

MR. JUSTICE  
IJAZ UL AHSAN



SUPREME COURT OF PAKISTAN

Islamabad, the 11 December, 2023

To,

The Secretary,  
Committee constituted under Section 2 of the Supreme  
Court (Practice and Procedure) Act, 2023.

SUBJECT: MINUTES OF THE FIFTH (5<sup>th</sup>) MEETING OF THE  
COMMITTEE HELD ON DECEMBER 7<sup>TH</sup> 2023

Dear Madam,

A meeting of the Committee ("the Committee") constituted under Section 2 of the Supreme Court (Practice and Procedure) Act 2023 (the "Act") was held in the Chambers of the Honourable Chief Justice at 4:00 PM on Thursday 7th December 2023. I attended the meeting being a member of the Committee. The agenda of the meeting (which was provided to me at about 2:30 PM after repeated phone calls) was as follows:

Sr.	Agenda Item
1	Fixation of Cases mentioned in the list.
2	Order of the Committee on the maintainability of Constitution Petitions mentioned in the list.
3	Fixation Policy regarding the matters in which early hearing petitions are allowed.

2. When Item No.1 of the agenda was discussed, it was agreed that since the judgment in the matter of the trial of civilians by military courts had been rendered by a five (5) member Bench of this Court, a seven (07) member Bench would be constituted to hear the appeals. I categorically and in clear terms stated that in order to dispel any impression of pick and choose, all Judges of this Court in the order of seniority be included in the appellate Bench. The Honourable Chief Justice agreed, but said that he would ask the honourable Judges and if any honourable Judge does not want to sit on the Bench, the next available Honourable Judge will be included.

3. The same principle was agreed for cases mentioned in Sr.Nos.3 to 6, with the difference that a three member Bench would be constituted in the order of seniority. If any Honourable Judge did not wish to sit on the Bench the next in order of seniority would be



included in the Bench. It was agreed that after asking the proposed members of the two Benches the members of the Committee will be informed.

4. I waited all day on Friday for any information regarding the two Benches. At least three phone calls were made to you, but my office was informed that the file with your note had been sent to the Honourable Chief Justice of Pakistan. The last call was made at 6:30 PM when your office stated that you had left for the day.

5. Neither the minutes of the 4th meeting nor those of the 5th meeting were sent to me on Friday or Saturday. Neither of the minutes have been seen or signed by me, yet these have been uploaded on the website of the Supreme Court of Pakistan.

6. As a member of the Committee, it is my right and duty to ensure that the minutes reflect accurately what was discussed in the meeting, what were the points of view of the members of the Committee and if there was any unanimity or a difference of opinion. The minutes of the 5th Meeting prepared and uploaded by you most certainly fail to do so.

7. Section 2 of the Act provides as follows:

*“Constitution of benches: (1) Every cause, appeal or matter before the Supreme Court shall be heard and disposed of by a bench constituted by the Committee comprising the Chief Justice of Pakistan and two next senior most Judges in order of seniority”*

8. The two special Benches have not been constituted by the Committee. The same were never placed before the Committee in its meeting. Had these been placed before the Committee, I could have agreed, disagreed, or refrained from giving my views. This has not happened to date. Further, as agreed in the meeting, a seven (07) member Bench has not been constituted – instead a six (06) member Bench has been notified. I am totally in the dark if any of the Honourable Judges who are higher in the order of seniority had refrained from sitting on the Bench.

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9. The three (03) member Bench constituted to hear petitions under Article 184(3) of the Constitution does not comprise Honourable Judges in the order of seniority. I have the greatest respect for each and every Honourable Judge of this Court, but as a matter of principle and in the interest of transparency and to maintain the dignity and honour of this Court, the rule of seniority was agreed to be followed to hear these matters.

10. I have therefore written this note to set the record straight. In view of the fact that you have uploaded the minutes of the meeting without even showing them to me, let alone getting my signatures, I expect that this note will also be uploaded on the website of the Supreme Court of Pakistan immediately.

*Regards,*

JUSTICE  
IJAZ UL AHSAN

Cc:

1. The Honourable Chief Justice of Pakistan.
2. All Honourable Judges of the Supreme Court of Pakistan.

MR. JUSTICE  
IJAZ UL AHSAN



SUPREME COURT OF PAKISTAN

Islamabad, the 17<sup>th</sup> of November, 2023

To,

The Hon'ble Chief Justice of Pakistan,  
Supreme Court of Pakistan,  
Islamabad.

Dear Sir,

I received a Court Roster for the next week commencing Monday, 20 November 2023 to Friday, 24 November 2023 at 6:00 pm on 16.11.2023. It has apparently been issued by order of the Committee constituted under Section 2(1) of the Supreme Court (Practice and Procedure) Act, 2023 ("the Act"). Section 2 of the Act provides as follows:

*"2. Constitution of Benches.—(1) Every cause, appeal or matter before the Supreme Court shall be heard and disposed of by a Bench constituted by the Committee comprising the Chief Justice of Pakistan and two next most senior Judges, in order of seniority.*

*(2) Soon after commencement of this Act, the Committee constituted under sub section (1) shall hold its first meeting to determine its procedure, including for holding meetings and constitution of Benches etc.:*

*Provided that, till such time the procedure is determined under this sub-section, the meeting of the Committee for the purposes of sub-section (1) shall be convened by the Chief Justice or other two members of the Committee, as the case may be.*

*(3) The decisions of the Committee shall be by majority.*

2. In the last meeting of the Committee held on 26.10.2023, Bench-III consisted of the following members:

Mr. Justice Ijaz ul Ahsan  
Mr. Justice Jamal Khan Mandokhail  
Mr. Justice Muhammad Ali Mazhar

Likewise, Bench-IV consisted of the following members:

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi  
Mr. Justice Syed Hasan Azhar Rizvi

3. During the said meeting, it was agreed that the aforesaid Benches will continue till start of winter vacation i.e. 16.12.2023. The constitution of Benches appears to have been changed. After the meeting of 26.10.2023, no other meeting of the Committee has been held and I am surprised to note that a fresh Court Roster has been issued by the Additional Registrar (Judicial) today which states that the Court Roster has been issued by order of the Committee under Section 2(1) of the Act while no such

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meeting was held or order passed. In the fresh Court Roster issued today, the constitution of Bench-III has been changed as follows:

Mr. Justice Ijaz ul Ahsan  
Mr. Justice Syed Hasan Azhar Rizvi  
Mr. Justice Irfan Saadat Khan

The constitution of Bench-IV has also been changed which will now consist of the following Hon'ble Judges of this Court:

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

Further, a new Bench has been constituted consisting of the following Hon'ble Judges:

Mr. Justice Jamal Khan Mandokhail  
Mr. Justice Muhammad Ali Mazhar

The constitution of the other Benches also appears to have been changed. It is pointed out that the Committee has never discussed or agreed upon this Court Roster or the fixation of cases before the Benches. Such large scale changes could not even otherwise have been undertaken by circulation specially when I was told that the Hon'ble Mr. Justice Sardar Tariq Masood was very unwell and could not attend the meeting of the Committee.

4. I was asked by your lordship on 15.11.2023 if I was available for a meeting of the Committee on Thursday, 16 November 2023 at 4:00 pm and I had expressed my availability for the meeting. In the morning of 16.11.2023 again before Court proceedings started your lordship reminded me that we had a meeting of the Committee on November 16, 2023 at 4:00 pm and I stated that I will attend the meeting. At around 12:00 noon again your lordship's office confirmed to my office that we had a meeting at 4:00 pm and this was duly acknowledged by my office. However, at around 3:00 pm my office received a phone call from your Personal Secretary that you had asked that since the Hon'ble Mr. Justice Sardar Tariq Masood was unwell if I had any objection to the meeting of the Committee being postponed till next week. I stated that I had no objection to the meeting being postponed till next week. Therefore, the Court Roster issued in the evening of 16.11.2023 has been issued without any meeting of the Committee. I may add that I have today, around 12:00 noon, received for approval by circulation the Court Roster for the next week. I notice that it is signed by the two other members of the Committee and that therefore, belatedly, the Roster has been presented to

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me as a fait accompli. This is, to say the least, most improper since I was available throughout for consultation and discussion. I do not therefore agree with this Roster.

5: I therefore request that the fresh Court Roster having been issued in violation of Section 2 of the Act may be directed to be recalled and the original Court Roster as agreed by the Committee in its last meeting held on 26.10.2023 which was required to be continued till 16.12.2023 may be accordingly continued.

*Yours sincerely,*

JUSTICE  
IJAZ UL AHSAN

*Copy to:*

1. Hon'ble Mr. Justice Sardar Tariq Masood, HJ(1).
2. Registrar/Secretary of the Committee.



18 November 2023.

Justice Ijaz ul Ahsan  
Supreme Court of Pakistan,  
Islamabad.

Dear Sir,

1. I am disappointed to have received your letter of 17 November 2023 concerning the working of the committee constituted under Supreme Court (Practice and Procedure) Act, 2023 (respectively 'the Committee' and 'the Act'). You allege that you have not been consulted with regard to the constitution of Benches. My door is always open to all my colleagues, I am also available on intercom and via cell phone, but surprisingly you neither came to talk to me nor reached out to me by intercom or cell phone to express your concerns.

2. Immediately, on receipt of your letter I called you on the intercom, but it was not answered. Thereafter, I asked my staff to contact your office and learnt that you had left for Lahore, early Friday afternoon and before the end of the working day. We are paid to work six days, not four and a half days.

3. The primary, and first, responsibility of a judge is to attend to judicial work. Therefore, I had initially scheduled the Committee to meet after all orders passed during the course of the day had been written, checked and signed, and this would be by Friday afternoon. But, conceding to your request, the Committee meetings were rescheduled to Thursdays, which I now consider may have been a mistake.

4. If I did not want to consult either you or Justice Sardar Tariq Masood would I have supported, believed and imposed the process of consultation on myself when a Bench, of which you were a member, had suspended the operation of the Act? Let me remind you of the first order I signed, after assuming the responsibility of the office of the Chief Justice of Pakistan, on 18 September 2023:

The Chief Justice stated that in view of the challenge thrown to the Supreme Court (Practice & Procedure) Act, 2023 and as the matter is pending adjudication he will be consulting with his two senior colleagues, namely, Justice Sardar Tariq Masood and Justice Ijaz ul Ahsan with

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Supreme Court of Pakistan, Constitution Avenue, Islamabad

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regard to the constitution of Benches and fixation of cases to which both of them have agreed.'

5. And, if I did not want to abide by what we decided in the Committee meetings would I have its working/decisions minuted and then have them uploaded on the Supreme Court website?

6. Before I attend to your uncalled for allegations, let me remind you that the first meeting of the Committee was delayed due to your non-availability, another could not take place because you were attending a conference in Hong Kong then the next Thursday (9 November 2023) was declared a public holiday and the Committee could not meet on the last Thursday (16 November 2023) because of the ill health of our colleague, and you had consented to the meeting being adjourned to the coming week. On my part I have throughout been available, have never adjourned a meeting because it was inconvenient for me, and have always accommodated my colleagues.

7. The two regular benches for criminal and civil cases, which were the only Benches to continue working till winter vacations, were minuted (26 October 2023, at serial No. 3) and reproduced for your case of reference:

3. Regular Criminal and Civil Benches:

Two regular Benches, comprising three Hon'ble Judges each, shall hear pending civil and criminal cases in chronological order (that is, those filed first shall be fixed first). These Regular Benches comprise of the following:

Regular Criminal Bench to hear criminal appeals and jail petitions:

Justice Sardar Tariq Masood,  
Justice Yahya Afridi and  
Justice Ayesha A. Malik

Regular Civil Bench to hear civil appeals;

Justice Munib Akhtar,  
Justice Shahid Waheed and  
Justice Musarrat Hilali.

The above Benches shall continue till winter vacations 2023.'



8. As regards the issuance of a fresh court roster the same was necessitated because some Judges were not available; you and Justice Yahya Afridi were in Hong Kong attending a conference, Justice Sardar Tariq Masood had taken leave on account of his daughter's wedding and then had fallen ill, and Justice Sayyed Mazahar Ali Akbar Naqvi has never been available for work on Fridays' but informs the Registrar of his unavailability at the eleventh hour. I may also remind you that Justice Naqvi was a member of a Bench with you but, after the Bench was constituted, you informed me that since his matter is before the Supreme Judicial Council you would not want to sit with him.

9. The constitution of Benches also demonstrates that every Judge is treated equally and with respect, and special benches are not made for particular cases and to include or exclude Judges.

10. Your accusations are contrary to the record and the facts. Nonetheless, if you have any suggestions for the reconstitution of Benches kindly propose the same and I shall convene a meeting of the Committee by requesting Justice Sardar Tariq Masood to join me at the Supreme Court and you should make it convenient to attend the Supreme Court Registry at Lahore to participate through video-link.

Yours sincerely,

Qazi Faez Isa.

Copies to: Justice Sardar Tariq Masood and  
Registrar/Secretary of the Committee.