

**Justice Qazi Faez Isa vs. The President of Pakistan and others**

PLD 2023 SC 661

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The petitioner — Justice Qazi Faez Isa — sought a review against the Supreme Court’s (“Court”) decision under Article 184(3) of the Constitution of the Islamic Republic of Pakistan (“Constitution”), which had directed the Federal Board of Revenue (“FBR”) to initiate an enquiry against his family. The petitioner also filed a civil miscellaneous application for broadcasting live proceedings of the case on Pakistan Television (“PTV”) and private television channels. He argued that a vicious propaganda campaign was active against him, irreparably harming his reputation, and that live broadcasting would allow him to counter the disinformation. The majority judgment held that the application raised new questions regarding freedom of expression and access to information — rights embodied, respectively, in Articles 19 and 19A of the Constitution — and thus was not maintainable under Article 188 of the Constitution.<sup>1</sup> The Court’s power to review was limited to rectifying material irregularities that could significantly impact earlier decisions. The judgment concluded that the Court could only decide on public broadcasting in its administrative capacity, and the matter was sent to the Chief Justice for further action.

However, the dissent noted that had this been an application seeking livestreaming of proceedings of all courts, it could only have been taken up through an independent petition under Article 184(3) of the Constitution. The scope of the current application was limited to the present case alone; thus, this question could only be decided by the bench hearing the case and not through a separate petition; and any decision reached by the bench could not be assailed through an independent petition as the Court’s original jurisdiction could not be considered a parallel to its review jurisdiction.<sup>2</sup>

The dissent concluded that Article 19A provides a justiciable right, ensuring scrutiny of public authorities and allowing accountability of state institutions. Furthermore, Article 19A

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<sup>1</sup> *Justice Qazi Faez Isa vs. The President of Pakistan* PLD 2023 SC 661.

<sup>2</sup> *Shabbar Raza vs. Federation* 2018 SCMR 514.

allows access to information in matters of “public importance.” Since the legislature did not define the term “public importance,” the dissent gave it the same meaning as used in Article 184(3) of the Constitution. Relying on previous precedents,<sup>3</sup> the dissent held that cases entertained under the Court’s original jurisdiction are, by their very nature, matters of “public importance” because the latter is a condition-precedent for invoking the Court’s original jurisdiction.

The dissenting note concluded that pursuant to Article 19A of the Constitution, the public has a fundamental right to access information about court proceedings entertained under Article 184(3) of the Constitution. The Court held that it must enforce this right by officially broadcasting proceedings on a case-by-case basis. However, the dissent did not order livestreaming in this case because of the infrastructural setup’s inadequacy at that time, nor did it direct the PTV or the Pakistan Electronic Media Regulatory Authority (“PEMRA”) to livestream the proceedings on the television because the Court considered this to be an interference with the television channels’ right to freedom of expression.

The majority view failed to recognize that the relief sought in the application was limited to this case. It is an established principle of law that all matters emanating from one cause of action shall be decided together. In this case, the issue of livestreaming was directly linked to the Court’s earlier decision. If parties had to resort to Article 184(3) of the Constitution to obtain ancillary relief in *sub judice* matters, this would lead to a multiplicity of proceedings and open floodgates of litigation. But most importantly, it would render the concept of *stare decisis* ambiguous, for what would happen if a separate bench were to grant such ancillary relief; would such decision be binding on the bench hearing the review, especially if the latter were to be a larger bench?

The Court has previously held that a review would be valid if the purpose was to prevent a significant violation of fundamental rights.<sup>4</sup> This must be read with the power of the Court to do complete justice under Article 187 of the Constitution and Order XXXIII, Rule 3 of the Supreme Court Rules, 1980 (“Rules”). The Court has also defined the power to do complete justice,<sup>5</sup> which allows it to grant ancillary relief and mould it.<sup>6</sup> The respondents could present their side through

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<sup>3</sup> *Manzoor Elahi vs. Federation of Pakistan* PLD 1975 SC 66; *Benazir Bhutto v. Federation of Pakistan* PLD 1988 SC 416.

<sup>4</sup> *Abdul Rehman vs. Asghar Ali* PLD 1998 SC 363.

<sup>5</sup> *Ch. Zahur Elahi vs. The State* PLD 1977 SC 273; *Mehr Zulfiqar Ali Babu vs. Government of Punjab* PLD 1997 SC 11.

<sup>6</sup> *Pir Sabir Shah vs. Shad Muhammad Khan* PLD 1995 SC 66.

media appearances, but the petitioner — a sitting judge of the Court — did not enjoy this privilege. Complete justice necessitated livestreaming to ensure that the public had direct access to the proceedings rather than relying on potentially biased narrations by the media.

The dissent recognized the social realities of Pakistan. It considered the country's ever-growing population and noted that not everyone can travel to witness court proceedings. Justice Mansoor Ali Shah, writing for the dissent, liberally interpreted Article 19A of the Constitution, which requires all three state organs to take affirmative action to enforce the right to information. The dissent held that if technology were available for enforcement, the Court should utilize it. This approach aligns with the evolving global trend to livestream court proceedings. Livestreaming would ensure transparency and facilitate access to justice in the country. More importantly, it would deter the Court from misusing its *suo moto* powers. After Justice Isa became the Chief Justice, the Court began public broadcasts of its proceedings on a case-to-case basis.

Article 19A of the Constitution, as noted in the minority opinion, is an operative provision that does not require administrative rules for its implementation. However, the Rules should be amended for seamless and frequent livestreaming of the Court's proceedings. Moreover, the next step should be to livestream the deliberations of the Judicial Commission for the elevation of judges to superior courts because, as Justice Shah stated, Article 19A imposes a duty on all state institutions. This would ensure that justice is not only done but is also seen to be done.