

Journal of Law & Social Studies (JLSS)

Volume 6, Issue 3, pp 295-308

www.advancelrf.org

Constitutional Cases In 2022-23 And Their Impact on Political Landscape of Pakistan

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Abstract

Scholars have questioned how decisions of court influence the politics. Last two years are marred with many constitutional problems and political unrest. Many political developments including regime change have taken place in this short span. Giving a slight historical background, the researcher has studied the impact of judicial interventions on political landscape of Pakistan. He has tried to analyse whether these decisions were a step toward stability or instability. This paper examines decisions of major sou motu proceedings after constitutional deadlocks in the last two years along with the decisions of other writ petitions raising constitutional question in which judicial interpretation has decided the fate of different stakeholders in the game. Many questions were raised regarding election procedure and functioning of election commission in previous years. They are also analysed along with their impact on domestic politics. This research offers useful insights into the intricate relationship among law, politics, and government in Pakistan by combining information from scholarly literature and judicial rulings.

Keywords: Constitutional Cases, Politics, Elections, Judicial Intervention, Stability.

Introduction

History of Pakistan is repleted with the constitutional crises. Multifaceted factors have overwhelmed the political dynamics of Pakistan. Many external and internal powers have been affecting political transition of successive governments. Judiciary had legitimated many martial laws in the past. It has rewritten the constitution through repetitive interpretations. Higher judiciary has become habitual of using Suo motto and intervening in the domain of executive and legislature. Politicians drag opponents to the courts to fix their conflicts. These practices have blurred the lines between separation of power among institutions.

A new phase of political instability has knocked the door of the country in early months of 2022. War in Ukraine triggered struggle for power in the political arena of Pakistan. Ex-prime minister Imran Khan's visit to Russia proved fatal for his own political career. Since its inception, the alignment of Pakistan towards the West is influencing its foreign and domestic affairs. Most of the aid programmes are sponsored by the West. With their help Pakistan manages to get loans from international financial institutions. Major chunk of exports from Pakistan are destined to US ports. This inclination has affected the behaviour of institutions in Pakistan, at large.

This article will analyse the impact of constitutional cases decided by judiciary, on the changing nature of politics in Pakistan. 2022-23 are the years of great political turbulence. This article will assess transition of governments in these years and the role of judiciary in such transitions. Disturbance started from the National assembly and spread to other provinces, especially KPK and Punjab. In this research, researcher will highlight key cases of constitutional nature and their role in legitimisation of caretaker governments. How the courts have tried to ensure stability and rule of law will also be a part of discussion. Researcher will try to explore the new precedents set by the honourable courts regarding elections and powers of Election Commission of Pakistan.

In March 2022, ex PM tried to dissolve the National assembly while vote of no confidence were just round the corner. Supreme Court declared this attempt unconstitutional and ordered restoration of the Assembly. No confidence motion was passed against Imran Khan. PTI then decided to resign from their seats – a strategic mistake. They abstained from voting in the assembly. PTI started campaign for early elections. It was a disturbance in the smooth democratic process. Government formed by prior opposition was legitimate.

In April 2022, Usman Buzdar resigned from the post of CM, Punjab. This resignation set the table for new political crisis in Punjab. PTI and PMLQ collectively nominated Pervaiz Illahi, speaker Punjab assembly at that time, as their candidate for CM. PPP and PMLN gave the name of Hamza Shahbaz for the said post. No confidence against Dost Mazaro, deputy speaker, was passed. Judiciary intervened. Hamza Shahbaz became the CM for few months succeeded by Pervaiz Illahi. PTI won by elections of July 2022. Same type of scenario was repeated in KPK assembly.

Polarisation strengthened its footing in politics of Pakistan. Populism clouded the political landscape of the country. Assassination attempt on Imran Khan during Azadi March, a political rally, has changed the nature of politics in Pakistan. Party made political capital on this foiled attempt. PTI leadership was struggling to find relevance in corridors of power. Idea of dissolving provincial assemblies in order to trigger elections in the country clicked the mind of leadership and KPK and Punjab assemblies were dissolved by CMs. Petition was filed in Supreme Court to give date for elections. Caretaker setups were installed in the provinces. SC gave date for the elections. However, ECP delayed the elections due to security issues and lack of funds for conducting election.

On May 9, 2023, Imran Khan was arrested under different charges. It triggered massive protests throughout the country. Many military instalments were attacked and molested. SC declared the arrest unlawful and ordered authorities to release Mr Khan immediately. Many of the PTI workers and supporters were arrested due to protests. He was again arrested in Tosha Khana case in August 2023. ECP delayed the election despite the judgement of Supreme Court. Caretaker setup was installed in provinces and centre. ECP subsequently finalised the date for elections which are going to be held on February 8, 2023.

Judgements of Higher Courts In 2022-23 On Constitutional Matters and Their Impact on Political Landscape

In the year 2022, a new phase of instability set its foot in the political corridors of Pakistan. soon after the return of PM Imran Khan from Russia, efforts started for the change of regime. It became talk of the town. Meanwhile, opposition presented the motion for vote of no confidence against the sitting PM before the speaker National assembly. Speaker let down the motion by giving the remarks that it was a part of foreign conspiracy against the regime, and he is not bound to accept it or entertain it. Constitutionally speaking, when there is motion of vote of no confidence against any PM under consideration, he has no power to dissolve the assembly, as per article 5 of the constitution. After the rejection of said motion this question set resolved. PM then advised President to dissolve National Assembly. President dissolved the house under article 58(1) of the constitution as per the advice. (Hussain Mirza, 2023).

Suo Motu No.1 Of 2022 And Restoration of Constitutional Order

Supreme Court took the Suo motto notice of the proceeding under article 184(3) of the constitution. SC analysed the development keeping in view the provisions of the constitution. The court decided that the ruling of Deputy Speaker of the National Assembly on a vote of no-confidence against the Prime Minister, issued on 03.04.2022, has been declared unconstitutional and of no legal effect. The Resolution for the vote of no-confidence remains pending and subsisting. The Prime Minister's advice to dissolve the Assembly and the subsequent order by the President to dissolve assembly are deemed contrary to the Constitution and are set aside thereof. All actions taken based on the dissolved

Assembly, including the appointment of a caretaker Prime Minister and Cabinet, are deemed illegal and quashed. The Prime Minister and Federal Ministers are restored to their offices as of 03.04.2022. The Assembly is declared to have been in session, and any prorogation prior to its dissolution is nullified. The Speaker is mandated to summon and hold a sitting of the Assembly immediately. The Assembly shall not be prorogued except under certain conditions, and if the no-confidence resolution is successful, a new Prime Minister must be elected promptly. The Federal Government is directed not to hinder members attending the session. Certain orders of the Court remain in force until the specified actions are completed. (Suo motto, 2022). The assembly again came in session. House, following the orders of court initiated the motion of no confidence against the sitting PM. That motion was subsequently passed, and Imran Khan no longer remain the prime minister of the country. A coalition was formed by opposition under the premiership of Mr. Shahbaz Sharif of PML-N in the centre.

Imran Khan started demonstrations and campaign against army and other institutions. He made a strategy for pressurising institutions to call for early elections. Opposition parties, on the other hand, were finding relevance. They tried to replicate this phenomenon to the provinces. Motion of no confidence against CM Usman Buzdar was presented before the deputy speaker in Punjab assembly. Buzdar resigned before the motion and house was called for the election of CM. Following the then-Chief Minister's departure, two Assembly members—among them the Speaker of the Assembly—came forward as candidates. Thus, in compliance with Article 130 of the Constitution, the Speaker notified the Deputy Speaker that the Provincial Assembly would be summoned to session in order to hold elections for the Chief Minister post. This prompts the Deputy Speaker to file this petition in addition to another Writ Petition, arguing that even though the Session has been adjourned, it ought to be promptly rescheduled in compliance with Rules 17–20 of the Rules of Procedure and Article 130(3) of the Constitution, omitting any other business. In addition, there have been concerns raised over the Speaker's choice to withdraw the Deputy Speaker's powers in line with Rule 25 of the Rules of Procedure.

Constitution Petition No. 9 & Reference No.1 Of 2022 And Challenges to Party Discipline

The questions presented revolve around the intricacies of fundamental rights within the framework of a constitution, particularly focusing on their enforcement, application, and implications within a parliamentary democracy. They inquire into the various aspects of fundamental rights enshrined in the constitution and seek to delineate differences between the holders of such rights under different provisions, notably comparing them to the sets defined under Article 17(2). Moreover, there is a contemplation on whether the rights in a parliamentary democracy are vested in the individual members comprising those parties or in the political parties themselves. The concept of a "healthy operation" of political parties within the parliamentary system as defined in Article 17(2), exploring both the dimensions of this operational health. (Pakistan Tahreek-e-Insaf through its Chairman Imran Khan vs Federation of Pakistan through M/o Interior Islamabad and others (in Const. P. 2 of 2022) The Election Commission of Pakistan, Islamabad and others, 2022). This question basically arose after the vote of no confidence because of the members of PTI who voted against party directives. This desertion led the is passage of vote of no confidence successfully. The question raised before the court was that whether such action is allowed, or it is in violation of article 63A of the state's constitution. Said article is linked with the fundamental right of freedom of association so that interpretation was also asked from the court.

Decision of the court delves into the multifaceted nature of fundamental rights within a constitutional framework, particularly focusing on their application in a parliamentary democracy. It elucidates that fundamental rights are characterized by equality among right-holders, individual exercise, and the freedom to choose whether to utilize them. However, Article 17(2) introduces a unique set of rights vested in political parties rather than individual members, thus emphasizing a singular purpose and interdependence among party members. The concept of a "healthy operation" of political parties

under Article 17(2) encompasses both internal and external aspects, relating to the pursuit, acquisition, and exercise of political power. The external aspect highlights the competitive nature of parties as they vie for power through electoral processes and subsequent actions within the legislative bodies. It underscores the necessity to counter defections to maintain the health of the political system. Consequences for members who defy party directives include a declaration of defection and possible de-seating by the Party Head. The division of powers between parliamentary parties and Party Heads as outlined in Article 63A contributes to the internal health of political parties. Procedures for issuing directives to parliamentarians for voting in the Assembly involve providing notice through various means. While members who cast proscribed votes are not automatically de-seated, the Party Head retains discretion in making declarations of defection. If de-seated, members have the option to seek re-election as independents or under a different party ticket. This decision enhanced the powers of the party head and has added into the role of party head in internal politics. Judgement in hand has tried to ensure party discipline. Honourable Jury looked into the matter very cogently and opined that being a member of party means alignment with party manifesto and understanding with other members. Pluralism in political parties promote pluralism in society. This landmark judgement promoted democratic norms in political parties.

Writ Petition no. 21710 & 21711 of 2022 and CM Punjab's Appointment

Hamza Shahbaz and Dost M. Mazari filed writ petition in Lahore High Court asking the questions that is it legitimate that the Provincial Assembly was tasked with electing the Chief Minister following the election of the Speaker and Deputy Speaker, with the phrase "exclusion of any other business" ordering a rapid election process? Is it possible to call off the assembly session in order to hold the chief ministerial election? Can the speaker revoke the deputy speaker's authority granted by Article 53(3) of the Constitution by sending out a notification? Does the motion of no confidence against the Speaker and Deputy Speaker prevent the Deputy Speaker from leading the Chief Minister election session? Will the Speaker or Deputy Speaker's conduct or decision be subject to scrutiny, barring the protections afforded by Article 69 of the Constitution? (Muhammad Hamza Shahbaz Sharif v. Province of Punjab and 04 others, and Sardar Dost Muhammad Mazari v. Provincial Assembly of the Punjab, 2022). The court then decided that after the elections of the Speaker and Deputy Speaker, the Provincial Assembly was tasked with choosing the CM. The phrase "exclusion of any other business" was used to give the Assembly immediate instructions to begin the process of choosing a new Chief Minister. Under Article 254 of the Constitution, the legislature may be adjourned in order to hold a chief ministerial election. The Speaker cannot withdraw power of the deputy speaker granted to him under Article 53(3) by notification. The Deputy Speaker is permitted to preside over the election meeting of the Chief Minister, despite the fact that a no-confidence resolution has been passed against the Speaker and Deputy Speaker. If the Speaker or Deputy Speaker violates constitutional boundaries, applies the law incorrectly, or abuses their discretion, their act or decision will be subject to scrutiny, with the exception of the immunity granted by Article 69 of the Constitution. Mr Hamza Shahbaz was elected as CM of the Punjab with the help of independents. Governor, then, abstained himself from administering the oath of Hamza Shahbaz as CM Punjab. Hamza Shahbaz then filed writ petition in Lahore High court to get his right to become CM.

Writ Petition 25671/2022 and Formation of Government

The court decided that the Constitution of Pakistan mandates prompt formation of governments at provincial and federal levels. It criticizes the delay in appointing a new Chief Minister for Punjab, stating it goes against democratic norms and the Constitution's scheme. It advises the Governor to ensure the prompt administration of the oath to the new Chief Minister by April 28, 2022, and urges the President to facilitate the process as required by the Constitution. Finally, it directs the Court to transmit this order to the Governor and President immediately. (Muhammad Hamza Shahbaz Sharif v. Federation of Pakistan, 2022) 25 MPAs of PTI crossed the floor to vote for Hamza Shahbaz. These dissidents were ousted from the house on the basis of violation of article 63A of the constitution for violating party protocol. Leader has taken this decision that party has no confidence on them, and

party thereby revoked their tickets. This resulted in their denotification as members provincial assembly. By-election was announced in Punjab on 20 seats. PTI won 15 seats in by-election. The assembly was not sitting for session to re-elect CM. Constitution petition was filed by Pervaiz Ilahi against deputy speaker to call house for session in order to re-elect CM.

Election Appeal No. 1 Of 2022 Lahore High Court and Disqualification Issues

Under section 63 of the Election Act 2017, respondent number one appealed against the decision of the District Election Commissioner/Returning Officer to accept nomination papers for the Punjab Assembly bye-election while appellant's objections were still unresolved. This appeal addresses whether a statement of defection cancels one's prospects of running in the Provincial Assembly bye-election, as ordered by the Supreme Court of Pakistan. Is it probable under Section 63(2) of the Election Act, 2017 to settle real issues quickly? (Zain Qureshi v. Muhammad Salman and another, 2022) Supreme Court has ruled that the statement of defection does not automatically disqualify one from running in the next Provincial Assembly bye-election. This position remains valid until the legislature passes a particular statute that deals with this issue. The directive suggests that legislation is necessary in order to set precise rules about the disqualification of defectors from taking part in elections. With respect to factual disputes, it is contended that they are not feasible to be resolved under summary jurisdiction conferred by Section 63(2) of the Election Act 2017. This implies that the Act's processes might not be sufficient to handle the intricate factual concerns that crop up during election disputes. It therefore emphasises the necessity of a more thorough and reliable process for settling such conflicts. So, this decision paved way for deserters to contest by-election.

Many conflicts propped up within parties which affected the politics of the country. Pressure groups and interests seekers tried to maximise their power and interests in this period of chaos. They further aired the conflicts and brought the state machinery in action against those who were not alligned to their whims. Opponent parties also knocked the door of the courts to get legitimacy of their actions from judiciary. These judgements, though done with a positive intent, has relative effect on the political situation of the country.

Election petition no. 1 of 2018, decided in August 2022

These concerns suggest penalties and repercussions for omission, deficiency, or non-disclosure in the Section 60 Elections Act, 2017 statement of assets and liabilities. The first issue questions whether every instance of such omission or deficiency automatically results in disqualification or charges of corrupt practice. The conclusion drawn by the honourable court is that not every omission or deficiency incurs such penalties, implying that discretion and context may play a role in determining the severity of the consequence. (Ayesha Nazir v. Election Commission of Pakistan, 2022) The second issue is whether non-disclosure or incorrect assertions in the statement of assets and liabilities are fraudulent declarations, regardless of explanation. It is emphasized that such declarations cannot be outrightly labelled as false without first considering the explanations offered, indicating the importance of context and mitigating factors in assessing the veracity of the submitted statements. Instability of centre was transferred to Punjab. Same type of crisis effected the politics of Punjab. Intervention of the court brought the things in order and paved way for stability.

Constitution Petition No. 22 Of 2022 And Punjab Government's Runoff Election

A Full Bench of the High Court, in a judgment dated 30.06.2022, directed the resumption of the Punjab Assembly session on 01.07.2022 for a runoff election between Hamza Shahbaz Sharif (PML-N) and the petitioner (PML-Q) for the Chief Minister position. On 01.07.2022, it was agreed that the runoff election would be held on 22.07.2022 after by-elections on 20 vacated seats. The Deputy Speaker's ruling on 22.07.2022 excluded 10 votes from the petitioner, resulting in Hamza Shahbaz Sharif's victory by 3 votes. The ruling was challenged, and after a hearing, it was concluded that the ruling was incorrect and violated constitutional provisions. The petitioner, Chaudhry Parvez Elahi, was declared the duly elected Chief Minister. The oath of office administered to Hamza Shahbaz

Sharif was deemed illegal, along with all actions taken under his administration. Advisors appointed by Sharif were relieved of their duties. The Governor of Punjab was directed by the court to administer the oath of office to the petitioner, and all lawful acts done under Sharif's administration were protected. The order was to be communicated to relevant authorities for compliance. (Ch. Pervaiz Ilahi vs deputy speaker Punjab assembly, 2022) Chaudhry Pervaiz Ilahi was elected as CM Punjab. He formed new government in Punjab. PTI was offended by not succeeding in bringing the authorities to announce early elections in centre. So, they decided to dissolve provincial assemblies. They already had resigned from the seats in national assembly. Now after dissolution of Punjab and KPK assemblies, 60% of the country's population needed new representation. They took this step to force early elections. Caretaker setups were installed in both the provinces.

Writ Petition No. 70991/2022 And Legal Battle Against Protests

This writ petition seeks to stop respondents from protesting as planned by long March and others. Discontenting, the question is whether the right to assembly and procession, a basic right under freedoms from oppression, might impact on freedom of movement and trade/business. In the Mian Ali Asghar Case (2020 CLD 157), the court ruled that protesting is a democratic right but must not violate others' rights to travel, trade, or enterprise. Thus, the petitioners' right to congregate and demonstrate peacefully is recognized and protected, but it does not violate the rights to mobility or enterprise. With this ruling, PTI stopped them from demonstrating and marching. (Muhammad Naeem Mir v. Federation of Pakistan etc., 2022). Political situation deteriorated afterwards. PTI was well aware of its vote bank. It has successfully mobilised the youth according to its needs. It has introduced new methods of doing politics. Owing to the resistance from state machinery, public became emotionally attached with the party. However, party was out of power and the gates were closing one by one. Only hope for it was a general election. It struggled and demanded early election but could not be heard by the powers that be. In order to press its demand for early election party decided to dissolve provincial assemblies of two provinces where it was ruling; Punjab and KPK. Constitutionally, after the dissolution of assemblies, there should be elections within 90 days but neither ECP nor the establishment was ready to organise separate elections in provinces and then in centre. So, a writ petition was moved in Lahore high court.

Writ Petition No. 5851, 6118, 6119, 6093 Of 2023 Lahore High Court, Election Dates and Institutional Role

According to Article 199 of the Pakistani Constitution of 1973, the petitioners asked for a writ of mandamus compelling the respondents to declare election date of the Punjab Assembly, within 90 days. The issues raised were whether a Provincial Assembly can dissolve itself due to the passage of time specified in Article 105 of the Constitution. Who can establish the election date to fulfil Article 224(2)'s timeframe for dissolving a provincial parliament by operation of law, under Article 112(1)? What's Penumbra Doctrine? (Pakistan Tehreek-e-Insaaf through its General Secretary Asad Umar v. Governor of Punjab, Munir Ahmad v. The Governor of Punjab, Zaman Khan Vardag v. Province of Punjab, 2023). Court decided that Article 105(3) of the Constitution states that it is not applicable in cases where a Provincial Assembly is dissolved because of the end of the term specified in that Article. This clause makes it clear that some processes listed in Article 105, which deal with Provincial Assemblies' dissolution, are not applicable when the assembly dissolves automatically at the end of its term as required by law. As per article 112(1) of Constitution, ECP must announce the next election date whenever a Provincial Assembly is dissolved by law. This duty is necessary to guarantee adherence to deadline specified in Article 224(2) of the Constitution, which controls the scheduling of elections to fill open assembly seats. Furthermore, the Constitution's implicit assurances of some unenumerated rights and obligations are recognised under the notion of Penumbra, a legal principle. These duties and privileges are implied from the Constitution's larger tenets and safeguards rather than being expressly mentioned. As it requires interpreting the Constitution to recognise and uphold essential rights and obligations that may not be expressly expressed but are implied by its provisions, this idea is also known as constitutional penumbras. Meanwhile, the supreme court also

announced the dates for election, but the election was not conducted in apparent dissidence to the orders of the court, but the commission was never charged for contempt. Courts tried to legitimise the actions of institutions and caretaker setup remain installed in the provinces till this current general election being held on 8th February 2024. Till this election, caretaker setup was therein in provinces and centre. Question arose of their powers because of many hard and essential policy decisions were pending and constitution says that caretaker setup cannot alter policies. It can only manage day to day affairs.

Writ Petition No. 5324 Of 2023 Lahore High Court and Clarification of Caretaker Government's Powers

This writ petition defines the powers and limitation of caretaker setups. The writ petitions contest notices that the caretaker Chief Minister of Punjab removed as Advocate General Punjab and several other legal officers while appointing new ones. The topics include what is meant by caretaker governments, their objectives, their constraints, and the legitimacy of appointments made during their term. There are also issues with how certain statutes, such Section 230 of the Election Act of 2017, should be interpreted and what is meant by "public interest" in relation to its provisions. The discussion also revolves upon the processes for appointing Advocate Generals and the coherence of legal rules, especially in cases where they disagree. (Ashfaq Ahmad Kharal etc. v. Province of Punjab through its Secretary, Law & Parliamentary Affairs, 2023) Caretaker Governments, appointed by the Governor-General or State Governor, serve as temporary administrations during periods of uncertainty until a stable government can be formed. Sometimes no party or alliance can form a stable government, therefore this temporary arrangement is made. The caretaker Chief minister, as Province Chief Executive, follows the Constitution and Election Act, 2017. Implementing Election Commission policies to promote fair, free, and transparent elections and public approval is their top priority.

Caretaker Governments must confine themselves to routine, noncontroversial, and urgent activities, all conducted in the public interest. These actions are subject to revision by future elected governments. Section 230 of the Election Act, 2017, encompasses various electoral matters, including constituency delimitation, election conduct, dispute resolution, and the formation of political parties. Additionally, Article 140 of the Constitution empowers Governors to appoint Advocate-Generals, following specific rules and schedules. The caretaker Chief minister holds exclusive authority over the appointment of law officers, adhering to prescribed qualifications and disqualifications outlined by law. In the case of statutory discrepancies, the later act would supplant the previous statute for the reasons covered or intended to be covered. Following Articles 218 to 224 & 224-A of the Constitution, the Elections Act, 2017, defines "public interest" as lawful, honest, free, and fair elections. When PTI decided to come back in national assembly to form opposition because their policies backfired, speaker NA started accepting the resignations of the PTI party members who had resigned in April last year. ECP de-notified the members whose resignation was accepted by the speaker. Petitioners approached court against this notification to get justice.

Writ Petition No. 8360 Of 2023 Lahore High Court Against ECP's Decision Regarding PTI MNA's Resignations

The petitioners oppose the ECP's notification to de-notify them as MNAs due to their contested resignations in this writ petition. The main question is whether the Speaker needs to investigate a non-personal resignation before accepting it. The contention put forth is that such an inquiry is indeed essential to ensure the authenticity and legitimacy of resignations, particularly when they are not personally tendered by the Member. (Muhammad Riaz Khan Fatyana & 29 others v. Speaker National Assembly & others., 2023) This judgement was not implemented in its letter and spirit by the authorities which constituted injustice.

Suo Motu Case No.1 Of 2023 Supreme Court and General Election Date

Since the dates for the elections to the provincial assemblies of Punjab and Khyber Pakhtunkhwa had not been declared, the constitutional petitions were submitted after the assemblies were dissolved. Additionally, the Supreme Court considered the case on a suo motu basis. The main questions addressed are: i) Does the term "General Elections" encompass the combined elections for both the National and the Provincial Assemblies? ii) With whom is the duty and power to ascertain the date of a general election vested? iii) Does Section 57(1) allow the President to operate independently or he has to adhere to the advice of the PM? iv) Is there a distinction between the act of "announcing" and the act of choosing or designating the specific date of the general election? v) Is the Supreme Court's involvement in the matter of holding general elections justified, given its jurisdiction under Article 184(3) and its relationship with the jurisdiction of High Courts under Article 199. (Islamabad High Court Bar Association Islamabad through its President Muhammad Shoaib Shaheen, ASC Islamabad etc. v. Election Commission of Pakistan, 2023).

The Supreme Court opined that when elections to the NA and all PAs are held on the same day, they are considered as five distinct general elections, both legally and factually. According to relevant Constitutional clauses, the President and Governor can dissolve the National and Provincial Assemblies under specified conditions. The President, according to Section 57(1) of the 2017 Act, holds authority to announce the date for general elections, whereas the Governor's role is consultative and not explicitly mentioned in the Act. In appointing the date for general elections, the President exercises this power independently, without being bound by advice. There is no significant difference between "announcing" the date for general elections and actually determining or certifying that date. The Supreme Court justified its intervention in matters related to holding general elections, bypassing proceedings in High Courts, due to constitutional time constraints and the potential for delay and confusion. The case predominantly revolved around legal and constitutional matters of high importance, with factual disputes being minimal. Additionally, the Court emphasized its authority to conduct inquisitorial proceedings under Article 184(3), allowing for examination of disputed factual questions and issues when necessary. Proceedings regarding validity of Supreme court practice and procedure bill was halted by the previous CJP. Justice Faiz Isa reopened the matter and ordered hearing to be made public through broadcast. This bill actually reduced the powers of Chief justice and divided it among the justices of supreme court.

Constitution Petition No. 21, 22 & 23 Of 2023 Supreme Court and Review of Judgements and Orders Act

The petitioners challenged the Supreme Court (Review of Judgements and Orders) Act, 2023 (Act No. XXIII of 2023)'s constitutionality under Article 184(3) of the Constitution of Pakistan, 1973. The central question is whether the court can directly handle fundamental rights enforcement issues that create public concerns. The Supreme Court must preserve the Constitution, provide justice, and protect fundamental rights. A right of appeal against the Court's orders under Article 184(3) is not mentioned in the 1973 Constitution, but ordinary law could turn Article 188's review into an appeal under Article 185. Giving the Supreme Court rule-making power was meant to improve justice. Though Parliament can legislate the Supreme Court's authority and powers, increasing its review jurisdiction under Article 188 is constitutionally problematic. Act 2023's Section 2 may extend the Court's Article 184(3) jurisdiction. The makeup of benches and the number of judges should be considered for legislative intervention. Analyzing the Court's authority requires distinguishing "jurisdiction" from "power". Ouster clauses in safeguarding legislation are questioned, as are the repercussions if the Act is ruled unconstitutional, leaving auxiliary measures in limbo. These concerns impact the dispute over the 2023 Act's legitimacy and effects on Pakistan's Supreme Court. (Ghulam Mohiuddin v. Federation of Pakistan thr. M/o Law & Justice and another, 2023).

Unlike Article 199, Article 184(3) gives the Supreme Court the power to immediately handle basic rights enforcement of public interest. The Court's main responsibility is to protect fundamental rights, therefore Article 184(3) of the 1973 Constitution does not allow appeals. Introducing such a right by

ordinary law would damage judicial independence, making it unconstitutional. Rule-making powers were conferred upon the Supreme Court to ensure its complete independence from interference by other state organs. Although parliament may extend the Court's authority, Article 188 does not expressly authorize it for enhancing review jurisdiction. Section 2 of the Act, by providing an appeal against judgments and orders under Article 184(3), is argued to diminish the Court's jurisdiction rather than expanding it. Additionally, it is contended that the legislature cannot override the Chief Justice's prerogative in nominating judges for review petitions. The distinction between jurisdiction and power is emphasized, clarifying the court's capacity to decide disputes versus its actions. Furthermore, no law conflicting with the Constitution, including fundamental rights, can be protected by an ouster clause. Finally, if the core of an act is deemed unconstitutional, ancillary provisions must also be invalidated as they cannot stand alone according to established legal principles. NAB act was amended by the PDM government in 2022. This amendment actually made the body toothless. It curtailed the powers of the Bureau. Its legitimacy, interpretation and powers were challenged in court at that time but the decision came in mid 2023 after due deliberation with amicu curiaes.

Constitution Petition No. 21 & C.M.A. 5029 Of 2022 and NAB Amendments

The petitioner in this constitutional petition contests the National Accountability Ordinance, 1999's amendments made in 2022 (1st and 2nd), together known as the "2022 Amendments." Among the main issues brought up are whether or not corrupt acts and practices are under Article 184(3) of the Constitution, if the Supreme Court may handle changes to the accountability statute, and if it needs to take the petitioner's standing into account. The petition also explores the possibility of Parliament overstepping its bounds of judicial authority, the possibility of prosecuting elected officials outside of accountability courts, and the implications of certain amendments like increasing the NAB's minimum threshold to five hundred million and eliminating section 21(g) of the NAB Ordinance. The petition also examines the effects of adding a second proviso to section 25(b) of the NAB Ordinance through the Second Amendment, as well as the legal ramifications of a proviso nullifying a main section. (Imran Ahmad Khan Niazi v. Federation of Pakistan through Secretary, Law and Justice Division, Islamabad and another, 2023) First, corruption can be contested under Article 184(3) of the Constitution, and the Supreme Court can review accountability law revisions. Secondly, the Court's exercise of jurisdiction under Article 184(3) is independent of the petitioner's standing. Thirdly, each branch of government must respect the distinct functions of the Legislature, Executive, and Judiciary to avoid encroachment. Fourthly, elected officials are not considered public servants and should only be prosecuted in accountability courts. Additionally, raising the NAB threshold to 500 million effectively grants blanket immunity to elected officials, violating various constitutional articles. Furthermore, the deletion of Section 21(g) makes it difficult to use essential foreign evidence in trials. The argument also elucidates that a proviso has the ability to qualify or establish exceptions, but it is unable to invalidate the main section. If payments are incomplete the plea bargain is ineffective under the second proviso to Section 25(b) of the NAB Ordinance. This provision prevents accused individuals from evading legal consequences.

May 2023 was a turbulent month when it comes to politics. Imran Khan was arrested in Toshakhana case. His arrest triggered nationwide protests. People attacked military installations and molested the monuments of Shuhdaa. Military asked government to let these culprits be tried in military courts. However, the act under which military courts were formed had a sunset clause which abolished the courts in 2017. Forgetting this fact PDM government allowed military to try these miscreants. This decision was challenged in court. Judgement of this petition came in 2024.

Constitution Petition Nos. 24-30 Of 2023, Arrest of Imran Khan, Nationwide Protests and Military Courts

The petition challenges the constitutionality of certain sections of the Pakistan Army Act, 1952, specifically Sections 2(1)(d) and 59(4), arguing that they are ultra vires the Constitution. It also challenges the Federal Government's illegal decision to submit civilians to military tribunals under

the Army Act and Official Secrets Act on May 9th and 10th, 2023. The petition delves into various aspects of constitutional law, including the operation of the Constitution, the conditions under which civilians can be subjected to the Army Act, the implications of Article 8(3)(a) of the Constitution, and the interpretation of validating clauses. It questions whether fundamental rights are suspended during a state of emergency, the legality of arresting civilians under the Army Act prior to formal charges, and the role of validating clauses, particularly regarding Section 59(4) of the Army Act. The petition seeks clarity on the constitutional validity of trying civilians in military courts and the parameters within which such proceedings can occur. (Jawwad S.Khawaja etc. v. Federation of Pakistan etc, 2023) The analysis provided by the court offers a comprehensive examination of various legal aspects pertaining to the Pakistan Army Act and constitutional provisions. It delineates three primary modes of constitutional operation: default mode, emergency mode, and situations involving the Armed Forces acting under Article 245. The criteria for civilians to be subjected to the Army Act are outlined, emphasizing matching offense elements with statutory descriptions. The practical consequence of civilian subjection to the Army Act is their trial by court martial. Additionally, it affirms the constitutional competence of courts martial, particularly in historical contexts. Underscoring its necessity in specific circumstances, the genesis of Article 8(3)(a) of the Constitution is being discussed. The analysis highlights the protective role of clause (5) of Article 8, both preemptively and in response to breaches of fundamental rights. It refutes the validity of certain provisions of the Army Act in light of constitutional protections. Furthermore, it clarifies the legal status of civilians charged under the Army Act and the limitations of validating clauses. Overall, the analysis provides insights into the intricate interplay between constitutional provisions and military law in Pakistan.

Additional note was also written by the respected jury in this case in which right to fair trial was discussed. The issues addressed pertain to matters of significant public concern, particularly regarding the safeguarding of fundamental rights and freedoms within the legal sphere. It is contended that Article 184(3) of the Constitution delineates its jurisdiction independently, not subject to the constraints of Article 199. In judicial and administrative contexts, everyone's right to a fair trial and due process is emphasised in this judgement. The court underscores essential components of a fair trial, including the presence of an impartial judiciary, transparency in proceedings, legal representation, access to pertinent information, opportunities for cross-examination and evidence presentation, the issuance of reasoned judgments, and avenues for appeal. Furthermore, the court highlights the constitutional and international commitments to uphold these rights. Criticism is leveled against the perceived lack of impartiality and due process within military trials, which are argued to violate constitutional imperatives and fundamental rights. Additionally, concerns are raised regarding the applicability of Article 8(3)(a) to civilians and the legitimacy of military courts in light of legal precedents and constitutional principles. The formation of military courts is contested on the grounds of constitutional validity and the paramount importance of safeguarding fundamental rights, rejecting arguments that prioritize expediency over rights protection. Caretaker setup was installed in August 2023. According to constitution, the election was supposed to be held in October but it was delayed deliberately by the caretaker setup. However, to ensure in time elections the petition was filed.

Constitution Petition Nos.32 And 36 Of 2023 For Early Elections and Legal Queries

Constitutional Petitions and civil miscellaneous appeals seek early elections, highlighting key questions: First, does the Constitution require the President and Election Commission to schedule general elections and notify the election schedule within ninety days after the Assembly's dissolution? Second, the inquiry covers whether constituency delimitation follows a census. Third, the petitions ask if each constitutional body must follow the Constitution without infringing on another's jurisdiction. The Constitution and laws' inviolability is also questioned. The President's authority to dissolve the National Assembly when enough members have registered a vote of no confidence and the PM's ability to suggest its dissolution are also questioned. These inquiries explain election and

governance constitutional requirements. (Supreme Court Bar Association of Pakistan through its Secretary, Islamabad and others etc v. Federation of Pakistan through Secretary, Cabinet Division, Islamabad and others., 2023).

The summary responses confirm several crucial points: According to the Constitution, the President and ECP must establish a date for general elections and notify the election programme within 90 days of Assembly dissolution. Constituency delimitation follows a census. Thirdly, every constitutional body must follow the Constitution without infringing on another's jurisdiction. Every citizen must also obey the Constitution and legislation. The National Assembly cannot be dissolved by the President or the Prime Minister unless the necessary number of members have filed a notice of vote of no confidence. These comments describe the constitutional roles and restrictions of several government organisations regarding elections and governance. At the end of 2023, it seemed that house is returning to its order when the election commission was issued fund and election commission mobilised its machinery to set the country's tone for election. However, initially, ex-pm Imran Khan was not allowed to contest election and then, considering the intra party elections unconstitutional, court put the last nail in the coffin by banning party from contesting election.

Election Appeal No. 831 Of 2024 and Imran Khan's Nomination

Imran Khan filed this appeal in opposition to the Returning Officer's decision to deny his nomination papers. The appellant brings up a number of legal issues and asks for definitions of important words and ideas related to the legal system. First, the differences between "judgment in personam" and "judgment in rem" are explained. A ruling in personam is only final between the persons involved or their heirs, but a judgment in rem is considered decisive against the entire world regarding the status of a specific matter. Second, a definition of "moral turpitude" is given. It describes deeds that go against a person's moral principles, impair their moral character, or entail intrinsic baseness in carrying out legal or societal duties toward other people, the government, institutions, or society. Thirdly, the differences between "sentence" and "conviction" are made clear. A criminal trial's legal determination of guilt is known as a conviction, and the penalty meted out to the found guilty party by the court is referred to as the sentence. Finally, the appellant asks for clarification about the legal ramifications of the distinction between the suspension of conviction and the suspension of punishment under Section 426 of the CrPC. It is emphasized that these are separate legal ideas and that, according to criminal jurisprudential principles, a conviction does not immediately become void only because an appeal is pending. (Imran Ahmed Khan Niazi v. The Returning Officer and another., 2024).

Civil Petition No. 42 Of 2024, Electoral Laws and Party Politics

An election appeal has been filed by the petitioner under sec. 63 of Election Act, contesting the legitimacy of a direction from the returning officer of the constituency that led to the petitioner's nomination form being rejected. In this case, the petitioner challenges the ruling made by the Peshawar High Court in a Writ Petition, which in turn contested an order made by the ECP regarding grievances and objections pertaining to PTI's intra-party elections. First, the petitioner asks if it is legal to file the identical lawsuit in two different courts at the same time. Second, the petitioner asks for an explanation of what would happen if a political party did not have intra-party elections. Thirdly, the petition examines whether the Elections Act or any of its sections have been the subject of any challenges. Finally, the petitioner asks if political parties have been prevented from getting a uniform election symbol for their candidates as a result of changes made to the Representation of the People Act, 1976. These legal questions highlight the intricacies of electoral laws, intra-party elections, and the jurisdictional facets of legal issues in Pakistani politics. (The Election Commission of Pakistan through its Secretary and others v. Pakistan Tehreek-e-Insaf, 2024). Court ruled that parties cannot use two courts for the same case. Without intra-party elections, a political party loses members and becomes meaningless. Since its October 2, 2017, enactment, the Elections Act has not been challenged. General Muhammad Zia-ul-Haq's 1985 Ordinances No. II and VIII modified Section

21(1)(b) of the Representation of the People Act, 1976 (ROPA) to prevent political parties from obtaining a consistent electoral symbol for their candidates, making general elections non-partisan.

Through this decision, PTI was barred from contesting election as a single party. So, all the candidates who had submitted papers in the name of PTI were considered independents. They contested election as independent candidates but their loyalties remained with the party. This decision was given on technical basis just like the decision of justice Munir in Molvi Tameezuddin case. Though it tried to ensure stability and do justice, role of judiciary in these two years was seen as inclined towards the establishment. It looked like someone was pulling the strings. Higher courts are the last hope of the aggrieved. People came here to get justice. Time and again institution bear politicisation and was influenced by others. Impartiality is the essential of justice. Higher courts tried to depart justice and maintain political stability through these judgements in last 2 years. They changed the course of politics in Pakistan. Actually, the decisions of higher courts give legitimacy to the legal and executive actions. Law is the command of sovereign and this command is interpreted by judiciary using different lenses and analysing those line in consideration with the current scenerio. Jسدiciary adopts problem solving approach in departing justice. So, it has greater role in ensuring stability than any other institution or constitutional body. Being human, many factors affects the decsions of judges but this doesn't means that trust in institution should be waved off. Oppressed gets refuge in the court rooms and aggrieved gets justice. Judiciary and politicians should understand their respective role in democratic country and try to remain loyal with their people who trust them.

Conclusion

To cut it short, the complex legal and political environment depicted in the preceding conversations provides insight into Pakistan's continuous process of democratic consolidation. The courts engaged in a comprehensive examination of governance, electoral procedures, and the principles of the rule of law by means of constitutional petitions, civil appeals, and electoral challenges. The court has played a pivotal role in navigating the intricate landscape of Pakistan's political sphere, encompassing tasks such as determining election dates and interpreting constitutional requirements. In spite of encountering significant obstacles and manoeuvring through controversial matters, the judiciary made efforts to safeguard the fundamental tenets of justice, equity, and constitutionality. The decisions made by the judiciary have had a significant impact on both the political environment and the course of governance within the nation. The courts have played a vital role in upholding stability and guaranteeing compliance with constitutional norms, whether through the clarification of legal terms in electoral appeals or the resolution of intra-party disputes. Nevertheless, in the middle of the complex legal details and political conflicts, concerns over the autonomy and neutrality of the judiciary persisted. The judiciary encountered examination about its rulings, as concerns of political interference and partiality threw a shadow over its processes. However, the judiciary's position inside Pakistan's democratic system continues to be essential. The judiciary upholds the rule of law and safeguards democratic values, serving as the guardian of constitutional rights and the arbiter of legal disputes. In the future, it is crucial for all parties involved, including politicians, jurists, and citizens, to reassert their dedication to democratic principles, openness, and responsibility. By cultivating a societal environment that upholds the principles of legal governance and enhancing the resilience of democratic establishments, Pakistan has the potential to establish a more dynamic and all-encompassing democratic system. Pakistan may achieve its goals of a successful and democratic future by working together to defend the ideals of justice and constitutionalism, notwithstanding the challenges it faces.

The judicial rulings, encompassing electoral procedures, intra-party conflicts, and executive measures, had a profound impact on Pakistan's political environment, influencing the trajectory of governance and establishing legal precedents for subsequent cases. Nevertheless, in the middle of the complex legal complexities and strategic political actions, the primary objective of the court remained unambiguous: to maintain the ideals of justice, equity, and adherence to the constitution. The

significance of the judiciary in Pakistan's democratic trajectory is of utmost importance. The judiciary, in its capacity as the custodian of constitutional rights and the adjudicator of legal conflicts, assumes a crucial function in safeguarding the integrity of the democratic system and maintaining the supremacy of legal principles. Nevertheless, obstacles endure, and the pursuit of an unbiased, autonomous court remains a fundamental aspect of Pakistan's democratic ambitions. When dealing with the intricacies of legal and political matters, it is crucial for all individuals involved, including politicians, jurists, and citizens, to maintain the values of fairness, openness, and responsibility. The realization of Pakistan's full potential as a vibrant democracy necessitates a collective endeavour to enhance democratic institutions and cultivate a culture that upholds the rule of law.

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