JUDGMENT

Syed Hasan Azhar Rizvi, J. I have had the privilege of perusing the majority judgment proffered by Mr. Justice *Qazi Faez Isa*, Hon'ble Chief Justice of Pakistan. I generally concur with the same to the extent of affirming the constitutionality of the Supreme Court (Practice and Procedure) Act, 2023 ("**the impugned Act**"); however, my disagreement, with the utmost respect, pertains solely to the retrospective right of appeal as stipulated in section 5(2) of the impugned Act. This dissent is grounded in a conscientious examination of the potential consequences that such a retrospective operation may yield, both legally and practically. Being so, I am persuaded to delineate and elucidate the rationale supporting my divergence from the majority opinion on this particular aspect. For convenience's sake, the short order dated 11.10.2023 is reproduced below: --

> ***"ORDER OF THE COURT***
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> *For reasons to be recorded later these petitions are decided as under:*
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> *1. Subject to paras 2 and 3 below, by a majority of 10 to 5 (Justice Ijaz ul Ahsan, Justice Munib Akhtar, Justice Sayyed Mazahar Ali Akbar Naqvi, Justice Ayesha A. Malik and Justice Shahid Waheed dissenting) the Supreme Court (Practice and Procedure) Act, 2023 ('the Act') is sustained as being in accordance with the Constitution of the Islamic Republic of Pakistan ('the Constitution') and to this extent the petitions are dismissed.*
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> *2. By a majority of 9 to 6 (Justice Ijaz ul Ahsan, Justice Munib Akhtar, Justice Yahya Afridi, Justice Sayyed Mazahar Ali Akbar Naqvi, Justice Ayesha A. Malik and Justice Shahid Waheed dissenting) sub-section (1) of section 5 of the Act (granting a right of appeal prospectively) is declared to be in accordance with the Constitution and to this extent the petitions are dismissed.*
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> *3. By a majority of 8 to 7 (Chief Justice Qazi Faez Isa, Justice Sardar Tariq Masood, Justice Syed Mansoor Ali Shah, Justice Amin-ud-Din Khan, Justice Jamal Khan Mandokhail, Justice Athar Minallah and Justice Musarrat Hilali dissenting) sub-section (2) of section 5 of the Act (granting a right of appeal retrospectively) is declared to be ultra vires the Constitution and to this extent the petitions are allowed."*

2. Before the impugned Act, there was no right of appeal against the order passed by this Court in the exercise of the original jurisdiction under clause (3) of Article 184 of the Constitution. But, the aggrieved person could have sought his remedy by invoking the review jurisdiction of this Court under Article 188 of the Constitution. The study of the

Constitutional history of Pakistan reveals that the power of Supreme Court to review any of its judgments or orders as given under Article 188 of the Constitution is not new as the same power was granted to the Supreme Court under Article 161 of the Constitution 1956 and Article 62 of the Constitution 1962. Initially, the Supreme Court's power of review was regulated by the Federal Court Rules, 1950. However, after the promulgation of the Constitution, 1956 the Supreme Court, in the exercise of its rule-making power, made the Supreme Court Rules, 1956 and under its sub-rule 2 of rule 1, the then existing Rules 1950 were revoked. The Order XXVI (R 1 to 7) of the Rules 1956 regulated the Supreme Court's power of review. The Rues 1956 remained in force till the making of the Supreme Court Rules, 1980 (**"Rules 1980"**) by the Supreme Court, in the exercise of the power conferred upon it under Article 191 of the Constitution, 1973. Order XXVI (Rule 1-9) of the Rules 1980 regulates the Supreme Court's power to review any of its judgments or orders. Being so, the aggrieved persons, from the very beginning, used to seek their remedy by resorting to the review jurisdiction of this Court, the only remedy available against the order passed by this Court in its original jurisdiction under clause (3) of Article 184 of the Constitution.

3. It would not be out of place to mention here that the power of review under Article 188 of the Constitution is not wide enough rather definite and limited in nature and confined to the basic aspect of the case referred to at the review stage which was considered in judgment but if the grounds taken in support of the review petition were considered in the judgment and decided on merits, the same would not be available for review in the form of re-examination of the case on merits. Reference may be made to the cases of *Ghulam Murtaza Versus Abdul Salam Shah* (**2010 SCMR 1883**); *Syed Wajihul Hassan Zaidi versus Government of the Punjab and others* (**PLD 2004 Supreme Court 801**); *Pakistan International Airlines Karachi versus Inayat Rasool* (**2004 SCMR 1737**); *Nook Hassan Awan versus Muhammad Ashraf* (**2001 SCMR 367**); *Kalsoom Malik and others versus Assistant Commissioner and others* (**1996 SCMR 710**) and *Abdul Majeed and another versus Chief Settlement Commissioner and others* (**1980 SCMR 504**).

4. On the other hand, an appeal allows for a comprehensive re-examination of a case, unlike a review that focuses on specific aspects of the original decision. More appropriately, the right of appeal and review are not analogous as an appeal is, the review is not the continuation of the

same proceedings. Thus, the legislature, in light of the above holistic distinctions, has rightfully provided the right of appeal from an order of a bench of this Court, that has exercised jurisdiction under clause 3 of Article 184 of the Constitution to a larger bench. Moreover, the right of appeal has been extended to the aggrieved persons against whom an order under the said Article of the Constitution has been made even before the commencement of the impugned Act. The provisions of section 5 are reproduced hereunder for ease of reference:

> "**5. Appeal**. –
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> *(1) An appeal shall lie within thirty days from an order of a bench of the Supreme Court who exercised jurisdiction under clause (3) of Article 184 of the Constitution to a larger bench of the Supreme Court and such appeal shall, for hearing, be fixed within a period not exceeding fourteen days.*
>
> (2) *The right of appeal under sub-section (1) shall also be available to an aggrieved person against whom an order has been made under clause (3) of Article 184 of the Constitution, prior to the commencement of this Act:*
>
> *Provided that the appeal under this sub-section shall be filed within thirty days of the commencement of this Act.*"

5. The provision of the right of appeal to an aggrieved person against whom an order has been made under Clause (3) of Article 184 of the Constitution is one of the objects of the enactment of the impugned Act as set out in the preamble thereof, which provides that "*[A]rticle l0A, of the Constitution, mandated right to fair trial and due process, Article 4 of the Constitution guarantees treatment in accordance with law, Article 25 of the Constitution prohibits discriminatory treatment and right of appeal is a universal fundamental principle of jurisprudence and Islam guarantees right of appeal, therefore, pursuant of Article 175 (2) read with Article 191 of the Constitution this law is being enacted.*" By providing the right of appeal, the legislature has achieved its objective. The conferment of the right of appeal is also in conformity with the injunctions of Islam as laid down in the Quran and the Sunnah as held by this Court in the cases of *Federation of Pakistan v. Public at Large* (**PLD 1988 Supreme Court 202**) and *Pakistan through Secretary, Ministry of Defence v. The General Public* (**PLD 1989 Supreme Court 6**). In these cases, the Shariat Appellate Bench of this Court declared that under the Islamic dispensation of justice, at least one right of appeal must be provided to an aggrieved person and that the law barring such right to an aggrieved person is repugnant to the injunctions of Islam.

6. The issue regarding the constitutionality of the impugned Act as well as the competence of the legislature to enact the impugned Act and to provide a statutory right of appeal thereunder against the exercise of original constitutional jurisdiction by this Court under Article 184(3) of the Constitution has exhaustively and comprehensively been deliberated in the majority judgment with sound reasoning, and I concur with the arguments built therein. And, I further add that this legislative framework would uphold the principles of fairness, transparency, and justice within our legal system. Now, the independent judges, greater in numbers and uninvolved in the original case, have the opportunity to rehear and decide the matter. This not only reaffirms the core values of impartiality but also strengthens the integrity of the legal system by allowing for a fresh perspective when justice may not have been adequately served in the original proceedings.

7. There is no denial to the fact that every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes the power to give it retrospective effect. However, normally, the legislation, which is not of a purely procedural nature, will not be given retrospective effect so as to take away vested rights of the parties. On a plain reading of the language of the afore-quoted provision, particularly, sub-section (2) of section 5 of the impugned Act, it becomes abundantly clear that the legislature's intent is to provide the remedy of appeal against orders passed by this Court, even predating the enactment or commencement of the impugned Act. It is a settled principle of law that the right of appeal is a substantive right; hence, the retrospective expansion thereof raises significant apprehensions, as it threatens to disrupt the finality and certainty that has historically been attributed to judicial pronouncements. Such disruptions may have deleterious ramifications, not only in terms of the orderly administration of justice but also with respect to the stability and predictability of legal decisions. For these reasons, my disagreement with the majority and reservation to the extent of the provision of the right of appeal retrospectively present a palpable concern, as it would offend the fundamental rights of the parties because it has the potential to open a veritable floodgate of claims and appeals pertaining to past transactions and concluded legal matters.

8. At the same time, I cannot loose sight of the fact that the legislature has the power to impair and take away vested rights but within the limits set by Articles 4, 8, 9, 10 and 10-A in conjunction with Articles

24 and 25 of the Constitution. The limitation flows from the doctrine that the action of the State must be fair and reasonable. Thus, the question, as to the validity of the retrospective law, is a matter to be judged on a consideration of the facts, the period of time, over which the retrospective law operates, the impact of the law on the vested rights, the public interest, the nature of the right, which is the subject matter of the law and the terms of the law. Even otherwise, the validity of a legislative enactment, whether with retrospective effect or otherwise, shall always be subject to judicial review on the well-recognized principles of *ultra vires*, non-conformity with the Constitution or violation of the Fundamental Rights, or on any other available ground as observed by this Court in the case of *Sindh High Court Bar Association through its Secretary and another versus Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad, and others* (**PLD 2009 Supreme Court 879**).

9. The notion of granting a right of appeal against earlier decided cases is not to be taken lightly, as it carries profound implications that extend far beyond the immediate legal proceedings. We must be acutely aware that such a provision, while intended to ensure justice and fairness, can potentially cast a shadow of prejudice over past and closed transactions, as well as the rights and interests that have been secured under the judgments of this Court. The legal system, as it stands, is built on a foundational principle of 'finality'. When the Court renders a decision, it offers parties involved a sense of closure and certainty, allowing them to plan their future actions and make informed decisions based on the judgment's legal precedent. This foundation of predictability is vital not only for the parties but also for the broader stability of our legal framework. It is, therefore, imperative that we proceed cautiously when considering appeals against earlier decisions. We must recognize the delicate balance that exists between the pursuit of justice and the preservation of past transactions and previously accrued rights. Granting the right of appeals retrospectively must be done judiciously and only when compelling circumstances require it, as it threatens to disrupt the settled expectations of those who have acted in good faith based on the Court's prior rulings.

10. The present constitution came into force on 14.08.1973 (see Article 266). Over the span of nearly five decades, so many cases have been adjudicated by this Court in the exercise of its power under clause 3 of Article 184 of the Constitution. It is a common practice that the aggrieved person would not be satisfied unless he exhausts all the remedies available

to him under the existing law. Even otherwise, the judgment or order passed under clause 3 of Article 184 of the Constitution, whether a review petition has been filed against it or if a period of thirty days has elapsed after the pronouncement thereof without a review filed by either party, could not be reopened and would be deemed to be a past and closed transaction. For this reason, introducing a retrospective right of appeal now raises a profound concern. This could further compromise the principle of *res judicata* and jeopardize the stability and predictability of the legal system. It would open a floodgate of litigation and potentially overburden this Court with the daunting task of reevaluating numerous pre-settled matters or rights which had accrued on account of determination validly made under the then-existing law.

11. A somewhat similar matter came for consideration before this Court in the case of *the Chief Land Commissioner, Sind, and others versus Ghulam Hyder Shah and others* (**1988 SCMR 715**), wherein, the validity of the Land Reforms Regulation (Sind Amendment) Ordinance, 1972, **which was expressly made retrospective** and had the effect of nullifying the alienations of land previously held valid under the provisions of the un-amended Regulation, was challenged. A three-member bench of this Court unanimously made the following important observations:

> "*11. Now on a plain reading of the language of the Amending Ordinance there is no ambiguity that the same was given effect retrospectively and by the mandate of the law the amendments were to be deemed to have taken effect on 11th March, 1972. However, doubt with regard to the retrospectively in this case has arisen, on account of the fact and in respect of the orders earlier passed by the Land Commission in exercise of powers vesting in it under the existing law whereby the alienations declared by the two landholders were affirmed as valid transactions. As pointed out by the* ***High Court the legislature has merely declared the amendments effected in the main Regulation to have taken place retrospectively and left the matter at that. No express provision was made in the amending statute to the effect that the new dispensation, totally prohibiting the recognition of any alienations in favour of non-heirs, will also affect and undo the orders passed under the existing law by the Land Commission prior to the date of the passing of the amending Ordinance.*** *In order to resolve this doubt the matter naturally falls within the domain of interpretation by the Court to determine whether the law as amended will also be applicable to past and closed transactions. To put it differently the question is whether in this sense the amending Ordinance contains an express provision or this result is contemplated by the language of the amending Ordinance by necessary implication.* ***In this behalf the High Court proceeded on a correct principle of interpretation***

> ***that "no rule of construction is more firmly established than this, that retrospective operation is not to be given to a statute so as to impair an existing right or obligation"****. The main and primary rule is that every statute is deemed to be prospective, unless by express provision or necessary intendment it is to have retrospective effect.* ***Also the rule that no statute shall be construed so as to have retrospective operation affecting vested rights to a greater extent than its language renders necessary is firmly established****."*
>
> **Emphasis Supplied.**

Further observed:

> *"12…Therefore, if the power vesting in the Commission, untrammeled by the prohibition, subsequently incorporated in the law, was once asserted and exercised, the result of such exercise of power will be a transaction past and closed qua the amending Ordinance. It is in this context that the retrospectivity of the amending statute in this case has to be determined.* ***Looking at the matter in this way we are in agreement with the conclusion arrived at by the Division Bench that there is no express or implied intendment in the provisions that such past and closed transactions would be affected by the amendment. Under the law as it stood on the date when the earlier orders were passed by the Commission the same were perfectly legal and capable of creating rights in favour of the donees of the gifts scrutinized under the provisions of the said law.*** *Therefore, although the amending Ordinance is retrospective in the sense that it applies to alienations which had taken place before 11th March, 1972,* ***the restrictions on the power of the Commission stipulated by the amending law cannot be retrospectively applied to transaction duly scrutinized and affirmed before the date of the amending Ordinance. This is consistent with the rule of presumption that the legislature does not intend what is unjust or to reopen transactions which have already resulted in creating title to property to be re-opened or exposed to jeopardy****."*
>
> **Emphasis Supplied.**

The Court finally held:

> *"Therefore,* ***the earlier orders by the Commission in favour of the non-heir transferees, having been lawfully passed could not be subjected to review by applying the dispensation created by the amending Ordinance to those orders, which amounts to unauthorisedly giving retrospective operation****, to the amending law not permitted by the statute itself."*
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> **Emphasis Supplied.**

12. Recently, in *Badshah Gul Wazir versus Government of Khyber Pakhtunkhwa through Chief Secretary and others* (**2015 SCMR 43**), a similar situation again came for consideration before this Court. In this case, the appellant, a retired grade 21 officer, was appointed as the

Provincial Ombudsman, Khyber Pakhtunkhwa, under section 3 of the Khyber Pakhtunkhwa Ombudsman Act, 2010, for a period of four years, with effect from the date of his taking the oath of the office of Provincial Ombudsman. Section 4(1) of the Act 2010 provides the tenure of the Provincial Ombudsman in the terms, "*The Provincial Ombudsman shall hold office for a period of four years and shall not be eligible for any extension in his tenure or for re-appointment as Provincial Ombudsman under any circumstances*." Later, section 4(1) of the Act 2010 was amended, which now provides, "*The Provincial Ombudsman shall hold office for a period of four years or* ***until the age of sixty-two years****, whichever is earlier, and shall not be eligible for any extension in his tenure or re-appointment as Provincial Ombudsman under any circumstance*." Since the appellant had reached the age of 62 years, the Government of KPK de-notified the appellant's appointment as Provincial Ombudsman in the light of the above amendment. Being dissatisfied, the appellant impugned the notifications of the KPK government before the concerned High Court but remained unsuccessful; subsequently, he approached this Court. The case of the appellant was that he was appointed for a period of four years, and before the expiration of that period, the Government purported to "de-notify" him. Furthermore, the amendment made in Section 4 did not automatically cause the appellant to cease holding the said office. There was nothing in the Amendment Act to suggest that the amendment made in section 4 was retrospective in operation and/or would also apply to the appellant. This Court allowed the appeal while holding that the appellant would continue to hold the office of the Provincial Ombudsman for a period of four years, which shall commence from the date he took the oath of office and made the following important observation:

> *"11. That the Act was enacted, "to provide for the establishment of the office of the Provincial Ombudsman for protection of the rights of the people, ensuring adherence to the rule of law, redressing and rectifying any injustice done to a person through maladministration suppress corrupt practices and to ensure good governance" (the first preamble of the Act). The Provincial Ombudsman has been empowered to investigate maladministration (section 9), therefore, to ensure that the watchdog status of the Ombudsman is not compromised and he does not succumb to pressure the legislature in its wisdom provided statutory protection to the person holding the office of Provincial Ombudsman and envisaged his/her removal only if he/she was guilty of misconduct or was physically or mentally incapacitated to perform his/her duties as provided in sub-section (2) of section 6 and its proviso. The appellant was appointed as the Provincial Ombudsman for a period of four*

> *years and no step for removal of the appellant was taken pursuant to subsection (2) of section 6, therefore, he must be allowed to continue to hold the office till the expiry of such term.* ***The amendment made to section 4 does not contain any element whereby the appointment of the appellant as a Provincial Ombudsman was revoked, repealed, withdrawn or cancelled****;* ***the silence of the legislature in this regard is significant.*** *Therefore, in the absence of legislation, the tenure of the appellant cannot be curtailed in the exercise of administrative powers, but, unfortunately, the same was purported to be done by the first impugned Notification. The Act grants security of tenure to the office of the Ombudsman and it cannot be undone by the Government as such power the legislature in its wisdom has not conferred upon the Government. Consequently, the first and second impugned Notifications are declared to be in contravention of the Act, illegal, without jurisdiction and of no legal effect. The appellant will continue to hold the office of the Provincial Ombudsman for a period of four years which shall commence from the date he took the oath of office of the Provincial Ombudsman Khyber Pakhtunkhwa pursuant to notification dated 29th December, 2010. Resultantly, the purported appointment of respondent No. 4 as Provincial Ombudsman, at a time when the appellant was holding such office, is also declared to be illegal, without jurisdiction and of no legal effect."*
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> **Emphasis Supplied.**

13. Similarly, the legislature in the impugned Act has merely declared that the right of appeal shall be available to an aggrieved person against whom an order has been made under clause (3) of Article 184 of the Constitution, prior to the commencement of this Act and has concluded the matter there. No express provision was made in the impugned Act to the effect that the new dispensation providing a right of appeal will also affect and reopen cases adjudicated by this Court under the existing law prior to the date of the passing of the impugned Act. To resolve this uncertainty, the matter inherently falls within the purview of judicial interpretation, necessitating a determination by this Court as to whether the impugned Act is also applicable to the cases that have long been concluded and regarded as past and definitively closed transactions. As certain valuable rights, e.g., right to property had accrued in favor of a party under the said past and closed transactions and are protected and guaranteed under Article 24 of the Constitution. The primary rule of interpretation is that every statute is deemed prospective unless by express provision or necessary intendment, it is to have a retrospective effect. At the same time, it is also a settled principle of interpretation that no statute shall be construed to have retrospective operation affecting vested rights to a greater extent than its language renders necessary as has observed by this Court in *Ghulam Hyder Shah's supra*.

14. By applying the afore-noted settled principles of law, it has been found that the provision of section 5(2) of the impugned Act unequivocally grants a right of retrospective appeal, a remedy that, by its very nature, has the potential to revisit and reopen all past and closed transactions. This aspect of the matter carries significant consequences, particularly the looming specter of injustice and prejudice that could be inflicted upon the parties in whose favour certain personal rights and liabilities have already rightfully been accrued and secured under the judgments or orders of this Court. The provision of the right of appeal retrospectively by itself is an infringement of fundamental rights which provide that every citizen shall be entitled to equal protection of law and will not be deprived of life or liberty save in accordance with law as provided under Article 9 read with Article 25 of the Constitution. The potential for adverse consequences to the parties affected by this retrospective provision must be carefully weighed. It is worth mentioning here that it is incumbent upon the legislature to balance the scales of justice in its pursuit of providing the right of appeal while simultaneously safeguarding the fundamental right i.e. right to property, office, etc., and the principles of legal finality. I have no doubt in my mind that balancing these competing rights/interests is an inherent duty of this Court as well, as it strives to maintain the delicate equilibrium between justice and the safeguarding of long-established rights. Being so, this Court on many occasions has authoritatively held that a transaction that has been completed and is thus "past and closed" beyond the possibility of being affected by any subsequent law. There is a long line of authorities in support of this proposition of law. It is not necessary to refer to all these decisions, for I think it would be sufficient to quote some passages from some leading judgments of this Court:

I) In *P. G. Bhandari versus the Rehabilitation Authority, Lahore and 2 Others* (**PLD 1961 Supreme Court 89**), it was held that:

> The argument is good so far as it goes, but it fails to meet the major argument of Mr. Mahmud Ali, namely, that with reference to the terms of West Punjab Act VII of 1948, construed with full regard to all the purposes and intentions underlying that statute, the restoration of the 10th May 1948, to Mr. Bhandari represented, **a transaction which had been completed and was thus "past and closed" beyond the possibility of being affected by any subsequent law**.
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> **Emphasis Supplied.**

II) In *Nagina Silk Mill, Lyallpur versus the Income-Tax Officer, A-Ward Lyallpur, etc.* (**PLD 1963 Supreme Court 322**), it was held that:

> **The Courts must lean against giving a statute retrospective operation on the presumption that the Legislature does not intend what is unjust. It is chiefly where the enactment would prejudicially affect vested rights, or the legality of past transactions, or impair existing contracts, that the rule in question prevails**. Reference may be made in this connection to page 206 of Maxwell on the Interpretation of Statutes, Eleventh Edition. Even if two interpretations are equally possible, the one that saves vested rights would be adopted in the interest of justice, specially where we are dealing with a taxing statute. The appellant herein had already acquired the vested right of escaping assessment, by lapse of time, when the 1960, Ordinance was enforced. In all probability, the Legislature never intended that the period of limitation prescribed in the Act should become variable with the changes in the "financial year" or "year" inserted in the Act for certain other purposes, namely, to accord with the new accounting year adopted by Government.
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> **Emphasis Supplied.**

III) In *Ahmad Ali Khan versus Muhammad Raza Khan and Others* (**1977 SCMR 12**), this Court held as follow:

> it seems to us that the High Court was right in the view it took, as has been pointed by this Court in the case of P. G. Bhandari v. The Rehabilitation Authority, Lahore (PLD 1961 SC89). **A subsequent change in the law cannot affect past and closed transactions.** Even if the rules prescribed in 46-A of the Rehabilitation and Settlement Scheme applied to the case of a deceased refugee owner (Sarfraz Khan could not be treated as a deceased right-holder), the petitioner could not have been allowed to re-agitate this matter after having earlier abandoned his appeal against mutation No. 25. After that abandonment in 1957, he could not maintain another appeal against mutation No. 25 in 1962 because of the change in the law in 1960. The Rehabilitation Authorities were, therefore, clearly wrong in deciding his second appeal against mutation No. 25 on the basis of the change in the law.
>
> **Emphasis Supplied.**

IV) In *Controller General of Accounts, Government of Pakistan, Islamabad and others versus Abdul Waheed and others* (**2023 SCMR 111**), it was held that:

> "7. According to Bennion on Statutory Interpretation (Seventh Edition), page 181 with regard to the retrospectivity effect of law, it was said that "principle is sometimes expressed in the maxim lex prospicit non respicit (law looks forward not back). As Willes J said in Phillips v Eyre retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when

> introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law." Whereas in Crawford's Statutory Construction, Chapter XXV, germane to Prospective and Retrospective Operation, at pages 562 to 566 and 622, **the gist of the discussion is that retroactive legislation is looked upon with disfavor, as a general rule, and properly so because of its tendency to be unjust and oppressive. There is a presumption that the legislature intended its enactments to have this effect to be effective only in futuro. This is true because of the basic presumption that the legislature does not intend to enact legislation which operates oppressively and unreasonably. If perchance any reasonable doubt exists, it should be resolved in favour of prospective operation.** In other words, before a law will be construed as retrospective, its language must imperatively and clearly require such construction. Amendatory statutes are subject to the general principles discussed elsewhere herein relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In the case of People v. Dilliard (298 N.Y.S. 296, 302, 252 Ap. Div. 125) Court held that "**It is chiefly where the enactment would prejudicially affect vested rights, or the legal character of past transactions that the rule in question applies. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation**."
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> **Emphasis Supplied.**

15. At the cost of repetition, it is stated that the legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws. However, every law enacted may not necessarily be tenable on the touchstone of the Constitution. It is the sole jurisdiction of this Court, under the law and the constitution to look into the fairness and constitutionality of an enactment and even declare it *non-est*, if it is found to be in conflict with the provisions of the Constitution. Therefore, legislative competence alone is insufficient to render a law valid; it must also withstand the test of constitutionality to be enforceable. Failure to meet this standard renders the law invalid and unenforceable. Normally the courts make utmost efforts to save a piece of legislation from becoming invalid. However, in certain cases, the courts also apply, *inter alia*, the doctrine of severance to remove a piece of legislation that distorts the scheme of a parent law or deviates from the

provisions of the Constitution. Reference here may be made to the cases of *Shahid Pervaiz versus Ejaz Ahmad and others* (**2017 SCMR 206**) and *Younas Abbas and others versus Additional Sessions Judge, Chakwal and others* (**PLD 2016 Supreme Court 581**).

16. Since the laws are enacted under a written Constitution and have to conform to the does and don'ts of the Constitution, neither prospective nor retrospective laws can be made to contravene the said prescribed limitations, particularly, the fundamental rights, independence of judiciary or its separation from the executive. An examination and empirical verification of the impugned law must demonstrate that it do not infringe upon any of the fundamental rights guaranteed by the Constitution. On the contrary, it not only facilitates their enforcement but also safeguards against their infringement by providing expeditious and inexpensive justice to the people at their doorstep. It does not remotely impinge upon the independence of the judiciary, nor does it militate against the concept of its separation from the executive. To my understanding, the law must concerned with today's rights and not yesterday's. A legislature cannot legislate today concerning a situation that occurred 30 years ago and ignore the march of events and the constitutional rights accrued in the course of that period. That would be most arbitrary, unreasonable, and a negation of history. Further, it is against the fundamental right of fair trial as enshrined in Article 10-A of the Constitution. Today's equals cannot be made unequal by saying that they were unequal 30 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations, and constitutional consequences cannot be tampered with that way.

17. In view of the foregoing, it is declared that the provisions of subsection 2 of section 5 of the impugned Act providing the right of appeal to an aggrieved person against whom an order has been made under clause (3) of Article 184 of the Constitution, prior to the commencement of impugned Act are *ultra vires* under Article 8 of the Constitution as they offend Articles 9, 10, 10-A, 24 & 25 thereof and are arbitrary and unreasonable. Therefore, they shall be deemed *non-est* from the day of their promulgation.

18. To this extent, the petitions are allowed, accordingly.

Judge