

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

(Appellate/Original/Advisory Jurisdiction)

Present:

Justice Aamer Farooq

Justice Rozi Khan Barrech

C.P.L.A.229-Q/2024

(Against the judgment dated 31.07.2024 passed by the High Court of Balochistan in CP No.458/2024)

Ghulam Ali Khan

...Petitioner(s)

Versus

Government of Pakistan, through
Ministry of Interior, Pak Secretariat,
Constitution Avenue Islamabad and
others

...Respondent(s)

For the Petitioner(s) : Petitioner in person

For the Respondent(s) : N.R.

Date of Hearing : 06.03.2026

ORDER

Rozi Khan Barrech, J: The petitioner has impugned before us the decision of the High Court of Balochistan in CP No.458/2024 dated 31st of July 2024 whereby his writ petition was dismissed. The Constitutional questions to be addressed before us are;

(i) whether the petitioner, in his capacity as Chieftain/Sardar, qualifies as an aggrieved party under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, thereby enabling him to seek relief against the refusal of the respondents to accept his attestation for the issuance of identity documents for his tribesmen; and

(ii) whether the petitioner is entitled to a declaration recognizing him as the Chieftain/Sardar of the Kharoti tribe under customary law, and whether such recognition carries legal authority or

binding effect so as to facilitate the issuance of Local Certificates, Domicile Certificates, and Computerized National Identity Cards (CNICs) for his tribesmen on the basis of his attestation.

2. At the outset, and before addressing the substantive legal issues, it is necessary to recapitulate the essential facts that constitute the backdrop of the present petition. In the matter before the Court, the petitioner, Ghulam Ali, son of Baz Mir, asserts his affiliation with the distinguished and ancient Kharoti tribe, identifying himself as the 'Turban Holder' (Chieftain) of said tribe. In the prevailing Customary practices in triable setup of Balochistan, the Turban Holder is called as *Sardar* of the tribe duly recognized by the tribesmen of the area. The petitioner contends that his fellow tribesmen encounter significant challenges in procuring essential documents such as Local Certificates, Computerized National Identity Cards (**CNICs**), Domicile Certificates, and National Passports. They are reportedly subjected to a rigorous interrogation process, which includes demands for historical documentation.

3. In his capacity as the head of his tribe (Sardar), the petitioner approached the relevant authorities, seeking to alleviate the burdensome requirements imposed on his tribesmen. He requested that the verification and attestation provided by him, as Chieftain/Sardar, be deemed sufficient for the issuance of the aforementioned documents. However, this request was met with refusal by the respondents. The petitioner has articulated that it is imperative for the petitioner to be formally recognized and declared as the Chieftain/Sardar of his tribe in accordance with customary practices. Furthermore, he contends that the respondents are obligated to take into account the petitioner's

attestation when processing applications for CNICs, Local Certificates, and Domicile Certificates for his tribesmen.

4. We have heard the petitioner in person and perused the record extensively and will address the constitutionality of the matter at hand sequentially.

5. The substantial question of law that arises is: *“Does the petitioner, in his capacity as Chieftain/Sardar, qualify as an aggrieved party under Article 199 of the Constitution of Pakistan, thereby enabling him to seek relief against the refusal of the respondents to accept his attestation for the issuance of identity documents for his tribe members?”*

6. It is essential to emphasize that it is a well-established principle that only an aggrieved person may seek relief under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (“**Constitution**”). In the present case, the allegations made are general in nature, asserting that the tribesmen of the petitioner are not treated in accordance with the law. However, it is an admitted fact that the petitioner himself is not directly or indirectly aggrieved by the actions of the respondents. We have examined the substantial question of law that whether the petitioner qualifies as an “aggrieved person” within the contemplation of Article 199 of the Constitution, it is pertinent to observe that the Kharoti tribe is an indigenous tribe of Balochistan. Local/domicile certificates have admittedly been issued in favour of both the petitioner and his father. However, the mere fact of tribal identity or issuance of such certificates does not establish that the petitioner has been denied the protection of law or has been subjected to treatment not in accordance with law.

7. The petitioner has failed to demonstrate that any of his legal or constitutional rights have been infringed or denied. The allegations regarding denial of certain rights, privileges, or unequal treatment to members of his tribe are couched in broad and general terms. No specific instance, individual case, or identifiable act of discrimination has been cited to substantiate the claim of violation of any fundamental right.

8. In the absence of concrete particulars or evidence demonstrating infringement of a legally enforceable right, the petitioner cannot be regarded as an “aggrieved person” within the meaning of Article 199 of the Constitution. We are, therefore, constrained to hold that neither the petitioner nor any identifiable member of his tribe has established a violation of fundamental rights warranting the exercise of constitutional jurisdiction

9. Consequently, we find that the petitioner does not meet the criteria of an aggrieved party under Article 199 of the Constitution, nor has he demonstrated that his rights or those of his tribesmen have been violated.

10. With regard to the second question posed for determination *“Whether the petitioner is entitled to a declaration recognizing him as the Chieftain/Sardar of the Kharoti tribe under customary law, and whether such recognition carries legal authority or binding effect so as to facilitate the issuance of Local Certificates, Domicile Certificates, and Computerized National Identity Cards (CNICs) for his tribesmen on the basis of his attestation?”* It is required that the matter must be examined on the touchstone of the Constitution and the statutory framework governing the field.

11. At the outset, the Preamble to the Constitution of the Islamic Republic of Pakistan, 1973 (as made substantive by Article 2A), mandates that fundamental rights shall be guaranteed, including equality of status and equality of opportunity before the law. This constitutional command is further reinforced by Articles 4 and 25, which ensure that every citizen is entitled to the protection of law and to be treated in accordance with law, without discrimination. The relevant portion of the Preamble which is quite relevant in the given case is reproduced here for ready reference:

Preamble: WHEREIN shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;¹

12. Likewise, in the backdrop of the Preamble of the constitution, Article 4 of the Constitution unequivocally guarantees that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. Article 4 of the Constitution is reproduced for ready reference:

“4. Right of individuals to be dealt with in accordance with law, etc.— (1) *To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.*

(2) *In particular—*

(a) *no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;*

(b) *no person shall be prevented from or be hindered in doing that which is not prohibited by law; and*

(c) *no person shall be compelled to do that which the law does not required him to do.”*

¹ Preamble, Constitution of Islamic Republic of Pakistan, 1973

This provision embodies the foundational principle of rule of law, ensuring that no individual or authority may act beyond or contrary to the law. Consequently, all administrative actions, recognitions, or claims of authority, whether rooted in custom or otherwise, must derive their legitimacy from and remain subject to the Constitution and the law. Further, it is a settled canon of constitutional interpretation that no provision of law is to be construed in isolation; rather, the Constitution must be read as an integrated and harmonious whole. The same interpretative principle is equally applicable to the facts and controversy involved in the instant petition.

13. In this context, Article 8(1) of the Constitution bears direct relevance to the petitioner's claim seeking a declaration as Chieftain/Sardar. The said Article unequivocally stipulates that any law, as well as any custom or usage having the force of law, shall be rendered void to the extent that it is inconsistent with or in derogation of the Fundamental Rights guaranteed under Chapter I of Part II of the Constitution. The Article *ibid* declares all laws, customs and usages as void to the extent of their repugnancy and inconsistency with the fundamental rights. For ready reference, Article 8(1) provides as follows:

“8. Laws inconsistent with or in derogation of Fundamental Rights to be void. (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.”

14. Additionally, for a proper appreciation of the submissions contended by the petitioner, it would be apposite to reproduce Article 28 of the Constitution of the Islamic Republic of Pakistan, 1973, which provides as follows:

“28. Preservation of language, script and culture. Subject to Article 251 any section of citizens having a distinct language, script or

culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.”

15. A plain reading of the above provision manifests that the Constitution safeguards the cultural autonomy of distinct sections of citizens by recognizing their right to preserve and promote their language, script, and culture, and subject to law, to establish institutions for that purpose. The protection afforded under Article 28, however, is not absolute; it is circumscribed by the overarching framework of the Constitution and remains subject to other constitutional mandates, including the Fundamental Rights guaranteed under Chapter I of Part II.

16. The petitioner’s claim that he is entitled to be declared as the Chieftain/Sardar of his tribe based on a persisting *de facto* feudal or Sardari system, asserted to be part and parcel of tribal customs and usages, must therefore be examined within this constitutional matrix. While cultural practices may enjoy recognition to the extent permitted by law, any customary rule relating to hereditary or selective conferment of authority, particularly where it purports to create a status carrying legal consequences, cannot be sustained if it offends the constitutional guarantees of equality before law and equal protection of law enshrined in Articles 4 and 25 of the Constitution. Article 25 of the Constitution is reproduced for ready reference:

“25. Equality of citizens. _(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex 1[]*

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.”

Emphasis added

17. Moreover, the Objective Resolution², recognized as the Magna Carta of Pakistan's constitutional history, forms part of the substantive Constitution by virtue of Article 2A. It proclaims, inter alia, that principles of democracy, freedom, equality, tolerance, and social justice, as enunciated by Islam, shall be fully observed. The concept of equality so enshrined in objective resolution and provided in Article 25 of the Constitution admits of no parallel authority or privileged legal status except in accordance with law.

18. Thus, any claim seeking judicial endorsement of a customary or feudal designation, carrying implications beyond the cultural sphere and entering the domain of legal authority, must withstand the test of constitutional supremacy, equality, and rule of law. While customary practices and tribal structures may hold social and cultural significance, they cannot override or substitute statutory requirements prescribed under law. The issuance of Local Certificates, Domicile Certificates, and CNICs is regulated by specific statutory instruments and administrative rules, which vest authority in designated public functionaries. Such powers are to be exercised strictly in accordance with law and not on the basis of private attestations, unless expressly recognized by statute. Likewise, the customary practice of nominating or recognizing a Chieftain/Sardar by members of a tribe, in itself, does not vest such Chieftain or Sardar with legal authority to attest Local Certificates, Domicile Certificates, or CNIC applications. Such authority can only be exercised where it is expressly conferred or recognized under specific statutory provisions or duly framed administrative rules.

²Objectives Resolution is one of the most important documents in the constitutional history of Pakistan. It was passed by the first Constituent Assembly on 12th March 1949 under the leadership of Liaquat Ali Khan and made substantive part of the Constitution of Pakistan, 1973 under Article 2A.

Therefore, even if the petitioner claims recognition as a tribal Sardar under customary law, such recognition, in the absence of express statutory backing and administrative rules, does not *ipso facto* confer legal authority or binding effect upon public authorities to issue official documents solely because of his attestation. Any declaration sought must thus be consistent with constitutional principles of equality, rule of law, and the supremacy of statutory governance over customary assertions.

19. Furthermore, any claim by a Chieftain/Sardar to demand royalties, or other monetary or material benefits from tribesmen, governmental authorities, or private entities, merely based on the practices of customary status and title of Sardar lacks legal sanctity unless supported by a clear statutory framework. In a constitutional dispensation governed by the rule of law, no individual can assume fiscal or administrative authority without express authorization under law and administrative rules. Any such demand, if not traceable to a valid legal instrument, statute or administrative command, would be devoid of lawful justification and cannot be enforced through judicial process.

20. It is equally pertinent to observe that Article 28 of the Constitution permits the establishment of institutions for the preservation and promotion of language, script, and culture, subject to law. The qualifying phrase “subject to law” is of decisive significance, for it makes the exercise of such right conditional upon, and subordinate to, the existing legal framework. In other words, no institution or practice; however deeply rooted in custom, can claim constitutional protection if it stands in conflict with a validly enacted law.

21. In this context, it is noteworthy that the institution of *Sardari* or the feudal system has been expressly abolished through the promulgation of the *System of Sardari (Abolition) Ordinance, 1976*, published on 8th April 1976 (hereinafter referred to as “the **Ordinance**”). Section 3 of the said Ordinance unequivocally abolishes the Sardari system and terminates the legal recognition of such status and privileges. In view thereof, the petitioner’s attempt to invoke Article 28 for recognition of a Sardari status is misconceived. Since the constitutional right under Article 28 is expressly made subject to law, and the relevant law, namely, *Ordinance XXXV of 1976* has abolished the Sardari system, no legal benefit or enforceable right can be claimed based on a system that no longer enjoys statutory recognition.

For ease of reference, the Preamble and Section 3 of the Ordinance is reproduced hereunder:

“Preamble: *WHEREAS the system of Sardari, prevalent in certain parts of Pakistan, is the worst remnant of the oppressive feudal and tribal system which, being derogatory to human dignity and freedom, is repugnant to the spirit of democracy and equality as enunciated by Islam and enshrined in the Constitution of the Islamic Republic of Pakistan and opposed to the economic advancement of the people;*

Section 3. Abolition of system of Sardari. *Notwithstanding any custom or usage, as from the commencement of this Act, the system of Sardari shall stand abolished and no person shall—*

(a) exercise any judicial powers not expressly conferred on him by or under any law for the time being in force; or

(b) maintain any private jail; or

(c) save as provided in the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law for the time being in force, arrest or keep in custody any person; or

(d) take free labour from any person or compel any person to labour against his will; or

(e) demand or receive, by reason of being or having been a sardar, any tribute or any other payment, whether in cash or in kind; or

(f) be in possession of, or derive any benefit from, any land belonging to a tribe, by reason of being or having been a Sardar of the tribe.”

22. Moreover, the view taken by the High Court of Balochistan regarding abolishing of Sardari system in the case of *Sardar Haji Muhammad Yousaf*, reported as *PLD 2006 Quetta 1*, is well reasoned and same is relevant in the given circumstances of the case. The relevant excerpt therefrom is reproduced as under:

“Above fundamental right clearly provides that the citizens having a distinct language, culture and script have rights to preserve, all these subject to law framed in this behalf. The custom of language, script and culture does not include appointment of ‘Sardar’ which institution A under Ordinance, 1976, stood abolished and all those cultural customs to that extent have been declared to be against the provisions of law relating to Sardari System.”

Likewise, the view taken in *Muhammad Yousaf’s Case* (PLD 2006 Quetta 1) is also affirmed and seconded in the case of *Asmatullah Khan*, reported as *PLD 2013 (Balochistan) 13*, and the relevant para is reproduced as infra:

“Therefore, if Article 25(1) of the Fundamental Rights, Article 33 of the Principles of Policy and the Sardari System (Abolition) Act, 1976 are read together Article 199 cannot be pressed into service to claim oneself to be a ‘sardar’, and in such capacity claim any right and/or privilege. To claim a right and/or privilege, purportedly arising from being a ‘sardar’, would offend the Constitution, which envisages equality of all citizens. Article 8(1) too rather than supporting the case of the petitioner destroys it, because it inter alia stipulates that any ‘custom or usage’ if inconsistent with any Fundamental Right shall be void. Therefore, if sardars’ or the ‘sardari’ system are deemed to constitute custom or usage the same would be treated as void on the touchstone of Article 25(1).”

23. In view of the foregoing constitutional, statutory provisions and judicial precedents, it is evident that while the petitioner undoubtedly retains the right to preserve and promote his language, script, and culture, such right does not extend to the recognition of a ‘Sardar’ or ‘Chieftain’ in a manner contrary to the prevailing legal framework. The Sardari system stands unequivocally abolished under the law, and no

judicial endorsement can be accorded to a status or institution that has ceased to have legal existence. The constitutional guarantee under Article 28, being expressly subject to law, cannot be invoked to revive or legitimize a system that has been abrogated by statute.

Consequently, the relief sought by the petitioner is devoid of legal basis and cannot be granted. The petition, therefore, stands dismissed.

Judge

Judge

Islamabad
06.03.2026
Zahid Hussain/Ihtaram Ul Haq
Approved for Reporting