

BEFORE THE HONOURABLE LAHORE HIGH COURT, LAHORE

**HAFEEZ-UR-REHMAN CHOUDHARY S/O GHULAM RASOOL CHOUDHARY R/O 1)
6 HREN COURT DIX HILLS, NY-11746, USA 2) 300 O BLOCK, FAREED TOWN,
SAHIWAL, PAKISTAN**

...Petitioner

VERSUS

**FEDERATION OF PAKISTAN THROUGH CABINET DIVISION, CABINET BLOCK,
CABINET SECRETARIAT, Red Zone, Capital Territory, Islamabad, Pakistan**

...Respondent

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN FOR ENFORCEMENT OF ARTICLE 2A OF
THE CONSTITUTION OF PAKISTAN**

PARTIES TO THE PETITION

1. That the Petitioner is a patriotic and a law-abiding citizen of Pakistan. The Petitioner is a public spirited individual, striving for the betterment of Pakistan in every field especially the system of the government and wants to bring Presidential form of Government in Pakistan to ensure political stability and justice.

PURPOSE OF THE PETITION

2. That the Petitioner has filed the instant petition in **PUBLIC INTEREST** and through the instant petition the Petitioner seeks indulgence of the Hon'ble Court in a matter of public interest for the furtherance and progress of Pakistan. This petition is filed with the sole purpose to seek the aid of this Hon'ble Court and to invoke Article 2-A, and the law/legislation under Article 32, Article 51, Article 59 and Article 106 of the Constitution of the Islamic Republic of Pakistan, (hereinafter the "**Constitution**"). The relevant sections are produced below:

Promotion of local Government institutions

32. The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.

Existing Composition of the National Assembly of Pakistan:

Province / Area	General Seats	Women Seats	Non-Muslim	Total Seats
Balochistan	14	03		17
Khyber Pakhtunkhwa	35	08		43
Punjab	148	35		183
Sindh	61	14		75
Federal Capital	02	-		02
FATA	12	-		12
	-	-	10	10
Total	272	60	10	342

51. National Assembly:

(1) There shall be [three hundred and forty two] seats for members in the National Assembly, including seats reserved for women and non-Muslims.

(2) A person shall be entitled to vote if-

(a) he is a citizen of Pakistan;

(b) he is not less than eighteen years of age;

(c) his name appears on the electoral roll; and

(d) he is not declared by a competent court to be of unsound mind;

(3) The seats in the National Assembly referred to in clause (1), except as provided in clause (4), shall be allocated to each Province and the Federal Capital as under-

Province / Area	General Seats	Women Seats	Non-Muslim	Total Seats
Balochistan	14	03		17
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	-	-	10	10
Total	272	60	10	342

59 The Senate

[122](#)[

- (1) The Senate shall consist of one-hundred members, of whom, -
- fourteen shall be elected by the members of each Provincial Assembly;
 - eight shall be elected [123](#)] [123](#) from the Federally Administered Tribal Areas, in such manner as the President may, by Order, prescribe;
 - two on general seats, and one woman and one technocrat including aalim shall be elected from the Federal Capital in such manner as the President may, by Order, prescribe;
 - four women shall be elected by the members of each Provincial Assembly;
 - four technocrats including ulema shall be elected by the members of each Provincial Assembly.

] [122](#)

- (2) Election to fill seats in the Senate allocated to each Province shall be held in accordance with the system of proportional representation by means of the single transferable vote.

[132](#)[

- (3) The Senate shall not be subject to dissolution but the term of its members, who shall retire as follows, shall be six years:- [133](#)[
- of the members referred to in paragraph (a) of clause (1), seven shall retire after the expiration of the first three years and seven shall retire after the expiration of the next three years.
 - of the members referred to in paragraph (b) of the aforesaid clause, four shall retire after the expiration of the first three years and four shall retire after the expiration of the next three years;
 - of the members referred to in paragraph (c) of the aforesaid clause, one shall retire after the expiration of the first three years and two shall retire after the expiration of the next three years; and
 - of the members referred to in paragraph (d) of the aforesaid clause, two shall retire after the expiration of the first three years and three shall retire after the expiration of the next three years;

ARTICLES 32, 51,29 AND 106 OF THE CONSTITUTION ARE ATTACHED WITH THE PETITION AS ANNEXURES : _____

3. That through the instant petition the Petitioner seeks to highlight the indifference, lassitude and inaction of the Respondents towards non-fulfillment and non-implementation of Article 2-A Objective Resolution guaranteed under the Constitution of the Pakistan, (hereinafter the "**Constitution**"). That the Petitioner argues that Article 2A read as follows:

The Objectives Resolution to form part of substantive provisions [2A- The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly].

4. That the objective resolution embodies the primary purpose of constitution whereas the later provisions of Article 32, 51, 59 and 106 are merely secondary procedures which are not followed accordingly. Factually, Article 2A represents the foundation of constitutional development in Pakistan; reinforcing core political values of equality, justice, freedom, and morality. Article 2A, initially, acted as a preamble for previous Constitutions and later, became a part of the 1973 Constitution under the Eighth Amendment. Since Article 2A signifies the morality of the constitution, one cannot change this provision. In contrast, later articles detailing political procedures are susceptible to change.
5. That the Petitioner recommends an alternate political system — ***a Presidential System*** and further contends that these procedural changes would restore ***political justice*** in Pakistan which lays the foundation for socio-economic justice in both domestic and international spheres.

(Annexure A - A Practical Road Map for a Presidential System in Pakistan) and (Annexure B - A journey on vision for Pakistan)

Constitutional History

6. That after the Partition of Sub-continent, Pakistan came into being on 14th August 1947, as a new independent, sovereign and Muslim state. The Government of India Act 1935 and the Constitution of British India with certain adaptations and modification served as the Interim Constitution of the Islamic Republic of Pakistan.
7. That following independence, it took three Governor Generals, four Prime Ministers and two constituent assemblies (1947-1954 & 1955-1956), and nine years of protracted Constitution building/making process to produce the first constitution of Pakistan in 1956, which was abrogated after two years until the first President of Pakistan Major- General Iskander Mirza dissolved the national and provincial legislatures and imposed Martial Law in October 1958, appointing General Ayub Khan as the Chief Martial Law Administrator. After passing a new Constitution in 1962 that empowered an autocratic executive, General Ayub Khan ruled until 1969. In 1973 Pakistan adopted its current constitution after thorough deliberation and

consensus of all the political parties. The Constitution of Pakistan created a parliamentary form of government following the British model whereby the elected Prime Minister is the locus of executive power and the President is a figurehead. The other key foundational principle of the 1973 Constitution is that of federalism.

8. That in the Constitution making process it took the three constituent assemblies of Pakistan (1947-1954, 1955-1956, 1972-1973), producing the 1956, 1962 and (current) 1973 constitution.
9. That Pakistan was born on August 14, 1947 without a constitution. Absence of constitution was the fundamental reason for 1971 loss of East Pakistan. Pakistan's 1956 constitution is illegitimate because of its approval by a nominated assembly created in 1955. Pakistan's 1962 constitution is illegitimate because of its approval under a military dictatorship (Ayub Khan). It did not represent the will of the people. Pakistan's 1973 constitution has serious structural defects pertaining to electing the government which has brought about political instability in Pakistan and has consequently resulted in the national crises of 1977, 1999, and 2007.

GROUND

10. That there is a sheer violation of Article 2A of the Constitution which speaks about Equality, Fairness, Social justice and **Political justice**. The Fundamental Rights guaranteed under the Constitution include Equality, Fairness, Social Justice and **Political justice** to the citizens on behalf of the State and in **2012 PLC (C.S) 1048**, the importance of Article 2-A i.e. the Objectives Resolution, is discussed in the following terms:

“There can be no denial that social justice is an objective, embodied and enshrined in our Constitution. The Preamble and Article 2-A i.e. the Objective Resolution, ordain that principles of equality and social justice as enunciated by Islam shall be fully observed. In **1987 PLD 58 Lahore**, Article 2-A i.e. the objective resolution is again held to be substantive part of constitution. Thus, the violation of Article 2-A would amount to a breach of fundamental rights guaranteed under the Constitution.

11. That the august Supreme Court through multiple judgments over the years expressed the importance of fundamental rights. In **PLD 2012 Supreme Court 681**, it is discussed that “All constitutional mandates and prescriptions are deemed to have been issued in furtherance of these Islamic principles and within these prescribed parameters. Article 2A, therefore, expressly instructs that “...principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed” in the State of Pakistan. The protection and advancement of these principles is an integral objective and an essential feature of the Pakistani Constitutional

Order. In appreciation of the value accorded to Fundamental Rights by Islam, the same Article mandates that the State shall guarantee "fundamental rights, including equality of status, of opportunity and before law, social, economic and **political justice**, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality". The entire set of Chapter II of the Constitution further reiterates the constitutional importance and manifests the realization of this objective."

(Article 2-A)

The Objectives Resolution

Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

12. That the Respondents are bound under the Constitution to secure all rights the citizens of Pakistan are entitled to, especially those which have a direct impact on the quality of their lives including the intrinsic, fundamental, constitutionally guaranteed the Constitution.
13. That Pakistani Courts have established that Fundamental Rights promised under the Constitution shall be interpreted in its true spirit. The Respondents are bound under the Constitution to adhere to Article 2A, Objective Resolution, of the Constitution which guarantees the fundamental right of **political justice** which is denied to the people of Pakistan because they have been ruled by the political parties who get less 51% of the popular vote.
14. That about 25% of *special seats in Parliament* are rooted in corruption and it is unjust to the people of Pakistan. [Article 51(3)]. This violates Article 2A which declares "Wherein the State shall exercise its powers and authority through the **chosen representatives of the people**" while in the presidential system, there will be no special seats in parliament and the exercise of power would be through chosen representatives of people.
15. That under the present system, there are Indirect elections of senators which deprives the people of Pakistan of their fundamental right of **Political justice**, Equality and Fairness, by excluding their direct votes. That in the Presidential System, there will be a direct election of senators which will ensure fairness.
16. That the senate has less power, resulting in a weaker federation and it is pertinent to highlight that in the presidential system, the senate will be more powerful which would result in keeping the federation strong.
17. That the independence of President is maintained in a presidential system. Once the President is elected the he is above his party and its pressure. Hence, he stands as a symbol of one nation and is free from

the pressure of political parties and its members. In the Presidential system, President is elected for a fixed term/tenure and this upholds a stable government.

18. That the current system is violative of the principle/concept of Separation of Powers. The Principle of Separation of Powers states that the three arms of government; the legislature, executive and judiciary must be separate in functions, personnel and power, but in the current system; there is fusion of powers in terms of executive and legislature.
19. That the mechanism of Separation of Power in a state enhances the effective performance of each arm of the governments functions, a check and balance is ensuring the performance of government.
20. That in a presidential system, there is individual ministerial responsibility and unlike the current parliamentary system which allows non performing ministers to shelter under the collective responsibility, the individual ministerial responsibility/accountability ensures a smooth, substantial and efficient checks on ministers.
21. That it is pertinent to mention that the dual nature of executive as in the present system, can be a source of conflict i.e. disagreement on policies and programmes to be implemented in the state. In the Presidential system, people elect legislators and executives separately, thus upholding the notion of separation of powers.
22. That in a Presidential system, the President, Governor and District Mayor can more effectively provide good governance on Federal, State and District levels.
23. That the Parliamentary system encourages polarization in Pakistani society which contains many languages and religious sects. We can view this polarization in the parliamentary elections of 2008, 2013, and 2018. [Attach results of political parties which indicates polarization].

Province	2008	2013	2018
Punjab	PML(N)	PML(N)	PTI
Sindh	PPP	PPP	PPP
KPK	ANP	PTI	PTI
Balochistan	PML(Q) + PPP	BNP + PML(N)	BAP

24. In the presidential system, any person from any province has the opportunity to gain the popular vote based on their own merits. This will diminish polarization rooted in religious and linguistic sects.

25. That in the current parliamentary system, independently elected MNAs and MPAs sell their loyalty and convert a majority party to a minority party e.g. 2018 Punjab Election results. There will not be any independent candidates without a political party in the presidential system.

26. By-election in the Parliamentary system wastes time and money at the expense of the people of Pakistan. There will be no by-election in the presidential system.

27. That in order to restore **political justice** under the purview Article 2-A, Objective Resolution

PRAYER:

In view of the above it is most respectfully prayed that this Honourable Court may be pleased to:

- i. Direct the the respondents conduct violative of Article-2A of the Constitution;
- ii. Declare the respondents should take steps to meet the Objective Resolutions given in the Constitution;
- iii. Direct the matter to the Parliament for consideration, discussion and evaluation of the current system;
- iv. Direct the Prime Minister of Pakistan to hold a referendum under Article 48(6) of the Constitution of the Islamic Republic of Pakistan in order to ascertain and determine the will of the people of Pakistan;
- v. Eliminate the special seats in Senate, National and Provincial Assemblies;
- vi. Direct it the Respondents responsibility and duty to achieve Separation of Powers and to prevent the misuse of powers
- vii. Direct provincial governments to form district governments under the true spirit of Article 2A.

And any other relief this Honorable Court deems to be just and appropriate may also kindly be granted

Applicant/Petition

Through

Barrister Muhammad Ahmad Pansota
Advocate Supreme Court

Ahmed & Pansota
(Advocates & Legal Consultants)

20-Sir Ganga Ram Mansions, the Mall, Lahore

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W.P. No. _____ / 2021

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Vs

**FEDERATION OF PAKISTAN THROUGH CABINET DIVISION, CABINET BLOCK,
CABINET SECRETARIAT, Red Zone, Capital Territory, Islamabad, Pakistan**

**APPLICATION U/S 151 C.P.C. FOR EXEMPTION OF
PRODUCTION OF CERTIFIED COPIES OF THE ANNEXURES**

Respectfully Sheweth:

1. That the Applicants/Petitioners have filed the titled Petition before this Honourable Court, which is yet to be fixed for hearing.
2. That the Applicants/ Petitioners are making vigorous and strenuous efforts to secure the certified copies of the annexures attached and that the said copies shall be placed on the record as and when made available. Uncertified copies therefore, duly checked, and signed by the counsel has been placed on the record.

It is therefore, respectfully prayed that production of the certified copies of the annexures may kindly be dispensed with and the titled Application be entertained as it is.

Any other order deemed to be just and appropriate may also kindly be made.

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Through

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