Rights are contravened. This approach does not conform with the constitutional requirement. The Constitution only permits the Supreme Court to exercise its jurisdiction provided the stated two pre-requisites (mentioned above in paragraph 15) exist. The stated conditions prescribed by the Constitution can not be ignored nor redundancy attributed to them. There must be a clear nexus between the legislation under challenge with the *enforcement of any of the Fundamental*

*Rights* and it must be established that the same are violated or that the enforcement of such Fundamental Rights is undermined. Regretfully, the impugned judgment did not do so. We are also not persuaded by Mr. Niazi and learned Senior Advocate Khawaja Haris Ahmed that the Amendments violated the Constitution. Jurisdiction, with respect, was assumed by the learned Judges in disregard of the mandate of Article 184(3) of the Constitution, and having done so the provisions of the Amendments were minutely examined, and in doing so a cardinal feature of the Constitution was also disregarded.

18. The Constitution distributes functions amongst the different constitutional bodies that are set up thereunder, including the legislature, the primary function of which is to make laws. Till a law or any provision thereof is successfully challenged and struck down by a High Court, the Federal Shariat Court or by the Supreme Court it must be construed to be validly enacted, and it must be abided by. Legislation can also not be treated at par with Executive action/inaction. Unlike suspending and/or striking down the action of the Executive, or directing it to act, under Articles 199 or 184(3) of the Constitution, legislation enacted by Parliament or a Provincial Assembly, must be treated with respect and obeyed. And, if, and only if, legislation contravenes the Constitution, and it be so declared by a superior court having jurisdiction, the same continues to subsist. Unfortunately, we note that this fundamental principle was twice lost sight of, first, in disregarding the Act and then in substituting what the majority of the learned Judges considered in their personal opinion to be better than what was expressed by the elected representatives of the people and which was enacted by Parliament through the Amendments. Merely because this Court considers that it could have drafted or formulated a law better than Parliament does not empower it to strike down or disregard legislation enacted by Parliament.

19. The impugned judgment did not test the Amendments on the touchstone of the Constitution, it instead proceeded to consider the Amendments by applying their lordships' own criteria and yardstick, which, with respect, was not permissible in terms of the Constitution. Needless to state, Judges must abide, as their oath of office prescribes, by '*the Constitution of the Islamic Republic of Pakistan and the law.*' Unless *the law*

is clearly found to offend the Constitution, and it is first so declared, it cannot be disregarded or struck down. The Petition had challenged the Amendments, therefore, it had to be established that the two pre-requisites of Article 184(3) of the Constitution (mentioned above) were met.

20. The impugned judgment did not demonstrate how the Amendments violated or infringed any of the Fundamental Rights which were cursorily mentioned therein. The impugned judgment had referred to Article 9 (*security of person*) but did not even briefly explain how anyone's security was undermined or affected by the Amendments. Reference was also made to Article 14 (*inviolability of dignity of man*) but there was no explanation forthcoming on how any of the Amendments had affected anyone's dignity. The next reference in the impugned judgment was to Article 25 (*equality of citizens*) but once again no explanation was offered nor was it elaborated how citizens were being subjected to different laws or were being treated differently. Passing reference was also made to Article 23 (*provision as to property*) and to Article 24 (*protection of property*) but neither of these Articles were expounded or elucidated with regard to the Amendments, let alone that the Amendments, or any part thereof, offended either of them. Without stating, demonstrating and then establishing that the Amendments, or any of its provisions did not conform to the said Fundamental Rights, the same could not be struck down.

21. In view of the aforesaid the Petition should not have been allowed; it merited dismissal. Having arrived at this conclusion we need not consider the remaining submissions of the appellant's counsel and those who supported them, including that some of the Amendments gave effect to the decisions of the superior Court, that Mr. Niazi himself was the architect of many of the provisions which were later incorporated into the Amendments and that Mr. Niazi did not act *bona fide*.

22. The Supreme Court whenever possible must try to uphold legislation rather than rush to strike it down, and if there be two or more interpretations of any legislation to adopt the interpretation which upholds it. This does not mean that when the law, or any provision thereof, is unconstitutional it should not be so declared and struck down. However, the Petition and the impugned judgment failed to establish that the

Amendments were unconstitutional, nor have we been so persuaded in this regard.

23. The Constitution has set out the respective roles of the Legislature and that of the Judiciary and every care should be taken to ensure that neither encroaches onto the domain of the other. Constitutional institutions better serve the people when they respect each other and perform the functions respectively granted to them by the Constitution. The Chief Justice and the Judges of the Supreme Court are not the gatekeepers of Parliament.

24. Therefore, for the aforesaid reasons, we allow these appeals by setting aside the impugned judgment, and dismiss the Petition. However, there is no order as to costs.

Chief Justice

Judge

Judge

Judge

I agree with the conclusion but I am unable to concur with the reasons. So, I will give my own reasoning through a separate note.

Judge

Islamabad  
(M. Tauseef)

Announced in open Court at Islamabad on 6 September 2024.

Chief Justice.

Approved for reporting

I have carefully read the opinion eloquently authored by the Chief Justice and I concur that the impugned majority judgment is liable to be set aside. With profound respect, in my opinion the appeal filed by the Federation was not competent under section 5 of the Supreme Court (Practice and Procedure) Act, 2023 and the same is hereby dismissed. However, the appeals preferred by the private appellants were maintainable and the same are allowed. Consequently, the impugned judgment is set aside. Moreover, the opinion recorded in the minority judgment is affirmed to the effect that members of the Armed Forces and Judges of the constitutional courts are not immune from accountability under the National Accountability Ordinance, 1999. The detailed reasons shall be recorded later.

(Athar Minallah)  
Judge