

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE SH. AZMAT SAEED  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE SAJJAD ALI SHAH

**CIVIL APPEAL NO.233/2015, CIVIL MISC. APPEAL NO.175/2017  
IN CONST. PETITION NO.NIL OF 2017, CIVIL MISC.  
APPLICATION NO.1535/2013 IN CIVIL APPEAL NO.191-L/2010,  
CIVIL MISC. APPLICATION NO.1536/2013 IN CIVIL APPEAL  
NO.409/2010, CIVIL MISC. APPLICATION NO.3470/2013, CIVIL  
REVIEW PETITIONS NO. 81/2013, 86/2013, 87/2013, 206/2011,  
218/2013 IN CIVIL PETITIONS NO.492, 493/2013, 494/2013,  
1485/2011 AND 1033/2013, CIVIL REVIEW PETITION  
NO.223/2013 IN CIVIL MISC. APPLICATION NO.3470/2013 IN  
CIVIL APPEAL NO.409/2010, CIVIL REVIEW PETITION  
NO.38/2014 IN CIVIL APPEAL NO.47/2014, CIVIL PETITIONS  
NO.770/2013, 668/2014 & CIVIL APPEAL NO.476 AND 689/2014,  
204-L/2016 AND CIVIL PETITION NO.2620-L/2016 AND CIVIL  
MISC. APPLICATION NO. 845 OF 2018.**

- C.A.233/2015: Sami Ullah Baloch Vs. Abdul Karim Nousherwani & others
- C. M. Appeal No.175/2017 Chaudhry Atta ur Rehman Vs. Election Commission of Pakistan, Islamabad.
- C.M.A.1535/2013: Implementation/Modalities of judgment passed in C.A.191-L & 409/2010 regarding submission of fake/bogus degrees at the time of Election
- C.M.A.1536/2013: Implementation/Modalities of judgment passed in C.A.191-L & 409/2010 regarding submission of fake/bogus degrees at the time of Election
- C.M.A.3470/2013: News Clipping Published in Daily Jang dated 04.06.2013
- C.R.P.81/2013: Moulvi Muhammad Hanif Vs. Election Tribunal Balochistan thr. Additional Registrar, Quetta & others
- C.R.P.86/2013: Sardar Fateh Ali Khan Umrani Vs. Returning Officer, PB 28 Nasirabad-I, Dera Murad Jamali and others
- C.R.P.87/2013: Sardar Fateh Ali Khan Umrani Vs. Returning Officer, PB 29 Nasirabad-I, Dera Murad Jamali and others
- C.R.P.206/2011: Senator Mir Muhammad Ali Rind Vs. Obaidullah and others

- C.R.P.218/2013: Allah Dino Khan Bhayo Vs. Election Commission of Pakistan and others
- C.R.P.223/2013: In Re case of Ms. Samina Khawar Hayat, Ex-MPA
- C.R.P.38/2014: Qaimous Khan v. Dr. Haider Ali Khan & others
- C.P.770/2013: Sardar Fateh Ali Umrani v. Samiullah & others
- C.P.668/2014: Abdul Ghafoor Lehri Vs. Election Commission of Pakistan thr. its Secretary & others
- C.A.476/2014: Khan Muhammad Khan Jatoi Vs. Sardar Samiullah Khan & other
- C.A.689/2014: Sardar Sami Ullah Khan Vs. Khan Muhammad Khan Jatoi
- C.A.204-L/2016: Ch. Nazir Ahmad Jatt Vs. Chief Election Commissioner of Pakistan, etc.
- C.P.2620-L/2016: Shamona Badshah Qaisarani Vs. Election Tribunal, Multan, etc.
- C.M.A No.845/2018 Implementation/Modalities of judgment passed in C.A.191-L & 409/2010 regarding submission of fake/bogus degrees at the time of Election.

For the petitioner(s)/  
Applicant(s)/appellant(s): Dr. Babar Awan, Sr. ASC  
Ch. Akhtar Ali, AOR  
Assisted by:  
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**(In C.A.233/2015)**

Syed Iftikhar Hussain Gillani, Sr. ASC  
Mr. Mehr Khan Malik, AOR  
**(In C.R.P.206/2011)**

Mr. Wasim Sajjad, Sr. ASC  
**(In C.R.P.218/2013)**

Mian Muhammad Hanif, ASC  
Raja Abdul Ghafoor, AOR  
**(For HEC in C.M.As.1535 & 1536/2013)**

Mr. Ahmed Raza, ASC  
**(In C.M.A.3470/2013)**

Mr. Tariq Mehmood, Sr. ASC  
**(In C.R.Ps.81, 86, 87, 233/2013, 38/2014 & C.P.770/2013)**

Mr. Shehzad Shaukat, ASC  
**(In C.P.2620-L/2016)**

Mr. Kamran Murtaza, Sr. ASC  
Syed Rifaqat Hussain Shah, AOR  
**(In C.P.668/2014)**

Sardar Muhammad Aslam, ASC  
Ch. Akhtar Ali, AOR  
**(In C.A.476/2014)**

Mr. Mehr Tanvir Ahmed Jangla, ASC  
**(In C.A.689/2014)**

Sardar Muhammad Aslam, ASC  
Mr. Zubair Khalid, ASC  
**(In C.A.204-L/2016)**

Malik Muhammad Qayyum, Sr. ASC.  
**(In C.M.A. No.175 of 2017)**

For the respondent(s):

Syed Iftikhar Hussain Gillani, Sr. ASC  
Mr. Mahmood A. Sheikh, AOR  
**(Respondent No.1 in C.A.No.233/2015)**

Mr. Tariq Aziz, AOR  
Mr. Imran-ul-Haq Khan, Spl. Prosecutor, NAB  
**(Respondents 2 & 3 in C.A.No.233/2015)**

Mr. Mehr Tanvir Ahmed Jangla, ASC  
**(In C.A.476/2014)**

Mr. Nazir Ahmed Bhutta, ASC  
**(In C.A.204-L/2016)**

Mr. Umer Aslam, ASC  
**(In C.P.2620-L/2016)**

Mr. Sattar Sardar, Election Officer, Rajanpur  
**(In C.P.2620-L/2016)**

Syed Haziq Ali Shah, ASC  
**(In C.R.P.38/2014)**

Mr. Salman Akram Raja, ASC.  
Assisted by:  
Mr. M. Asad Lada, Advocate.  
**(In CMA No. 4275/2013)**

Amicus Curiae:

Mr. Munir A. Malik, Sr. ASC  
Syed Ali Zafar, ASC Assisted by:  
Mr. Zahid Nawaz Cheema, ASC.

On Court's notice:

Mr. Ashtar Ausaf Ali,  
Attorney General for Pakistan.

Mr. Muhammad Waqar Rana,  
Additional Attorney General

Nemo.  
**(On behalf of Mian Mohammad Nawaz  
Sharif)**

Mrs. Asma Jehangir, Sr. ASC  
Assisted by:  
Ms. Noor Ejaz, Ms. Ayesha Malik,  
Mr. Usama Malik, Mr. Arsalan Khalid,  
Advocates.  
**(On behalf of Rai Hassan Nawaz, Ex-MNA)**

Mr. Sikandar Bashir Mohmand, ASC  
Assisted by Mr. Zulqarnain, Advocate.  
**(On behalf of Mr. Jehangir Khan Tareen)**

Nawabzada Ghazanfar Ali Gull, Ex-MPA  
In-person **(CMA No.656/2018)**

Mr. Mudassar Khalid Abbasi, ASC.  
**(CMA No.767/2018)**

Mr. Kamran Murtaza, Sr. ASC  
**(CMA No.845/2018)**

Mr. Faisal Farid Hussain, ASC  
**(in-person)**

For ECP: Mr. M. Arshad, D.G. (Law)

Dates of hearing: 30.01.2018, 31.01.2018; 01.02.2018; 07.02.2018;  
08.02.2018; 12.02.2018 & 14.02.2018.

### **JUDGMENT:**

**UMAR ATA BANDIAL, J.** – All these connected matters seek a common relief, namely, an authoritative pronouncement about the effect of provisions of Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan ("**Constitution**"). The crucial question raised is whether the incapacity imposed by Article 62(1)(f) of the Constitution upon a person interested to contest an election to a seat in the National Assembly or Senate ("**Parliament**"), is of perpetual effect if there is a declaration against him by a Court to the effect

that he lacks sagacity or righteousness or is profligate or is dishonest or is not *Ameen* (untrustworthy). This question is posed because Article 62(1)(f) of the Constitution does not stipulate the duration of incapacitation of a judgment debtor under a judicial declaration on one or more of the aforementioned grounds for contesting an election to a seat in Parliament. Article 62(1)(f) of the Constitution provides as follows:

“**62. (1)** A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless –

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e)
- (f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and
- (g) ...”

In the absence of a fixed period of incapacity of a candidate for election to a seat in Parliament being specified for complying the requirements under Article 62(1)(f) of the Constitution, one point of view urged before the Court is that such incapacity ought to be construed as perpetual. The other point of view canvassed before the Court is that the period of disqualification under Article 63 of the Constitution for the character flaw of moral turpitude ought to be construed along with Article 62(1)(f) of the Constitution. In this regard Article 63(1)(h) of the Constitution creates a bar for a period of five years for contesting an election after serving no less than a two year sentence for conviction for an offence involving moral turpitude. The said disability ought to be construed along with

Article 62(1)(f) of the Constitution to limit the period of incapacity imposed by the latter provision to five years as well.

2. Article 113 of the Constitution makes the qualifications under Article 62 of the Constitution and disqualifications under Article 63 of the Constitution applicable to the candidates for election to a seat in the Provincial Assemblies. Therefore, the Constitution has applied the same *criteria* of eligibility for election to a seat in all **Constitutional Legislatures** together referred in this opinion as 'Parliament'. Article 113 of the Constitution provides as follows:

“113. The qualifications and disqualifications for membership of the National Assembly set out in Articles 62 and 63 shall also apply for membership of a Provincial Assembly as if reference therein to “National Assembly” were a reference to “Provincial Assembly”.”

**Submissions by the Counsel:**

3. Mr. Babar Awan, Sr. ASC appearing before this Court (in Civil Appeal No.233 of 2015) has supported the lifetime bar under Article 62(1)(f) of the Constitution on the eligibility of a candidate to contest election to Parliament. He argued that the Constitution and the law contemplate permanent and transient disqualifications. Thus, Article 62(1)(d), (e), (f) and (g) of the Constitution do not fix a time limit for the incapacity of a candidate to contest an election. Within this category of provisions Article 62(1)(f) *ibid* above requires that a declaration by a Court of law indicating delinquent conduct be in existence before incapacity upon a candidate for election can be imposed thereunder. The remaining

three clauses do not provide for any such mechanism. These provisions were added to the Constitution pursuant to Islamic provisions and whenever attracted to a case they create a perpetual bar. He read from the verses of the Holy Qur'an to emphasise the meaning of the expression "Ameen" used in Article 62(1)(f) of the Constitution. These verses include *Surah Nisah* verse 58 and *Surah Aal-e-Imran* verse 75. As a threshold for the requirement of honesty, he referred to *Surah Al- Ma'aidah* verse 119; *Surah At' Taubah* verse 119; *Surah Al Ahzab* verse 23, 24 and 35. He pointed out further that the permanent bar created under Articles 62(1)(f) of the Constitution was endorsed by Parliament in the Constitution (Eighteenth Amendment) Act, 2010 ("**18<sup>th</sup> Constitutional Amendment**"). No omission is attributable to the Constitution nor reading into a provision thereof is permissible under the settled rules of Constitutional interpretation. If at all the period of embargo under Article 62(1)(f) of the Constitution is to be relaxed, then such an outcome can follow only from a Constitutional amendment by the Parliament.

4. Mr. Sikandar Bashir Mohmand, learned ASC appearing for Jehangir Khan Tareen, Ex-MNA has argued against the imposition of a permanent embargo under Article 62(1)(f) of the Constitution on the eligibility of a candidate for election to Parliament. He contended that the absence of a specified term of the bar on eligibility in the said constitutional provision made the same amenable to interpretation and that a life time bar amounted to an excessive restriction on the fundamental right guaranteed under

Article 17(2) of the Constitution. That the principle of proportionality ought to be applied to Article 62(1)(f) of the Constitution in the light of the embargo on eligibility for election provided in similar provisions. Particular emphasis was placed on Article 63(1)(h) of the Constitution wherein more serious misconduct by a candidate for election who has been convicted and sentenced for an offence involving moral turpitude has been subjected to an embargo on contesting election to Parliament for a fixed term rather than permanently. Moreover, gross acts of dishonesty catered by Section 15 of the NAB Ordinance and similar acts by Section 100 of the Representation of the People Act, 1976 ("**ROPA**") provide for an embargo for fixed periods. In these circumstances, the lack of specification of the duration of the bar created under Article 62(1)(f) of the Constitution ought not be given permanent effect. Under the principle of proportionality the Court ought to impose a bar that is commensurate with the wrong committed by a candidate for election. In this respect, the Court had discretion to fix the term but unfitness to contest for five years should be treated as an outer limit. He read from Section 100 of the ROPA which creates a disqualification of five years for exceeding the limit of election expenses and Section 15 of the NAB Ordinance for imposing disqualification for ten years after release from prison on conviction for offences of corruption and corrupt practices. On the other hand, the inadvertent non-disclosure of certain assets by a candidate without any intention to deceive the authorities or the public appears to be a trivial misdemeanor in comparison, yet the



Courts have under Article 62(1)(f) of the Constitution applied a permanent time bar in consequence thereof.

5. Ms. Asma Jehangir, Sr. ASC appearing for Rai Hassan Nawaz Ex-MNA explained that her client was disqualified under Article 62(1)(f) of the Constitution for not declaring his inherited property in his statement of assets. This is because the said asset was held in the name of a family company. Her client derived no advantage from the said non-disclosure but has been subjected to a life time bar for misdeclaration and concealment of his assets. She argued that Article 62(1)(f) of the Constitution is vague in its language for lacking a specific period of incapacitation of a candidate for election and sets an exceptionally high standard of human character to be met by him. She also contended that sagacity and non-profligacy are subjective terms for which determination or quantification can be onerous and irrational. Although the meaning and effect of these terms was a matter for Parliament to determine, yet the Courts have the authority and power to apply the rule of proportionality in order to avoid the harsh consequence of permanent incapacitation of a candidate under Article 62(1)(f) of the Constitution. She submitted that Section 99(1)(f) of the ROPA provides the same substantive qualifications as expressed in Article 62 of the Constitution but these do not create a permanent embargo. Consequently, for the lack of the same qualification to contest election for the Parliament, there are divergent provisions in the statute and in Article 62(1)(f) of the Constitution. The Constitutional

mandate in Article 62(1)(f) of the Constitution ought to be construed and enforced in the light of the aforesaid statutory provisions.

6. Sardar Muhammad Aslam, Sr. ASC appearing for the two disqualified appellants in two Civil Appeals (No.476 of 2014 & No.204-L of 2016) respectively, submitted that the commission of the wrong, namely, the misdeclaration of assets did not cause an injury or loss to any person and ought to be treated lightly on the principle of *Touba* (repentance) and *Maghfirat* (forgiveness), which are the foundations of Islamic law and jurisprudence. He was, however, candid to accept that except for submitting their affidavits in Court, his clients had not made any expression of remorse, regret or repentance before the concerned authorities or the public.

7. Learned *amicus curiae*, Mr. Munir A. Malik, Sr. ASC stated that a settled principle of interpretation of the Constitution is that it should be read as a whole. The chapter of fundamental rights lies at the heart of the Constitution and the right to contest elections emanates therefrom. Articles 62 and 63 of the Constitution are not preceded by a non-obstante clause, therefore, these provisions must be read in a manner that advances the fundamental right to contest election and not curtail the same. Furthermore, Articles 62 setting out qualifications and Article 63 laying down disqualifications for election to a seat in Parliament ought to be read together as these provisions are complementary to each other. According to the textual history of the Constitution, the provisions, *inter alia*, of Article 63(1)(g) and (h) belong to a set of disqualifications that are based on past delinquent conduct of a candidate. Prior to the 18<sup>th</sup>

Constitutional Amendment, the conviction for such delinquent conduct resulted in disqualification without a time limitation, hence these were construed as being of permanent effect.

8. The 18<sup>th</sup> Constitutional Amendment, however, introduced a time limit in respect of both these disqualifications. Article 63(1)(h) of the Constitution is relevant for present purpose. After the 18<sup>th</sup> Constitutional Amendment, it lays down that a person who is convicted and sentenced to more than two years imprisonment for an offence involving moral turpitude stands disqualified to contest and election for a period of five years after the date of his release from prison. The 18<sup>th</sup> Constitutional Amendment has similarly made the incapacity cast upon a candidate for election under Article 62(1)(f) to be contingent upon an adverse declaration by a Court of law being made against the candidate. Learned *amicus curiae* submits that this step dilutes the rigours of the sanction under Article 62(1)(f) of the Constitution which otherwise does not fix a time limit for the incapacity imposed by it. The learned *amicus curiae* has argued that according to his understanding, every act of dishonesty conceivably falls within the ambit of moral turpitude. Therefore, dishonesty under Article 62(1)(f) of the Constitution is a subset of moral turpitude in Article 63(1)(h) thereof. The imposition of a lifetime bar on contesting election to Parliament under Article 62(1)(f) of the Constitution would render Article 63(1)(h) thereof redundant. Therefore, the two provisions of the Constitution ought to be construed to derive substance and meaning from each other. Consequently, the period of incapacity under Article 62(1)(f) of the

Constitution ought to be limited to the period of disqualification imposed on a candidate for election under Article 63(1)(h) of the Constitution.

9. Syed Ali Zafar, learned ASC also appearing as *amicus curiae* argued that the present exercise is essentially a journey to discover the silence of the Constitution. This is because no time limitation has been prescribed for the incapacity imposed on a candidate by Article 62(1)(f) of the Constitution. From the historical perspective, the disqualification under Article 62(1)(f) of the Constitution is permanent which represents one extreme; on the other hand, the other extreme perspective can be that disqualification is for one election term, that is five years. However, he advocated a third approach for fixing a time period between those two extremes to be determined by the Court as it deems fit. The learned *amicus curiae* stated that in doing so, the Court will be adopting the structural methodology of constitutional interpretation. He then referred to six modalities of construction of constitutional provisions as per *Philip Babbitt* in his book "*Constitutional Interpretation*" referred to in **Al-Jehad Trust vs. Federation of Pakistan** (PLD 1997 SC 84). By following the structural modality for interpretation of the constitutional provisions in the present case, the Court would give due importance to the fundamental right of citizens to contest election under Article 17 of the Constitution. Moreover, qualifications for and disqualifications to contest election for a seat in Parliament under Articles 62 and 63 of the Constitution in essence deal with a common subject and therefore the two

provisions are complementary to each other and ought to be read together. A person who has committed a criminal offence involving moral turpitude is permitted to contest election after a lapse of five years of his release from prison, therefore, the constitutional intention cannot be to inflict a graver punishment of a life time bar to contest election upon a person who has committed a dishonest act. Finally, he submitted that by omitting to prescribe a period of incapacity for lack of qualification of a candidate for election, Article 62(1)(f) of the Constitution purposefully left the extent of the exclusionary bar to the discretion and judgment of the Court.

10. At the end of the proceedings, learned Attorney General for Pakistan also assisted the Court with his succinct and candid submissions. He submitted that omission by the Constitution to provide a time limit for the incapacity imposed under Article 62(1)(f) of the Constitution cannot mean that such incapacity is of permanent character. Such a result would deprive a person of his fundamental right under Article 17 of the Constitution. Furthermore, the effect of a judicial declaration under Article 62(1)(f) of the Constitution has to be weighed on a case to case basis. A case of breach of trust differs from forgery or a misdeclaration of fact made under oath. However, he accepted that a judicial declaration of a person being dishonest or not *ameen* under Article 62(1)(f) of the Constitution does not end with the efflux of time. Finally, he stated that it is only for the Legislature to put a time limit on the period of incapacity suffered by a candidate under Article 62(1)(f) of the Constitution in consequence of an adverse judicial declaration. Until

such time as Parliament intervenes, the incapacity to contest elections shall continue under Article 62(1)(f) of the Constitution for so long as an adverse judicial declaration against a candidate is in force.

**Analysis:**

11. Before we proceed to examine the respective contentions of the learned counsel appearing before us, it would be useful to reproduce the provisions of Articles 62 and 63 of the Constitution as originally framed in the year 1973 (**"1973 Constitution"**), followed by their version after amendments expanding the list of qualifications and disqualifications laid down therein for becoming or remaining a Member of Parliament:

**1973 Constitution:**

**"62.** A person shall not be qualified to be elected or chosen as a member of Parliament unless—

(a) he is a citizen of Pakistan;

(b) he is, in the case of the National Assembly, not less than twenty- five years of age and is enrolled as a voter in any electoral roll for election to that Assembly;

(c) he is, in the case of the Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership; and

(d) he possesses such other qualifications as may be prescribed by Act of Parliament."

**"63.(1)** A person shall be disqualified from being elected or chosen as, and from being, a member of Parliament, if—

(a) he is of unsound mind and has been so declared by a competent court; or

(b) he is an undischarged insolvent; or

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or

(d) he holds any office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or

(e) he is so disqualified by Act of Parliament.

(2) If any question arises whether a member of Parliament has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall refer the question to the Chief Election Commissioner and, if the Chief Election Commissioner is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.”

12. During the Martial Law regime of General Zia-ul-Haq, amendments were made in 1973 Constitution including some that were meant to supplement the Islamic content of the Constitution. In the present context, the President’s Order No.14 of 1985 introduced, *inter alia*, new qualifications and disqualifications for membership to Parliament. These are reproduced below:

**1985 Amendment:**

“62. A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—

(a) he is a citizen of Pakistan;

(b) he is, in the case of National Assembly, not less than twenty- five years of age and is enrolled as a voter in any electoral roll for election to a Muslim seat or a non-Muslim seat as the case may be in that Assembly;

(c) he is, in the case of Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;

(d) he is of good character and is not commonly known as one who violates Islamic Injunctions;

(e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as well abstains from major sins;

(f) he is sagacious, righteous and non-profligate and honest and ameen;

(g) he has not been convicted for a crime involving moral turpitude or for giving false evidence;

(h) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan:

Provided that the disqualifications specified in paragraphs (d) and (e) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation; and

(i) he possesses such other qualifications as may be prescribed by Act of Majlis-e-Shoora (Parliament)."

The new disqualifications for election incorporated by the President's Order No.14 of 1985 in Article 63 of the Constitution recapitulated the prescriptions made in certain existing statutes but without emphasizing the Islamic law:

**"63.(1)** A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if—

(a) he is of unsound mind and has been so declared by a competent court; or

(b) he is an undischarged insolvent; or

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or

(d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or

(e) he is in the service of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest; or

(f) being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act, 1951 (II of 1951), he is for the time being disqualified under any law in force in Azad Jammu and Kashmir from



being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir; or

(g) he is propagating any opinion, or acting in any manner, prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan; or

(h) he has been, on conviction for any offence which in the opinion of the Chief Election Commissioner involves moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release; or

(i) he has been dismissed from the service of Pakistan on the ground of misconduct, unless a period of five years has elapsed since his dismissal; or

(j) he has been removed or compulsorily retired from the service of Pakistan on the ground of misconduct unless a period of three years has elapsed since his removal or compulsory retirement; or

(k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service; or

(l) he is found guilty of a corrupt or illegal practice under any law for the time being in force, unless a period of five years has elapsed from the date on which that order takes effect; or

(m) he has been convicted under section 7 of the Political Parties Act, 1962 (III of 1962), unless a period of five years has elapsed from the date of such conviction; or

(n) he, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by, Government:

Provided that the disqualification under this paragraph shall not apply to a person—

(i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him;

(ii) where the contract has been entered into by or on behalf of a public company as defined in the Companies Ordinance, 1984 (XLVII of 1984), of which he is a shareholder but is not a director holding an office of profit under the company; or

(iii) where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interest; or

Explanation.— In this Article “goods” does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force, under a duty or obligation to supply.

(o) he holds any office of profit in the service of Pakistan other than the following offices, namely:-

(i) an office which is not whole time office remunerated either by salary or by fee;

(ii) the office of Lumbardar, whether called by this or any other title;

(iii) the Qaumi Razakars;

(iv) any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force; or

(p) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.

**(2)** If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall refer the question to the Chief Election Commissioner and, if the Chief Election Commissioner is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.”

13. The above amendments made by the President's Order No.14 of 1985 were affirmed by the elected Parliament vide 8<sup>th</sup> Constitutional Amendment in the year 1985. Constitutional amendments were also made in the year 2002 by the Legal Framework Order, 2002 during the Martial Law regime of General Pervez Musharraf. However, these amendments are not significant for our present discussion regarding eligibility to contest an election for a seat in Parliament. This is because in the year 2010, Parliament discarded these changes through the 18<sup>th</sup> Constitution Amendment Act, 2010 and substantially reformed the constitutional scheme regarding candidature for election to the Parliament. Therefore, it is the post 18<sup>th</sup> Amendment version of Articles 62 and 63 of the Constitution that is relevant to the present controversy and may now be examined in order to comprehend the improvement made in the clarity and enforceability of the said provisions:

**Post 18<sup>th</sup> Amendment:**

**"Qualifications for membership of Majlis-e-Shoora (Parliament). –**

**62.** (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless–

(a) he is a citizen of Pakistan;

(b) he is, in the case of the National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll in –

(i) any part of Pakistan, for election to a general seat or a seat reserved for non-Muslims; and

(ii) any area in a Province from which she seeks membership for election to a seat reserved for women.

(c) he is, in the case of the Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;

(d) he is of good character and is not commonly known as one who violates Islamic Injunctions;

(e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;

(f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and

(g) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan.

(2) The disqualifications specified in paragraphs (d) and (e) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation."

**"Disqualifications for membership of Majlis-e-Shoora (Parliament).**

63.(1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if –

(a) he is of unsound mind and has been so declared by a competent court; or

(b) he is an undischarged insolvent; or

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or

(d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or

(e) he is in the service of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest; or

(f) being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act, 1951 (II of 1951), he is for the time being disqualified under any law in force in Azad Jammu and Kashmir from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir; or

(g) he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, unless a period of five years has elapsed since his release; or

(h) he has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release; or

(i) he has been dismissed from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the ground of misconduct, unless a period of five years has elapsed since his dismissal; or

(j) he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the ground of misconduct, unless a period of three years has elapsed since his removal or compulsory retirement; or

(k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service; or

(l) he, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by, Government:

Provided that the disqualification under this paragraph shall not apply to a person –

(i) where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him;

(ii) where the contract has been entered into by or on behalf of a public company as

defined in the Companies Ordinance, 1984 (XLVII of 1984), of which he is a shareholder but is not a director holding an office of profit under the company; or

(iii) where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interest;

Explanation.- In this Article "goods" does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force, under a duty or obligation to supply;

or (m) he holds any office of profit in the service of Pakistan other than the following offices, namely:-

(i) an office which is not whole time office remunerated either by salary or by fee;

(ii) the office of Lumbardar, whether called by this or any other title;

(iii) the Qaumi Razakars;

(iv) any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force; or

(n) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off; or

(o) he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers; or

(p) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.

Explanation.- For the purposes of this paragraph "law" shall not include an Ordinance promulgated under Article 89 or Article 128.

**(2)** If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and if he fails to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission.

**(3)** The Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.”

14. It will be seen that the introduction in 1985 of Islamic provisions in Article 62 of the Constitution were retained by the 18<sup>th</sup> Constitutional Amendment. However, certain overlap in the subject matter of the provisions of clauses (g) and (h) of Article 62(1) and Article 63 of the Constitution was removed by deleting repetitive text in Article 62(1) of the Constitution. The salient Islamic provisions of Article 62, retained by the 18<sup>th</sup> Constitutional Amendment are contained in its clauses (d), (e) and (f) of Article 62 of the Constitution. These carry Quranic qualifications under Islamic law for establishing eligibility to hold public office of trust or authority. Although introduced in the year 1985, these clauses continue to remain part of the Constitution. Clauses (d) and (e) of Article 62 lay down the following conditions of eligibility for election to Parliament, namely, good character, observance of Islamic injunctions, knowledge of Islamic teachings and abstention from major sins. These conditions are subjective and under Article 62(2) obligate only the Muslim candidates for election to Parliament. It

may also be noted that these provisions do not prescribe objective standards of conduct. Therefore, only cases of blatant deviation from commonly recognized and accepted standards of Islamic norms can form the subject matter of such restraints.

15. On the other hand, Article 62(1)(f) of the Constitution also imposes Islamic ethical conditions for eligibility of a candidate for election to Parliament but these are made applicable to both Muslim as well as non-Muslim candidates for Parliamentary membership. One reason that the conditions of Article 62(1)(f) are made a criterion of eligibility of all candidates for election is the universality of their ethical prescription. Their content constitutes a basic norm in all progressive democratic societies that are governed by the rule of law. It is a matter of fact that in Pakistan the members of Parliament occupy leadership roles for the people of Pakistan and constitute the political and ruling elite in society. According to the Preamble of the Constitution, these persons are representatives of the people of Pakistan to whom the former are ultimately responsible as fiduciaries. It was held by this Court in **Muhammad Yasin vs. Federation of Pakistan** (PLD 2012 SC 132 at p.164) that:

“56. ... holders of public office are first and foremost fiduciaries and trustees for the people of Pakistan ... and when performing the functions of their Office, they can have no interest other than the interests of the honourable People of Pakistan.”

An instructive observation in this behalf was also made in **Habibullah Energy Limited vs. WAPDA** (PLD 2014 SC 47 at p.69) in the following terms:



“6. ... A breach of the duty of loyalty, such as in the case of a self-dealing transaction or one involving conflict of interest, will trigger heightened scrutiny by the court. Further, if public officials fail to exercise the duty of care that is expected of a prudent manager, the court will assess the underlying action or transaction to ascertain whether the state functionaries have breached their fiduciary obligations to the people of Pakistan.”

16. The Holy Qur’an narrates the accounts of different exalted personalities having leadership roles. Amongst these, the Holy Prophet Muhammad (PBUH) is regarded as the finest example for emulation by mankind; not only for his exceptional spiritual qualities as a Messenger of Almighty Allah Subanahu Wa Ta’ala (“**SWT**”) but also his remarkable capabilities of humanity and leadership that distinguished him as the best role model. With such qualities the Holy Prophet Muhammad (PBUH) escaped persecution in his own land of Mecca to establish without any coercion a just and egalitarian society in the distant land of Madina. This city state was governed by the laws laid down in the Holy Qur’an and exemplified in the Sunnah of the Holy Prophet Muhammad (PBUH). Likewise, for his conquest of Mecca without the use of any force. A prominent American author, *Michael H. Hart* explains in his book titled “**The 100, a Ranking of the Most Influential Persons in History**”; Citadel, 1992 that:

“My choice of Muhammad [PBUH] to lead the list of the world’s most influential persons may surprise some readers and may be questioned by others, but he was the only man in history who was supremely successful on both the religious and secular levels. ... Muhammad [PBUH] was a secular as well as a religious leader. In fact, as the driving force behind the Arab conquests, he may

well rank as the most influential political leader of all time.  
 ... We see then, that the Arab conquests of the seventh century have continued to play an important role in human history, down to the present day. It is this unparalleled combination of secular and religious influence which I feel entitles Muhammad [PBUH] to be considered the most influential single figure in human history."

***[emphasis provided]***

For his extraordinary character qualities and impeccable ethical values the Holy Prophet Muhammad (PBUH) is described in Surah Al-Ahzab Ayat 21 (33:21) in the Holy Qur'an as follows:

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِّمَن كَانَ يَرْجُوا اللَّهَ وَالْيَوْمَ  
 الْآخِرَ وَذَكَرَ اللَّهَ كَثِيرًا

*"Indeed in the Messenger of Allah (Muhammad SAW) you have a good example to follow for him who hopes in (the Meeting with) Allah and the Last Day and remembers Allah much."*

The qualities of sagacity, righteousness, honesty and trustworthiness laid down in Article 62(1)(f) of the Constitution as qualifications for membership to the elected Houses are actually derived from the Sunnah of the Holy Prophet Muhammad (PBUH). Such strengths can never be equaled by ordinary mortals for whom these are goals to strive for and more importantly not to consciously violate.

17. The Holy Qur'an recognizes the temporal significance of the character qualities specified in Article 62(1)(f) of the Constitution. These qualities are since acknowledged in political thought as attributes of a public leader. One account of some qualities is are narrated by the Holy Qur'an in the story of Hazrat

Yusuf (AS) in Surah Yusuf, Ayat No.54-55 (12:54-55) with a clear message:

وَقَالَ الْمَلِكُ أَتُونِي بِهِ ۖ اسْتَخْلِصْهُ لِنَفْسِي ۖ فَلَمَّا كَلَّمَهُ قَالَ إِنَّكَ الْيَوْمَ لَدَيْنَا مَكِينٌ  
 أَمِينٌ ﴿٥٤﴾ قَالَ اجْعَلْنِي عَلَىٰ خَزَائِنِ الْأَرْضِ ۗ إِنِّي حَفِيظٌ عَلَيْمُ ﴿٥٥﴾

"And the king said, "Bring him to me; I will appoint him **exclusively for myself**." And when he spoke to him, he said, "Indeed, you are today **established** [in **position**] and **trusted**. [Joseph] said, "**Appoint** me over the **storehouses of the land**. Indeed, I will be a **knowing guardian**."

**[emphasis supplied]**

These verses are often quoted to demonstrate Allah (SWT)'s guidance that the qualities of honesty, trustworthiness, guardianship, knowledge and skill are necessary attributes of persons holding public office involving trust and responsibility. These requirements are echoed in the conditions of sagacity, honesty and *Ameen* (trustworthiness) specified as qualifications in Article 62(1)(f) of the Constitution for membership to Parliament. As observed above, the laws of mature secular democracies emphasise the importance of the above-noted qualities to dignify persons holding parliamentary office. These standards are generally lodged in laws, enforced, *inter alia*, through a code of conduct for lawmakers; or as regulations that provide amongst others, for a duty to act honestly solely in public interest, avoidance of conflict of interest and setting out the terms and extent of disclosure of their pecuniary and other interests. The priority of the duties owed by Parliamentarians and of accountability for their actions that are

established in the current Code of Conduct for Members of Parliament (United Kingdom) are such that deserve review:

### **“The Code of Conduct for Members of Parliament**

*Prepared pursuant to the Resolution of the House of 19 July 1995*

#### **I. Purpose of the Code**

1. The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the House, their constituents and the public at large by:

(a) establishing the standards and principles of conduct expected of all Members in undertaking their duties;

(b) setting the rules of conduct which underpin these standards and principles and to which all Members must adhere; and in so doing

(c) ensuring public confidence in the standards expected of all Members and in the commitment of the House to upholding these rules.

#### **II. Scope of the Code**

2. The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.

3. The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the House and the rulings of the Chair, and to those which apply to Members falling within the scope of the Ministerial Code.

#### **III. Duties of Members**

4. By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

5. Members have a duty to uphold the law, including the general law against discrimination.

6. Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

7. Members should act on all occasions in accordance with the public trust placed in them. They should always

behave with probity and integrity, including in their use of public resources.

#### **IV. General Principles of Conduct**

**8.** In carrying out their parliamentary and public duties, Members will be expected to observe the following general principles of conduct identified by the Committee on Standards in Public Life in its First Report as applying to holders of public office. These principles will be taken into account when considering the investigation and determination of any allegations of breaches of the rules of conduct in Part V of the Code.

##### ***Selflessness***

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

##### ***Integrity***

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

##### ***Objectivity***

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

##### ***Accountability***

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

##### ***Openness***

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

##### ***Honesty***

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

##### ***Leadership***

Holders of public office should promote and support these principles by leadership and example."

## V. Rules of Conduct

9. Members are expected to observe the following rules and associated Resolutions of the House.

10. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

11. No Member shall act as a paid advocate in any proceeding of the House.

12. The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

13. Members shall fulfill conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Financial Interests. They shall always be open and frank in drawing attention to any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.

14. Information which Members receive in confidence in the course of their parliamentary duties should be used only in connection with those duties. Such information must never be used for the purpose of financial gain.

15. Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters. Members shall ensure that their use of public resources is always in support of their parliamentary duties. It should not confer any undue personal or financial benefit on themselves or anyone else, or confer undue advantage on a political organisation.

16. Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally. ..."

***[emphasis supplied]***

The substantive content of the Code of Conduct is derived from centuries of parliamentary experience in the United Kingdom. However, these principles mirror and build upon the basic values

and standards of public conduct that were espoused by the Holy Qur'an and the Holy Prophet (PBUH) fourteen centuries ago. Be that as it may, the universality of standards of honourable conduct in public life in the contemporary democratic world, irrespective of faith or culture, makes it plausible that firstly, the conditions of eligibility for election under Article 62(1)(f) of the Constitution are made applicable to all candidates for the Parliament including non-Muslim candidates; and secondly, that these conditions have been retained by the elected Parliament in the 18<sup>th</sup> Constitutional Amendment.

18. The foregoing view is further reinforced by the Constitutional duty of honesty, devotion of best ability in decisions, faithfulness and fidelity to the Constitution and the law that are sworn by every member of Parliament in his Oath made in pursuance of Article 65 of the Constitution read with its Third Schedule and by every member of the Provincial Assemblies sworn under Articles 65 and 127 read with the Third Schedule to the Constitution. Such a firm and robust commitment enjoined by the Constitution upon members of the elected Legislatures conforms the Constitutional architecture envisaged in its Preamble providing for the exercise of authority over the people of Pakistan, within the limits prescribed by Almighty Allah (SWT), as a sacred trust. For the State is to be run through the chosen "representatives of the people" observing principles of democracy, freedom, tolerance and social justice as envisaged by Islam, enabling Muslims to order their lives individually and collectively in accordance with the teachings and

requirements of Islam, as set out in the Holy Qur'an and Sunnah of Prophet Muhammad (PBUH). ***[emphasis supplied]***.

19. With the foregoing structure of normative values enshrined in and reiterated by our Constitution, there can be no doubt that the qualifications in Article 62(1)(f) occupy a crucial place in the exercise of political rights conferred by the Constitution. These political rights are guaranteed by Article 17 of the Constitution, which is reproduced herein below:

**"Freedom of Association:**

17.(1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity or Pakistan, public order or morality.

(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) Every political party shall account for the source of its funds in accordance with law."

In the case of **Muhammad Nawaz Sharif vs. Federation of Pakistan** (PLD 1993 SC 473 at p.559), the right to contest an election and to form government has been held to emanate from the right conferred by Article 17(2) of the Constitution, that guarantees the freedom to form and to be a member of a political party. The fundamental right under Article 17(2) of the Constitution has been a



subject of repeated scrutiny by this Court as and when actual or perceived threats to the democratic dispensation were challenged before the Courts. A celebrated judgment in this behalf was delivered in the case of **Miss Benazir Bhutto vs. Federation of Pakistan** (PLD 1988 SC 416). It laid down a threshold for ensuring the lawful exercise of the fundamental right of political association and action. The precedent hold that the exercise of political rights and action is not absolute in character and is subject to any reasonable restriction imposed by law in the interest of sovereignty or integrity of Pakistan. These observations made in the said judgment (*at page 570 of the law report*) are presently relevant and are reproduced below:

“The right to form associations or unions or political parties, like all other Fundamental Rights, is not absolute. Article 17 explicitly authorises the State to impose reasonable restrictions on the exercise and enjoyment of this right. The restrictions which the State is empowered to impose on the right to form or be a member of a political party will have to satisfy criteria embodied in Article 17(2), firstly that these restrictions should have a statutory sanction which means that the executive cannot, without the backing of law, impose any restriction on the exercise and enjoyment of the right. Second, the restrictions imposed should pass the test of reasonableness before they can validly restrict the exercise of the right. Third, these restrictions in order to be constitutional will have to have a clear nexus with one of the grounds i.e. sovereignty or integrity of Pakistan. These requirements are implicit in the expression “in the interest of” the sovereignty or integrity of Pakistan.”

The expression “integrity of Pakistan” used in Article 17(2) of the Constitution has been construed in the said judgment to include

“morality” as one of its features. This is because the word “integrity” means moral soundness, morality and sound moral principles. These ought to be read as forming part of the expression “integrity of Pakistan.” After quoting the Holy Qur’an, it is observed (*at page 526 of the law report*) that:

“... [N]ot only individually but also collectively Muslims have to live within an exclusively moral framework as enjoined by the Holy Quran and the Sunnah. No civilised society can deny this standard of morality. The concept of democracy in our Constitution should, therefore, be regarded to be imbued with individual and collective morality as according to Islam (Holy Quran and Sunnah). It goes without saying that morality provides the basis for the society's spiritual values and in terms of democracy-- freedom, equality, tolerance and social justice. Collectively the political parties are now expected to protect public morals in the same way as other legal institutions protect public truthfulness and public symbols of authority. To leave the political parties entirely free to do as they please is to suggest that morality does not matter. A situation like this might prove ultimately subversive to the fabric of the State in the maintenance of the law and order. Therefore, political parties should conform to stringent obligations of high ethical standard.”

20. Pursuant to the said criteria the political rights of action under Article 17(2) of the Constitution are subject to reasonable restrictions that may be imposed by statutory law. These would include conditions imposed upon a candidate to contest election. The stature of the qualifying limitations under Article 62(1)(f) of the Constitution occupy an insular and superior pedigree than statutory limitations. This is because the test under Article 17(2) of the Constitution applies to statutory but not to constitutional restrictions. The latter enjoy an autonomy that is discussed below.

21. The matter of curtailment of the fundamental right of freedom of expression of parliamentarians under Article 19 of the Constitution came up for scrutiny by this Court in the case of **Wukala Mahaz Barai Tahafaz Dastoor vs. Federation of Pakistan** (PLD 1998 SC 1263). The issue was whether safeguards against defection by parliamentarians incorporated by Article 63A in the Constitution amounted to a violation of the parliamentarians' political right of freedom of expression guaranteed under Articles 19 and 66 of the Constitution. It was held that Article 8 of the Constitution giving overriding effect to Fundamental Rights over conflicting statutes did not, however, operate to judge or invalidate other provisions of the Constitution (*at p.1313 of the law report*). As a result Article 63A of the Constitution was held to be valid law although it made parliamentarians liable to dismissal by their parliamentary party leader: for breach of party discipline expressed through the party's constitution, code of conduct and declared policies or for voting contrary to the directions issued by the parliamentary party to which they belong or for abstention from voting in the House contrary to the party's policies against any bill. It was held that forfeiture of parliamentary membership as a consequence of the breach of party discipline by a parliamentarian nevertheless did not wrest his freedom of speech and expression under Article 19 of the Constitution.

22. Just as the validity of a Constitutional provision cannot be tested at the touchstone of Article 8 and fundamental rights thereof [*Ref:* **Mahmood Khan Achakzai vs. Federation of Pakistan**

(PLD 1997 SC 426)], it is also an established rule that Article 2A of the Constitution cannot be made a benchmark to test the validity of another Constitutional provision [Ref: **Hakim Khan vs. Government of Pakistan** (PLD 1992 SC 595 at pp.630 & 634)]. In the above scenario, the overriding principle of Constitutional interpretation is that every word, clause and Article of the Constitution must be given effect and the attribution of redundancy to any part of the Constitution be avoided. [Ref: **Reference by the President** (PLD 1957 SC 219 at p.235). As such, the Constitution must be interpreted as a whole because it is an organic document that is meant to apply to the changing circumstances of time and space. Consequently, each provision of the Constitution or part thereof has a purpose, meaning and integral place that must be understood, acknowledged and applied harmoniously. It is only when a conflict between two provisions of the Constitution is irreconcilable and one of such provisions was inserted when the Constitution was held in abeyance, then the provision which was made part of the Constitution during the period of its abeyance would yield, provided that the other provision conflicting therewith was enforced by parliamentary will and is closer to the provisions of the Preamble of the Constitution. Reference is made to **District Bar Association, Rawalpindi vs. Federation of Pakistan** (PLD 2015 SC 401).

23. In the background of aforesaid principles of interpretation of the Constitutional provisions and the equal standing of both Article 17(2) and Article 62(1)(f) of the Constitution, the task of harmoniously interpreting the fundamental right under

Article 17(2) of the Constitution and the pre-conditions for reposing responsibility and authority upon persons vying for parliamentary office under Article 62(1)(f) of the Constitution may now be undertaken. The substantive content of Article 62(1)(f) finds support from the Preamble of the Constitution emphasising Islamic values in Society and from the Oath of parliamentary office which enjoins honesty, faithfulness to public interest and the law. Endorsement of such conditions is also given by the 18<sup>th</sup> Constitutional Amendment passed by an assertive Parliament in the year 2010. Several important adjustments were made by this Amendment in the contours of the Constitution. Most notably, these include the distribution of State functions and authority between the Federation and the Provinces; and also a new mechanism for appointment of superior Court Judges. In the present context, the conditions and qualifications in Article 62(1)(f) of the Constitution were retained in toto; and made objectively and transparently enforceable by the prescription of a judicial declaration for precipitating the loss of the electoral qualification specified in the said clause. Where a declaration made by a Court of law against a candidate for election warrants a conclusion of his misrepresentation, dishonesty, breach of trust, fraud, cheating, lack of fiduciary duty, conflict of interest, deception, dishonest misappropriation, etc. to be derived from such a verdict, then it stands to reason that the consequential incapacity imposed upon the candidate for election should last for as long as the declaration is in force. This result follows as a rational consequence of the judicial declaration and from the lack of any time

period of incapacity of the candidate being laid down in Article 62(1)(f) of the Constitution. In other words, if the declaration by the Court has attained finality, the embargo under Article 62(1)(f) of the Constitution acquires permanent effect.

24. The foregoing aspects of Article 62(1)(f) of the Constitution do not encumber but regulate the fundamental right of political association and action under Article 17(2) of the Constitution. The incorporation of the requirement of declaration by a Court (in terms of Article 62(1)(f) of the Constitution) necessarily involves delinquent conduct by a candidate for election that is in violation of the law. A Court of law does not issue a declaration that offends mere sentiments or sensibilities. Consequently, a valid declaration by the Court would involve the breach of a legal duty or obligation owed by the candidate for election to another person or the violation of the latter's legal right or privilege.

25. In our legal system the rights and duties of parties in a legal correlation are broadly speaking of two kinds. One species concerns the breach of rights or duties involving the commission of criminal offences. The convictions after trial for such offences carry punishments including the capital penalty, imprisonment, proprietary forfeitures and pecuniary fines. The other kind of legal correlation involves the breach of rights and duties that carry civil liability. A decree by a Court of civil jurisdiction can grant pecuniary or specific relief, including, a declaration with respect to a legal right, status or legal character. Such a decree that is based on admissions or evidence and sustained by reasons attains finality

after remedies before the higher *fora* are exhausted. A final decree has binding effect and is commonly described as a past and closed transaction having permanent effect. Therefore, the consequence of permanent nature i.e. incapacity, following a final and binding decree of Court of civil jurisdiction, is the ordinary and lawful outcome of civil litigation.

26. To advance the plea against permanent ineligibility under Article 62(1)(f) of the Constitution reference has been made to the constitutional disqualification to contest an election to a seat in Parliament on account of a conviction and sentence for commission of any offence involving moral turpitude. The provisions of Article 63(1)(h) of the Constitution lay down this disqualification in the following terms:

**“63.** (1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if –

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) he has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release; or  
...”

***[emphasis supplied]***

We have already observed that a conclusion about a judgment debtor having character failings specified in Article 62(1)(f) of the

Constitution, that emanate or can be derived from a final judicial declaration, would cause the permanent incapacity of a candidate for elected office. It has been argued before us that the character flaws covered by Article 62(1)(f) of the Constitution falls within the ambit of wrongs that involve moral turpitude under Article 63(1)(h) of the Constitution. A conviction and sentence by a Court of law for offences involving moral turpitude is subjected to a disability to contest an election to Parliament for a period of five years following release of the convict from prison. The expression "moral turpitude" is not a defined expression in our codified law; however, it has been examined in authoritative legal commentaries and precedents. **Words and Phrases**, Permanent Edition 27-A, assigns the following meaning to the said expression:

"Moral turpitude" is a vague term, and its meaning depends to some extent on the state of public morals; it is anything that is done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man; it implies something immoral in itself, regardless of fact whether it is punishable by law."

***[emphasis supplied]***

The foregoing definition was considered by this Court in **Ghulam Hussain vs. Chairman, POF Board** (2002 SCMR 1691) and it was held that:

"7. Perusal of the meaning of above expression clearly indicates that anything which is done contrary to the good principles of morality is within the circuit of above expression. In fact, any act which runs contrary to justice,



honesty, good moral values, established judicial norms of a society, falls within the scope of above expression. ...”

According to the said definition, it is clear that offences of moral turpitude would include delinquent conduct involving, *inter alia*, misrepresentation, fraud, breach of trust or fiduciary duty, dishonesty, misappropriation, forgery, cheating, conflict of interest, etc.

27. It is apparent straightaway that the offences of moral turpitude should cover certain errant conduct that falls within the terms of Article 62(1)(f) of the Constitution. Consequently, delinquent conduct under Article 63(1)(h) of the Constitution would to such extent eclipse the criteria of qualifications set out in Article 62(1)(f) thereof. However, both these provisions of the Constitution are distinct and separate which possess their respectively different place, meaning and effect under the Constitution. Article 63(1)(h) of the Constitution deals with the consequences of criminal liability of a delinquent action. Such action may also fall within the ambit of Article 62(1)(f) of the Constitution. However, the distinct place, purpose and meaning of Article 62(1)(f) of the Constitution becomes obvious from the civil consequences of its provisions as opposed to Article 63(1)(h) of the Constitution which deals with the cognizance of the same action by a criminal court followed by criminal punishment. The two provisions of the Constitution, namely, Article 62(1)(f) and Article 63(1)(h) deal with different laws, remedies, *fora*, and relief although the underlying subject matter of the legal action is the same. It is settled law that the outcome of criminal

proceedings for a particular misconduct cannot foreclose the outcome of civil proceedings in relation to the same act. If the exclusivity of jurisdiction and proceedings in a Court and their outcome, that is civil or criminal respectively, is disregarded as is urged before us, redundancy would attach to the provisions of either Article 62(1)(f) or Article 63(1)(h) of the Constitution, as the case may be. This is impermissible; the result of a judicial declaration envisaged in Article 62(1)(f) of the Constitution cannot be overshadowed by the outcome of a criminal proceeding for the same conduct.

28. Article 62 of the Constitution provides the qualifications that must necessarily be possessed by a candidate for contesting election to Parliament. These qualifications are enumerated in Article 62(1)(a) to (g) of the Constitution. On the other hand, Article 63(1) of the Constitution enumerates the disqualifications for the membership to the Parliament and Provincial Assemblies. These disqualifications are enumerated in clause (a) to clause (p) of Article 63 of the Constitution. Although the ultimate result of a candidate for election lacking a qualification under Article 62 of the Constitution or for incurring disqualification under Article 63 of the Constitution is the same, namely, his ouster from the election contest, yet the object, meaning and effect of the two provisions is very different. The view that qualifications and disqualifications are interchangeable and therefore, the consequences of incurring either, namely, period of ouster from the election contest should be similar because the same misconduct can form the subject matter of both

provisions, is flawed. In the case of Govt. of Pakistan vs. Akhlaque Hussain (PLD 1965 SC 527 at p.579), the two facets of ineligibility for vying a professional office were analysed in the following terms:

“While sometimes qualification and disqualification may present two aspects of the same matter the two concepts are obviously distinct and it is not possible to contend that there can be no classification into qualification and disqualification of the attributes of a person in relation to a profession, etc. Reference may in this connection be made to Article 103 of this very Constitution which in two separate paragraphs provides for qualifications and disqualifications for membership of an Assembly. “Qualification” as will appear from Aiyar’s Law Lexicon means “that which makes person fit to do an act.” The Lexicon goes on to state: “qualification relates to the fitness or capacity of the party for a particular pursuit or a profession”. Webster defines qualifications to mean “any natural endowment or acquirement which fits a person for a place, office or employment, or enables him to sustain any character with success”. It should be quite appropriate to refer by qualifications to the competence or the positive qualities needed for carrying on a profession and to regard the obstacles in the carrying on of a profession as disqualifications. Every profession requires for the efficient performance of the duties involved in it (1)knowledge, (2)skill and (3)a moral standard. In short whatever goes to his competence or makes a person fit to discharge the duties involved in his profession is a qualification. On the other hand, if a person is debarred from entering a profession though he is admittedly quite competent to discharge his duties for some reason not connected with his competence that is a disqualification. A person may be disqualified because he has served under a foreign Government or because he belongs to a particular tribe or his father was a rebel or because he has already sufficient income from lands or he is a shareholder of a company and so on. He may be the most competent person for carrying on a profession yet he may be debarred because of some other attributes which he possesses. That will be a disqualification.”

Another pronouncement on the same point but on different facts was made in the case of Hamid Sarfaraz vs. Federation of Pakistan (PLD 1979 SC 991) wherein the issue addressed was that when Article 207 of the Constitution required a person appointed as Attorney General to possess the qualifications for appointment as Judge of the Supreme Court of Pakistan, then would such person be deemed to be under the same 'disability' that was placed by the Constitution on a Judge of the Supreme Court in the matter of accepting another assignment carrying the right to remuneration. It was held that:

“... The argument is clearly misconceived, as merely prescribing a certain qualification for appointment as Attorney-General for Pakistan does not mean that he would be governed by the same disability as applies to a Judge of the Supreme Court.”

Subsequently, the same view has been followed in a reasoned judgment given by the learned High Court in Muhammad Shahbaz Sharif vs. Muhammad Altaf Hussain (PLD 1995 Lahore 541). On the other hand, the two aspects of eligibility, namely, qualifications and disqualifications to hold office, were held to be interchangeable by a learned Single Judge of the High Court in Muhammad Yousaf vs. Irshad Sipra (1988 CLC 2475). This view has subsequently been shared by individual members of this Court but never as an opinion of a majority and without considering the afore-noted two judgments of this Court. One of the basic rules of construction of a Constitutional instrument is that effect should be given to every part and every word of a Constitution. Therefore, the Court must lean in

favour of a construction which gives effect to every word without rendering it idle or nugatory. Reliance is placed upon the judgments in Reference by the President (PLD 1957 SC 219) and Mr. Fazlul Quader Chawdhry vs. Mr. Mohd. Abdul Haque (PLD 1963 SC 486). Both on the said principle of Constitutional interpretation as well as the distinct nature and purpose of qualifications *vis-a-vis* disqualifications, the provisions of Article 62(1)(f) of the Constitution containing qualifications cannot be used interchangeably with the disqualification under Article 63(1)(h) of the Constitution. The two provisions have their separate spheres of operation. Although the ultimate result of the enforcement of each provision is the exclusion of a candidate from an election contest on account of his delinquent conduct, yet each provision is worded differently and must be interpreted and construed in accordance with its terms. It goes without saying that since the two provisions pertain to the same subject matter, therefore, they ought to be construed harmoniously. However, in the discussion that follows, it is concluded that the two provisions address significantly different situations which ought to, in the proper scheme of things, be interpreted differently.

29. Under Article 62(1)(f) of the Constitution, the judicial declaration by a Court of civil jurisdiction against a candidate for election to Parliament would adjudicate misconduct of the candidate that has not resulted in his criminal conviction and sentence for more than two years by the competent Court. Accordingly, we now consider the argument that a civil law declaration involving

personal flaws mentioned in Article 62(1)(f) of the Constitution should not carry ineligibility for contesting election that is longer in duration to the disability provided in Article 63(1)(h) of the Constitution for the same misconduct.

30. At this juncture, two important considerations must be kept in mind; firstly, according to Article 63(1)(h) of the Constitution, the torment of a minimum of two years imprisonment upon conviction of an offence involving moral turpitude is necessary. This is of some importance. The reason for such an approach may be noticed in the view expressed by this Court on the concept of punishment awarded to an accused in a criminal case. In **Dadullah vs. State** (2015 SCMR 856 at p.862) it is held that:

“9. Conceptually punishment to an accused is awarded on the concept of retribution, deterrence or reformation. The purpose behind infliction of sentence is two fold. Firstly, it would create such atmosphere, which could become a deterrence for the people who have inclination towards crime and; secondly to work as a medium in reforming the offence. Deterrent punishment is not only to maintain balance with gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society. ...”

31. Retributive justice entails several serious consequences apart from deprivation of personal liberty of the convict. Such a convict in fact suffers a loss of life by being immobilized, endures loss of his livelihood, watches disruption and hurt to his family and lives with the lasting stigma of conviction on his reputation. It is, therefore, said that a convict, who has undergone a sentence of

corporal punishment has “paid his dues to society.” Even after his release from jail, the convict faces many daunting challenges for rehabilitating himself in society as a responsible, productive and acceptable member thereof. It is in this context that one should look at the disqualification under Article 63(1)(h) of the Constitution for a limited period of five years imposed upon a convict after his release from jail. Even so, with the limited period of his disqualification as an ex-convict for offences involving moral turpitude, he still carries the odium of his past conviction before the voters in his constituency, whose hearts and minds he has yet to win. An ex-convict suffers huge handicaps to find dignity and acceptance for himself in society. The notable effort by the Constitution to allow him an opportunity to reform himself and to strive for such a position in society cannot be deprecated for providing him relief rather than longer disenfranchisement.

32. Secondly, on the other hand, a candidate for election who has committed misconduct falling within the terms of Article 62(1)(f) of the Constitution, in particular, misrepresentation, dishonesty, breach of trust, fraud, cheating, lack of fiduciary duty, conflict of interest, deception, dishonest misappropriation, etc. as declared by a Court of civil jurisdiction has on the Islamic and also universal *criteria* of honesty, integrity and probity, rendered himself unfit to hold public office. He cannot be compared to the case of an ex-convict under Article 63(1)(h) of the Constitution because he has not paid a personal price for his delinquent act. It is in such circumstances that a person declared to be dishonest or in breach of

his trust or fiduciary duty or being non-righteous or profligate must suffer the burden of that finding of incapacity for as long as the Court decree remains in force. Considering that the Constitution does not fix the period of incapacitation of such a judgment debtor shows a clear intention that the lack of qualification under Article 62(1)(f) of the Constitution should extend so long as the declaration of law envisaged in Article 62(1)(f) remains in the field. If such declaration is final and binding, then the incapacity to contest elections to any of the Legislatures provided by the Constitution becomes permanent. There is no reason for applying the rule of proportionality to the incapacity of a candidate for election following a final decree against him in term of Article 62(1)(f) of the Constitution. Indeed the Court has no jurisdiction whatsoever to read into the Constitution nor any grounds for treating civil and criminal proceedings alike in relation to their respective consequences.

33. In order to complete the picture it will be helpful to record the past view taken by this Court on the question presently in issue. There are several reported cases of this Court adjudicating deficiency in qualification under Article 62(1)(f) of the Constitution of a candidate but some that deal with the duration of his ouster from election. The first among these is reported as **Imtiaz Ahmed Lali vs. Ghulam Muhammad Lali** (PLD 2007 SC 369). For the General Elections held in the year 2002, Chief Executive's Order No.7 of 2002 enacted that if the candidate had been dismissed from service of Pakistan or a Province on the ground of misconduct



involving moral turpitude, he shall be disqualified for contesting an election to Parliament. The relevant provision did not impose any time limitation. Consequently, the appellant who had been dismissed for misconduct from police service on 28.10.1990 was denied eligibility to contest election. It was held that the appellant suffered a life time embargo on his eligibility for election because his dismissal from service for misconduct barred him permanently from future employment as that would be prejudicial to the good order and discipline of the police force.

34. In the post-18<sup>th</sup> Constitutional Amendment scenario, an adverse declaration by a Court of law against a candidate is necessary to oust him from an election. It was held in **Abdul Ghafoor Lehri vs. Returning Officer, PB-29** (2013 SCMR 1271) that a false declaration made in the nomination papers by a candidate about his academic qualification led to a permanent embargo on the candidature for election. This is because Article 62 of the Constitution did not provide any period for which a person would stand debarred from contesting elections and, therefore, the appellant before the Court could not become qualified merely by efflux of time. To the same effect is the judgment in **Muhammad Khan Junejo vs. Federation of Pakistan** (2013 SCMR 1328 at p.1336) wherein a deficiency in qualification under Article 62(1)(f) of the Constitution led to a permanent disqualification. This outcome was followed in **Allah Dino Khan Bhayo vs. Election Commission of Pakistan** (2013 SCMR 1655), in which the following observations were made with respect to the duration of embargo

imposed by a deficiency in qualification under Article 62(1)(f) of the Constitution:

“11. ... The provisions of the said Articles when examined in the light of the judgment of this Court referred to and reproduced herein above reveal that certain disqualifications are removed by the efflux of time e.g. disqualification on account of conviction or removal from service. Similarly, the qualifications can be acquired by some future act of the candidate e.g. by acquiring exclusive citizenship so as to become qualified in terms of Article 62(1)(a) of the Constitution. However, with regards to a qualification in terms of Article 62(1)(f) of the Constitution, the framers of the Constitution have chosen not to prescribe any period of time through the flux whereof or any act or omission through which such qualification can be acquired if a candidate or a member has been held not to possess the same. Consequently, if a person, is held not to be qualified in terms of Article 62(1)(f) of the Constitution such absence of qualification in law will haunt him forever.”

35. It is clear from the findings recorded in the afore-noted four judgments by this Court that the absence of a time limit for the ineligibility of a candidate for election in Article 62(1)(f) of the Constitution is the basis for holding his incapacity to be incurable by efflux of time. The reasons recorded in our judgment reinforce that conclusion. It may also be noted that the Constitution envisages other situations in which a permanent bar to the eligibility of a candidate for election is enforced so long as the judgment that records or justifies the disability of the candidate remains in existence and occupies the field. This view is supported by Articles 63 (1)(a) and 63(1)(b) of the Constitution that provide disqualifications on account of judicial declaration regarding the

mental unfitness or the undischarged insolvency of a candidate for election. These disabilities also continue so long as the adverse judgment is in the field. Finally, it may be noted that the prescription by the 18<sup>th</sup> Constitutional Amendment of an adverse judicial declaration to precipitate the ineligibility of a candidate for election has provided a lawful, transparent and fair mechanism to a candidate under challenge both for contesting and for avoiding the onset of an embargo on his eligibility to contest elections. The restriction imposed by Article 62(1)(f) of the Constitution for the eligibility of a candidate for election to Parliament serves the public need and public interest for honest, upright, truthful, trustworthy and prudent elected representatives. The judicial mechanism in Article 62(1)(f) of the Constitution grants a fair opportunity and adequate remedy for relief to a candidate under challenge to vindicate himself. Therefore, the permanent incapacity of a candidate for election under Article 62(1)(f) of the Constitution is not an arbitrary, excessive or unreasonable curtailment of his fundamental right under Article 17(2) of the Constitution.

36. In the result, we are inclined to hold that the incapacity created for failing to meet the qualifications under Article 62(1)(f) of the Constitution imposes a permanent bar which remains in effect so long as the declaratory judgment supporting the conclusion of one of the delinquent kinds of conduct under Article 62(1)(f) of the Constitution remains in effect.

37. In view of the above, all these cases are directed to be fixed before appropriate Benches for decision in accordance with the

law laid down in this judgment, keeping in view the respective facts and circumstances of each case.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

**JUDGE**

**JUDGE**

Islamabad,  
Announced in Court  
on 13<sup>th</sup> day of April, 2018

**CJ.**

**APPROVED FOR REPORTING.**  
*Irshad Hussain /\**

**Sh. Azmat Saeed, J.**- I have had the privilege to go through the judgment of my learned brother Umer Ata Bandial, J., though I concur with the conclusions drawn in the said judgment but I do not find myself in agreement with reasoning employed in its entirety.

2. The adjudication of the *lis* at hand requires the interpretation of Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 so as to determine the period of time to which the lack of qualification in terms thereof shall extend. The aforesaid provision is reproduced herein below for ease of reference:-

“62. (1) A person shall not be qualified to be elected or chosen as a Member of Majlis-e-Shoora (Parliament) unless:-

- .....
- .....
- (f) he is sagacious, righteous, non-profligate, honest, and ameen, there being no declaration to the contrary by a court of law; and
- .....
- .....

The words and expressions denoting the attributes for being qualified to be a Member of Majlis-e-Shoora (Parliament), as spelt forth in the aforesaid provision, leaves no manner of doubt that

the same i.e. Article 62(1)(f) of the Constitution is rooted in and inspired by our Islamic values. It is not necessary to dwell further on this aspect of the matter in the instant proceedings. However, the said provision must be interpreted with great care, caution and respect.

3. The historical background and various amendments, which have been periodically introduced into Articles 62 and 63 of the Constitution have been very ably dealt with by my learned brother in his judgment and need not to be repeated. However, Article 62(1)(f) of the Constitution is required to be interpreted as it stands today. A plain reading of Article 62(1)(f) of the Constitution reveals that in order to be a Member of Majlis-e-Shoora (Parliament), the person must be, *inter alia*, sagacious, righteous, non-profligate, honest, and ameen. However, if there is a declaration by a Court of Law to the contrary i.e. he is not sagacious or righteous or non-profligate, honest, and ameen then such person shall not be qualified to be a Member of Majlis-e-Shoora (Parliament). A declaration by the Court of Law would mean a

conclusive finding. Obviously, such finding would be with regard to a *lis* before the Court, arising out of the violation of a law or non-fulfillment of a legal obligation. It is clear and obvious that lack of qualifications in terms of Article 62(1)(f) of the Constitution is the effect of a declaration by a Court of Law to the contrary, which is the cause. The obvious, legal and logical conclusion would be as long as the cause i.e. the declaration of a Court of Law holds the field its effect i.e. the lack of qualification shall also prevail. This appears to be the only possible interpretation of Article 62(1)(f) of the Constitution.

4. The expression "declared by a Court" has also been used in Article 63(1)(a) of the Constitution, which is reproduced hereunder:

"63(1)(a) he is of unsound mind and has been so declared by a competent court; or"

(underlining is for emphasis)

5. Obviously, in the aforesaid circumstances, the disqualification would continue as long as the declaration regarding the mental incapacity subsists. No sane person could seriously urge to the contrary.

6. During the course of hearing of the instant proceedings, a large number of counsels addressed at the bar, both on behalf of various parties and as *amicus curie*. Each and every counsel was confronted with the above mentioned obvious interpretation of Article 62(1)(f) of the Constitution that the lack of qualification was the effect of the declaration by a Court of Law, which was the cause and the duration of such effect would be the duration of the cause i.e. declaration. The response on behalf of the learned counsels by and large that upon an accumulative reading of Articles 62 and 63 of the Constitution pertaining to the qualifications and disqualifications of a Member of Majlis-e-Shoora (Parliament) would reveal that disqualifications resulting from acts and omissions of much greater gravity the period of disqualification is limited, hence that lack of qualification in terms of Article 62(1)(f) of the Constitution cannot be perpetual. It was also contended that lack of qualifications in terms of Article 62(1)(f) of the Constitution also falls squarely within the disqualification as is set forth in Article



63(1)(h) of the Constitution and the negative impact thereof is for a limited period of time.

7. Adverting first to Article 63(1)(h) of the Constitution, the reasons for disqualifications provided therein do not appear to be congruent with the lack of qualifications as set forth in Article 62(1)(f) of the Constitution. More importantly, if such an interpretation is accepted, it would make Article 62(1)(f) of the Constitution superfluous and redundant. It is an elemental principle of the interpretation of the Constitution that surplusage cannot be attributed to any provision of the Constitution, hence, it is legally impossible to accept this contention.

8. No doubt the period of disqualification in certain sub-Articles of Article 63 of the Constitution has been provided but such a sunset clause is not found in Article 62(1)(f) of the Constitution. The framers of the Constitution chose not to do so. This Court is empowered to interpret the Constitution but not to amend it. It is an equally elemental principle of interpretation of the Constitution that nothing can be added thereto, therefore, we cannot read into

Article 62(1)(f) of the Constitution, a period of such lack of qualification, which is not mentioned therein.

9. Some of the learned counsels also voiced that perhaps the effect of Article 62(1)(f) of the Constitution *qua* the period of lack of qualification may be disproportionate and a little harsh. Such arguments are perhaps more suitable to the floor of Majlis-e-Shoora (Parliament) than at the bar before this Court. We, as stated above, can only interpret the Constitution not amend or change it. This aspect of the matter is rather ironic as several persons before us were or had been the Members of Majlis-e-Shoora (Parliament) at some point of time and may have passed the amendments, which now stand in their way.

10. None of the learned counsels, who appeared before us confronted the elephant in the room i.e. the obvious interpretation of Article 62(1)(f) of the Constitution is that lack of the qualification to a Member is the effect of declaration by a Court of Law, which is the cause and period of lack of qualification would be co-extensive with the period to the cause i.e. declaration. None of the learned

counsels refuted the aforesaid obvious interpretation but only sidestepped the issue.

11. However, at the very end, the learned Attorney General for Pakistan addressed the Court and in no uncertain terms stated that once declaration has been made by a Court of Law that a person is not sagacious or righteous or non-profligate or honest and ameen, such a person is not qualified to be a Member of Majlis-e-Shoora (Parliament). This lack of qualification is the effect of the aforesaid declaration, which is the cause and as long as the declaration by the Court holds the field, the person in respect of whom such declaration has been made will continue to be deprived of the qualifications to be a Member of Majlis-e-Shoora (Parliament).

12. The stand taken by the learned Attorney General for Pakistan is not only fair but is also in accordance with the obvious and self-evident intent of Article 62(1)(f) of the Constitution. Incidentally, this Court on more than one occasions has already held that lack of qualification suffered under Article 62(1)(f) of the Constitution is in perpetuity. Reference, in this behalf, may be made to the judgments of this

Court reported as Mian Najeeb-ud-Din Owasi and another v. Amir Yar Waran and others (PLD 2013 SC 482), Muhammad Nasir Mahmood and another v. Federation of Pakistan through Secretary Ministry of Law, Justice and Human Rights Division, Islamabad (PLD 2009 SC 107) and Allah Dino Khan Bhayo v. Election Commission of Pakistan, Islamabad and others (2013 SCMR 1655), and no reason has been advanced to persuade me to take a different view.

Judge