

RECENTLY ENACTED LEGISLATION

▪ **Constitution (Twenty-Fourth Amendment) Act 2017**

This amendment amends clauses (3) and (5) of Article 51 of the Constitution.

Before the Amendment, the position of seats allocated to different territories of Pakistan in the National Assembly stood as below:

AREA	BEFORE	AFTER
Balochistan	17	20
Sindh	75	75
Punjab	183	174
KpK	43	48
FATA	12	12
Fed Capital	2	3
Total	332	332

So the total number of seats remains the same but there is decrease in number of seats in Punjab while there is no change in the number of seats for Sindh province Clause (5) is consequential.

COURT CASES

2017 SCC 334 (Canada) (Google Inc v ES Inc)

- D was a distributor company of E, a technology company, which was located in British Columbia. After some time of their relationship, D started re-labeling E’s products and passing them on as its own. D also acquired confidential information and trade secrets belonging to E, using them to design and manufacture a competing product. E filed a proceeding against D which was joined by the latter but abandoned soon. Now, despite court orders prohibiting the sale of inventory and the use of E’s intellectual property, D continued to carry on its business from an unknown location, selling the impugned product on its websites to customers all over the world.
- E approached Google and requested that it de-index D’s websites. Google refused. E then

brought court proceedings, seeking an order requiring Google to do so. Google asked E to obtain a court order prohibiting D from carrying on business on the Internet saying it would comply with such an order by removing specific webpages. An injunction was issued by the Supreme Court of British Columbia ordering D to cease operating or carrying on business through any website. Between December 2012 and January 2013, Google advised E that it had de-indexed 345 specific webpages associated with D. It did not, however, de-index all of D’s websites. De-indexing webpages but not entire websites proved to be ineffective since D simply moved the objectionable content to new pages within its websites, circumventing the court orders. E obtained an interlocutory injunction to enjoin Google from displaying any part of D’s websites on any of its search results worldwide. On appeal by Google, the Court of Appeal for British Columbia dismissed Google’s appeal. The matter went to the Supreme Court of Canada.

- **The issue is whether Google, which is a non-party to the suit, can be ordered, pending a trial, to globally de-index D’s websites which, in breach of several court orders, is using those websites to unlawfully sell the intellectual property of another company and whether the Court of British Columbia has jurisdiction to make such an extra-territorial order?**

Held

- The decision to grant an interlocutory injunction is a discretionary one and entitled to a high degree of deference. Interlocutory injunctions are equitable remedies that seek to ensure that the subject matter of the litigation will be preserved so that effective relief will be available when the case is ultimately heard on the merits. Their character as “interlocutory” is not dependent on their duration pending trial. Ultimately, the question is whether granting the injunction is just and equitable in the circumstances of the case. The test for determining whether the court should exercise its discretion to grant an interlocutory injunction against Google has been met in this case: there is a serious issue to be tried; E is

suffering irreparable harm as a result of D's ongoing sale of its competing product through the Internet; and the balance of convenience is in favor of granting the order sought.

ii. Google does not dispute that there is a serious claim, or that E is suffering irreparable harm which it is inadvertently facilitating through its search engine. Nor does it suggest that it would be inconvenienced in any material way, or would incur any significant expense, in de-indexing D's websites. Its arguments are that the injunction is not necessary to prevent irreparable harm to E and is not effective; that as a non-party it should be immune from the injunction; that there is no necessity for the extraterritorial reach of the order; and that there are freedom of expression concerns that should have tipped the balance against granting the order.

iii. Injunctive relief can be ordered against someone who is not a party to the underlying lawsuit. When non-parties are so involved in the wrongful acts of others that they facilitate the harm, even if they themselves are not guilty of wrongdoing, they can be subject to interlocutory injunctions. It is common ground that D was unable to carry on business in a commercially viable way without its websites appearing on Google. The injunction in this case flows from the necessity of Google's assistance to prevent the facilitation of D's ability to defy court orders and do irreparable harm to E. Without the injunctive relief, it was clear that Google would continue to facilitate that ongoing harm.

iv. Where it is necessary to ensure the injunction's effectiveness, a court can grant an injunction enjoining conduct anywhere in the world. The problem in this case is occurring online and globally. The Internet has no borders — its natural habitat is global. The only way to ensure that the interlocutory injunction attained its objective was to have it apply where Google operates — globally. If the injunction were restricted to Canada alone or to google.ca, the remedy would be deprived of its intended ability to prevent irreparable harm, since purchasers outside Canada could easily continue purchasing from D's websites, and Canadian purchasers could find D's websites even if those websites were de-indexed on google.ca.

v. Google's argument that a global injunction violates international comity because it is

possible that the order could not have been obtained in a foreign jurisdiction, or that to comply with it would result in Google violating the laws of that jurisdiction, is theoretical. If Google has evidence that complying with such an injunction would require it to violate the laws of another jurisdiction, including interfering with freedom of expression, it is always free to apply to the British Columbia courts to vary the interlocutory order accordingly. To date, Google has made no such application. In the absence of an evidentiary foundation, and given Google's right to seek a rectifying order, it is not equitable to deny E the extraterritorial scope it needs to make the remedy effective, or even to put the onus on it to demonstrate, country by country, where such an order is legally permissible.

vi. D and its representatives have ignored all previous court orders made against them, have left British Columbia, and continue to operate their business from unknown locations outside Canada. E has made efforts to locate D with limited success. D is only able to survive — at the expense of E's survival — on Google's search engine which directs potential customers to D's websites. This makes Google the determinative player in allowing the harm to occur. On balance, since the world-wide injunction is the only effective way to mitigate the harm to E pending the trial, the only way, in fact, to preserve E itself pending the resolution of the underlying litigation, and since any countervailing harm to Google is minimal to non-existent, the interlocutory injunction should be upheld.

IMPORTANT NEWS

- The Supreme Court will start the year 2018 with the hearing of as many as 13 petitions challenging the Elections Act, 2017, which allowed a disqualified parliamentarian to hold party office. These petitions had been earlier returned by the registrar's office on the grounds that the petitioners had directly approached the apex court instead of availing remedies through appropriate forums. Chief Justice of Pakistan however, overruled the objection during a hearing in his chamber.
- The Supreme Court has barred all unregistered medical colleges across the country from admitting students, warning of serious consequences if they fail to comply with the orders. SC expressed concern over medical

colleges and hospitals receiving exorbitant fees from patients and students. "It seems some medical colleges are also being run from small houses and garages," SC remarked. Ordering that the fee structures of medical colleges and bank account details of their owners be presented to the court, SC also warned private colleges against backdating admissions of students to bypass the order issued.

- Litigation over service-related matters and frivolous petitions are adding to the burden on the country's constitutional courts, hampering the smooth administration of justice as petitioners have to wait decades for a decision in their cases. According to figures from the Law and Justice Commission of Pakistan, cases pending before all high courts increased from 2016 to 2017. At least 293,316 cases are currently pending before the five high courts: 147,633 in the Lahore High Court (LHC), 93,404 cases before the Sindh High Court (SHC), 29,525 cases at the Peshawar High Court (PHC), 6,510 in the Balochistan High Court (BHC) and 16,244 before the Islamabad High Court (IHC). A year earlier, the tally was as follows: LHC 159,577, SHC 84,077, PHC 30,730, BHC 6,110 and 13,789 at the IHC.
- Dismissing the notion that judges were not working hard, Lahore High Court (LHC) Chief Justice Mansoor Ali Shah said on Sunday that the court system suffered this year because of 3,840 strikes by lawyers in just 10 months. As a result of the strikes, around 2.2 million cases were not heard in Punjab, Justice Shah said. "0.24 million cases could have been decided according to our calculations had the strikes not taken place," he added. According to the judge, of the 3 million cases, 2.1 were wrapped up by the courts this year while 12 million are still pending. CJ said that strikes are justified when they are done for a purpose. The chief justice pointed out that in reality, most of these strikes are called for reasons devoid of substance, such as "situation worsening in Turkey or United States".

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This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Similarly, it has not been designed to provide legal or other advice.

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