IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, HCJ
MR. JUSTICE JAWWAD S. KHAWAJA
MR. JUSTICE KHILJI ARIF HUSSAIN

Const. Petition No. 40 of 2012 & CMA No.2494/12

Muhammad Azhar Siddique Vs. Federation of Pakistan etc.

Const. Petition No. 41 of 2012 & CMA No.2495/12

Imran Khan Vs. Federation of Pakistan etc.

Const. Petition No. 42 of 2012

Kh. Muhammad Asif Vs. Federation of Pakistan etc.

Const. Petition No. 43 of 2012

Syed Zafar Ali Shah Vs. Federation of Pakistan etc.

Const. Petition No. 44 of 2012

S. Mehmood Akhtar Naqvi Vs. Federation of Pakistan etc.

Const. Petition No. 45 of 2012

Ch. Khalid Farooq, ASC Vs. Federation of Pakistan etc.

Const. Petition No. 46 of 2012 & CMA 2496 OF 2012

Shahid Naseem Gondal, Adv. Vs. Federation of Pakistan etc.

Const. Petition No. 47 of 2012

Ch. M. Asghar Saroha etc. Vs. Mohtarma Dr. Fehmida Mirza, Speaker National Assembly etc.

Const. Petition No. 50 of 2012

Lahore High Court Bar Association, thru. Sh. Ahsan ud-din, President of High Court	Vs.	Speaker National Assembly and others

For the petitioners:	Mr. A. K. Dogar, Sr. ASC Mr. Azhar Siddique, ASC Mr. Mehmood A. Sheikh, AOR (in Const.P. No.40/2012)
	Mr. Hamid Khan, Sr. ASC Mr. M. Waqar Rana, ASC S. Safdar Hussain, AOR (in Const. P. No.41/12)
	Kh. Muhammad Asif, MNA (In person) (in Const. P. No. 42/12)
	S. Zafar Ali Shah, Sr. ASC (in person) (in Const. P. No.43/12)
	S.Mehmood Akhtar Naqvi (in person) (in Const. P. No.44/12)
	Mr. Abdul Rehman Siddiqui, ASC (in Const. P. 45/12)
	Mr. A.K. Dogar, Sr. ASC (in Const. P. 46/2012)
	Khan Attaullah Tareen, ASC Ch. M. Asghar Saroha, ASC (in Const. P.47/12)
	Mr. Taufiq Asif, ASC (in Const. P. 50/2012)
On Court Notice:	Mr. Irfan Qadir, Attorney General for Pakistan
For Syed Yousaf Raza Gillani:	Ch. Aitzaz Ahsan, Sr. ASC Mr. M.S. Khattak, AOR
For the Federation:	Mr. Muhammad Munir Piracha, ASC Raja Abdul Ghafoor, AOR
For the Speaker, N.A:	Mr. Muhammad Latif Qureshi, Joint Secretary (L), N.Assembly
For the ECP:	Mr. Muhammad Nawaz, Director (L)
Date of hearing:	14, 15, 18 & 19 June, 2012

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. — On 15 October, 2007, the President of Pakistan promulgated the National Reconciliation Ordinance, 2007, hereinafter referred to as the "NRO". A number of petitions were filed before this Court under Article 184(3) of the Constitution challenging the *vires* of the NRO and various provisions thereof. This Court, by judgment dated 16 December, 2009, reported as Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265) held that sections 2, 6 and 7 of the NRO were *ultra vires* and violative of various Articles of the Constitution and declared the NRO *void ab initio* and *non est*. It was further held that "all steps taken, actions suffered, and all orders passed by whatever authority, any orders passed by the Courts of law including the orders of discharge and acquittals recorded in favour of accused persons, are also declared never to have existed in the eyes of law and resultantly of no legal effect." Paragraphs 177 and 178 of the judgment are reproduced hereinbelow: -

> "177. Since in view of the provisions of Article 100(3) of the Constitution, the Attorney General for Pakistan could not have suffered any act not assigned to him by the Federal Government or not authorized by the said Government and since no order or authority had been shown to us under which the then learned Attorney General namely Malik Muhammad Qayyum had been authorized to address communication to various authorities/courts in foreign countries including Switzerland, therefore, such communications addressed by him withdrawing the requests for mutual legal assistance or abandoning the status of a civil party in such

proceedings abroad or which had culminated in the termination of proceedings before the competent fora in Switzerland or other countries or in abandonment of the claim of the Government of Pakistan to huge amounts of allegedly laundered moneys, are declared to be unauthorized, unconstitutional and illegal acts of the said Malik Muhammad Qayyum.

178. Since the NRO, 2007 stands declared void ab initio, therefore, any actions taken or suffered under the said law are also non est in law and since the communication addressed by Malik Muhammad Qayyum to various foreign fora/authorities/courts withdrawing the requests earlier made by the Government of Pakistan for mutual legal assistance; surrendering the status of civil party; abandoning the claims to the allegedly laundered moneys lying in foreign countries including Switzerland, have also been declared by us to be unauthorized and illegal communications and consequently of no legal effect, therefore, it is declared that the initial requests for mutual legal assistance, securing the status of civil party and the claims lodged to the allegedly laundered moneys lying in foreign countries including Switzerland are declared never to have been withdrawn. Therefore the Federal Government and other concerned authorities are ordered to take immediate steps to seek revival of the said requests, claims and status.

2. It is submitted on behalf of the petitioners that the competent authority of the Federal Government failed to implement the judgment despite express directions of this Court issued from time to time and have continued to ignore the same till date. A *suo motu notice* was taken by this Court of a news item, which reported appointment of one of beneficiaries of NRO, namely, Ahmad Riaz Sheikh, as head of the Economic Crimes Wing of the Federal Investigation Agency (FIA). In the course of the proceedings, the

Government was once again directed to take steps to revive all the cases, including those, which were being pursued outside the country before the promulgation of the NRO, but were abandoned in pursuance of the NRO. The Court reiterated its direction issued in the case of *Dr. Mobashir Hassan* to write a letter as per instruction contained in paragraphs No.177 and 178 of the said judgment. On 30 March, 2010, the then Secretary, Ministry of Law, Justice and Parliamentary Affairs was summoned before the Court and was asked to explain the delay in the implementation of the judgment. He appeared on 31 March, 2010 and submitted reports on behalf of Law Ministry as well as National Accountability Bureau (NAB) through Mr. Anwar Mansoor Khan, the then Attorney General for Pakistan. The learned Attorney General sought time to go through the same and "apprise the Court with regard to the compliance of the judgment in letter & spirit". On 1 April, 2010, the Court was informed that the Chairman NAB had written a letter to the Swiss Authorities seeking revival of the said request. In the order of the said date, the Court expressed the opinion that request for reviving Pakistan's status of a civil/damaged party in the proceedings in Switzerland fell within the purview of the Government; therefore, the Government ought to do the needful in accordance with the procedure adopted earlier. After issuing these directions in the first hours of the Court working time, the case was again taken up in the afternoon. The learned Attorney General appeared and informed the Court that "he did his best to have access to the record of the case lying with Ministry of Law, Justice & Parliamentary Affairs, but Mr. Babar Awan, Minister of Law, was not allowing him to lay hands on the same for one or the other reason." The Court then summoned the Secretary, Ministry of Law on the same day who appeared and stated

that he had received three sealed envelops from the Foreign Office, addressed to the Secretary, the Attorney General of Switzerland and another functionary. He also stated that in the letter addressed to him, his opinion was sought on the issue of sending envelopes to Switzerland. According to him, he had retained two envelopes at home in safe custody and had yet to form his opinion on the matter. The Court then directed the learned Attorney General and the counsel for the NAB to submit report to the Registrar of the Court confirming that "request for opening of Swiss cases has been forwarded accordingly and no lacuna left therein." However, no such report was ever submitted to the Court. Mr. Anwar Mansoor Khan thereafter resigned from the office of the Attorney General for Pakistan.

3. The matter was thereafter taken up on different dates of hearing from time to time. On 25th May, 2010, the then Law Minister appeared and informed the Court that a summary regarding implementation of the judgment including, *inter alia*, the request for revival of the status of civil/damaged party had been prepared and submitted to the Prime Minister. He was directed to file a concise statement on behalf of the Federal Government, specifying expressly the steps taken for the implementation of the judgment. Accordingly, a concise statement was filed wherein reference was made to the observation made by the Prime Minister on the aforesaid summary that Ministry of Law, Justice and Parliamentary Affairs had not given any specific views in the matter as per Rules of Business, 1973. This observation of the Prime Minister was reproduced in the order of this Court dated 10th June, 2010.

4. A time barred review petition was filed by the Federation of Pakistan against the judgment in *Dr. Mobashir Hassan's case* and the implementation proceedings were suspended. The review petition was subsequently dismissed *vide* judgment reported as *Federation of Pakistan v. Dr. Mobashir Hassan* (PLD 2012 SC 106). Thereafter, the issue of implementation of the judgment was taken up again by a 5-member bench. On 3 January, 2012, the learned Attorney General was asked whether a summary had been submitted to the Prime Minister pursuant to the earlier order of this Court dated 5 July, 2010. The learned Attorney General expressed his ignorance of any developments in the matter.

5. This Court, in its order dated 10 January, 2012 identified six different options available to the Court to secure implementation of the judgment. Of these, the Court pursued Option No.2, which is reproduced hereunder: -

> "**Option No.2**
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> Proceedings may be initiated against the Chief Executive of the Federation, i.e. the Prime Minister, the Federal Minister for Law, Justice and Human Rights Division and the Federal Secretary Law, Justice and Human Rights Division for committing contempt of this Court by persistently, obstinately and contumaciously resisting, failing or refusing to implement or execute in full the directions issued by this Court in its judgment delivered in the case of Dr. Mobashir Hassan (Supra). It may not be lost sight of that, apart from the other consequences, by virtue of the provisions of clauses (g) and (h) of Article 63(1) read with Article 113 of the Constitution a possible conviction on such a charge may entail a disqualification from being elected or chosen as, and from being, a member of Majlis-

e-Shoora (Parliament) or a Provincial Assembly for at least a period of five years."

6. A 7-member bench of this Court issued notice to Syed Yousaf Raza Gillani, Prime Minister of Pakistan, hereinafter referred to as "the respondent", and, after observing due formalities, framed the following charge against him: -

> "That you, Syed Yousaf Raza Gillani, the Prime Minister of Pakistan, have willfully flouted, disregarded and disobeyed the direction given by this Court in para 178 in case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265)" to revive the request by the Government of Pakistan for mutual legal assistance and status of civil party and the claims lodged to the allegedly laundered moneys lying in foreign countries, including Switzerland, which were unauthorizedly withdrawn by communication by Malik Muhammad Qayyum, former Attorney General for Pakistan to the concerned authorities, which direction you were legally bound to obey and thereby committed contempt of Court within the meanings of Article 204 (2) of the Constitution of Islamic Republic of Pakistan, 1973 read with section 3 of the Contempt of Court Ordinance (Ordinance V of 2003), punishable under Section 5 of the Ordinance and within the cognizance of this Court. We hereby direct that you be tried by this Court on the above said charge."

7. The charge was denied and the matter proceeded on to full hearing. Ultimately, *vide* short order dated 26 April, 2012, the respondent was convicted under Article 204(2) of the Constitution read with section 3 of the Contempt of Court Ordinance, 2003 and sentenced under section 5 of the Ordinance to undergo imprisonment till rising of the Court. The detailed reasons for the said order were

released on 8 May, 2012. At para 70 of the detailed judgment, the 7-member bench of this Court clearly observed as follows:

> "In the case in hand the accused is the highest Executive functionary of the State of Pakistan and he has willfully, deliberately and persistently defied a clear direction of the highest Court of the country. We are, therefore, fully satisfied that such clear and persistent defiance at such a high level constitutes contempt which is substantially detrimental to the administration of justice and **tends not only to bring this Court but also brings the judiciary of this country into ridicule**. After all, if orders or directions of the highest court of the country are defied by the highest Executive of the country then others in the country may also feel tempted to follow the example leading to a collapse or paralysis of administration of justice besides creating an atmosphere wherein judicial authority and verdicts are laughed at and ridiculed."

It must also be noted that the respondent accepted his conviction and did not file an appeal against the said judgment.

8. The Speaker of the National Assembly after receipt of the order dated 26 April, 2012 gave ruling on 24 May, 2012 whereby she decided that no question for disqualification of the respondent had arisen even after the judgment of conviction rendered by the Supreme Court. Relevant paragraphs from the ruling of the Speaker are reproduced as under: -

> "5. Now coming to the point as to whether any question arises for disqualification of a member from being a Member of Parliament under clause (2) of Article 63 of the Constitution on the basis of material and information placed before me and the powers and jurisdiction of the Speaker under the said Article. I may like to reproduce the provision of clause (2) of Article 63 as under:-
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> > "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 has 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."

> 6. It would be advantageous here to quote the case law on the subject. It has been held in Kanwar Intizar Muhammad Khan VS. Federation of Pakistan and others reported in 1995 MLD Lahore 1903 that the Speaker while examining a reference under Article 63(2) of the Constitution is not supposed to act merely as post office. If a reference is submitted to him, he is not bound to forward/transmit the same, to the Chief Election Commissioner for decision forthwith. The Speaker has to apply his own mind judiciously after fully taking into consideration the relevant provisions on the subject and then decide as to whether "any question" in the nature of disqualification has "arisen" which may justify the making of reference to the Chief Election Commissioner." The same view was also expressed by the Supreme Court of Pakistan in PLD 2005 SC 52."

In conclusion, the Speaker held as under: -

> "In the light of what has been stated above, I am of the view that the charges against Syed Yousaf Raza Gillani are not relatable to the grounds mentioned in paragraph (g) or (h) of clause (1) of Article 63, therefore, no question of disqualification of Syed Yousaf Raza Gillani from being a member arises under clause (2) of Article 63 of the Constitution. The letter of the Assistant Registrar (IMP) for Registrar of the Supreme Court stands answered accordingly. Furthermore, the petition of Moulvi Iqbal Haider, Advocate being without any merit, is not maintainable and accordingly rejected."

9. These petitions have been filed directly before this Court under Article 184(3) of the Constitution challenging the above ruling of the Speaker with the assertions that, *inter alia*, after the judgment of the 7-member bench of this Court, the respondent stands disqualified

as a member of the *Majlis-e-Shoora* (Parliament) and has also ceased to be the Prime Minister on and from the day and time of his conviction. The prayer clauses of Constitution Petitions No. 40 & 41 of 2012 are reproduced below: -

> Const. P.40/2012
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> It is therefore, respectfully prayed that in the light of the submissions made in the paras above 2nd Respondent be required to show under what authority of law he claims to hold the office of the Prime Minister of Pakistan.
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> It is further prayed that pending disposal of the main petition this learned court be pleased to restrain the 2nd Respondent from acting as Prime Minister and to stop usurpation of his office and misuse of the facilities connected with the said office.
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> Const. P. 41/2012
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> IT IS WHEREFORE MOST RESPECTFULLY PRAYED that this Honourable Court may graciously be pleased to declare the decision of Respondent No.1 dated 24.05.12 as unconstitutional, void and in violation of fundamental rights of access to justice and independence of judiciary.
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> It is further prayed that this Honourable Court be pleased to direct Respondent No.4 to decide the question of disqualification of Respondent No.2 as having been deemed to have been referred to it under Article 63(2) and (3)."

10. We have heard the learned counsel for the parties in all the petitions, including the learned Attorney General for Pakistan at length and have gone through the case-law cited at the bar in support of their respective arguments and contentions.

11. At the outset, it may be appropriate to deal with the preliminary objection raised by the respondents and the learned Attorney General against the maintainability of these petitions. Mr.

Aitzaz Ahsan, Sr. ASC, learned counsel for the respondent has challenged the maintainability of the petitions on the ground that they do not meet the requirements of Article 184(3) of the Constitution of Pakistan, viz., the involvement of a question of public importance with reference to enforcement of any of the Fundamental Rights conferred by Chapter 1, Part II of the Constitution. According to the learned counsel, the petitioners have not identified which of their fundamental rights stands violated. Mr. Muhammad Munir Piracha, learned ASC for the Federation has reiterated the same objection. He has referred to the case of *Syed Kabir Ahmad Bukhari v. Federation of Pakistan* (1988 SCMR 1988) wherein the petition was dismissed as being incompetent on the ground that no violation of any Fundamental Right was alleged for whose enforcement the jurisdiction of this Court could be invoked under Article 184(3) of the Constitution. On the issue of maintainability of the instant petitions, the learned Attorney General has contended that all the petitioners, especially Khawaja Muhammad Asif, MNA, Pakistan Muslim League (N), have not approached this Court with clean hands, inasmuch as they are using the Supreme Court to settle political scores and with the object of seeking public sympathy and votes for the upcoming election.

12. In response, Mr. Hamid Khan has submitted that the petitioners, including Imran Khan who is the head of a political party, have approached this Court for the vindication of their Fundamental Rights as enshrined in Articles 10A, 14, 17 and 25 of the Constitution and for ensuring obedience to the Constitution and the law, which is the inviolable obligation of every citizen, low or high. He has placed reliance on the case of *Muhammad Nawaz Sharif v. President of*

Pakistan (PLD 1993 SC 473). He has further argued that the action of the Speaker runs contrary to the principle of independence of the judiciary and also infringes the Fundamental Right of access to justice in the light of the law laid down by this Court in *Asad Ali v. Federation of Pakistan* (PD 1998 SC 161). Mr. Hamid Khan has argued that the maintainability of the petitions cannot be questioned in view of a plethora of case law, more particularly in light of a very recent pronouncement of this Court *In re: Corruption in Hajj Arrangements* (PLD 2011 SC 963) wherein the parameters of the jurisdiction of this Court under Article 184(3) of the Constitution have been laid down very clearly. He further argued that the conviction of the Prime Minister, *ipso facto*, made it a question of public importance and also constituted infringement of their aforesaid Fundamental Rights, which entitled the petitioners to invoke the original jurisdiction of this Court for the enforcement of their aforesaid Fundamental Rights.

13. In almost every petition filed before this Court under Article 184(3) of the Constitution, objection regarding maintainability is raised and is dealt with by the Court on the facts and circumstances of each case. The scope of this jurisdiction by now is, therefore, well settled. Each petitioner, in order to be able to successfully invoke this jurisdiction, is required to satisfy the Court about the two-fold requirement stipulated in Article 184(3), viz., the petition raises a question of public importance with reference to the enforcement of Fundamental Rights. In support of their plea for maintainability of the petitions, the petitioners have referred, inter alia, to the cases of *Miss Benazir Bhutto* and *Muhammad Nawaz Sharif*. In both these judgments, this Court has placed a broad based interpretation on the

scope of Article 184(3) of the Constitution. In the former case, Muhammad Haleem, C.J., while dealing with the applicability of the rule of *locus standi* in the matter of initiation of public interest litigation referred to a famous discourse on the subject, which is reproduced hereunder: -

> "... ... After all the law is not a closed shop and, even in adversary procedure, it is permissible for the next friend to move the Court on behalf of a minor or a person under a disability. Why not then a person, if he were to act bona fide, activise the Court for several reasons. This is what public interest litigation seeks to achieve as it goes further to relax the rule on *locus standi* so as to include a person who bona fide makes an application for the violation of any constitutional right of a determined class of persons whose grievances go unnoticed and unredressed. The initiation of the proceedings in this manner will be in aid of the meaningful protection of the rule of law given to the citizens by Article 4 of the Constitution, that is, "(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. ..." [the World Peace Through Law Conference at Lagos in 1961]

On the nature and the scope of the jurisdiction of this Court under Article 184(3), the learned Chief Justice commented as under: -

> "The plain language of Article 184(3) shows that it is open-ended. The Article does not say as to who shall have the right to move the Supreme Court nor does it say by what proceedings the Supreme Court may be so moved or whether it is confined to the enforcement of the Fundamental Rights of an individual which are infracted or extends to the enforcement of the rights of a group or a class of persons whose rights are violated. In this context the question arises whether apart from the non-incorporation of sub Articles 1(a) and 1(c) of Article 199 the rigid notion of an "aggrieved person" is implicit in Article 184(3) as because of the traditional litigation which, of course, is of an adversary character where there is a *lis* between the two contending parties, one claiming relief against the other and the other resisting the claim. This rule of standing is an essential outgrowth of Anglo-Saxon jurisprudence in which the only person wronged can initiate proceedings of a judicial nature for redress against the wrongdoer. However, in contrast to it, this procedure is not followed in the civil law system in vogue in some countries. The rationale of this procedure is to limit it to

the parties concerned and to make the rule of law selective to give protection the affluent or to serve in aid for maintaining the status quo of the vested interests. This is destructive of the rule of law which is so, worded in Article 4 of the Constitution as to give protection to all citizens. The inquiry into law and life cannot, in my view, be confined to the narrow limits of the rule of law in the context of constitutionalism which makes a greater demand on judicial functions. Therefore, while construing Article 184(3), the interpretative approach should not be ceremonious observance of the rules or usages of interpretation, but regard should be had to the object and the purpose for which this Article is enacted, that is, this interpretative approach must receive inspiration from the triad of provisions which saturate and invigorate the entire Constitution, namely, the Objectives Resolution (Article 2-A), the Fundamental Rights and the directive principles of State policy so as to achieve democracy, tolerance, equality and social justice according to Islam.

In this milieu, I am of the view that the adversary procedure, where a person wronged is the main actor if it is rigidly followed, as contended by the learned Attorney General, for enforcing the Fundamental Rights, would become self-defeating as it will not then be available to provide "access to justice to all" as this right is not only an internationally recognized human right but has also assumed constitutional importance as it provides a broad based remedy against the violation of human rights and also serves to promote socio-economic justice which is pivotal in advancing the national hopes and aspirations of the people permeating the Constitution and the basic values incorporated therein, one of which is social solidarity, i.e. , national integration and social cohesion by creating an egalitarian society through a new legal order.

This ideal can only be achieved under the rule of law by adopting the democratic way of life as ensured by Fundamental Rights and Principles of Policy. The intention of the framers of the Constitution, as it seems to me, is to implement the principles of social and economic justice enshrined in the Principles of Policy within the framework of Fundamental Rights. Chapters I & II of Part II of the Constitution which incorporate Fundamental Rights and directive principles of State policy, respectively occupy a place of pride in the scheme of the Constitution, and if I may say so, these are the conscience of the Constitution, as they constitute the main thrust of the commitment to socio-economic justice. The directive principles of State policy are to be regarded as fundamentals to the governance of the State but they are not enforceable by any Court. Nonetheless, they are the basis of all legislative and executive actions by the State for implementing the principles laid down therein. As the principles of democracy are not based on dogmas and also do not accept the theory of absolutes in any sphere of socio-economic justice, therefore, the authors of the

> Constitution, by enumerating the Fundamental Rights and the Principles of Policy, apparently did so in the belief that the proper and rational synthesis of the provisions of the two parts would lead to the establishment of an egalitarian society under the rule of law. However, while implementing the directive principles of policy, the State should not make any law which takes away or abridges the Fundamental Rights guaranteed by Chapter I in view of the embargo placed by Article 8(1) and (2). Necessarily, therefore, the directive principles of State policy have to conform to and to operate as subsidiary to the Fundamental Rights guaranteed in Chapter I, otherwise the protective provisions of the Chapter will be a mere rope of sand. Law, in the achievement of this ideal, has to play a major role, i.e., it has to serve as a vehicle of social and economic justice which this Court is free to interpret.

In *Mian Muhammad Nawaz Sharif v. President of Pakistan* (PLD 1993 SC 473), maintainability of petition under Article 184(3) was discussed and decided as under: -

> "6. While construing Article 17 which guarantees fundamental right, our approach should not be narrow and pedantic but elastic enough to march with the changing times and guided by the object for which it was embodied in the Constitution as a fundamental right. Its full import and meaning must be gathered from other provisions such as preamble of the Constitution, principles of policy and the Objectives Resolution, which shed luster on the whole Constitution. Reference in this connection may be made to the observations made by Muhammad Haleem, C.J. (as he then was) in Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416 at 489: -
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> > "... ... while construing Article 184(3), the interpretative approach should not be ceremonious observance of the rules or usages of interpretation, but regard should be had to the object and the purpose for which this Article is enacted, that is, this interpretative approach must receive inspiration from the triad of provisions which saturate and invigorate the entire Constitution, namely, the Objectives Resolution (Article 2A), the Fundamental Rights and the directive principles of State policy so as to achieve democracy, tolerance; equality and social justice according to Islam."

In the case of Munir Hussain Bhatti v. Federation of Pakistan (PLD 2011 SC 407) it has been held as under:-

"6. The petitioners have invoked the jurisdiction vested in this Court under Art. 184(3) of the Constitution. Mr. K.K. Agha, learned Additional Attorney General for Pakistan has argued that the jurisdiction of this Court under the said Article can only be invoked where "a question of public importance with reference to the enforcement of any of the fundamental rights" is involved. .....

9. More importantly, however, under the law, this factual claim is quite irrelevant for answering the present question, which is: does the case before us involve "a question of public importance with reference to the enforcement of any of the Fundamental Rights"? Article 184(3) *ibid* empowers this Court to exercise jurisdiction thereunder whenever the Court considers a matter to: (i) be of public importance and (ii) that it pertains to the enforcement of fundamental rights. The determination on both these counts is to be made by this Court itself, keeping the facts of the case in mind. That this case involves a question which relates to the "enforcement of fundamental rights" has not been seriously questioned. ... ...

10. Furthermore, in making this determination, the Court is not to be swayed by expressions of public sentiment nor is it to conduct an opinion poll to determine if the public has any interest in an issue being agitated before the Court under Article 184(3) of the Constitution. Instead, a whole range of factors need to be kept in mind, which have, over the years, been expounded in numerous precedents of this Court. It is important to keep these precedents in view because, as noted in an earlier judgment, "[i]t is through the use of precedent that the contours of the law are constantly defined. The Constitution of Pakistan, through Article 189, recognizes the significance of judicial precedent in the acknowledged tradition of a Common Law jurisdiction." (Re: Suo Motu Case No.10 of 2009 reported as 2010 SCMR 885, 921). A review of the precedents that enunciate the scope of Article 184(3) makes it clear that contrary to the import of Mr. Agha's submission, "overt expression of public interest" or "street demonstrations and vigorous media debate" have not been considered necessary factors for the exercise of jurisdiction over a case under the said Article.

16. ... ... there have been cases where this Court has declined to exercise jurisdiction under Article 184(3) of the Constitution. Mr. K.K. Agha referred to the case titled Jamat-e-Islami through Amir and others v, Federation of Pakistan and others (PLD 2008 SC 30) wherein exercise of jurisdiction had been declined. Mr. Makhdoom Ali Khan provided us a list of six other reported cases (referred to below) where the Supreme Court decided that the circumstances did not warrant exercise of jurisdiction

under Article 184(3) *ibid* as the petitions in those cases did not meet the dual criteria of (a) public importance and (b) enforcement of fundamental rights. These cases are Manzoor Elahi v. Federation of Pakistan (PLD 1975 SC 66 at page 79, 128, 144 and 159), Shahida Zaheer Abbasi v. Federation of Pakistan (PLD 1996 SC 632 at page 659 and 662 sideline G and H), Syed Zulfiqar Mehdi v. PIAC (1998 SCMR 793 at page 799, 800, 801 sideline A, B, C and D), Watan Party v. President of Pakistan (PLD 2003 SC 74 at page 81, sideline D and E), Mian Muhammad Shahbaz Sharif v. Federation of Pakistan (PLD 2004 SC 583 at page 596 para 18-19, page 597, 598 para 22) and APNS v. Federation of Pakistan (PLD 2004 SC 600 at 619W, 621AA). None of these seven cited cases, however, related to the independence of the Judiciary or to the process of judicial appointments, the same are distinguishable on this ground alone.

17. Based on the foregoing discussion and review of precedents, we are not left in any doubt that these cases are eminently suitable for the exercise of jurisdiction under Article 184(3) of the Constitution."

14. In the context of the present case, a recent decision of this Court rendered *In the matter of: Corruption in Hajj Arrangements in* 2010 (PLD 2011 SC 963) is also very relevant. It may be advantageous to refer to the relevant discussion, which reads as under: -

"20. The judiciary including the High Courts and the Supreme Court is bound to protect and preserve the Constitution as well as to enforce fundamental rights conferred by the Constitution either individually or collectively, in exercise of the jurisdiction conferred upon it either under Article 199 or 184(3) of the Constitution. We are fully cognizant of our jurisdiction, it is one of the functions of the judicial functionaries to decide the matters strictly in accordance with the Constitution and law. We are conscious of our jurisdiction, and exercise the same with judicial restraint. But such restraint cannot be exercised at the cost of rights of the citizens to deny justice to them. The scheme of the Constitution makes it obligatory on the part of superior Courts to interpret Constitution, law and enforce fundamental rights. There is no cavil with the proposition that ultimate arbiter is the Court which is the custodian of the Constitution, as it has been noted herein before and without repeating the same, this Court had initiated proceedings in the instant case as is evident from the detailed facts and circumstances noted hereinabove to ensure that corruption and corrupt

> practices by which the Hujjaj were looted and robbed has brought bad name to the country."

15. In the case at hand the Prime Minister stood convicted by the apex Court of the land for willfully, deliberately and persistently defying a direction issued in *Dr. Mobashir Hassan case*, and such persistent defiance at the highest level was considered substantially detrimental to the administration of justice, and as tending not only to bring this Court, but also the entire judiciary of this country into ridicule. The ruling of the Speaker declaring that no question of disqualification of the respondent had arisen despite a concluded judgment of the apex Court defied the principles of independence of the judiciary and trichotomy of powers, and also constituted a violation of the due process clause under Article 10A of the Constitution. All this has made it a case suitable for invoking the original jurisdiction of this Court. Accordingly, we hold that the instant petitions raise a question of public importance with reference to the enforcement of Fundamental Rights enshrined in Articles 9, 10A, 14, 17 & 25 of the Constitution and meet the requirement of Article 184(3) of the Constitution, therefore, the same are held to be maintainable. The objection raised by the learned counsel for the respondents, being devoid of any merit, is overruled.

16. Mr. Aitzaz Ahsan, Sr. ASC for the respondent, also argued that the petitioners have directly invoked the jurisdiction of this Court under Article 184(3) of the Constitution, and in case they succeed in getting the relief, the respondent would be deprived of the right of appeal under Article 185(3) of the Constitution, which is included in the right to fair trial and due process enshrined in Article 10A read with Article 4 of the Constitution. Reference in this behalf has been

made to the case of *Abdul Haq v. Muhammad Yasin* (PLD 1956 Lahore 209), *Pakistan v. General Public* (PLD 1989 SC 6) and *Jamat-e-Islami v. Federation of Pakistan* (PLD 2008 SC 30).

17. We have considered the argument of the learned counsel and have gone through the judgments cited at the bar. In *Abdul Haq's case* (*supra*), right to file revision was provided under the Punjab Urban Rent Restriction Act, 1952, but in view of the expiry of the said Act, the petitioner therein was deprived of the same. The High Court held that the judgment of the trial Court, against which no appeal could be filed, was not sustainable unless it had passed through all the contemplated stages. The case of *Pakistan v. General Public* pertained to Islamization of different laws wherein right of appeal was barred against the decision of Court Martial. However, this Court held that the remedy of review provided to an aggrieved person could not be equated with the remedy of appeal. In *Jamat-e-Islami's case* the petitions were filed under Article 184(3) of the Constitution challenging the eligibility of the person in uniform to contest the election of the President of Pakistan. The Court, by majority of 5 to 4, held that such a question could not be raised before the Supreme Court as the matter squarely fell within the jurisdiction and domain of Election Commission of Pakistan. Reliance has also been placed by the respondents on *All Pakistan News Paper Society v. Federation of Pakistan* (PLD 2012 SC 1 at page 54), *Ghulam Mustafa v. General Manager* [2012 PLC (CS) 617]. The distinguishing features of all these cases, particularly the case, which had arisen out of civil proceedings initiated before the trial Court, except in the case of *Pakistan v. General Public* (*supra*), wherein process of Islamization of the laws was undertaken by the

Shariat Appellate bench of this Court, were that nothing was said about providing right of appeal in those cases which arise out of constitutional jurisdiction under Article 199 or Article 184(3) before this Court. However, in some of the cases, if a Constitution Petition is filed under Article 199, right of intra-court appeal is available under section 3 of the Law Reforms Ordinance, 1972, subject to the conditions noted therein. It is a well recognized principle that the right to claim review of any decision of a Court of law, like the right of appeal is a substantive right and not a mere matter of procedure. A review is not available unless it has been so conferred by law. See *Hussain Bakhsh v. Settlement Commissioner* (PLD 1970 SC 1). As regards the judgment pronounced by the Supreme Court in exercise of its original jurisdiction under Article 184(3), though an aggrieved person has the right to seek review thereof under Article 188 of the Constitution, but the framers of the Constitution in their wisdom have not provided a right of appeal against it. It is well settled that the legislature is presumed to know the state of law as it exists, as such, no premium can be allowed to be made on account of any provision of the Constitution or the law. The judgments cited by the learned counsel for the respondent hardly advance the proposition canvassed by him. The plea is unfounded and is rejected.

18. Mr. Hamid Khan and other learned counsel, who filed petitions after the Speaker had given the aforesaid ruling, have also argued that after the pronouncement of the judgment of the 7-member bench dated 26 April, 2012, the Speaker was bound to refer the matter to the Election Commission for issuance of notification of disqualification of the respondent. The Speaker was not legally

empowered to sit in judgment over a matter, which had been finally adjudicated upon by the apex Court of the land, obstruct the course of administration of justice, and thereby violate the principle of independence of judiciary, as also various Fundamental Rights of the citizens. On the other hand, Mr. Aitzaz Ahsan, Sr.ASC, Mr. Irfan Qadir, learned Attorney General for Pakistan and Mr. Muhammad Munir Piracha, ASC were of the opinion that notwithstanding the judicial determination by a Court of law, the Speaker had the power and jurisdiction to decide the question of disqualification of the respondent within 30 days by applying her independent mind as she was not a mere post office, particularly after the change brought about in clause (2) of Article 63 of the Constitution by the Eighteenth Constitutional Amendment and in case she failed to do so, then after the expiry of the aforesaid period, it shall be deemed to have been referred to the Election Commission. According to Mr. Aitzaz Ahsan, there is no such thing as automatic application of Article 63(1)(g). He argued that reference made by the learned counsel for the petitioners to Article 104(2) of the Constitution of 1962 and the judgment of the Supreme Court in *A.K. Fazlul Quadir Chowdhry v. Shah Nawaz* (PLD 1966 SC 105) had no bearing on the case at hand on account of significant difference between the language employed in the said Article and the one used in Article 63(2), particularly after the recent change brought about in the latter mentioned provision.

19. Learned Attorney General argued that the 7-member bench which convicted and sentenced the respondent for contempt of Court travelled much beyond its jurisdiction by bringing into its “zoom” the likely consequences of Article 63(1)(g) of the Constitution

notwithstanding the clear cut legal position. That even otherwise the Supreme Court had no role to play in matters to be decided either by the Speaker of the National Assembly or eventually by the Election Commission. According to the learned Attorney General, the disqualification of the respondent was not an issue before the 7-member bench, inasmuch as the only issue before it was whether the Prime Minister, by not writing a letter to the Swiss Authorities in compliance of the judgment of the Supreme Court, had committed any contempt or not. He added that even if it is assumed for the sake of argument that some order was flouted, conviction in terms of Article 63(1)(g) ought to be a direct consequence and not an indirect consequence, inasmuch as in law, direct consequences, and not remote consequences, are to be considered. The above argument of the learned Attorney General is misplaced. The question of the respondent's disqualification was not before the 7-member bench of this Court. The only issue before that bench was whether the respondent's action or inaction amounted to contempt of court of a kind that ought to bring about a conviction and sentence. It is for this reason that the 7-member bench of this Court did not disqualify the respondent at the time of his conviction. Instead the learned judges on that bench left the question of the respondent's disqualification to be addressed directly through the process provided for under Article 63(2) of the Constitution.

20. Mr. Muhammad Munir Piracha, learned ASC, elaborating his argument submitted that after a conviction is recorded, the Speaker still has to examine two things: firstly, she has to decide the question whether the court was of competent jurisdiction, which is not

in doubt here; and secondly, she has to determine what offence has been committed because conviction for each and every offence does not disqualify a person from becoming or being a Member of the Parliament. He argued that in the instant case, the Speaker was required to examine whether the respondent was convicted for contempt of court for propagating any opinion, or acting in any manner, prejudicial to the integrity, or independence of the judiciary, or for defaming or bringing into ridicule the judiciary in terms of Article 63(1)(g). He argued that the respondent was convicted for disregarding an order of the Court, and not for the offences mentioned in Article 63(1)(g). He further argued that disobedience of an order of the Court cannot be taken as ridiculing or defaming the judiciary. To further elucidate his argument that a person will not be disqualified for all kinds of convictions, e.g., if somebody is convicted under paragraph (a) of clause (2) of Article 204 of the Constitution for abusing, interfering with or obstructing the process of the Court in any way or for disobeying any order of the Court, or somebody is convicted under paragraph (c) *ibid*, for doing anything which tends to prejudice the determination of a matter pending before the Court, he will not be disqualified as these are not covered by Paragraphs (g) & (h) of clause (1) of Article 63.

21. We have considered the arguments raised by the learned counsel. It may be noted that in the instant case, the respondent has been convicted by this Court under Article 204(2) of the Constitution read with section 3 of the Contempt of Court Ordinance, 2003 for willfully flouting, disregarding and disobeying the Court's direction contained in paragraph No.178 of the judgment in *Dr. Mobashir*

Hassan's case and sentenced to imprisonment "till rising of the Court", which was duly undergone by him. The respondent did not file an appeal against the said judgment. Therefore, the judgment attained finality entailing all the consequences, including disqualification of the respondent from being a Member of the Parliament on and from the day and time of his conviction and sentence. A perusal of the concluding portion of the short order dated 26 April, 2012 shows that the eventual disqualification of the respondent in terms of Article 63(1)(g) of the Constitution on account of his conviction was treated by the Court as a mitigating circumstance in determining the quantum of sentence to be passed against him. In the instant case, a concluded judgment of conviction of the respondent pronounced by the highest Court of the land was holding the field. Therefore, the Speaker was not required to take upon herself the exercise of deciding whether a question of disqualification of the respondent had arisen. As soon as the judgment of conviction and sentence was passed by the 7-member bench on 26 April, 2012 at 9:30 a.m. against the respondent there was no doubt whatsoever that a question of his disqualification had arisen under Article 63(1)(g). In those circumstances the Speaker ought to have referred the question of the respondent's disqualification to the Election Commission within the prescribed time of 30 days.

22. As regards the nature or kind of conviction that entails disqualification of a Member of the Parliament, that is not an issue in the present case as it is not an appeal against the judgment of the 7-member bench. Furthermore, it is rightly pointed out by the learned counsel for the petitioners that the issue has been dilated upon by the 7-member bench in quite some detail, inasmuch as the bench

convicted the respondent in that case for willfully flouting, disregarding and disobeying direction of the Court contained in Para 178 of the judgment delivered in *Dr. Mobashir Hassan's case*. The 7-member bench has clearly held in Para 70 of their judgment of 26 April, 2012 that "such clear and persistent defiance at such a high level constitutes contempt which is substantially detrimental to the administration of justice and **tends not only to bring this Court but also brings the judiciary of this country into ridicule**." Therefore, in view of such a judicial determination, the Speaker was not empowered to decide that no question of disqualification of the respondent had arisen and was only to refer the matter to the Election Commission in terms of Article 63(2) of the Constitution for enforcement of the judgment.

23. In a system of constitutional governance, guaranteeing Fundamental Rights, the Judiciary is assigned the role of interpreting and applying the law, adjudicating upon disputes arising among governments or between State and citizens or citizens *inter se* and enforcing the Fundamental Rights. The Constitution of Pakistan contains specific and categorical provisions for the independence of Judiciary. The Preamble and Article 2A lay down that "the independence of Judiciary shall be fully secured"; and with a view to achieving this objective, Article 175 provides that "the Judiciary shall be separated progressively from the executive". The principle of trichotomy of powers upon which the scheme of the Constitution is based, envisages three organs of the State, namely, Legislation, Executive and Judiciary, each of whom has to perform its functions within its domain. In line with the said principle, this Court has always performed its functions strictly remaining within the area of its

jurisdiction and shown utmost respect to the other organs of the State by not intruding upon the domain reserved for them. In *Al-Jehad Trust v. Federation of Pakistan* (PLD 1996 SC 324) this Court held as under: -

> "It was made known to the people that they were fighting for the freedom and in consequence of freedom what would they gain would be democracy and their own Government and perception of such democracy was Government of the people, for the people and by the people. To set up such democratic Governments, Constitutions were made in India and Pakistan in order to produce system of governance with trichotomy of powers among the three pillars, namely, the Legislature, Executive and Judiciary. The word "consultation" has been used for the first time in the Constitution of India and the Constitution of Pakistan in connection with appointments of Judges in the Superior Judiciary. The history of India and Pakistan, as mentioned in detail in the preceding part of this judgment, very clearly shows that always effort was made to seek that the Judiciary functioned independently and should not be controlled by the Executive. There is no cavil with the proposition that the Legislature has to legislate; the Executive has to execute laws and the Judiciary has to interpret the Constitution and laws. The success of the system of governance can be guaranteed and achieved only when these pillars of the State exercise their powers and authority within their limits without transgressing, into the field of the others by acting in the spirit of harmony, cooperation and coordination. So far the powers of the Judiciary are concerned, we are exactly going to do that and we are going to interpret the relevant provisions of the Constitution within the limits prescribed so that the provisions are harmonized and the Constitution becomes workable."

This Court, in the *Sindh High Court Bar Association's case* declared the Proclamation of Emergency and PCO No.1 of 2007 to be unconstitutional, illegal and *void ab initio* and all the Ordinances, which were in force on 3rd November, 2007 as well as the Ordinances, promulgated between 3rd November upto 15th December, 2007, were shorn off the validity purportedly conferred upon them. However, this Court referred all such Ordinances, including the National Reconciliation Ordinance, 2007 to the Parliament for the purpose of

validation or otherwise. This act of the Court demonstrates the respect it has for the legislature because the Court instead of determining the fate of those Ordinances itself left it to be decided by the Parliament or the concerned Provincial Assembly. Similarly, *In re: Corruption in Hajj Arrangements in 2010* (PLD 2011 SC 963) it was held that if the action or decision in question is perverse or is such that no reasonable body of persons, properly informed could come to, or is arrived at by misdirecting itself and adopting a wrong approach or is influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same. In the said case, the notification of placing one Mr. Sohail Ahmad, the then Secretary Establishment as OSD was declared to be not sustainable in the eyes of law. However, it was observed that it was the prerogative of the competent authority to post him either as Secretary Establishment or give him any other assignment commensurate with his status, performance, ability, work, etc. Likewise, in the case of *Tariq Aziz-ud-Din* (2010 SCMR 1301), the Court, after having concluded that the discretion in making the promotions of Government officers from grade 21 to 22 had not been judiciously exercised, instead of directing the Government to promote the petitioners therein, sent back the matter to the competent authority with certain observations. *In re*: *Suo Moto Case No.5 of 2010 (LNG case)* (PLD 2010 SC 731), where proceedings were initiated under Article 184(3) of the Constitution on the report of Mr. Rauf Klasara, a known journalist regarding a scam of 25 billion rupees, the case was sent back to the concerned authorities of the Government for further action. Similarly, *In re*: Privatization of Pakistan Steel Mills reported as Wattan Party v. Federation of Pakistan (PLD 2006 SC 697), Iqbal Haider v. Capital Development Authority (PLD 2006 SC

394), In the matter of: Human Rights Cases No.4668 of 2006 etc. (F.9 Park) (PLD 2010 SC 759) and *In re: SMC No. 13/2009 regarding Multi Professional Housing Societies* (PLD 2011 SC 619), the Court instead of issuing directions to the Federal Government, referred the matter to the Executive Authorities to take appropriate steps in accordance with law in light of the observations made by it. Thus, as far as this Court is concerned, it may be said without fear of contradiction that it has always adhered to the principle of trichotomy of powers. The Judiciary has never claimed supremacy over the other organs of the State and has confined itself to the discharge of functions assigned to it under the Constitution, including enforcement of Fundamental Rights guaranteed under the Constitution. The Courts derive their powers and jurisdiction from the Constitution and the law and the decisions rendered by them can be revised, reviewed, or scrutinized by no forum other the one provided under the Constitution or the law within the judicial hierarchy. However, surprisingly, as has been argued by the petitioners, the Speaker of National Assembly *vide* ruling dated 24 May, 2012 effectively made an attempt to overrule the judgment of the 7-member bench passed by them in exercise of jurisdiction conferred upon them under Article 175(2) of the Constitution.

24. Mr. Hamid Khan, Sr. ASC argued that: -

(a) As appeal was not filed against the judgment of this Court dated 26 April, 2012, therefore, this judgment cannot be set aside except in the manner provided in the Constitution and the law.

(ii) The Speaker in her ruling dated 24 May, 2012 made an attempt to exercise judicial powers which are not vested in her under the Constitution and the law, therefore, she

cannot be allowed to sit in appeal over the judicial verdict of a Court of law.

On the other hand, Mr. Aitzaz Ahsan, Sr. ASC argued that the Speaker having been designated specifically by the Constitution itself to perform a constitutional function has the exclusive authority to decide the matter. Therefore, she is within her constitutional authority and her ruling is within the scope of the Constitution and the law as well as within the ambit of the judgment of the 7-member bench.

25. It is to be noted that section 19(1)(iii) of the Contempt of Court Ordinance, 2003 provides that in case of an original order passed by a Single Judge or a Bench of two Judges of Supreme Court an intra-court appeal shall lie to a Bench of three Judges and in case of original order passed by a Bench of three or more Judges, an intra-court appeal shall lie to a Bench of five or more Judges. As in the instant case original order was passed by a Bench comprising seven Hon'ble Judges, therefore, appeal was competent before a Bench comprising 8 or more Hon'ble Judges of this Court. Reference may be made to the case of *Abdul Hameed Dogar, Former Judge v. Federation of Pakistan* (PLD 2011 SC 315). In the said case, the original order was passed by a 4-Member Bench of this Court whereby the case was fixed for the framing of charge. The intra-court appeal filed against the said order was heard by a larger Bench comprising 7 Hon'ble Judges. Similarly, in the case of *Syed Yousaf Raza Gillani, Prime Minister of Pakistan v. Assistant Registrar, Supreme Court of Pakistan* (2012 SCMR 422), wherein the original order was passed by a 7-Member Bench of this Court and the intra-court appeal filed under section 19 of the Ordinance was heard by a larger Bench comprising 8 Hon'ble

Judges. In the case of *Justice Hasnat Ahmed Khan v. Federation of Pakistan/State* (PLD 2011 SC 680) the intra-court appeal was heard by a Bench comprising 6 Hon'ble Judges against the original order passed by a 4-Member Bench of this Court.

26. Admittedly against conviction/sentence awarded to Syed Yousaf Raza Gillani no appeal was filed, therefore, the Speaker had no judicial power to ignore the judgment dated 26 April, 2012 on the ground that no specific charge regarding propagation of any opinion or acting in any manner against the independence of judiciary or defaming, ridiculing the judiciary as contemplated by Article 63(1)(g) of the Constitution had been framed. It may be observed that the Speaker, by interfering in a concluded judgment on contempt of Court, has gone beyond the jurisdiction available to her under the relevant provision of Constitution.

27. It is to be observed that before determining the role of the Speaker in pursuance of the judgment delivered by a 7-Member Bench of this Court, who being adjudicators are responsible for the administration of justice at the highest forum of the hierarchy of judicial system, decided the contempt case brought before them in the exercise of jurisdiction conferred upon them. The judgment has attained finality since no appeal was filed challenging its merit under the law.

28. As has been noted hereinabove, the Speaker as per the contents of her ruling dated 24 May, 2012 was fully cognizant that the Supreme Court of Pakistan *vide* short order dated 26 April, 2012,

followed by the detailed judgment released on 8 May, 2012 has punished the Prime Minister under section 5 of the Contempt of Court Ordinance (Ordinance V) of 2003 with imprisonment till rising of the Court. Sentence was executed forthwith. The Speaker also stated that both the orders have been conveyed to her and has admitted that she has also gone through the same. However, before deciding as to whether any question has arisen for disqualification of the respondent, she reproduced the relevant provisions of Constitution, i.e. Article 63(2) and also quoted following judgments:-

(i) Kanwar Intezar Muhammad Khan v. Federation of Pakistan (1995 MLD 1903)

(ii) Ayatullah Dr. Imran Liaqat Hussain v. Election Commission of Pakistan (PLD 2005 SC 52)

As per the contents of the ruling of the Speaker, the *ratio decidendi* of the judgment in the first mentioned case is that the Speaker while examining a Reference under Article 63(2) of the Constitution is not supposed to act merely as post office. If a Reference is submitted to him, he is not bound to forward the same to the Chief Election Commission for decision forthwith. The Speaker has to apply his own mind judiciously after taking into consideration the relevant provisions on the subject and then decide as to whether 'any question' in the nature of disqualification has 'arisen' which may justify making reference to the Chief Election Commissioner. As far as the observation made in this judgment by the three learned Judges of the Lahore High Court is concerned, it is not applicable to the facts of the instant case, as in the reported judgment there was no final judgment delivered by a Court of law declaring a Parliamentarian guilty of contempt of Court. In the cited case, the grievance of petitioner

Kanwar Intizar Muhammad Khan, advocate and citizen of Pakistan in his application dated 15 September, 1995 before the Speaker of National Assembly was based on certain allegations against Mohtarama Benazir Bhutto, the then Prime Minister of Pakistan as according to him she was disqualified from remaining a Member of Majlis-e-Shoora (Parliament) on the basis of the allegation reproduced in the judgment. The facts of the second case were that "a Petition under Article 199 of the Constitution was filed in the High Court of Sindh, Karachi with the prayer (not properly worded) that the Election Commission of Pakistan be directed to reject nomination papers of those candidates who are not faithful to the declaration by the founder of Pakistan and bear true faith and allegiance to Pakistan and will uphold the sovereignty and integrity of Pakistan. Specially the candidates of MQM and those candidates who are holding tickets from MQM shall be strictly condemned to participate in the election of 10th October, 2002 and their election campaign should be banned until the judgment of this petition be fulfilled". The Constitution petition was dismissed and this Court observed that while the allegations leveled against the Muttaheda Qaumi Movement were indeed very serious but the genuineness and authenticity of such allegations could not be determined by this Court merely on the basis of press-clippings and speeches made on various occasions. Therefore, while dealing with Article 63(2) of the Constitution it was observed as under:-

> "6. In the same wake of events we have adverted to the provisions embodied under Article 63 which hardly renders any assistance to the case of petitioner and "provides mode to oust a member of the Parliament if he incurs disqualification subsequent to his election as member. The Speaker of the National Assembly or the Chairman of the

> Senate as the case may be, may make a reference to the Election Commission for decision of the question as to whether a member who had suffered disqualification ceased to hold his office or not. When a matter is brought to the notice of the Speaker with reference to the disqualification of a member, he would have to apply his mind to the fact whether a question such as contemplated in Article 63(2) had arisen or not. For instance, if the information upon which he was required to make a reference was unrelatable to any of the grounds contained in sub clauses (a) to (e) or clause (i) of Article 63 of the Constitution, he would be entitled to refuse to make a reference. However, his function under Article 63(2) is clearly of a very limited character. He will no doubt apply his mind to the very limited point whether a question had or had not arisen. In fact, in a proper case, he might be directed by the superior Court to make a reference where he had refused to do so, if a petition was brought for that relief." Ghulam Muhammad Mustafa Khar v. Chief Election Commission of Pakistan and others (PLD 1969 Lah. 602).”

The Speaker, in her ruling, placed reliance on the cases of Javed Hashmi and Dr. Imran Liaqat Hussain. The former case proceeds on a different premise and is, therefore, not attracted to the facts and circumstances of the present case. The latter case also does not advance the proposition sought to be laid down by the Speaker in her ruling, inasmuch as it is held therein that when a matter of disqualification of a member is brought before the Speaker, she will have to apply her mind but the function required to be performed under clause (2) of Article 63 is of a very limited character. Furthermore, there is a difference between sub-clauses (a), (g) and (h) of clause (1) of Article 63 and the other sub-clauses therein, which

were the focus of the reasoning in that case. These three sub-clauses base disqualification of a member of Parliament on convictions by courts. Thus, it means that when a conviction of a member of Parliament by a court of competent jurisdiction is placed before the Speaker, she is bound to make a reference to the Election Commission and cannot instead sit in judgment over it in the garb of an exercise of power under Article 63(2) of the Constitution. The Speaker does not enjoy an appellate authority or a review jurisdiction to look into the merits of the judgment, nor does she have the power to set such a conviction aside.

29. Mr. Aitzaz Ahsan, learned counsel for the respondent argued that even if a case falls under one of those sub-clauses of Article 63(1) which mention a conviction by a court the Speaker retains some discretion to determine whether a question of disqualification has arisen. He highlighted that under Article 63(1)(h) a person would be disqualified from being a Member of the Parliament only if he is convicted for an offence, which involves moral turpitude and that he is sentenced to undergo imprisonment for a term of not less than 2 years unless a period of 5 years has lapsed since his release. According to him when the Speaker is informed about a conviction, she has to determine whether it is for an offence involving moral turpitude. Mr. Aitzaz Ahsan's argument is no doubt correct that even in cases falling under sub-clauses (a), (g) and (h) the Speaker would normally have the discretion to determine whether a question of disqualification has arisen, but where a court specifically notes that it is convicting a person for the kind of offence that would form the basis of disqualification under sub-clauses (a), (g) and (h), the Speaker has

no choice but to refer the matter to the Election Commission under Article 63(2).

30. A perusal of the short order dated 24 April, 2012 as well as reasons of the judgment, referred to hereinabove, abundantly makes it clear that after the conviction/sentence the Court was fully conscious of the fact that he has to suffer disqualification and thus the observations are based on objective consideration keeping in view the evidence available on record, on the basis of which the Court rightly held that he has been willfully, deliberately and persistently defying the order of this Court and such act was found to be substantially detrimental to the administration of justice not only to bring this Court but also bring judiciary of this Court into ridicule. The learned counsel for the respondent referred to the ruling of the Speaker which showed that the Speaker focused on the fact that the charge regarding an offence of moral turpitude had not been framed in terms of Article 63(1)(h). However, it appears that the Speaker failed to notice that the charge contained the provision of Article 204(2) of the Constitution read with section 3 of the Ordinance, 2003. This aspect of the matter is discussed in detail in the following Para of the judgment: -

> 68. After finding the factual allegations against the accused to have been established beyond reasonable doubt, we now advert to some legal aspects regarding his guilt and punishment. We note in this context that key words used in the Charge were “willfully flouted”, “disregarded” and “disobeyed” which find a specific mention not only in Section 2(a) of the Contempt of Court Ordinance (V of 2003) defining “civil contempt” but also in Section 3 of the said Ordinance defining “Contempt of Court”. The said Ordinance V of 2003 derives its authority from Article 204(3) of the Constitution, Article 204(2) of the Constitution itself empowers this Court to punish a person for committing “Contempt of Court” and the above mentioned words used in the Charge framed against the accused also stand sufficiently covered by the provisions of Article 204(2) of the Constitution. It is pertinent to

> mention here that Section 221, Cr.P.C. dealing with Charge and its forms clarifies that a Charge is to state the offence and if the offence with which an accused is charged is given a specific name by the relevant law then the offence may be described in the Charge "by that name only". According to Section 221, Cr.P.C. "If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged". It is further provided in Section 221, Cr.P.C. that "The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge". In the case in hand not only the name of the offence, i.e. contempt of court had been specified in the Charge framed against the accused but even the relevant Constitutional and legal provisions defining contempt of court had been mentioned in the Charge framed. According to Section 221(5), Cr.P.C. the fact that the Charge is made in the terms noted above "is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case".

At this stage, reference may be made to the contents of the short order dated 26 April, 2012 passed by the 7-memebr bench, which reads as under: -

> "For the reasons to be recorded later the accused Syed Yousaf Raza Gillani, Prime Minister of Pakistan/Chief Executive of the Federation, is found guilty of and convicted for contempt of court under Article 204(2) of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 3 of the Contempt of Court Ordinance (Ordinance V of 2003) for willful flouting, disregard and disobedience of this Court's direction Cr.O.P. No.06 of 2012 contained in paragraph No. 178 of the judgment delivered in the case of Dr. Mobashir Hassan v Federation of Pakistan (PLD 2010 SC 265) after our satisfaction that the contempt committed by him is substantially detrimental to the administration of justice and tends to bring this Court and the judiciary of this country into ridicule.
>
> 2. As regards the sentence to be passed against the convict we note that the findings and the conviction for contempt of court recorded above are likely to entail some serious consequences in terms of Article 63(1)(g) of the Constitution which may be treated as mitigating factors towards the sentence to be passed against him. He is, therefore, punished under section 5 of the Contempt of Court Ordinance (Ordinance V of 2003) with imprisonment till the rising of the Court today."

Para 2 of the above order clearly refers to the disqualification envisaged by Paragraph (g) of Clause (1) of Article 63, and not to the disqualification mentioned in Paragraph (h).

31. Mr. Muhammad Munir Piracha, learned ASC for the Federation argued that the jurisdiction of this Court is barred under Article 69(1) of the Constitution because the Speaker is the Member of Parliament, therefore, her ruling dated 25 May, 2012 falls within the ambit of internal proceedings and the Court has no jurisdiction to interfere with the same. He has also taken an alternate plea that in case the Court comes to the conclusion that the petition is competent and the ruling of the Speaker is held to be invalid, in that eventuality, the ruling of the Speaker may not be substituted with the Court's verdict, rather the matter should be remitted to the Speaker to decide it afresh and the bar of 30 days will not apply. On this issue, the learned Attorney General argued that this Court has no role to play in the matter of disqualification of a member of the Parliament, which is to be decided either by the Speaker of the National Assembly or eventually by the Election Commission and that the Speaker of the National Assembly is not bound by the judgment of the Supreme Court.

32. Mr. Aitzaz Ahsan learned Sr. ASC was called upon to present his argument on whether this Court is empowered to examine the validity of a ruling by the Speaker of the Assembly under Article 63(2) of the Constitution. He stated that the Constitution itself has specifically empowered the Speaker to decide the question of disqualification of a member of the Parliament, therefore, the decision of the Speaker is *sui generis* and adjudicatory in nature. According to

the learned counsel, Speaker's ruling is pre-eminently within the ambit of the judgment of the 7-member bench of this Court, which only hinted to a possible disqualification of the respondent pursuant to the conviction, and did not contemplate it conclusively. Mr. Hamid Khan argued in rebuttal that under Article 63(2) a duty has been cast upon the Speaker to decide the question of disqualification within 30 days and that the role of the Speaker in these matters is very limited. He has placed reliance on *Ayatullah Dr. Imran Liaqat Hussain v. Election Commission of Pakistan* (PLD 2005 SC 52).

33. Clause (1) of Article 69 of the Constitution provides that the validity of any proceedings in the Parliament shall not be called in question on the ground of any irregularity of procedure whereas clause (2) *ibid* provides that no officer or Member of the Parliament in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in the Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers. The issue as to what are, and what are not, the internal proceedings of the Parliament, which are beyond the pale of jurisdiction of the Courts has been dilated upon by the superior Courts in the past on many occasions. In the case of *Farzand Ali v. Province of West Pakistan* (PLD 1970 SC 98), Hamoodur Rehman, C.J., observed that whatever was not "related to any 'formal transaction of business' in the House cannot be said to be a part of its internal proceedings". In the case of *Muhammad Naeem Akhtar v. Speaker, Sindh Provincial Assembly* (1992 CLC 2043) the High Court held that the action of Speaker in accepting resignations in question would neither fall within meaning of term "any proceedings in the

Provincial Assembly" used in Article 69 read with Article 127 of the Constitution, nor such action could be described as an exercise of power by the Speaker of regulating the procedure or the conduct of business in the Assembly; thus, a constitutional petition against the action of Speaker in accepting resignations of Members of Assembly was maintainable. In the case of *Shams-ud-Din v. Speaker, Balochistan Provincial Assembly* (1994 MLD 2500), it was held by the High Court that the internal proceedings which were carried out by the Assembly, during its session, were not amenable to the jurisdiction of Court. However, all other administrative actions by the Speaker including recruitment of employees would not enjoy immunity from judicial review, particularly when such action of Speaker, *prima facie*, was in violation of existing rules or the discretion vested in him to take certain decisions in order to smoothly run the functions of Provincial Assembly Secretariat had not been exercised judiciously. Therefore, the High Court under Article 199 of the Constitution was competent to examine the validity or otherwise of such action. The High Court of Balochistan, in the case of *Mining Industries of Pakistan (Pvt.) Ltd. v. Deputy Speaker, Balochistan Provincial Assembly* (PLD 2006 Quetta 36) held that the question relating to right of a person to be a Member of House or to continue to sit therein was not a question pertaining to the internal proceedings of the House, but a question affecting the constitution of the House, which was not precluded from inquiry by the Courts under Article 199 of the Constitution. This Court has recently reaffirmed the relevant principles, in a judgment reported as *Munir Hussain Bhatti v. Federation of Pakistan* (PLD 2011 SC 407). While dilating upon the power of judicial review of the Court vis-à-vis Article 69 of the Constitution, this Court noted that although the committee

constituted under Article 175A of the Constitution bore the title of "Parliamentary Committee" its nature and functions were such that its proceedings were not to be considered the internal proceedings of Parliament. Its functions were of an administrative nature and related to judicial appointments rather than parliamentary business. Therefore, its proceedings were held to be reviewable by the superior courts and there was no immunity from judicial scrutiny under Article 69 of the Constitution. The same principle applies to the Speaker's ruling under article 63(2) of the Constitution. The Speaker performs the administrative task of determining whether a question of disqualification has arisen and if in doing so she goes beyond her constitutional remit, misapplies the applicable law or misuses her discretion, then her decision will be reviewable. Article 69 will not provide her ruling any immunity from judicial review.

34. Similar approach is adopted and prevalent in the neighbouring country despite the bar of jurisdiction of courts provided in Para 7 of the Tenth Schedule of the Indian Constitution. The superior Courts of that jurisdiction have adjudicated upon the validity of the rulings of the Speaker and on several occasions have set aside the rulings passed by the Speaker. Reference may be made to the judgments reported as *Ravi S. Naik v. Union of India* (AIR 1994 SC 1558), *Mayawati v. Markandeya Chand* [(1998) 7 SCC 517]. Recent examples of cases where the Speakers' rulings on various issues have been held to be reviewable include *Jagjit Singh v. State of Haryana* (AIR 2007 SC 590), *Rajendra Singh Rana v. Swami Prasad Maurya* (AIR 2007 SC 1305) and *D.Sudhakar v. D.N.Jeevanraju* [Civil Appeal Nos.4517-4521 of 2011] decided on 25 January, 2012.

35. A survey of the above case-law makes it abundantly clear that the ruling of the Speaker is open to judicial scrutiny by the superior Courts because it does not fall within the proceedings or conduct of business of the Parliament within the contemplation of Article 69 of the Constitution. Thus, we hold that the ruling of the Speaker in the matter of referring the case to the Election Commission under Article 63(2) of the Constitution wherein a question of disqualification of a Member of the Parliament has arisen, or where the Speaker decides that no such question has arisen, is amenable to the jurisdiction of the superior Courts. It may be noted that after the decision of the 7-member bench dated 26 April, 2012, a copy of the judgment was forwarded by the office of this Court to the Speaker and in the meantime a petition was also filed by one Maulvi Iqbal Haider before the Speaker for making a reference to the Election Commission in terms of Article 63(2). However, on 24 May, 2012, a day before the expiry of the period of 30 days within which the Speaker had to decide the question in terms of Article 63(2), she gave a ruling that no question of disqualification of the respondent had arisen pursuant to his conviction by the Supreme Court. Admittedly, the judgment of this Court along with the covering letter was not made a part of the proceedings of the Parliament for the obvious reason that under Article 63(2) the Speaker's function is not part of the parliamentary process. Applying the test laid down in the judgments noted hereinabove and also considering the provision of the Constitution and the Rules of Procedure on the subject, we hold that ruling of the Speaker dated 25 May, 2012 does not fall within the "proceedings" of the *Majlis-e-Shoora* (Parliament) which cannot be subjected to judicial scrutiny by

virtue of Article 69 of the Constitution. In light of the above discussion, the objection raised by respondent's counsel is not tenable and is overruled.

36. Suffice it to observe that the Speaker, in performing the function assigned to him under Article 63, has to decide whether there is any determination by a Court of competent jurisdiction in respect of any of the disqualifications mentioned in clause (1) thereof, e.g., whether a person is of unsound mind and has been so declared by a competent court, etc. In this case, the Speaker is required to consider the judgment of the concerned Court. Secondly, in the case of disqualification which is not emanating from a judgment of a Court of law, the Speaker has to decide the matter on the basis of the information laid before her, e.g., where a person has become undischarged insolvent, or he has ceased to be a citizen of Pakistan, or has acquired the citizenship of a foreign State, or he holds an office of profit in the service of Pakistan, or is in the service of any statutory body, or is dismissed from service, etc.

37. The Speaker on having considered the contents of the charges against the respondent wherein it has been categorically stated that "you, Syed Yousaf Raza Gillani, the Prime Minister of Pakistan, have willfully flouted, disregarded and disobeyed the direction given by this Court in Para 178 in the case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265) to revive the request by the Government of Pakistan for mutual legal assistance and status of civil party and the claims lodged to the allegedly laundered moneys lying in foreign countries, including Switzerland, which were unauthorizedly withdrawn by communication by Malik Muhammad

Qayyum, former Attorney General for Pakistan to the concerned authorities, which direction you were legally bound to obey and thereby committed contempt of court within the meanings of Article 204(2) of the Constitution of Islamic Republic of Pakistan 1973 read with Section 3 of the Contempt of Court Ordinance (Ordinance V of 2003), punishable under Section 5 of the Ordinance and within the cognizance of this Court. We hereby direct that you be tried by this Court on the above said charge", has observed that "no specific charge regarding the propagation of any opinion or acting in any manner against the independence of the judiciary or defaming or ridiculing the judiciary as contemplated under Article 63(1)(g) has been framed", and ultimately concluded that charges against Syed Yousaf Raza Gillani are not relatable in paragraph (g) or (h) of clause (1) of the Article 63 of the Constitution, therefore, no question of disqualification of Syed Yousaf Raza Gillani from being a Member arises under clause (2) of Article 63 of the Constitution. It seems that the Speaker in violation of principle of independence of judiciary and access to justice purportedly exercised jurisdiction similar to that of an appellate court as she sought to interpret the judgment passed by a Bench comprising 7 Hon'ble Judges of this Court and determine its effects vis a vis the respondent's disqualification. In this behalf, reference may be made to the case of *Asad Ali v. Federation of Pakistan* (PD 1998 SC 161). Inasmuch as a judgment given by this Court by a larger Bench is binding on the Benches of which number of Judges is less than the larger Bench and under Article 189 the judgments of Supreme Court are binding on all judicial forums and executive authorities under 190 of the Constitution. Reference in this behalf may be made to the cases of *Iffat Jabeen v. District Education Officer (M.E.E.), Lahore* (2011

SCMR 437), *Al-Jehad Trust v. Federation of Pakistan* (PLD 1997 SC 84), *Section Officer, Government of Punjab, Finance Department v. Ghulam Shabbir* (2010 SCMR 1425), *Chairman, Central Board of Revenue v. Nawab Khan* (2010 SCMR 1399) and *Nazar v. Member (Judicial-II) BOR* (2010 SCMR 1429). In such view of the matter, the respondent had no lawful authority to continue to occupy the office of the Prime Minister of Pakistan and represent the whole nation. It is to be noted that the Court always exercises restraint with a view to avoiding any constitutional and legal complications and ensure that the functioning of the Government under the Constitution is carried on smoothly. It is pertinent to mention that Constitution Petition No.41/2012 was filed on 27th May, 2012, i.e., after the expiry of limitation provided for filing of appeal and in the meantime the Speaker *vide* her ruling dated 25th May, 2012 declined to make a reference to the Election Commission under Article 63(2) of the Constitution in terms of the order dated 26th April, 2012 passed by a Bench comprising 7 Hon'ble Judges of this Court. As observed earlier, the citizens of this country have a right to be governed by the chosen representatives who are not disqualified to become, and from being members of the *Majlis-e-Shoora* (Parliament). As soon as a member of the *Majlis-e-Shoora* (Parliament), much less a representative who is further elected as the Prime Minister of the country, incurs a disqualification in terms of Article 63 of the Constitution, he ceases to be a member. It is the right of every citizen that they should live with respect, honour and dignity as envisaged by Article 14 of the Constitution, therefore, they are to be governed by their representatives who have not been convicted or sentenced for contempt of Court in pursuance whereof they would be disqualified for

the period of five years. We have gone through the judgments relied upon by the learned counsel. There is no cavil with the principles laid down therein, but the instant case has to be seen in view of its own facts and circumstances. It has already been stated that a chosen representative of the people, who had been elected unanimously by all the Parliamentarians belonging to different political parties, has been convicted and sentenced for contempt of Court and due to such conviction, he is likely to face some serious consequences in terms of Article 63(1)(g) of the Constitution, therefore, anyone amongst the citizens, who is subject of the Constitution has a right to come forward and raise question about the disqualification of the Prime Minister because of violation of his fundamental rights under Articles 9, 10A, 14, 17 and 25 of the Constitution. In none of the judgments cited by the learned counsel for the respondent, the allegation of being a convict of contempt of Court and still continuing to rule the country as its Chief Executive/Prime Minister was leveled against anyone. Those judgments have proceeded on different facts and circumstances and are not even remotely attracted to the facts of the instant case.

38. Though we have dealt presently with Article 63(2) as per current status after 18th Constitution Amendment, it would also be not out of context to point out that sub Article (2) of Article 63 had undergone certain changes at different times. The original provision of Article 63(2) provided that 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. However, there had been complaints that at times the Speaker was not making references against the Members for indefinite period. Therefore, on 21 August, 2002 *vide* Chief Executive Order (LFO, 2002), aforesaid Clause (2) was amended and a time limit was provided for making such a reference. The amended clause provided that the Speaker or the Chairman, as the case may be, shall, within thirty days from raising of such question, refer the matter to the Chief Election Commissioner. This amendment was made part of 17th Constitutional Amendment. The said clause was further amended by the Eighteenth Constitutional Amendment and it was provided that the Speaker or 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 failed to do so within the aforesaid period, it shall be deemed to have been referred to the Election Commission. The change brought about by the recent amendment only suggests that the Speaker is required to decide the matter in an appropriate case as discussed hereinabove, and refer the matter to the Election Commission. In no way, does this dispensation take the action of the Speaker out of the pale of the jurisdiction of this Court.

39. Mr. Aitzaz Ahsan learned ASC has submitted that there are three different kinds of contempt of court, but only one kind of contempt effects the disqualification of a member of Parliament. Out of these three types of contempt, only two are relevant to section 18 of the Contempt of Court Ordinance, 2003. Nor was the effect of the trial of the respondent resulting in the judgment liable to disqualify him because none of the words ‘ridicule’, ‘scandalize’, ‘or defame’ were

used in the show cause notice; the charge; the evidence; or in any question put to the accused. The concept of subjective satisfaction of a court or judge is alien to the law and to that extent the observations in the judgment of the 7-member bench with regard to the application of section 18 of the Contempt of Court Ordinance, 2003 do not effect the disqualification of the respondent to be a member of Parliament.

40. Learned Attorney General for Pakistan raised the following contentions. He argued that the disqualification of Prime Minister was not an issue before the 7-member bench. The issue was only whether the Prime Minister had committed any contempt or not, therefore, the judgment of the 7-member bench was violative of clauses (1) & (2) of Article 248 of the Constitution. The jurisdiction of the Supreme Court cannot transcend the territorial limits of Pakistan. Hence, the question of contempt did not arise at all. Therefore, the judgment of the 7-member bench ought to be ignored as was done in the past in many cases. The Hon'ble Judges of the 7-member bench had absolutely no justification or mandate to charge the Prime Minister with contempt keeping in view the factual, legal and constitutional aspects of the case in question. The conviction of the Prime Minister was based on a groundless charge. The Supreme Court never ordered the Prime Minister in the NRO case to write a letter to the authorities in Geneva. The Speaker of the National Assembly in her ruling has also referred to the charge itself. The entire contempt proceedings in the Supreme Court eventually resulting in conviction were without jurisdiction. There was absolutely no occasion for the 7-member bench to have called the Prime Minister thrice, and that too, in utter disregard of the law and the Constitution. Tracing the history of contempt of court law,

the Attorney General added, it would become evident that at the moment, there is no contempt law in the country. The Prime Minister cannot be held guilty for noncompliance with an unimplementable direction of the Supreme Court. The charge in this case is illegal. This is a unique case where the role of prosecutor and adjudicator was assumed by the court itself. For the purpose of disqualification of the Prime Minister, especially when it is well known that the courts in the past have been destabilizing elected government through judicial over-reach. No order of the court has been flouted or disregarded by the Prime Minister. Even otherwise, no court in Pakistan can order or dictate the Prime Minister in the realm of his executive authority and courts in the past have never interfered in the working of the Prime Minister. Even if for the sake of argument, it may be assumed that some order was flouted, conviction in terms of Article 63(1)(g) ought to be a direct consequence and not an indirect consequence. Here, the conviction is not for defaming or ridiculing. In law, direct consequences and not remote consequences are to be considered. In the instant case, disqualification has to be direct consequence in terms of Article 63(1)(g). It is a conviction for not writing a certain letter, and not for defaming or ridiculing the judiciary. The Prime Minister was not charged for ridiculing the judiciary and the word ‘ridicule’ finds no mention in the defunct Contempt of Court Ordinance, 2003. There has to be a positive act to attract disqualification under Article 63(1)(g). Any omission will not constitute the act of defaming or ridiculing the judiciary in terms of the said clause. A lot of emphasis was laid on section 18 of the Contempt of Court Ordinance, 2003. It is out of context. Real essence of section 18 is that as far as possible, contempt jurisdiction is to be sparingly exercised and under the Supreme Court

rules, 1980, it is the Attorney General for Pakistan to conduct the proceedings. The Hon'ble Chief Justice has been pointing out that the conviction ought to have been set aside by filing an appeal. There was no need for the Speaker to go into the question as to whether any appeal has been filed or not. The judgment of the 7-member bench suffers from serious constitutional and legal violations and that judgment is being made an issue in this case by the petitioners because heavy reliance has been placed, therefore, proper course would be to refer this matter to a larger bench, so that the same could be revisited. There are judgments, in which appeals were not filed. In Tikka Iqbal Muhammad Khan's case, no appeal was filed, and the Judges were restored, it had not been set aside till then. Therefore, judgments can be revisited at a later stage. There are judgments which lay down that a void order is to be ignored. So, this judgment of the 7-member bench is also required to be ignored. There is no finding in the judgment of the 7-member bench that the Prime Minister propagated anything for the purpose of defaming or ridiculing the judiciary. These words appearing in the Constitution have a direct nexus with defaming or ridiculing. Through silence nobody can be defamed or ridiculed.

41. Suffice to add that above grounds raised by learned counsel for respondent and learned Attorney General legally can only be considered by the appellate Court hearing appeal under section 19 of the Contempt of Court Ordinance, 2003. Learned counsel for the respondent and learned Attorney General for Pakistan have raised the above mentioned legal points, which they could have raised in appeal. This Bench in exercise of jurisdiction under Article 184(3) is not the

appellate Court of the 7-member bench. Therefore, the same cannot be adjudicated upon in the present proceedings.

42. It is further to be added that according to Article 63(2) the Speaker has to decide if any question of disqualification of a member of the *Majlis-e-Shoora* (Parliament) has arisen or not. To interpret this provision, it is necessary to examine meaning of the word 'question' as given in various dictionaries, some of which are as under: -

> **Question:** A sentence worded or expressed so as to seek information.
> 2. a doubt about or objection to a thing's truth, credibility, advisability, etc. b. the raising of such doubt etc.
> 3. a matter to be discussed or decided or voted on.
> 4. a problem requiring an answer or solution.
> 5. a matter or concern depending on conditions. **[Concise Oxford Dictionary of Current English; Eighth Edition]**
>
> **Question:** To ask a question or questions of a person or figure a thing; to interrogate.
> 2. To question with: to ask question of; to hold discourse or conversation with; to dispute with.
> 3. To ask or put questions.
> 4. To make question of, to raise the question; hence, to doubt hold as uncertain.
> 5. a. To call in question, dispute, oppose. b. To bring into question, make doubtful or insecure. c. To state as a question. 6. To ask or inquire about, to investigate a thing. **[The Oxford English Dictionary; Volume VIII]**
>
> **Question:** 1. a. An expression of inquiry that invites or calls for a reply. b. An interrogative sentence, phrase, or gesture.
> 2. A subject or point open to controversy; an issue.
> 3. A difficult matter; a problem: a question of ethics.
> 4. A point or subject under discussion or consideration.
> 5. a. A proposition brought up for consideration by an assembly. b. The act of bringing a proposal to vote.
> 6. Uncertainty; doubt: There is no question about the validity of the enterprise. [**The American Heritage Dictionary of the English Language, Fourth Edition**]

The word 'question' means, *inter alia*, a doubt about a certain thing or matter, which is required to be ascertained. However, in the instant case, after the conviction of the respondent by the 7-member bench, there was no doubt that a question of his disqualification had arisen.

In the circumstances, the Speaker, in discharge of her functions, could not bypass/ignore such determination, and was left with no alternative but to decide the question of disqualification of the respondent in the affirmative and refer the matter to the Election Commission. If the relevant authorities would not adhere to the afore discussed principle, then a convict would continue to participate in the affairs of the Parliament, perform the functions of Prime Minister and would be running the affairs of State unconstitutionally.

43. Now we turn to the argument of the learned counsel for Syed Yousaf Raza Gillani that every conviction, *ipso facto*, does not disqualify a person from being a Member of the Parliament. This argument has been advanced by the learned counsel with two impressions in his mind. One, that the respondent has not been convicted by a Court of competent jurisdiction for propagating any opinion, or acting in any manner prejudicial to the integrity or independence of judiciary, or for defaming or bringing into ridicule the judiciary, therefore, he cannot be disqualified. It is to be seen that the respondent has been found guilty of contempt of Court by the 7-member bench for willfully, deliberately and persistently defying clear direction of the highest Court of the country after having taken into consideration his conduct as the highest executive functionary of the State and on being fully satisfied that such willful and persistent defiance at such a high level constitutes contempt, which is substantially detrimental to the administration of justice, and tends not only to bring this Court but also the judiciary of this country into ridicule. [Emphasis provided]. Exactly, the same word i.e. 'ridicule' has been used in Article 63(1)(g) of the Constitution. Thus, it has attracted

the provision of disqualification. The 7-memebr bench seized with the matter could have passed order of his disqualification at that time, but it seems that judicial restraint was exercised knowing that the convict had a right of appeal and review. Furthermore, his case was also to be routed through the Speaker for the purpose of following the process of law, and above all, he would have been entitled to defend himself if direct challenge was thrown to his qualification as a Member of the Parliament. And as now a good number of petitions have been filed seeking enforcement of Fundamental Rights enshrined in Articles 9, 10A, 14, 17 and 25 of the Constitution as Syed Yousaf Raza Gillani has continued his position as Prime Minister instead of resorting to the remedy available to him under the law, it is held that after having been convicted and sentenced for contempt of Court he has been disqualified, *ipso facto*, from being a Member of the Parliament. Second important question in the mind of the learned counsel for the respondent in raising this plea appeared to be based on a number of grounds and we have been tried to be persuaded to decline the relief to the petitioners on the plea that the judgment of the 7-member bench did not contain some of the elements of the term “contempt” as defined in the Contempt of Court Ordinance, 2003. A similar argument was made by the learned Attorney General. Suffice to reiterate that the learned counsel, or the learned Attorney General – the latter being on Court notice in terms of Order XXVIIA, CPC to assist the Court on constitutional issues, and having also acted as a Prosecutor in the contempt of Court proceedings – could have conveniently agitated the above points by filing an appeal before the appropriate bench against the judgment of the 7-member bench instead of throwing a challenge to the same in a collateral proceedings.

44. M/s Aitzaz Ahsan and Muhammad Munir Piracha insisted that in case this Court comes to the conclusion that the ruling of the Speaker dated 24 May, 2012 is not sustainable, then the matter may be sent back to the Speaker for fresh decision as per law laid down in *Umar Draz Khan v. Muhammad Yousaf* (1968 SCMR 880), *Azmat Ali v. Chief Settlement and Rehabilitation Commissioner* (PLD 1964 SC 260) and *Begum B.H.Syed v. Afzal Jahan Begum* (PLD 1970 SC 29). We have considered the submission of the learned counsel. As has been noted hereinabove, the Speaker had a period of 30 days at her disposal to decide whether she was agreeable to send a reference or not. Though she ought to have decided the question much earlier because the affairs of the country were being run by a Member of the Parliament who had become disqualified after his conviction and sentence passed by the 7-member bench against which neither any appeal was filed nor was it got suspended from the forum provided under the law. However, the Speaker decided the matter on 24 May, 2012, i.e., just one day before the expiry of the period of 30 days provided for the purpose. In the circumstances, the plea for remand is not entertainable, inasmuch as the period of 30 days already having expired, the same cannot be enlarged. In case the decision was not taken in this behalf at the earliest possible, the country would have continued to remain in a serious constitutional crisis. In this view of the matter, the judgments cited by the learned counsel for the respondents are distinguishable on facts and are not attracted to the present case. In *Umar Draz Khan's case*, the election petition was dismissed by the Authority on the ground that it had no jurisdiction to declare the election void as the respondent did not suffer from the

disqualification on account of age at the time of his election as member of the electoral college. The said order was challenged before the High Court through a writ petition, which was accepted and the decision of the Authority was declared to be untenable in law, and it was directed that his name be removed from membership of electoral unit. However, the case was remanded to the Authority to decide the Election Petition in accordance with law. The order of the High Court was challenged before this Court, wherein it was observed that in a proceeding of this nature, the High Court should not have gone into disputed questions of fact and recorded a finding thereon. On the basis of said observations, the order of the High Court so far as it related to the questioning of the order of the Authority and remanding the case to him, was upheld; however, part of the order by which the directions were issued to the Controlling Authority to remove the name from membership of the electoral college, was set aside. In the case of *Azmat Ali's case*, it was held that in a proceeding of extraordinary nature where a superior Court calls for the records of judicial or *quasi-judicial* authorities or tribunals, which are not subject to its appellate jurisdiction, the superior Court no doubt has the full power to do justice, but does not, as a rule, even in a case where it does interfere, substitute its own decision for the decision of the inferior authority or tribunal. Where it is felt that questions have been left undecided by such Tribunal or authority or a question has to be decided after the taking of fresh evidence, it is more appropriate to return the case to authority or Tribunal concerned for decision in accordance with law, after quashing the order complained against. In *Begum B.H.Syed's case*, it was held that the High Court in writ petition against order of the Settlement Authorities is not competent, after quashing the order

of the lower Tribunal, to go into the merits of the case and decide which of the parties was entitled to the transfer of the property in dispute. If the High Court does so, it exceeds its jurisdiction.

45. The above judgments hardly advance the proposition sought to be canvassed by the learned counsel for the respondents, inasmuch as in none of these case, the question of disqualification of a sitting Member of the Parliament, who was also the Chief Executive of the country on account of his conviction recorded by the highest Court, which had attained finality as no appeal was filed against it, and called for no determination of any questions of fact, was involved. Even in *Al-Jehad Trust case*, some Judges were laid off while others were working, therefore, the functioning of the judiciary had not come to a standstill whereas in the instant case 180 million people were being governed by a disqualified Member of the Parliament. Same was the position of the Cabinet, headed by the Prime Minister, inasmuch as all the actions done by the Ministers are considered to be the actions of the Federal Government. Therefore, it was not in the interest of the country and the institution to remand the case.

46. As stated above, while interpreting the Article 63, an effort has been made to keep the case within the four corners of the said provision of the Constitution. As such, reference of the matter to the Election Commission for issuance of notification under the short order dated 19 June, 2012 in the instant case was entirely within the ambit of Article 63(2) in view of the fact that the ruling of the Speaker had been found not sustainable.

47. The crux of the above discussion is that the respondent after having been convicted by the 7-member bench for contempt of courtbecame disqualified to be a Member of the Parliament in terms of 63(1)(g) of the Constitution as he did not avail the remedies provided by law to get such a finding set aside. Therefore, when the matter came before the Speaker, she ought not to have delayed the decision and to have referred it to the Election Commission immediately in view of the exigency of the circumstances, notwithstanding the fact that 30 days' period was available to her, and also keeping in mind that she was not the appellate authority of the Supreme Court whose judgment of conviction had attained finality. In the circumstances, the question in terms of Article 63(2) at best be to send the reference to the Election Commission or not, and by applying her mind she had to decide positively even before the expiry of 30 days' period in the interest of institution and the country to refer the matter to the Election Commission for issuance of notification of disqualification of the respondent from being a Member of the Parliament. Much emphasis was laid by the learned counsel for the respondent on the word 'unless' used in Article 63(2). No doubt, the existing scheme of the Constitution gives the Speaker right to decide the question of disqualification of a person from being a Member of the Parliament in respect of issues, which are required to be probed with reference to the disqualifications envisaged by Article 63(1) where no conviction has been recorded by a Court of competent jurisdiction, which is to be done within the period of 30 days provided in Article 63(2).

48. Here, a word may also be said about the role and function of the Election Commission after a question has been referred, or is

deemed to have been referred to it, by the Speaker under Article 63(2). Article 63(3) provides that 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. Like the Speaker, the Election Commission also cannot sit in appeal over a concluded judgment of a superior court, and has to decide the question in the affirmative that the convicted person has become disqualified, therefore, his seat shall become vacant. As has been noted above, there is a clear distinction in respect of other disqualifications mentioned in Article 63(1), in respect whereof information is laid before the Speaker involving determination of controversial facts. Therefore, the Election Commission may, after a reference from the Speaker, undertake a second scrutiny in such matters. But where there is a conviction recorded by a competent Court against a person, who is a Member of the Parliament, which has attained finality, the role and function of the Election Commission is confined to issuing notification of disqualification of the concerned Member on the basis of verdict of the Court.

49. In the instant case, the Speaker, in not making a reference to the Election Commission under the circumstances of the case, exceeded her jurisdiction, and consumed 30 days' time. In view of facts and circumstances of the present case, the said period of 30 days prescribed by the Constitution cannot be enlarged. Thus, being left with no alternative, matter was sent to the Election Commission for issuance of notification of disqualification of the respondent as a Member of the Parliament with effect from 26 April, 2012 when he was

convicted by the 7-member bench. Considering the fact that the Speaker's ruling was a nullity in the eyes of law, and considering further the clause in Article 63(2) which stipulates that if the Speaker fails to decide if a question of disqualification has arisen within 30 days "it shall be deemed to have been referred to the Election Commission", this Court has concluded that the matter stood referred to the Election Commission. The Election Commission, in turn, considering it a reference deemed to have been sent to it in accordance with the above provision, issued the notification of disqualification of the respondent in exercise of power vested in it under Article 63(3).

50. Now we turn to the question of validity of the decisions made and the acts or actions performed or done by the respondent as Prime Minister of Pakistan on and from 26 April, 2012, the date of his conviction till 19 June, 2012. In this behalf, it is to be noted that this Court in the case of *Asma Jilani v. Government of Punjab* (PLD 1972 SC 139) as well as in Sindh High Court Bar Association's case declined to protect such actions, which were not in accordance with Constitution and the law. In the instant case, the respondent on having been convicted under Article 204(2) of the Constitution read with section 3 of the Contempt of Court Ordinance, 2003 with effect from 26th April, 2012 stood disqualified from being a Member of the National Assembly and became a stranger to the House, but continued to hold the office of the Prime Minister contrary to the Constitution and the law. Therefore, all the decisions made and the acts or actions performed or done by him during that period had no constitutional sanctity. However, the Federal Government or the Provincial Governments, if need be, may refer such matters to the Parliament for the purpose of

ratification of all those decisions, acts or actions or otherwise, in light of the law laid down by this Court in *Sindh High Court Bar Association's case*.

51. Above are the reasons for our short order dated 19 June, 2012, which reads thus: -

> "For reasons to be recorded later, the titled petitions are disposed of as under: -
>
> (1) This Court in exercise of jurisdiction under Article 184(3) of the Constitution of Islamic Republic of Pakistan is competent to ensure enforcement of the fundamental rights of the citizens in all matters of public importance;
>
> (2) The Speaker of the National Assembly under Article 63(2) of the Constitution exercises powers, which are not covered by the definition of internal proceedings of Majlis-e-Shoora, therefore, this Court, in exercise of power of judicial review, is not debarred from inquiring into the order dated 25.05.2012. Reference in this behalf may be made to the cases of *Mining Industries of Pakistan (Pvt.) Ltd. v. Deputy Speaker, Balochistan Provincial Assembly* (PLD 2006 Quetta 36), *Madad Ali v. Province of Sindh* (1996 SCMR 366), *Shams-ud-Din v. Speaker, Balochistan Provincial Assembly* (1994 MLD 2500), *Muhammad Naeem Akhtar v. Speaker, Sindh Provincial Assembly* (1992 CLC 2043), *Farzand Ali v. Province of West Pakistan* (PLD 1970 SC 98); *Muhammad Anwar Durrani v. Province of Baluchistan* (PLD 1989 Quetta 25); *Jagjit Singh v. State of Haryana* (AIR 2007 SC 590) and *Rajendra Singh Rana v. Swami Prasad Maurya* (AIR 2007 SC 1305);
>
> (3) As a Bench of 7 Hon'ble Judges vide judgment dated 26.04.2012 followed by the detailed reasons released on 08.05.2012 has found Syed Yousaf Raza

Gillani guilty of contempt of Court under Article 204(2) of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 3 of the Contempt of Court Ordinance, 2003 and sentenced him to undergo imprisonment till rising of the Court under section 5 of the said Ordinance, and since no appeal was filed against this judgment, the conviction has attained finality. Therefore, Syed Yousaf Raza Gillani has become disqualified from being a Member of the Majlis-e-Shoora (Parliament) in terms of Article 63(1)(g) of the Constitution on and from the date and time of pronouncement of the judgment of this Court dated 26.04.2012 with all consequences, i.e. he has also ceased to be the Prime Minister of Pakistan with effect from the said date and the office of the Prime Minister shall be deemed to be vacant accordingly;

(4) The Election Commission of Pakistan is required to issue notification of disqualification of Syed Yousaf Raza Gillani from being a member of the Majlis-e-Shoora w.e.f. 26.4.2012; and

(5) The President of Pakistan is required to take necessary steps under the Constitution to ensure continuation of the democratic process through parliamentary system of government in the country.

2. We place on record our thanks and appreciation to learned counsel appearing for the parties for providing valuable assistance in deciding these petitions."

Chief Justice

Judge

Judge

Islamabad
19 June, 2012.

APPROVED FOR REPORTING

Jawwad S. Khawaja, J. I have gone through the reasons given by Hon'ble the Chief Justice and by my learned brother Khilji Arif Hussain, J. in support of the short order dated 19.6.2012 and am in respectful agreement with the same. I only wish to add this brief note to elaborate a fundamental principle of the Constitution of Pakistan which appears to have eluded the learned counsel opposing these petitions.

2. An argument was advanced by learned counsel for the respondents and by the learned Attorney General which proceeded on the premise that the elected members of Parliament alone represented the will of the people and, therefore, were not answerable to any other organ of the State including this Court. It is on this account that there was a misplaced reliance by them on Article 69 of the Constitution. This argument (discussed in the lead judgment) proceeds on a false premise. The elected representatives in Parliament and the Executive cannot claim any primacy over and above the Constitution. It is the Constitution which is supreme over all organs of the State because it manifests the will of the people. This is expressly stated in the Constitution itself. In the Preamble, for instance, the Constitution is mentioned as expressing the "*will of the people of Pakistan to establish [a constitutional] order*" and in the Third Schedule, it is stated clearly that the Constitution "*embodies the will of the people*". It is this fundamental principle which is the hall-mark of our democratic dispensation.

3. In an earlier case we have already observed that in so far as all three organs of the State remain within the limits prescribed by the Constitution, "*they have a legitimate claim to being enforcers and exponents of the will of the people. Our Constitution conceives of an Order wherein the various organs of State are co-equals, each manifesting the will of the people and giving effect to such through adjudication, executive action or legislation. It is important that the primacy of the Constitution over the Government as also over the judicature be fully understood.*" (*Syed Yousaf Raza Gillani versus Assistant Registrar, Supreme Court of Pakistan* (PLD 2012 SC 466 para 34). To find the will of the people, we, as Judges, are not required to embark upon any theoretical journey in the realm of abstract political philosophy or to try finding solutions to legal conundrums in alien constitutional dispensations materially different from ours; we need only examine our own Constitution to ensure that the people of Pakistan, the political sovereigns, are obeyed and their will, as

manifested in the Constitution, prevails. This after all is the very essence of a democratic order.

4. When we examine the Constitution, we find that the people in their wisdom have created a balance between Parliament, the Judiciary and the Executive. The rationale behind choosing this form of divided and balanced government was nicely articulated by a political thinker in another continent. He stated: *"[i]f men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions"*(James Madison, in Federalist No. 51, The Federalist Papers). In our Constitution, the division of powers with its distinct features, is perhaps the most important of these "*auxiliary provisions*" which oblige the government and Parliament to themselves be controlled by Constitutional norms and mechanisms. The people of Pakistan have ordained that all three organs of the State are to function in accordance with the Constitution. With the object of ensuring that these organs of the State remain obedient to the Constitution, a simple and uncomplicated mechanism, which relies on the trichotomy of powers, has been set out in the Constitution. There is no room for obfuscation on this score.

5. Since the Executive has been entrusted by the people with the physical and material resources of the State, the Constitution has, in unequivocal terms, commanded that *"all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court"* (Article 190). The Supreme Court does not have to exercise executive or enforcement powers on its own because this is not necessary in light of Article 190 *ibid.* The people have willed that the Executive shall implement and enforce any order passed by the Supreme Court. In order to ensure that there is no disobedience by the Executive, the people have further willed that this Court *'shall have power to punish any person who ... disobeys any order of the Court ... scandalizes the Court or otherwise does anything which tends to bring the Court… into hatred, ridicule or contempt …"* (Article 204). In order to check any

possible disobedience to the Constitution by State organs or members of Parliament by not acting in aid of the Supreme Court or actually refusing to do so, the people have expressly stipulated that *"a person shall be disqualified from being elected or chosen as, and from being a member of Parliament . . . if he has been convicted by a Court of competent jurisdiction for …acting in any manner . . . which defames or brings into ridicule the Judiciary"* {Article 63(1)(g)}. The people have thus, in the clearest possible terms, stated that they will not allow themselves to be represented by a person who has or earns a disqualification under Article 63 *ibid.* As noted in the judgment of Hon'ble the Chief Justice, a seven-member Bench of the Supreme Court has already convicted the former Prime Minister, Syed Yousaf Raza Gillani on this count. Mr. Gillani, by not appealing this decision, has accepted the verdict of the Court. It would, therefore, amount to defiance of the Constitution for an elected member of Parliament to insist upon disobeying constitutional orders and yet remain insistent upon remaining a member of Parliament. The cumulative effect of Articles 190, 63 and 204 is hard to miss; it effectively ensures adherence to the peoples' will embodied in the Constitution. This is an important and distinctive feature of our Constitution which is not to be found in any other jurisdictions that I am aware of.

6. The above fundamental democratic and constitutional concept can be elaborated through a simple illustration. If a member of Parliament starts disobeying the Constitution by looting the public exchequer and continues to do so even when directed by this Court to stop the loot and return the plunder, it is clear that the people have armed this Court with the power under Article 204 *ibid* to convict him. This ensures that the Court is not a helpless bystander incapable of ensuring that the command of the people is fulfilled. The Court can effectively perform the role of the peoples' sentinel and guardian of their rights by enforcing their will; even against members of Parliament who may have been elected by the people but who have become disobedient to the Constitution and thus strayed from their will. This mechanism provides a straightforward governance paradigm, controlled ultimately by the people. It says in effect: *"abide by our will (i.e. the Constitution) or lose the privilege of being our representative".* It is all quite simple.

7. This Court and its empowerment by the people through the Constitution has to be seen as a bedrock of democratic rule. The Court, therefore, has performed its democratic role stated in the Constitution to keep elected representatives in compliance with the will of the people manifested in the Constitution. It is in this context that the law of contempt has to be understood. It is not a device to be used for self aggrandizement by Courts, but must be employed where the will of the people (i.e. the Constitution) is being flouted. Seen in this perspective there can be no hesitation in rejecting the argument that this Court somehow does not represent the will of the people or that it should refrain from enforcing such will simply because the respondent happens to be the Prime Minister. This latter claim, which amounts to a claim of special privilege, has already been rejected by the Court in I.C.A No. 1 of 2012 filed by the Prime Minister. In that case, we reaffirmed the "*timeless and prophetic principle of governance, encapsulated in the well- known saying:* سيد القوم خادمهم *. (The leader of a people is their servant)".* We had held that "*[o]ur constitution manifests the embodiment of this very principle when it obliges the highest executive functionary to carry out the commandments expressed by the people in the form of the constitution and the law*" (Syed Yousaf Raza Gillani v. Assistant Registrar (PLD 2012 SC 466, para 26). Even in a case prior to that, we had elaborated the principle that all State organs and their respective functionaries are in the service of the people and can have as their *raison d'être,* only the enforcement of the will of the people as manifested in the Constitution and the law. In *Muhammad Yasin v. Federation of Pakistan* while examining the legal right of the OGRA Chairman to hold office, we held that "…*holders of public office have to remain conscious that in terms of the Constitution … they 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 in whose name they hold office and from whose pockets they draw their salaries and perquisites*" *Muhammad Yasin v. Federation of Pakistan*- (PLD 2012 SC 132, page 163). Today, in the case of the Prime Minister who is the highest executive functionary of the State, we have no option but to adhere to the same principle.

8. It is also important to remember that all organs of the State have to act in harmony and with due humility as instrumentalities and servants of the people. There is no question of any clash of institutional or individual egos in abiding by the Constitution. In Munir Bhatti's case, we had stated that "*there is nothing unusual or exceptional about differences as to constitutional questions cropping up between constitutional bodies or State functionaries in a democratic dispensation. …. However, as nations mature and polities evolve, their maturity is reflected in the manner in which such differences are resolved in accordance with the governing compact, which is the Constitution… [Such differences] cannot be seen as adversarial turf-wars … or as matters of prestige.* (*Munir Hussain Bhatti v. Federation of Pakistan* (PLD 2011 SC 407para 82).

9. We have also repeatedly held that there can be no instability in the country as long as the Constitution is adhered to. We operate in a dispensation of laws and not of men. Individuals in such dispensation, are not indispensable; they are here today but may be in the hereafter tomorrow. As Iqbal said: ثبات اک تغیر کو ہے زمانے میں . In the case titled Syed Yousaf Raza Gillani vs. Assistant Registrar, Supreme Court of Pakistan *ibid*, we have held: "*What happens to an individual can be of little consequence as long as State institutions continue functioning in accordance with the Constitution. The anachronistic notion of "**après moi, le déluge**" has no room in a Constitutional order based on institutions rather than individuals*" (para 31). This observation has been fully vindicated in the recent events of the past few weeks. Constitutional rule has been strengthened by the fact that a former Prime Minister who was disobedient to the Constitution has been replaced in Parliament and the affairs of State continue unimpeded in accordance with the constitutional order which, as noted above, is the embodiment of the will of the people.

10. At this point it is important to note that clause (g) of Article 63(1) was amended in 2010 through the 18th Constitutional Amendment. This amendment is of material significance in the present case but the change appears to have escaped the attention of the learned Attorney General and learned counsel representing the respondents. Prior to the 18th amendment clause (g) of Article 63(1) did not contain any reference to the conviction by a Court of competent jurisdiction, of a member of the National Assembly.

But after the said amendment, clearly there is no room left for the exercise of decision making by the Speaker when a member of Parliament stands *"convicted by a Court of competent jurisdiction ..."*. At this point I respectfully reiterate the reliance by Hon'ble the Chief Justice on the case law referred to in his detailed reasoning. It is abundantly clear from the judgment of the learned seven-member Bench of this Court that the conviction of Syed Yousaf Raza Gillani is, without doubt, in respect of the disqualifying conditions of Article 63(1)(g). A substantial part of the argument of learned counsel for Mr. Gillani and of the learned Attorney General, were addressed towards perceived errors in the judgment of the said learned Bench. These, however, have no relevance whatsoever in the present proceedings because the judgment of the seven-member Bench has attained finality and there is no lawful basis on which we, in these proceedings, or the Speaker could have gone against the said judgment or reviewed the same.

11. While concluding this note I would like to add that there is no justification in our dispensation, for muddying the crystal and undefiled waters of our constitutional stream with alien and antiquated, 19th Century Diceyan concepts of Parliamentary supremacy. These concepts have lost currency even in their own native lands. As Lord Steyn writing in the House of Lords, the highest Court of England (the land of our former colonial masters), has written in a recent case, *"[t]he classic account given by Dicey of the doctrine of supremacy of Parliament, pure and absolute as it was, can now be seen to be out of place in the modern United Kingdom"*. *Jackson & others (Appellants) v. Her Majesty's Attorney General (Respondents)* [(2005) UKHL 560]. It is about time, sixty-five years after independence, that we unchain ourselves from the shackles of obsequious intellectual servility to colonial paradigms and start adhering to our own peoples' Constitution as the basis of decision making on constitutional issues.

(Jawwad S. Khawaja)
Judge

KHILJI ARIF HUSSAIN, J.- I have gone through the draft opinion recorded by Hon'ble Chief Justice of Pakistan in this case. However, I would like to record my independent reasoning in reaching that outcome.

2. The facts of the case have been elaborated in the main judgment by the Hon'ble Chief Justice. It would suffice here to highlight some key aspects of the events leading up to the hearing of this petition. Mr. Yusuf Raza Gilani, former Prime Minister of Pakistan, hereinafter referred to as "the respondent", was charged by a 7-member bench of this Court under Article 204 (2) of the Constitution of Islamic Republic of Pakistan, 1973 read with section 3 of the Contempt of Court Ordinance (Ordinance V of 2003). On 26 April, 2012, following a full hearing, the respondent was convicted and sentenced under section 5 of the Ordinance to undergo imprisonment till the rising of the Court. The 7-member bench of this court did not, however, hold that the respondent was disqualified from being a member of the Majlis-e-Shoora (Parliament) under Article 63(1)(g) of the Constitution and, showing great restraint and wisdom, left the same to be determined through mechanisms provided for in the Constitution of Pakistan.

3. It must be noted that at this stage there were three legal possibilities that remained open. Firstly, the respondent could have appealed the decision of the 7-member bench in which case he could have presented several substantive arguments, which his counsel

unsuccessfully tried to raise in the current proceedings, before a larger bench of this Court. Secondly, the Speaker of National Assembly could have exercise her independent judgment and referred the question of the former Prime Minister's disqualification as member of Parliament to be determined by the Election Commission pursuant to sub-clauses (2) and (3) of Article 63.

4. The respondent chose not to appeal. Instead, he waited for the Speaker to exercise the limited administrative discretion entrusted to her under Art. 63(2) to determine whether a question of disqualification had arisen. In the presence of this Court decision finding the respondent guilty of contempt and bringing the judiciary into ridicule it ought to have been evident to the Speaker how that role were to be performed. However, the Speaker failed to bring an impartial approach to the matter and purported to decide that no question of disqualification had arisen. In the immediate aftermath of the Speaker's action various petitions were filed under Art. 184(3) of the Constitution before this Court challenging the Speaker's ruling. The petitioner prayed that, inter alia, after the judgment of the 7-member bench of this Court the respondent stood disqualified to be a member of the Majlis-e-Shoora (Parliament) and hence ceased to be the Prime Minister on and from the day and time of his conviction. Such are the genesis of the present controversy.

5. The respondent, by following the above-mentioned course of action, dis-abled himself from raising arguments concerning the validity of his conviction and immunity, if any, under the Constitution. As the respondent has not questioned his conviction by filing an appeal, the only question before the bench in the present case was that of the effect of the

conviction for contempt in terms of the disqualification of the contemnor from being a member of Parliament. **This bench thus neither entertained arguments regarding the merits of the conviction and a Prime Minister's immunity from prosecution nor ruled upon them.** The only relevant arguments raised by the respondent were with regard to the maintainability of the petition, the justiciability of the Speaker's ruling, and the process of disqualification of a member of Parliament under the relevant provisions of the Constitution. These matters are discussed in detail below.

MAINTAINABILITY OF THE PETITION

6. In the opinion recorded by Hon'ble Chief Justice this aspect of the matter has been dealt with in detail, and this petition has been entertained under the Original Jurisdiction of the Supreme Court under Article 184(3) of the Constitution of Pakistan, 1973. Under the said provision the Supreme Court may make an order of the nature mentioned in Article 199 which provides for the 'Writ' jurisdiction of the High Courts. Article 199(1)(b)(ii) enables the high Courts to make an order, on the application of any person, "requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office." This, as any administrative lawyer would recognize, is in the nature of the traditional prerogative writ of ***quo warranto*** albeit without the technical limitations under which the traditional Common Law writs were exercisable. There is no requirement of *locus standi* for bringing a petition before the High Courts and by extension before the Supreme Court. There are, however, two requirements which have to be met before the Supreme Court may directly entertain such a petition under its Original Jurisdiction under Art. 184(3). The petition must raise "a question of

public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II."

7. Lawyers, and of course judges too, are by their nature and training creatures of habit or 'tradition'. The counsels appearing for the parties in petitions under Art. 184(3) habitually or traditionally make arguments for and against the maintainability of such petitions by tying or rejecting the tying of the subject matter of the petitions to specific Fundamental Rights provisions in Chapter I of Part II of the Constitution. In the present case one can argue that the petitioner's Fundamental Rights under Art. 17 (Freedom of Association which includes the right of political participation and the right to be governed by chosen representatives) is most directly affected. However, this practice of identifying individual Fundamental Rights which are affected in a case such as this is somewhat anachronistic. It is tantamount to pretending that the remarkable developments over the course of nearly two and half decades, since the seminal decision of this Court in *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416) in 1988, *i.e.* the development of Public Interest Litigation, never happened. This court, however, is very mindful of the march of history, in particular the collective wisdom of superior court judges of the past and present as it has come to be reflected in the progressive development of the Writ jurisdiction of the High Courts and the Original Jurisdiction of the Supreme Court.

8. In *Benazir Bhutto's case,* this Court began the process of progressively relaxing the requirement of *locus standi*, one of the hallmarks of an adversarial legal system and a legacy of the ideology which sees citizens as individual right-bearing subjects. In relaxing the requirements of *locus*

standi, which were ultimately whittled down by the end of the 20th Century, the Court noted that this would render more meaningful the "protection of the rule of law given to citizens by Article 4 of the Constitution, that is ... [t]o enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen." Thus, in this decision the Court began reading the Fundamental Rights provisions in Chapter I of Part II of the Constitution in harmony with the other provisions of the Constitution. Furthermore, the bench in *Benazir Bhutto's* case also initiated the vital process of harmonizing the remedies and processes under the Original Jurisdiction of the court with the Fundamental Rights, hereafter seen as collective public rights as much as private individual rights. The Court observed that the right of "*access to justice ... is not only an internationally recognized human right but has also assumed constitutional importance as it provides a broad-based remedy against the violation of human rights and also serves to promote socio-economic justice which is pivotal in advancing the national hopes and aspirations of the people permeating the Constitution and the basic values incorporated therein, one of which is social solidarity, i.e. national integration and social cohesion by creating an egalitarian society through a new legal order.*" In extension of this progressive process of development, this Court subsequently whittled down the requirement of a formal petition in the landmark case of *Darshan Masih v. The State* (PLD 1990 SC 513) where this Court converted a telegram from a bonded labourer into a petition. Furthermore, even prior to these developments in Public Interest Litigation, the Supreme Court had begun initiating cases *suo motu.* See *Shrin Munir v. Government of Punjab* (PLD 1990 SC 295).

9. Similar developments have taken place with regard to the definition of public importance. Whereas in the early years the Court

demanded that a matter will be considered one of public importance if it affects not just one or a few individuals but the public at large, by mid 1990s the Court began to appreciate the inherent link between the two conditions laid down in Art. 184(3). In *Shahida Zahir Abbassi v. President of Pakistan* (PLD 1996 SC 632) the Court observed that:

> *Public Importance should be viewed with reference to freedom and liberties guaranteed under Constitution, their protection and invasion of these rights in a manner which raises a serious question regarding their enforcement, irrespective of the fact whether such infraction of right, freedom or liberty is alleged by an individual or a group of individuals.*

10. Therefore and thereafter this Court has admitted petitions that raise matters concerning the interpretation of any of the Fundamental Rights or which may affect the enforcement of the Fundamental Rights of the public at large for such petitions by definition raise matters of public importance.

11. Furthermore, in *Benazir Bhutto's* case the Court observed that individual Fundamental Rights provisions could not be read in isolation. Instead the Court's "*interpretive approach must receive inspiration from a the triad of provisions which saturate and invigorate the entire Constitution, namely, the Objectives Resolution (Article 2-A), the Fundamental Rights and the directive principles of State policy so as to achieve democracy, tolerance, equality and social justice according to Islam.*". In *Muhammad Nawaz Sharif v. President of Pakistan* (PLD 1993 SC 473), this Court observed that Article 17, the Fundamental Right provision arguably most relevant to the present petition, could not meaningfully be read individually and in isolation:

> *While construing Article 17 ... our approach should not be narrow and pedantic but elastic enough to march with the changing times and guided by the object for which it was embodied in the Constitution as a Fundamental Right. Its full import and meaning must be gathered from other provisions such as the preamble of the Constitution, principles of policy and the Objectives Resolution, which shed luster on the whole Constitution.*

12. In another landmark case, that of *Shehla Zia v WAPDA* (PLD 1994 SC 693), this Court pointed out that the Fundamental Rights provisions in Chapter I of Part II of the Constitution, including the Right to Life in Art. 9, were animated by a collective spirit and in turn enlivened the entire Constitution, technical procedural provisions *et al*. It was held that the Fundamental Rights provisions in Chapter I of Part II of the Constitution were to be thereafter read in the light of the Principles of Policy provided in Chapter II of Part II of the Constitution and in accordance with the aspirations for social justice and substantive equality incorporated therein.

13. In the light of the above discussion, it may be surmised that in certain classes of cases the threshold of meeting the test of "public importance with reference to the enforcement of any of the Fundamental Rights" is invariably low. In particular, three categories of cases can be highlighted in which this Court has found that the test of maintainability is rather easily met. These comprise cases that involve the interpretation of constitutional provisions governing the structure, functioning and

accountability of the institutions of state under the Constitution. In one such category lie cases that raise questions concerning the independent functioning, appointment and accountability of the superior judiciary. In the seminal case of *Al-Jehad Trust v. Federation of Pakistan* (PLD 1996 SC 324) the Court observed that "*not only a practicing advocate but even a member of the public is entitled to see that the three limbs of the State, namely the Legislature, the Executive, and the Judiciary act not in violation of any provision of the Constitution, which affects the public at large*." While the above statement was made specifically with reference to the requirement of *locus standi* the same principle may be and was in fact extended to other conditions of maintainability in that and subsequent cases concerning the judicial branch. As the judiciary is the institution responsible for the interpretation and ultimately the enforcement of Fundamental Rights under the Constitution, when questions of constitutional interpretation and enforcement regarding the independence, appointment and functioning of the judiciary are raised, these are by definition questions of public importance relating to the enforcement of Fundamental Rights. Notable recent examples are the *Chief justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan* (PLD 2010 SC 61, PLD 2007 SC 578) and *Nadeem Ahmed, Advocate v. Federation of Pakistan* (PLD 2010 SC 1165).

14. Another category of cases where the threshold requirement of "public importance with reference to the enforcement of any of the Fundamental Rights" is relatively low are those involving the processes for the election, qualification, disqualification of the members, and the legislative powers of the legislature. This Court has found that such cases meet the test of maintainability by their very nature as it is the legislative institutions and the legislators who are responsible for framing laws that both give meaning

to and impose limitations on the citizens' rights, including Fundamental Rights. It must be noted that a number of Fundamental Rights provisions in Chapter I of Part II of the Constitution are subject to restrictions imposed by law or otherwise enjoyable within parameters laid down by laws which are framed by the legislatures. Such Fundamental Rights provisions include, for example, the following: Art 9, Security of person – Art 10, Safeguards as to arrest and detention – Art 11(4), Slavery, Forced labour etc. – Art 14, Dignity of man – Art 15, Freedom of movement – Art 16, Freedom of assembly – Art 17, Freedom of association – Art 18, Freedom of trade – Art 19, Freedom of speech – Art 19A, Right to information – Art 20, Freedom of religion – Art 22 (3), Safeguards as to religious institutions – Art 23, Provision as to property – Art 24, Protection of property rights – Art 25, Equality of citizens – Art 25A, Right to education – Art 27, Safeguards against discrimination in services – Art 28, Preservation of language, script and culture. Any case which raises a matter of constitutional interpretation and enforcement regarding the composition, processes and powers of the legislatures is thus by its very nature a case of public importance, as it affects the rights of the public at large, and also affects the Fundamental Rights of the citizens. This principle has been firmly established since *Benazir Bhutto* and *Nawaz Sharif* cases. As a result, in a number of cases, some of which shall be dealt with in detail in the following paras, petitions concerning the qualifications and disqualifications of members of the National Assembly have been admitted by the Court. The Court has admitted petitions concerning qualifications and disqualifications to contest elections to Senate as well [*Javed Jabbar v. Federation of Pakistan* (PLD 2003 SC 955)]. Most recently, in *Workers Party v. Federation of Pakistan* (C.P. No. 87/2011) the entire process for the election of members of national and provincial assemblies was reviewed by the Supreme Court in a petition brought under Art. 184(3).

15. A third category of cases which meet the maintainability test of Art. 184(3) by their very nature are those which pertain to appointments, promotions, dismissals, disciplining, transfers, powers and accountability of key executive officials, including but not limited to ministers, senior bureaucrats and heads of regulatory bodies and statutory corporations. The executive, especially its upper echelons, is the first and foremost branch of the constitutional government which is entrusted with the execution of laws and framing and enforcement of policies which directly affect the citizens' rights, including Fundamental Rights. Therefore, any petition which raises questions of constitutional interpretation and enforcement affecting the structure, powers and procedures of the top executive, including the elected representatives heading ministries, career bureaucrats heading or overseeing important functions in the government departments and top officials responsible for the functioning of regulatory bodies and statutory corporations by their very nature raise questions of public importance concerning Fundamental Rights. In this category fall cases such as *Muhammad Yasin v. Federation of Pakistan* (PLD 2012 SC 132), *In re Tariq Aziz-ud-Din* (2010 SCMR 1301), and *In the matter of: Alleged Corruption in Rental Power Plants, etc.* (2012 SCMR 773).

16. It does not mean, however, that a case falling under any of the above categories will be automatically admitted for hearing. There are other principles in light of which a petition falling under any of the above categories may be denied. The Supreme Court retains the discretion to deny petitioners who approach the Court after undue delay or with unclean hands. More significantly, since one of the key purposes of this supervisory jurisdiction of the Court under Art. 184(3) is to ensure the proper working

and reform of lower judicial, quasi-judicial and administrative organs of the state, this Court refuses to exercise its jurisdiction where other forums that are efficacious and suitable are available. Furthermore, if a petition involves the need for extensive fact-finding which may more appropriately be done by another forum this Court will refuse to entertain a petition under Art. 184(3) and will direct that it be adjudicated before that forum. Even otherwise, Article 184 (3) and Article 199 of the Constitution regulate the Jurisdiction of the superior Court and do not oust it. The question as to whether a particular case involves the element of Public Importance is to be determined by this Court with reference to the facts and circumstances of the each case.

17. The present case – which raises questions regarding the interpretation and enforcement of Articles 62, 63, 69, 204 and 225 – clearly falls in the second category of cases outlined above as it deals with the qualifications and disqualifications of members of Parliament and the role of the Speaker of National Assembly and the Election Commission in the disqualification process. Furthermore, as the respondent was also the Prime Minister and the elected head of the executive, his case also falls in the third category of cases outlined above. Additionally, as this case also raises questions concerning the interpretation of Articles 63(1)(g) and 204 it also falls in the first category of cases outlined above which includes cases that deal with the role of the judiciary, the enforcement of its decisions and the effects of convictions for contempt. There is thus no doubt that this case by its very nature raises questions of public importance with reference to the enforcement of Fundamental Rights conferred by Chapter I of Part II of the Constitution of Pakistan. Additionally, as will be argued in detail later, the Speaker's ruling rendered the mechanism for adjudicating questions of disqualification under Art. 63(2) inefficacious. Therefore, the alternate forum

became unavailable. The petition also did not raise any issues of fact-finding as the relevant facts were admitted and available on record.

JUSTICIABILITY OF THE SPEAKER'S RULING

18. The respondent's counsel raised certain arguments which if accepted would bar a review of the Speaker's ruling under Art. 63(2) in the present case. Barrister Aitzaz Ahsan, ASC, argued before us that the Speaker's ruling pursuant to art 63(2) is non-justiciable before either the High Court in a petition brought under Art. 199, or before the Supreme Court in a petition brought under Art. 184(3). His contention was that Art. 63(2) provides the Speaker with an unfettered, exclusive and complete discretion to decide if "any question arises whether a member of Majlis-e-Shoora (Parliament) has become disqualified from being a member." He relied in particular on an amendment to the said provision through the Constitution (Eighteenth Amendment) Act, 2010, which inserted the phrase "unless he decides that no such question has arisen" in that provision. The learned counsel was of the opinion that through this insertion the Parliament intended the Speaker to have complete and exclusive powers to decide if any question of disqualification had arisen in a case. A related argument advanced by the Speaker's counsel, Mr. Munir Piracha, ASC also merits consideration. The learned counsel referred to Art. 69 of the Constitution which provides that:

> 69. Courts not to inquire into proceedings of Majlis-e-Shoora (Parliament).
>
> (1) The validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure.

(2) No officer or member of Majlis-e-Shoora (Parliament) in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in Majlis-e-Shoora (Parliament), shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

19. Both these arguments are easily dismissed. Dealing with the argument concerning the interpretation of Art. 69 of the Constitution it must be pointed out that the Speaker's ruling under Art. 63(2) does not fall under the category of decisions – "regulating procedure or the conduct of business, or for maintaining order" – which are held to be immune from review by this Court. In *Fazalul Quader Chaudhury v. Shah Nawaz* (PLD 1966 SC 105) the issue pertained to the vacation of a member's seat due to a purported resignation. The Court faced with the argument that Art. 111 of the 1962 Constitution (counterpart to Art. 69 of the 1973 Constitution) ousted its jurisdiction observed that:

> *The question that falls for determination in the instant case relates more to the constitution of the Legislative Assembly itself, in so far as the point raised is whether, on a true interpretation of the provisions of the Constitution, a sitting Member's seat has become vacant or not. No matter relating to "the regulation of procedure, the conduct of business or the maintenance of order in the Assembly" has been brought under review. Article 111 is consequently not attracted to the case and the Court's jurisdiction is not ousted. Indeed, the High Court's jurisdiction is eminently invokable under Article 98 to correct any error of law or any transgression of jurisdiction by any person or authority in circumstances akin to those prevailing in the instant case so long as the order to be passed is not repugnant to any other provision of the Constitution. No such danger exists here. The*

> *Constitution contains a scheme for the distribution of powers between various organs and authorities of the State, and to the superior judiciary is allotted the very responsible though delicate duty of containing all other authorities within their jurisdiction, by investing the former with powers to intervene whenever any person exceeds his lawful authority. Legal issues of the character raised in this case could only be resolved in case of doubt or dispute, by the superior Courts exercising judicial review functions, assigned to them by the fundamental law of the land, viz., the Constitution which must override all other sub-constitutional law. The judges of the High Court and of this Court are under a solemn oath to "preserve, protect and defend the Constitution" and in the performance of this onerous duty they may be constrained to pass upon the actions of other authorities of the State within the limits set down in the Constitution not because they arrogate to themselves any claim of infallibility but because the Constitution itself charges them with this necessary function, in the interests of collective security and stability. In this process, extreme and anxious care is invariably taken by the Judges to avoid encroachment on the constitutional preserves of other functionaries of the State and they are guided by the fullest and keenest sense of responsibility while adjudicating on such a matter. The action take by the Speaker was clearly not sacrosanct in this case and its legality was open to challenge under Article 98 of the Constitution.*

20. Likewise, in *Farzand Ali v. Province of West Pakistan* (PLD 1970 SC 98), a case dealing with the potential disqualification of members of the assembly for being in the service of Pakistan, this Court clearly noted that a question of disqualification is a:

> *[Question affecting the constitution of the House and, therefore, it is not a question which can possibly be barred from enquiry by the Courts under Article 111 of the Constitution. This is not a matter which pertains either to the regulation of the procedure of the House or the conduct of its business or the maintenance of order in the Assembly or affecting any of its privilege. This is not a question, therefore, which ... relates to the "internal proceedings" of an Assembly. Clause (1) of Article 111 bars the Courts only from enquiring into the validity of "proceedings in an Assembly" in the formal sense and nothing more.*

21. In subsequent cases the High Courts have consistently upheld the principles enunciated in *Fazalul Quader Chaudhury* and *Farzand Ali*. In *Muhammad Anwar Durrani v. Province of Balochistan* (PLD 1989 Quetta 25), for example, a four member bench of the learned High Court of Balochistan dismissed a challenge to its jurisdiction under Art. 69(1) on the basis that the said provision only barred the court from adjudicating on any "irregularity of procedure" and the court was fully entitled to interpret a constitutional provision. In *Muhammad Naeem Akhtar v. Speaker, Sindh Assembly* (1992 CLC 2043) the Divisional Bench of the High Court of Sindh ruled that the action of the Speaker in accepting the resignation of certain members did not fall under either the definition of "any proceedings" in Sindh Assembly under clause (1) or that of the exercise of power by the Speaker "for regulating procedure or the conduct of business, or for maintaining order" under clause (2) of Art. 69.

22. A more recent case in which the Speaker of Senate's decision was held to be subject to review is that of *Asif Ali Zardari v. Federation of Pakistan* (PLD 1999 Karachi 54). Mr. Zardari had been elected as a senator

while he was interned while facing trial in two separate cases and was unable to attend the ceremony to take his oath as a Senator. Both the trial courts exhibited a willingness to temporarily release Mr. Zardari in order to enable him to take the oath if the Chairman of Senate summoned him for this purpose. Rule 72-A of the Rules of Procedure and Conduct of Business in the Senate, 1988, enabled the Chairman to do so. However, the Chairman of Senate refused to summon Mr. Zardari on the basis that since he had not taken oath he was not yet a senator and hence could not be thus summoned. When Mr. Zardari challenged the Chairman Senate's decision before the High Court under Art. 199, the respondent sought immunity from proceedings pursuant to Art. 69. In dismissing this objection the learned High Court of Sindh observed that:

> *The argument, however, overlooks that it is not each and every act of such officer or member, as is embraced by Article 69(2), inclusive of the Chairman, that is protected. It is only an exercise of power, which has a nexus with regulating of procedure or the conduct of business or maintaining of order in the parliament which is, thus, made immune, though subject to time honoured constraints. ... Besides, it is often overlooked that the protection in clause (1) of Article 69 to which clause (2) also is subject, protects only "any irregularity of procedure" and obviously not a patent illegality. Summoning a member to a session of a House of Parliament does not appear to us to be a matter, which pertains to the regulation of procedure or conduct of business or maintenance of order in a House of Parliament and is, therefore, speaking strictly, beyond the ambit of immunity.*

23. Likewise, in *Mining Industries of Pakistan (Pvt.) Ltd. v. Deputy Speaker* (PLD 2006 Quetta 36) the Full Bench of the High Court found that "*a question relating to the title of a person to be a Member of the House or to continue to sit therein is not a question pertaining to the internal proceedings of the house, but a question affecting the constitution of the House and not barred from inquiry by the Courts under Article 199*."

24. The jurisprudence of the Supreme Court of India on this subject is particularly worth noting. In *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha* (2007 (3) SCC 184) the Supreme Court noted that the Tenth Schedule to the Indian Constitution expressly excluded the jurisdiction of the courts "*in respect of any matter connected with the disqualification of a Member of a House*." Nonetheless, the court observed that "*notwithstanding the existence of finality clauses, this Court exercised its jurisdiction of judicial review whenever and wherever a breach of fundamental rights was alleged. … [T]he Speaker (or the Chairman, as the case may be) deciding questions of disqualification … may be acting as authorities entrusted with such jurisdiction under the constitutional provisions. Yet, the manner in which they exercised the said jurisdiction is not wholly beyond the judicial scrutiny*."

25. These cases clearly establish that in performing her function under Art. 63(2) the Speaker is acting in an administrative or quasi-judicial capacity which does not relate to the internal processes, conduct of business or the maintenance of order in the House. Her actions are reviewable under the Writ jurisdiction before the High Court or under the Original Jurisdiction of the Supreme Court like those of any other functionary performing administrative or quasi- judicial functions.

26. As regards the argument that recent amendment to Art. 63(2) has vested untrammelled, subjective and exclusive powers in the Speaker to decide if a question concerning disqualification has arisen, while it is correct that the Speaker is not merely a post office, it is also evident that her role in the disqualification process is very limited. The only discretion that the Speaker has under Art. 63(2) is to decide whether "***any question arises*** whether a member of Majlis-e-Shoora (Parliament) has become disqualified from being a member." In fact, a perusal of the relevant provision in the **Rules of Procedure and Conduct of Business in the National Assembly, 2007,** which was left unamended in the aftermath of the Constitution (Eighteenth Amendment) Act, 2010, indicates that in the National assembly's internal view the Speaker has a very limited role in the disqualification process. Rule 45 in Chapter VI reads as follows:

> **45. Unseating, disqualification and death of a member. –**
>
> (1). If any member is unseated as a result of an election dispute under Art 225 or becomes disqualified from being a member under Article 63, the Chief Election Commissioner shall immediately intimate that fact to the Speaker stating the date on which he has been unseated or, as the case may be, disqualified from being a member and on receipt of such intimation the Speaker shall, as soon as may be, inform the Assembly that such member has been unseated or disqualified by the Chief Election Commissioner.

27. As regards the contention by learned Sr. ASC Aitzaz Ahsan that the word "any" has to be given the widest possible meaning, we did not agree with this position for otherwise the Speaker's discretion would have been read down to a virtual nullity as it would have been confined to determining

if ***any question whatsoever*** has arisen, which test would have been satisfied in a much wider category of cases.

28. In response Mr. A. K. Dogar, ASC, counsel for the petitioner, pointed out a much more significant amendment brought in Art. 63(1)(g) by the Constitution (Eighteenth Amendment) Act, 2010. Through the said Amendment Act the requirement of a ***conviction by a court of competent jurisdiction*** was added to sub-clause (g) of Art. 63(1). This amendment was evidently designed to raise the threshold of disqualification under the said sub-clause. Another important consequence of this change, however, has also been that the Speaker's role under Art. 63(2) in the category of cases falling under Art. 63(1)(g) has been reduced only to determining as a matter of fact if such a conviction exists and whether 5 years have elapsed since the date of such a conviction. Once a court of competent jurisdiction has found a member of Parliament to be guilty of contempt "for 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" the Speaker is bound to refer the matter to the Election Commission under Art. 63(2).

THE DISQUALIFICATION PROCESS AND THE COURTS' ROLE

29. Coming now to the crux of the matter, this Court has been asked to delineate the process and conditions for the disqualification of a member of Parliament pursuant to Article 63(2) and (3), in particular under the ground of disqualification provided for in sub-clause (g) of clause (1) thereof. It has been argued by the respondent that the Articles 225 and 63(2) of the

constitution together provide the exclusive mechanism for the disqualification of a member of Parliament, meaning that there is no role for a superior court in this regard. Let me reproduce the above provisions for ease of understanding. Article 225 states:

> No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament).

Article 63(2) states:

> If any question arises whether a member of 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 should he fail to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission.

Note that while Article 225 expressly provides for the adjudication of "election disputes" exclusively before election tribunals and seeks to oust the jurisdiction of the courts, no such exclusionary language is found in Article 63(2) and would have to be inferred as a matter of necessary intendment. Also note that while it is difficult to draw hard and fast distinctions, Art 225 appears to provide the mechanism for pre-election disqualification, i.e. disqualification that existed at the time of elections, along with other election disputes. Art 63(2), on the other hand, appears to provide the mechanism of dealing with post-election disqualification, i.e. disqualification arising after the election of a person as a member of Parliament.

30. The respondent's argument appears to be that these provisions are animated by a common spirit and together provide for an exclusive mechanism for dealing with disqualification questions. Thus, if a candidate or elected member of Parliament is alleged to suffer from a pre-election disqualification, for example if he/she had been convicted of contempt that fell within the parameters of Art.63(1)(g) prior to the election, his/her case may be dealt with through an election petition but if a member is convicted of contempt after the elections then his/her case ought to be dealt with exclusively under Art. 63(2). However, as was pointed out at the outset, Art. 199(1)(b)(ii) and 184(3) entrust the courts with the jurisdiction to require a person "holding or purporting to hold a public office to show under what authority of law he claims to hold that office." This appears to provide the superior courts with an independent power to adjudicate upon questions of disqualifications of members of Parliament along with other persons holding or purporting to hold public office. As such, the two sets of provisions need to be reconciled with each other and read harmoniously together.

31. It must be stated upfront that the present case is the first instance in which the question of the proper scope and interpretation of Art. 63(2) has been raised – it is a case of first impression and hence fit for adjudication under this Court's Original Jurisdiction. However, there is a long line of cases in which this Court has found that the superior courts have an independent power of adjudicating questions of qualifications and disqualifications of members of Parliament under Art. 199(1)()(ii) and 184(3) despite the seemingly exclusionary nature of Art. 225. The principles stated in these cases are by extension equally applicable to questions of disqualification falling under the purview of Art. 63(2) meaning thereby that

the mechanism provided for in the said provision cannot be the exclusive manner of dealing with such questions and must be reconciled with the relevant jurisdictions of the superior courts. Following is a detailed analysis of the relevant precedents of the Supreme Court.

32. An early clear statement of the relevant principles is found in the case of *Farzand Ali v. Province of West Pakistan* (PLD 1970 SC 98). The Court rejected the argument that the writ jurisdiction of the High Courts was barred by Art. 171 of the 1962 Constitution (counterpart to Art. 225 of the 1973 Constitution) and election petitions were the exclusive mechanism for dealing with questions of disqualification of members of Parliament on the following grounds:

> *[T]his would be allowing a person to continue to remain a member of an Assembly even though Article 103 of the Constitution says that he cannot. Secondly, because, the dispute raised after an election is not, a dispute relating to or arising in connection with an election but a dispute regarding the right of the person concerned from being a Member of an Assembly. An election dispute is a dispute raised by a voter or a defeated candidate in his individual capacity under the Statute. It determines the private rights of two persons to the same office but a proceeding for an information in the nature of quo warranto is invoked in the public interest. The latter seeks to determine the title to the office and not the validity of the election. These are two distinct and independent remedies for enforcing independent rights, and the mere fact that the disqualification has been overlooked or what is worse, illegally*

> *condoned by the authorities who were responsible for properly scrutinizing a person's right to be enrolled as a voter or his right to be validly nominated for election would not prevent a person from challenging in the public interest his right to sit in the house even after his election if that disqualification is still continuing. ... The introduction of election petitions to test the validity of elections and statutory provisions for appeals, have no doubt reduced the demand for the remedy but have not excluded it altogether. It will still be available in all cases where the matter is, as in the case under consideration, outside the scope of the statutory remedy.*

33. In the aftermath of the promulgation of the 1973 Constitution of Pakistan the cases raising the question of disqualification process are very much in line with *Farzand Ali* (above). There are, however, some cases which incorporate *obiter dicta* that support the respondent's contention that the mechanisms provided in Art 225 and 63(2) either completely exclude or severely curtail the jurisdiction of the courts. In ***Election Commission of Pakistan v. Javaid Hashmi*** (PLD 1989 SC 396), for instance, made the following observations (at pages 416 and 417):

> *In enacting Article 225 in the Constitution the purpose of Legislature is obvious that it did not contemplate two attacks on matters connected with the election proceedings; one while the election process is on and has not reached the stage of its completion by recourse to an extraordinary remedy provided by Article 199, and another when the election has reached the stage of completion by means of an election petition. ... It is, therefore, that the constitutional provision is expressed in the negative form to give exclusive jurisdiction to the*

> *Tribunals appointed by the Election Commissioner and thus to exclude or oust the jurisdiction of all Courts in regard to election matters and to prescribe only one mode of challenge. The purpose is not far to seek as in all democratic Constitutions such as is ours the Legislatures have an important role to play, and, therefore, it is of utmost importance that the election should be held as scheduled without being unduly delay or prolonged by challenging matters at an intermediate stage.*

34. It must be noted, however, that this case involved a challenge to the appointment of electoral staff through the Writ jurisdiction of the High Court prior to the holding of elections and the majority of the Court was concerned specifically with the disruption to the electoral process. This is evident in the above quote in references to the intermediate stage at which the Writ petition was brought and decided. Furthermore, the majority was also mindful of the extent of fact-finding required to determine the issues raised in the petition which could more appropriately be done in an election petition rather than in a petition brought under Art. 199. It must also be noted that in a forceful dissent Justice Nasim Hasan Shah observed (at p. 429) that:

> *[Any decision or order made by a functionary charged with the conduct of elections which is made in excess of his authority, being coram non judice, would still be subject to the control of the High Court in exercise of its jurisdiction under Article 199. The legislature expects every statutory authority to act within the limits of the law and if any such authority steps out of these limits or refuses to function as the law requires him to function and he proceeds to make an order not within the limits of the law; such an order can be*

declared under Article 199 of the Constitution as without lawful authority and to be of no legal effect.

35. In ***Sabir Shah v. Saad Muhammad Khan*** (PLD 1995 SC 66) several *obiter dicta* are found in the majority opinions that appear to suggest that under Art. 63(2) the Election Commission is the exclusive forum for determining questions of disqualification. However, these *dicta* are of little persuasive value as that case dealt with the *vires* of a statutory provision, namely Section 8-B of the Political Parties Act, 1962, and not with the superior courts independent jurisdictions under the Constitution. The court found that Section 8-B of the Political Parties Act, 1962 was invalid to the extent that it provided a forum other than the Election Commission in the form of an appeal to the Supreme Court. The majority of the Court noted that while Art 63(1), as it then stood, enabled the legislature to add to the grounds of disqualification, Art 63(2) provided exclusively for the Election Commission as the forum at which these grounds could be adjudicated. There is no doubt even at present that the Election Commission is the only forum mentioned in Art 63(2). The question here is whether it is exclusive forum provided for in the entire constitutional scheme? An additional basis for distinguishing the above case is that the particular ground of disqualification at issue was defection or withdrawal from a political party which, in the aftermath of the Legal Framework Order, 2002 (Chief Executive's Order No. 24 of 2002) and the Constitution (Eighteenth Amendment) Act, 2010, is dealt with separately under Art. 63-A of the Constitution. In ***Aftab Shahban Mirani v. President of Pakistan*** (1998 SCMR 1863) also it was stated obiter that the mechanism provided in Art. 63(2) is the exclusive process for determining questions of disqualification. However, this statement was also *obiter dictum* and of little persuasive value as this was made in petition for leave to appeal which was dismissed on grounds of limitation. Further, the

dictum had been made in exclusive reliance on the *dicta* to this effect in *Sabir Shah* case.

36. In sharp contrast with the above cases, in a number of decisions the Supreme Court has enunciated principles which support the proposition that the superior courts have an independent jurisdiction to deal with questions of disqualification of members of Parliament. In ***Niaz Ahmed v. Province of Sind*** (PLD 1977 SC 604, 622) ***Farzand Ali*** was affirmed and it was clarified that in the "*absence of adequate remedy being available*" the writ in the nature of *quo warranto* remains competent despite any ouster clauses. This position is very much in line with the general "*principle consistently affirmed by all Court that provisions seeking to oust the jurisdiction of superior Court are to be construed strictly with a pronounced leaning against ouster.*" See ***State v. Zia ur Rahman*** (PLD 1973 SC 49), also quoted in ***Federation of Pakistan v. Ghulam Mustafa Khar*** (PLD 1989 SC 30, 44). More recently, in the Short Order in ***Federation of Pakistan v. Muhammad Nawaz Sharif*** (PLD 2009 SC 644), the Court held that:

> *The Article 225] places a bar to challenge an election dispute except through an election petition under the law i.e. the Representation of People Act, 1976. In exceptional circumstances, however, the qualification or disqualification of a candidate can be challenged under Article 199 of the Constitution provided* ***the order passed during the election process is patently illegal****, the* ***law has not provided any remedy either before or after the election****; and* ***the alleged disqualification is floating on record requiring no probe and enquiry.***

37. In the detailed judgment in ***Federation of Pakistan v. Muhammad Nawaz Sharif*** (PLD 2009 SC 644) my leaned brother Jillani J.

analysed the extant case law masterfully and delineated the relative spheres of the two remedies quite clearly, re-affirming the above-stated principles. Likewise, in ***Muhammad Hayat Khan v. Imtiaz Ahmad Khan*** (PLD 2008 SC 85, 103-104), the Court stated that:

> *There could not be second opinion that dispute relating to corrupt or illegal practices or illegal acts, alleged to have been committed etc. during the polling, cannot be adjudicated upon by the High Court or by this Court in exercise of Constitution Jurisdiction because these questions require to be established on the basis of evidence and this Court would never encourage the settlement of such dispute by invoking its Constitutional Jurisdiction, except in those cases where there is undisputed facts and nothing is required to be proved. [Therefore, we are of the opinion that all those* ***disputed questions of facts****, arising out of pre-election or post-election disputes, should be determined by the Tribunal and where there is no dispute of such like nature, the jurisdiction of the High Court can be invoked.*

38. It is evident from the above cases that the superior courts have an independent jurisdiction to examine questions of disqualification under Art. 199 or 184(3), as the case may be. However, the access to the court's jurisdiction is conditional upon the meeting of the requirements of maintainability mentioned in the first part of this note. In particular, the Court will not exercise its powers if a suitable and equally efficacious remedy is available through another competent forum, such as an election tribunal or through a reference to the Election Commission under Art. 63(2) and (3). Even in the case of *Intesar Hussain Bhatti v. Vice-Chancellor* (PLD 2008 SC 313, 319) it was held that the writs in the nature of *quo warranto* were available despite the presence of Art. 225 and 63(2) when the forum having

jurisdiction "***has failed to exercise the same or it is improperly exercised***." Also, see *Nayyar Hussain Bukhari v.District Returning Officer, NA-49* (PLD 2008 SC 487). This Court normally refuses to exercise its Original jurisdiction in such matters if the relevant facts are not admitted or easily determinable, requiring an extensive fact-finding probe. For a recent example case where the petition was dismissed for failure to meet the above-stated conditions one can see *Aftab Ahmad Khan v. Muhammad Ajmal* (PLD 2010 SC 1076), where it was held that the superior courts will avoid exercising their writ jurisdiction in such cases.

39. Having firmly established the basis, and the conditions, for the exercise of the writ jurisdictions of the superior courts in matters of disqualification of members of Parliament let us proceed to a delineation of the appropriate process, especially in cases falling under Art. 63(1)(g). In *Ayatullah Dr. Imran Liaquat Hussain v. Election Commission of Pakistan* (PLD 2005 SC 52) a bench of this Court provided an accurate summary of the disqualification process. The Court dismissed the petition on the grounds that the petitioner, claiming that certain members of Parliament and the provincial assembly of Sindh, had not challenged the eligibility of those members of the legislature at the time of the elections and had failed to provide any justification for his failure. Furthermore, the Court observed (at pp. 59-60) that if a question of disqualification arises subsequent to the election then the procedure laid down Art. 63(2) must be followed. However, the Speaker or the Chairman of Senate's "*function under Article 63(2) is clearly of a very limited character. He will no doubt apply his mind to the very point whether a question had or had not arisen. In fact, in a proper case,* ***he might be directed by the superior courts to make a reference where he had refused to do so, if a petition was brought*** *for that relief*."

40. Therefore, it is clear that if an issue of pre-election disqualification arises at the time of the election, the petitioner must first avail the remedies provided under the relevant statute including an election petition. If, however, for reasons beyond the petitioner's control the issue cannot be raised before the relevant forums provided for in the election laws – for example, the basis of disqualification was not known, or an election petition is available to candidates only and the petitioner does not fall in that category, or the petition has been dismissed by the election tribunal – then the petitioner can approach the High Courts under Art 199(1)(b)(ii). The petitioner may also approach the Supreme Court directly under Art. 184(3) if the petition raises questions of constitutional interpretation and meets the maintainability conditions. Such petitions will not be ousted by Art. 225. If a question of post-election disqualification arises under any sub-clause of Art. 63(1) the matter must be referred to the Speaker or Chairman of the House of Parliament under Art. 63(2). As explained earlier, the Speaker or the Chairman has a limited role to perform, *i.e.* determine if any question of disqualification has arisen or not. If the Speaker or the Chairman exercises his/her discretion under Art 63(2) improperly then his/her decision is reviewable by the superior courts as established earlier.

41. It must, however, be noted that there is an important difference between disqualification under sub-clauses (a), (g) and (h) of Art 63(1) and the other sub-clauses thereunder. Sub-clauses (a), (g) and (h) provide for disqualification pursuant to convictions or findings by courts. In such cases the Speaker's or the Chairman's role is even further curtailed to determining whether such convictions exist. It will be interesting to note the history of Art. 63(1)(g). Art. 63(1) in its original form at the time of the framing of the

1973 Constitution of Pakistan only included sub-clauses (a) to (e). Sub-clause (g) was added to this provision vide a Presidential Order (P.O. 14 of 1985) dated 2nd March, 1985. The language of the newly introduced sub-clause (g) was as follows:

> (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;

42. It has been argued by many critics that this change in the constitutional provision was brought by a military dictator, along with other heads of disqualification under art. 63(1), in order to pressurize elected politicians and was thus worded very broadly. In the Constitution (Eighteenth Amendment) Act, 2010, the elected Parliament of Pakistan however retained and thus adopted Art. 63(1)(g) although with one significant change. The Constitution (Eighteenth Amendment) Act, 2010, added the requirement of a conviction by a court of competent jurisdiction implicating any of the grounds stated in sub-clause (g). Furthermore, the grounds have been reduced to exclude "morality, or the maintenance of public order." The provision presently reads as follows:

> (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 lapsed since his release**;

43. Thus, prior to the Constitution (Eighteenth Amendment) Act, 2010, the Speaker or the Chairman had relatively greater discretion in determining whether any question of disqualification on the basis provided for in Art. 63(1)(g) had arisen. However, by inserting the requirement of a conviction by a court of competent jurisdiction the Constitution (Eighteenth Amendment) Act, 2010, fundamentally altered the nature of that sub-clause. No doubt the intent of the amendment was to raise the threshold for disqualification under the said provision.

44. However, a necessary consequence of that change is that once a court of competent jurisdiction finds a member of Parliament guilty of an offence of the nature mentioned in Art. 63(1)(g) the Speaker's role is greatly reduced to merely establishing whether such a conviction exists.

45. In the present case the 7-member bench of this Court followed the above process and despite finding the respondent guilty of contempt of court "acting in any manner" which brought "into ridicule the judiciary" it did not disqualify him from being a member of the Parliament on the spot. Instead, the 7-member bench of this Court left the question of disqualification to be determined through the process laid down in Art. 63(2). The Speaker, by claiming much greater authority than she possesses in this regard and by misusing her limited powers, rendered that mechanism inefficacious. In these circumstances a petition under Art. 184(3) became competent in order to review the Speaker's decision. Having determined that the Speaker's decision not to refer the question of disqualification to the Election Commission was flawed because the conviction by the 7-member bench of this Court clearly

met the conditions laid down in Art 63(1)(g) we are left with no choice but to direct the respondent's disqualification to the Election Commission.

These are the reasons of our short order dated 19.06.2012.

Judge