

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice AAMER FAROOQ
Justice SYED ARSHAD HUSSAIN SHAH

F.C.P.L.A.507/2025, C.P.L.A.1461-L/2024, C.P.L.A.1464-L/2024, C.P.L.A.1474-L/2024,
C.P.L.A.1523-L/2024, C.P.L.A.1555-L/2024 AND C.P.L.A.1586-L/2024
(Against judgment dated 13.10.2025 & 30.04.2024, passed the
Lahore High Court, Lahore as well as Multan Bench, Multan in
W.Ps.No.1991/2017, 16633, 16635, 16630 and 16634 of 2015,
5748/2012 and Press Appeal No.225/2012)

Muhammad Abdul Qadoos	F.C.P.L.A.507/2025
Tahir Mehdi Imtiaz Ahmad Warraich	C.P.L.A.Nos.1461-L & 1586-L of 2024
Mahmood Ahmad Ashraf	C.P.L.A.1464-L/2024
Luqman Ahmad	C.P.L.A.1474-L/2024
Ihsanullah	C.P.L.A.1523-L/2024
Abdul Samee Khan	C.P.L.A.1555-L/2024

.....Petitioner(s)

Versus

Province of Punjab & others	F.C.P.L.A.507/2025
Government of Punjab, etc.	C.P.L.A.1461-L/2024
Province of Punjab through Secretary Home Department, Lahore	C.P.L.A.1464-L/2024 C.P.L.A.1474-L/2024, C.P.L.A.1523-L/2024 and C.P.L.A.1555-L/2024
District Coordination Officer, Chiniot	C.P.L.A.1586-L/2024

.....Respondent(s)

For the Petitioner(s)	: Mirza Mahmood Ahmad, ASC
For the Respondent(s)	: Mr. Khalid Masood Ghani, Asst. A.G, Punjab
Assisted by	: Barrister Zarrar Haider Bhatti, Law Clerk
Date of Hearing	: 25.02.2026

**JUDGMENT OF THE FEDERAL CONSTITUTIONAL COURT OF
PAKISTAN****JUDGMENT OF THE COURT****JUSTICE AAMER FAROOQ:**

1. A common question of law arises from the above-captioned petitions, which are being decided through this single consolidated judgment. The High Court dismissed the petitions on the grounds of laches and the petitioners' failure to avail an alternate remedy within the prescribed limitation period. In the present proceedings, the petitioner also contends that an executive action has infringed upon his right to religious freedom as guaranteed under Article 20 of the Constitution of 1973. We disagree and affirm the judgment of the High Court.

A**I**

2. Petitioner Mr. Muhammad Abdul Qadoos challenged the legality of Notification No. SO (IS-III) 6-15/2010 dated 25.06.2014, issued by the Home Department, Government of Punjab, under Section 99-A of the Criminal Procedure Code ("**Cr.P.C.**")¹. Through this notification, a publication titled "Rohani Khazayeen, Volumes 1 to 23" was banned and all copies thereof were ordered to be forfeited. The writ petition filed by Abdul Qadoos was dismissed by the Lahore High Court, leading to the filing of the present leave to appeal before this Court. Likewise other petitioners, before us, challenged the action taken by the authorities under section 99-A Cr. P.C. against certain literature/material for being seditious.

¹ Writ Petition No. 1991 of 2017

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3. Petitioner Mr. Tahir Mehdi Imtiaz Ahmed Warriach, in the exercise of writ jurisdiction, challenged the show-cause notice bearing No. 1990 dated 11.02.2012, issued by the District Coordination Officer, Chiniot under Section 19 of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 ("**the Ordinance**"). The petition was dismissed; therefore, leave to appeal before this Court has been sought.

II

4. Learned counsel for the petitioners *inter alia* contended that ban imposed is on the writing of the literature on the religion of Ahmadiyya's titled "Rohani Khazayeen" and, as such, is not a book (FCPLA No.507-2025). It was contended that with respect to other writings as well, the ban imposed is uncalled for and is not warranted. It was contended that the imposition of ban is in violation of the fundamental right of the petitioners enshrined under the Religious Freedom Clause. It was submitted that as per the referred Clause, every citizen has a right to profess, practice and propagate his religion and every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions. It was contended that the right pertains to the religion of the petitioners hence impugned action on part of respondents is violative thereof. It was further submitted that it is trite law that through executive action, fundamental right cannot be curbed. It was argued that remedies under s. 99-B Cr.P.C. could not be invoked, as it is an alternate remedy. It was further contended that remedy provided under section 99-B is only applicable

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where fundamental rights are not involved and, as such, parameters of section 99-B have not been complied with. It was also submitted that writ petitions were not barred by laches inasmuch as petitioners acted promptly. On the other hand, Learned Additional Advocate General, Punjab *inter alia* contended that writ petitions filed by the petitioners are barred by laches, as same were filed after a considerable period of time. Moreover, it was submitted that since alternate remedy was not availed hence the petitions were also not competent on that score as well.

5. We have heard the learned counsel for the parties and perused the record available

B

6. Before delving into the gravamen of the case, it is noted that CPLA No. 1461/L of 2024 arises out of the impugned order passed by the Lahore High Court in Press Appeal No. 225 of 2012. Accordingly, we adjudicate upon the said petition and dismiss it along with the other connected petitions.

7. We assume jurisdiction over the aforementioned petition under Art. 175E (5) of the Constitution, 1973. Ordinarily, it is well settled that this Court hears appeals from judgments of the High Court(s) rendered in the exercise of their writ jurisdiction under Art. 199, subject to the grant of leave to appeal. See, Pakistan Const. Art. 175F(1)(c) (1973). However, this Court, in its precedent of *Matracon* case, has explained at length that Article 175E (5) is both a “character-conferring” clause and a “competence-enumerating” one. See, PLD 2026 FCC 127 at p.10. It

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vests this Court with a constitutional character to determine any case that “involves a substantial question of law as to the interpretation of the Constitution”. Once this Court is satisfied that such a question has arisen, it may “call for the record of any case pending before any Court and make such order in the case [this Court] thinks fit”. “By removing jurisdictional or subject-matter limits, [Art.] 175E (5) enables the Court to intervene wherever substantial constitutional meaning is at stake”. *Ibid.*

8. The test outlined in *Matracon* case, provides that a substantial question of law involving a question of the constitutional interpretation arises when “the case involves a dispute concerning the meaning, scope, or application of a constitutional provision and the resolution of the question [must have] consequences extending beyond the immediate parties, affecting the broader constitutional and/or legal framework of our Country”. *Ibid* at fn. 3².

² If a slight attempt is made at interpreting Art. 175E (5), it becomes apparent that the principal phrase warranting closer examination is “substantial question of law as to the interpretation of the Constitution”. The expression, it seems, is neither a term of art nor a relative term. Equally, it is not a novel phrase. Rather, it has previously been employed in Art. 175F(1)(b), which subsumes the erstwhile Art. 185(2)(f), conferring appellate jurisdiction upon the Supreme Court in cases where the High Court certified that a substantial question of law as to the interpretation of the Constitution arose. Although there is limited jurisprudence interpreting this phrase, the Sindh High Court, as early as 1964, in *Governor General of Pakistan v. Asafia Construction*, refused to grant a certificate of appeal to the Supreme Court because the Court was of the view that “[n]o provision of the Constitution [was] involved in the case”. See, PLD 1964 Karachi 614 at p.10. The involvement of a constitutional provision, therefore, becomes an indispensable precondition before it can be said that a question of constitutional interpretation has arisen at all.

Turning to the constitutional framework of 1957, Art. 157 conferred *pari materia* constitutional appellate jurisdiction upon the Supreme Court. While examining what constitutes a substantial question of law, Mr. AK Brohi observed that it is “[the] one in regard to which there can be a difference of opinion but it must be of such a general importance that it would be proper that it be settled by a declaration from the Supreme Court”. See, AK Brohi, *Fundamental Law of Pakistan* 673-674 (1958). Reading these authorities together, the conclusion that emerges is that a substantial question of constitutional law is one that is capable of giving rise to differing judicial opinions in relation to the interpretation of a constitutional provision. In other words,

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9. In light of our discussion in Part-D of our judgment, we assume our jurisdiction over CPLA No.1461/L of 2024 and dismiss it along with the connected petitions in terms as follows.

C

I

10. At the outset, the aspect of the case requiring consideration is that section 99-B of the Cr.P.C. affords a remedy to any person aggrieved by an order or action undertaken by the Government under section 99-A. The referred remedy is by way of application to the High Court to challenge the order of forfeiture. Similarly, a remedy of appeal is also provided under s.20 of the Ordinance in case of any grievance arising out of s.19 of the Ordinance. The High Court, while conducting proceedings under s.99B Cr.P.C. and s.20 of the Ordinance is arbiter of law and fact and is competent to take into account the impropriety, irregularity or illegality committed by the respondents/Government.

the question must involve a constitutional provision, and there must exist the genuine possibility of divergent views regarding its interpretation.

It is important to note that, as suggested by Mr. Brohi, the possibility of a difference of opinion need not be reflected in the impugned judgment. Rather, the relevant inquiry is whether the constitutional question is of such a character that it is reasonably capable of attracting differing judicial views. The emphasis, therefore, is on the inherent nature of the constitutional issue to raise divergent views rather than on the existence of an actual disagreement between the members of the bench deciding the case.

In *Matracon*, the Court introduced an additional qualification by holding that the effect of the constitutional question should extend beyond the immediate parties. This requirement serves an important constitutional purpose. The Constitution is not an instrument designed merely for the protection of individual litigants; rather, it is a foundational legal document intended to safeguard the rights and interests of all Pakistanis and, where applicable, other persons entitled to its protection. Consequently, constitutional adjudication should ordinarily address questions whose implications transcend the dispute between the parties, contribute to the development of constitutional jurisprudence, and provide authoritative guidance for future cases.

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Where the judicial forum is empowered to decide question of law, naturally, it can also decide the issue of fundamental right as well. Admittedly, the petitioners did not assail notification(s)/action on part of Government of the Punjab through remedy under section 99-B Cr.P.C and s.20 of the Ordinance, respectively within the prescribed limitation as specified in the referred statutes. Instead, they filed petitions under Article 199 of the Constitution. The referred petitions were filed after a considerable delay.³ No plausible justification exists for such kind of delay and, as such, even in the grounds of writ petition, nothing cogent has been mentioned as to the reason for delay in approaching the High Court.

11. The High Court held that the case is barred by laches, and we concur with this finding. Although no specific limitation period is prescribed for a writ petition, an inordinate delay gives rise to serious concerns, and such petitions may be rendered untenable on account of laches. The timely availment of remedies is essential, as limitation or even laches for that matter is not a mere technicality. Resorting to a constitutional petition to circumvent limitation, by disguising an otherwise time-barred claim as a “constitutional” matter, amounts to a clear abuse of the process of law.

³ Writ Petition No. 16634/2015 is filed after a delay of 11 months.

Writ Petition No. 16633/2015 is filed after a delay of 1 year.

Writ Petition No. 16635/2015 is filed after a delay of 1 year.

Writ Petition No. 16630/2015 is filed after a delay of 05 months & 21 days.

Writ Petition No. 1991 of 2017 is filed after a delay of 2 years 7 months.

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II

12. Another objection which was taken by learned counsel for the petitioners regarding notification(s) issued by the respondent that impugned decision was not taken by the Government of the Punjab rather the Home Department and this vitiates the judgment of the Supreme Court in case reported as *Mustafa Impex v. Government of Pakistan*, PLD 2016 SC 808 (per MIAN SAQIB NISAR, J.). We find the said submission of the learned counsel to be wanting. Under the Punjab Rules of Business, 2011, authority has been duly delegated and since the Home Department is the one to take actions in such like matters hence it was competently done. Learned counsel also contended that impugned decision has not been taken with application of mind; we are afraid that this issue is also not related as per the record inasmuch as Ulema Board was constituted, which after deliberations, decided that material therein can cause hatred amongst Muslim community, hence opined that the same be forfeited.

D

13. Another question posed before us is whether *via* an executive action, the rights of the petitioners are imperiled and can executive take such an action? While we shall endeavor to address this question, it will become apparent in the course of our analysis that the Petitioners' failure to avail the statutory remedy creates a significant limitation. This omission constrains the scope of our examination, as certain aspects of the case cannot be fully assessed in the absence of the requisite material.

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14. Fundamental rights under Chapter I, Part II of the Constitution, 1973 are understood as a catalogue of guarantees conferred upon citizens and, in certain instances, upon all persons. Yet, this orthodox formulation only captures part of the constitutional design. The true source, the stream from which these rights flow, lies in Article 4, which operates as the foundational guarantee of the fundamental rights. It secures to every individual the right to be dealt with in accordance with law and affords equal protection thereof, thereby safeguarding personal liberty in its broadest sense. In this way, Article 4 does not merely stand alongside other rights; it undergirds the entire scheme, from which specific guarantees, including the freedom of religion, draw both meaning and force, even as the Constitution proceeds to delineate them expressly in subsequent provisions.

15. Within this same constitutional architecture, rights and powers are not conceived in isolation but as interdependent components of a single, coherent scheme. The Constitution simultaneously envisages a “State”, comprising the Federal Government, Majlis-e-Shoora (Parliament), Provincial Governments and Provincial Assemblies, and vests in it the authority necessary for governance, including the power to legislate and administer. Thus, the conferral of fundamental rights on individuals and the allocation of powers to the State are complementary, designed to ensure the orderly and effective functioning of the constitutional order. The scope of executive authority, in particular, is circumscribed by and co-extensive with the law-making

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competence of the respective legislatures, reinforcing that all state action must trace its legitimacy to a lawful source.

16. Seen in this light, the petitioner's assertion that his fundamental right under Article 20 has been infringed by the "executive" is, with respect, untenable. The correct approach is not to broadly label an act as "executive," but to determine the exact legal source from which the challenged action derives its authority. Only by locating that source; whether in statute, delegated legislation, or otherwise, can the Court meaningfully assess its conformity with the guarantees of fundamental rights.

17. It is now well-settled that "any action, of whatever nature, must be firmly rooted in law and must be traceable to a legal source from which it derives its authority. This principle constitutes the fundamental affirmation of the constitutionality of our system of governance". See, *Chief Secretary, Government of Balochistan v. Bayazid Khan Kharooti*, CPLA No. 217-Q of 2023 (FCC), at p.1. This articulation encapsulates the principle of legality as recognized within our jurisdiction. Tested against this standard, there is no dispute that the impugned action emanates from the office of the Chief Secretary; however, the determinative inquiry is not the identity of the functionary, but the legal source of the power exercised. In the present case, the authority is clearly traceable to statutory instruments, namely Cr.P.C. and the Ordinance. These enactments expressly empower the Chief Secretary to undertake the impugned measure, thereby situating the action within a statutorily conferred framework rather than the realm of

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unfettered executive discretion. The Constitution, in this respect, delineates the contours of permissible state action by insisting that all exercises of public power must find their origin within law.

18. In *Ministry of Commerce v. Kashif Law Book House*, CPLA Nos. 1505 & 1506 of 2024, this Court was confronted with a tension between fundamental rights and considerations of foreign policy. While the Court exhibited deference to policy considerations, such deference was neither absolute nor unqualified. It was grounded in the constitutional scheme which delineates the respective spheres of authority among state organs and necessitates a functional equilibrium between governance imperatives and the protection of fundamental rights. Courts, therefore, refrain from supplanting policy choices, yet remain vigilant in ensuring that such choices do not transgress constitutional boundaries. Crucially, even within this deferential posture, the Court underscored that any impugned action must remain anchored in law; absent such legal pedigree, it would struggle to withstand constitutional scrutiny.

19. Applying these principles to the case at hand, it becomes evident that the impugned action cannot be characterized as a purely “executive action” in the broader sense suggested by the petitioner. The constitutional framework clearly delineates a distinction between (i) actions taken in the exercise of bare executive discretion and (ii) actions undertaken pursuant to statutory authorization. The present case squarely falls within the latter category. Although the action has been undertaken by an executive functionary, it has been exercised strictly

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“pursuant to” and “in furtherance of” statutory authority. The mere involvement of an executive official does not *ipso facto* render the action executive in nature if its source and legitimacy are derived from positive law. To hold otherwise would conflate the identity of the actor with the character of the power exercised, an approach inconsistent with established constitutional doctrine. Accordingly, the petitioner’s contention is misconceived and is, therefore, liable to be dismissed.

20. Furthermore, in this context, as reflected in the evolution of jurisprudence in *Kashif Law Book House*, the treatment of fundamental rights demonstrates an approach rooted in balancing such rights against competing policy considerations, most notably, reconciling the right to access reading material with the demands of foreign policy. This approach is not unprecedented. Rather, the Supreme Court’s articulation of this balancing exercise rests upon the following foundational premise:

“The Fundamental Rights can neither be treated lightly nor interpreted in a casual or cursory manner but while interpreting Fundamental rights guaranteed by the Constitution, a cardinal principle has always to be borne in mind that these guarantees to individuals are subject to the overriding necessity or interest of community. A *balance* has to be struck between these rights of individuals and the interests of the community. If in serving the interests of the community, an individual or number of individuals have to be put to some inconvenience and loss by placing restrictions on some of their rights guaranteed by the Constitution, the restrictions can never be considered to be unreasonable.” (*Pakistan Muslim League (N) through Khawaja Muhammad Asif v. Federation of Pakistan*, PLD 2007 SC 642) (emphasis supplied in italics).

This demonstrates that fundamental rights, including the right to religious freedom, are not absolute but must be balanced against broader public considerations. In this context, Article 20 of the

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Constitution guarantees religious freedom, subject to law, public policy, and morality. At this juncture, it is necessary to pause. The petitioner's claim that Article 20 has been violated requires a careful examination of the validity, strength, and underlying reasoning of the bans imposed on the books/material under the Cr.P.C. and the relevant Ordinance and the forfeiture thereof. However, in the absence of actual material on the record, owing to the petitioner's failure to avail the appropriate remedies, we are unable to proceed on mere assumptions. In any event, this contention cannot be invoked to bypass the statutory limitation periods, which have already resulted in the dismissal of the writ petitions. It is restated that the assertion of the learned counsel for the petitioners that the impugned actions on part of the executive/respondents violate their Religious Freedom clause seems to be an afterthought and was nothing more than wittering on about the subject of Fundamental Rights in general and Religious Freedom clause in particular. The learned counsel instead of making any attempt to show us the content of the material and its impact made a general discourse. As already noted, we are unable to decide the referred question in a purposive manner due to reasons noted in preceding paragraphs. Hence, we can safely conclude that there was no violation of Fundamental Rights of the petitioners in the facts and circumstances.

E

21. In light of the reasoning set out in Part C & D of the judgment, we hold that the impugned judgment before us does not suffer from any

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error of law or jurisdiction warranting our interference. Instant petitions stand dismissed and leave refused. Accordingly, all pending applications are also disposed of.

Judgment is hereby entered.

JUDGE**JUDGE**

Islamabad
25.02.2026

Zawar/

APPROVED FOR REPORTING