

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice AAMER FAROOQ
Justice ROZI KHAN BARRECH

F.C.P.L.A No.14 of 2025

(Against the Order dated 06.11.2025 passed by High Court of Sindh, Circuit Court Larkana, in CP No. D-670/2025)

Vice Chancellor Shaheed Mohtarma Benazir
Bhutto Medical University & others

...Petitioners

Versus

Altaf Hussain Somroo

...Respondent

For Petitioners: Ghayoor Abbas Shahani, ASC

For Respondent: In-Person

Assisted by: Barrister Zarrar Haider Bhatti, Law
Clerk

Date of Hearing: 07.01.2026

JUDGMENT OF THE COURT

JUSTICE AAMER FAROOQ:

1. A question has arisen before this Court concerning the scope and exercise of the constitutional jurisdiction of the High Courts under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution, 1973**”), particularly in relation to the exercise of its equitable jurisdiction. The Sindh High Court, Larkana Bench, while exercising its constitutional jurisdiction, issued a writ of mandamus directing the Petitioners to hold a “super/supplementary examination” for the Respondent, notwithstanding the absence of any law, rule, or regulation

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requiring the conduct of such an examination. We hold that the High Courts are not vested with the authority to exercise such powers, as every case must be adjudicated strictly in accordance with the law and not on considerations of compassion, equity or whims of a judge.

2. Mr. Somroo ("**the Respondent**") is a student of Second Year MBBS at Chandka Medical College, functioning under the administrative control of Shaheed Mohtarma Benazir Bhutto Medical University, and belongs to Batch-51. During the relevant period, he underwent a kidney transplant surgery at the Sindh Institute of Urology and Transplantation, Karachi, and, on medical advice, was required to observe mandatory bed rest and post-operative care. Owing to this medical condition, he was unable to appear in the Annual Examinations of Second Year MBBS and, subsequently, also missed the Supplementary Examination of the Physiology module scheduled for 11.06.2025. The Respondent submitted two applications to the Vice Chancellor of Shaheed Mohtarma Benazir Bhutto Medical University, dated 17.06.2025 and 09.07.2025, respectively, seeking remedial measures; however, both applications were declined. Aggrieved thereby, the Respondent invoked the constitutional jurisdiction of the Sindh High Court under Article 199, praying that he be allowed to appear in a "special/super supplementary examination" for Second Year MBBS Physiology (theory). The Sindh High Court granted the requested relief and issued a writ of mandamus (**'the impugned order'**).

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Consequently, the Petitioners approached this Court under Article 175F(1)(c) seeking leave to appeal against the impugned order.

3. Learned counsel for the Petitioners contended before this Court that there exists no law, rule, or regulation permitting any student, let alone the Respondent, to appear in a “special/super supplementary examination,” and that the Sindh High Court, by granting such relief, entered the domain of policy-making and unlawfully interfered in the affairs of an educational institution; reliance was placed on *Muhammad Umar Wahid v. University of Health Sciences, Lahore*, PLD 2006 SC 300, (per NASIR-UL-MULK, J.). Conversely, the Respondent, appearing in person, submitted that he was unaware of the supplementary examination as the schedule was not uploaded on the official website and, for that reason, he could not appear therein. We have heard the learned counsel for the Petitioners, the Respondent in person, and have pursued the available record.
4. The questions arising for consideration before this Court warrant determination: whether the conscience of a judge can fill a vacuum where the command of law is silent; whether a writ of mandamus can be issued in the absence of statutory or legal backing; and whether a court can restrict the precedential value of its own judgment.

A.

Conscience of a Judge and its Relation to Law

5. Under the Constitution 1973, Pakistan is established as a Federal Republic founded upon the principles of “democracy, freedom,

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equality, tolerance, and social justice”, as enshrined in the Preamble and Article 1 of the Constitution, 1973. The framers envisioned a State governed by the rule of law, wherein the supremacy of the Constitution is recognized, upheld, and enforced. Within this constitutional framework, the judiciary occupies an indispensable position, being entrusted with the responsibility to interpret, and apply the laws of the land in accordance with constitutional mandates, see *Dossani Travels Pvt v. Messers Travels Shop*, PLD 2014 SC 1, at p.26 (per TASSADUQ HUSSAIN JILLANI, J.).

6. The expression employed by us, “to interpret and apply the laws of the land”, is used with an intent and purpose. The Preamble of the Constitution, 1973 declares in unambiguous terms: “We, the People of Pakistan, do hereby, through our representatives in the National Assembly, adopt, enact and give to ourselves this Constitution.” See Preamble of the Constitution, 1973. This solemn affirmation elevates the will of the people above all else and renders all organs and functionaries created by the Constitution, including the Executive, the Legislature, and the Judiciary, subject to it. In essence, it is the “will of the people of Pakistan” that they have adopted a constitutional order in which law exists, etched in black and white, leaving no room for arbitrariness, and ensuring that governance and adjudication are guided by laws only.
7. In the instant case, while granting relief to the Respondent, the Sindh High Court categorized the matter as a “special case”

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involving what it termed “exceptional circumstances,” thereby justifying the grant of what was described as “equitable relief.” In this context, the operative portion of paragraph 7 of the impugned order reads as follows:

“In these peculiar circumstances, the petitioner's absence cannot be treated as willful or negligent. Rather, it resulted from a combination of medical incapacity and lack of timely notice, for which the University bears responsibility. Though it is correct that the University Act and relevant rules do not specifically provide for holding a third attempt or special supplementary examination, this Court is of the view that the case of the petitioner presents exceptional circumstances justifying equitable relief. Accordingly, the petition stands disposed of with directions to the respondents to make all necessary arrangements for conducting the petitioner's supplementary examination for the subject of Physiology (Theory), 2nd year MBBS, as a special case, considering the petitioner's medical condition and genuine hardship within 10 (ten) days after receipt of this order”. (Emphasis supplied)

8. When we recognize that Pakistan is a democracy founded upon the rule of law, designed to secure “freedom, equality, tolerance, and social justice”, we transition from being a nation governed by men to one governed by constitutionalism. The people of Pakistan have consciously “adopted, enacted, and given” to themselves this

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constitutional order, within which judges do not function as private individuals or members of executive. Rather, they act as impartial Justices, who interpret the law and apply it to the cases before them. While compassion may blur the distinction between law and morality by urging a judge to act according to personal sentiment, the judicial role demands adherence to constitutional duty only. To allow compassion to override the obligation to interpret and apply the law would amount to a retreat from our judicial responsibility.

9. Initially, the Constituent Assembly adopted the Government of India Act, 1935, which established a Federal Court, which was bound by the laws in force and required to operate strictly within the limits so prescribed, See Part IX, Ch. I, Section 200 of Government of India Act, 1935; thereafter, under the Constitutions of 1956 and 1962, the High Courts and the Supreme Court continued to function within the framework of the then existing Constitution and the law. Throughout this constitutional evolution, the courts have acted as courts of law and not of compassion, tasked with enforcing the Constitution rather than interpreting it according to personal understanding or subjective notions. A survey of our constitutional history, thus, reveals that at no point have the courts assumed jurisdiction to dispense compassion; instead, they have consistently worked as constitutional courts or the courts of law, deriving their mandate from the Constitution and the law dispensing only such justice as is sanctioned by law.

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10. Instead, what we find is that the Supreme Court in the year 2013, in *Director General, National Savings, Islamabad v. Balqees Begum*, PLD 2013 SC 174, (per MIAN SAQIB NISAR, J.), laid down that compassion cannot undo the diktat of the law and its mandate cannot be undone by equity¹. In *Balqees Begum case*, before the Supreme Court was assailed an Order of learned judge in chambers of the Lahore High Court who granted relief to Balqees Begum on compassionate grounds while acknowledging that there is no law permitting her to claim the prize bond after expiry of six years, but as she is just a normal village folk, she should not be deprived of the prize money on a mere technicality. The Supreme Court quashed the order of the Lahore High Court and opined that “equity cannot be given precedence and overriding effect over the clear mandate of law” and it steps in “where law has no answer to provide for doing justice”, see *Balqees Begum, supra*, at p.2. Court went on to pronounce that “like equity, the concepts of compassion and hardship shall also be considered by the Courts for providing relief to an aggrieved party in terms of Article 199 of the Constitution, 1973, only when there is room in the relevant law to do so, but undoubtedly not by the breach of law and moreso by stultifying the right accrued to the opposite side or/and to enforce a right which the aggrieved party under the law has lost”, *ibid*.

¹ The judgment was binding on the Sindh High Court in the instant case. The doctrine of *stare decisis* is etched into our Constitution, 1973 with which every court is strictly bound. No court can deviate from the principles and questions of law announced and settled by the Superior Courts as we have deliberated in Section C of our judgement. See *Riaz Hussain through Legal Representatives v. Chairman Federal Land Commissioner*, CPLA No. 962, 963, and 964 of 2023, (per ROZI KHAN BARRECH, J.)

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11. The appraisal of the *Balqees Begum case* is, to the extent that it affirms the principle that “equity cannot be accorded precedence or overriding effect over the clear mandate of law,” however, its further suggestion that “where law has no answer to provide for doing justice” equity steps in, does not commend itself to us. The High Courts are themselves a creation of the Constitution, 1973, and our constitutional journey has always unfolded within the discipline of law, not within a realm governed by personal goodwill or unchecked authority. Even in moments where the law appears to be silent, we are not allowed to substitute legal command with individual morality or compassion. In such rare instances, should they arise, the duty of the Courts remains to seek an answer that best resonates with our constitutional order, guided by sound constitutional principles and our judicial precedents².
12. “Compassion is ‘the feeling that arises in witnessing another’s suffering and that motivates a subsequent desire to help’³. In *DeShaney v. Winnebago County*, 489 U.S. 189 (1989), (per CHIEF JUSTICE REHNQUIST) the United States Supreme Court rejected the notion that the State bears a constitutional duty to protect individuals from private violence. The case arose from the tragic circumstances of four-year-old Joshua DeShaney, who suffered severe and permanent injuries after being brutally beaten

² In situations where the law is silent and no judicial precedent may exist, a judge may resort to ‘analogical reasoning’. In words of Mr. Brohi, it is a ‘useful weapon’ in such situations. This analogical reasoning should guide him in reaching a conclusion consistent with our constitutional principles and established judicial precedents. See AK Brohi, *Fundamental Law of Pakistan* (Din Muhammadi Press 1958) 539

³ Susan A Bandes, ‘Compassion and the Rule of Law’ [12 May 2017] 13 (2) *International Journal of Law in Context* <<https://doi.org/10.1017/S174455231700011>>

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by his father. Following the assault, the constitutional question was whether the State of Wisconsin, by failing to intervene despite having knowledge of the risk, had violated Joshua's rights under the Fourteenth Amendment. Majority opinion acknowledged the powerful human impulse to seek compensation for Joshua, observing that "judges and lawyers, like other humans, are moved by natural sympathy in a case like this.", however, he cautioned against allowing such sentiment to override constitutional limits, emphasizing that the grievous harm was inflicted not by the State, but by Joshua's father, a private individual⁴. In sharp contrast, JUSTICE BLACKMUN dissented, in his opinion he voiced, "Poor Joshua!" which is now characterized as operating in an "emotional register", see n.2.

13. Mr. A.K. Brohi, in his eminent work *Fundamental Law of Pakistan*, see n.2, while discussing the Constitution of 1956, examines the question: "*Are Our Courts, Courts of Law or Courts of Justice?*" see at page 538-539. In this context, he explains that "it is undoubtedly true that a judge has no unfettered power to do 'justice' in accordance with his notions of what a just decision in a given case before him should be. There is no power of administering justice without restraint conferred upon a Court. 'That restraint', says Broomfield in his "*Legal Maxims*", has been imposed from the earliest times" (emphasis in original). Mr.

⁴ Speaking for the majority, CHIEF JUSTICE REHNQUIST remarked, "Judges and lawyers, like other humans, are moved by natural sympathy in a case like this to find a way for Joshua and his mother to receive adequate compensation for the grievous harm inflicted upon them. But before yielding to that impulse, it is well to remember once again that the harm was inflicted not by the State of Wisconsin, but by Joshua's father".

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Brohi further emphasizes “that system of law is the best, which leaves least to the discretion of the Judge- and that Judge the best, who relies least on *his* own opinion” (emphasis in original). This perspective clearly reflects the foundational philosophy of Pakistan’s judicial structure, which is built upon adherence to established legal principles. It also reinforces the understanding that our courts were conceived as courts of law governed by restraint, consistency, and legal certainty.

14. The only power of compassion that might exist or may not exist is only conferred on the Supreme Court and the Federal Constitutional Court under Article 187 of the Constitution, 1973 and that too is different from the “scope and ambit” of High Court under Article 199, which can only exercise the power conferred on it by law or Constitution, see *Dossani Travels, supra*, at p.14. We note that, as we have not resorted to that proviso of the Constitution, we do not feel fit to interpret it in this case, but we have no doubt in our mind in holding that that despite having the power of rendering “complete justice” we do not lose our status as courts of law and still have to act within our broad constitutional fabric and judicial precedents.
15. For every Court, before they reach a judgment, it does not matter that they might “come under fire” or “face pressures”. “We cannot exceed the scope of our authority under the Constitution [or the law], and we cannot allow our decisions to be affected by any extraneous influences such as concern about the public’s reaction to our work”, see *Dobbs v. Jackson Women’s Health Organization*,

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597 U.S. 215, (per ALITO, J.). Our legitimacy lies not in making compassionate decisions but in adhering to uncovering what the law means. We ought not to be influenced by our morality, personal understandings and political realities as we “have to do right to all manner of people, according to law, without fear or favour, affection or ill-will”⁵ and “even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision” (quoting *Dobbs, supra*, at pg.69).

16. Therefore, the High Court of Sindh in the instant case, while acknowledging that no law exists that allows “special/super supplementary examination” but the same is given as an “equitable relief”, we believe the Sindh High Court went off course. We hold that the Constitution does not permit the High Courts to do complete justice or do compassion. They in any form of their jurisdiction are strictly bound by law and under doctrine of *stare decisis* by decisions of the Courts superior to them.

⁵ Before assuming office, every Judge of the High Court, the Supreme Court, and the Federal Constitutional Court solemnly swears an oath that he will not allow his personal interests to influence his official conduct or decisions, and that he will “do right to all manner of people, according to law, without fear or favour, affection or ill-will,” see Third Schedule to the Constitution, 1973. These words, particularly “affection” and “favour”, are of profound significance, for they require judges to set aside personal inclinations and subjective considerations, and to discharge their duties with complete impartiality, guided solely by the law. See *Khalid Mehmood v. Pakistan, through Ministry of Finance* (2025), (per AAMER FAROOQ, J.)

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B.

Writ of Mandamus in Absence of any Law:

17. As held by this Court in *Khalid Mehmood*, see n.5 at p.6, no court may exercise a jurisdiction that is not vested in it by law. A careful reading of the impugned order reveals that the High Court, in effect, issued a writ of mandamus under Article 199(1)(a)(i) while simultaneously treating the matter as one involving the enforcement of a fundamental right under Article 199(1)(c).
18. In issuing the writ of mandamus, the Sindh High Court directed the Petitioners, as well as the learned Additional Advocate General Sindh, to ensure compliance with its order. With respect, it is difficult to comprehend the role assigned to the Additional Advocate General Sindh in the conduct of a “special/super supplementary examination,” as ordered by the High Court, since no statutory or administrative function in this regard vests in that office. The impugned order appears to have conferred, by judicial order, an authority upon the Additional Advocate General Sindh to secure compliance and oversee the holding of the examination. In our considered view, this amounted to the creation of a power not sanctioned by law, a course which goes beyond the permissible limits of constitutional adjudication and reflects an exercise of judicial overreach not contemplated under our constitutional order.
19. Secondly, the very language of a writ of mandamus denotes a command issued to a person or authority requiring the performance of a duty which the *law* obliges him or her to perform

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and which has been unlawfully omitted⁶. “It is a sine-qua-non that there should exist a legal right in favour of the person who is seeking such a relief, see *Muhammad Azam Khan Swati v. Federation of Pakistan*, PLD 2023 Islamabad 184, p.6 (per AAMER FAROOQ, J.). However, in the instant case, there was no law that required conduction of a “special/super supplementary examination”, therefore, the performance of the same by issuing a writ of *mandamus* was an action not sanctioned by Article 199(1)(a)(i).

20. We now turn to the question of whether the High Court, in exercising its jurisdiction under Article 199(1)(c) to enforce a fundamental right under Chapter I of Part II of the Constitution, 1973, has acted within the scope of the law. It is beyond doubt that the right to education, enshrined in Article 25A and introduced through the Constitution (Eighteenth Amendment) Act, 2010, constitutes a fundamental right for all children. Article 25A provides that: “*The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.*” While the Sindh High Court appears to be striving to uphold the right to education under Article 25A, it seems to have deviated from established legal authority. In doing so, it has acted contrary to the binding judgment in *Khyber Medical University v. Aimal Khan*, PLD 2022 SC 92, (per SYED MANSOOR ALI SHAH, J.) by directing the conduct

⁶ See, e.g., *Prof. Dr. Sheikh Israr Ahmed v. Government of Punjab*, 2025 PLC (C.S.) 182, p.9 (per RAHEEL KAMRAN, J.) and *Muhammad Azam Khan v. Government of N.W.F.P through Chief Secretary NWFP*, 1998 SCMR 204, p.6 (Per KHALIL-UR-REHMAN KHAN, J.)

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of “special/super supplementary examinations,” which are not sanctioned by law.

21. The *Aimal Khan* case has authoritatively clarified that “that courts must sparingly interfere in the internal governance and affairs of educational institutions. It is simply prudent that the courts keep their hands off educational matters and avoid dislodging decisions of the university authorities, who possess technical expertise and experience of actual day to day workings of the educational institutions. Every university has the right to set out its disciplinary and other policies in accordance with law, and unless any such policy offends the fundamental rights of the students or violates any law, interference by the courts results in disrupting the smooth functioning and governance of the university”.
22. In this regard, we refer to *Prof. Dr. Israr Ahmed*, see n.6 at p.9, wherein the Lahore High Court observed that the powers of the High Courts under Article 199(1)(c) of the Constitution, relating to the enforcement of fundamental rights enshrined in Chapter I of Part II, are broader than the powers exercised in relation to other constitutional writs. However, the Court clarified that while exercising such jurisdiction, the High Courts cannot adopt “disproportionate measures.” This observation appears to us to signify that, notwithstanding the wide ambit of jurisdiction under Article 199(1)(c), the High Courts remain bound by the limits of their constitutional mandate and cannot, in our considered view, grant relief solely on the basis of compassion or equitable considerations in the absence of legal sanction. Any direction

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issued must strictly conform to the express provisions of law and remain within the bounds of judicial authority.

23. At this juncture, we briefly depart from our main theme to note that the contention of the Respondent that the examination timetable was not uploaded on the website does not persuade us, for two major reasons. First, the Respondent admittedly missed the first examination conducted on 11.06.2025, yet appeared in the other two supplementary examinations held on 13.06.2025 and 16.06.2025. The assertion that he was aware of the latter two examinations but unaware of the first does not appeal to reason and cannot be accepted. Second, it is on record that “*all students*” appeared in the examination, which clearly indicates that the examination schedule was known to the student body at large. The claim that every student was aware of the examination except the Respondent points to an omission on the part of the Respondent himself, rather than any lapse on the part of the University (Preliminary Objection to the Respondent’s Petition, p. 4).
24. In view of the foregoing discussion, the Sindh High Court, acting as a court of law, was not competent to interfere in the functioning of Shaheed Mohtarma Benazir Bhutto Medical University by directing the conduct of a “special/super supplementary examination.” Courts must exercise restraint and interfere in the affairs of educational institutions only in exceptional circumstances, namely where the governing laws or policies offend the principles of natural justice or transgress constitutional or

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statutory mandates. In the present case, the statutes, regulations, and academic framework of the University do not contemplate or permit a “special/super supplementary examination.” Such relief, therefore, could not be granted by the Sindh High Court under the guise of equitable jurisdiction.

C.

Confining the Precedential Value:

25. Indeed, common law is valid because it depicts the opinion of learned Justices; a procession of sages and savants (*Khalid Mehmood, supra*, at p.15). Under our constitutional framework, Article 201 provides that decisions of a High Court, to the extent that they decide a question of law or lay down a principle of law, are binding on all subordinate courts. This provision, however, operates subject to Article 189, which establishes that the decisions of the Supreme Court are binding on all courts subordinate to it, including the High Courts. Similarly, the decisions of this Court, the Federal Constitutional Court, are binding on every court in the country, including both the Supreme Court and the High Courts. As noted above in paragraphs 10 and 11, we partially disagree with the judgment of Supreme Court in *Balqees Begum*, particularly with respect to the latitude it granted to High Courts to “fill gaps” with compassion and justice when the law is silent. This approach is only taken because this Court is now, not bound by jurisprudence developed by the Supreme Court (though it does not in any way mean that the jurisprudence of Supreme Court developed over years is now

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nullified, it remains valid unless overruled by this Court). Within its own constitutional domain, this Court is fully competent to interpret the law.

26. When a judgment is declared a public record, it is offered openly to the people of Pakistan, to be read, examined, and judged in the court of public reason. This openness is itself an expression of judicial accountability. A judgment, once delivered, must remain open to debate, to disagreement, and even to criticism, for it is through such dialogue that the law evolves. There is no fault in a later court adopting a different view; the law is not diminished by acknowledging that an earlier understanding may have been flawed. When a court, at the moment it decides a case, tries to limit the reach of its own ruling by stating that it should not serve as a precedent for the future, while still recognizing a right in the case before it, the court withdraws from responsibility for the broader consequences of its judgment. Such self-imposed insulation suggests a decision unwilling to face public scrutiny, academic engagement, or the test of legal principles. So, the consequence is not restraint, but uncertainty.
27. Allowing such a practice would invite uncertainty and encourage judicial arbitrariness. In many cases before the Supreme Court and lower courts, issues of limitation are raised, and lawyers often seek relaxation on compassionate grounds. What restrains courts from adopting an overly lenient approach in such cases is the concern that disregarding limitation periods would create improper judicial precedents. We note that it would be easy to say

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that the limitation period is waived due to the unique facts of a case and that the decision should not apply to future cases. However, this approach would give judges unchecked discretion to decide cases as they please and then avoid accountability simply by declaring that their rulings are not to be followed as precedent.

28. What distinguishes judges from others who serve this nation, is their commitment to abide by the rules and principles they have previously pronounced, in accordance with the established doctrine of *stare decisis*.

D.

Conclusion:

29. In light of the above, the instant petition is converted into appeal and the same is accepted, and the impugned order is set aside, the writ petition filed by the respondent stands dismissed. *Judgment is hereby entered.*

JUDGE

JUDGE

Islamabad
Zawar
APPROVED FOR REPORTING