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China-Pakistan Bilateral Energy Investment Agreements in the Perspective of CPEC: Environmental Challenges, Legal Issues and Recommendations

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Abstract

The purpose of the following study is to conduct a critical and in-depth investigation of the coal-based electricity projects and investment under CPEC (China-Pakistan Economic Corridor), discussing their environmental impacts, legal issues, and recommendations. This research uncovers various aspects of these projects, phases them out, and presents solutions to achieve sustainability. For this study, the researchers have chosen the qualitative research method with the help of secondary data sources and thematic analysis. Following the qualitative design, this research will uncover varied subjective data, such as the results of other studies on carbon pricing, the carbon power energy projects of CPEC, and the arbitration methods used for amicable solutions and their impacts. Additionally, using the qualitative design will allow offering more enriched and detailed outcomes, supporting a better understanding of the data. The data sources of the current research include but not limited to Acts, Statutes, International Conventions and Treaties, International Energy Reports and Statistics, Case laws as well as quality research articles, books and e-journals repositories. Through the findings of this study, it may be observed that coal-based electricity projects under the CPEC require further improvement to overcome environmental and legal issues. The solutions recommended within this study include emission trading system, significant development and work on renewable sources, carbon pricing policy and adopting best international arbitration practices. This study is significant because by examining Pakistan's coal-based energy infrastructure situation, revisiting applicable rules and regulations, and considering the bilateral investment regime, Pakistan can better manage the CPEC projects.

Keywords: *China Pakistan Economic Corridor; Carbon Pricing; Coal based Energy; Environmental Challenges; International Arbitration; Legal Issues; Renewable Energy.*
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1. INTRODUCTION

Envisioned in the middle of 2013 and started in 2015, the China-Pakistan Economic Corridor (CPEC) is a project set under the Belt and Road Initiative of China, marking a new period in the economic relationship between China and Pakistan, traditionally characterized by security cooperation. However, it is noted that CPEC is aggravating existing grievances among the population, who view it as an exploitation activity, compounded by neglect from central authorities and the suppression of dissent, which has long driven an insurrection. In the Tharparkar district of Sindh, CPEC's coal-based power projects are not only destroying the environment but also displacing local citizens from their homes, negatively impacting their livelihoods.

Moreover, the environmental effects of coal power, such as water and air pollution for the carbon emissions, have created controversies in the project. According to China, shifting the plant to Thar demonstrates their commitment to not supporting new coal projects. China claims to be well aware of the environmental issues caused by the coal project and has scrutinized the site from all perspectives, including the environmental considerations. To achieve these goals, all the coal-based power plants operating without carbon storage and an emission must be completed by the year 2040 as outlined by the Paris Agreement of 2015. Despite considering other alternatives, China identified coal as the only feasible fuel source to help Pakistan develop Gwadar and secure investment, emphasizing that sustainable power provision is essential (Ebrahim, 2023).

To analyze the data, the researchers used a thematic analysis method. This analysis is considered an effective approach due to its ability to yield varied findings regarding the coal-based electricity projects under CPEC in Pakistan. It is noted that the thematic analysis method allows the researcher to examine the data through the construction of themes from the information (Braun and Clarke, 2012). The thematic analysis was chosen because it helps in determining detailed results in an understandable manner. Thus, every objective of the study can be analyzed separately.

2. COAL-BASED ELECTRICITY PROJECTS UNDER CPEC IN PAKISTAN

There are various coal-based electricity projects under CPEC in Pakistan, such as the 1320MW Sahiwal Coal Power Plant, the Port Qasim Coal-fired plant of 1320MW, China Hub Coal Project of 1320MW, Coal-Fired Power Project of 300MW in Gawadar (cpec.gov.pk, 2023), and the most notable Thar coal power projects of more than 2,000 MWs. It is also noted that Pakistan has launched a plan to develop an imported coal plant at Gawadar under the CPEC project, due to the high cost of imported fuel, preferring to use local resources (Rana, 2022).

CPEC coal energy projects have had an impact effective on the power industry improvement of Pakistan that supported economic development by raising reduced supply at a lower cost. It is noted that the total CPEC projects installed capacity, such as the solar, hydropower, coal, and wind positions at 6570 MW. Moreover, they have developed 28549.94 and 25772.48 GWH of power in the year 2020 and 2021 respectively, and have accounted for 18.37% and 22.03% of overall production in Pakistan. The 20% average annual addition in the national grid has alleviated the widespread load shedding in the region and particularly powered the industries which are exporters from Pakistan. Moreover, it is also identified that CPEC could eliminate the energy deficit in the country which is approximately 8500 MW. The imported fuel products account for an enormous 90% Pakistan's fuel consumption, therefore CPEC will significantly improve the energy mix in a country of more than 200 million citizens. Capitalizing on native energy resources might enable Pakistan to reduce its overall reliance on imported fuel from the Middle East, which is

costly to nationwide funds (Kugelman, 2017).

3. COAL-BASED ELECTRICITY PROJECTS IMPACT ON ENVIRONMENT

An inexpensive source of energy production, coal-based plants have intense environmental implications. It is asserted that while China has created tremendous economic growth in the last few decades, it has also had a damaging effect on the environment primarily due to the unprecedented development of coal-based energy (Ali, 2018). Considering this, the CPEC-coal power projects may reduce the demand and supply gap in Pakistan. These may also have a significant impact on the environment in the long term. However, there are many issues related to carbon dioxide (CO2) emissions associated with coal-based power projects. Though engagement with different academics and civil society members, honest concerns were raised regarding the coal-based serious thoughtful environmental implications for the state. Thus, despite the high hopes connected with the energy sector's extensive investments, a shift towards coal power plants may have major long-term effects on the environment in Pakistan, as the state is already high vulnerable to climate-induced dangers (Isran, 2017). According to the 2017 Global Climate Risk Index 2017, which ranks states based on their impacts from extreme weather conditions, including fatalities and economic losses, Pakistan is listed as one of the 10 most affected states.

CPEC is not only an economic project but also holds a strategic and political significance for both China and Pakistan. Additionally, it has international implications affecting regions such as Central Asia, East Asia, West and South Asia, America, and the Gulf (Naz, 2020). Therefore, changes and negotiations to the agreements may impact overall international diplomacy and international considerations. Moreover, there may be challenges such as compensation claims, potential penalties, and re-evaluation of funding.

4. CHALLENGES AND LEGAL ISSUES IN CHANGING THE COAL-BASED ELECTRICITY PROJECTS UNDER CPEC

There are various challenges faced by coal-based electricity projects under CPEC with financial viability being a major issue. The Government of Pakistan may not be able to provide the funding that is necessary for the project's energy needs. The international financial organizations are also unable to provide the authorities with the required funding. Moreover, the circular debt issues in the power industry did not receive any attention in CPEC. Despite the problems in the sector, electricity has developed significantly as an outcome of coal-fired power projects (Rasheed et al., 2022). Furthermore, inhaling hazardous substances emitted from coal-power plants and their by-products are detrimental to human health. According to the study, coal burning is a more polluting than any other energy sources. It is

noted that burning 1 ton of coal, emits nearly 4 tons of carbon, which is the highest among all other energy resources.

The aim of this research is to propose legal reforms to accelerate the coal phase-out within CPEC in a manner that minimizes legal issues for both Chinese and Pakistani investors. This can be achieved through banning coal or implementing carbon pricing alongside electricity market reforms. However, such approaches raise significant legal questions regarding the state's capacity to reduce coal usage and prioritize sustainability. The legal aspects of decarbonization in Pakistan remain largely unexplored, despite their significance in global climate policy and Chinese investment. Certain projects focus on Pakistan and provide a critical reflection on legal reforms necessary to phase out coal by 2040.

Regarding the situation in Pakistan, the consequences of Chinese coal-based investments can be addressed or mitigated through three perspectives. The perspective strategy involves direct environmental regulation, which includes investigating the impact of stringent emissions regulations on the closure of coal-fired power plants, thereby restricting coal-powered operations. The second perspective involves conducting an assessment of the financial impact on electricity, analyzing how market-based electricity and carbon pricing reforms could facilitate the phase-out of coal. Similarly, the third perspective entails a thorough analysis and critical study from environmental, social, legal, and economic perspectives. This would help estimate the implications of these reforms on Chinese investments and explore legal pathways for expediting coal phase-out. Based on this research, recommendations are formulated to enhance coal restrictions with minimal impact on investor rights in Pakistan.

5. CARBON PRICING POLICY OF PAKISTAN

The proposition of carbon pricing policy in Pakistan can be considered a major strategic action to address the climate change objectives and commitments of the country including the Paris Climate Agreement. Pakistan relies for most of its energy needs on coal and other fossil fuels, Pakistan has the herculean task of shifting towards cleaner forms of energy. Carbon pricing, which encompasses carbon taxes and cap-and-trade systems among others, has a simple practical way of discouraging carbon emissions while at the same time making renewable energy sources cheaper to compete with the carbon emitting sources of energy. For example, carbon taxes require the polluter to pay a direct monetary amount based on the volume or weight of carbon in fossil fuels. This approach is quite direct in the sense that it motivates industries to cut back on their emissions to save money at the same time, it also creates government revenue that could be reinvested into projects such as renewable energy plants or energy efficiency modernizations. One good example of this strategy is Sweden this country has probably the highest carbon tax rate in the world and has been able to realize deep cuts in carbon emissions while at the same time registering impressive economic growth (Anser, Ahmad, et al., 2021).

While a cap-and-trade system introduces a maximum allowable

amount of emissions for greenhouse gases and provides these emissions with permits that can be bought and sold by companies. This method offers an economic signal to firms to be innovative and bring changes for cutting down emission levels in an effort to trade surplus permits. The European Union's Emissions Trading System (EU ETS) is an example of an implementation of this system whereby, having set an emissions ceiling, the organization progressively lowers it to ensure that the levels of greenhouse gas emissions reduce (Anser et al., 2020). In addition, Pakistan has international commitments under treaties like the Paris Agreement that was acceded by Pakistan in 2016 to reduce and limit greenhouse gas emissions and to adapt it to the operational consequences of climate change by providing further assistance to other developing nations for the same. In this regard, carbon pricing could be used not only to achieve these goals but also possibly to obtain financial resources from abroad, for example, climate finance in the framework of the GCF. These funds could go towards covering the setup cost of carbon pricing systems and further dampen the economic effect.

However, the introduction of carbon pricing policy in Pakistan is not without risking the country's economy, especially in organizations that use inexpensive coal energy (Bompard et al., 2022). Another plausible argument is the feeling, that due to carbon pricing, more costs can appear suddenly affecting certain industries' competitiveness and, therefore, jobs and prices on the consumers' side. To this end, any policy aimed at the use of carbon prices should incorporate the following steps: It should be implemented gradually; sectors affected most by the change should be given enough time to adapt; and the policy should include provisions for compensating the losers, be they particular industries or certain groups of the population (Anser, Khan, et al., 2021). Thus although, the use of carbon pricing in Pakistan is an excellent suggestion for the country to decrease the level of its carbon emissions, the approach should be well thought-out and come with solid legal foundations and proper economic calculations. Thus, only with the further synchronization of national legislation with the requirements of international environmental obligations and guaranteeing the minimization of economic consequences through the proper elaboration of policy measures, Pakistan can unleash the maximum potential of carbonization to achieve climate targets efficiently (Khurshid et al., 2023).

The introduction of carbon pricing in Pakistan offers a complex solution, mainly because of the country's economic relations and the political aspect of the energy sector. Pakistan's economy depends a lot on the coal and other non-renewable sources of energy which are subsidized to keep energy prices low for the consumers and various industries (Khurshid et al., 2022). The transition to a carbon pricing instrument whether a carbon tax or a cap and trade system requires a lot of careful planning to avoid the adverse effects on the economy and particularly sensitive populations. For example, carbon pricing could lead to higher costs for energy which could be unbearable especially to low income earners and small to medium enterprises, which are more vulnerable to cost shocks (Akhtar et al., 2022). Hence, the formation of

an effective carbon pricing policy must entail instruments such as revenue recycling which can be used to underlay the purchase of renewable energy for the underdeveloped or rural regions or actual rebates to consumers to cushion them from the high energy costs. Such measures would not only act as a shock absorber to the economic effect but would also help in a more effective transition to the green energy sources.

Regarding the legal initiatives, Pakistan has to fit its attempts to introduce carbon pricing into the national legislation on the environment as well as into the organization's international treaties. Presently the law used for framing the policies is Pakistan Environmental Protection Act (PEPA) 1997 and this law does not have provisions regarding carbon emission or price of carbon. Hence, more legislations or new legislation on carbon pricing would be necessary to have a legal framework that addresses carbon pricing in compliance with international environmental laws and conventions including the Paris Accord. Also, Pakistan must pay attention to its commitments it made to UNFCCC and Kyoto Protocol that support the economic instruments like carbon pricing for achieving the intended low-carbon economy. These international conventions offer the guidelines for the accountability of emission reduction and tracking of progress which not only assist Pakistan in achieving the emission reduction goals but also in enhancing its position in the international forums for environmental concerns.

6. THE ROLE OF ARBITRATION IF THE COAL-BASED PROJECTS CONFLICT REFERS TO THE ARBITRATION CENTRE

Arbitration is one of the significant tools available in the sphere of international dispute resolution especially in relation to energy contracts linked with diverse coal-oriented ventures in Pakistan. The use of arbitration clauses in these contracts is basically designed to make it possible that any emerging disputes avoid the rather conventional and possibly unpredictable court procedures but rather go for a more neutral, rule-based arbitration. More to the point, these ventures are more or less consistent with the so-called CPEC projects, which entail a tremendous amount of Chinese money, meaning the risks are higher. The choice of the arbitration institutions often names entities like ICC or SIAC as preferred for their neutrality and efficiency of the processes in their procedures. This is because of past occurrences like the KKEU and Islamic Republic of Pakistan where the International Centre for Settlement of Investment Disputes (ICSID) was applied. The amounts of money awarded to KKEU by the tribunal for wrongful contract termination also underlines the necessity of the financial consequences of the decision as well as the fact that arbitration awards are final (Goldberg et al., 2020). Such outcomes not only prove the efficiency of the arbitration in the settlement of critical international disputes but also show that a huge sum of money might be recovered in case of non-fulfillment of contractual obligations, which still emphasizes the severity of the situation.

The challenge emerges when these environmental responsibilities are

addressed together with investors' legal rights under IIL, including those provided by the ECT. The ECT allows the investors to claim the right to fair and equitable treatment and the latter can be interpreted as the right for a stable environment. That is why, any changes in policies or cancellation of projects can be considered as the violation of this treaty and further filing of arbitration claims against Pakistan. This raises a major conflict of interest for Pakistan. Because, on one hand, the country is bound to protect environment while on the other hand, it has to ensure that Chinese investors under CPEC deals are safeguarded. However, the execution of the arbitration awards in Pakistan has some technical issues of its own. Despite the fact that the country is a contracting party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral awards which makes it easier to enforce arbitration awards from other countries there is still resistance when it comes to the enforcement of such awards locally. This was the case especially after the Tethyan Copper Company arbitration when challenges in enforcing the award revealed tensions between international arbitration decisions and domestic legal frameworks. Such instances indeed give rise to pertinent questions pertaining to the ability of arbitration in situations where national interest and international legal obligations are in conflict (Zeller & Trakman, 2019).

The choice of the neutral venues and the use of foreign legislation, for example the United Kingdom or Singapore laws, can be considered as part of a global plan, which was designed to avoid unpredictability and domestic approaches of the national legal systems. It is useful especially taking into account rather large investments and the number of strategic projects, which often become an object of influence by nationalist policies and domestic political processes. For instance, the choice of English law, which is particularly renowned for its detailed precedents and principles in contract and commercial law means that there is a familiar and comparatively stable legal environment for both parties to operate in. This choice is rather typical for the contemporary international contracts to rely on the legal systems of the countries with rich legislatives and jurisprudences in order to be confident that the contracts will be legally sound and their enforcement predictable.

However, these arbitration clauses that have been negotiated a fine detail must also take the dynamic nature of the international environmental law, especially within the climate change framework. Since Pakistan has also signed the Paris Agreement, it has agreed to cut down on carbon emission and move towards the sustainable energy sources. This international commitment requires reconsidering the existing and planned energy initiatives, particularly those of CPEC that are mainly coal-fired power plants which contribute immensely to carbon emissions (Donaubauer et al., 2018). The legal regime set out by the Paris Agreement is not specific on how to attain these reductions, but it indirectly pushes the signatories to eliminate the less sustainable sources of energy. This means that there is a possibility that the contractual relations within CPEC may contradict Pakistan's international environmental responsibilities.

The Pakistan Environmental Protection Act of 1997 and other domestic laws of have legal provisions to empower the government to take measures for the conservation and protection of environment. This act might be construed to mean a lack of enforcement of arbitration awards that are perceived to be prejudicial to the environmental policies of the nation. Here is the possible conflict between protection of the international commercial treaties and the promotion of national environmental goals. This tension underlines the fact that there is in most countries a complex balance that has to be made between the legal requirements of the country and the environmental concerns of the country in question, In this case Pakistan.

While arbitration is effective, free from bias and time consuming, it is also time-consuming and carries some decreases that some times more less useful in cases that the of public interest or those concerning the environment. The first major drawback is the cost implication of the arbitration process. Arbitration is generally costly because it comprises of the arbitrators' fees, counsel fees, and administrative charges from the arbitration center. In the case of states such as Pakistan, which remain financially limited, this can prove to be a real problem because the costs of arbitration are high (Brekoulakis, 2019). This is even more so in the cases with significant financial turnover like the large-scale infrastructure or energy projects under such programmes as CPEC, where the scale of the cases' financial implications and their specific nature entail the need for the most sophisticated legal advice. In addition, the undertaking can take time, in the range of several months or years, due to comprehensive preparation and strict adherence to procedures. This not only increases costs but also heightens the time taken to address important matters concerning energy projects and environmental management; this may slow down the putting into effect of essential environmental policies or even the commencement of developmental projects that are vital for the country's progress.

7. RECOMMENDATIONS

a. Develop a Comprehensive Energy Transition Plan

Pakistan should formulate a detailed energy transition plan that supports nation compliance with to the Paris Accord. This plan should detail strategies and timeline of phasing out the use of coal-based energy and progression towards renewable energy within the national energy mix. It should also contain plans outlining the Connected Grid roadmap, the transmission system roadmap, and the roadmap for integrating renewable energy solutions.

b. Strengthen Legal and Policy Frameworks

Due to a heavy dependency on non-renewable sources, Pakistan requires the enhancement of its legal and policy measures to move towards renewable energy. This includes passing new amendments to the NEPRA regulations as well as the AEDB policies to afford more incentives to the renewable energy projects. The government should be working on the simplification of the

approval point, lessening of bureaucratic encumbrances and ensuring of legal certainty to foster local as well as foreign investments.

c. Enhance Financial Mechanisms

The creation of renewable energy facilities requires much of capital for its creation and incorporation. There is also the question of what instruments can be used for climate finance in Pakistan; it is recommended that Pakistan should look into unconventional methods like green bond schemes and PPPs and international climate finance. Similarly path the government can also design a renewable energy fund that will offer loans as well as subsidies to the renewable energy undertaking.

d. Promote International Cooperation

International cooperation is a matter of great importance for Pakistan when it comes to the transition to clean energy. The government should proactively solicit for assistance, technical and financial, from IGOs, multilateral development banks, as well as countries with proven capabilities in renewable energy technologies. Specifically, deepening cooperation with China due to their competencies and experience in the use of renewable sources seems promising within the framework of cultivating partnerships with other countries. Similarly, collaborative R and D efforts can also enable Pakistan to implement advances in Technologies for Renewable Energy.

e. Implement Carbon Pricing Mechanisms

Speaking of carbon pricing mechanisms as carbon taxes or cap-and-trade systems, it is possible to encourage the decrease in greenhouse gas emissions. These techniques keep on generating certain revenues that in turn, are utilized in supporting renewable energy undertakings and energy conservation measures. Thus, by adopting a phased implementation plan, industry will be ready to adjust as necessary and reduce on the overall impact on the economies of the world.

f. Invest in Grid Modernization

An effective national grid system that is capable to absorb the uncertainties of the renewable energy generation is therefore required. Pakistan should invest in grid modernization in order to ease it to manage intermittent electricity source such as solar and wind. This includes investing in smart grid solutions, energy storage solutions, and increasing grid accessibility.

g. Focus on Capacity Building and Training

It is imperative that there is an active construction of local capability in renewable energy technologies. The government should also train the people to support renewable energy since the industry needs well-trained personnel coupled with certification programs and links with academic institutions. Another advantage of capacity building is that it lessens reliance on foreign skills and expertise hence promoting sustainable development.

h. Encourage Public Awareness and Participation

Educational initiatives to expand people's understanding of the advantages of renewable energy and the need to decrease their carbon footprint can contribute to the support of the energy transition. Decision-making processes should involve the communities, industries, and CSOs to fully represent the people's interests.

i. Develop a Just Transition Strategy

It is crucial to have a just transition policy to regulate the shift from coal usage since it has negative economic repercussions. It should also detail plans for transitioning workers and the communities that depend on these coal plants to other economic activities like, retraining programs or jobs placements for the laid off employees, and economic diversification to provide for the needs of the communities that depend on the plants for their source of income.

j. Monitor and Evaluate Progress

Establishing a structure for the monitoring and evaluation of the energy transition plan is essential to track its implementation. Evaluation can be used to determine what obstacles may exist, how the newly adopted policies perform, and what modifications must be made to guarantee the plan's success. If the mentioned recommendations will be pursued, Pakistan will be able to transform from the use of coal as an energy source to renewable and become an energy secure as well as an ecologically sustainable country that will fulfil its commitments within the framework of the Climate Change Convention.

8. CONCLUSION

Pakistan is on strategically important economic trajectory where, on one side, it is aiming to achieve its economic development goals. On the other hand, it is burdened with environmental sustainability challenges. Renewable power sources are not only legal and environmental requirements but also, they are economic and social requirements as well. This work has endeavored to describe the transition as not limited to energy systems solely but requiring inclusive energy policies, enhanced infrastructure, collaborations with other nations, and creative approaches to funding. The first recommendation is the development of national and regional energy policies that give serious considerations to renewable sources of energy. The Alternative and Renewable Energy (ARE) Policy should be enhanced so that it provides clear and realistic goals for the expansion of the role of renewable energy sources in total energy consumption. This policy should encourage the private investors, especially in the development of contracting solar, wind, and hydroelectric power projects through providing tax incentives and subsidies and dealing with repetitive bureaucratic hurdles. By improving the policy environment, there will be the realization of a favorable environment for renewable, thus attracting local and international investors. However, most importantly, it is critical to create a special authority to regulate the renewable energy sector and the implementation of the policies above. Carbon taxes and cap and trade policies will help in reducing the amount of carbon emissions by imposing a price on

carbon. They will help in funning the renewable energy subsidies. Green bonds enable private capital for sustainable infrastructure projects, and their access to International Climate Funds like Green Climate Funds will be useful for large-scale renewable energy generation. Further, the studies regarding the environmental advantages of adopting renewable energy resources, like cleaner air and water, as well as a decrease in greenhouse gas emissions, would offer a strong argument for boosting the pace of change to renewable energy sources. Comparative examinations with other countries, which have faced a similar challenge of the shift from the utilisation of coal to renewable energy, may yield useful insights and experiences.

Thus, Pakistan's transition from of coal-based energy to renewable energy is not an easy process. Still, it is more sensitive and comprehensive and addresses various sectors such as policy, technology, finance, and cooperation. Adopting various energy policies, improving infrastructures, enhancing cooperation across the globe, and developing research can help Pakistan build a sustainable energy system in the future. The proposed structural change will help Pakistan fulfils its global climate commitments and achieve the goals of energy self-sufficiency and development. The listed recommendations above point insight into this transition process by pointing towards the necessity of well-coordinated and multi-faceted efforts in policy-making, technology development, financing, and cooperation at the international level.

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Regulating Digital Expression: A Critical Appraisal of the Prevention of Electronic Crimes (Amendment) Act, 2025, and its Impact on Civil Liberties in Pakistan

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Abstract

The Prevention of Electronic Crimes (Amendment) Act, 2025, which amends the Prevention of Electronic Crimes Act (PECA) 2016 by redefining cybercrime and establishing four new regulatory bodies, has drawn considerable criticism in Pakistan. The amendments were enacted with little parliamentary debate or stakeholder consultation. Civil society, journalists and legal experts are of the view that the law may allow the executive to go beyond its limits and harm constitutional freedoms, especially the right to freedom of expression, the right to privacy and the space for political opposition. The government, on the other hand, presents these reforms as a necessary response to the growing problem of cybercrime and online disinformation. The paper combines doctrinal analysis with a Critical Legal Studies (CLS) lens. The state presents these reforms as necessary steps against the growing menace of cybercrime and electronic disinformation. The paper critically evaluates whether these measures enhance digital rights or are simply instruments of surveillance and control in an increasingly securitised context. It contributes to scholarship on technology law and civil liberties in postcolonial nations by situating the amendments within debates on digital authoritarianism, legal instrumentalism, and constitutionalism.

Keywords: PECA 2025, digital rights, privacy, article 19, constitutionalism, chilling effect
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1. INTRODUCTION

The Prevention of Electronic Crimes (Amendment) Act, 2025, which can also be referred to as PECA Amendments 2025, has supplemented the definitions of cybercrimes and established four new institutions to monitor digital speech. The legislation has been subject to criticism by the citizens, the media, and the legal experts who believe that the legislation has done little, in effect, to prevent the spread of cybercrime and digital misinformation. Among the chief concerns is that the amount of public input in the process was too little, which raises the question of the democratic quality and transparency of the legislative process (Aslam et al., 2025). The federal government believes that the changes are necessary to prevent the distribution of fake information and safeguard digital integrity. Critics, however, argue that the changes may result in censorship and the repression of dissent (Digital Rights Foundation, 2025). Thus, a fundamental legal question arises: do the 2025 changes help safeguard digital rights and prevent the spread of fake information, or do they give the

executive the authority to suppress political opposition, popular discourse, and press freedom in the country?

These problems are dealt with in this paper in a critical legal framework which discusses socio-political power structures involved in digital regulation. First, it subjects the PECA Amendments 2025 to a doctrinal and legislative analysis. Second, it identifies the gaps in Pakistan's legal regime regarding data protection. Third, it provides a comparative review of international legal standards and jurisprudence. Finally, it gives recommendations on policy changes and legislative changes to make Pakistan accountable to its constitutional protections and international human rights obligations. The amendments mark a significant shift in Pakistan's digital regulatory landscape. They add four new regulatory bodies to the Act and redefine several key terms. Nevertheless, the Act suffers from structural and doctrinal weaknesses that jeopardise constitutionally guaranteed freedoms, particularly freedom of expression and the right to due process (A. Khan, 2025).

2. VAGUE AND OVERBROAD DEFINITIONS

One of the strongest criticisms of the PECA Amendment 2025 is that its definitions are vague and too broad, which creates real difficulties in the prosecution and adjudication of cybercrimes. (Digital Rights Foundation, 2025). The amendment changes the meaning of the term 'complainant' to a person who is a victim or has a 'substantial reason to believe' that an offence has been committed. This makes it very easy to make a criminal complaint. A relaxed definition invites frivolous and speculative grievances and can make the law fodder for the misguided. Also, the broader definition of "person", which now means a natural person or a body politic or corporate. This enables state officials and private organizations to initiate criminal actions against citizens, and to establish a hierarchical system of enforcement that undermines civil rights and democratic accountability. Section 26A, which prohibits the spread of false and fake information, is one of the most controversial provisions. It reads as follows:

"Whoever intentionally disseminates, publicly exhibits, or transmits any information through any information system, that he knows or has reason to believe to be false or fake and likely to cause or create a sense of fear, panic or disorder or unrest in general public or society shall be punished with imprisonment which may extend up to three years or with fine which may extend to two million rupees or with both." (Prevention of Electronic Crimes (Amendment) Act, 2025, s. 26A)

This provision does not pass the three-pronged test of legality, necessity, and proportionality that has been set by Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) (Human Rights Committee, 2011). First, the provision is not certain legally since the words such as fear, panic, disorder, and unrest are undefined and subjective in nature. Second, the measure is unnecessary in a democratic society, as the existing civil and defamation laws offer less restrictive means of addressing misinformation. Lastly, punishing such a widely defined offence with imprisonment does not

pass the proportionality test. On an international level, this legislation would most probably be considered incompatible with the laws of freedom of expression. In Garrison v. Louisiana (1964), the U.S. Supreme Court warned against criminalising false statements about public officials without proof of actual malice, which helped to preserve healthy public discourse, at least on governance matters. Likewise, in United States v. Alvarez (2012), the Court held that false statements are not, by that fact alone, excluded from constitutional protection. The PECA Amendment, which does not require proof of intent to cause harm or malice, puts real-life political speech and investigative journalism in jeopardy. Furthermore, the wording provides too much room for manoeuvre for the authorities to determine what is false, and what fake, content is. This has a chilling effect on freedom of speech and promotes a selective application particularly against dissenting views and journalists and political dissent (Khilji, 2025; Sheraz et al., 2025). In Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416), in relation to Article 17, the Supreme Court decided that laws which abridge fundamental rights must be specific and rationally related to the legitimate aim which the law is trying to pursue. The 2025 amendments do not meet this criterion. They leave their operative terms undefined, which might make Pakistan's digital legal system a tool of surveillance and control. That would be in violation of Article 19 of the Constitution of Pakistan, 1973, and Article 19(3) of the ICCPR.

3. OVERREGULATION AND RETALIATORY DEFINITIONS: GROWING STATE OVERSIGHT OVER DIGITAL EXPRESSION

A basic tenet of a democratic legal system is that criminal law should be limited and drafted so precisely that it cannot be abused or misapplied. The PECA (Amendment) Act 2025, however, departs from this principle by introducing legal constructs which are ambiguous and expansive. Such ambiguities create vistas of disproportionate encroachment of rights that are, according to the constitution, secured freedoms, in particular, freedom of speech and information access. Law language that was declared illegal and unconstitutional by a prior ruling and was thought to be outdated is brought to life by the introduction of the term, aspersion (section 2(1) (iiia)), which means spreading false and harmful information which damages the reputation of a person. In its landmark ruling in Pakistan Federal Union of Journalists v. President of Pakistan, decided by Chief Justice Athar Minallah, the Islamabad High Court struck down the 2022 Ordinance and the words “or harms the reputation” in section 20 of PECA 2016 (Naseer, 2022). The court also pointed out that the laws should not be aimed at protecting the individuals, and especially the ones in high positions, against harsh criticism. It noted that any restriction of such expression in the name of safeguarding the so-called reputation is not aligned with the principles of the democratic system and Pakistan’s obligations under the ICCPR. The Islamabad High Court also held that the free exchange of information and ideas is the most crucial aspect of running a democratic society, and that any law that suppresses speech,

especially critical speech, is unconstitutional in nature. Despite this jurisprudential progress, the PECA Amendment reiterates a similarly troublesome language, an act of retrogression by the legislature that can easily undo the gains made on digital rights. Equally problematic is the broadened definition of social media platforms in section 2(1) (xxviiib), which includes any person that owns, provides, or manages information, or a website, application, platform or communication channel or any other such application and service that allows the user to use the social media. This broad generalisation radically extends the regulatory domain of the state. The government gains too much latitude to control and censor internet communications by categorising any form of media, such as private messaging services as well as non-conventional mediums, such as social media. A further element of ambiguity that gives discretion to the authorities is the introduction of a novel word, communication channel, which gives room to understand even encrypted messaging applications such as WhatsApp or Signal, as being covered by PECA regulations. This risks exposing private communications to state control, thus violating the constitutional guarantee of privacy under Article 14 of the Constitution. Furthermore, this extension of power corresponds to the recent measures like the governmental blocking of X (previously Twitter) and increased monitoring of Virtual Private Network (VPN) use. With the modified structure, VPNs can now be blocked or restricted, even though they have a valid purpose of providing secure communication, whistleblower protection, and overcoming censorship in totalitarian internet settings. Any blocking of VPNs would issue a direct challenge to the right to access information and would impede digital literacy, particularly where political issues are involved (Aslam et al., 2025).

From a comparative perspective, democratic jurisdictions such as the European Union have opposed such extensive controls. They have instead prioritised transparency, the autonomy of the users, and judicial protection when controlling digital platforms. The fact that Pakistan has left these normative standards is a threat to the process of connecting the digital governance regime to other recognised human rights practices globally. These legislative trends in a conclusive impact reveal that a systematic propensity of the executive to transgress reaches heights where the Supreme Court of Pakistan has cautioned against, as in Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324), which supported legal precision and reasonableness in matters touching upon human rights. Conversely, the PECA Amendment 2025 places state-centred security concerns ahead of citizen-centred freedoms where digital expression is considered as a danger rather than a democratic requirement.

4. REGULATORY OVERREACH AND INSTITUTIONAL CAPTURE

The PECA Amendment of 2025 inserts three new chapters, 1A, 1B and 1C, into PECA 2016. Chapter 1A establishes the Social Media Protection and Regulatory Authority (SMPRA), which will act as the principal regulator of

online spaces in place of the Pakistan Telecommunication Authority (PTA). The powers granted to SMPRA are quite broad: it can regulate unlawful or offensive content (Section 2B (e)) and oversee the enlistment and registration of social media platforms (Section 2B (f)), grant or suspend such enlistment (Section 2B (g)), block platforms (Section 2B (h)), issue the content removal orders (Section 2B (l)) and take the suo motu action (Section 2B (t)). Such an institutional re-formation is a radical centralisation of regulatory power which functions with few checks and balances. Jurisprudentially speaking, the transfer of such discretionary and open-ended authority to executive appointees, without notable judicial limits, is quite problematic in the light of Articles 4, 9, 10A and 19 of the Constitution of Pakistan, which uphold the elements of due process, legal certainty and freedom of expression. The words employed in the delineation of the powers of SMPRA are unclear and so broad that they may be used, at the whim of those in power, against political opponents or critics under the excuse of offensive or unlawful content.

These concerns are accentuated by the composition of SMPRA which has been outlined in Section 2D. The fact that the Chairperson and five of the eight members are appointed by the federal government makes the regulatory body susceptible to political influence and institutional capture, a concept often condemned in critical legal studies as a violation of the rule-of-law principles in favour of executive expediency. The lack of judicial and parliamentary control mechanisms will further increase the chances that SMPRA will not act as an impartial arbiter but rather as an instrument of state control over digital discourse. This setup is directly opposed to international human rights norms. According to the United Nations Human Rights Committee (2011), any limitation on freedom of expression must meet three conditions: legality, legitimacy, and necessity. Regulatory activities and laws need to be designed in a very minimalist way, spelled out, and must meet a valid purpose. In comparison, the imprecise meaning of the words of PECA as to fake information, unrest, and incitement does not conform to the legal certainty norm.

These uncertainties contravene the rule of nulla poena sine lege, under which no individual is supposed to be punished under a law which is vague or exceedingly discretionary. Further, section 2C, which grants SMPRA the authority to accept complaints and act upon them promptly including the blockage or deletion of content, provides a quasi-judicial system without due process of the law. No reference is made to the adversarial hearings, the rights of appeal, and/or protection against the unjustified removal of content. The consequences are especially terrifying to the independent press, the minority political voice and civil society actors, which historically have been the earliest victims of poorly written cyber laws in Pakistan (Anwar et al., 2024). The critical legal tradition warns of the recent proliferation of the executive authority in the name of technological regulation particularly in the postcolonial nations whose governance is frequently authoritarian in the name of legality. The PECA Amendment gives SMPRA wide, vague, and even unaccountable powers, thereby depriving the process of democracy and

constitutional responsibility. It is a paradigmatic instance of how digital regulation can be instrumentalised to serve the purposes of political suppression, being disguised in the normative discourse of public order and national interest.

To put it briefly, the government is entitled to control the digital ecosystem, but in a transparent and accountable manner that respects the rights of people. As currently designed, SMPRA fails to meet such standards and would become a tool of censorship rather than protection, which is not only against the constitution of Pakistan but also against the international standards which the country must adhere to under the ICCPR.

5. DISCRETIONARY AUTHORITY AND EROSION OF DUE PROCESS

One of the major weaknesses of the PECA Amendment 2025 is its persistent neglect of procedural fairness. The amendment does not provide a mechanism for adversarial hearing or for affected people to be heard before regulatory or punitive measures are enforced. This contravenes Article 10A of the Constitution of Pakistan, which guarantees due process. The regulatory authority can act as it wishes without procedural safeguards such as notice, hearing and the right of appeal, whereas domestic constitutional law as well as international law requires a regulatory authority to act in a way that is fair to the affected person. These broad discretionary terms bestowed on SMPRA concerning the enlistment or suspension of social media platforms in the absence of a procedural framework are of grave concern in the suppression of political opposition.

The termination of judicial consideration and objective fact-finding of content through labelling as aspersion, false information, offensive content and categories also permits state censorship in the guise of legality and is thus highly problematic under critical legal theory analysis. Section 2B (v) provides the authority with the power to do any other activity that can be described as ancillary, incidental, or consequential to its current powers. This is not only overbroad but may also amount to excessive delegation, because it allows SMPRA to operate beyond clearly defined statutory limits, whereas delegated powers should operate within clear and well-defined limits. The enabling clause is an open-ended one, which undermines the intent of the legislation, and allows an overreach of the executive, which is contrary to the democratic constitutional design of Pakistan. The Supreme Court of Pakistan has repeatedly held that any restriction on the fundamental rights must be limited, reasonable and legally grounded. The landmark case of Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416) establishes that any restriction of a democratic right cannot be used as a weapon to control politics and must not be administered as a means of oppression.

This is a judicial dictum that strengthens the opinion that the new discretionary powers granted to SMPRA particularly without procedural safeguards, are prohibited by the Constitution. In addition, centralisation of executive control is further enhanced with the fact that policy directives issued

by the federal government are binding on SMPRA (section 20). This power concentration also destroys freedom of action of the regulatory authority and erases the pretence of independence as this would effectively turn SMPRA into an instrument of the state to direct or manipulate the regulatory decisions politically or ideologically.

This violates Article 19 of the Constitution and Article 19 of the ICCPR, by which Pakistan, as a state party, is bound. The UN Human Rights Committee (2011) has made clear that freedom of expression includes the right to seek, receive and impart information in whatever medium one desires and any measure should meet the requirements of legality, necessity, and proportionality. The PECA Amendment fails all three tests. To sum up, the legal system introduced by the PECA Amendment 2025 marks the further degradation of due process and a dangerous increase in executive discretion, with potentially disastrous consequences for democratic rights. The changes are part of a larger trend in postcolonial legal authoritarianism; whereby direct repression is regularly substituted with the use of vague legal systems. The amendment should also be studied critically for its potential to destabilase Pakistan's fragile democracy in the name of regulating cyberspace.

6. INSTITUTIONAL CAPTURE AND PROCEDURAL DEFICIENCIES

PECA Amendment 2025 establishes a regulatory framework through which these matters are to be administered. One of its features is the establishment of Social Media Protection Tribunals, which are to address disputes concerning content. However, further critical examination reveals that their practices and organisation have severe flaws that damage the autonomy of the courts, access to justice, and the separation of powers. Each tribunal consists of three persons: a Chairman who has been, or is qualified to be, a judge of a High Court, and two other persons who are experts in the field of journalism and software engineering. Although such a hybrid composition seems to be technocratic, it is marked by a high concentration of the executive power since all the appointments are done only by the federal government. Such a process of appointment, which does not incorporate any independent and judicial participation, leaves people concerned regarding institutional capture, which involves adjudicative bodies being encroached by the executive. Such a structure contradicts the concept of judicial independence, which is a vital component of constitutionalism. It might make these courts an instrument of state coercion rather than courts of justice.

The tribunals are also immensely powerful including the capacity to control the content, levy punishment, and censor without the major scrutiny of the courts. It is a breach of the principle of separation of powers as defined in the Constitution of Pakistan since the legislative, executive, and quasi-judicial powers are concentrated in one body. It goes against Article 10A that ensures the right to a fair trial and due process of law, as well. The tribunals in effect are granted the authority to serve as judge, jury, and executioner although it bypasses the judicial institutions that have been mandated in the constitution.

Moreover, under section 2X of the Amendment, decisions of the tribunal can be appealed only to the Supreme Court of Pakistan.

This bypasses the High Courts, which exercise constitutional jurisdiction under Article 199, and systemically distorts the appellate procedure. It practically denies the citizens the right to the multi-layer appellate review, making access to justice imaginary to a common litigant because of the financial, logistical, and procedural impediments. Such a tribunal model not only reduces the role of the judiciary in the institution but also goes against international standards of law. According to the UN Human Rights Committee, the tribunals that are performing judicial functions are required to be independent, unbiased, and created through a law, and the right to appeal should be available and functional (Human Rights Committee, 2007). By vesting all appellate jurisdiction in the Supreme Court, the amendment eliminates an important judicial examination that would have otherwise served as a checkpoint against the arbitrary or politically driven decisions. It is also disturbing that criminalization of indeterminate and vague speech acts has become a common practice.

The amendment imposes a maximum prison term of three years for the dissemination of false and fake information which is likely to cause fear, panic, disorder or unrest among the public. The punitive provision is not legal, it is a principle of criminal legal theory, it has to be specific, it has to be predictable, and it has to not be random. The words fear, panic and unrest are not specific and can be considered biased, and it gives the government the right to inflict punishment on dissenting thought in the guise of maintaining order. Jurisprudentially in line with the Human Rights Committee, such imprecise penal provisions fall foul of Article 19(3) of ICCPR, which requires that restrictions on speech be provided by law and be necessary and proportionate. The excessive criminalization of unclear expression and the elimination of judicial checks suggest that there is a systematic shift to legal authoritarianism, with the dressing of digital regulations. It creates in its turn a structural crisis of constitutionalism and democratic responsibility, as the state institutions are re-targeted not at serving the people, but at watching them, regulating them, and suppressing them.

7. PROCEDURAL DEFICIENCIES AND THE THREAT TO JUDICIAL INDEPENDENCE

The amendment of PECA 2025 suggests the establishment of Social Media Protection Tribunals to hear the offences related to the contents under the Act. Organizationally, every tribunal consists of three individuals with one of them being the Chairman, who has been, or is qualified to be, a High Court judge and the other two with knowledge in journalism and software engineering. Nonetheless, the fact that the powers of appointment are concentrated in the hands of the federal government raises serious issues of politicisation and institutional impartiality. Such one-sided form of appointment without any independent vetoing or judicial process undermines the impartiality of the tribunal and opens the possibility of quasi-judicial

functions being subjugated.

The fact that the tribunal has the power to control the content in the digital space including imposing fines and the interpretation of the offence without any significant judicial review is against the constitutional rules of separation of powers. With such a structure, the judiciary has been successfully taken out of its constitutional responsibility as stipulated in Articles 175 and 199 of the Constitution while the tribunal acts as both judge and executioner. According to Kennedy (2002), as bureaucratic organisations take on a few governmental duties, the probability of the rights abuses grows exponentially and in politically sensitive cases like digital expression, they are bound to occur. These tribunals can act as tools of repression, instead of tools of justice delivery, because of their structure. Their design reflects what critical legal theorists describe not as an administrative failure but as a planned approach to promote government overreach and curtail constitutional liberties.

This arrangement compromises Article 10A in the Constitution which gives every person the right to fair trial and due process which includes the right to an independent and impartial tribunal. Also, Section 2X of the Amendment provides for only one appeal from the decisions of the tribunals to the Supreme Court, within 60 days. This type of limitation of the appellate jurisdiction of the High Court is an exception to the usual judicial review regime and highly limiting in terms of access to justice. The Supreme Court, which is already overburdened by public interest litigation, constitutional litigation and other litigation, is simply not able to be the Supreme Court to all cases generated by the tribunals under PECA. This process ignores both the monetary and procedural limitations of the common litigants and practically precludes meaningful redress in the process of appeal. The substantive vagueness of criminal clauses is another problem.

The amendment outlaws the spread of such fake and false information that results in the feeling of fear, panic, disorder, or unrest, and this is punishable by imprisonment of not more than three years. This language is indeterminate in nature and does not comply with the principle of legal certainty which is one of the main principles of legal practice in both domestic and international human rights law (Human Rights Committee, 2011). The imprecise nature of the terms of fear, panic, and unrest places general discretionary power in the hands of the tribunal or regulatory bodies, allowing them to classify the dissident talk as a criminal offence at their own will. Article 19(3) of International Covenant on Civil and Political Rights (ICCPR) to which Pakistan is a party, sets out the proportionality test, under which any restriction on expression in a democratic society must be necessary and serve a legitimate aim. The PECA Amendment 2025 fails this test as it lays down excessive penal punishments for ill-defined offences and infringes on the safeguards for procedural protection against misuse. Combined, the tribunal system proposed by the PECA Amendment is an inverted legal and structural version of democratic accountability.

This shows an authoritarian approach to content regulation, rather than consideration for the harm done online, by avoiding judicial bodies and by

limiting appeals and relying on unclear and overly punitive criminal provisions. The critical legal scholars believe that such legal frameworks frequently serve to legitimise power and not to restrict it and thus violate the rule of law and constitutional safeguards.

8. INSTITUTIONAL OVERREACH AND THE NORMALIZATION OF EXECUTIVE SURVEILLANCE

A very significant change in this PECA Amendment 2025 is that the Cyber Crime Wing of the Federal Investigation Agency (FIA) has been replaced by a new agency called the National Cyber Crime Investigation Agency (NCCIA). Judicial checks and constitutional responsibility, as well as the sustainability of proceedings, are serious issues to be raised legally and politically in this institutional transformation. The wholesale transfer of the FIA's investigative powers and pending case backlog to NCCIA is likely to exacerbate the problems instead of fixing them. A new, undefined legal role institution can lead to case overloads, breaks in the continuity of investigations, and cause confusion as to whether the institution of protection applies to the procedures. In terms of administration, sudden changes in institutional structures, without sufficient transitional mechanisms and an understanding of what is being changed in the law, affect the element of legal security, a fundamental principle of the rule of law. More to the point, it is the concentration of all the investigatory authority in the executive branch without giving the means through which the courts can review or examine such powers on their own, which puts at stake the principle of checks and balances.

As designed, neither the structure nor the activities of the NCCIA are subject to judicial control. This model of executive dominance discredits institutional independence of the investigation and facilitates politically driven investigations and discriminatory enforcement of the cybercrime laws. The amendment further allows the investigative cooperation of the NCCIA with the intelligence agencies thereby providing legal cover to the surveillance practices that were considered ultra vires in the past. Section 30, as substituted by the 2025 act, now expressly permits joint investigation teams to seek assistance from any intelligence agency, thereby giving statutory cover to a practice that previously lacked a clear legal basis. Such a legislative turnaround is a clear example of the phenomenon of the juridification of repression that has been defined by the critical legal theorists as the act of re-engineering law in such a way that it is not used to check the power of the state, but rather it is a way to legitimise the arbitrary expansion of the scope of state authority.

By this amendment, the institutional surveillance and investigation apparatus is not subject to popular and judicial scrutiny, and further entrenches the logic of the security state, which places priority on executive discretion rather than on individual rights and democratic accountability. These developments are extremely concerning considering Article 10A (right to fair trial) and Article 14 (inviolability of dignity and privacy) of the Constitution of Pakistan, 1973. The amalgamation of executive and intelligence capabilities in one of the new and unaccountable authorities essentially breaks the balance of

norms of liberty and security. It is also an indicator of reverse direction in legal evolution, according to which institutional change is defined by dictatorial needs, and not by participatory or constitutional loyalty.

Therefore, the design of the NCCIA and the latitude it may be working with has to be perceived not as a technical and bureaucratic adaptation, but as a deep change in the design of digital governance. The amendment bypasses judicial authority, permits intelligence cooperation, and institutionalises executive primacy, placing PECA in danger of becoming an instrument of surveillance administration, contrary to constitutional protections and the democratic principle of the rule of law.

9. LEGISLATIVE SHORTCOMINGS AND THE IMPERATIVE FOR A DATA PROTECTION REGIME

The amendments to the Prevention of Electronic Crimes Act (PECA) in 2025 were adopted through a process that was clearly not transparent, consultative, or democratic. This lack of consultation with the affected stakeholders, legal professionals and civil society participants indicates that legislative authoritarianism is increasingly characteristic of digital lawmaking in Pakistan. As critical legal theorists observe, the type of legal process also reveals its political role: when law is made in a rush, it is usually made on behalf of the already powerful instead of on behalf of the common good. The urgent issue is the fact that in regard to the amendments, no substantial data protection system was introduced even at the time when the surveillance authority and the means of getting access to data are proliferating. Although the reforms described by the government are presented as the requirements to stop misinformation and threats related to digitalization, the government also omits the fact that a strong legal apparatus is necessary to safeguard the informational and personal autonomy of the citizenry.

According to Tarana (2025), the legislation has failed to offer any protection to users, making them vulnerable to identity theft, unauthorised surveillance, and digital profiling, as illustrated by the Careem data breach (The Express Tribune, 2018); yet none of these concerns has been addressed in line with international data privacy and cyber governance standards. However, jurisdictions such as the European Union (through the General Data Protection Regulation) and India (through its Digital Personal Data Protection Act, 2023) have moved in the right direction to recognise data privacy as a fundamental digital right. Pakistan, however, currently lacks a comprehensive data protection law despite numerous requests by legal and human rights organisations. Such a deficiency is not only a legislative lapse; it is a structural inability to defend the right to informational self-determination which is increasingly becoming a component of preservation of dignity, autonomy and democratic participation in the digital era.

Such legislative negligence is reflected in sections 31 and 32 of PECA 2016 (E. A. Khan, 2022). These provisions allow investigating officers to obtain user data without a prior court order, so that the state is free to access digital conversations. Not only is there a procedural deficiency with this

authority, but it directly goes against the constitutional guarantee of privacy in Article 14 of the Constitution of Pakistan, 1973. In Mohtarma Benazir Bhutto v. President of Pakistan (PLD 1998 SC 388), the Supreme Court held that the right to privacy is connected to the rights to free speech and liberty, and that any invasion of privacy not authorised by law amounts to an abuse of fundamental rights. PECA, however, converts into law the very warrantless surveillance against which the Court has cautioned on numerous occasions. The nature of the executive agencies holding the surveillance power, without judicial or external checks, indicates a current trend in the governance of cyberspace in Pakistan. In that respect, this amendment is more of a control tool than a regulatory change, which reveals the intrinsically coercive character of digital law in the authoritarian environment. The risks of such neglect of the legislature have already been demonstrated in sections 31 and 32 of PECA 2016.

From a constitutional and policy perspective, the lack of a data protection structure coupled with the intensified cybercrime investigation procedures makes the legislation unjust as well as dangerous. The unregulated expansion of the state authority without proper legal protection of the interests of the data subjects raises significant questions concerning the principles of proportionality, legality, and necessity as the key to the rights-based governmental justice. The PECA Amendment 2025 does not only disregard the issue of data protection, but it also actively undermines the fundamentals of digital constitutionalism in Pakistan.

10. INTERNATIONAL FRAMEWORK

Different nations use diverse laws and systems to combat the spread of fake news, disinformation, and misinformation. These countries use their laws in consideration of the right of freedom of expression and free speech in such a way that the opinion of the people would not be compromised. Pazzanese (2021) explains that the First Amendment to the U.S. Constitution guarantees freedom of speech and significantly restricts the government's ability to control misinformation. Similarly, the Digital Services Act adopted by the European Union, rather than targeting individuals and ordinary citizens, establishes an accountability scheme for platforms and social media firms in event of any differences. In Pakistan, however, there is no comparable law ensuring accountability for any breach or misuse of users' data by companies. Another important law is the United Kingdom's Online Safety Act 2023, which regulates online safety for users and manages the risks of illegal and harmful material.

These are global systems that control the possibility of misinformation and guarantee freedom of speech and personal rights. Such a framework is highly needed in Pakistan to address the requirement of international protection of digital rights, which would reduce cybercrime while preserving the constitutional rights of ordinary citizens.

On the same note, courts have the authority to nullify laws that produce a chilling effect on free speech. In its landmark decision in New York Times

Co. v. Sullivan (1964), the US Supreme Court held that imprudent legal restrictions on journalism suffocate public discussion and frustrate democracy. Similarly, in Shreya Singhal v. Union of India (2015), the Indian Supreme Court invalidated section 66A of the Information Technology Act, 2000, because it violated the freedom of speech guaranteed by the Constitution of India. The court discussed the same rationale to do with chilling effect. The same chilling effect can be seen in new PECA amendments, and this can have much more ominous effects on freedom of speech and political dissent. In legal terms, the chilling effect refers to the deterrence of individuals from exercising their legal rights for fear of becoming the subject of criminal proceedings. Such a chilling effect may be produced by the new PECA amendments through the abstract definitions of crimes, excessive punishment, and ineffective processes.

The Islamabad High Court has already declared the PECA (Amendment) Ordinance 2022, and part of section 20 of PECA 2016, unconstitutional because of their chilling effect on freedom of speech (Naseer, 2022). The Ordinance was found unconstitutional because of its overbroad statutory language. This ruling demonstrates the importance of the right to freedom of speech. It is heavily feared that in case the court considers such an amendment, it may invalidate them as being ultra vires the Constitution. Moreover, Pakistan has signed and ratified the ICCPR and is therefore bound to observe its obligations under the treaty.

The judiciary has been voicing the same within Pakistan. The ruling of the Islamabad High Court striking down the PECA (Amendment) Ordinance 2022 on grounds of over breadth and unconstitutionality shows how judicial opposition to laws that jeopardise free expression can deter such infringements. The Court directly resorted to the doctrine of chilling effect as a legal theory term where it refers to laws that deter people from exercising their lawful rights because they fear the punishment or are uncertain of punishment under the law. Replicating the same malpractices, disproportional penalties, and the lack of due care, the 2025 amendments are likely to be regarded as having the same flaws that the court is likely to void. In this regard, international human rights law imposes an additional layer of scrutiny on Pakistan's legislation. Being a signatory to the International Covenant on Civil and Political Rights (ICCPR) makes it the obligation of Pakistan to uphold freedom of expression as dictated in the Covenant in Article 19 that any restrictions made have to be legal, necessary and proportionate. However, the present legislation under PECA cannot pass this tripartite test due to providing excess powers to the executive, lack of specific delineation on the crimes, and offering no real checks or redress. Such deficiencies not only infringe the constitutional guarantees enshrined in Articles 14 and 19 of the Constitution of Pakistan but also breach Pakistan's international duties under the ICCPR.

To summarise, the PECA amendments, when compared with constitutional jurisprudence and international norms, are indicators of a retrogressive and even unconstitutional increase in state power. Unless there are effective judicial checks and balances and a comprehensive digital rights framework, these rules are likely to be used to stifle the digital populace rather

than to govern the digital public space democratically.

11. CONCLUSION AND POLICY RECOMMENDATIONS

Based on the above discussion, it is recommended that the government review the amendments in PECA 2025 at the earliest and align it with the Constitution and commitments with international bodies. The general lack of precision of offences, the inadequate procedures and the severity of punishments must be amended. The Pakistan State should ensure dignity and basic rights of the common man of Pakistan and should not create fear in his life, as he is already facing a lot of issues in his normal life. Keeping this in mind, the following recommendations are made.

a. The PECA Amendment 2025 could have significant impact internationally for Pakistan, particularly given that the nation has already fallen in the list of press freedom in the world. The vague and broad definitions of offences may put political discussion at risk and weaken the freedom of the press and media. The law should be carefully reviewed and its wording made clear in the light of Pakistan's international obligations under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and the fundamental rights provided in the Constitution of Pakistan.

b. The government should carry out a comprehensive review of these amendments to guarantee the rights of journalists and media professionals, in line with the constitutional rights of free speech and expression. The law should not be used to influence political discourse or to silence criticism and public opinion. Instead, it should protect journalists and social activists. All legal provisions must also meet the constitutional requirements of due process.

c. The government ought to do a comprehensive revision of these amendments in which the rights of journalists and media practitioners are guaranteed, and this is in tandem with the constitutional rights of free speech and free expression. This legislation should not influence political discourse, criticism, and opinions in society. It ought to protect the media persons and social activists. Legal provisions must satisfy the constitutional requirements of due process. The law has been enacted in a rush without involving the stakeholders and the people in consultation on the law. Hence, there is a need for discussion with, and engagement of, stakeholders and policy analysts.

d. There should be no political influence or interference in these institutions. Appointments ought to be made by a body that is independent of the incumbent government. This would require the new institutions like the Authority, tribunal, and NCCIA to be politically independent so that they can operate without biases. By doing so, a fair result would be anticipated. The judiciary should check the operations of these institutions.

e. Excessive restriction of social media sites may reduce digital innovation within Pakistan. This may adversely affect Pakistan’s digital economy and deter international digital investment. Thus, an innovation-friendly policy is an unavoidable requirement to promote the digital and information technology industry.

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Smart Contracts, Old Laws: Navigating Pakistan's Regulatory Landscape

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Abstract

This study examines the legal limitations and challenges with respect to using smart contracts within the legal system of Pakistan. In particular, it focuses on specific legislations dealing with contractual relations in Pakistan and its application to smart contracts. Employing the theoretical lens of law and technology, this study seeks to evaluate whether the current laws of Pakistan are adequate for recognizing complex blockchain smart contracts. This study adopts both doctrinal and comparative methodology to draw lessons from other jurisdictions on this particular issue. The article proposes certain legislative and policy changes to address the regulatory gaps in relation to legal recognition of smart contracts in Pakistan.

Keywords: Smart contracts, blockchain technology, self-execution, digital ledgers, specific performance, law and technology, traditional contracts, regulatory gaps
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1. INTRODUCTION

The spectacular breakthroughs of the modern technology have caused fundamental changes in all facets of life. The advancement in technology has ushered in a new era for contracts, too. The concept of 'smart contracts' is not as unique as some think. Many automated transactions in our daily life (like purchasing commodities out of a vending machine) employ smart contracts. However, the introduction of block-chain technology resulted in a major shift in the way smart contracts work.

A smart contract is basically "a computerized transaction protocol that executes the terms of contract" (Szabo, 1997). The prime distinction between a smart contract and a traditional contract is that the former relies on a self-executing agreement that does not require any intermediary for contractual performance. The supporters of smart contracts regard efficiency as the prime advantage of executing smart contracts. This efficiency is due to the fact that smart contracts are automated, reduce operational costs, offer standardization and save time (Ferreira, 2021). Furthermore, some experts believe that traditional contracts suffer from certain limitations including inconsistent judicial interpretations of contractual terms, swelled legal costs and wastage of time (Sklaroff, 2018). Thus, the technology enthusiasts and entrepreneurs present smart contracts as to remedy the ills associated with the traditional

contracts. However, this new technology-based contract regime is not without criticism. According to some scholars, smart contracts would require the support of traditional contract for the purposes of enforcement of legal obligations (Frankenreiter, 2019). This raises the question whether smart contract satisfy all the elements of a traditional contract. In particular, does the current contract law in Pakistan consider smart contracts as valid contracts? These are important queries as they pertain to determining legality of such contracts.

Blockchain is a decentralized database that records and stores information in a transparent and safe manner (Tavares Borges & Rodrigues Leite, 2024). Blockchain technology possesses the ability to store and time-stamp infinite transactions. These transactions cannot be tampered with or changed because inputs on blockchain cannot be altered (Cadogan, 2023). Hence, blockchain technology comprises of a decentralized digital ledger that registers across multiple computers in such a manner that registered transaction cannot be altered retroactively (Murray et al., 2021). As opposed to traditional databases which are characterized by control of a single entity, blockchains are supported by a network of nodes (computers) guaranteeing that no single person has control over the whole chain (Tavares Borges & Rodrigues Leite, 2024). Modern smart contracts are based on blockchain technology. They run on distributed networks (like Ethereum, Solana) which demonstrates that no single entity controls execution of contracts. Developers create smart contract in the form of codes that define rules and regulations this contract is theme in blockchain where it exists is an immutable code. A smart contract once triggered conditions encoded in the contract are satisfied. Lastly, the transaction in a smart contract is validated by blockchain network of nodes. This whole process demonstrates that smart contracts foster expediency and are concluded without the need for intermediaries.

Though smart contracts are seen as an expeditious and cost-effective replacement of the traditional contracts, there has also been a scathing critique on the legality and efficiency of these modern contractual instruments. The first concern is about the legality and validity of a smart contract. Unlike a traditional contract, a smart contract is an automated self-executing contract that does not require intermediaries. In most jurisdictions, a contract must satisfy certain conditions such as offer and acceptance, free consent, consideration and capacity. Since smart contracts operate on blockchain, they do not fulfill all of these essentials that poses a challenge for them. Since smart contracts are self-executory, they are more akin to a gentlemen's agreement than a legally enforceable contract (Werbach & Cornell, 2017). In context of this article, the requirements of a valid contract are mentioned in the Contract Act 1872 which is Pakistan's legislation that governs the subject of contracts. An analysis of this law suggests that the design of a smart contract is not in line with the regulatory framework of Pakistan. However, another legislation the Electronic Transactions Ordinance, 2002 does provide validity to the electronic transactions. The emergence of smart contracts raises a fundamental question: Are Pakistan's existing contract laws adequate for legal recognition

and enforcement of block-chain based smart contracts? With regard to this important question, this study focusses on examining whether the existing legal framework of Pakistan can accommodate smart contracts and what type of legislative measures may be required to remove uncertainty in such contracts. It also delves into a comparative analysis of some other common law jurisdictions to assess how these jurisdictions are coping with the challenges inherent in smart contracts.

2. THEORETICAL FRAMEWORK

This study is based on theoretical lens of law and technology theory to examine the scope and limitations of enforceability of smart contracts in Pakistani legal system. The premise of this theory is that change in technology has an important impact on legal rules and thus this nexus between technology and rules must have a separate theoretical framework (Moses, 2007). The introduction of new technologies often renders certain legal rules obsolete, so there is a need to appreciate the effect of technology over law. Employing Bernstein's (2007) advocacy for a general theory of law and technology and Cockfield and Pridmore's (2007) synthetic approach of law and technology, this study's framework analyzes blockchain based smart contracts and Pakistan's formal legal framework.

The reason for using a general theory of law and technology is because Bernstein (2007) argues that technology-specific theoretical frameworks fail to take into account broad societal limitations. Therefore, a general theory of law and technology is a more realistic theoretical lens to conduct this study. The advantage of using this theoretical framework is that the limitations of a legal system vis-à-vis new technologies could only be thoroughly analyzed by acknowledging that rules need to adapt to changes in technological innovations.

3. RESEARCH METHODOLOGY

This study draws on qualitative research methodology, combining doctrinal analysis, comparative legal analysis and normative analysis to evaluate existing laws and enforceability of smart contracts in Pakistan. Relevant statutes such as Contract Act, 1872, Specific Relief Act, 1877 and Electronic Transactions Ordinance, 2002 are analyzed to examine their application to the blockchain based smart contracts. Along with these primary sources the study has secondary sources, such as articles and comparative legal frameworks from other jurisdictions.

Furthermore, the study is based on objective approach. Primary sources, such as national and international statutes are selected and used due to their relevance in understanding the legal recognition and enforcement of smart contracts. While, secondary sources, such as journal articles and policy reports used in this study provide conceptual grounding and comparative analysis of developments on smart contracts. The analysis is primarily based on developments from 2013-2024, highlighting the period in which blockchain based smart contracts received regulatory attention.

As this research design is doctrinal in nature. It relies on non-human data, including legal texts and relevant scholarly literature. It does not involve human participants, interviews or empirical data collection.

The methodology is based on assessing the critique on legality of smart contracts and challenges in their enforcement. This methodology is employed to propose context-specific regulatory solutions for Pakistan's legal framework vis-à-vis smart contracts.

4. LITERATURE REVIEW

Cadogan (2023) argues that as smart contracts have certain technical features which may lead to the inference that they do not meet the necessary conditions for a legally binding contract between parties. Smart contracts do not employ human language and is based on technical code language that is not comprehensible to ordinary people due to which it is unlikely that this technical language represents the true contractual intentions of contracting parties (Cadogan, 2023). In most jurisdictions, the consensus of parties on the same terms is considered as an essential precondition of a valid contract; the absence of such consensus due to technical coded language is often deemed as a limitation of smart contracts.

In a vast majority of commonwealth countries, a contract can only be concluded by someone who has attained the age of majority. The Pakistani contract law also prescribes this requirement as a prerequisite for entering into a contract (Contract Act, 1872, s.11). According to Giancaspro (2017), as the identity of parties is often unknown in smart contracts, there is a potential risk that a party who is major may inadvertently contract with a minor who is cloaked behind the anonymity of a blockchain. The legal status of such contracts will be difficult to be determined. The obscurity of blockchain can give rise to such unintended transactions.

While describing limitation of smart contracts, Frankenreiter (2019) contends that blockchain technology could be used to illegal transactions such as money laundering and drug trafficking. Similar to many other jurisdictions, the contract law of Pakistan treats agreements based on unlawful consideration or object as void (Contract Act, 1872, s.24). This essentially employs that it is extremely difficult to ensure that consideration or object of the agreement is not unlawful in blockchain technology.

Enforcement of smart contracts is another daunting challenge. In any traditional contract, parties rely on certain institutions to enforce the terms of a contract. This is not the case in a smart contract. Werbach (2018) maintain that the execution of a legally binding contract can be automated but its enforcement requires human intervention. The parties in a contract could revise its terms or it could be set aside by a court at a later stage (Werbach, 2018). Conversely, a smart contract gives the whole enforcement control to a decentralized digital ledger. Once a smart contract is initiated, it cannot be altered or revised. Thus, stakeholders lack flexibility in a smart contract which makes the whole arrangement less efficient (Sklaroff, 2017). Sometimes, this lack of flexibility in modifying terms of a contract, results in inconvenience

and higher transaction costs for the parties. Furthermore, the absence of centralized intermediaries often gives rise to questions of enforceability, allocation of liability and jurisdiction (Raskin, 2017). In addition to that, the existing business models and regulatory frameworks tend to consider blockchain as a disruptive technology which could lead to obstacles in adoption of smart contracts in numerous industries (Swan, 2015).

While identifying the limitations of smart contracts, Borges and Leite (2020) claim that regulatory uncertainty is a huge obstacle for smart contracts, as there is a great variance in legal frameworks of different countries which often lead to inconsistent application of law. Furthermore, like any other digital platform, smart contracts are susceptible to potential cyber-attacks such as phishing attacks on wallets, smart contract bugs and hacks attempts which can shake the trust of parties in this new digital regime (Atzei et al., 2017).

Meraj (2024) suggests that the rules mentioned in contract law of Pakistan should be applied to a smart contract. By means of automatic execution in a smart contract in form of computerized code, smart contracts would eliminate the possibility of deliberate evasion of terms, disputes pertaining to factual circumstances and disputes regarding interpretation (Meraj, 2024). This suggestion may seem a bit out of place given the fact that it is not easy to simply apply the regulatory code of traditional contracts to smart contracts. The view that contracts executed via computer code contribute to reducing contractual disputes is flawed because the terms of contracts are in form of a technical code could only be interpreted by computer experts.

Some cryptocurrency experts have identified interpretation and dispute resolution as major challenges in implementation of smart contracts. It has also been suggested by some experts that legal professionals will have to develop understanding about blockchain coding to deal with smart contracts (Fenwick et al., 2017). Studies like these suggest that smart contracts are specialized contracts which should not be seen like traditional contracts.

Despite abundance of literature on smart contracts and their limitation, there are significant research gaps in context developing countries like Pakistan. Much of the existing scholarship has been on the interaction of smart contracts with the legal frameworks of technological advanced countries like the United Kingdom and European Union. Though this scholarship provides valuable insights and guidance, it does not take into account the peculiar challenges of developing countries where legal and institutional frameworks have not matured in response to technological innovations.

This study emphasizes on the impact of smart contracts on the domestic legal framework of Pakistan. Through doctrinal and comparative research methodology, this study offers a critical legal analysis that can contribute to a wider conversation on how existing laws could deal with smart contracts in developing countries like Pakistan.

5. LEGAL FRAMEWORK GOVERNING CONTRACTS IN PAKISTAN

The general law dealing with contracts in Pakistan is Contract Act, 1872, a colonial era statute that is still applicable today. This statute contains detailed provisions regarding formation, execution and enforcement of contracts. The requirements of Contract Act, 1872 applies to both traditionally written contracts and electronic contracts. Another special dealing with enforcing specific performance of contracts is Specific Relief Act, 1877. It lays down conditions in which a party can seek specific enforcement of contractual terms. The Electronic Transactions Ordinance, 2002 gives legal validity to electronic documents, signatures and transactions. Before diving into the specific challenges pertaining to smart contracts, it would be prudent to understand the legal requirements of a valid contract in Pakistan.

5.1 Contract Act, 1872

The Contract Act 1872 is a general law that governs contractual relationships in Pakistan. This law defines contract as "agreement enforceable by law" (Contract Act, 1872, s.2 (h)). This implies that not every agreement transforms into a contract. For an agreement to be enforced by law, certain characteristics must be present in it. Under this statute, a valid contract requires free consent, competence of parties, lawful consideration and object and an agreement not declared to be void (Contract Act, 1872, s.10). These requirements are similar to the requirements mentioned in other common law jurisdictions. English and Pakistani contract laws share core elements—offer and acceptance, intent to create legal relations, consideration, certainty and free consent (Andrews, 2011).

It is important to understand that any agreement which lacks these essential elements will not be enforceable. The assessment as to whether smart contracts fulfill these essentials will be discussed later. It must be understood that this 19th century legislation was enacted at a time when contracts were dependent on human intention and manual performance.

5.2 Specific Relief Act, 1877

The primary legislation that governs certain specific reliefs (like specific performance and injunctions) in civil suits is Specific Relief Act, 1877. This is another legislation which was made during British colonial era and still is employed by litigants to settle their civil claims.

According to Specific Relief Act, specific performance of contract may be enforced when: a) act is in nature of trust b) there is no standard to assess actual damages c) monetary compensation in form of damages is inadequate d) compensation cannot be recovered (Specific Relief Act, 1877 s. 12). The application of concept of specific performance to smart contracts is an interesting proposition. Given the technical character of smart contracts, can such contracts be specifically enforced if there is some problem in their enforcement.

5.3 Electronic Transactions Ordinance, 2002

With the rise of electronic-commerce industry, Pakistan introduced Electronic Transactions Ordinance in 2002. As opposed to the usual norm of relying on paper documents and ink-based signatures, this particular legislation was meant to streamline and validate transactions in digital form (Rafiq et al., 2023). Under the aegis of Government of Pakistan's IT Policy in 2000, an IT Law Forum comprising of country's prominent legal experts having expertise in information technology drafted this law for Pakistan. The two-fold purpose of this law can be seen in its Preamble which states: (1) "to recognize and facilitate documents, records, information, communications and transactions in electronic form, and (2) to provide for the accreditation of certification service providers" (Electronic Transactions Ordinance, 2002, Preamble). This demonstrates that this law recognizes transactions that take place on digital platforms.

The Electronic Transactions Ordinance, 2002 unequivocally recognizes and validates all documents, records, information, communication and transaction that are in electronic forms (Electronic Transactions Ordinance, 2002, s.3). By looking at this particular provision, some may think that it may facilitate legal recognition of smart contracts, however, it would be a highly presumptive approach. The question as to whether smart contracts can be covered under the framework of Electronic Transactions Ordinance, 2002 will be discussed in the next section.

6. APPLICABILITY OF PAKISTANI LEGAL FRAMEWORK TO SMART CONTRACTS

A glance at the existing laws vis-à-vis contractual relations makes it evident that there are regulatory gaps due to which smart contracts do not come within the ambit of these laws. As law and technology theory posits that the impact of change of technology on existing rules often demands new legislative and policy interventions. It is argued by the advocates of this theory that change in technology often gives rise to legal issues (Moses, 2007). Two of the statutes were enacted in the 19th century—a period way before the IT revolution. Even the modern Electronic Transactions Ordinance, 2002 predates the creation of blockchain smart contracts. However, to get a more holistic picture as to the challenges involved in regulation of smart contracts, it would be prudent to discuss the relevant laws one by one.

6.1 Smart Contracts and Contract Act 1872

As mentioned earlier, Contract Act 1872 was enacted to regulate traditionally written contracts with the help of human intermediaries. The emergence of blockchain smart contracts has seriously challenged notions related to traditional contracts. In this regard, this technological disruption has completely changed the paradigm surrounding creation and enforcement of

contracts.

Under the contract law of Pakistan, it is an essential requirement for a valid contract that parties to a contract must have attained the age of majority. Any contract concluded by minor is not enforceable under the present regulatory framework. Smart contracts lack this subjective element of legal capacity (Madir, 2018). Since these contracts are self-executory, they may be deployed by anyone having knowledge about the platform. This raises serious questions on the validity of smart contracts in the legal system.

The traditional contract law of Pakistan requires that an agreement only becomes a valid contract if its consideration and object are lawful (Contract Act, 1872, s.10). However, blockchain technology could be used for unlawful purposes. There is a view that money launderers find smart contracts a convenient tool to engage in illicit funds transfer (Sharif, 2024). Given the opaque nature of the distributed ledger on which smart contracts are based, it seems quite difficult to regulate each and every transaction on the platform.

6.2 Smart Contracts and Specific Relief Act, 1877

Specific Relief Act, 1877 provides a remedial framework for enforcing performance of contracts. This law lays down specific equitable reliefs that can be obtained in civil proceedings. Primarily, a court may grant relief of specific performance of contract where damages are not an adequate remedy (Specific Relief Act, 1877, s.12). This premise has significant relevance with such smart contracts which involve unique or high value digital assets (examples include non-fungible tokens and a time sensitive automated service).

The main query which arises in this context is whether smart contracts require specific performance? A vast majority of studies assert that the unique feature of smart contracts is that the formation and execution of these contracts is completely automated (Cieplack & Leefatt, 2017). With a self-executing computer code, a smart contract presumes specific performance and does not allow parties to breach the contract (Kun, 2021). This implies that there is a fundamental diversion between the specific performance provided in Specific Relief Act, 1877 and self-executing nature of smart contracts. The statute in question deals with ensuring performance of a contract made by humans in a language that is comprehensible to everyone; conversely, the coded language employed in smart contracts does not require intermediaries like courts and legal professionals for execution. This unique immutable nature of smart contracts renders the traditional notion of specific performance redundant.

6.3 Smart Contracts and Electronic Transactions Ordinance, 2002

As mentioned earlier, the prime purpose of Electronic Transactions Ordinance, 2002 is to recognize and validate digital documents, transactions and signatures (Electronic Transactions Ordinance, 2002, s.3). Mainly, this legislation was adopted to foster electronic commerce in the country by

authenticating electronic transactions. The law was passed in response to UN Model Law on Electronic Commerce. Other countries like Singapore and Hong Kong also enacted electronic transactions laws to facilitate electronic commerce (Senq, 2008).

This context of the Electronic Transactions Ordinance, 2002 makes it abundantly clear that this legislation was not meant to accommodate complex blockchain smart contracts rather it was only meant to streamline and expedite processing of online documents and transactions. It would be reasonable to allege that the legislation operates within a limited sphere and any attempt to accommodate smart contracts within its framework would defeat the purpose for which this law was enacted.

7. COMPARATIVE LEGAL PERSPECTIVES ON SMART CONTRACTS

7.1 The United Kingdom

The United Kingdom Law Commission's advice to government demonstrates that smart contracts must align with the UK's broad legal framework on contracts. The Law Commission's findings are based on following observations:

- **a.** Smart contracts meet all the legal requirements necessary for creating contracts. Offer and acceptance happens through deployment of code, consideration, in form of cryptocurrency is readily identifiable; intent to create legal relations can be deduced from actions of parties like using computer code (Law Commission, 2021).
- **b.** As much of the English contract law is based on common law, the courts can flexibly interpret the code of smart contracts using existing principles in contract (Law Commission, 2021).
- **c.** Simple smart contracts (such as bank payments) do not present a formidable legal challenge as such automation is already quite common. As far as complex contracts are concerned, they could be dealt with by applying existing principles (Law Commission, 2021).
- **d.** Smart contracts should not be used in deeds that require specific legal formalities like witnesses and writing (Law Commission, 2021).

The critics believe that the Law Commission did not appreciate the nuanced differences between a traditional contract and a smart contract. As far as interpretation of smart contracts is concerned, the code should itself be seen as law, thus leaving no room for interpretation. The Law Commission takes exception to this line of thinking and maintains that just like terms of a traditional contract, the code of a smart contract can be interpreted. Drawing such parallels is not realistic as unlike traditional contracts, smart contracts execute coded instructions in deterministic manner.

7.2 The European Union

The European Union has emerged as a global leader in drafting

comprehensive legislation on use of data and data protection. The European Commission views blockchain as a strategic technology that has potential to make Europe home to platforms, applications and tech companies (European Commission, 2023). The EU is perhaps the only jurisdiction that has defined a smart contract in its legislative framework in the following words, "smart contract means a computer program used for the automated execution of an agreement or part thereof, using a sequence of electronic data records and ensuring their integrity and the accuracy of their chronological ordering" (Data Act, 2024, art.2 (39). The EU Data Act is an all-encompassing legislation that also contains ample details on regulation of smart contracts.

As per the Data Act, the blockchain smart contracts must fulfill the following requirements:

- **a.** Smart contracts must be robust against errors with access control mechanism. (EU Data Act, 2024, art.36)
- **b.** Smart contracts must incorporate termination mechanisms (e.g., kill switch) to stop execution (EU Data Act, 2024, art.36)
- **c.** The vendors of smart contracts must ensure that in case of termination, the past data is properly archived (EU Data Act, 2024, art.36).
- **d.** For protection of smart contracts, there must be rigorous access control mechanisms (EU Data Act, 2024, art.36).
- **e.** The smart contract terms must be consistent with data-sharing agreement to ensure verifiable execution (EU Data Act, 2024, art.36).

The EU Data Act demonstrates a strong legislative intervention to regulate smart contracts. In terms of regulation of data, the European Union is way ahead of many other advanced jurisdictions.

8. WAY FORWARD FOR PAKISTAN

The main premise of law and technology theoretical framework is that legal response to technological change has an immense impact on important values and interest of a society (Cockfield, 2003). This theoretical framework has the advantage of encouraging anticipatory legislative and judicial interventions to address the legal lags with respect to emerging technologies. The old laws governing contracts in Pakistan do not cover blockchain smart contracts. It is also equally true that the socio-economic conditions of Pakistan are different from those of industrialized countries. Therefore, Pakistan's regulatory response vis-à-vis smart contracts must be based on its own legal culture while incorporating useful and practical insights form international best practices. The following policy initiatives could help Pakistan navigate the ways to address regulatory challenges vis-à-vis smart contracts:

- **a.** There is an immediate need for revising existing legal framework including the Contract Act, 1872 and Electronic Transactions Ordinance, 2002. Instead of having a special law for smart contracts, these two legislations could be amended to include smart contracts as valid contracts. Contract Act, 1872 should

acknowledge the validity of smart contracts. While Electronic Transactions Ordinance, should define terms like smart contract, automated transactions and blockchain based agreements.

b. As smart contracts often involve dealing with complex computer coding, it would be important to build capacity of legal fraternity including judges and practitioners. The Federal Judicial Academy could initiate trainings aimed at creating greater sensitization about legal tech issues like smart contracts.

c. To build expertise in this particular field, the law schools and Bar Councils could offer specific courses on smart contracts, blockchain regulation and impact of technology on law.

d. As Pakistan is a common law country, encouraging strategic public interest litigation could lead to precedents that define the legal validity of smart contracts and dispute resolution in automated transactions.

e. Pakistan could also benefit from experiences of other nations that have taken legislative and policy measures on smart contracts. This international collaboration could help in developing common legal standards for blockchain based smart contracts.

f. The Law and Justice Commission of Pakistan could seek feedback from the tech industry specialists and develop model guidelines for smart contracts. These guidelines may cover dispute settlement procedures, jurisdictional issues and human override options in smart contracts.

9. CONCLUSION

This study has assessed the legal implications of smart contracts in Pakistan through doctrinal and comparative lens. The overall analysis showed that the present regulatory framework of Pakistan is not ready to address the challenges posed by smart contracts. The country lacks legal and institutional readiness to deal with issues such as enforceability and dispute resolution pertaining to smart contracts. A comparative analysis of other jurisdiction reveals that numerous countries are proactively making the necessary legislative and policy shifts to deal with the challenge of smart contracts. Pakistan can adapt its institutional framework by drawing lessons from these jurisdictions. However, bridging gap between the technological innovations and static legal framework requires more than just ephemeral legislative reviews. Pakistan needs to adopt a holistic policy change towards legal adaptability, building expertise and anticipatory digital governance.

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Assessing India's Unilateral Suspension of the Indus Waters Treaty: An Appraisal under the Law of Treaties, State Responsibility, and International Water Law

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Abstract

This article critically analyzes the unilateral suspension of the Indus Waters Treaty (IWT) by India in April 2025 as a landmark agreement that governs water-sharing between India and Pakistan since 1960. It discusses whether the decision of India to place the Treaty in abeyance can be justified under international law, focusing on the Vienna Convention on the Law of Treaties (VCLT), the Articles on State Responsibility (ARSIWA) of the International Law Commission, and principles of international water law. This analysis proves that the action of India contravenes the mutual-consent clause in Article XII of the IWT and does not meet legal requirements of suspension based on doctrines of material breach, fundamental change of circumstances, or necessity. Relying on the jurisprudence, including the Gabčikovo Nagymaros Project case, and stressing the humanitarian and environmental character of river treaties, this article argues that the move by India undermines the stability of treaties and sets a worrying precedent of transboundary river management.

Keywords: IWT, VCLT, treaty, international water law, state responsibility
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1. INTRODUCTION

The Indus Waters Treaty (IWT) signed by India and Pakistan in 1960 under the facilitation of the World Bank is a pioneering case study of the long-term transboundary water management. The three eastern rivers were divided between India (the Ravi, Beas, and Sutlej) and Pakistan (the Indus, Jhelum, and Chenab), India has a limited right to non-consumptive use of the western rivers (Asiasociety.org, 2025). Although there have been numerous military conflicts and the broader geopolitical antagonism between the two countries, the Treaty has nevertheless been in existence since more than 60 years ago.

In April 2025, after a terror attack in Pahalgam, which India claimed was a result of cross-border militant activity, New Delhi declared the IWT in abeyance, in effect suspending its implementation unilaterally (Financial Times, 2025). This is the first such suspension in the history of the Treaty, which is why its legality in the face of international law is subject to strong criticism. The relocation sheds light on a complicated crossroads between bilateral treaty provisions, customary norms of treaty law, and principles of responsibility under international law and creates urgent humanitarian and

environmental issues given the livelihoods of over three hundred million people who are dependent on Indus waters (Banerji, 2024).

The discussion is based on the Vienna Convention on the Law of Treaties (VCLT) specifically the Article 26, which codifies the principle of pacta sunt servada- that all treaties that are in force are binding and should be faithfully observed by their parties (Vienna Convention on the Law of Treaties [VCLT], 1969, art. 26). India and Pakistan are not signatories to the VCLT; however, the principle reflected in Article 26 is considered as customary international law, thus giving the obligation of treaties between India and Pakistan a quasi-binding quality. In addition, in Article 12 of the Treaty itself, the same is provided that it can be terminated or amended only with mutual consent, and nothing was explicitly stated about unilateral suspension. As a result, the key issue is whether a state can legitimately suspend such a treaty due to the concerns of national security or outside influences?

The norms of state responsibility and countermeasures, which have been codified in the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) complicate this question further. The ARSIWA framework limits legitimate counteractions to those, which are proportional, reversible, and related to the alleged breach (International Law Commission [ILC], 2001). Where one state (such as India) wants to suspend a treaty (allegedly because it is a terrorist act by another state) the connection, proportionality, and larger effects in particular, humanitarian effects become crucially important.

Jurisprudential analysis, e.g., the 1997 decision of the International Court of Justice involving the GabčikovoNagymaros Project, reveals a deeper understanding. The ICJ pointed out that unilateral suspension of a water-related treaty regime is extremely rare and heavily restricted by the principle of necessity according to the international law (International Court of Justice, 1997). River treaties have come to be understood as so-called objective or permanent regimes, which meant to endure even in case of armed conflicts or the disintegration of a political unit. The ILC Draft Articles on the Effects of Armed Conflicts on Treaties (2011) which include many of these principles, also support this principle (International Law Commission [ILC], 2011, art. 7). The fact that the IWT was suspended by India, thus, is a test not just of a bilateral agreement but of international law order itself that how law limits state action in crises, how norms of water sharing intersect with security issues, and how humanitarian and environmental obligations weigh against unilateral claims of sovereignty.

The act of abeyance of 2025 as presented in this paper is embedded into the bigger scope of legal and normative systems. It examines the legality of the unilateral suspension of India by considering the leading sources of international law: the Vienna Convention on the Law of treaties (VCLT), the Principles of State Responsibility (ARSIWA), and the international water law, including permanent river regimes and humanitarian obligations. Through the analysis of each of these areas, the paper will criticize the viability of the suspension and come up with a conclusion on the lesson on the stability of

treaties in areas prone to conflicts.

2. LITERATURE REVIEW

The Indus Waters Treaty has been the object of a long-standing school of scholarly interest in the disciplines of law, politics, and hydrology. Initial criticism tended to see the Treaty as an unusual instance of successful collaboration between two states otherwise engaged in war. Its ability to withstand three wars and numerous crises led many analysts to describe it as a water peace treaty that scaled up hydro politics to deal with wider disputes (Wolf, 1998). In international law, the IWT was frequently invoked as having been complied with in the case of technical cooperation that could transcend geopolitics (Elhance, 1999).

This tale becomes more convoluted and structurally constrained, with contentious readings, in later research. The hydropower projects of the western rivers of India have always been controversial amongst the scholars on the question of whether the hydropower projects meet the requirements of Annexure D and Annexure E of the Treaty (Abas et al., 2019). The case examples of litigation brought to neutral experts and arbitration courts, including the Baglihar (2007) and Kishenganga (2013) cases indicate that these conflicts are not peripheral or easy; they are highly legal and political (Salman, 2008). In the meantime, the mediating aspect of the World Bank is also being questioned as Pakistan feels like it is not being aggressive enough to make treaty commitments (Mustafa, 2010).

Although the political and hydrological dimensions of IWT have been explored widely by scholars, the legal discourse regarding unilateral suspension or termination is limited. The prevailing literature views the Treaty as long-lasting and presupposes its perpetual validity. Critical works tend to concentrate on power imbalances, and hydro-hegemony, but fail to tackle doctrinal issues in treaty law (Zeitoun 2008/Mirumachi, 2008). There are some analyses that doubt that India or any state that is signatory to a river treaty could suspend it unilaterally. Consequently, a significant disconnect of treaty law in doctrinal terms still exists.

The period of treaty-law debate has been followed by the growth of scholarly research on international water law, notably with the publication of the UN Watercourses Convention in 1997 and the Helsinki Rules in 1966 (International Law Association [ILA], 1966). These treaties focus on the fair use of water, the non-infliction of severe damage, and the humanitarian nature of water-sharing obligations (McCaffrey, 2019). In its 2011 Draft Articles on the Effects of Armed Conflicts on Treaties, the International Law Commission further emphasized the notion that water treaties are part of a special category of so-called permanent regimes that persist even in times of hostility. Nonetheless, these materials are rarely included in legal discussions about IWT suspension, even though the materials relate to the problem.

The lacuna in the law is particularly apparent in light of recent events. In 2025, the Ministry of External Affairs of India stated that the Indo-Pakistan Water Treaty (IWT) would be suspended due to security reasons following

the Pahalgam attack. Pakistan denounced the action as unlawful, sought a fair investigation, and appealed to the dispute-settlements mechanisms of the treaty. The Permanent Court of Arbitration soon followed with a supplemental award, which states that it could proceed to hear the claims of Pakistan, despite India attempting to stay the case and demonstrating that unilateral abeyance cannot prevent dispute resolution. However, this new legal precedent has not been adequately studied by the scholars yet, and thus there is need to conduct further studies on the same.

The law of treaties, state responsibility, and the international water law have never been incorporated into any comprehensive doctrinal appraisal to evaluate the unilateral suspension of the IWT by India. Although the political and hydro-political effects are well-known, the legality of unilateral suspension under binding international norms has been an under-theorized issue. This article addresses this gap by offering a doctrinally grounded evaluation of the abeyance announcement through the lenses of treaty law, countermeasures, and water law regimes.

3. RESEARCH METHODOLOGY

The research methodology is doctrinal research methodology which mainly relies on the analysis of primary and secondary sources of international law. The main sources are the Vienna Convention on the Law of Treaties, the Indus Waters Treaty, the Articles on Responsibility of States to Internationally Wrongful Acts and the jurisprudent cases like the Gabckikovo-Nagy maros Project Case. Secondary sources consist of articles in the academic literature, reports and commentaries on the international water law and treaty law. The study is analytical, critical, considering whether unilateral suspension of the Indus Waters Treaty by India can be justified on the basis of the established principles of the international law. This doctrinal analysis is supplemented by a case-study approach that takes into account the 2025 abeyance to test the interaction between the treaty obligations, the state responsibility, and the humanitarian consideration.

4. THE TREATY FRAMEWORK OF THE INDUS WATERS TREATY

The Indus Waters Treaty, of 1960 is one distinctive in its method of allocation. Whilst most river treaties emphasize joint usage, IWT adheres to an allocation approach. Article II assigns the three eastern rivers, namely Ravi, Beas, and Sutlej to India and the three western rivers, namely the Indus, Jhelum, and Chenab, are assigned to Pakistan. India has limited rights to utilize the western rivers as a domestic, non-consumptive and hydroelectric power source (India, Pakistan and International Bank for Reconstruction and Development, 1960 art. II)). This separation was because Pakistan still needed to receive most of the Indus waters, which were especially important to irrigate crops. Such an asymmetric yet stable compromise, between the upstream position of India and the downstream reliance of Pakistan as a riparian state, was entrenched in the Treaty. The rigid allocation model has since been praised as being clear but criticized as locking the basin into a partition framework which prevents

integrated basin-wide management (Salman, 2008).

4.1 Dispute Resolution Mechanisms

Article IX of the IWT contains a list of recovery-dispute mechanisms listed in order of approaching the sphere of greater formality. The bilateral settlement of the technical differences is initially carred out through the Permanent Indus Commission (PIC) which is made up of India, Pakistan and the International Bank of Reconstruction and Development (1960, art. IX). In the event that no solution has been found, then the dispute may be submitted to a Neutral Expert chosen by the World Bank to resolve the technical issues (Article IX(2)(a)) or to a Court of Arbitration to resolve the wider legal or interpretative issues (Article IX(2)(b)). This design demonstrates that the Treaty favors legal and technical mechanisms as opposed to political bargaining. The system has been invoked in a number of high profile cases, such as the Baglihar Dam dispute (20052007), where a Neutral Expert ruled in favour of India on drawdown flushing (Robins, 2013), and the Kishenganga Arbitration (20102013), where the PCA found that India had the right to divert waters with restrictions on minimum flows (Raman, 2014). These precedents demonstrate the strength and effectiveness of the Treaty as an autonomous legal system.

4.2 Permanent Indus Commission to Neutral Expert to Court of Arbitration

The main component of the treaty is the Permanent Indus Commission (PIC) that is consist of one commissioner each of the two countries and an international bank that will assist in the reconstruction and development of the two countries (India, Pakistan & International Bank for Reconstruction and Development, 1960, art. VIII). It convenes at least once annually and provides a permanent platform through which to share information technically scrutinize matters and resolve disputes at an early stage. In case disputes cannot be solved in the PIC, it may be transferred to a Neutral Expert who may answer technical interpretation questions. In the case of legal conflicts or other larger disagreements, a seven-member Court of Arbitration may be formed under Annexure G, two members nominated by each party and three by third-party nominating authorities. This multi-level system provides flexibility and legal certainty (World Bank, 1960).

4.3 Termination and Modification by Mutual Consent

Article 12 of IWT declares that the treaty must remain in force unless terminated by mutual agreement of both parties (India, Pakistan & International Bank for Reconstruction and Development, 1960, art. XII). This is the essence of the current dispute as it outlaws unilateral termination or suspension. Another clear provision of the treaty is that such continuity exists unless otherwise agreed upon by the two parties, rather than admitted only to the limited exceptions to suspension, which are found in the Vienna Convention on the Law of Treaties. This was a deliberate inclusion by the

parties who noted that they are highly dependent on shared waters and a need to ensure the treaty is not exposed to changing political relations. Consequently, the unilateral suspension would be a direct violation of Article XII.

4.4 The World Bank's Role as Guarantor and Facilitator

The World Bank played a decisive role in mediating and financing the IWT. Beyond its role as signatory to the Treaty's Annexures, the Bank continues to act as a facilitator and appoint authority for Neutral Experts and members of the Court of Arbitration. Although it does not adjudicate on disputes, its presence makes sure that the dispute resolution process is impartially overshadowed (World Bank, 2018). Pakistan has used the Bank on several occasions to initiate arbitration, most recently as part of the Kishenganga and Ratle disputes. India has however, challenged the neutrality of the Bank resulting in deadlocks in the procedure at times. However, the fact that the Bank has continued to play a role enhances the institutional soundness of the Treaty.

5. LAW OF TREATIES PERSPECTIVE

5.1 The Principle of Pacta Sunt Servanda under VCLT

The principle of pacta sunt servada, established in Article 26 of the Vienna Convention on the Law of Treaties (VCLT) is one of the pillars of the international law of treaties. It confirms that all treaties that are in force are binding on the parties and must be performed in good faith (United Nations, 1969, art. 26). This principle is believed to reflect a peremptory norm of international law, which reflects not only treaties law, but also general international legal obligation (Scobbie, 2002). The stability of treaty is based on performance, which has been repeatedly emphasized by the ICJ even in the cases of Nuclear Tests (ICJ, 1974).

When applied to the Indus Waters Treaty, the principle will disallow any one of the parties to invoke political or security considerations to justify suspension, unless the reasons are recognized under the law of treaties. The fact that the IWT does not include a clause that would allow unilateral suspension is contradictory to this principle since India has tried to place the Treaty in abeyance, but there is no such clause in the Treaty. By bypassing the mutual-consent clause in Article XII, India will be at risk of violating, not only the specific text of the treaty itself but also the larger doctrine of pacta sunt servada, which assures the reliability of international agreements (Zhifeng, 2022). This principle of law, therefore, forms the point on which the action of India will have to be evaluated.

5.2 Grounds for Suspension or Termination under VCLT

The VCLT offers a fastidious number of grounds for suspension or termination of treaties, which are enshrined in Articles 60-62. These are indicative of a stability of treaty obligation and the low acknowledgment of extraordinary circumstances that may justifiably warrant non-performance (United Nations, 1969, arts. 60–62).

5.3 Material Breach of Treaty

The VCLT article 60 acknowledges material breach as a basis for termination or suspension of treaties. Essential to the achievement of the object and purpose of the treaty, a material breach is defined as a breach of the treaty which was not authorized by the Convention (Giegerich, 2018). The doctrine represents a balance and as such, it ensures that serious violations are not left unanswered, it also helps in ensuring that treaty stability is maintained at high level. In the Gabčikovo Nagymaros Project (1997), the ICJ indicated that not every breach results in a suspension, but only the violation that undermines the main foundation of the treaty can be considered (International Court of Justice [ICJ], 1997).

Using this to the case of Indus Waters Treaty, India has not complained that Pakistan has failed to abide by its water-sharing commitments under the Treaty. Its assertions are about the presence of Pakistan in cross-border militancy, which is out of the scope of the treaty. As Article 60 provides that there must be a direct nexus between the alleged breach and the treaty regime itself, India cannot legally invoke material breach as the basis to justify suspension. This would not only misinterpret the provision but would also undermine the stability of the treaties.

5.4 Fundamental Change of Circumstances

Rebus Sic Stantibus (Fundamental Change of Circumstances) is a customary principle of International Law, which may be inferred from Article 62 of the treaty. It allows termination or suspension where there has been a fundamental change of circumstances that (1) was unforeseen, (2) constituted an essential basis of the parties' consent, and (3) radically transforms treaty obligations (Khan 1973). The ICJ has repeatedly emphasized the restrictive scope of this doctrine, notably in the Fisheries Jurisdiction cases (International Court of Justice [ICJ], 1973), where it declined to accept Iceland's reliance on changed economic and environmental conditions as sufficient grounds.

India may argue that the rise in terrorism and the altered security scenario since 1960 is a paradigm shift. However, Article 62(2) specifically excludes situations in which a treaty establishes a boundary regime. Water-sharing arrangements are permanent and because they are humanitarian, they are classified as permanent regimes, which are difficult to modify with changes in politics. Moreover, the constant warfare and enmity at the time of signing the IWT in 1960 was not easily foreseeable. Thus, the conditions of the application of Article 62 are not satisfied, and the Indian claim is not legally valid.

5.5 Customary Status of These Norms

Even though neither India nor Pakistan is a party to the VCLT, the material breach and fundamental change of circumstances provisions are widely considered as representative of customary international law. The basic rules contained in the VCLT, in particular pacta sunt servanda, material breach and rebus sic stantibus, have achieved customary status, meaning that they are binding on all states regardless of formal ratification (Solape, 2024). The

International Law Commission has likewise confirmed their customary character through state practice and opinio juris (Elias, 1995).

Such traditional acknowledgement supports the restraints to unilateral suspension. States may not avoid the obligations under the pretext of not being VCLT parties because the underlying rules are based on general international law. India is, thus, subjected to the traditional norms that limit termination or suspension to strictly defined reasons. In trying to suspend the IWT without a breach of a treaty, or a fundamental change, India is violating the customary international law. This highlights the fact that the legal authority of the IWT is not solely based on its text but the broader normative framework that protects the stability of the treaty.

5.6 The Gabčíkovo–Nagymaros Project Case

The decision of the ICJ in Gabckiikovo-Nagymaros Project has been cited as the most authoritative in the area of termination and suspension of treaties under the international law. Hungary had requested to cancel its contract with Slovakia to build a dam project grounding its argument on environmental, basic change of circumstances, inability to perform and necessity. These arguments were dismissed by the Court, which believed that none of the reasons as stipulated in the VCLT could be used to support the action of Hungary in terminating unilaterally. (International Court of Justice [ICJ], 1997).

This case is instructive in the IWT dispute, first it demonstrates that the ICJ enforces a rigid rule on Articles 60 and 62, the court ruled that only direct breaches of a treaty, or radical and unforeseen changes may qualify. Further, in such occurrences the burden of proving rests heavily on the shoulders of the party that suspended. Second, the Court emphasized that long-term treaties governing shared resources should be persisting. Cooperation structures and environmental protection should not be discarded casually. Third, the Court reinstated the notion of proportionality, it also demanded negotiated solutions as conflicts were on the rise.

The act of suspension of the IWT in India is strikingly similar to the unsuccessful arguments of Hungary in Gabcikovo-Nagymaros. Similar to Hungary, India is also relying on the non-treaty related factors (terrorism, security conditions) to survive. Like in that case, international law does not rejoice with unilateral intervention with collaborative regimes that govern common natural resources.

6. STATE RESPONSIBILITY AND COUNTERMEASURES

The Articles on Responsibility of States for Internationally Wrongful Acts (International Law Commission [ILC], 2001) offer the framework of countermeasures. Articles 49-54 stipulate the circumstances under which a state can take action; that is, a response to a wrongdoing by another state. These provisions affirm that counter action should be temporary, reversible and should be intended to induce compliance with the international obligations, but not to cause punishment (International Law Commission [ILC], 2001, arts. 49–54). These limits have been strengthened by the ICJ in

case Gabčikovo Nagymaros Project (1997) with the ICJ highlighting that the countermeasures should be commensurate and geared towards ensuring performance of obligations.

Article 50 forbids actions which weaken the obligations under the humanitarian law, peremptory norms (jus cogens), or environmentally protective obligations. Article 54 underlines the collective character of the responsibility, saying that when a state commits a grave violation of duties towards the Erga omnes, all states can demand responsibility, but within the limits of the law.

The case of the Indus Waters Treaty (IWT) of India wherein India suspended the treaty following alleged involvement of Pakistan in terrorism does not come within the sphere of ARSIWA. The countermeasures should be linked to the breach in question, as the IWT regulates water-sharing and not counter-terrorism, suspension cannot be justified as a lawful countermeasure. Instead, it contravenes the very stability of treaties as well as the law of state responsibility.

6.1 Proportionality, Reversibility, and Relation to the Breach

The principle of proportionality involves that countermeasures must not be disproportionate to the level of the violation (ARSIWA, Art. 51). Further on, Article 49 provides that countermeasures should be reversible that is upon the cessation of the wrongful act the countermeasures must be reinstated. Any disturbance of water flows may lead to irreparable humanitarian and ecological damage, which is contrary to this requirement. Lastly, Article 49(1) stipulates that there must be a nexus between the breach and the countermeasure. Terrorism charges are not covered by the terms of the IWT, i.e., the response of India does not have the necessary legal relationship.

6.2 Application of "Terrorism" Allegations

India has tried to justify itself on the grounds of its suspension of its treaty by linking Pakistan to a cross-border terrorism with particular reference to the Pahalgam attack. But ARSIWA says an act of countermeasure can be taken only in the case of a violation of an international duty by a state. Pakistani country may have been supportive of the terrorists but this is not a violation of the International Water Law Treaty (IWT) which is concerned with water distributions. India is compromising between two rules of law by suspending the treaty: the counter-terrorism obligations of the international law and the water-sharing obligations of the treaty. This misunderstanding defrauds the concept of the responsibility of the state. Thus, the terrorism accusations in India simply cannot be utilized to a legal justification of a unilateral suspension of its water commitments.

6.3 Humanitarian Impact of Suspending Water-Sharing Duties

The humanitarian impacts of suspending the IWT are far reaching, the right to life, health, and food security is directly connected with water access because international human rights documents like the International Covenant on Economic, Social and Cultural Rights ensure these rights. The UN Human

Rights Committee has also insisted that states should not employ essential resources as instruments of coercion (UN Human Rights Committee, 2019). Pakistan has been relying on the Indus basin to irrigate, get food, and drink water and thus anything India does is threatening the livelihoods of millions. Since ARSIWA prohibits any countermeasures that undermine basic human rights (Art. 50), suspending the IWT is an infringement of this protection.

6.4 Countermeasures versus Erga Omnes Obligations

The ban on impairment of obligations owed Erga omnes is another obstacle to the suspension of India. Transboundary water regimes are more classified under the category of obligations of collective concern as reflected in the UN Watercourses Convention (1997) and the jurisprudence of the ICJ on the protection of the environment as a community interest (Pulp Mills on the River Uruguay, 2010). All states have a right to require that such obligations be met under ARSIWA Article 54. Thus, the fact that the IWT is unilaterally suspended does not only impact Pakistan but also the wider obligation to protect common resources and populations reliant upon them. In that regard, the act of India is a breach of the duties that one owes to the entire international community.

While the VCLT itself does not codify necessity, Article 25 of the International Law Commission's Articles on State Responsibility (ARSIWA) permits it as a defense where a grave and imminent peril threatens the essential interest of the state, and suspension is the only means of safeguarding it. However, necessity cannot justify impairing essential interests of the other state or obligations arising under peremptory norms. Given Pakistan's humanitarian dependence on Indus waters, India's suspension cannot meet this proportionality test. Likewise, countermeasures under ARSIWA require a nexus to the breach being remedied, which is absent here.

The decision of India to suspend the treaty on its own is not highly supported by the treaty law. The IWT provides in Article 12 that termination is only possible by mutual agreement, which makes it difficult to terminate the treaty on unilateral basis. Exceptions The standard exceptions of material breach, fundamental change of circumstances, or necessity are not applicable under the general law of treaties. Therefore, the unilateral suspension by India is not only against terms in the treaty but also the larger provisions of treaty law.

7. INTERNATIONAL WATER LAW AND CONTINUITY DOCTRINES

7.1 Doctrine of Equitable and Reasonable Utilisation

The UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention) of 1997 establishes two cardinal principles of international water law, equitable and reasonable utilisation (Article 5), and obligation not to cause significant harm (Article 7) (United Nations, 1997). These twin norms establish a balance between a state's sovereign right to use transboundary waters and its duty to respect the rights of other riparians. In Gabcmkovo Nagymaros Project (1997),

the International Court of Justice (ICJ) affirmed that equitable utilisation should be understood in the context of sustainable development and environmental protection, thus instilling fairness into the utilisation of resources.

As applied to the Indus Waters Treaty (IWT), these norms enable continuity of the obligations. Although India may suspend the Treaty, customary international law places an obligation on India to avoid causing severe damage to the water consumption in Pakistan. States cannot enforce transboundary waters as political tools since water-sharing involves critical human rights and environmental sustainability (UNGA, 1997). As such, the attempt of India to suspend the IWT would be against the general principle of international water law, that of fairness and harm-prevention over the pursuit of unilateral benefit.

7.2 Doctrine of Objective Regimes and Permanent Regimes for Rivers

The water-sharing treaties are largely categorized as objective regimes, and they are binding not just as a reciprocal agreement but as a legal framework which is permanent. In the case of Upper Savoy case (1932) in its Permanent Court of International Justice (PCIJ) the regimes created by treaties can be enforced against the successor states and third parties (Permanent Court of International Justice [PCIJ], 1932).

The IWT, and other river treaties, are under this doctrine as a result of their humanitarian and environmental nature. These regimes are irrevocable once in place, as the role of these regimes is to stabilize relationships over common natural resources (Rathod, 2023). By stating the Treaty in abeyance, India flouts the principle of objective regime by not only flaunting its duty towards Pakistan but also the collective interest of the global community in maintaining a predictable rule over transboundary waters.

7.3 Draft Articles on the Effects of Armed Conflicts on Treaties (2011)

According to International Law Commission in its Draft Articles on the Effects of Armed Conflicts on Treaties, there are certain types of treaties which remain in effect even during war like situations. Article 7 of the Annex talks about treaties on the administration of international water courses and associated environmental obligations as treaties which do not cease to exist when hostilities are engaged in (ILC, 2011). It is typical of a shared view of the core purpose of water-sharing treaties is not merely political warfare.

Despite the fact that India and Pakistan are not at war, the Draft Articles indicate that treaties such as the IWT are resilient in nature. These commitments are not ended when there is conflict and cannot be canceled solely on the basis of the peacetime terrorism claims. The humanitarian and environmental security of water treaties also enforce their security against the withdrawal of water treaties unilaterally. The suspension of India, is, therefore, not only contrary to the law of the treaty, but also the still more recognisable principles of the International Law Commission which are watercourse regimes here to stay.

7.4 Environmental and Humanitarian Character of Water Treaties

It is becoming more accepted that water-sharing agreements play both humanitarian and environmental roles and thus are subject to the Erga omnes obligations. The Pulp Mills on the River Uruguay (2010) by the ICJ highlighted the responsibility to preserve international watercourses since it is a common environmental interest (ICJ, 2010).

This duality is portrayed in the IWT, it started off as an allocative treaty; today it has become a savior of agriculture, drinking, and energy security in Pakistan. Anyway, its suspension would jeopardize fundamental rights that are guaranteed by such treaties as the International Covenant on Economic, Social and Cultural Rights. The application of the principles of the environmental law, i.e., intergenerational equity and precautionary approach should be used to maintain such treaties. Therefore, the IWT is not to be seen as simply a bilateral bargain but rather as an environmental-humanitarian regime. The suspension of India is a normative violation of this change, revealing its action as antithesis not only to the law of treaties, but also to larger normative frameworks of human rights and environmental protection.

8. APPLICATION TO INDIA'S 2025 ABEYANCE

On 23 April 2025, the Ministry of External Affairs India declared that it would straight away suspend the Indus Waters Treaty of 1960. Suspension will be made until Pakistan ceases its assistance in cross-border terrorism. It was issued after a security cabinet meeting and was a composite of a national security justification on the one hand, and an indictment of Pakistan on the other, that Pakistan violated the goodwill on which the Treaty is based (Ministry of External Affairs, Government of India, 2025). The next day this decision was officially delivered to Pakistan, strengthening the connection between the issues of security and the water-sharing governance of India. During parliamentary briefings, the officials emphasized that the moves taken by Pakistan had rendered the spirit of cooperation, as embodied by the Treaty, useless.

8.1 PCA's Supplemental Award on Competence (2025)

In response to these developments, on 27 June 2025 in response to an Article IX and Annexure G to the Treaty arbitration that was initiated by Pakistan, the Permanent Court of Arbitration (PCA) rendered a Supplemental Award on Competence. The PCA said that, regardless of the Court's competence to proceed with adjudication of the dispute, the Indian declaration of unilateral 'abeyance' does not have any effect on the competence of the Court to continue adjudicating the dispute and the Court affirmed its competence as established in its prior 2023 Award on Competence. The Tribunal underlined that the continuation of arbitral proceedings cannot be stopped by unilateral claims, which are made after the fact (Permanent Court of Arbitration, 2025). It also clarified that this holding does extend to the competency of the Neutral Expert and reinforces the idea that procedural processes in the Treaty must go on unhindered, even in the face of a security-motivated suspension of India.

The IWT acts as a key towards continuation of the treaty as article twelve of the IWT says that the treaty shall continue in force until it is terminated by the mutual consent of both parties. In this provision, it is apparent that the unilateral suspension or abeyance is not covered. This was supported by the PCA that stressed that any measure to derail the dispute resolution machinery under the pretext of the so-called abeyance is fundamentally against the systemic integrity of the Treaty. This interpretation is in line with the doctrine of pacta sunt servada in the Vienna Convention and that the modification or termination should follow prescribed procedures. The fact, that India has already decided to suspend the treaty, alone disregards the clear wording and intention of the treaty and violates the principle of mutual consent, which maintains the existence of the treaty (Lekkas & Tzanakopoulos, 2014).

The excuse that India gave that it suspended the Treaty as a response to the allegations by Pakistan that India was perpetrating terrorism backfires on two pivotal fronts. To begin with, in the ARSIWA approach, countermeasures that are lawful must be related to the breach of the treaty, reversible, in proportion and not undermine humanitarian obligations. Terrorism is not an area of concern to the IWT and therefore any link that can be established between the two is far flung. Second, the necessity doctrine is also not offered: and such defense will not justify destroying civilian populations or neglecting duties that are related to essential resources. Moreover, the humanitarian implications of offering Pakistan a way to sustain its agricultural activities and drinking water supply, make the suspension immensely disproportional and illegal under both the treaty-text and the principles of international responsibility.

9. PAKISTAN'S LEGAL OPTIONS

After the unilateral suspension of the Indus Waters Treaty (IWT) by India, there are a number of viable legal avenues on the side of Pakistan. First of all, it can invoke Article IX of the Treaty to proceed to seek arbitration before the Permanent Court of Arbitration (PCA), which has already determined that it has jurisdiction despite India claiming that it is suspended. Another option available to Pakistan could be to bring a case before the International Court of Justice (ICJ) and frame the actions of India as a breach of the customary international law of treaties and watercourses. Moreover, Pakistan may ask the World Bank to play the role of a facilitator in accordance with the IWT, to seek the diplomatic intervention in support of the integrity of the Treaty. Another possibility is the appeal to the principle of Erga omnes obligations- the argument that access to water is a fundamental human right, and that this implicates broader humanitarian law issues (Bhatti, Mustafa, and Waris, 2019). Even though these remedies may not compel an immediate compliance, the fact that Pakistan has adopted a strategy of using various forums such as arbitral, ICJ and UN bodies to enhance its position. By taking the dispute international, Pakistan makes India appear to have taken a step towards not only weakening the bilateral relation but the stability of

international treaty obligations as well.

The Indian move to suspend the IWT could be a slippery slope, which has serious consequences on the international law of water. The transboundary treaties such as the Danube Convention (1994) and the UN Watercourses Convention (1997) are based on continuity and predictability. In case unilateral suspensions were accepted, states that conflicted on geopolitical grounds could use the value of freshwater resources as a weapon to the detriment of the principle of equitable and reasonable use, this would also directly erode the doctrine that water treaties have a quasi-permanent character. Moreover, such unilateral actions might encourage other riparian states to ignore old agreements, creating imbalance in the delicate basins such as the Nile, Mekong, and Jordan Rivers. The stability of treaties depends on denying the practice of India and reasserting that issues should be solved through the mechanisms established by the treaties rather than through political statements unilaterally issued by India. The implications are not confined to South Asia but are also related to the global governance of common rivers, and the validity of international law itself.

10. CONCLUSION

As the analysis shows, with India, there is by no means the legal power to unilaterally suspend or cancel the Indus Waters Treaty (IWT). The text of the treaty, especially Article XII, can only be ended or changed through mutual consensus leaving no possibility of unilateral withdrawal (World Bank, 1960). The material breach (Article 60) or fundamental change of circumstances (Article 62) cannot be credibly invoked to support the position of India especially when the alleged justifications are extraneous to water-sharing obligations (Vienna Convention on the Law of Treaties, 1969). Moreover, the efforts to frame suspension as a countermeasure do not work under the Articles on State Responsibility by the International Law Commission which states that countermeasures should be proportionate, reversible, and linked to the wrongful act in question (International Law Commission, 2001). The abeyance of India is thus inconsistent with the framework of the treaty, and the settled doctrines of international law.

This only highlights the strength of the IWT as a mainstay of transboundary water governance. It has survived wars, political crises, and repetitive disputes over more than sixty years under international law, reaffirming a quasi-permanent nature of water treaties. This can be attributed to the fact that this principle is characterized by the fact that treaties that regulate common natural resources, especially rivers, cannot be easily ousted by political contingencies (ILC, 2011). Further evidence of the fact that continuity and cooperation are the key to protecting ecological and humanitarian interests across borders is provided by the UN Watercourses Convention (1997) and the jurisprudence of the ICJ in GabčikovoNagymaros (1997). The rejection of unilateralism by the IWT is an example of how stability in the international water law can contribute to peace and security in volatile regions. Therefore, the suspension effort by India is, on the one hand,

a legal failure; and, on the other hand, it shows the long-term significance of the cooperative and rules-based management of shared water resources.

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Blockchain Jurisprudence: Regulation and Taxation of Cryptocurrency in Pakistan

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Abstract

The cryptocurrencies have become a disruptive aspect of global finance that has endangered the conventional monetary frameworks and regimes. The debate is of concern to regulators in Pakistan as they attempt to strike a balance between innovation and financial stability, consumer protection, and global compliance. Specific focus will be given in the present paper to the legal obstacles to the introduction of cryptocurrency in Pakistan, such as the lack of a specific legal framework, inefficient tax laws and regulations, and the risk of money becoming a means of criminalizing money. The study, as compared to other countries, indicates that there is the need to have clear policies, exchange licensing, investor protection, mining and trading regulations. The potentials of cryptocurrencies to diversify the financial system of Pakistan as well as to decrease dependency on the dollar in trade are also discussed in the paper. The facts demonstrate that Pakistan is not able to ban and to legalize the usage of cryptocurrencies unconditionally. Instead, a harmonized legal and policy framework has to be established to legalize them, enable economic growth and protect financial integrity.

Keywords: cryptocurrency regulation, Pakistan, financial stability, legal framework, crypto adoption, blockchain policy

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1. INTRODUCTION

Cryptocurrency has changed the global financial system. It has succeeded in challenging the traditional banking and introduced a decentralized and unregulated system that transcends borders. Cryptocurrencies such as Bitcoin and Ethereum have evolved from niche technological innovations into mainstream instruments of trade, investment, and even state-level adoption, as demonstrated by El Salvador's recognition of Bitcoin as legal tender in 2021 (Narayanan et al., 2016). The significance of cryptocurrencies is not merely its value but the feature that it allows transfer of money through a block without any centralized authority or an intermediary making the transfer of funds easy and fast. It has the capacity to reshape the global economy by offering enhanced cross-border intermediary-free transfers, reduced dependence on central banking authority and fast access (Catalini & Gans, 2016). According to the World Bank (2022), cross-border remittances constitute nearly $626 billion annually, a sector where cryptocurrencies increasingly play a pivotal role in ensuring efficiency, speed, and lower transaction costs. This international topicality highlights the

immediate necessity to consider legal, regulatory, and policy implications of cryptocurrencies.

The case of Pakistan in this regard comes into the limelight as a significant case study. In 2022, the Chainalysis ranked Pakistan as the eighth-largest crypto market in the world, indicating not only the growing interest of people in cryptocurrency but also the growing reliance of informal economy on digital assets. The sector is a challenge and an opportunity to the state with the estimated value of assets traded per year in the crypto ecosystem of Pakistan amounting to as much as 20 billion dollars. It has its own merits and demerits. The interest is particularly pronounced among youth, freelancers, and small investors, many of whom turn to digital currencies to hedge against inflation and the depreciation of the Pakistani rupee (Aslam & Khurshid, 2024). The factor behind this trend is weak conventional banking system that is hostile towards digital payments and fintech. Despite these advancements, there exists no regulatory framework for crypto in Pakistan. This has opened avenues for the misuse of cryptocurrency and potential financial crimes such as money laundering, terror financing, and digital frauds. The State Bank of Pakistan (SBP) has issued multiple circulars warning against digital currencies, notably its 2018 circular banning banks and financial institutions from engaging with crypto exchanges (SBP, 2018). Nevertheless, these restrictions have no strong basis in legislation, leaving investors and regulators in the grey area. The inability of legislators to speak up has left investors on toes. Strict compliance is emphasized by the Financial Action Task Force (FATF) that has been scrutinizing Pakistan for years to prevent money laundering and terrorist financing using virtual assets. Unregulated cryptocurrency presents major challenges for Pakistan. The lack of compliant FATF standards puts the financial system at risk and jeopardizes the position of Pakistan in world finance as it may face a risk of being shut out of the international market (Mirza).

The instant policy response is needed to resolve ambiguity, potential uncertainty, abuse possibilities, and grave consequences. The argument presented in this paper is that Pakistan has an opportunity to do more than mere bans and establish an extensive legal and regulatory framework regarding cryptocurrencies to achieve the full potential of their benefits. The paper will focus on critically discussing the global development of cryptocurrency regulation, the status of Pakistan and the threat posed by the absence of legal regulations. The proposed research seeks to identify opportunities and challenges through adoption of a qualitative method that integrates statutory and case-law review and comparative insights within other jurisdictions such as the United States, European Union, and India. I have confidence in a robust regulatory framework in Pakistan that will lower the risks of financial crimes, enhance innovation, provide employment opportunities to youngsters, and draw Pakistan into the worldwide financial framework.

2. RESEARCH METHODOLOGY

A qualitative methodology is the most appropriate to use in the research. It provides us the opportunity to study the dynamic and complex legal, regulatory, and financial environment of cryptocurrencies in Pakistan. Qualitative methods allow us to critically examine legal texts, case outcomes, and policy reports and reveal the history of norms and governance issues. Unlike quantitative methods, which emphasize statistical tendencies, qualitative methods offer descriptions of how legal norms are related to social, economic, and financial realities (Creswell and Poth, 2016). This plan is required because it will cover the major concerns on compliance, sovereignty and international financial imperatives in addressing the regulation of cryptocurrencies. It is not merely a matter of numbers, but it furnishes much, explanatory information. Numerous primary and secondary sources are used in the analysis. It is informed by the Pakistani statutes and case law which provides the domestic legal background. It further discusses international guidelines and norms, particularly the Financial Action Task Force (FATF) recommendations that provide guidelines across the globe when dealing with money laundering (AML) and the financing of terrorism (CTF) (FATF, 2021). The European Union, the United States, and India also have regulatory frameworks reviewed during the study (Houben and Snyers, 2018). Finally, the critique of the scholarly commentary, foreign agency reports and judicial decisions are critically analyzed that adds depth to the theoretical and practical aspects of the research.

3. DISCUSSION

3.1 Discerning Web3: Blockchain, Smart contracts and Cryptocurrency

Web3 Smart contracts are self-executing agreements, coded in software and executed without intermediaries, through the Web3 blockchain technology. In contrast to the traditional contracts, smart contracts operate on a decentralized registry, ensuring the transparency, immutability and automation (Szabo, 1997). They are important because they help to cut down the cost of transactions, remove the intervention of third parties, and give certainty of execution. Nonetheless, their legal status is still disputable, with most legal systems still being based on the traditional principles of contract law, i. e., offer, acceptance and consideration (Werbach and Cornell, 2017).

The enforceability of smart contracts is determined whether the legal systems of such jurisdictions recognize code as a legal medium in which a contract may be established. As an example, jurisdictions such as the U.S. and EU have started to recognize smart contracts under e-commerce and digital signature laws, albeit with the understanding to apply to blockchain-based agreements (Mik, 2017). The concerns have included issues of jurisdiction, cross-border enforcement, and the problem of immutability where erroneous coding cannot be corrected that the issue of immutability exemplifies gaps in technological innovation and legal infrastructure. Despite these constraints, smart contracts have transformative potential to financial services, supply chain management, and governance, assuming legal frameworks adapt to regulate their risks without compromising their efficiency (Tapscott &

Tapscott, 2016).

3.1.1 Difference between Fiat and Digital Currency

Fiat money is legal tender that is emitted by a government, and whose value depends on the backing of the government, not on any intrinsic or extrinsic value.--An example is the Pakistani Rupee, or the U.S. Dollar. Digital currency on the other hand, refers to any type of currency that is available in electronic form (including central bank digital currencies (CBDCs) that retain sovereign guarantees (BIS, 2020). Cryptocurrency is a type of digital asset, which is decentralized and secured by cryptography, and is not controlled by central authorities. The value of a fiat money is market based and stable, unlike fiat money.

The crypto assets are more comprehensive than the cryptocurrencies, including the tokens that are used as utility, governance or investments on blockchain platforms (Kerner, Kochanska, Teulery, and Tresso). Although fiat and digital currencies are used as stable mediums of exchange, the cryptocurrencies and crypto assets are speculative, innovative and usually unregulated financial instruments. This difference is of paramount importance to the regulatory policy because each category has different implications on the monetary stability, consumer protection, and anti-money laundering frameworks (FATF, 2021).

Cryptocurrency coins versus crypto tokens compose an important aspect of comprehending the organization of cryptocurrency markets. Coins Coins are native digital currencies which run on their own independent blockchains, such as Bitcoin (BTC) running on the Bitcoin blockchain or ETH) running on the Ethereum blockchain (Narayanan et al., 2016). Coins are majorly produced with the intention of using them in the form of a medium of exchange, a store of value and in some cases, a unit of accounting functions which have traditionally been attributed to money. In contrast, tokens are deposited on top of blockchains, via such standards as ERC20 or BEP20. They may be tokens that represent digitised assets like real estate or securities, voting rights and utilities, and so on (Mougayar, 2016). This is a difference that does count in terms of the law. In the way they are issued and utilized, regulators can perceive tokens as securities (Guseva, 2020). The coins could be considered to remain useful in the blockchain they are linked to, but the tokens gain value as they are meant to perform certain tasks.

3.1.2 Crypto: Property, Currency or a Commodity?

A controversial subject in legal and academic circles is taxonomy of cryptocurrencies, with jurisdictions taking different positions on the issue. In the US, the IRS considers cryptocurrencies as property and is thus capital-gain taxable. In the meantime, Community Futures Trading Commission (CFTC) regards the cryptocurrencies, specifically, Bitcoin, as commodities. According to this categorization, the CFTC will oversee the markets of derivatives and futures related to cryptocurrencies (Lucking & Aravind, 2019).

The bilateral treatment illustrates a disjointed regulatory environment, whereby one and the same asset is handled differently in different contexts. In

the United Kingdom, a court regards cryptocurrency as an asset. They are contented with the fact that cryptocurrencies can be possessed, transferred, and even subject to injunctions. El Salvador, in contrast, has made Bitcoin a legal tender, which it treats as a currency (Alonso et al., 2023). It demonstrates that digital currencies cannot be easily incorporated into a single category; they combine the features of a property, currency, and commodities (Houben and Snyers, 2018). Therefore, investor protection, taxation, and anti-money-laundering regulations are affected by this ambiguity. Laws should then follow suit to evolve with the increasing usage of digital assets in international finance.

3.2 Regulation of Cryptocurrency in Pakistan: Regulating the Unregulated

According to the Chainalysis Global Crypto Adoption Index (2022), Pakistan is rapidly forming the eighth-largest cryptocurrency market worldwide. This development is due to the economic nature of the problems of the country and the young and tech-savvy population. Inflation, weakening rupee, and weak access to traditional banking services have pushed individuals to resort to digital assets as a barrier to financial risk. Also, the affordability of smartphones and the growing internet access has enabled cryptocurrency transactions in semi-urban and rural areas as well (Nadeem et al., 2025). Even though the State Bank of Pakistan prohibited the ability of banks to operate with cryptocurrencies in 2018, the users still interconnect via peer-to-peer (P2P) models and decentralized exchanges (DEXs). This paradoxically establishes a situation where crypto expansion occurs in the informal setting as formal regulatory mechanisms are absent. As a result, Pakistan runs a risk of money laundering and financial instability (Ahmad et al., 2022).

3.2.1 Role of State Bank of Pakistan and Ministry of Finance

The State Bank of Pakistan (SBP) took a cautionary approach and released Circular No. 3 in April 2018. These circular encouraged banks and other financial institutions to shun crypto transactions, to reduce their usage (State Bank of Pakistan, 2018). Similarly, the Ministry of Finance had issued a warning that cryptocurrencies would enable the funding of terrorism, capital flight, and money laundering (Rana, Audi, and Ali, 2025). The two institutions are in a dilemma. Harsh penalties are meant to comply with the FATF standards, but they also suppress innovation and prevent the introduction of blockchain as a tool to achieve financial inclusion in Pakistan (Rana, 2025). It is preferable to a balanced regulatory regime that controls innovation but prevents financial crime, rather than prohibitions. Lack of explicit laws opens a loophole in the legal framework that places businesses, investors, and enforcement agencies in a vacuum and impedes the future sustainable development of the digital economy.

3.2.2 Case Studies of the USA and the UK

The regulatory systems of the USA and UK may be good examples that Pakistan can refer to. The system in the U.S. is still in its maturity and

cryptocurrencies are currently regulated in a fragmented manner. Most tokens are regulated by the U.S. Securities and Exchange Commission that imposes strict requirements on securities. The Community Futures Trading Commission (CFTC) treats cryptocurrencies such as Bitcoin as commodities. Cryptos are taxed as property by IRS, which creates the multi-layered regime (Houben and Snyers, 2020). This variety of approach proves the difficulty in regulating crypto but indicates the need to harmonize the legal categories with the economic facts. The model that guides the United Kingdom is based on principles which focuses on consumer protection and anti-money laundering policies. The Financial Conduct Authority (FCA) regulates crypto exchanges in accordance with the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 (that impose the stringent customer due diligence) (Arner, Barberis, and Buckley, 2015). Although the cryptocurrency is not a legal tender in the UK, the country treats the crypto assets as property and it provides clear guidelines on taxation and conflict resolution. These examples suggest that Pakistan can go on hybrid strategy: combine the sectoral model of the U.S. with the focus on the consumer protection and money laundering compliance of the UK.

3.2.3 Maintenance of decentralized nature of cryptocurrency while safeguarding it from misuse

One of the key problems that the policymakers in Pakistan must tackle is that it is necessary to strike a balance between the decentralization of cryptocurrency, on the one hand, and the protection against misuse, on the other hand. The first appeal of digital currencies is their decentralization, which provides freedom and avoids the use of the banking system. But the same aspect can be also a cause of concern regarding the anonymity, money laundering and terrorist financing, all these are the same issues raised by the Financial Action Task Force (De Koker, 2020). This should be effectively controlled to create transparency without compromising on the innovation of the blockchain technology. Some countries, such as Switzerland, have shown that it is possible to have a decentralization and introduce safeguards by licensing exchanges, implementing know-your-customer (KYC) protocols, as well as requiring transactions to be monitored (Zohar, 2015). In the example of Pakistan, a regulatory sandbox of the State Bank of Pakistan may enable the authorities to experiment. The sandbox would also enable authorities to monitor risks, and at the same time stimulate the creation of fintech. It would be a hybrid solution, which would safeguard against abuse but would not damage the democratic ethos of cryptocurrencies.

3.2.4 Legal recognition of crypto-related contracts and transactions

The legal recognition of crypto contracts is the most important step in the process of legalizing the use of digital assets in the Pakistani legal and economic system. In the current times, the law of Pakistan has adopted the Contracts Act of 1872, which is only used to determine the validity of contracts in case they include an offer, acceptance, consideration, and a legal purpose. Cryptocurrency contracts including crypto contracts can meet these

requirements, but these are still uncertainties within the legal framework since no specific law recognizes them. As an illustration, the crypto transactions are never formally announced as legal tender, thus, it is not clear whether the courts will enforce them. Singapore and the UK have begun to recognize the transactions of digital assets, making them enforceable by the existing laws. Pakistan may emulate this by enforcing crypto-related agreements as contracts provided they pass the minimum contractual requirements. This would create much confidence among the investors and put business in the emergent digital asset market on a clear path.

3.2.5 P2P, smart contracts and enforceability under Pakistani legal system

Peer-to-peer (P2P) trading and smart contracts pose difficult legal issues in Pakistan. Though P2P crypto exchanges are widespread, they are regulated in a vacuum, and traders are exposed to fraud, with claims hard to enforce. Smart contracts, which are self-executing contracts that are coded on the blockchain, blur legal and traditional notions of interpretation and enforcement. The Pakistani courts are based on the Contract Act of 1872 and the Qanoon-e-Shahadat Order of 1984, which lack a precedent on digital contracts, which makes the situation unclear. However, comparative analyses indicate that accepting blockchain records as admissible evidence and general contract law to smart contracts may offer a way to enforce contracts (Werbach and Cornell, 2017).

3.3 Taxation of Cryptocurrency in Pakistan

The taxation of cryptocurrency has emerged as one of the most significant legal questions globally, and Pakistan cannot remain outside this debate. Fundamentally, cryptocurrency represents value and is capable of generating economic benefit, which makes it a potential subject of taxation under the general principles of fiscal law. The Income Tax Ordinance, 2001 in Pakistan gives that any income, whether those incomes are from any source, unless specifically exempted, shall be subject to taxation. Based on this, the tax net may cover cryptocurrency income, be it through trading, mining, or staking. In the world, it has already been proven that jurisdictions like the United States and the United Kingdom can indeed tax digital assets. Thus, even when it is a decentralized system, and is not supported by a sovereign, crypto qualifies as the basic definition of taxable property, so long as it generates a measurable economic benefit (Yermack, 2017).

3.3.1 Classification of crypto for taxation purposes: Income, asset or capital gains?

One of the main issues of taxing cryptocurrency in Pakistan is the classification of the cryptocurrency. Varied approaches have been taken in different jurisdictions. The U.S. Internal Revenue Service (IRS) considers crypto as property, thus making transactions taxable by capital gains tax. Likewise, the HMRC of the UK has made it clear that crypto-assets are not currency or money but can be regarded as assets in terms of taxation. Pakistan In Pakistan there is uncertainty when it comes to classification, as there is no

clear legal recognition. Nonetheless, with the application of the general principles of taxation, crypto can become subject to three possible heads:

a. Income: The business income that can be taxed under the Income Tax Ordinance is the income of the business in the form of the profits of the business.

b. Asset: Cryptocurrency being treated as a store of value is subject to taxation as a wealth or asset tax regime.

c. Capital Gains: The sale or disposal of crypto at a profit would logically fall within the capital gains tax as would shares or securities (Nadeem, Liu, Pitafi, Younis, and Xu, 2021).

The taxation system in Pakistan needs to be based on a hybrid model that acknowledges the various classifications, based on the nature of the transaction and to avoid tax evasion as well as to align with the international best practices (Bhullar, Joshi, Sharma, Phan, & Nguyen, 2025).

3.3.2 Role of SECP and FBR: Crypto trading and mining

The Federal Board of Revenue (FBR) and the Securities and Exchange Commission of Pakistan (SECP) play crucial roles in regulating the tax of cryptos. The SECP, which is already a regulator of capital markets, can offer frameworks of regulating the crypto exchanges and the Initial Coin Offering (ICO), to ensure compliance and investor protection (United Nations ESCAP, 2021). Meanwhile, the FBR collects taxes on trading, mining and staking revenue. Another factor that makes mining a particularly complex issue is the fact that mining involves expenditure on hardware and electricity, and the coins that are mined are taxed as soon as they are minted. This can be achieved by setting up rules that adhere to the international requirements so that loopholes that could promote tax evasion are done away with. It is important to organize a transparent tax system with SECP. This framework must consider crypto as a taxable undertaking but at the same time promote innovation within the rapidly expanding digital economy of Pakistan.

Mining of cryptocurrency can generate profits, but it places a heavy burden on an already scarce power supply in Pakistan. The mining is a computationally intensive process which leads to excessive electricity consumption and exacerbates the long-standing energy deficit experienced in the country (Javaria & Masood, 2025). Large-scale mining may redirect limited electricity resources to private gains at the expense of other important public sectors, and because of frequent load-shedding and reliance on imported fuel, large-scale mining can effectively expropriate public resources. These are the issues that lead us to the thought that whether the price is greater than the price. Mining is mostly informal and thus does not generate income for the state. Moreover, the production of electricity is premised on the use of fossil fuel, thereby contributing to carbon emissions (Abdurakhmonova, 2024). Thus, crypto mining can be an attractive source of short-term returns, but when it is powered by renewable sources and controlled, it might instead turn into a societal liability.

3.3.3 Case Studies: India and the USA

The history of India and the United States reveals two opposite methods of taxation of cryptocurrencies. India has proposed a tax regime: 30 percent tax on crypto gains, 1 percent TDS on transactions. This is achieved to reduce speculation and inject more money into the government (Biswas, 2023). As a result, a lot of active trading on the formal exchanges has reduced and many traders are shifting to the peer-to-peer (P2P) platforms (Sardana & Shukla, 2025). By contrast, United States taxes cryptocurrencies as property. The treatment of crypto as a capital gain subject to taxation is treated similarly as other assets such as stocks. This will have the effect of encouraging long-term holding but asking the users to declare their dealings. These instances confirm the fact that Pakistan must strike a balance between creativity and money making. The over-taxation may drive the market to the underground thus there is a need to regulate it.

3.4 FATF's Obligations and International Pressure

Cryptocurrencies have become a big problem in the world, as they are used to fund terror groups and money laundering. Financial Action Task Force (FATF) has warned that virtual assets are equally attractive to terrorist groups and criminal networks over their anonymity and cross-border capabilities. Pakistan already became a grey listed country of the FATF; thus, it is also under closer inspection. Unless cryptocurrency transactions are adequately regulated, there is a risk that the illicit actors may exploit the loopholes in the regulation and arouse the financial suspicion of the country in the international arena (Ahmed, 2021). Finance financing of terror is an old challenge in financial system in Pakistan. The absence of regulations of crypto transactions may subject the country to new international sanctions and curbs to cross-border money flows. The mitigation of crypto-based terror financing risks is, thus, important both to the economy and to the security of nations and the status of Pakistan in the international arena.

3.4.1 FATF's Guidelines on Virtual Assets

In 2019, the Financial Action Task Force (FATF) issued formal guidance on virtual assets (VAs) and virtual asset service providers (VASPs). It called on the member states to extend the Anti-Money laundering (AML) and Counter-Terrorist Financing (CTF) regulations to encompass these entities. The recommendation emphasized the Travel Rule. This rule mandates VASPs to collect and disclose information regarding the origin and beneficiaries of crypto transacting that surpass some threshold, a fact that also applies to conventional banking (Houben and Snyers, 2020). Further, FATF recommended governments to license and supervise Virtual Asset Service Providers (VASPs), enforce good customer due diligence, and report suspicious activity. The United States and the EU states have heeded these recommendations with laws being put into place. Consequently, this requires exchanges to comply with KYC and anti-money-laundering (AML) regulations (Skinner, 2023). It is particularly important that Pakistani compliance is 100 percent. Noncompliance with the FATF regulations might

undermine its recent off-grey listing efforts and foreign investments. Compliance with FATF will demonstrate the commitment of Pakistan to combating financial crime and will open its digital economy to international trade.

3.4.2 Legal Compliance and Implications of Non-Regulation

There is no apparent regulatory framework of cryptocurrency in Pakistan, which is extremely risky. In legal terms, non-adherence to the FATF directives may weaken the reputation of the country, limit cross-border banking, and undermine investors. It can also encourage global financial authorities to perform more vigilant tracking, complicating cross-border trade and remittances (Ali, Aftab, Aslam, and Ferreira, 2024). The active regulation, which is based on the FATF requirements, may provide the space for financial innovations and may also prevent the flow of illegal money. Nations that have neglected to act on FATF recommendations, such as some of the African states have found it difficult to access international capital markets. Pakistan faces high stakes. Failure to regulate crypto assets as per the FATF rules will likely wipe out the gains that it has achieved in enhancing financial regulation. Thus, the harmonization of domestic legislation with the international one is essential to ensure the preservation of economic stability and maintain the financial reputation of Pakistan on the international arena.

3.5 Use of Cryptocurrency by the State Government

3.5.1 International Trade and Reliance on Digital Assets

Pakistan is looking at blockchain-based options to enhance the speed and cost of international remittances, which is a key income earner estimated to have introduced approximately USD 27-31 billion in 2022. This is being spearheaded by the Pakistan Crypto Council (PCC), which was formed in 2025 with the aim of reducing the cost of remittances and accelerating transactions using blockchain applications. Pakistan has very slow and costly traditional remittances, and this innovation will help improve financial inclusion, ease cross-border payment, and boost the economy that is highly dependent on remittances.

3.5.2 De-dollarizing Trade

The use of cryptocurrencies and blockchain technology may also be used as a tool by Pakistan to help reduce the use of the U.S. dollar as a currency in international trade. Although still in its infancy, the strategic impetus of the state institutions suggests that there is a desire to seek such options. Notably, in the middle of 2025, Pakistan announced its national Strategic Bitcoin Reserve, a non-speculative, non-tradable, sovereign-owned digital asset reserve, which is a long-term commitment to decentralized finance (Arab News, 2025). The migration is an indication of a globalized trend whereby economies are exploring the use of digital assets as alternative settlement tools. To Pakistan, the mechanisms would help to ensure that in the long run, reliance on the dollar would be reduced and that the economy would be cushioned against outside shocks, provided the international community adopts the strategy and the country maintains high level of financial integrity.

Custodianship of crypto assets in the sovereign area is novel and hazardous. There are very few states that possess crypto reserves, and Pakistan is no exception; its Strategic Bitcoin reserve. The funds of this savings account are financed through the seizure of U.S. Treasury BTC and by controlling a national Bitcoin wallet. There is more than 460,000 BTC in the possession of governments, or approximately 2.3 percent of the total supply (ChainlQ, 2025). Despite the fact that these assets present some sort of speculative diversification and a symbolic association with the digital economies, they also involve the presence of strong governance, effective custody services, and active risk management. The greatest challenge facing Pakistan is to use these resources in a smart way. A balance between innovation and stability of the finances should be created by good structures.

3.6 Legal and Policy Reforms: Toward a Transparent Crypto Regime

3.6.1 Dedicated cryptocurrency law and amendments to the existing financial laws

Cryptocurrency is not specially legalized in Pakistan. This contradiction forces the regulatory authorities such as the State Bank of Pakistan (SBP), the Securities and Exchange Commission of Pakistan (SECP) to adopt the old financial laws. A complete law on cryptocurrency would give a clear understanding of classification, the recognition of crypto- assets and the responsibility of users and intermediaries (Ali, 2022). Such changes to the current legislation as the Payment Systems and Electronic Fund Transfers Act 2007 and the Anti-Money Laundering Act 2010 would be needed to make the transactions involving digital assets covered by the legislation. Without these reforms, it is possible that Pakistan will be left behind to the global standards of FATF that focuses on regulation of virtual assets and individuals offering its services. Therefore, there is need to develop a clear statute based on the optimal international practices to have the legal certainty and increase investor confidence.

3.6.2 Licensing of Exchanges

Reforming crypto exchanges to licensed is a reform that is required and will increase transparency, accountability and regulation. Licensing has also been introduced in countries like Japan and Singapore to ensure that the exchanges meet the capital adequacy standards, cybersecurity standards and anti-money laundering standards. In the case of Pakistan, exchanges licensing to be overseen by SECP would protect against fraud and illicit trading and would instill confidence in the investors. It would also enable regulators to uphold compliance with FATF recommendations by ensuring that there is proper due diligence, verification of customer and reporting standards. This type of licensing can at once promote innovation and guard the integrity of the financial system.

3.6.3 Investor Protection

Protecting investors is one of the key concerns of the validity of a crypto regime. Retail investors fall prey to financial losses because crypto markets

are susceptible to scams, Ponzi schemes, and extreme volatility (Arner, Barberis, and Buckey, 2016). Pakistan has no explicit dispute resolution mechanisms and avenue to the crypto investors. The state can protect investors by making them aware of their rights and covering them against fraudulent deals through consumer protection laws, disclosure requirements of exchanges and advertisements. The UK regulators, e.g., put a lot of emphasis in the fair treatment of the customer and transparency in the financial products, an example Pakistan may follow. The high level of investor protection would not only reduce risks but also increase the involvement in digital asset markets.

3.6.4 Legal clarity on Crypto mining and trading

Crypto mining and trading are not highly regulated in Pakistan, causing investors and miners to be uncertain about the law. Mining is a process that consumes a large amount of energy resources, which casts doubts on its sustainability and the control of the state (Alzoubi, Al-Ahmad, Kahtan, and Jaradat (2022). In the absence of specific legal provisions, people and companies involved in mining and trading will be at risk of being criminally liable under the current anti-money laundering and foreign exchange laws. Pakistan must clearly define mining operations, establish parameters in energy use, and determine taxation parameters on income obtained through mining. Similarly, the legality of the trade, whether it is exchange or peer-to-peer (P2P) should be made clear. Crystal law will reduce confusion in the market, illegal transfer, consumer protection, and encourage legitimate investment in the Pakistan crypto economy.

3.6.5 Adaptive attitude towards crypto: Role of Parliament, SECP, FBR and SBP

With the formation of an effective crypto regime, Pakistan will have to collaborate in order to come up with a clear framework. Based on which crypto is its own property, and is considered by the international standards, including the FATF, a parliamentary law should be enacted. The SECP is likely to regulate the exchanges, put in place disclosure policies and ensure that the market is not abused. The FBR will be forced to come up with specifically designed laws on taxation of crypto capital gains and incomes. Meanwhile, the SBP must be financially stable and ensure that the crypto activity will not interfere with the monetary policy and foreign reserves. A flexible and balanced approach to innovations and regulated by laws can enable Pakistan to take advantage of the possibilities of crypto and keep risks under control.

4. CONCLUSION

The current paper has uncovered the fact that regulation of cryptocurrency in Pakistan is underdeveloped. The rules and regulations are unclear, laws are disjointed and the overall policy is non-existent. With the increase in individuals and companies using crypto, the absence of definite rules has resulted in a shadow market, which is susceptible to fraud, tax

evasion and money laundering. Comparing it to other countries, it is seen that, when crypto is treated as a legal asset and financial regulation observed, and the economy is not disrupted, the innovation can thrive. Such models can be utilised by Pakistan to come up with a free and flexible regulatory framework. Such a framework should also come with an elaborate cryptocurrency policy that defines the legal status of cryptocurrency assets, mining activities, and trading business. Parliament ought to act as a mediator in the development in collaboration with the regulatory bodies like the Securities and Exchange Commission of Pakistan (SECP), the State Bank of Pakistan (SBP), and the Federal Board of Revenue (FBR). The partnership between these organizations would bring about coordination in the industry. Licensing of exchanges, protection of investors and establishment of transparent tax regulations to regulate cryptocurrency gains should also be included in the reforms. Development of policies which would help in ensuring that mining activities which are compliant with the guidelines of the Financial Action Task Force (FATF) are energy efficient is also needed. These would put illegal cryptocurrency activities in check. The campaigns of public awareness and institutional training will be beneficial in terms of compliance, minimizing risks exposure, and investor confidence. The latter, together with a flexible regulatory framework that would be consistent with the current international trends would aid Pakistan to not only enjoy the fruits of innovation but also be able to manage the systemic risks within the country. The adoption of cryptocurrency in Pakistan ought not to be shrouded in dark secrets, ambiguity, and must be supported by a solid institutional response. The future of digital assets and the maintenance of financial stability is about to be reaped by an active and targeted regulatory system.

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Adopting a Structured Mandatory Pre-Trial Mediation System in Pakistan: A Comparative Proposal Based on Research Analysis on Victoria, Australia

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Abstract

The civil justice system in Pakistan is characterised by long-term inefficiency mainly because it is stuffed with a large number of pending cases in civil courts. Such procedural stagnation is devastating to access to justice and confidence in the judiciary. This doctrinal legal research will respond to the urgent need for reform on the use of successful integration of mediation as part of the civil justice approach in Victoria, Australia. Based on a comparative legal analysis, it examines the legislative and institutional systems which have facilitated the mainstreaming of mediation in Victoria and the reduction of congestion in the courts. Based on this model, the paper aims to adopt a context-specific design for Pakistan; it only touches on the civil courts, which constitute the primary source of judicial backlog. The suggested remedy will involve modification of specific sections of the Code of Civil Procedure (CPC) to furnish judges in Pakistan with the power to refer relevant civil cases to be put under mediation under the procedure at specified stages, which is to be mandatory. The suggestion is to institutionalise mediation as a mandatory element of civil litigation, not require mediation as an option and in the periphery. The adoption of the proposed framework will facilitate case management, minimise delays, and encourage the resolution of disputes by mandating the incorporation of mediation into the operations of the court.

Keywords: Pre-trial mediation, ADR, Pakistan legal system, Victoria mediation model, comparative law, legal reform

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1. INTRODUCTION

The system of justice in Pakistan is going through a severe problem of growing case backlogs at the moment. As of later half of 2023, the Law and Justice Commission of Pakistan reported that the overall number of cases pending increased by 3.9 percent to alarming 2.26 million cases. As indicated in the research, the district judiciary adjudicates 82% of the pending cases (1.86 million); the Supreme Court, the Federal Shariat Court and the High Courts adjudicate the other 18% (0.39 million cases). According to the report, from July through December 2023, 2.38 million new cases were reported, yet 2.30 million cases were resolved by the courts. This fact that new lawsuits were still being filed meant that despite this tremendous resolve, there remained a great number of cases that remained unresolved. The report further

highlighted, as compared to criminal cases (19% of the cases pending in the High Courts), civil suits (81% of the cases pending in the High Courts) constitute the majority. Conversely, at the district court, 36% of the outstanding cases are criminal in nature, while 64% of the cases are civil in nature. Delay in the disposal of cases damages the reputation of a justice system beyond repair. The stakeholders tend to believe that the system does not have the capacity to deliver; consequently, such a state is left behind in the comity of nations. This issue is not exclusive to Pakistan and can be found in many other jurisdictions. To address this issue, various Alternative Dispute Resolution methods have been imposed which have served as a potential solution throughout various jurisdictions in the world (Dawn, 2024).

This study aims to develop a structure for the incorporation of mandatory pre-trial mediation in the civil justice system of Pakistan. There has been a lot of emphasis on mandatory mediation in Europe with the issuance of Mediation Directives (Raffaelli, R, 2016).

Pakistan has introduced pre-trial mediation through incorporation of section 89-A into the Code of Civil Procedure 1908, where much is left at the discretion of the judge whether pre-trial mediation is necessary according to the circumstances of the case. However, mediation is not a novel idea in Pakistan, where the traditional Lokh Adalat and Jirgas already exist, but the introduction of mandatory pre-trial mediation as mandated by the state is a comparatively new concept.

2. OVERVIEW OF MANDATORY PRE-TRIAL MEDIATION

Mediation refers to informal negotiations between the contesting parties with the facilitation of a neutral third party called a mediator. The role of a mediator is to identify points of controversy between the parties, reflect on various solutions and bring the parties to a minimum acceptable terms. So far, mediation has been the most successful ADR technique and requires the involvement of a trained facilitator. This methodology is being successfully used in several countries to resolve commercial and family disputes, among others.

To understand the implications of mandatory pre-trial mediation, it is crucial to delve into the theoretical underpinnings of ADR, the legal framework in Pakistan, and the international experiences that have influenced its adoption. This review aims to contextualise the paper within the broader academic landscape and highlight the gaps.

Menkel-Meadow and Ury, in their work on “Foundations of Dispute Resolution”, have laid the foundations for mediation as an effective means of conflict resolution, emphasising its potential to preserve relationships and reduce adversarialism. Within Pakistan’s legal context, the Code of Civil Procedure has been incorporated with provisions for pre-trial alternative dispute resolution mechanisms. This legal framework draws inspiration from international models, such as the United States' court-annexed mediation programs (Meadow, 2012).

Melissa Hanks in her particular parresia, as well as her proposals for

further studies, "Perspectives on Mandatory Mediation" have explored along with various aspects of mandatory mediation that it can lead to quicker case disposition and decreased litigation costs. It is one of the primary arguments in favour of mandatory pre-trial mediation, as its potential to speed up case resolution and hence reduce the burden on overburdened judicial systems. In the context of Pakistan, where a backlog of cases is a pressing issue, examining effects impositions mandatory pre-trial mediation is essential (Hank, 2012).

3. RESEARCH METHODOLOGY

This researcher adopts a qualitative doctrinal and comparative research methodology to analyse the feasibility of incorporating a structured mandatory pre-trial mediation system within the civil justice framework of Pakistan through a comparative analysis with the mediation model operating in Victoria, Australia. The study is primarily analytical and reform-oriented.

4. CASE STUDY: VICTORIA'S MANDATORY MEDIATION SYSTEM

As already discussed in the literature review, that pre-trail mediation in its mandatory form has not previously been enforced in Pakistan; yet there is a need to develop a system of mandatory pre-trial mediation. Developing an entirely new system would not be feasible in this paper; however, it is feasible that an already established system could be envisioned to suffice the needs of Pakistan's legal system. This study discusses the mandatory pre-trial mediation legal system of a country that is best suited to Pakistan. It will also attempt to justify the reason for selecting the proposed legal system and why it is best suited to Pakistan's legal system.

4.1 Mandatory Pre-Trial Mediation System of Australia: New Victoria

Australia is renowned for upholding one of the most established and effective mediation processes in the contemporary era. Mediation is the main form of civil dispute settlement in Australia and is carried out through initiatives that are referred by the courts. Followings are the reason which makes Australia suitable for this study.

Common law was brought to both Australia and Pakistan during British colonial control. The concepts and processes of Australia's mediation system can be more readily adapted to Pakistan's judicial framework because of this shared legal background.

There are serious issues with backlogs in the courts and delayed justice in both regions. The implementation of obligatory pre-trial mediation in Australia has been effective in alleviating the burden of court cases, resulting in expedited resolution of disputes. Such a strategy to accelerate civil proceedings can be beneficial to Pakistan, which is facing comparable challenges.

Pakistan's traditional emphasis on communal peace and informal dispute resolution is consistent with the social dynamics of conflict resolution

in Australia, which prioritises community involvement and reconciliation. The smoother adoption and acceptance of the mediation process in Pakistan can be facilitated by this cultural compatibility.

At this stage, it will be more feasible to single out a state of Australia for the purpose of efficiently understanding its system. For this study, the state of Victoria can serve the cause due to its similarities with Pakistan. Victoria also inherited an adversarial civil court system as a result of Australia's colonial past. Moreover, before court-mandated mediation was introduced, Victoria's judicial system also faced criticism from the legal community and civil disputants, much like Pakistan, among other issues. Among the things that drew criticism were the long backlog of cases in the courts, which caused aggravating postponements in court procedures, and the expensive, time-consuming, and anxious nature of litigation. (Silva, 2016)

Before delving into the mandatory pre-trial mediation system of Australia, it is necessary to understand its historical background, composition, and its legal system. Studying its historical background, composition, and its legal system will develop an understanding of how the system has developed over time and in what ways it is similar to Pakistan's systems.

4.2 Australia: Historical and Constitutional Overview

Australia was first colonised in the 1780s, which gave England the right to claim and govern the continent. Until 1901, the nation consisted of six independent British colonies that were ultimately governed by the British Parliament. Australia as a Commonwealth was formed in 1901 with the promulgation of the Australian Constitution Act of 1900. The six colonies then transformed into Australia's six states.

The six governments of Australia's states and two territories share power with the federal government of Australia, commonly known as the Australian government or Commonwealth government. The Commonwealth of Australia is the common name for Australia. Australia is made up of six states, including Victoria, Queensland, South Australia, Western Australia, Tasmania, and the Northern Territory, as well as two territories, the Australian Capital Territory and the Northern Territory.

Australia operates under a constitution. Consequently, the Constitution of Australia binds both the Parliament and the legislatures of every state and is the ultimate and fundamental legislation of the nation. If an act of the state legislature is against the Australian Constitution, it is considered unconstitutional. The Constitution of Australia defines the Commonwealth and state legal systems as consisting of three distinct government departments: legislature, executive branch, and judiciary.

This separation of authorities is rooted in the doctrine of "Separation of Powers." The legislative branches (parliaments) have the power to establish laws, the executive branches have the power to carry out governmental operations and implement laws, and the judiciary (court system) has the power to make legal decisions.

However, the Australian Parliament's power to legislate has been limited by the Constitution of Australia to specified subjects, including

business law, marriage and divorce, taxes, defense, and external affairs through its Section 51. On the other hand, every state has a constitution that gives its legislatures the ability to pass laws, its governments the ability to exercise power, and its courts the ability to decide any disputes that arise within the state. These constitutions are still governed by the Constitution of Australia, nevertheless.

4.3 The Court System in Australia

4.3.1 The High Court of Australia

According to section 71 of the Australian Constitution, the High Court of Australia is the highest court in the nation. Regarding its jurisdiction, the High Court has the authority to consider cases in specific categories, such as state concerns, as the court of first instance. Furthermore, with the consent of the aforementioned High Court, any appeal to the Supreme Court, the apex court in any state, may be filed with the High Court. All Australian courts and tribunals are required to follow the High Court, which is Australia's final court to appeal.

4.3.2 The Federal Court of Australia

Parliament may enact laws defining the jurisdiction of the Federal Court of Australia, as specified in section 77 of the Australian Constitution. However, the jurisdiction of the Court is limited to instances related to federal tribunal appeals, judicial review of presidential directives, taxation, and insolvency. Additionally, the decision of a single Federal Court judge may be appealed to the full Federal Court and, with permission, to the High Court.

4.3.3 *The Family Court of Australia*

A specialised subset of the Federal Court, the Family Court handles cases involving marital property and children. Additionally, there is the option to appeal to the three Family Court justices as a whole, and from there to the High Court, which was previously indicated.

4.3.4 The Federal Magistrates' Court of Australia

The Federal Magistrates Court (Federal Circuit Court of Australia) was established to ensure that there is a lower level of federal court to take the burden off the Federal Court and the Family Court. Consequently, it is not subordinate to either of the two courts mentioned above, but it is under its jurisdiction.

4.4 The Victorian Courts

The hierarchy of courts in Victoria is as follows:
The Supreme Court of Victoria
The County Court
The Magistrates' Court of Victoria

4.4.1. Highest court in Victoria

The Trial Division, also referred to as the Supreme Court, and the Supreme Court of Appeal comprise the two branches of Victoria's Supreme Court. The Supreme Court has unrestricted jurisdiction over whatever subject

matter it sits over, regardless of the amount of money that can be claimed. However, for filing an appeal from a lower court to the Supreme Court of Appeal, it may be on the grounds, including a legal question, a mistake, a lack of jurisdiction, or insufficient jurisdiction.

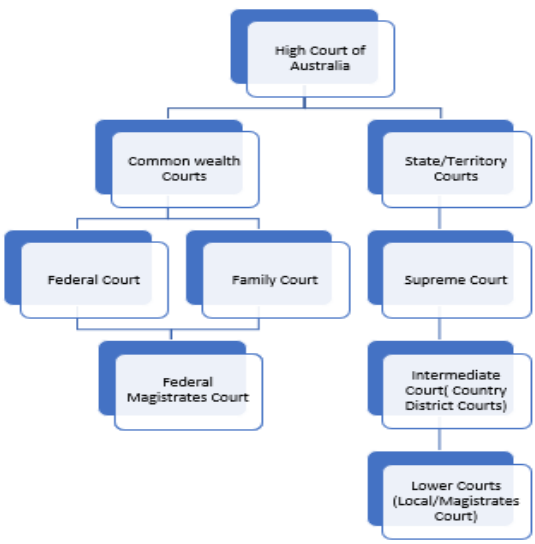
4.4.2 The intermediary court

The intermediary court is the County Court. All claims in any case where the County Court is expressly granted jurisdiction under Part 2 of the County Court Act are covered by the County Court's civil jurisdiction. Regarding civil cases, the Magistrates' Courts do not consider appeals.

4.4.3 The lowest court in Victoria

The lowest court in Victoria is the Magistrates' Court. Sections 4, 100, and 101 of the Magistrates' Court Act expressly prescribe the Court's jurisdiction in civil matters, and they are the primary source of jurisdiction for hearing matters. It handles most of the legal issues that Victoria encounters. In accordance with the Magistrates' Court Act section 101, the court may modify the complaint to bring the case under its purview or halt it while the request awaits it to be transferred to a court of a higher level.

Figure 1: Court System of Australia



4.5 Understanding the Implementation of Mandatory Mediation in the State of Victoria

In addition to the Victorian County Court's arbitration processes, mediation was first used in Victoria in 1983 as a means of settling building disputes. John Harber Phillips, the Chief Justice at the time, established a group of seasoned attorneys in 1992 to conduct pro bono mediation sessions in an effort to manage the caseload because the Supreme Court of Victoria had a significant backlog of cases that needed to be heard.

This campaign, known as the "Spring Offensive," was somewhat successful and was repeated two years later as the "Autumn Offensive in 1994.

This campaign resulted in a nearly 80% success rate in disputes that were successfully mediated. These mediation programs greatly decreased the backlog of cases, but more crucially, they made the process of mediation known to a larger segment of the legal community and the general public in Victoria.

In response to the publicity around the mediation system, the foundation of Standards of court-connected mediation in Victoria was developed in 1994 by the Victorian Law Foundation and the Law Reform Advisory Council of the Victorian State Attorney-General to guide mediation provision in this area. This was a noteworthy achievement because it demonstrated the support of the legal community for the establishment of mandatory court-referred mediation.

The above offensives and mentioned norms were successful, and in 1995 the Supreme Court of Victoria formulated the 'Portals Protocol' that enabled the creation of a more sophisticated mediation referral mechanism. This involved the Supreme, County, and Magistrates Courts, the three levels of the Victorian Courts. The Chief Justice of the Supreme Court at the time, Phillips CJ, endorsed this in 1995, stating that it was time for all Victorian courts to establish active mediation participation.

"It should be emphasised that mediation is not an inferior form of justice," he continued. It's a different kind of justice. Every study on conflict resolution reveals that people place a high value on prompt dispute settlement and the chance to present their argument to an impartial third party. Both of these conditions are met by mediation.

4.5.1 Mediation at the Supreme Court Level

Court-approved mandatory referral mediation programs were developed as a result of the aforementioned changes and the widespread acceptance of the mediation process over time. At a civil justice conference in Melbourne in 2009, Marilyn Warren AC, the Chief Justice of the Supreme Court of Victoria at the time, declared that no civil case in the Supreme Court of Victoria should be permitted to go to trial without first passing the one round of minimum mediation, except appeals and judicial review involving the Magistrates' Court and the Civil Administrative Tribunal of Victoria (Warren, 2009).

The Victorian courts have permitted the use of mandatory mediation methods through various statutes and court regulations. Among these is rule 50.07(1) of the Supreme Court (General Civil Procedure) Rules of Victoria 2005, which states that the Court may, at any time during the proceeding, order that the entire or a portion of the proceeding be referred to a mediator, either with or without the consent of any party.

4.5.2 Mediation at County Court Level

Rule 34A.21 at the County Court level states that, in accordance with Rule 50.07 of the County Court Civil Procedure Rules of 2008, the Court may refer the proceedings to mediation in whole or in part during the directions hearing, with or without the consent of any party.

4.5.3 Mediation at Magistrates' Court Level

According to section 108 of the Magistrates Court Act 51 of 1989, which deals with the court's authority to refer cases to mediation, the court may, on its own initiative or at the request of one or both parties, refer all or a portion of a civil proceeding to mediation after following and in compliance with the Rules or the Civil Procedure Act of 2010.

All legal procedures in the state of Victoria are governed by the Legal Procedure Act of Victoria, which gives all Courts the authority to send parties to the dispute to mediation at any point throughout civil proceedings, with or without their agreement. The Act's main goal is to make it easier for all civil issues to be resolved in a fair, timely, and economical manner. This overriding goal may be accomplished by the court's decision-making on the proceedings, a consensus between parties to the dispute, or other suitable dispute resolution procedure that the disputant consents to or the court orders.

The Civil Procedure Act mandates that any party to the proceedings, any lawyer and law firm representing that party, and any party providing financial support to that party all serve the aforementioned overarching aim. Accordingly, any individual to whom the general duties apply owes the court to advance the execution of justice in any matter in which they are concerned, including, among other things, any suitably conducted dispute resolution procedure.

By forcing all parties personally to attest that they have not only read but also comprehended the above-mentioned obligations, the Act strengthens the enforcement of these overarching duties and main obligations. In the civil proceedings, this certification and the first substantive document are to be filed with the court.

A lawyer must attest that each factual allegation, including denial or non-admission in the court, has a valid basis in addition to the contesting party's filed certification. This certification must also be filed in court. The "Proper Basis Certification" is the name of this certification. With this certification, a lawyer has the responsibility of making sure their client is aware of the steps required in filing or defending a civil lawsuit.

Under the Civil Procedure Act, the aforementioned general requirements might result in penalties. The Act states that the court must evaluate whether to issue a cost order that suits the proceedings or a discretionary order that penalises the violation, if any of the parties to the dispute fail to submit the necessary certifications.

It is clear that, in addition to having provisions requiring the court to use mediation, the Civil Procedure Act requires the good faith participation of all parties to maintain the proper, timely, efficient, and cost-effective resolution of all civil disputes in Victoria. The Act further demonstrates its commitment to the efficacy of the mediation process by establishing repercussions for noncompliance. Therefore, the Act explores the theory and practice of mediation in court to ensure that it is a successful and efficient process.

4.6 The Impact of Mandatory Court-Referred Mediation in Victoria

Being among the most committed states in the promotion of alternative methods to formal dispute resolution in Australia, Victoria is a state that has the longest history in the practice of court-mandated mediation. None of the civil disputes can proceed to a hearing without undergoing at least one cycle of mediation, unless in the fields of judicial reviews and appeals, where it has been determined that mediation has become so popular over the past 20 years since its inception in Victoria.

The statistics of the success rates of the mediation referred to the court in Victoria are few, as follows. Almost 70 percent of the cases mediated in that court have been able to settle, as it is indicated by the 2005/2006 Annual Report of the Supreme Court over the years; this is as opposed to exposing both the parties involved, as well as the court, to the burden of a trial. The Annual Report of the County Court 2005/2006 states that the civil issues were addressed in a successful manner; almost 60 percent were solved successfully through the use of mediation. In a year-end annual report which was issued in 2007 by the Magistrates Court, it is stated that about 64.42 percent of civil cases were successfully mediated, and in a year-end report issued in 2005/2006, it is stated that about 70 percent of the cases were effectively mediated at the court.

The statistics success percentages shown above suggest that court-mandated mediation has been a successful and efficient addition to Victoria's civil justice system.

5. PAKISTAN: HISTORICAL AND CONSTITUTIONAL OVERVIEW

Pakistan was previously part of the undivided Indian subcontinent, which was colonised by the British. Pakistan gained its independence in 1947 from British rule. The country was composed of two regions, East Pakistan and West Pakistan, which were governed by the Parliament of Pakistan. In 1971, East Pakistan separated from Pakistan and is now a separate country, Bangladesh.

Pakistan has a federal form of government known as the "Pakistani Government" or "Federal Government,". It consists of four provinces: Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan and two territories: Islamabad Capital Territory and Gilgit-Baltistan.

The legislative, executive, and judicial branches are the three separate departments of government that make up Pakistan's federal and provincial legal systems, according to the constitution. This phenomenon is called "Separation of Powers." Thus, the legislative branch (parliament), executive branch (executive branch) and judiciary (court system) are the three bodies of government that have the power to create laws, carry out legislative duties, and decide legal matters.

Pakistan operates under a constitution known as the Constitution of Pakistan, which binds both the National Assembly (parliament) and the legislative assembly of each province and is the ultimate and fundamental legislative assembly of the nation. If an act of any provincial assembly is

repugnant to the Constitution of the country, the Act or Law is considered null and void.

The 1973 Constitution divides legislative authority among three branches:

a. Parliamentary (or Federal), which includes Defense, Foreign Affairs, Nationality and Citizenship, Posts, Telecoms, and Electronic Media, Currency, Federal Libraries and Museums, Federal Research and Training Centres, Nuclear Energy, etc.

b. Concurrent includes criminal law, criminal procedure, evidence, and

c. Residuary (or provincial) includes matters other than those included in the parliamentary and concurrent lists.

Since its establishment in 1947, Pakistan has incorporated several laws from British India, also known as the Subcontinent, where litigation was deemed the most effective method of resolving disputes. Consequently, all of the country's procedural laws have been oriented towards either protracted trials involving testimony and evidence or summary trials, with no mention of alternative dispute resolution (ADR) in the laws that were adopted from that region.

It is also important to note that two distinct sets of laws govern Pakistan's legal system: statutory laws and Islamic law (Sharia). Statutory laws, which control the domains of criminal, civil, administrative, and constitutional law, are made by the Parliament and provincial assemblies, while Islamic laws are enacted through laws such as the Muslim Personal Law (Baig, 2024).

5.1 Court System in Pakistan

Pakistan's judicial system is currently regulated by Article 175 of the Constitution, which calls for the creation of the Federal Constitutional Court, Supreme Court and High Courts in each of the four provinces—Punjab, Sindh, Balochistan, and Khyber Pakhtunkhwa. A High Court for the capital territory of Islamabad was recently established by amendment. The Civil Courts Ordinance of 1962 and the Code of Criminal Procedure of 1898 established the Civil Courts and the Criminal Courts, respectively, because Article 175 permits the establishment of new courts by legislation. The Federal Shariat Court, a supplementary court established under Article 227 of the Constitution, has the following jurisdiction.

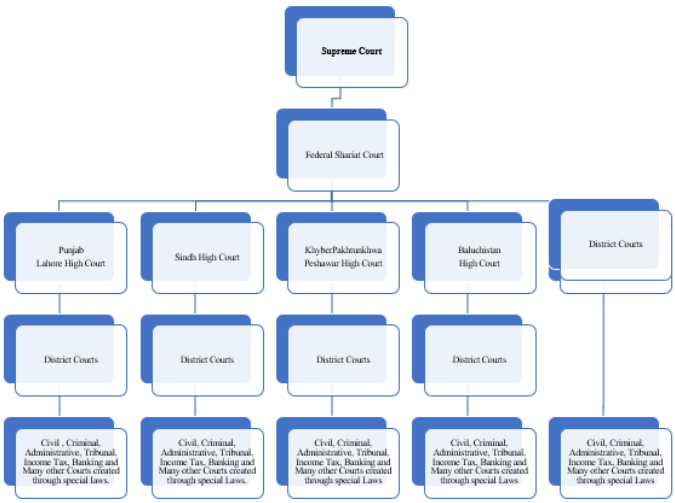
> "No law shall be enacted which is repugnant to such Injunctions, and all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, here referred to as the Injunctions of Islam."

The district judiciary, which includes both criminal and civil courts created by acts that are overseen and managed by the corresponding High Courts in accordance with Article 203 of the Constitution. The Tribunals, Special Courts, and Administrative Courts are created by other statutes.

Before the Constitution (Twenty-seventh Amendment) Act, 2025, the

Pakistani judicial system could be broadly classified into three classes, or the trichotomy of the judicial system as shown by Figure 2. However, after the Twenty-seventh Amendment, the Federal Constitutional Court (FCC) holds a position of higher legal authority than the Supreme Court in terms of binding decisions and specific jurisdictions.

Figure 2: Court System in Pakistan



Constitution's Article 175 E (3) and Article 199 of the Constitution grant the Federal Constitutional Court and High Courts, respectively, the authority and jurisdiction of judicial review. When compared to the jurisdiction of High Courts, the jurisdiction of the Federal Constitutional Court to judicial review is far more significant. When there is an infringement of fundamental rights and the issue is significant to the public, the former has the authority to investigate. However, only after a few requirements are met may the High Court exercise its jurisdiction over judicial review.

5.2 Current System of Mediation in Pakistan:

The foundation of mediation in Pakistan has not been fully developed yet. However, in Pakistan, various Alternative Dispute Mechanisms are being considered. There has been a lot of discussion and debate going on in Pakistan regarding its development and enforcement. Pakistan is considering various alternative dispute resolution methods. The retired Honorable Chief Justice of the Islamabad High Court, Mr. CJ Athar Minallah, had also underlined the need for increased awareness and implementation of alternative dispute resolution (ADR) during an event. He had emphasised the role of ADR in Pakistan for reducing Pakistan's overloaded courts and case backlog. He underlined that the Pakistani judiciary must back the intervention of the introduction of ADR in Pakistan Judicial System. He also promised that the Islamabad High Court under his supervision specifically would advance this endeavor to promote and facilitate alternative dispute resolution (Piracha et al, 2022).

In Pakistan, although no formal system of mandatory pre-trial Mediation exists, various form of other alternative dispute mechanisms exists in Pakistan. ADR may be observed in several legislations of Pakistan, including Code of Civil Procedure 1908, Code of Criminal Procedure 1898, Small Claims and Minor Offences 2002, Local Government Ordinance 2001, Local Government Act 2013, Arbitration Act 1940, Constitution of Pakistan 1973, National Accountability Bureau Ordinance 1999, Probation of Offenders Ordinance 1960 and Muslim Family Courts Act 1964 among others to have a deeper insight on Alternative Dispute Resolution that already exists in Pakistan one needs to examine some of the alternative dispute resolution mechanisms entrenched in the Pakistani Laws.

5.2.1 The Reference in Constitution of Pakistan

The Pakistani Constitution does not specifically address alternative dispute resolution (ADR); however, it does include reference to business and financial operations, which could imply that Pakistan uses some form of ADR. Upon cursory examination of the Constitution, it can be observed that Articles 153–154 address the Council of Common Interest, Article 156 addresses the National Economic Council, Article 160 addresses the National Finance Commission, and Article 175E grants the Federal Constitutional Court of Pakistan original jurisdiction over "any dispute between two or more Governments."

5.2.2 Current Domestic Laws of ADR in Pakistan

The concept of Pre-trial Mediation is relatively new; however, various places can be traced where alternative dispute mechanisms have been introduced. Some of the relevant laws are as follows: Arbitration Act, 1940; Conciliation Courts Ordinance, 1961; Muslim Family Laws Ordinance, 1961; Family Courts Act, 1964; Section 89-A of the Code of Civil Procedure, 1908 read with Order X Rule 1-A; The Small Claims and Minor Offences Courts Ordinance, 2002; Punjab Local Government Act, 2012; Khyber Pakhtunkhwa Local Government Act, 2012; Punjab Consumer Protection Act 2005; The Punjab Alternate Dispute Resolution Act 2019.

An account of how some of the laws mention alternative dispute resolution mechanisms is given in the following:

The Code of Civil Procedure, 1908: According to section 89-A of the CPC, the court may use any form of alternate dispute resolution, including conciliation and mediation, depending on the specific facts and circumstances of the case and with an eye towards quickly resolving civil lawsuits. The purpose of the section's insertion is to minimise costs, expedite the resolution of disputes between parties, and lessen the court's workload.

The Small Claims & Minor Offences Courts Ordinance 2001: According to Section 14 of the 2001 Ordinance, the court would try to reach an out-of-court settlement in civil matters valued less than Rs. 100,000 and, should the settlement be successful, will implement it as a decision or order of the court. In the event that ADR is unsuccessful, the court will resolve the dispute through the specified summary procedure.

The Customs Act 1969: According to Section 195-C of the Customs Act, any party who feels wronged regarding a dispute that is pending before a court or appellate authority and involves the payment of customs duty, refunds or rebates, the seizure of goods, etc., may apply to the Board to form a Committee to resolve the dispute in appeal. The Committee, once established, will carry out an investigation, get professional advice, or mandate an audit from a customs officer. The Board may make any necessary orders based on the Committee's report. Following that, on the Board's instructions based on the Committee's proposal, the harmed party may pay duty, taxes, or fines, as applicable. If the Board has issued an order in a matter that is now before a court or tribunal, the Board must submit the agreement reached with the harmed party in light of the Committee's report for the court or tribunal, as applicable, to approve.

The Punjab Alternate Dispute Resolution Act 2019: A court must refer a case included in Schedule I of the Act to ADR within 30 days of the written statement being filed, per section 3 of the Act. The court will first seek the parties' opinion on the referral ruling and a decree that reflects the conditions of the settlement. An appeal under the Act cannot be based on a decree or order.

The Punjab Consumers Protection Act, 2005: ADR must be used to resolve consumer complaints that are brought before it, according to a requirement outlined in the Punjab Consumers Protection Act, 2005. The Act gives the Consumer Tribunal the authority to use any kind of ADR to resolve the dispute before it.

The parties will choose the ADR person with mutual permission. The parties and the ADR service provider agree to maintain the confidentiality of all proceedings, and the service provider shall retain a copy of any written correspondence, settlement, agreement, or award. A party who makes a meaningful offer and the other party rejects it will not be entitled to reimbursement for costs. The parties themselves, the parties' solicitors, accredited ADR service providers, and approved ADR centres registered under the Companies Act 2017 may conduct the ADR.

Draft Arbitration Bill 2024: Pakistan is currently taking a step forward towards Alternative Dispute Resolution by drafting the Arbitration Bill 2024. The bill is being discussed as a landmark in the area of Arbitration. The bill has been transferred to the Federal Law Minister, and he has declared that the government will take the bill to both houses of parliament, and after being subjected to the legislative process, it will be made into law later this year. The bill discusses various issues like the Arbitrators, their impartiality and the numbers. This bill also contains the provisions of interim measures granted by the court (Section 10) and the arbitral tribunal (Section 19). Interim measures of a court cannot be sought where the arbitral tribunal has been constituted unless it cannot provide a sufficient measure of redress. The Bill also provides that where parties have sought and been granted a court-ordered interim measure before the start of the arbitration, an arbitration must be commenced within 90 days from the date of the order of the court, and also, the arbitral

tribunal can make orders that are in excess of the court's orders. This is provided in order to prevent parties from deriving undue benefits from the awards of interim orders of the court.

The bill is a commendable step towards the promotion of Alternative Dispute Mechanisms and will pave the way for awareness of the general public and legal fraternity towards Alternative Dispute Resolution Mechanisms.

5.3 What needs to be done in case of Pakistan

In Pakistan, as discussed and seen in this study, mandatory pre-trial mediation is nonexistent. What can be seen is that many laws and provisions allow parties to adopt various alternative dispute mechanisms if they are willing and the circumstances and facts of the case warrant it. For the imposition of mandatory pre-trial mediation, there is a lot that needs to be done from grass root level. The following are the various measures that can be taken by drawing inferences from New Victoria.

5.3.1 Mandatory pre-trial Mediation at the Federal Constitutional Court and Supreme Court

Mandatory pre-trial mediation should be enforced at the level of the Federal Constitutional Court and Supreme Court. The judges ought to have authority to impose mandatory mediation whereby they can order or order without the consent of any party, that the proceedings or any aspect of the proceedings be referred to a mediator in civil matters specifically.

5.3.2 Mandatory pre-trial Mediation at High Court

High Courts in all four provinces and the Capital Territory should also be empowered either with or without the consent of any party, to refer the entire or any part of the proceedings to mediation in Civil matters, especially.

5.3.3 Mandatory pre-trial Mediation at District Court

All the District Courts in Pakistan should also be empowered, either with or without the consent of any party, to refer the entire or any part of the proceedings to mediation in civil matters, especially.

5.3.4 Legislation by Amending the Court of Civil Procedure 1908

As the concept of Mandatory Pre-trial Mediation is foreign to Pakistan, there is no provision available for enforcing it. So, the first and foremost inevitable step that needs to be taken in this regard is legislation in this regard. There should be a state law enforcing Mandatory Pre-trial Mediation. This law should be added by amending the Code of Civil Procedure of Pakistan, as it governs the rules of Civil Procedure in Pakistan. The law should confer the power to order parties to mediation at any stage of the legal process, with or without their consent, in the Supreme Court, High Courts, and District Courts. Facilitating the prompt, equitable, and cost-effective resolution of all civil disputes ought to be the primary objective of the amendment. This main objective may be achieved by the court making decisions regarding the proceedings, the disputing parties coming to an agreement, the court issuing an order, or another appropriate dispute resolution mechanism that the

disputants agree to.

The Code of Civil Procedure should also mandate that all parties to the proceedings, including those represented by counsel and law firms, and those providing financial assistance to such parties, serve the aforementioned objective.

Furthermore, similarly to New Victoria, there should also be a compulsion on lawyers to provide a Proper Certification Certificate in which the lawyer and the parties to the case should certify that the lawyer has explained and the parties have understood their obligation under Mandatory Pre- Trial Mediation Procedures and they will perform their obligation in good faith.

The Code of Civil Procedure should also penalise the previously indicated amendment. Therefore, if any relevant parties neglect to provide the necessary certifications or their duties, the court will have to take this into account and determine whether to sanction the breach with a discretionary order or to make a cost order appropriate for the proceedings.

6. WHERE TO BEGIN?

In Pakistan, the district judiciary has 82% of pending cases (1.86 million), with the highest tier comprising the Supreme Court, Federal Shariat Court, and High Courts handling the remaining 18% (0.39 million cases). It is pertinent to mention that following the incorporation of the Constitution (Twenty-seventh Amendment) Act, 2025, many disputes that were pending or filed before the Supreme Court or its Constitutional Benches were forthwith transferred to the Federal Constitutional Court to be heard and decided exclusively by it, which will also result in pendency of cases at the Supreme Court being transferred to the Federal Constitutional Court. A thorough examination of the cases that are pending in the District Judiciary and High Courts reveals that 81% of the cases in the High Courts are civil matters, while 19% are criminal cases. If one were to examine the district judiciary in more detail, 36% of the pending cases are criminal in nature, while 64% of the cases are civil in nature.

Figure 3: Percentage of Pending Cases

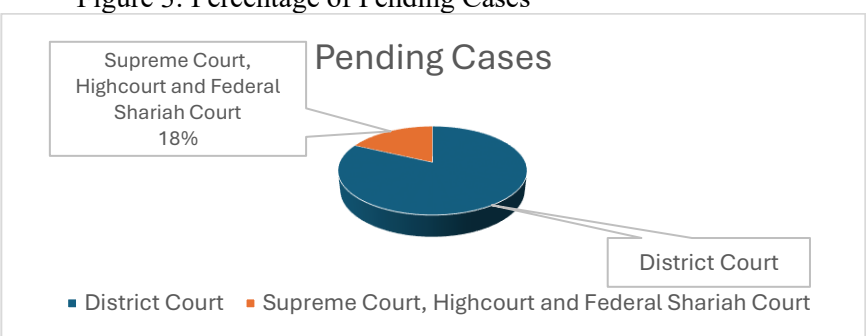
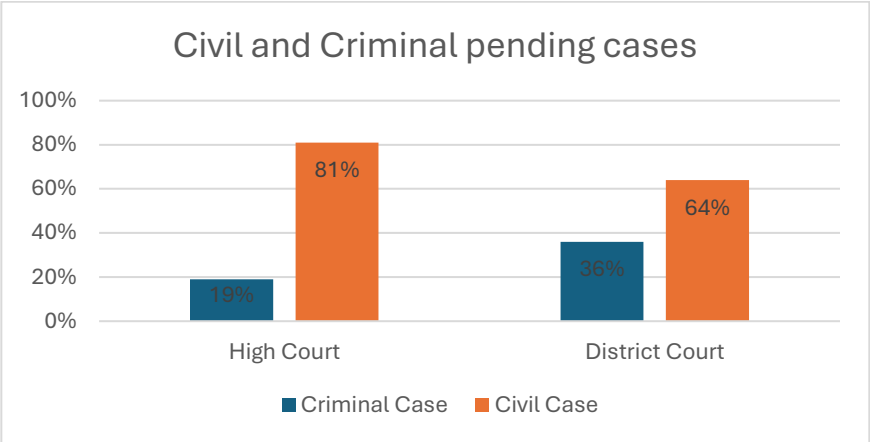


Figure 4: Civil and Criminal Pending Cases



So, according to the above data, the most pending cases are the civil matters and are at the district courts' level, so this is where Mandatory pre-trial Mediation should be enforced at the beginning levels. After which, the processes should be steadily moved to higher tiers afterwards. This helps to analyse the system in detail after its first phase implementation, and then, after completion of the first phase, a thorough examination can be done of the progress and lacunae, if any, takes place. This will help to increase the efficiency of the entire process before its introduction in the second phase.

Resistance is often seen in Pakistan to the imposition of a foreign pre-trial mediation system. This psychological resistance can be based on multiple factors, such as an individual may perceive this culture as unfamiliar or not aligning with their cultural norms. According to Psychological Reactance Theory, people generally resist those ideas and concepts that limit their freedom of choice (The Decision Lab, n.d.). When mediation centres are set up in Pakistan, frustration has been seen in people. For example, a mediation centre in Karachi was set on fire. This shows how strongly people react when they think someone is forcing a system on them. If Western-style mediation is used in Pakistan without considering the culture, people will not trust it. People in Pakistan like things that are part of their own culture and rely on them more.

The social identity theory further explains this resistance, as individuals tend to protect systems that reflect their cultural identity and reject those associated with external groups (McLeod, 2025). Pakistan being a collectivist society, the conflict is not considered as an individual problem like in the West; it is more linked to family honour and community relations. This mediation process may not be seen as socially and psychologically aligning with the people. However, formal mediation can still help people who are marginalised, like women. It can provide a way of resolving conflicts. If people are forced to change their culture, they will resist. If a new system is combined with the existing culture, people will adapt more easily. A mediation system that combines methods with formal practices will work better in Pakistan. This is why a combined approach that uses Islamic

principles, like Sulh and structured mediation techniques, will be more effective and widely accepted in Pakistan.

7. CONCLUSION AND RECOMMENDATIONS

Pakistan is facing a huge backlog of cases which needs to cope with through appropriate Alternative Dispute Resolution mechanisms. Adopting New Victoria's mandatory pre-trial mediation system presents a practical and culturally compatible solution to address the inefficiencies in Pakistan's civil justice system. The similarities in legal frameworks, judicial challenges, and social dynamics between the two regions make this system a suitable candidate for implementation in Pakistan. Pakistan can adopt various reforms in its current justice system for the incorporation of mandatory pre-trial mediation, effectively including amendments to the Code of Civil Procedure, where judges of the Supreme Court, High Court and District Court should have discretion to move the case for one or more rounds of mediation with or without the consent of the parties. Pakistan also needs to introduce procedural safeguards like the Proper Basis Certification for proper understanding of the mediation process to the Litigants. By prioritising mediation with the measures proposed, Pakistan can, similarly to Australia, enhance its judicial efficiency, reduce costs, and improve access to justice.

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Moot Court Competition

"The power I exert on the court depends on the power of my arguments, not on my gender," once noted the late US Supreme Court Justice Sandra Day O'Connor.
"In fact, it is the power of the legal argument—and an aspiring lawyer's ability to craft and articulate it effectively—that undergirds the very essence of moot court programs and competitions all over the world." (The Federal Bar Association, Blog, March 20, 2024).

M. Nawaz Wahla[1],
Principal & Dean of NLS

1. INTRODUCTION

Since my engagement with the NLS in 2022, the moot court competition has been a concern, in one form or another. At my own curiosity and initiative, *I began studying it and asking*:

- What are the reasons and goals behind the Moot Court Competition?
- Why does this concept fall behind in developing countries like Pakistan?
- Even when it is undertaken, it often isn't for the right reasons. What causes this approach? How can it be improved?
- Additionally, in some law schools, the Moot Court Competition has sparked conflicts, leading to accusations of favoritism and discrimination.
- Some students have traveled abroad to participate in various competitions, which has increased tension among those who were not selected.

[1] While serving as a Judge of the Superior Court for the State of Connecticut, I was fortunate to have the opportunity to teach the ADR Clinic at Quinnipiac Law School as an adjunct professor from 2020 to 2023. After retiring from the bench in July 2021—having spent nearly four decades in the United States, undergoing extensive legal education, earning three master's degrees, practicing law with a firm I built from the ground up, and eventually reaching the bench, which is a pinnacle of the legal profession—I accepted a Foreign Visiting Faculty position at NUST Law Department of S3H. It was in the spirit of giving back to my birth country, paying it forward, as the cliché goes! I returned to NUST in the fall semester of 2023, again as a Foreign Visiting Faculty. In April 2024, upon the law department's elevation to NUST Law School (NLS), I accepted the position of Principal & Dean of NLS. That's where I was exposed to the ***Moot Court Competition, along with numerous issues such as legal education, discipline (students and faculty), attendance, teaching methods, examination procedures, cheating, hiring, training, and retaining faculty. Cultural barriers and resistance to change are the impediments to progress and prosperity—challenges of monumental magnitude!***
*I can earnestly hope and fervently pray that [We All] students, faculty, administration, and staff at NLS [Never] give up on the aspiration of **[Becoming the Best Human being in Every Aspect of Life!**

*It is well known that the moot court competition is an extracurricular activity,[2] a small, nevertheless important, part of the law school experience. The overarching objective of law school education is to equip future lawyers with the legal knowledge, critical thinking, and ethical principles needed to handle real-world legal problems. This brief article explores practical steps to address these purported hypothetical questions.

2. A BRIEF HISTORY

Before delving into the questions above, it is worthwhile to look at the brief history of the moot court competition.

Federal Bar Association Blog dated March 20, 2024, states: "The roots of moot court can be traced back to medieval England, where law students engaged in moots, simulated legal exercises designed to sharpen their skills in legal reasoning and making legal arguments. Over the centuries, this tradition evolved, finding its place in legal education institutions worldwide. In the U.S., Harvard is often cited as the originator of the tradition, dating back to 1820, and the activity is now found at almost every American law school."[3]

It goes on to state that "The modern moot court competition emerged in the early 20th century, with law schools organizing simulated appellate proceedings to provide students with practical experience in advocacy. The National Moot Court Competition was created in 1947 by Harrison Tweed, then-president of the New York City Bar Association, to help recruit younger members to the City Bar after World War II. The competition has attracted an illustrious roster of competitors and past judges, including U.S. Supreme Court Justices Thurgood Marshall, William Rehnquist, Ruth Bader Ginsburg, and O'Connor."[4]

While some legal experts credit moot court experience as a key factor in determining whether you 'win or lose' in a courtroom, others remain objectively cautious. "At the end of the day, I remain skeptical concerning whether a formal moot court for a typical intermediate appellate court oral argument is worth the time, effort, and expense that it would entail," wrote Pennsylvania-based lawyer Howard Bashman. "But it surely is incredibly worthwhile in preparing for a U.S. Supreme Court oral argument."[5]

[2] jdadvising.com
[3] https://www.fedbar.org/blog/the-value-of-moot-court-competitions-explained/
[4] Id.
[5] Id.

3. PURPOSE AND REASONING BEHIND MOOT COURT COMPETITIONS IN LAW SCHOOLS

Moot court competitions are simulated appellate court proceedings where law students argue hypothetical legal cases. These often involve *research*, *drafting briefs*, and delivering *oral arguments* before a panel of judges, which may include practicing lawyers, professors, or actual judges. The main goal of these competitions is to connect theoretical legal education with practical skills. Moot court originated centuries ago, in legal training traditions, such as the 19th-century Harvard Law School. Although the concept predates it in English legal education, moot courts are designed to *mimic real courtroom dynamics without the risks of actual litigation.*[6]

The primary reasoning includes:

- **Skill Development:** They build essential skills such as legal research, analytical thinking, persuasive writing, and oral advocacy. Students learn to analyze complex legal issues, craft arguments, anticipate counterarguments, and present them effectively within time limits—skills directly relevant to careers in litigation, arbitration, or advocacy.[7]
- **Practical Preparation:** Writing in Fedbar.Org, The Value of Moot Court Competition Explained, law school curricula often emphasize doctrinal knowledge, but moot courts offer hands-on experience in procedural rules, evidence handling, and ethical advocacy, preparing students for the "rigors of real-world litigation." This aligns with law schools' broader goal of equipping future lawyers with the skills needed to handle ethical and legal challenges in practice, rather than just memorizing statutes. Additionally, writing at Mahindra University: Why Moot Courts are Essential for Law Students?
- **Holistic Benefits:** Writing for the faculty of Law, University of Oxford, titled: What it is, why to participate? It states that "in addition to skills, they cultivate teamwork, time management, critical thinking, and confidence. Participation shows commitment to employers and enhances resumes in competitive job markets. They also encourage engagement with current issues, such as international humanitarian law or environmental regulations, making learning more relevant and enjoyable."[8]

In 'Pros and Cons of Moot Court and Law Review,' it is written that moot court competition is described as an extracurricular activity that allows students to develop legal research and writing skills they use in the first year by

[6] fedbar.org
[7] Id.
[8] law.ox.ac.uk

writing the case.[9]

In essence, moot courts are more than just games; they demonstrate that effective lawyering requires performing under scrutiny and turning abstract principles into practical strategies.

4. STATUS AND CHALLENGES OF MOOT COURT COMPETITIONS IN COUNTRIES LIKE PAKISTAN

Moot court competitions are very popular in Pakistan, supported by a strong network of national and international events. Examples include the Henry Dunant Moot Court Competition (focused on international humanitarian law, with national rounds featuring dozens of teams from universities like LUMS,[10] which has won multiple times), the Philip C. Jessup International Law Moot (hosted by institutions such as Indus College of Law, with Pakistan's national rounds connecting to the global finals), and local events like the Pakistan College of Law's Annual National Moot, HCBA Multan National Law Moot, and Lords National Law Moot. Law schools like Pakistan College of Law (PCL), Lahore University of Management Sciences (LUMS), University of Management and Technology (UMT), and others regularly host or participate, often bringing 20–50 teams from across the country. Pakistani teams have also competed internationally, earning successes, including runner-up finishes in events such as the Jean Pictet Competition.[11]

However, the "conception" (i.e., the ideal purpose of skill-building and ethical preparation) can be overlooked or misused in countries like Pakistan because of systemic and cultural factors.[12] These factors include resource constraints and unequal access, traditional education focus, misaligned motivations, and broader contextual factors.

- **Resource Constraints and Unequal Access:** Many law schools, particularly outside major cities like Lahore, Islamabad, or Karachi, lack funding for dedicated moot court programs, trained coaches, or travel to competitions. This makes participation elitist, confined to well-funded institutions, rather than a widely accessible educational tool.[13] In contrast, developed countries integrate moots more seamlessly into curricula with institutional support.
- **Traditional Education Focus:** Pakistan's legal education often emphasizes rote memorization and theoretical exams rather than practical skills, reflecting colonial-era curricula and bar council requirements. Moots are occasionally seen as optional extras rather than essential for developing "advocacy competence." This results in inconsistent

[9] jdadvsing.com
[10] icrc.org
[11] pcl.edu.pk
[12] london.ac.uk
[13] icrc.org

implementation, with moots existing but not prioritized for their educational value.[14]

- **Misaligned Motivations:** Sometimes, moots are pursued for prestige, resume building, or perks like international travel, rather than for genuine skill development. This can create a competitive environment instead of a collaborative one, with accusations of favoritism in team selection, such as favoring connections over merit. Broader issues like nepotism in academia make this worse, turning moots into status symbols rather than fair learning opportunities.
- **Broader Contextual Factors:** Limited judicial infrastructure, political instability, and a focus on bar exams over experiential learning contribute to the delay. While initiatives like the Pakistan Law Moot (started in 2015) aim to promote national-level engagement, adoption varies.[15]

Reasons for this approach include the historical inertia of British-influenced systems that emphasize lectures, economic disparities that limit access, and cultural norms that prioritize hierarchy over merit-based participation.

To fix it:

- **Curriculum Integration:** Require moot courts to be credit-bearing courses in all law schools and mandate participation for licensure through bar councils such as the Pakistan Bar Council.
- **Capacity Building:** Collaborate with international organizations (e.g., ICRC for humanitarian law events) to provide training sessions, secure funding, and develop faculty.
- **Inclusivity Measures:** Subsidize participation for underfunded schools and promote intra-school competitions to democratize access.
- **Awareness Campaigns:** Host seminars highlighting moots' role in ethical legal practice, shifting focus from competition to learning.

5. SPECIFIC CHALLENGES AT INSTITUTIONS LIKE NUST AND PRACTICAL STEPS TO REDUCE FRICTION

Although publicly available information does not mention allegations of favoritism or discrimination in NUST's moot court program, NUST's Department of Law actively participates in events like constitutional law moots and international competitions. However, such issues are common in competitive extracurricular activities worldwide, where selection for prestigious teams—especially those involving international travel—can cause resentment if perceived as unfair. This friction occurs because moots are extracurricular and not part of the law school's main goal of teaching legal knowledge, ethics, and problem-solving for real-world issues—yet they can

[14] schooloflaw.net

[15] courtingthelaw.com

significantly impact student relationships.

Practical measures to address favoritism, discrimination, and resulting tensions include:

- **Transparent Selection Processes:** Set clear, publicly shared criteria—such as mock arguments, GPA in relevant courses, and essays—that are evaluated by a diverse committee including students, alumni, and external judges. Implement blind reviews to reduce bias.
- **Rotation and Inclusivity Policies:** Limit how often students are chosen to encourage broader participation. Create tiered teams (such as beginner versus advanced) or intra-school leagues to give more students experience without high-pressure exclusion.
- **Grievance Mechanisms**: Set up anonymous complaint reporting systems with independent reviews by ombudsmen or ethics committees. Conduct regular audits of selections to help build trust.
- **Faculty-Student Dialogue:** Hold town halls or feedback sessions to openly discuss concerns, emphasizing the extracurricular aspect of moots. Train faculty on anti-bias practices.
- **Diversify Opportunities:** Expand beyond elite international trips by hosting local moot courts, virtual competitions, or pro bono collaborations with NGOs, reducing envy over perks.
- **Holistic Emphasis:** Reinforce through orientations and counseling that the core of law school is ethical training and knowledge, not just competitions. Offer alternative extracurricular activities, such as legal clinics and research journals, to promote a better balance.
- **Monitoring and Accountability:** Track participation demographics annually and address imbalances (such as gender or regional favoritism) through affirmative policies, while complying with anti-discrimination laws.

These steps can turn moots into unifying experiences, aligning with their original goal of fostering ethical, skilled lawyers.

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