

Describing the Scope, Process and Grounds of Review in the Legal Framework of Pakistan

Syed Zaffar Hassan Naqvi

LL.M Fellow, Bahria University Law School, Bahria University, Islamabad
naqvi.pms@gmail.com

Dr. Sadaqut Ali

Assistant Professor, Bahria University Law School, Bahria University, Islamabad.
Sadaqut.buic@bahria.edu.pk

Abstract

This article aims to describe the scope, process and grounds of review in the legal framework of Pakistan. The concept of a 'review' refers to a legally sanctioned process wherein a court revisits its own judgment. This practice is globally prevalent and has sparked diverse debates, featuring arguments both for and against the exercise of review by courts. The doctrine of review is also incorporated in the legal and constitutional framework of Pakistan. This descriptive research has been done through doctrinal methodology and qualitative approach. Review mechanisms in Civil and Criminal law are governed by distinct legislative frameworks. Criminal Law's review, as per Section 369 of the Criminal Procedures Code 1898, bars modifications to a finalized judgment, except for clerical or arithmetical errors, ensuring consistency in the criminal justice system. In contrast, Civil law permits reviews for errors or sufficient grounds as guided by Section 114 and 152 of the Civil Procedures Code. Article 188 empowers even the Supreme Court of Pakistan to rectify its clear mistakes, preserving justice and public trust. However, this review isn't for reevaluating the entire case but to correct evident errors, emphasizing judicial integrity and precision.

Keywords: Review, Scope, Process, Grounds of Review and Supreme Court of Pakistan

1. Introduction

The literal meaning of "review" is re-examination of something for the sake of correction or improvement (Choudhury, 2012). In legal proceedings, the term review implies reconsideration or re-adjudication of an already decided case by the same court. The purpose behind investing a court with review jurisdiction is rectification of errors (Kairali, 2020). The courts tend to stand by the judgments rendered by them, as a general principle, in line with the doctrine of *stare decises*. However, in interest of justice, courts across the globe can reconsider their earlier decisions (Mrabure & Idehen, 2021). The concept of review is premised upon the fallibility of human beings that is to say that humans can never be immune to committing errors and mistakes. The doctrine of review therefore permits the courts to rectify such mistakes in order to avoid serious miscarriage of justice (Salihu, 2020). The courts have been appreciating the concept of review even before its incorporation into the formal statute (Choudhury, 2012). The ultimate object of the court is to uphold justice therefore when injustice and illegality is bound to perpetuate due to a patent error, a court may not hesitate in reviewing its order

(Sh Mehdi Hassan Vs Province of Punjab, 2007). Review is therefore an exception to the general principle that a judgment once pronounced must not be changed. The purpose of review is correction of any mistake in order to uphold the justice (Hafi Bahadar Khan Vs Habib Ahmad ,2021).

The power of the court to reconsider its earlier decision has been justified for the sake of justice. If the previous decision contained a patent error which may in certain circumstances lead to private as well as public inconvenience and loss. If such error is not rectified, the loss and inconvenience may continue for an indefinite period of time. In such a case a court should not hesitate to review its earlier decision (Burgess, 2020). It has also been argued that the Judiciary should be vested with the power of Review in order to ensure emergence of a dynamic society. Rigidity should not be allowed to obstruct the process of dispensation of justice. Absence of the option of Review will render the legal system static and incompatible to the needs and demands of a progressive society. In such circumstances, even a second review of judgment, called curative review, is even justified (Burgess, 2020).

The doctrine of review is also incorporated in the legal and constitutional framework of Pakistan. However, the review being an exception to the general principle is to be exercised in exceptional conditions which have been laid down in the respective laws and judgments of the courts. Both criminal and civil courts in Pakistan are invested with the power of review though with different scope (Manzoor Ahmad Vs Muhammad Nawaz, 2013). In civil proceedings, the review is admissible for correction of mistakes, accidental slips or any other sufficient ground provided under the Law. Section 114 and 152 of Civil Procedures Code along with the Rules made thereunder govern the review procedures. The procedures adopted for the review are similar to those observed for exercise of original jurisdiction. However, the review is to be invoked in exceptional circumstances only (“Instructions to Civil Courts,” n.d.). During the course of inspection of civil courts by the judges of high courts, it is to be seen whether the review petitions have been admitted on reasonable grounds (“Instructions to Civil Courts,” n.d. The scope of review is however quite limited under the criminal Law in Pakistan. The criminal courts are not allowed to review their judgments once pronounced. However, review in criminal law can be exercised for correction of clerical mistakes. Review can also be exercised to revise the sentence of whipping in criminal law (“Instructions to Criminal Courts Volume 3,” n.d.).

Review power is also invested in the revenue officers and revenue courts in Pakistan. However, the revenue power can be exercised only if no appeal has been preferred against the order sought to be reviewed. The officers below the district collector can exercise the power of review with his prior sanction while the collector can exercise review with the permission of commissioner and the commissioner can exercise review jurisdiction with the sanction of the financial commissioner. No permission is however required for the financial commissioner to review his orders. The limitation period of review is 90 days. However, no limitation applies if review is being taken by a revenue officer at his own. The persons likely to be affected from the review should be given a prior notice before giving judgment on review petition (“Instructions to Civil Courts,” n.d).

The Supreme Court of Pakistan being the apex court in the country is invested with the ultimate jurisdiction. Its decisions are binding upon all other courts subordinate to it under Article 189 of the Constitution Pakistan and all executive authorities are constitutionally obligated to render all necessary assistance to the Court when sought by it under Article 190. Though its decisions cannot be challenged at any other legal forum across the country, however, the Article 188 of the Constitution of Pakistan empowers the Supreme Court to review its own judgment. The power of review, under the Article 188, is subject to any Law made by the parliament (Majlis-E-Shoora) or Rules made by the court itself.

The Parliament of Pakistan has not framed any Law to regulate the exercise of review jurisdiction by the Court. However, “The Supreme Court Rules, 1980” framed by the Court under Article 191 of the Constitution for regulating its procedures and practices contain the provisions for review procedures under Part-IV Order XVI of the said Rules (The Supreme Court Rules, 1980).

2. The System and Hierarchy of Courts in Pakistan

Part VII of the Constitution of Pakistan establishes and regulates the judicial system of Pakistan according to which the constitutional courts in Pakistan include the Supreme Court of Pakistan, the High Courts and the Federal Shariat Court. There are five high courts in Pakistan, one for each of the four provinces and one for the Federal Capital Territory, according to Article 175 of the Constitution. The High Courts are vested with powers to issue Writ under Article 199 of the Constitution. Under Article 203, the superintendence and control of the subordinate court vests in the respective high court under whose jurisdiction they are functioning.

In addition to the Writ Jurisdiction, High Courts are also invested with the following jurisdictions under the various statutes (Hussain, 2011).

1. Under section 100 of Civil Procedures Code 1908, appeal second appeal shall lie before the High Court against every decree adjudicated in first appeal by the court subordinate to that High Court.
2. Under section 114 of the Civil Procedures Code 1908, a High Court can review its Orders.
3. A high court can summon record of any case decided by a court subordinate to it and pass appropriate orders, a power termed as “revision” under section 115 of Civil Procedures Code 1908.
4. Under Section 410 of Criminal Procedures Code 1908, appeal against sentence awarded by a session court lies before the High Court.
5. Under section 417 of Criminal Procedures Code 1908, the prosecution can appeal the order of acquittal of an accused by a session court before the High Court.
6. High Courts are also invested with the appellate powers under various special laws.
7. High Courts can pass direction in the nature of habeas corpus under section 491 of Code of Criminal Procedures.
8. Under Law reforms Ordinance 1972, the appeal against order of a single bench of the High Court lies before a division bench of the same court.

The Federal Shariat Court was established under Presidential Order No.1 of 1980 (Constitution (Amendment.) Order, 1980) by the then Military Ruler General Zia Ul Haq and then it was incorporated in the Constitution under 8th amendment vide Chapter 3A of Part-VII of the Constitution (Federal Shariat Court, n.d.). The court is vested with the powers to strike down any Law if it is found in violation of Islamic Injunctions. The Court also exercise appellate jurisdiction against the cases adjudicated under Hadud Laws (Khan, 2017) The Court is bestowed upon the powers of a civil court with respect to its judicial proceedings under Article 203 (E)(1) of the Constitution. For punishment of its contempt, under Article 203(E) (3) the Court exercise the same powers as vested in a High Court an Appeal against the Judgment or Order of the Court lies before the Shariat Bench of the Supreme Court of Pakistan under Article 203 F of the Constitution.

In addition to these courts, Administrative Courts and Tribunals can be established under Article 212 of the Constitution of Pakistan in pursuance whereof following tribunals have been established (Chaudhry, 2009).

- i. Service Tribunals and Federal and Provincial Level to adjudicate the cases involving terms and conditions of the civil servants
- ii. Income Tax Appellate Tribunals to adjudicate tax related matters.
- iii. Environmental protection Tribunals
- iv. Insurance Appellate Tribunals
- v. Custom, Excise and sales appellate Tribunals
- vi. Appellate Tribunals for Anti-Dumping Duties

Then there are subordinate courts which are divided in to two categories, Civil and Criminal. Civil Courts are established under Civil Courts Ordinance 1962 and regulated under Civil Procedures Code 1908. The Civil Courts include Civil Judge Class -1, Civil Judge Class II and Civil Judge Class-3. The Court of District Judge serves as Appellate Court against the decree and Order of Civil Judges. Criminal Courts function under Criminal Procedures Code 1898 and include the Court of Magistrate, 1st, 2nd and 3rd Class, and the Court of Session Judge. In addition to these courts, there are special courts established under different statutes with powers and procedures similar to those of the district and session courts.

3. The Supreme Court of Pakistan

3.1.Historical Overview

The modern Judicial System in Pakistan owes its origin to the colonial rule in the subcontinent (Khan, 2017). High Courts and Chief courts had been established in the subcontinent before year 1935. However, there was no court at central level. The appeals against High Courts and Chief Courts lied before the Judicial committee of the Privy Council of London. It caused a great deal of inconvenience to ordinary citizens in pursuing their cases in London. In order to address this problem, the Federal Court of India was established under Government of India Act 1935 to hear the appeals against the decisions of High Courts and Chief Courts could be challenged. After partition initially there was no Federal Court for Pakistan and appeals against the Orders and Judgments of High Courts and Chief Court lied before the Judicial Committee of Privy Council of London. The Governor General of Pakistan established Federal court of Pakistan vide Order dated 23 February 1948 but it became functional in May 1949(Khan, 2017. The jurisdiction of Federal court was extended vide Federal Court (Enlargement of Jurisdiction) Order 1949 while the jurisdiction of Privy Council was abolished altogether vide Privy Council (Abolition of Jurisdiction) Order 1950.

The Supreme Court of Pakistan replaced the Federal Court under the first Constitution of Pakistan promulgated on 23rd march 1956. The powers of the Supreme Court were, however, much wider than the Federal Court. It was empowered to interpret the Constitution and its interpretation were bindings upon all other courts in Pakistan. Unlike the concept of Parliamentary Supremacy in United Kingdoms, the Constitution was declared to be supreme and the Supreme Court of Pakistan was declared as Guardian of the Constitution. Its decisions were made binding upon all the subordinate courts and could not be challenged anywhere. The Constitution was abrogated on 7th October 1958 but the Supreme Court continued to work under Laws (Continuation in Force Order) 1958. Then the Supreme Court of Pakistan was kept intact under 2nd Constitution of Pakistan promulgated on 8th June 1962, Laws (Continuation in Force Order) 1969 and the Interim Constitution of 1972 (Khan, 2017).

3.2.The Supreme Court under Current Constitution:

The Current Constitution of Pakistan was promulgated on 14th of August 1973. The Supreme Court of

Pakistan with jurisdiction almost similar to the previous Constitutions has been conferred upon it by the current constitution of Pakistan. It's the apex Court of the country invested with ultimate judicial powers. Under Article 176 of the Constitution of Pakistan the Supreme Court comprises of a Chief Justice and judges. Under the Supreme Court (Number of Judges) Act 1997 the number of total judges, excluding the Chief Justice of Pakistan, in Supreme Court is 16. The decisions of the Supreme Court are binding upon all other courts subordinate to it under Article 189 of the Constitution Pakistan and all executive authorities are constitutionally obligated to render all necessary assistance to the Court when sought by it under Article 190.

There are three types of Jurisdictions which the Supreme Court is Invested with under the Constitution of Pakistan.

3.3. Original Jurisdiction. (Article 184):

- The Original Jurisdiction of the Supreme Court of Pakistan extends to two matters.
- I. The disputes between the governments under article 184(1) of the Constitution.
 - II. The enforcement of fundamental rights under which the powers vested in the High Courts under Article 199 of the Constitution can be exercised by the Supreme Court of Pakistan under Article 184(3), if it entails a fundamental question of public importance.

The most notable provision under Article 184 is subsection (3), which allows the Supreme Court to exercise its jurisdiction in cases of a "question of public importance" related to the "enforcement of any of the Fundamental Rights" enshrined in the Constitution ((Nadeem et al., 2023). This empowers the Supreme Court to take suo motu (on its own motion) notice of violations of fundamental rights or to hear petitions directly when there's a significant public interest matter at hand (Rauf, 2019). Through this provision, the Court has intervened in various instances, ranging from matters of administrative failures to human rights violations. The original jurisdiction under Article 184(3) plays a crucial role in the constitutional framework of Pakistan, ensuring that the state remains accountable and that citizens' fundamental rights are upheld. It has been both lauded for its proactive approach in defending rights and criticized for potential overreach (Shamim, 2018). Critics argue that the expansive use of this jurisdiction might encroach upon the domains of the executive or the legislature, while proponents view it as a necessary measure to uphold justice, especially in cases where other state organs may have faltered (Rizvi, 2021).

3.4.Appellate Jurisdiction (Article 185):

Appeal against the decrees, Orders and final judgments of the High Courts lies before the Supreme Court of Pakistan. Appeal in the cases, other than those specified in Article 185(2) of the Constitution, can be filed after grant of leave to appeal by the Court as envisaged under Article 185(3) of the Constitution.

The appeal against the orders and Judgments of the administrative tribunals established under Article 212 of the Constitution of Pakistan also lies before the Supreme Court of Pakistan.

The Supreme Court of Pakistan, being the highest judicial institution in the country, possesses appellate jurisdiction over various matters (Majeed, 2000). This authority is outlined in the Constitution of Pakistan, 1973, with the aim of ensuring that justice is dispensed appropriately and that the decisions of lower courts conform to the law and the Constitution. According to the Constitution, the Supreme

Court's appellate jurisdiction extends to judgments, decrees, final orders, or sentences from a High Court within Pakistan. This includes both civil and criminal matters. However, not every case from a High Court can be appealed to the Supreme Court. The appeal might require the Supreme Court's permission or may depend upon the nature of the case. For criminal cases, if the High Court has on appeal reversed an order of acquittal and sentenced a person to death or to life imprisonment, the individual has the right to appeal to the Supreme Court. Similarly, in civil cases or other criminal cases, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution, it can be appealed before the Supreme Court (Hussain, 2011).

The appellate jurisdiction of the Supreme Court plays a pivotal role in the Pakistani judicial system. It ensures a final check on judicial decisions, rectifying errors or inconsistencies in the interpretation and application of the law by lower courts. Moreover, by exercising its appellate jurisdiction, the Supreme Court has the power to set precedents, which then guide the jurisprudence of the country. This mechanism not only assures litigants of a final avenue for seeking justice but also aids in the consistent application of legal principles across Pakistan (Rauf, 2019).

3.5. Advisory Jurisdiction (Article 186):

Article 186 of the Constitution of Pakistan deals with the advisory jurisdiction of the Supreme Court. Unlike its original and appellate jurisdictions, where the Court primarily deals with disputes and hears appeals, the advisory jurisdiction empowers the Supreme Court to give its opinion on certain matters when sought by the President of Pakistan (Daudpota, 2021). According to Article 186, if at any time the President of Pakistan considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he believes to be of public importance, he may refer the question to the Supreme Court for a formal advisory opinion. This is a discretionary power vested in the President, and the Court's opinion in such cases, while authoritative, is non-binding. It is meant to offer legal clarity on complex issues that might need the Court's expert view. The advisory opinions rendered by the Supreme Court under Article 186 are distinct from its judgments in contentious cases. These opinions do not have the force of a binding precedent, but they carry significant weight given that they reflect the Court's formal view on legal matters of public importance. Over the years, the President has invoked this provision on various occasions to seek clarity on constitutional ambiguities or on matters where legal guidance was deemed necessary for effective governance (Shabbir, 2020).

In essence, the advisory jurisdiction under Article 186 is a testament to the importance of a collaborative relationship between the executive and the judiciary in Pakistan, ensuring that the state's actions remain within the confines of the law and constitutional propriety (Daudpota, 2021).

3.6. Review Jurisdiction (Article 188):

The decisions of the Supreme Court cannot be challenged at any other legal forum across the country; however, the Article 188 of the Constitution of Pakistan empowers the Supreme Court to review its own judgment. The power of review, under this article, is subject to any Law made by the parliament (Majlis-E-Shoora) or Rules made by the Court itself. Previously, the Parliament of Pakistan had not framed any Law to regulate the exercise of review jurisdiction by the Court. However, "The Supreme Court Rules, 1980" framed by the Court under Article 191 of the Constitution for regulating its procedures and practices contain the provisions for review procedures under Part-IV Order XVI of these Rules. Under Rule 1 of the said Order, the review can be exercised in civil cases on the similar grounds as envisaged under Code of Civil Procedure 1908 while in criminal cases the review is to be exercised for correction of errors. The limitation period for review is 30 days under Rule 2. Under Rule

4 the advocate applying for review has to file a certificate to the effect that review being sought is justifiable and if the court finds the certificate contrary to the opinion of court, such an advocate may be made to face disciplinary action under Rule 5. The Rule 6 envisages that the same advocate who appeared for the case for which the original judgment sought to be reviewed can file the review petition. Under Rule 7, the litigant seeking review has to deposit a security deposit of Rs. 10000 before filing the review which is liable to be forfeited in event of the dismissal of review petition. Under Rule 8, the review has to be heard by the same bench who rendered the original judgment as much as it is possible. The Rule No 9 stipulates that review can be sought for once only.

However recently the Parliament of Pakistan has enacted “The Supreme Court (Review of Judgments and Orders) Act 2023 whose section 3 provides that a review petition would be heard by a bench larger than the one who rendered the judgment which would be sought to be reviewed. This enactment of this law has however stirred a political and legal controversy and has been challenged before the Supreme Court proceedings upon which are underway (Bhatti, 2023).

3.7.Scope, Process and Grounds of Review in Criminal Law:

Review in Criminal Law is governed section 369 of Criminal Procedures Code 1898 (Juan Suli VS State, 1971) which stipulates that once a judgment has been pronounced by a criminal court and signed by the presiding judge, it shall not be altered or reviewed, except to correct a clerical or arithmetical mistake. The purpose of the section 369, Cr.P.C. prohibition is to maintain regularity and consistency so that the criminal justice system is administered through correct and proper channels. If review of a final judgment is permitted for any reason, significant chaos could ensue, and public confidence and faith in the system would be eroded. In accordance with section 369 of the Criminal Procedure Code, it is now a well-established principle that a judge or magistrate delivering a final judgment or order lacks the authority or jurisdiction to change or review the same after pronouncing it (Shah Nazar Khan VS Goga Khan, 2005).

This provision underscores the importance of maintaining the sanctity and finality of judgments in criminal matters, promoting legal certainty and preventing double jeopardy (Bator, 1962). Any substantive challenges or appeals against the judgment are typically directed to the appellate courts, such as the High Court or the Supreme Court of Pakistan, where legal and factual issues can be thoroughly examined and determined. Section 369 CrPC aims to strike a balance between ensuring that errors are corrected when they are apparent and avoiding the constant revisitation of judgments, thereby upholding the principles of justice and judicial integrity in the criminal justice system.

This implies that scope of review under criminal law is very limited. This principle is founded on the doctrine of finality of judgments, which emphasizes the importance of ensuring that legal decisions are not subject to constant reexamination, thereby promoting judicial certainty and stability in the legal system (Yadav, 2021). It underscores that the correctness of the judgment, including issues of law and fact, should be challenged through the appellate process, where higher courts have the authority to review and potentially reverse or modify the judgment based on legal arguments and evidence presented during the appeal. The prohibition against altering or reviewing judgments is aimed at maintaining the integrity of the judicial process while providing a structured mechanism for challenging and rectifying errors through the appropriate channels of appellate forum (Bator, 1963).

The limited scope of review of its own judgment by a court in criminal law, especially in comparison to civil law, is a reflection of the distinct and paramount principles and considerations that govern these two legal domains. Criminal law involves the liberty of individuals and potentially severe consequences, such as imprisonment or capital punishment. Therefore, a higher degree of finality is essential to prevent double jeopardy, safeguard against potential abuse of the legal process, and

maintain public confidence in the criminal justice system (Meador, 1967). The Pakistani legal framework, including provisions in the Code of Criminal Procedure, expressly limits the grounds for reviewing criminal judgments, typically permitting such review only for correcting clerical errors (Wali Muhammad Vs Special Judge Anti Corruption, 2017). This limitation recognizes that criminal convictions bear a heavier burden of proof and scrutiny, as they entail the deprivation of personal liberty and reputation, and underscores the principle that once a verdict is delivered, it is presumed to be correct. In contrast, civil law matters often center on disputes of a pecuniary nature, where the consequences are primarily monetary. Thus, the scope for review and reconsideration of judgments in civil law cases is relatively broader, encompassing issues of both fact and law. This distinction underscores the profound importance of protecting individual rights and the finality of criminal judgments, while allowing for more flexible avenues of redress in civil law cases where monetary interests are the primary concern (Meador, 1967).

Allowing criminal courts to alter their judgments after signing can introduce several pitfalls into the legal system. Firstly, it undermines the principle of finality, causing uncertainty and eroding public trust in the justice system, as individuals may be left in a state of perpetual legal limbo. Secondly, it risks potential abuse of the legal process, with parties seeking to reopen cases for strategic reasons, leading to endless litigation and resource strain on the courts. Thirdly, it may infringe upon the fundamental rights of the accused, as they could face the prospect of being retried or punished multiple times for the same offense, violating the protection against double jeopardy. Lastly, it can undermine the authority and expertise of the original trial judge, as their decisions may be constantly subject to reconsideration, potentially leading to inconsistency in legal outcomes. Overall, the limited scope for altering judgments in criminal cases after signing serves to uphold legal certainty, fairness, and the integrity of the judicial system (Werle & Jessberger, 2020).

While there are limited circumstances in which criminal courts can alter their judgments, allowing for such alterations can have a few potential benefits in certain situations. One primary benefit is the ability to correct genuine errors or injustices that may have occurred during the trial or in the judgment itself. For example, if new evidence comes to light that was not available during the original trial and could exonerate the accused or significantly impact the case, allowing the court to alter its judgment may prevent a miscarriage of justice. Additionally, in cases where there is clear evidence of a clerical or arithmetical mistake in the judgment, allowing for corrections can maintain the accuracy of the court's records and prevent unintended consequences. These limited provisions for altering judgments, when used judiciously, can help ensure that the criminal justice system remains fair and just, even after a judgment has been signed (Hall, 2010).

3.8.Scope, Process and Grounds of Review in Civil Law:

The Civil Procedure Code (CPC), 1908, is a comprehensive code that seeks to consolidate the rules regarding the procedure to be followed in civil courts (Mahmood, 2010). An integral component of this procedural mechanism is the concept of 'review' – a legal recourse available to a litigant who seeks a re-examination of a decree or order passed by the court. At the core of the review mechanism is Section 114 of the Civil Procedure Code, 1908 (CPC). This section empowers the court to review its prior judgments. While Section 114 provides the inherent authority, Order 47 and Rule No 1 to 9 lay out the detailed provisions regarding how this power is to be exercised. This bifurcation ensures that while the inherent power to review is recognized, there are clear procedural safeguards and guidelines to prevent its misuse (Mahmood, 2003).

Rule 1 is the foundational provision under Order XLVII (Mahmood, 2010). It delineates the

circumstances under which a party, feeling aggrieved, can seek a review of a judgment. The rule allows for such a review in cases where: a) there exists a decree or order from which an appeal is legally permissible but has not been taken up; or b) when the decree or order is such that no appeal lies against it. However, the grounds for seeking a review are stringently defined. They encompass scenarios like the unveiling of new and important matters or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time the decree was passed; an apparent error or mistake evident on the face of the record; or any other analogous reason. It's essential to understand that these grounds are not open-ended and are to be construed with a sense of judicial restraint to prevent misuse (Mahmood, 2003).

Rules 2 to 9 meticulously craft the procedural contours of the review mechanism. Rule 2 sets out the timeframe, often aligned with the stipulations of the Limitation Act, within which an application for a review has to be made. Rule 3 dictates that individuals who weren't parties to the original decree or order are barred from seeking its review. Rule 4 underscores the court's discretion, highlighting that no review application would be admissible where the decision in question has already been confirmed by a higher appellate authority. Rule 5 and 6 address the modality of the hearing process. While the preference is to decide on the review based on written submissions and records, Rule 6 does provide the court with the discretion to permit oral arguments if deemed necessary. Rule 7 affirms that if the review is allowed, it might culminate in the reversal or modification of the original decision. Rule 8 instills a sense of finality by clarifying that an individual cannot seek a review more than once for the same issue, preventing endless loops of litigation. Lastly, Rule 9 charts out the protocol to be followed when the judge or judges responsible for the original decision are not available, ensuring continuity and adherence to the principles of natural justice (Mahmood, 2010).

The Civil Procedure Code, 1908 (CPC), offers a structured procedure for an aggrieved party desiring to seek a review of a decree or order (Dr. Jahanzeb Vs Govt of KP, 2023). Initially, the process commences with the submission of an application for review. This application is pivotal and needs to be presented within a stipulated time frame, specifically within 30 days from the date of the decree or order in question. As an imperative protocol, the application must be detailed, outlining the precise grounds on which the review is sought. To further validate the seriousness of the application and to ensure its authenticity, the applicant is also mandated to support the application with an affidavit. This affidavit serves as a testament to the genuineness of the concerns and the grounds presented, effectively eliminating frivolous or unmerited requests (Mahmood, 2003).

The very notion of a review embedded in the Civil Procedure Code, 1908, is rooted in principles that prioritize the rectification of glaring errors and uphold the sanctity of justice (Rai Sher Jahan Bhatti Vs Rai Aurangzeb Bhatti, 2023). To start with, a review isn't an appeal in a covert form. The CPC crystallizes the distinction between an appeal and a review, emphasizing that the latter is not an avenue to simply express dissatisfaction with a judgment or to re-litigate. Instead, the review is an exceptional tool, invoked only to correct substantial oversights or palpable errors (Bismah Noureen Vs Federation of Pakistan, 2023). A cornerstone of this principle is that the error in question should be manifest and patent. It should not demand exhaustive scrutiny or extensive argumentation. The error should be glaring enough to be discernible without delving deep into elaborate debates. Essentially, any mistake that requires long-drawn discussions to identify isn't a valid ground for review, as the process isn't intended to serve as a re-hearing of the case (Dr. Jahanzeb Vs Govt of KP, 2023).

In addition, the CPC underscores the importance of judicial finality through the principles governing

review. While justice is paramount, the continuation of endless litigation isn't a desired outcome. Thus, the CPC establishes limitations on the review mechanism. It sets clear boundaries, such as not allowing any decree or order to be reviewed multiple times. By doing so, it ensures that while genuine errors are addressed, the litigation doesn't become a perpetually revolving door. This not only upholds the finality and authoritative nature of judicial decisions but also protects the interest of litigants, ensuring they are not trapped in unending legal battles. Balancing the pursuit of justice with the essentiality of a decisive closure stands at the heart of the principles governing the review under the CPC (Muhammad Ajmal Vs Province of Balochistan, 2022).

The Civil Procedure Code, 1908 (CPC) makes a distinct differentiation between an appeal and a review. The essence of this differentiation is rooted in the purpose and nature of the review mechanism. A review, as envisaged by the CPC, isn't a mere rerun or a platform to express dissatisfaction over a judgment. It's an instrumentality meant to rectify obvious oversights or address manifest errors that have crept into the decision. The core principle is not about re-evaluating evidence or reassessing the merits but about correcting an inadvertent slip or clear oversight that affects the judgment's very basis.

The CPC establishes that for a judgment or order to be eligible for review, the error in question must be clear, obvious, and apparent. Such errors should essentially leap out of the page and shouldn't require a thorough digging into intricate debates or long-drawn argumentation to be identified. The fundamental reason behind this principle is that a review shouldn't turn into a second hearing. It's about correction, not re-litigation. Thus, any mistake which demands extensive discussions or re-examination of evidence for identification goes beyond the purview of a review (Fayyaz Ahmad Vs Bilal Ahmad, 2022).

The doctrine of finality forms a bulwark of the judicial process. The CPC, while allowing room for review, also emphasizes this doctrine. The intent is to ensure that while avenues for rectification of palpable errors exist, litigation doesn't transform into an interminable cycle. The Code stipulates clear restrictions, such as not allowing the same judgment or order to be reviewed multiple times, safeguarding the essence of finality and the legitimacy of judicial decisions. This principle recognizes that while the pursuit of justice is indispensable, it shouldn't lead to perpetually pending litigations (Muhammad Rehan Vs Akbar Shahzad, 2019).

Ensuring justice isn't just about correcting errors, but also about following a process that's transparent and just in itself. The CPC, in its provisions for review, underscores the principle of natural justice. When a review is sought, all parties to the original case are to be informed, ensuring no party remains in the dark. This ensures that every party is given an opportunity to present its side and that decisions are made in a transparent manner. The idea is that justice should not only be done but must also be seen to be done (Dr. Jahanzeb Vs Govt of KP, 2023).

The CPC, while permitting reviews, also meticulously outlines the limitations. Not every dissatisfaction with a judgment turns into a ground for review. The Code essentially lays down that only certain defined situations, like the discovery of new evidence which the applicant couldn't produce despite due diligence during the trial or an evident error on the face of the record, can be grounds for review. This principle is grounded in the objective to ensure that the mechanism of review isn't abused or turned into an avenue for protracting litigation, but is used in a manner that upholds the sanctity and integrity of the judicial process (Shahzaib ul Hassan Khan Vs Mian Muhammad Ahmad, 2017).

3.9.Review by Supreme Court of Pakistan:

The power of review of the Supreme Court of Pakistan is regulated under Article 188 of the Constitution of Pakistan who has framed “Supreme Court Rules, 1980” f under Article 191 of the Constitution for regulating its procedures and practices including the review procedures under Part-IV Order XVI of these Rules. Under Rule 1 of the said Order, the review can be exercised in civil cases on the similar grounds as envisaged under Code of Civil Procedure 1908 while in criminal cases the review is to be exercised for correction of errors. The limitation period for review is 30 days under Rule 2. Under Rule 4 the advocate applying for review has to file a certificate to the effect that review being sought is justifiable and if the court finds the certificate contrary to the opinion of court, such an advocate may be made to face disciplinary action under Rule 5. The Rule 6 envisages that the same advocate who appeared for the case for which the original judgment sought to be reviewed can file the review petition. Under Rule 7, the litigant seeking review has to deposit a security deposit of Rs. 10000 before filing the review which is liable to be forfeited in event of the dismissal of review petition. Under Rule 8, the review has to be heard be the same bench who rendered the original judgment as much as it is possible. The Rule No 9 stipulates that review can be sought for once only.

The scope of review by the Supreme Court of Pakistan under Article 188 of the Constitution of Pakistan, 1973, is precisely defined and limited. It's important to emphasize that the power of review is not an open invitation for the Court to rehear a case entirely, nor is it a platform for the aggrieved parties to simply re-argue points that were previously considered and dismissed. Instead, the scope is narrowly confined to rectifying palpable errors or addressing manifest oversights evident on the face of the record (EX Lance Naik Mukkarram Hussain Vs Federal Government, 2017). The review mechanism doesn't accommodate the introduction of new evidence or the reevaluation of testimonies; it primarily focuses on errors of law or procedural lapses that might have significantly influenced the outcome of the original judgment (Zakrya Ghani Vs Muhammad Ikhlq Memon, 2016). In essence, Article 188 operates as a safety valve, ensuring that the highest judicial body in the land has a means to address its own inadvertent mistakes, thus ensuring that the wheels of justice turn smoothly and accurately, minimizing the potential for miscarriages of justice (Zakrya Ghani Vs Muhammad Ikhlq Memon ,2016).

The purpose of the power of review granted to the Supreme Court of Pakistan under Article 188 of the Constitution of Pakistan, 1973, stems from an inherent recognition that even the apex judicial body can err in its judgments (Zakrya Ghani Vs Muhammad Ikhlq Memon ,2016).. Rooted deeply in the tenets of justice and the pursuit of a flawless judicial process, this provision ensures that the Court can reconsider its own decisions, providing a corrective framework to address any potential mistakes or inadvertent oversights that might have occurred. By enabling the Supreme Court to rectify its judgments, Article 188 safeguards against miscarriages of justice and helps in reinforcing the trust and confidence of the public in the judicial system. Furthermore, this mechanism underscores the Court's commitment to its foundational role as the ultimate arbiter of justice in Pakistan, ensuring that its judgments not only stand the test of time but also reflect the highest standards of judicial integrity and precision. Through this provision, the Constitution acknowledges the fallibility of human judgment while ensuring that the nation's highest court has the means to correct itself in the service of justice (Zakrya Ghani Vs Muhammad Ikhlq Memon ,2016).

The grounds upon which the Supreme Court of Pakistan can reconsider its own judgment are limited Basharat Ali KhanVs Muhammad Akbar, 2017). The emphasis is on rectifying clear and obvious errors or addressing glaring oversights that stand apparent on the face of the record. Such errors might be attributable to a misinterpretation of the law, a misreading of key provisions, or a failure to consider a critical precedent that directly impacts the decision. It's pivotal to understand that this provision doesn't

invite a comprehensive re-evaluation of the case or allow for the introduction of new evidence. Instead, it serves as a corrective mechanism when an evident legal or procedural flaw, capable of causing a miscarriage of justice, exists in the Court's ruling. The intention behind such a confined scope is to preserve the sanctity and finality of the Supreme Court's judgments while providing a narrowly tailored avenue for redress in cases of manifest error (Basharat Ali Khan Vs Muhammad Akbar, 2017).

3.10. Promulgation of Supreme Court Review of Judgment Act:

In May 2023, the Parliament passed the "Supreme Court (Review of Judgments and Orders) Act, 2023." This law granted the right to appeal against decisions made by the Supreme Court of Pakistan when acting on its original jurisdiction as outlined in Article 184(3) of the Pakistani Constitution. (Khan, 2023) Essentially, this expands the review process to be more akin to a standard appeal. Under section 3 of the Act, the bench constituted for hearing appeal was to be larger than the bench who delivered the original judgment. In accordance with Section 6 of the Act, the prescribed limitation period for instituting an appeal was fixed as sixty days. Section 4 of the Act provided that an aggrieved individual, against whom an order had been rendered under Clause (3) of Article 184 of the Constitution before this Act took effect, had retained the right to submit a review petition. However, such a review petition, in accordance with this section, had to be lodged within sixty days after the enactment of this Act. The statement of objects annexed to the bill stated that Article 188 of the Pakistani Constitution had authorized the Supreme Court to review its judgments or orders, in line with any legislation from the Majlis-e-Shoora (Parliament) and any rules set by the Supreme Court. The purpose of this Bill was to broaden the Supreme Court's jurisdiction as distinctly defined under Article 188, thereby amplifying and solidifying its review powers. Such expansion was essential in ensuring the fundamental right to justice, providing a thorough review of judgments and orders that the Supreme Court had issued in its original capacity under Article 184.

However, the Act was challenged in the Supreme Court of Pakistan (Bhatti, 2023). The Court declared that any efforts to expand its review domain under Article 188 were invalid and without legal validity (Ghulam Mohiuddin Vs Federation of Pakistan, 2023). The judgment emphasized that tampering with the SC's rights and jurisdiction would have led to a mistaken and misinterpreted view of the Constitution. The 2023 Act didn't broaden the review powers; instead, it introduced an appellate jurisdiction that lacked a constitutional foundation or approval. The court further highlighted that any legal measures jeopardizing the judiciary's autonomy would have been "deemed invalid and without legal standing." To change the court's review authority to appellate, a constitutional amendment had been necessary. The distinction between an appeal and a review, stating that the law's Sections 2 and 3 infringed on several constitutional guidelines, exceeding the powers allocated by Article 188 (Ghulam Mohiuddin Vs Federation of Pakistan, 2023).

The architects of the 1973 Constitution had clearly understood the concept of "review" and had specified that the Supreme Court had the authority to revisit its judgments/orders. They held no ambiguities or uncertainties regarding the definition of review jurisdiction. In Article 188, they had purposefully and explicitly chosen the term "review" over "appeal", underscoring their precise understanding of the difference between the two. Whenever they had intended to bestow appellate authority upon the Supreme Court, they had distinctly mentioned it in Article 185. As a result, the creators of the Constitution had deliberately limited Article 188 to the realm of review jurisdiction.

The decision to grant the Supreme Court rule-making authority stemmed from the 1973 Constitution's foundational principle of ensuring the Court's full independence, safeguarding it from potential interference by other state entities. In the late 1970s and early 1980s, a distinguished panel of judges convened as a Full Court in the Supreme Court. They deeply pondered over the definition of "review" as specified in Article 188. Following their discussions, they unanimously established the "Supreme Court Rules, 1980," as alluded to in Lt. Col. Nawabzada Muhammad Amir Khan's case. During their discussions about Article 188 and the term "review", their understanding of "review" was unequivocal. Hence, when they instituted Order 26 Rule 1 of the Supreme Court Rules, 1980, they simply encapsulated the established meaning of "review" in both civil and criminal matters, and to enhance clarity, they made a particular reference to Order XLVII, Rule 1 of the Code of Civil Procedure ("CPC") (Ghulam Mohiuddin Vs Federation of Pakistan, 2023).

4. Conclusion:

This article has discussed and described the scope, process and grounds of review in the legal framework of Pakistan. The procedural aspects of review mechanisms within Civil, Criminal are codified through distinct legislative frameworks. Criminal Law's review is provided in Section 369 of the Criminal Procedures Code 1898. It dictates that once a judgment is rendered and formalized by the signature of the presiding judge in a criminal court, modifications or reviews of said judgment are strictly prohibited, save for corrections of clerical or arithmetical errors. The inherent prohibition within Section 369, Cr.P.C. serves the pivotal role of sustaining regularity and consistency within the administration of the criminal justice system, ensuring that due process is maintained and justice is dispensed through proper and lawful channels (Manzoor Ahmad Vs Muhammad Nawaz, 2013). In civil proceedings, the review is admissible for correction of mistakes, accidental slips or any other sufficient ground provided under the Law. Section 114 and 152 of Civil Procedures Code along with the Rules made thereunder govern the review procedures. possible.

The purpose of review power under Article 188 is to ensure that even the highest court has the means to correct its own inadvertent mistakes and oversights, preserving justice and maintaining public trust in the judicial system. This power of review is not to rehear a case entirely or to introduce new evidence but to rectify clear and obvious errors or address glaring oversights in law or procedure that have significantly influenced the original judgment. The scope of review is precisely defined and limited, emphasizing correction of clear and palpable errors and addressing manifest oversights. In essence, the provision for review in the Supreme Court of Pakistan is a safety mechanism, allowing the court to uphold justice by correcting its own errors, reinforcing trust in the judicial system, and ensuring the court's judgments reflect the highest standards of judicial integrity and precision. The grounds and scope for review are limited, focusing mainly on rectifying legal and procedural flaws and not on a comprehensive reevaluation of the case.

Bibliography

Basharat Ali Khan Vs Muhammad Akbar (2017) SCMR 309

Bator, P. M. (1962). Finality in criminal law and federal Habeas Corpus for state prisoners. Harv. L. Rev., 76, 441.

Bhatti. (2023, June 7). SC clubs together pleas against review of judgments law, Punjab polls order.

Dawn.Com. Retrieved October 8, 2023, from <https://www.dawn.com/news/1758441#:~:text=A%20three%2Dmember%20bench%20of,to%20the%20Punjab%20Assembly%20on>

Bhatti. (2023, June 19). SC Reserves Verdict on Pleas Challenging Review of Judgments Law. Dawn.Com. Retrieved October 9, 2023, from [https://www.dawn.com/news/1760611Bismah Noureen Vs Federation of Pakistan](https://www.dawn.com/news/1760611Bismah%20Noureen%20Vs%20Federation%20of%20Pakistan)(2023) CLC 110

Burgess, C. (2020). Principle or Partisanship: An Analysis of the Role Stare Decisis Plays in Supreme Court Jurisprudence.

Choudhury, A. (2012). Review Jurisdiction of Supreme Court of India: Article 137. *Available at SSRN 2169967*.

Chaudhry. (2009). *Essays on Law, Justice, Human Rights and Legal System* . Federal Law House.

Daudpota, F. (2021). An Introduction to the Advisory Jurisdiction of the Supreme Court of Pakistan. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3765537>

Dr. Jahanzeb Vs Govt of KP(2023)PLD 25

EX Lance Naik Mukkarram Hussain Vs Federal Government (2017) SCMR 580

Fayyaz Ahmad Vs Bilal Ahmad (2022) MLD 787

Federal Shariat Court . (n.d.). Federal Shariat Court . Retrieved October 8, 2023, from <https://www.federalshariatcourt.gov.pk/en/establishment/>.

Hall, J. (2010, December 1). *General Principles of Criminal Law*. The Lawbook Exchange, Ltd.

Hafi Bahadar Khan Vs Habib Ahmad (2021) CLC 114

Juan Suli VS State(1971) SCMR 618

Khan. (2023, May 6). Senate Passes SC Review of Judgements Bill amid Uproar. Dawn.Com . Retrieved October 9, 2023, from <https://www.dawn.com/news/1751184>

Khan, H. (2017, January 15). *A History of the Judiciary in Pakistan*.

Kairali, V. S. (2020). Nature and Scope of Reference Review and Revision under Civil Procedure Code 1908. *Paripex-Indian Journal Of Research*, 9.

Instructions to Civil Courts . (n.d.). In Lahore High Court. Lahore High Court. Retrieved October 8, 2023, from https://www.lhc.gov.pk/system/files/Volume1_0.pdf

Instructions to Criminal Courts Volume 3 . (n.d.). In Lahore High Court. Retrieved October 8, 2023, from https://www.lhc.gov.pk/system/files/volume3_0.pdf

Meador, D. J. (1967). *American Bar Association Project on Minimum Standards for Criminal Justice*:

Standards Relating to Post-Conviction Remedies (Tentative Draft).

- Majeed, N. B. (2000, December 1). Hubco Judgment Transcript: In the Supreme Court of Pakistan (Appellate Jurisdiction). *Arbitration International*, 16(4), 439–460. <https://doi.org/10.1093/arbitration/16.4.439>
- Mahmood, M. (2003, January 1). A Concise But Exhaustive Commentary on the Code of Civil Procedure 1908.
- Mahmood, M. (2010, January 1). The Code of Civil Procedure, 1908.
- Manzoor Ahmad Vs Muhammad Nawaz (2013) PLD 123
- Mrabure, K. O., & Idehen, S. O. (2021). Appraising Nigeria's Supreme Court's Powers to Review Its Own Judgments. *International Journal of Law and Society*, 4(2), 77.
- Muhammad Ajmal Vs Province of Balochistan (2022) CLC 965
- Muhammad Rehan Vs Akbar shahzad (2019) MLD 429
- Nadeem, M., Qasim, M., & Ibrahim, S. (2023, March 30). Original Jurisdiction of the Supreme Court of Pakistan Article 184 (3) of the Constitution of Pakistan, 1973. *Spring 2023*, 3(2), 1054–1064. <https://doi.org/10.54183/jssr.v3i2.339>
- Rai Sher Jahan Bhatti Vs Rai Aurangzeb Bhatti (2023) MLD 496
- Rauf, Y. (2019). Impact of the Original Jurisdiction of the Supreme Court on Its Appellate Jurisdiction and Pendency of Cases in the Apex Court. *Islamabad Law Review*, 3(1/2), 24-0_6.
- Rizvi, A. (2021, September 30). Judicial Politics and Judicial Independence at Crossroads: A Study of Judicial Activism in Pakistan. *PAKISTAN LANGUAGES AND HUMANITIES REVIEW*, 5(II). [https://doi.org/10.47205/plhr.2021\(5-ii-sep\)1.07](https://doi.org/10.47205/plhr.2021(5-ii-sep)1.07)
- Salihu, M. (2020). Should the Supreme Court review its judgments? An examination of the grounds for appeal of Nigeria's apex court ruling on the 2019 Imo state gubernatorial elections. *International Journal of Research and Innovation in Social Science*, 4(6), 101-105.
- Shabbir, S. S. (2020). Supreme Court of Pakistan Judges Hand Book, Role, Powers and Functions of the Chief Justice and the Judges of the Supreme Court of Pakistan. *Role, Powers and Functions of the Chief Justice and the Judges of the Supreme Court of Pakistan*.
- Sh Mehdi Hassan Vs Province of Punjab (2007) SCMR 7559
- Shah Nazar Khan VS Goga Khan (2005) YLR 3297
- Shahzaib ul Hassan Khan Vs Mian Muhammad Ahmad (2017) CLC 1539
- Shamim, S. J. (2018). A Review on Judicial Activism in Pakistan. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3126641>

The Supreme Court Rules(1980)

Hussain, F. (2011). The judicial system of Pakistan (p. 19). Pakistan: Supreme Court of Pakistan.

Wali Muhammad Vs Special Judge Anti Corruption (2017) PLD 76

Werle, G., & Jessberger, F. (2020). Principles of international criminal law. Oxford University Press.

Yadav, V. S. (2021). An Analytical Overview of Doctrine of Finality and Judicial Response in India. EPRA International Journal of Multidisciplinary Research, 7(1), 80-83.

Zakrya Ghani Vs Muhammad Ikhlq Memon (2016)CLD 480