

**IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)**

Constitution Petition No. 3885 of 2015

1. Shahzad Roy
Son of Kabiruddin Roy,
Muslim, Adult,
Resident of House No. 79/2,
Khayaban-e-Hilal, Phase 6, D.H.A.,
Karachi

2. Karamat Ali,
Son of (Late) Amanat Ali,
Muslim, Adult,
Resident/office at 143-A, Sector X-5,
Gulshan-e-Maymar,
Karachi-75340

3. Nazim Fida Hussain Haji
Son of Fida Hussain Haji,
Muslim, Adult,
Resident of House No. A-21/2-A,
KDA Scheme 1A Extension,
Stadium Road,
Karachi

4. Pakistan Institute of Labour
Education & Research,
Registered as an Association under Section 42,
Companies Ordinance, 1984,
Through its authorized person,
Having its registered office at PILER Centre,
ST-001, Sector X, Sub-Sector V,
Gulshan-e-Maymar,
Karachi-75340

5. National Organization for Working
Communities (NOW Communities),
An Agency registered under the
Voluntary Social Welfare Agencies
(Registration & Control) Ordinance, 1961,
Through its authorized person,
Having its registered office at 1-D,
First Floor, Westland Trade Centre, K.U.C.H.S.,
Block 7/8, Near Baloch Colony,
Shaheed-e-Millat Road,
Karachi

6. Urban Resource Centre,
A Society registered under the
Societies Registration Act, 1860,
Through its authorized person
Having its registered office at

A-2/2, 2nd Floor, Westland Trade Centre,
Commercial Area, Shaheed-e-Millat,
Karachi

7. Workers Education and Research Organization
(WERO),
An Agency registered under the
Voluntary Social Welfare Agencies
(Registration & Control) Ordinance, 1961,
Through its authorized person
Having its registered office at
D-1, First Floor, West Land, Trade Centre,
K.U.C.H.S., Block 7/8, Near Baloch Colony,
Shaheed-e-Millat Road,
Karachi.....Petitioners

Versus

1. Federation of Pakistan,
Through the Secretary,
Ministry of Water and Power,
Room No. 201-204, 2nd Floor,
A Block Pak Secretariat, Islamabad
2. Federation of Pakistan,
Through the Secretary,
Aviation Division,
Cabinet Secretariat,
Government of Pakistan,
Islamabad
3. Federation of Pakistan
Through the Secretary,
Ministry of Climate Change,
Constitution Avenue,
Islamabad
4. National Disaster Management Authority,
Established under the
National Disaster Management Act, 2010,
Through the Chairperson,
Prime Minister's Secretariat,
Constitution Avenue,
Islamabad
- ✓ 5. Pakistan Meteorological Department,
Through Director General,
Having headquarter Office at Sector H-8/2,
Islamabad
6. National Electric Power Regularity Authority (NEPRA),
An Authority established under
the Act No. XL of 1997,

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Through its Chariman,
Having Office at NEPRA Tower,
Attaturk Avenue (East), Sector G-5/1,
Islamabad

7. Province of Sindh
Through the Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi

8. Province of Sindh
Through the Secretary,
Department of Local Government,
Government of Sindh,
Sindh Secretariat,
Karachi

9. Province of Sindh
Through the Secretary,
Department of Health,
Government of Sindh,
Sindh Secretariat,
Karachi

10. Provincial Disaster Management Authority,
Established under the
National Disaster Management Act, 2010,
Through the Chairman/Relief Commissioner,
C-52, Block 2, K.D.A. Scheme No.5,
Karachi

11. The Commissioner,
Commissioner Karachi Division,
4-Club Road,
Karachi

12. K-Electric Supply Company Limited,
Through its Chief Executive Officer,
Having office at Sunset Commercial Street #1
Karachi.....Respondents

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the
abovenamed Petitioners as under:

1. That the subject-matter of this present Petition is in relation to the deaths of over one thousand (1000) people and injury caused to over 40,000 people affected, inter-alia, by heat waves striking Karachi and various parts of Sindh and the gross negligence and illegalities of the Respondents [hereinafter referred to as the 'Heat Wave Tragedy']. It is submitted that the Petitioners, through this Petition, seek justice and enforcement of the fundamental rights and the law, for the victims, the survivors and their families, and also seek further directions from this Honourable Court to inquire into the deaths of/injury to a huge number of people in relation to the Heat Wave Tragedy, fix the responsibility for such deaths and injury, to suggest measures in order to deal with the ongoing Heat Wave Tragedy and also to deal with such Heat Wave Tragedies in the future.

2. That the Petitioners No. 1 to No. 3 are known activists who are involved in various struggles for the enforcement of the legal and human rights of the people of Pakistan. In their individual capacities, as well as through the platform of various forums and organizations, the aforementioned Petitioners are engaged in numerous social and welfare activities, which include but are not limited to, enforcement of the right to education, social awareness campaigns and activities to promote and fight for the rights and welfare of labourers and workers on voluntary basis. The Petitioners No. 4 to No. 7 are known organisation which have undertaken dedicated efforts towards the betterment of the people of Pakistan through various measures on a voluntary basis. The Petitioner No.4 had made great efforts to fight for the rights of labourers and workers.

A copy of the Resolution passed by the Petitioner No. 4, Certificate of Incorporation, Resolutions of Petitioner No. 5 to No.7 authorising the institution of this Petition, along with the incorporation documents, are annexed and marked as Annex 'A' & 'A-7' respectively.

3. That the Respondent No.1 ['Ministry of Water and Power'] is the federal ministry responsible for, inter alia, ensuring adequate supply of energy and power to the public. The Respondent No. 6 ['NEPRA'] is an Authority

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responsible for safe, reliable, efficient and affordable electric power to the electricity consumers of Pakistan. Furthermore, it is entrusted with the task of facilitating the transition from a protected monopoly service structure to a competitive environment where several power sector entities function. It is submitted that even though the Respondent No. 12 ['K-electric Supply Company Limited'] i.e. a public listed company, have a majority shareholding of a private group, the Federal Government retains 26% of its shareholding post privatisation, and since the Respondent No.12 is the sole company in Karachi which is engaged in the transmission and distribution of electricity to Karachi, the Federal Government cannot be exonerated from its responsibility from ensuring supply of energy and power to cater for the need of people of Karachi and likewise, Respondent No. 6 cannot be exonerated from ensuring that its licensee i.e. Respondent No.12 ['K-electric Supply Company Limited'], performs to its optimal in the provision of electricity to the public and on its failure to do so, the Respondent No.6 has a statutory duty to take action against the Respondent No.12.

4. That the Respondent No.2 ['Aviation Division'] and Respondent No.5 ['Pakistan Meteorological Department'] are responsible for, inter alia, providing meteorological services throughout Pakistan which include, but are not limited to, provision of early warning of natural hazards due to meteorological, hydrological and geophysical phenomena, to investigate the behaviour of the atmosphere and exploit, analyse climatological data and disseminate this knowledge and findings for short and long term weather predictions, warnings and weather trends, such as severe Heat Waves. The Respondent No.3 ['Ministry of Climate Change'], Respondent No.4 ['National Disaster Management Authority'] and Respondent No.10 ['Provincial Disaster Management Authority'] are responsible for, inter alia, laying down guidelines for preparing disaster management plans by different ministries or departments and the Provincial Authorities and for liasing for the provision of technical assistance for preparing the disaster management plan and for co-ordinating

response in the event of any threatening disaster situation or disaster, in order to ensure that District and local authorities are well directed to carry out relief work, made sufficiently and effectively aware and provided funds and resources through Provincial Government to carry out relief work. The Respondent No. 7 ['Chief Secretary Sindh'], Respondent No.8 ['Department of Local Government'] and Respondent No.9 ['Department of Health'] are responsible for providing services to the public in a natural hazard such as the Heat Wave. It is submitted that such a large number of deaths and injured persons have proven beyond a shadow of doubt that the aforementioned Respondents as well as the entire machinery of the State failed to effectively respond to the Heat Wave Tragedy and this gross negligence and illegality on their part led to the death toll, as well as the injured persons, being substantially greater in number than it should reasonably have been if there was an effective response on the part of the state machinery against the onslaught of Heat Wave.

*A copy of the objectives of Pakistan Meteorological department and National Disaster Management Act, 2010, is attached and marked as **Annex 'B' & 'B-1'**.*

5. That in the Heat Wave tragedy which gained intensity on 20th June, 2015, when the temperature soared as high as 49 degrees centigrade in Sibbi and Larkana and 45 degrees centigrade in Karachi, over one thousand (1,000) people across Sindh have died. Reportedly, over 40,000 people have suffered heatstroke and as many as 7,500 of them were treated in Jinnah Postgraduate Medical Centre (JPMC), where 311 people died. According to figures collected from various hospitals, of the 950 deaths in Karachi, 729 were recorded in government-run health facilities and 221 in private hospitals. The gravity of the Heat Wave tragedy could be gauged from the fact that only Abbasi Shaheed Hospital and other hospitals run by the Karachi Metropolitan Corporation treated 17,382 patients till 24th June, 2015 and out of them, 207 have died. It has further been reported that 15 people died in Hyderabad, 02 in Naushahro Feroz and 05 in Badin, with a total of 61 in other districts of Sindh. It is important to submit that the aforementioned figures

have been provided by the hospitals and no measure had been taken by the Federal or Provincial Government to collect and collate the data and figures of the number of deaths caused prior to and since 20th June, 2015 until today due to heat waves.

A copy of the relevant news clipping is attached and marked as Annex 'C'.

- 6. That in an Article published in March, 2015, on the Pakistan Weather Portal, it was stated that as soon as the winter ended, a heat wave had entered into Karachi which has and will continue to cause rise in temperatures. It was again reported in April, 2015, that heat waves had entered into Karachi, which gave a further indication that temperatures are continually rising and that proper measure in such respect must be taken. Furthermore, the data revealed by National Aeronautics and Space Administration (NASA) on 16th June, 2015, showed that the global temperature in the first five months of 2015 have been the highest ever recorded and that following the climatic patterns over the next year, there are ample chances that this year may go on to set an all-time new records. However, the Respondents No. 3, No.4, No. 5, No.6 and No. 10, in complete violation and contravention of the powers, authority and duties conferred upon them, failed to understand the seriousness of the climatic changes and/or extend warnings, issue potential emergency signals, draft a plan to cope with consequences of climatic changes or direct the Federal, Provincial or local authorities to remain prepared to tackle with the consequences of heat waves so as to ensure minimal damage.

A copy of the relevant Article news clipping is attached and marked as Annex 'D' to 'D-2'.

- 7. That even though the climatic conditions in Karachi intensified on 20th June, 2015, the federal and provincial governments did not declare emergency until 23rd June, 2015, when over 426 people had died whilst a huge number of people remained injured due to heat stroke. It is submitted that one of the major reasons

for increasing number of deaths and injury due to heat stroke was the ignorance amongst the general public about the safety precautions which must be taken during such climatic condition, which is also the failure of the government to launch an awareness campaign in this regard. The heat wave coincided with severe electricity cuts, leaving many without fans, water or light in the beginning of the holy month of Ramazan, when many Muslims do not eat or drink during daylight hours. Reportedly, many of deaths among the elderly and poor in Karachi were caused by dehydration. It is submitted that the delay in declaring that there is an emergency situation and extending safety guidelines during heat waves, which include but is not limited to, staying indoors, drinking water frequently etc, resulted in general public attending to their day to day activities and routine casually, without taking any safety precautions, thereby leading to many suffering from heat strokes and/or dehydration. It is further submitted that the Met Office in UK and India, American Red Cross, and authorities in Australia and Canada have issued guidelines in advance for the public on their website and through booklets so as to minimize the tragic consequences of hazards such as heat waves. However, it is submitted that no guideline had been issued by the Respondents in this respect. Furthermore, the World Health Organization (WHO) has also made guidelines for the treatment of heat stroke patients which were also not made available to hospitals and public. The exorbitant number of deaths could clearly be attributed to lack of guidance by the Federal and Provincial Government to the public, authorities and medical professionals attending heat stroke patients.

A copy of the relevant Article, news clipping, guidelines of UK, India, American Red Cross, Australia and Canada, WHO is attached and marked as Annex 'E' to 'E-8'.

8. That reportedly, the Respondent No. 5 ['Pakistan Meteorological Department'] is ill-equipped to predict extreme weather events, such as heat and cold waves. It is submitted that an official from the Ministry of Climate Change is reported to have said that environment was not a priority for Government of Pakistan

Needless to mention that no action had been taken by Respondent No.6 [NEPRA] to rectify the aforementioned problem.

- b. Secondly, even though the majority shareholding in Respondent No.12 lies with the private owners, the Government of Pakistan still holds 26% of the shares in Respondent No.12. The Federal and Provincial Government and Respondent No.12 are equally responsible for failing to ensure uninterrupted power supply to the people that led to their deaths and injury.
- c. Thirdly, due to influx of bodies into the morgues in the Edhi Centre where the air conditioning units had stopped working, the medical officials were forced to store bodies in the bags on the floor. However, the Federal and Provincial Government had not done anything to attend to the aforementioned issue or ensure provision of any facility to the public in order to deal with the aforementioned crisis, except to place blames on Respondent No.12 in all the statements made by and on behalf of Respondent No.7.
- d. Fourthly, despite a number of hospitals issuing appeals for urgent need of beds, cold water, facilities and other basic items, the Federal and Provincial Governments have failed to provide any and most of the relief work has been carried out by the charity run networks, which provided ambulances, clinics and morgues to bridge the gaps in the overburdened and poorly funded public health system.
- e. Fifthly, the Rangers, Pakistan Paramilitary force, have set up 10 relief centres across the city of Karachi, to distribute water and salt tablets. But even that has proven inadequate. It is submitted that the Federal and Provincial Government have failed to establish any heat stroke centres at the appropriate time.

f. Sixthly, as mentioned in Para 7 above, lack of awareness due to absence of any guidelines for safety precautions against heat wave by the Federal Government and Provincial Government of Sindh, failure to declare public holiday during days of intense heat and lack of water supply to the general public are the major reasons for the heat wave tragedy. Reportedly some shops had refused to sell ice or water during the day, citing religious laws which make it illegal to eat or drink in public from dawn to dusk and through which they could be fined.

A copy of the relevant news clipping is attached and marked as Annex 'G' to 'G-10'.

10. That it is most respectfully and most humbly submitted that being aggrieved by the abovementioned actions and inactions of the Respondents as being unconstitutional, without jurisdiction and illegal, the Petitioners have no alternative or efficacious remedy except to invoke the Constitutional jurisdiction of this Court on the, inter alia, facts and grounds stated herein.

GROUNDS

A. That the Respondents No.7, 8, 9 and 11 have completely failed in their constitutional obligation to ensure the right to life of the citizens of the Province of Sindh. It is submitted that this failure of their constitutional obligation is obvious and apparent from the above and following facts. Firstly, the Provincial Government, its Departments and local authorities failed to launch any kind of awareness campaign either before or during the heat wave informing the public at large about the measures to be taken in order to safeguard people from being affected by the heat wave. As explained above, these preventive measures as well

as curative measures are well known throughout the world. Secondly, the Provincial Government, its Departments and local authorities failed to declare an emergency even after it was obvious and apparent that hundreds of people were dying every day from the heat wave. Thirdly, the Provincial Government, its Departments and local authorities failed to take emergency measures in relation to public hospitals in order to ensure that lives were saved and proper treatment was provided to the people affected by the heat wave. Fourthly, the Provincial Government, its Departments and local authorities failed to take any emergency measures in relation to setting up facilities (i.e. heat stroke facilities etc) in various parts of Karachi and the Province in order to provide help and relief to the people affected by the heat wave. Therefore, the aforementioned failure of the Provincial Government, its Departments and local authorities has led to a violation of the fundamental rights under Article 9, Constitution, 1973, of the Petitioners as well as the people of the Province of Sindh.

- B. That the Respondents No.7, 8, 9 and 11 have completely failed in their constitutional obligation to ensure the right to life of the citizens of the province of Sindh. It is submitted that this failure of their constitutional obligation is obvious and apparent from the following facts. Firstly, the Provincial Government, its Departments and local authorities failed to launch any kind of awareness campaign either before or during the heat wave informing the public at large about the measures to be taken in order to safeguard people from being affected by the heat wave. As explained above, these preventive measures as well as curative measures are well known throughout the world. Secondly, the Provincial Government, its Departments and local authorities failed to declare an emergency even after it was obvious and apparent that hundreds of people were dying every day from the heat wave. Thirdly, the Provincial Government, its Departments and local authorities failed to take emergency measures in relation to public hospitals in order to ensure that lives were saved and proper treatment was provided to the people affected by the heat wave. Fourthly, the Provincial Government, its Departments and local authorities failed to take any emergency

measures in relation to setting up facilities (i.e. heat stroke facilities etc) in various parts of Karachi and the Province in order to provide help and relief to the people affected by the heat wave. It is most respectfully and most humbly submitted that this is not the first example of the failure of the Provincial Government to deal with a natural disaster as only recently the Provincial Government completely failed in its constitutional obligations to safeguard the right to life of the people of Thar during the recent Tharparkar drought. Such criminal negligence has been proved by the report submitted by an inquiry committee of the Government of Sindh itself, which report is annexed herein. Therefore, unless the Provincial Government, its departments and local authorities are held accountable, the fundamental rights of the citizen of Karachi as well as the people of the rest of the Province of Sindh will continue to be violated and as a consequence, the Petitioner has a right under Article 4, Constitution, 1973, to hold the Provincial Government, its Departments and local authorities accountable for its constitutional failure to safeguard the right to life of the people of the Province of Sindh.

A copy of the Thar Inquiry Committee Report is annexed and marked as Annex 'H'.

- C. That in view of the facts as mentioned above, it has been known since March, 2015, that a severe heat wave is going to hit the Province of Sindh, especially Karachi. It is submitted that it was the statutory and legal obligation of the Respondents No.2 and No. 5 to ensure that these drastic and radical changes in the weather of Karachi and the rest of Sindh were communicated to all Government departments and this information was also disseminated to the general public. It is most respectfully submitted that the Respondents No.2 and No.5 have completely failed to fulfil their statutory and legal obligations. Therefore, the aforementioned failure of the Respondents No.2 and No. 5 has led to the violation of rights under Articles 4 and 9, Constitution, 1973, of the Petitioners and the people of Sindh.

tragedy were massively increased due to either the absence of the electricity, or massive load-shedding in various parts of Karachi and Province of Sindh. It is most respectfully and most humbly submitted that the gross failure of the Respondent No.6 to regulate and monitor the functioning of the Respondent No.12, in relation to the supply of electricity to the people of Sindh, especially the arbitrary and illegal policy of load-shedding practiced by the Respondents No.6, in order to ensure the welfare of the consumers i.e. the people of Sindh, is a violation of the statutory obligations under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997. Therefore, the aforementioned actions of the Respondents No.6 and No.12 is a violation of the constitutional rights under Articles 4, 9, 14 and 38, Constitution, 1973, of the Petitioners and the people of Sindh.

- G. That the right to electricity is neither a commodity nor a privilege but a fundamental and constitutional right under Articles 9, 14 and 38, Constitution, 1973, of the people of Sindh. It is submitted that in view of the abovementioned facts, it is obvious that the deaths and the injuries in relation to the heat wave tragedy were massively increased due to either the absence of the electricity, or massive load-shedding in various parts of Karachi and Province of Sindh. It is most respectfully and most humbly submitted that it is the gross failure of the Federal government to regulate and monitor the functioning of the Respondent No.12, in relation to the supply of electricity to the people of Sindh, especially the arbitrary and illegal policy of load-shedding practiced by the Respondent No.12, in order to ensure the welfare of the consumers i.e. the people of Sindh, which it could have rectified by exercising the federal governments shareholders rights in the Respondent No.12. Therefore, the aforementioned in-actions of the Federal Government is a violation of the constitutional rights under Articles 4, 9, 14 and 38, Constitution, 1973, of the Petitioners and the people of Sindh.

- H. That the right to electricity is neither a commodity nor a privilege but a fundamental and constitutional right under Articles 9, 14 and 38, Constitution,

1973, of the people of Sindh. It is submitted that in view of the abovementioned facts, it is obvious that the deaths and the injuries in relation to the heat wave tragedy were massively increased due to either the absence of the electricity, or massive load-shedding in various parts of Karachi and Province of Sindh. It is most respectfully and most humbly submitted that it is a fact that the Respondent No.12 has a monopoly over the distribution of electricity in the city of Karachi and in view of the abovementioned facts, it is obvious and apparent that the Respondent No.12 has abused its monopolistic power to engage in an illegal and arbitrary supply or non-supply of electricity and an illegal and arbitrary policy of load-shedding, which is completely illegal and unconstitutional. Therefore, the aforementioned actions of the Respondents No.12 is a violation of the constitutional rights under Articles 4, 9, 14 and 38, Constitution, 1973, of the Petitioners and the people of Sindh.

- I. That it is most respectfully and humbly submitted that the Petitioners seek the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

P R A Y E R

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment, and orders, in the following terms:

- (a) Declare that the right to electricity is not a commodity or a privilege but the right to electricity is a fundamental right of the people of the Province of Sindh to the extent that their right to be dealt with in accordance with law (Article 4), their right to life (Article 9) and their right to dignity (Article 14), is ensured and implemented and the failure to provide electricity to the

people of Sindh to such an extent is a violation of such fundamental rights of the people of the Province of Sindh under the Constitution, 1973;

- (b) Declare that the victims and their families and the injured of the heat wave tragedy are entitled, as a fundamental right under the Constitution, to demand reasonable and appropriate compensation from the Provincial and Federal Government as well as from the Respondent No.12;
- (c) Direct the Constitution of a broad based Judicial Commission, headed by a retired High Court Judge or a retired Supreme Court Judge and comprising of relevant and respected civil society persons including experts, as nominated by this Honourable Court (at the cost of the Federal and Provincial government and Respondent No.12), and direct this Judicial Commission to give its findings on, inter alia, following terms of reference:
- (i) Number of people who died, and or were injured, or substantially effected, by the heat wave tragedy.
- (ii) Inquire into the reasons for the massive loss of life and injuries to the people of Sindh, in relation to the heat wave tragedy.
- (iii) Assign responsibility and liability of persons, including Government officials, as well as Government departments and private persons and entities, including but not limited to the Respondents, for failing to take preventive, curative and other measures in order to reduce the loss of life and injury to the people of Sindh.
- (iv) After assigning responsibility and liability on various institutions and persons, including but not limited to the Respondents, to recommend civil, criminal and administrative action, to be taken against the responsible institutions and entities.

- (v) Inquire into the role of Respondent No.12 in relation to the lack of supply of electricity and/or load-shedding during this heat wave tragedy especially its policy of load-shedding and misuse of monopoly power.
- (vi) Inquire into the failure of the Respondent No.6 and Federal Government to regulate and monitor the actions of the Respondent No.12, during the heat wave tragedy.
- (vii) Determine the quantum of compensation for the victims and their families and the injured of this heat wave tragedy and to determine the share of the Provincial and Federal Government as well as the Respondent No.12 for the payment of such compensation.
- (vi) Make recommendations in relation to such heat wave tragedies in the future including but not limited to early warning mechanisms, awareness campaign, declaration of emergency provisions in hospitals and setting up of heat stroke centres, policy of load shedding etc. and the role of the Provincial, Federal and private institutions in this regard.
- (d) Grant such further, additional or alternative relief, as this Honourable Court may deem fit and proper;

PETITIONER NO.1

PETITIONER NO.2

PETITIONER NO.3

PETITIONER NO.4

PETITIONER NO.5

PETITIONER NO.6

PETITIONER NO.7

ADVOCATE FOR THE PETITIONERS

Karachi;

Dated: _____, 2015

DOCUMENTS FILED:	As shown in the Petition
DOCUMENTS RELIED UPON:	The abovementioned documents e.t.c.
ADDRESS OF PETITIONER:	As per in title of the petition
ADDRESS OF PETITIONER COUNSEL:	Faisal Siddiqi Advocate HC-8504/HC/KHI F-66/3, Park Lane, Block-5, Clifton, Karachi.

DRAWN BY ME

ADVOCATE