

Human Right Case No. 8157-P of 2023

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In its order in *Human Right Case No. 8157-P of 2023*, the Supreme Court of Pakistan (“Court”) has struck a perfect balance between protecting the fundamental rights of citizens and preserving the sanctity of executive institutions. The decision underscores the delicate and coordinated processes required to achieve justice and accountability in the diverse sociopolitical environment of our country.

The petitioner, Moez Ahmed Khan, filed a petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 (“Constitution”), alleging misconduct by General (retired) Faiz Hameed and other intelligence agency personnel. The petitioner alleged that the respondents raided his residence and business offices, detained his family, and forcibly transferred his business, Dynast Associate/Top City Housing Scheme, to their nominees. He accused intelligence agency officers of committing crimes by misusing their authority and lamented that no government authority would address his grievances due to the respondents’ senior positions within the military.

A three-member bench of the Court, headed by the then Chief Justice Qazi Faez Isa, considered the maintainability of the petition under Article 184(3) of the Constitution. The Court emphasized that the powers under Article 184(3) should be exercised cautiously, especially when alternative remedies are available. The Court highlighted that other remedies—such as recourse to fora like the Ministry of Defence or legal actions like criminal cases or damages suits—could address the petitioner’s complaints. This observation is noteworthy as it is rare for the Court to emphasize alternate remedies when ascertaining whether original jurisdiction should be invoked or not—except for few cases in the late 1980s, the Court has not held this view and has exercised its powers under Article 184(3) of the Constitution all too often. Following an order by the Court, the counsel for the state assured the Court that the Ministry of Defence would give due consideration to any grievance of the petitioner.

Although the Court acknowledged the seriousness of the allegations, it determined that the petitioner had alternative legal remedies. Consequently, the petition was deemed not maintainable, and the case was dismissed with instructions that the petitioner could approach the Ministry of Defence. The Court reiterated that the Ministry of Defence must consider the petitioner's complaints in accordance with the law.

Allegations of unlawful raids, detentions, and property seizures raise serious concerns about the conduct of key institutions in the country. These accusations, if left unaddressed, can erode public trust in the very structures meant to safeguard the rights and liberties of citizens. The Court in this instance navigated this delicate situation by prioritizing justice while ensuring that the integrity of institutional processes was respected. Instead of intervening directly, the Court adopted a measured approach, directing the relevant executive authority to conduct an inquiry, thereby allowing the legal framework to function as intended. In response to the Court's orders, the Ministry of Defence promptly formed an inquiry committee to investigate the claims. This procedural step highlights the importance of following established legal mechanisms in addressing allegations, ensuring that any potential misconduct is thoroughly examined in accordance with the law. By taking this course of action, the Court reinforced the principle that accountability must be pursued through proper channels, preserving the balance between judicial oversight and executive autonomy.

Accountability has often remained illusory in Pakistan, but to achieve progress, prosperity, and socio-economic wellbeing, a nation must confront its challenges head-on. A clear example of this approach can be seen in the actions taken by the military against its own members, especially General Hameed who was a top-ranking official in the army.¹ Montesquieu, in *The Spirit of Law*, declared that there is no liberty if the judicial power is not separated from the legislature and the executive.² This principle is also enshrined in the Constitution, which delineates the responsibilities of the three branches of government. However, true harmony and progress can only be achieved when these organs work in unison, strengthening and supporting one another.

¹ 'Court Martial Against Gen Faiz Hameed Initiated Based on Concrete Evidence: DG ISPR' *Dawn* (Karachi, 5 September 2024) <<https://www.dawn.com/news/1857094>> accessed 8 January 2025.

² Baron de Montesquieu, *The Spirit of Laws* (Thomas Nugent tr, 2 vols, The Colonial Press 1899) 151–162.

The order by Justice Isa and its subsequent impact exemplify this necessary balance, particularly at a time when the judiciary and the executive are often seen to be at odds.

The investigation led by the Ministry of Defence, as directed by the Court, must also be viewed through the lens of the Pakistan Army Act, 1952, specifically its Section 92.³ Section 92 stipulates that individuals who were once subject to the military law but have since left the service can still be held accountable for offenses committed during their tenures. They may be taken into military custody and tried as if they were still bound by military regulations. This legal backdrop plays a pivotal role in ensuring that accountability extends beyond the duration of military service, reinforcing the principle that misconduct ought not to be overlooked simply because it comes to light after one's retirement.

This Court's order brings into focus the tension between legal formalism and practical governance, a theme central to James Madison's concerns about the concentration of power. Madison's observation that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny" is particularly relevant here.⁴ The present case as well as General Hameed's alleged political role during Imran Khan's tenure illustrates the risks of unbridled authority and emphasizes the need for institutional checks and balances. This is all the more important considering that military officials have historically not been subjected to accountability laws, and their actions have largely remained unchecked.⁵ Notably, the indictment of General Hameed by a military court can be seen as a continuation of the principles reinforced by the Court's order reflecting efforts to hold individuals accountable. In this context, the Court's decision and the Ministry of Defence's subsequent actions highlight the importance of preventing the overreach of any one branch of government, reaffirming the necessity of maintaining clear separation of powers to safeguard citizens' rights, while also fostering cooperation for the greater good of society.

³ The Pakistan Army Act 1952, s 92.

⁴ James Madison, 'Federalist No 47' (1 February 1788) in Alexander Hamilton, James Madison and John Jay, *The Federalist Papers* (first published 1788, Clinton Rossiter ed, Signet 2003) 301.

⁵ Hasnaat Maik, 'NAB law doesn't apply to judges, armed forces' *The Express Tribune* (Karachi, 10 September 2023) <<https://tribune.com.pk/story/2435008/nab-law-doesnt-apply-to-judges-armed-forces>> accessed 24 January 2025; 'NAB cannot check corruption in army' *Dawn* (Karachi, 21 April 2002) <<https://www.dawn.com/news/29596/nab-cannot-check-corruption-in-army>> accessed 14 January 2025.