

## Effect of Power Unification and Simultaneous Interpretation by Superior Courts: A Critical Analysis

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### Abstract

*The dearth of specialized constitutional court(s) in Azad Jammu and Kashmir and Pakistan places an unnecessary strain on the superior courts in both regions. The interpretation of statutes and constitutional interpretation constitute two distinct processes with various considerations and approaches. However, the judges of superior courts of Pakistan and AJ&K have to interpret both statutes and the constitution which makes their work more difficult and reduces the effectiveness of the courts. The higher courts in Pakistan and AJ&K possess significant judicial authority since they have comprehensive jurisdiction over the lower courts in their respective territories. By interpreting statutes, settling constitutional conflicts and safeguarding the enforcement of fundamental rights, the superior courts play a crucial part in maintaining the rule of law. Furthermore, without the requirement for a formal petition, the Supreme Court of Pakistan might commence proceedings on issues involving public concern. This power emphasizes the court's constructive role in ensuring justice, but it simultaneously comes with additional workload. Besides, conflicts of interest arise from judges' dual responsibilities in supreme judicial councils, thereby rendering it challenging to impartially implement judicial conduct standards. Moreover, the natural justice notion is compromised by how contempt of court proceedings are handled because the judges of the superior courts serve as both prosecutors and complainants, in matters related to the contempt. The constitutions of both regions provide the superior courts with considerable amounts of authority, including jurisdiction over subordinate courts and concurrent legal interpretation, impose more responsibility and more pressure on judges. The vast authority of the superior courts strengthens their ability to enforce justice but also adds to their burden and obligations, necessitating efficiency to guarantee equitable and efficient judicial decisions. This research is dynamic considering a descriptive and analytical approach to examine the powers of superior courts in both areas. This work suggests the establishment of separate constitutional court(s) to deal only with constitutional and ancillary matters, while offering an overall framework for implementing the code of conduct and improving fairness and effectiveness in the higher judiciary of Pakistan and AJ&K.*

**Keywords:** Azad Jammu & Kashmir, Constitutional Courts, Contempt of Court, Constitutional Interpretation, Judicial Code of Conduct, Statutory Interpretation.

## 1- Introduction

Interpretation of a statute is done based on jurisprudence of the prevailing legal system in a country whereas interpretation of constitution is made on the basis of altogether different jurisprudence<sup>1</sup> i.e. constitutional conventions or the basis on which a state is created or popular will of the citizens of the states through which they wished to be governed. Authority of a court is to adjudge simultaneously constitutionality of a particular enactment especially the interpretation of fundamental rights and freedom given in the constitution along with interpretation of that particular enactment causes multiple complications.

A noteworthy example of such complication is the common observation that superior courts frequently overrule their own precedents due to exigencies of relief to be given in a particular case. This practice not only causes embarrassment for the legal fraternity but also negates the doctrine of *Stare Decisis*. In some cases, it has been noted that a precedent is overruled even more than once creating confusion and uncertainty in the whole legal system.

Additionally, political disputes weigh heavily on superior courts, which makes it harder for them to provide prompt justice. Due to the Supreme Court's backlog of protracted political and constitutional issues, the current system of justice is beset by substantial delays, with average citizens having to wait decades for their cases to be decided. This load could be lessened by setting up a distinct Federal or Constitutional Court(s) for political and constitutional issues, enabling the Supreme Court to concentrate on routine cases and provide prompt justice. In addition to addressing the discontent of the public with the current system, this approach seeks to increase court efficiency. Leading figures such as Justice Qazi Faez Isa have expressed dissatisfaction regarding the current setup, emphasizing the pressing necessity for modifications to guarantee a more efficient and specialized justice system. Hence, to increase the overall efficacy and efficiency of the judicial system, separate Constitutional Court(s) could serve as a workable approach.<sup>2</sup>

Moreover, the Supreme Judicial Council which regulates judge's code of conduct is unable to enforce the code in its true spirit because members of Supreme Judicial Council are overburdened with heavy workload and lack of sufficient human resource. Thus, it is appropriate that there should be an impartial body to function as Supreme Judicial Council

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<sup>1</sup> Wojciech Sadurski, *Rights Before Courts: A Study of Constitutional Courts in Post-Communist States of Central and Eastern Europe* (2008).

<sup>2</sup> Asif Mahmood, 'Justice System and the "F Grade"' Daily 92 (6 July 2024).

which could not only make judges of superior courts accountable for their conduct and to enforce their code of conduct in its true spirit while meeting the ends of natural justice i.e., “No one can be a judge in his own cause” but also lessen the intense workload from their shoulders.

For the purposes, this research did not only examine comparatively and critically the dual functions of superior courts to interpret constitution and enactment through a single judgment and impact of such practice in dispensation of justice in light of case law of Pakistan and Azad Jammu & Kashmir (AJ&K) but also the existing structure of superior Courts of Pakistan and AJ&K. It has been observed in many cases that common men suffer a lot not only because of bulk of cases pending before higher judiciary but also for colossal case law requiring expertise of different jurisprudence are subjudice before one court. This hardship increases as higher judiciary constitutes larger or full benches to entertain these cases and ultimately lingering the cases of common man from days to months to years. Besides that, the judges are not fully equipped with research methodology and modern solution research techniques prevailing in this contemporary time, which is pivotal for finding solutions for ticklish constitutional issues. Resultantly, this situation not only culminates into monetary loss to the poor litigants who come from far-flung areas of the state but also causes them acute mental stress and tension.

## **2- Objectives And Limitation of the Research**

The main objectives of this research are;

- to examine and contrast the jurisdictions and powers of superior courts in Pakistan and AJ&K,
- to evaluate the effects of the dual role of superior courts in interpreting both, the statutes and the constitution, by means of a single verdict,
- to examine how the principle of natural justice could be upheld while handling situations involving contempt of court,
- to put forward suggestions for enhancements concerning the accountability regime involving superior court judges.

Besides this, the scope of this study is limited to investigate the aforementioned objectives surrounding the superior courts of Pakistan and AJ&K, excluding other

jurisdictions. The goal of this research for the constitutional court in this context is to achieve normative supremacy as the highest court in the state; in other words, the constitutional court aims to establish a degree of control over a traditionally depoliticized and deferential judicial system.

### 3- Literature Review

There exist some works on the subject under discussion in shape of different books, articles, journals etc. but in scattered form. For this, we have gone through the books “Constitutional Development in Azad Jammu and Kashmir”,<sup>3</sup> “The Constitution of Azad Jammu and Kashmir”<sup>4</sup> by Syed Manzoor ul Hassan Gillani, “The Constitution of the Islamic Republic of Pakistan” by M. Mahmood,<sup>5</sup> and “The Constitution of the Islamic Republic of Pakistan”, by Muhammad Abdul Basit,<sup>6</sup> but none has provided any provision favoring the creation of separate constitutional court.

Moreover, while going through from different articles like the one titled “Building Reputation in Constitutional Courts: Political and Judicial Audiences” by Tom Ginsburg<sup>7</sup>, the author has examined internal consensus and fragmentation of the constitutional court as a function of the need to communicate to two different external audiences: political and judicial. According to him, the political audience consists of other branches of government and the political establishment more generally. Constitutional courts are inevitably political actors. In traditional civil law countries, the constitutional court has been inserted as a “special court” into a legal system within existing hierarchy of courts. Furthermore, there may be institutional rivalries between the top courts of ordinary jurisdiction-accustomed to their superior place in the judicial hierarchy-and the new constitutional court. This can lead to legal incoherence and gridlock. Conflicts between the highest court of ordinary jurisdiction (Supreme Court) and the constitutional court have taken place in many countries and usually arise when the Supreme Court rejects the authority of the constitutional court in a particular case. These conflicts are typically exacerbated once concrete constitutional review is fully

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<sup>3</sup> Syed Manzoor Hussain Gillani, *The Constitutional Development in Azad Jammu and Kashmir* (Government Printing Press 1988).

<sup>4</sup> Syed Manzoor Hussain Gillani, *The Constitution of Azad Jammu and Kashmir* (National Book Foundation 2008).

<sup>5</sup> M Mahmood, *The Constitution of Islamic Republic of Pakistan, 1973* (Al-Qanoon Publishers 2004).

<sup>6</sup> Muhammad Abdul Basit, *The Constitution of the Islamic Republic of Pakistan* (Federal Law House 2013).

<sup>7</sup> Tom Ginsburg, ‘Building Reputation in Constitutional Courts: Political and Judicial Audiences’ (University of Chicago Law School, USA).

[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2441&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2441&context=journal_articles) <last accessed on 30 December 2024>.

developed because the interaction between judicial courts and the constitutional court becomes more intense, and coordination between the two systems is essential.

Also, Lech Garlicki's<sup>8</sup> article, titled, "Constitutional Courts versus Supreme Courts" held the view that constitutional courts exist in most of the civil law countries of Western Europe, and in almost all the new democracies in Eastern Europe; even France has developed its *Conseil Constitutionnel* into a genuine constitutional jurisdiction. While their emergence may be regarded as one of the most successful improvements on traditional European concepts of democracy and the rule of law, it has inevitably given rise to questions about the distribution of power at the supreme judicial level. As constitutional law has come to permeate the entire structure of the legal system, it has become impossible to maintain a firm delimitation between the functions of the constitutional court and those of ordinary courts.

However, there is no exclusive material in the form of a book, monograph, article and essay available with this perception on the subject. Therefore, there is an immense need of undertaking research on the subject with comparative approach. So, this research tries to fill this gap; it explores the actual and potential intersections of Interim Constitution of Azad Jammu and Kashmir and Constitution of Pakistan, existing judicial system and the need and prospects for the creation of separate constitutional court within both regions.

#### **4- Research Methodology**

The methodology sought to be adopted to make this work possible is, descriptive and analytical. This research will rely on data collected from primary sources like legal instruments enacted for judicial structures by legislative bodies of Pakistan and AJ&K for/within their jurisdictions. For this research, material from secondary sources like books, articles and internet too would be accessed and discussed. The comparative research method would be adopted for research and relevant material will be analyzed according to contemporary needs and modern principles. The original and classical literature will be surveyed for the purpose of analyzing the structure on the subject and a balanced mechanism will be suggested so that the research objectives would be achieved to extinguish all hardships to common man on one hand and the confrontation with the existing structure would be avoided on the other.

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<sup>8</sup> Lech Garlicki, 'Constitutional Courts versus Supreme Courts'.  
<https://academic.oup.com/icon/article/5/1/44/722508> <last accessed on 30 December 2024>.

## **5- Power Convergence: Simultaneous Interpretation by Superior Courts**

Etymologically derived from “*interpretaria*”, interpretation is the process of giving something meaning. In legal contexts, it entails interpreting laws to reveal their true intentions by analyzing their language, implications and subjects. According to Blackstone, determining the legislative intent is the most equitable approach.<sup>9</sup> Courts use established standards of interpretation to discern meanings where uncertainty arises, guaranteeing objectivity and transparency in application.

Since both the regions lack a court specifically entrusted with interpreting the constitution, the superior courts of AJ&K and Pakistan have to interpret simultaneously, the statute and the constitution. In addition to deciding whether or not particular enactments are constitutional, superior courts must negotiate the difficult challenge of interpreting the scope and meaning of fundamental rights and freedoms enshrined in the constitution. Courts commonly have to navigate the complex legal hurdles and obstacles that arise from the junction of statutory interpretation and constitutional law in order to maintain the balance between legislative authority and constitutional protections.

### **I. Constitutionalism and Constitutional Conventions**

Fundamentally, a constitution sets forth rules that organize and delineate the powers of the legislative, executive and judicial branches of government. Although every state has a constitution, constitutionalism stresses the importance of these rules and how they significantly limit the power of the government. These limitations frequently take the form of civil rights safeguards, which include rights to freedom of expression, association, equality and due process in addition to other measures that limit the authority and power of the government. Conversely, constitutionalism, in its wider sense, holds that the governmental authority is contingent upon abiding by certain constraints placed on its powers. However, constitutionalism supports the role of judiciary in interpreting legislation to maintain governmental accountability and conformity to constitutional limits, even though it does not fundamentally support the separation of powers. The principles of constitutionalism emphasize responsibility and judicial interpretation in order to ensure that the limitations of

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<sup>9</sup> Priya LM Lakshmi, ‘Difference Between Interpretation and Construction’ (iPleaders Blog) <https://blog.iplayers.in/difference-between-interpretation-and-construction/> <last accessed on 30 December 2024>.

constitution are followed. Thus demonstrating how important interpretation is to determining that constitutional ideas are applied in a way that makes sense.

Alternatively, unwritten customs and norms that direct constitutional governance are included in constitutional conventions. Any consistent behavior in governance is frequently referred to as “constitutional convention” in a vague sense.<sup>10</sup> True constitutional conventions, on the other hand, are certain social standards that govern how political parties or governmental organizations engage with one another. These conventions only make reference to constitutionally based social norms. Thus, both constitutionalism and constitutional conventions impact the interpretation and implementation of a constitution.

## **II. Interpretation of Constitution and Statutes**

Constitutional interpretation and statutory interpretation are two separate procedures with different methods and factors to take into account. Several constitutional scholars contend that because of the abstract nature of the terms of the constitution as well as its elevated legal position, constitutional interpretation differs from statutory interpretation. Statutory standards are typically more concrete than constitutional norms since they deal with crucial political concerns and social institutions. Certain scholars, however, contest this difference claiming it is untrue and even detrimental. In the opinion of Andras Jakab, the main differences between statutory and constitutional interpretation techniques are the focus and how often they use. In contrast, a comparative analysis of constitutional interpretation that used the German Constitutional Court and the US Supreme Court as models of common law and civil law systems, respectively, found no appreciable distinctions between the two. When the Court makes no reference to any constitutional provision or right, it becomes difficult to make a distinction between constitutional and statutory interpretation.

Interpreting a constitution is part of the process of determining the fundamental laws and values that govern a country or state. It requires not just delving into the political, social and historical context that shaped it but also comprehending the goals of legislators, precedent and judicial rulings. The objective is to highlight the core principles and concepts of constitutionalism, such as constitutional standards and rights. The process of interpreting a constitution typically adopts a flexible, adaptive attitude to address shifting social demands and conditions. The meaning of the constitution is dynamic and adapts to changing

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<sup>10</sup> Joseph Jaconelli, ‘The Nature of Constitutional Convention’ (1999) 19(1) *Legal Studies* 24-46.

circumstances and ideas. Constitutional interpretation is adaptable, considering it is historically relevant to read the document in line with the legislators' objectives. Constitutional interpretation draws on a range of jurisprudential frameworks, including familiarity with basic state concepts, constitutional conventions and the declared preferences of the populace for different forms of governance. Several theories, such as originalism and living constitutionalism which have different perspectives on how to approach the meaning and development of a constitution are included in the field of constitutional interpretation. Therefore, constitutional interpretation, constitutionalism, constitutional conventions and interpreting fundamental rights are closely related since they influence how a constitution is understood and applied.

As far as statutory interpretation is concerned, every legal system depends on interpretation to apply its laws efficiently. Judges and courts engage in an interpretive process that shapes the legal system as a whole. Constitutional law offers standards for policy interpretation that guarantee uniformity in the administration of justice. Finding the genuine intent of the legislator through analysis of the written wording of statutes is the main goal of interpretation. Finding the meaning of words used in a document is the definition of interpretation in the English legal system. Judges must interpret the language of the statute in accordance with their judgments or the legislative intent. However, in order to determine legislative purpose, construction clarifies ambiguities. It is the duty of jurists and judges to interpret and create legal documents in order to deal with modern problems.

Statute formation and interpretation are essential components of all legal systems, including those in Pakistan and the AJ&K. The primary sources of interpretation for these legal domains, aside from contemporary legal sources such as statutes, precedents and societal norms are Islamic legal texts for instance, the Qur'an and Sunnah. The interpretive strategies of these judicial systems often aim to reconcile traditional and modern legal principles in order to uphold the rule of law and protect fundamental rights. The sources used for interpretation are different in Pakistan and the AJ&K from various legal systems across the world. The Qur'an and Sunnah are the main sources of interpretation in this case, serving as the cornerstones for the establishment of law. As long as they are consistent with Islamic law, modern sources can include state constitutions, statutes, precedents, case law and social conventions. Determining the legislative purpose is the major goal of statutory interpretation, regardless of the country, religion or lack thereof. The notion that interpretation is a distinctively judicial responsibility is essentially uncontested. The main responsibilities of the



Supreme Courts in Pakistan and AJ&K are to define the parameters of passed legislation and interpret it in accordance with the intentions of the legislature. As a result, the interpretive policy of the Supreme Courts in both regions outlines the techniques and approaches it employs which are comparable to those of an impartial jurist or mujtahid. These include, among other things, the principles of autonomous ijihad, avoiding taqlid, legislative history, the mischief rule, contextual and harmonic construction, and purposeful interpretation.

### **III. Challenges in Legal Interpretation**

Legal interpretation presents a number of challenges, particularly when combined with simultaneous interpretation. The requirement for in-depth legal research to accurately understand and interpret complex laws and regulations is a significant barrier. Additionally, competence in the legal field as well as language interpretation is necessary to provide an accurate presentation of legal terms and concepts. A key component of this endeavor is the requirement that interpreters conduct comprehensive legal research. It is necessary to dive thoroughly into complex laws, precedents and legal concepts in order to gain a complete understanding of the pertinent legal framework. The knowledge that interpreters need to successfully interpret and convey legal concepts in urgent situations is provided by this type of basic study. Furthermore, advocacy is crucial since translators must convey the arguments and points of view of the legal counsel with ability and objectivity. Despite these efforts, contradictory interpretations by different courts or interpreters may result in inconsistent rulings. These inconsistencies undermine public trust and jeopardize the justice system's impartiality and integrity. The main goal of legal interpretation nevertheless remains maintaining judicial consistency which is necessary to preserve the impartiality and reliability of the legal system.

#### **6- Overview of the Superior Judicial System in Pakistan and Aj&K**

The uppermost courts in Pakistan and AJ&K are the Supreme Courts, which have broad jurisdiction over all lower courts within their respective domains as well as the high courts. Below the Supreme Court, the judiciary in Pakistan is composed of five high courts that are positioned in the capital cities of the four provinces and one high court located in Islamabad, the federal capital. By contrast, the AJ&K legal system comprises upon one high court, which

is located in its capital, Muzaffarabad. In addition, the AJ&K high court consists upon circuit benches occasionally convened in Mirpur, Rawalakot and Kotli.<sup>11</sup>

However, the superior courts in AJ&K and Pakistan have a broad range of powers and jurisdiction, enabling them to rule over an extensive spectrum of legal issues. However, this great influence comes with a great deal of responsibility. The vast array of powers bestowed upon these courts invariably results in a burdensome workload, as great power is accompanied with tremendous responsibility. The important duty of interpreting statutes as well as the constitution falls under the authority of the superior courts of Pakistan and AJ&K because there fails to be a distinct constitutional court in either region. In this regard, superior courts are burdened with a surplus of work because their responsibilities are diverse and require a careful evaluation of every case.

### I. Annual Cases Report Statements: A Brief Summary

➤ **Table, A: Supreme Court of Pakistan (2020-2022)**

Category	Total
Institution of cases	40,724
Disposal of cases	34,869
Pendency as on 15.09.2020	45,515

*Source:* Annual Report 15<sup>th</sup> September 2020 – 14<sup>th</sup> September 2022, Supreme Court of Pakistan.

➤ **Table, B: Lahore High Court (2022)**

Category	Total
Pendency as on 01.01.2022	187,250
Institution of cases (2022)	149,260
Disposal of cases (2022)	157,085
Balance Pendency as on 31.12.2022	157,085

<sup>11</sup> High Court of AJ&K, 'Circuit Benches' [https://ajkhighcourt.gov.pk/Userside/circuit\\_benches](https://ajkhighcourt.gov.pk/Userside/circuit_benches) <last accessed on 30 December 2024>.

Source: Annual Report 2022, Lahore High Court, Lahore.

➤ **Table, C: High Court of AJ&K (2023)**

<b>Category</b>	<b>Total</b>
Pendency as on 01.01.2023	16,468
Institution of new cases (2023)	10,110
Decided cases as on 31.12.2023	10,439
Remaining cases as on 01.01.2024	16,139

Source: Annual Report by the High Court of AJ&K at 11<sup>th</sup> Judicial Conference held on 15<sup>th</sup> January, 2024.

## **II. Assessing the Jurisdictions and Powers of The Superior Courts**

Within their respective jurisdictions and powers, the Supreme Courts of Pakistan and AJ&K are of utmost importance. Amongst other provincial units, Azad Kashmir stands apart within Pakistan since it is the only administrative unit with its own Supreme Court.<sup>12</sup> Alternatively, the High Courts of AJ&K and Pakistan have both original writ and appellate jurisdictions under the constitutions and procedural laws respectively. Moreover, significant authority is vested in the Supreme Courts and the High Courts of both Pakistan and AJ&K. They can establish legal precedents and have jurisdiction over issues pertaining to fundamental rights and contempt of court. Furthermore, in order to guarantee efficient justice administration, the High Courts also have superintendence over lower courts.<sup>13</sup>

### **A. Jurisdiction of Superior Courts**

The Constitution of Pakistan, 1973, under its articles 184 and 185, grants original and appellate jurisdictions to the Supreme Court of Pakistan respectively.<sup>14</sup> Situations involving basic rights and disputes between governments fall under original jurisdiction. Nonetheless,

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<sup>12</sup> Justice Syed Manzoor Hussain Gilani, *The Constitution of Azad Jammu and Kashmir* (National Book Foundation, 1st edn, 2008).

<sup>13</sup> *Ibid.*

<sup>14</sup> *The Constitution of the Islamic Republic of Pakistan, 1973.*

Article 185 establishes the procedure for appeals against decisions made by the High Court. Moreover, as of the Advisory Jurisdiction provided by Article 186, the Court can offer legal opinions or guidance on matters that the President refers to it. On the other hand, the AJ&K interim constitution grants the Supreme Court of AJ&K particular authorities. In particular, the Court may accept appeals referring exclusively to decisions, rulings, judgments, final orders or sentences issued by the AJ&K High Court under Article 42(10).<sup>15</sup> According to Article 42(12), the Supreme Court of AJ&K has the discretionary power to grant an appeal against decisions made by the High Court in order to reinforce its standing in the appellate process. As an additional aspect of its judicial power, the Supreme Court of AJ&K is endowed with advisory jurisdiction pursuant to Article 46-A of the interim constitution. In continuity to the previous jurisdiction, advisory jurisdiction is the only original jurisdictional authority rendered to the AJ&K Supreme Court. This gives the Court the authority to offer knowledgeable legal views on matters presented to it, carrying out its advising function with skill and accuracy. Nonetheless, the Supreme Court of AJ&K does not have original jurisdiction, in contrast to its counterpart in Pakistan. Rather, the main focus of its jurisdiction is on appellate responsibilities.

The Supreme Court of Pakistan is endowed with broad jurisdictions, together with original, appellate and advisory jurisdiction under the prevailing Constitution of 1973. On the contrary, AJ&K Supreme Court merely enjoys appellate and advisory jurisdictions. In accordance with the interim constitution, 1974, the AJ&K Supreme Court does not have original jurisdiction, unlike the Supreme Court of Pakistan. Additionally, the court cannot establish new jurisdiction since the interim constitution limits its authority.

Pursuant to their procedural laws and constitutions, the High Courts of Pakistan and AJ&K have appellate and writ jurisdiction respectively. Additionally, under various types of laws, including those outlined in the Azad Jammu & Kashmir Interim Constitution Act of 1974, the AJ&K High Court hears cases concerning both civil as well as criminal matters. The High Courts of Pakistan and AJ&K High Court are endowed with original writ jurisdictions, in the order under Article 199 of the Constitution of Pakistan and Article 44 of the Interim Constitution. While Article 44 of the interim constitution and Article 199 of the Pakistan constitution are conceptually similar, there are differences in terms of territorial jurisdiction. The Azad Kashmir High Court is not constrained by the boundaries of adjacent

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<sup>15</sup> The Azad Jammu and Kashmir Interim Constitution, 1974.

regions, unlike the High Courts located in the provinces of Pakistan. The absence of limitations under Article 44 enables the High Court of Azad Kashmir to examine the measures implemented by the Pakistan government concerning Azad Jammu and Kashmir.

### **B. Powers of Superior Courts**

Article 199 of the Constitution of Pakistan lends the judiciary a mandate to protect fundamental rights, while Article 184(3) of the constitution grants the Supreme Court this authority. The Supreme Court potentially without a formal complaint, intervene in cases of public concern pertaining to constitutional rights under Article 184(3), even if it decides to take action on its own. The Supreme Court of Pakistan has the power, pursuant to Article 184(3), to act suo moto on issues of public importance pertaining to the upholding of fundamental rights, without negatively impacting Article 199. The Supreme Court of Pakistan is the sole authority with the power to initiate suo moto proceedings under the constitution. Moreover, Article 204 delineates the authority of the Supreme Court and High Courts to oversee cases of contempt. According to Article 189, the Supreme Court's rulings set precedents and are binding on all other subordinate courts within jurisdiction of Pakistan. In the same manner, Article 201 provides each high court the authority to establish precedents, with their rulings on legal issues enforceable on lower courts situated inside Pakistan. Moreover, each Pakistan's high court is empowered to supervise lower courts by virtue of Article 203.

On the other hand, contempt of court is defined in Article 45 of the interim constitution of AJK, which provides superior judiciary the power to punish individuals who disrupt court proceedings, cause scandals or cast suspicion on ongoing cases. Regarding legal issues, Article 42-B declares that rulings rendered by the Supreme Court are binding on all other courts in AJ&K. In the same spirit, subordinate courts must abide by the rulings of the High Court pursuant to Article 44-B. Additionally, the High Court has the power to supervise and manage all courts subordinate to it under Article 46.

Based on all above discussion, the Pakistan and AJ&K superior courts have extensive jurisdiction that encompasses interpreting laws and the constitution, upholding fundamental rights and deciding cases involving their respective contempt. Despite these extensive powers, the lack of specialized constitutional courts in either region causes delays in the adjudication of cases. Judges have an excessive amount of work since they are overloaded with an extensive nature and variety of cases. The dual legal systems in AJK and Pakistan

also make the duties of superior judiciary even more difficult. Judges must follow the *stare decisis* doctrine, which compels them to uphold earlier rulings, while navigating and interpreting statutes. The intricacy of their work is increased by this combined demand. Due to the absence of specialized courts, judges are forced to strike a compromise between standard legal matters and constitutional interpretation, which exacerbates delays and impedes the effective distribution of justice. This seriously impairs the capacity of judiciary to handle and conclude cases quickly, which has an effect on the justice system's overall efficacy.

### **7- Powers Surrounding Contempt of Court Proceedings**

With respect to the constitutions of Pakistan and AJ&K, every citizen has the right to freedom of speech and expression, as well as freedom of the press.<sup>16</sup> Nonetheless, legitimate restrictions apply to these freedoms, one of which constitutes contempt of court. The freedom of speech and contempt laws is interpreted by the courts in AJ&K and Pakistan. In addition to acting as the arbiter of acceptable constraints on these freedoms, the court is responsible for deciding which expression is protected as well as what are grounds for contempt. Since contempt procedures are special and do not easily fall into either the criminal or civil categories, they originate from English Common Law. They may be broadly classified into two categories: those for respecting the dignity of the court and those for violating private rights-related court orders.

Articles 204<sup>17</sup> and 45<sup>18</sup> of the constitutions of Pakistan and AJ&K, respectively, clearly establish the power to deal with contempt of court. The aforementioned articles provide the Supreme Courts and High Courts in their respective regions the authority to punish people for engaging in a variety of behaviors that are considered disrespectful by the law, including interfering with court orders, obstructing proceedings, scandalizing the court or its judges, and harming ongoing cases. Moreover, laws and court-established guidelines may govern how this authority is used. Supplementary to the previously listed Articles, the

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<sup>16</sup> Nazir Ahmed, 'Law of Contempt of Court' (2000) 22 JL & Soc'y 71.

<sup>17</sup> This Article empowers the Supreme Court or a High Court of Pakistan to punish any person who abuses, interfere with or obstructs the process or disobeys any order of the Courts; scandalizes the Court or bring the Court or Judge of the Court into hatred, ridicule, or contempt; does anything that prejudice the determination of a matter pending before the Court or any other conduct that, by law, constitutes contempt of court.

<sup>18</sup> This Article confers the power to the Supreme Court or a High Court of AJ&K to punish any person who abuses, interfere with or obstructs the process or disobeys any order of the Courts; scandalizes the Court or bring the Court or Judge of the Court into hatred, ridicule, or contempt; does anything that prejudice the determination of a matter pending before the Court or any other conduct that, by law, constitutes contempt of court.

Contempt of Courts Act, 1993 grants the courts in AJ&K contempt of court jurisdiction; in Pakistan, the Contempt of Court Act of 2012 governs this authority. These articles are limited to the High Court and the Supreme Court. They have the innate power to rapidly punish anyone who tampers with the administration of justice because they are courts of record, upholding legal authority and guaranteeing the efficient operation of the legal system.

The purpose of enacting contempt legislation is to protect the public's confidence in the legal system and to preserve the dignity of the courts. It aims to stop any activities that might erode public trust in the fairness of legal proceedings and the administration of justice since they might endanger the stability of the state as a whole. The purpose of contempt proceedings is to shield the general public from any harm that might result from a court's authority being weakened. The overall goal of these laws is to prevent any attempts to weaken the judiciary and to preserve public faith in it.

Although laws against contempt protect the public interest by upholding the legitimacy and power of the legal system, they contradict the natural justice precept that “No one can be a judge in his own cause.” As, the conviction of a sitting prime minister for contempt of court for disobeying a Supreme Court order to disclose Swiss bank accounts was a landmark event in Pakistan history.<sup>19</sup> After being forced to stand for about thirty seconds as a symbolic punishment, the prime minister resigned from his position. In a same vein, Prime Minister Sardar Tanveer Ilyas Khan was excluded from the legislative assembly for contempt by the full bench of the AJ&K High Court.<sup>20</sup> The court observed that Mr. Ilyas acknowledged making the statements and that he did not respond to the notice that was sent out with any objections. As a result, the court determined that his conduct qualified as contempt in accordance with AJK Interim Constitution, 1974 Article 45. As per the order, Mr. Ilyas was barred from standing for election, joining the legislative assembly, and occupying any public position for a period of two years, due to his “punishment by the court.” Mr. Ilyas appeared before the AJK Supreme Court after the decision and again apologized for the remarks he made. At this moment, instances involving allegations of contempt are decided by courts, which raise questions about their impartiality and possible conflicts of interest. As a result, it is recommended that an entirely distinct institution be given responsibility for handling contempt matters, with the relevant court serving as the prosecution. In accordance with the

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<sup>19</sup> Criminal Original Petition No 06 of 2012 in Suo Motu Case No 04 of 2010.

<sup>20</sup> Robkar-e-Adalat v Sardar Tanveer Ilyas Khan.

core ideas of natural justice, this strategy would improve openness, equity and the sense of justice in contempt hearings.

### **I. Contempt of Court: Natural Justice and Judicial Accountability**

As the debate made clear, the fundamental conflict of interest that occurs when judges hear cases in which they are the party who has been wronged is the primary cause of the natural justice standards that are violated in contempt proceedings. This circumstance goes against the basic tenet that “No one can be a judge in his own cause.” In *Suo Motu Case No. 04 of 2010*, and in *Robkar-e-Adalat vs. Sardar Tanveer Ilyas Khan*, the courts served as both the complainant and the arbiter in the cases of sitting prime ministers who were sentenced for contempt of court. Concerns regarding fairness and impartiality are raised by this arrangement since the court’s objectivity may be weakened by its stake in the result. Furthermore, the symbolic penalty could be viewed as insufficient or arbitrary even if it was meant to support the court's authority.

Both Pakistan and AJ&K under their respective constitutions have set up Supreme Judicial Councils to protect judicial standards. The Council comprises the Chief Justice of the Supreme Courts, the two succeeding most senior Supreme Court Judges and the two most senior Chief Justices of High Courts. Investigations into claims of incompetence or wrongdoing against Supreme Court or High Court judges are under the purview of these bodies. For additional action, they present their conclusions to the Chairman of the Council or the President. They also supply the Chairman or President with information so they can start investigations based on judicial behavior. As the highest court body, the Supreme Judicial Council supervises superior court judges' behavior. It is responsible for drafting a code of conduct for judges and has the authority to investigate any violations.

One important difference between the Pakistan constitution and the AJ&K interim constitution is that the Chairman of the AJ&K Council and the President must respect the Supreme Judicial Council's decision to remove a judge if it seems inappropriate. The opinion expressed by the Council does not limit the President of Pakistan. Additionally, the Council of Pakistan has the power to initiate proceedings against a judge, while the Council of AJ&K is dependent on recommendations from the Chairman or President. Without the Council's recommendation, neither the Chairman nor the President possesses the autonomous power to remove a judge. The Council can control its own processes during investigations and assesses judges' behavior in accordance with its Code of Conduct. It is therefore, required of judges to



act impartially, honestly and fairly under the Code of Conduct. Judges have three obligations: they have to be impartial, stay out of conflicts of interest and not act in a political manner. Violating these norms amounts to grave wrongdoing and erodes public trust in the legal system.

### **8- Improving Judicial Systems: Constitutional Courts and Judicial Council**

However, it is necessary to reconsider the functions and structure of judicial councils and establishment of separate Constitutional Court(s) in order to improve judicial systems in Pakistan and AJ&K. Concerns about impartiality and public trust are raised by the combination of judges serving on judicial councils and apex courts. The judges in consideration may unintentionally undermine their impartiality in the process of interpreting legislation and constitutions, in addition to overseeing contempt proceedings. This could lead to a breach of the core tenet of natural justice. Although, a recent instance involving Justice (retired) Mazahir Ali Akbar Naqvi shows that this is not always the case.<sup>21</sup> The Supreme Judicial Council (SJC) determined that Mr. Naqvi had violated the Code of Conduct and broken his oath of office by receiving gifts that were not justified. Because five of the ten accusations against him were found to be true, the SJC concluded that he had engaged in misconduct and ought to have lost his job as a judge. Yet, it is crucial that separate constitutional courts be established and that several distinct individuals be given the responsibility to implement the code of conduct in order to address these issues and strengthen public confidence in the judiciary.

By keeping these responsibilities distinct, any conflicts of interest may be reduced and the legitimacy of the judicial system may be reinforced. A stringent and specific approach to upholding core values would also be made possible by the creation of specialized constitutional courts which would provide a particular platform for constitutional interpretation. Not only would this restructure expedite court operations, but it would also improve the overall effectiveness and integrity of the legal system. The establishment of distinctive constitutional courts and the authority granted to these courts to implement their respective codes of conduct are essential for upholding judicial independence, safeguarding natural justice and fostering public confidence in the judiciary. These modifications must be carried out in order to create a just, accountable and easily accessed justice system which serves the interests of both regions.

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<sup>21</sup> Complaints No 586, 589, 592, 595, 596, 597, 600, 601 and 609 of 2023/SJC.

## **9- Conclusion and Recommendations**

In Pakistan and AJ&K, the higher judiciary has wide-ranging jurisdiction and retains charge of the lower courts. The extensive authority and power of superior courts in both jurisdictions are comparable, notwithstanding their varying structures. In addition to original, appellate, advisory and writ jurisdictions, the superior courts in both domains possess the authority to interpret statutes and constitutional provisions. However, the superior courts endure challenges in their effectiveness and efficient functioning because they are required to interpret statutes and constitutions simultaneously as there are no distinct constitutional courts. Because of their broad authority, the superior courts of Pakistan and AJ&K play a crucial role in upholding the rule of law, constitutional adjudication and supervising subordinate courts. Although these extensive powers allow the courts to administer justice in an efficient manner, they also come with a heavy burden and require efficiency and accountability in order to maintain public trust and maintain the fairness of their rulings. On account of an abundance of work and time constraints resulting from this overburden, the judicial process becomes increasingly complex and there exists a deficiency in the field legal research. Furthermore, the constitutions grant the higher judiciary the authority to consider matters involving contempt, the essential tenet of natural justice is undermined by the practice of courts serving as both the complainant and the prosecution in cases involving contempt. The powers granted to the Supreme Court and High Courts to handle contempt are essential for maintaining the dignity, authority and efficient operation of the court. These authorities protect the rule of law by ensuring that judicial procedures are not obstructed or biased. Since the same judges are in charge of upholding the code of conduct and considering cases involving misconduct, this threshold highlights questions about judicial accountability and the implementation of justice in an unbiased and equitable way. This procedure needs to be changed in order to preserve the integrity and equity that are fundamental to legal processes. Thus, rectifying these concerns via structural changes in the judicial systems of AJ&K and Pakistan will substantially improve the judiciary's effectiveness, responsibility and compliance to natural justice standards.

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