Pakistan's Supreme Court to Purify Parliamentarians

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For roughly sixty years, by means political, military, and media, Pakistan's political elite has curbed the Supreme Court from snooping around in their affairs. Corruption flourished. Then came the 2016 Panama revelations. The Court dethroned Prime Minister Nawaz Sharif for charges linked to his financial infidelity. Corruption flourished a little less.

On a wintery day in late February 2018, Pakistan's Supreme Court lashed out against Nawaz Sharif once more. This time, they disqualified him from presiding over a right-wing conservative alliance, the Pakistan Muslim League Noon, PML (N), for short; the same political party, Sharif once tamed and moulded into a fiercely loyal group of rubber-stamping vassals. The Court also invalidated all decision Nawaz Sharif had taken as party chief of the PML (N). This included the nomination of twenty-three candidates to the upcoming Senate elections, which leaves PML (N) candidates without any formal institutional umbrella. The party symbol on the ballot cards next to the candidates' names was hastily changed from the PML(N) tiger to a generic pick-up truck (in case you are wondering: elephants were taken).

There is also another way of telling this story. In this narrative, the Supreme Court is not a naïve rule-of-law perpetuating lamb but more bullish. When in 2009, Pakistan's last military dictator Pervez Musharraf quarrelled with a former chief justice of the Court, the ensuing 'civil' protest movement led to Musharraf's downfall. The Court had tasted blood. Now it is breathing down heavy on the government's neck. So much so, that a squeamish Nawaz Sharif lamented in front of his interviewers: "The Court took rulership (*sadaarat*) from me last July. Now the Court has barred me from running my own political party. All I have left is my name: Muhammad Nawaz Sharif. But I'm sure the Court will soon find a provision in the Black Law Dictionary to strip me of this name as well."

A number of legal observers have ebbed their applause for the Court's unrestricted interventionism. The timing of the ruling, so shortly before the Senate elections, has even spurred discontent amongst impartial well-wishers. Has the Court ultimately dabbled into murky political waters? The sixteen petitioners in the case spanned an unusually wide political spectrum: from mud-slinging populists and polite liberal universalists, to fanatic religious enthusiasts. Whenever such implausible political alliances join forces to identify and demolish the personification of evil in a single person, any Court translating such antagonism into the language of the law, would be hard pressed to appear politically impartial.

The main reason for the petitioners' frustration was the 2017 Election Act. Following last year's defeat at the Supreme Court, Nawaz Sharif strong-armed the Act through parliament to secure his political afterlife as party head. With a sleight of hand, the Act brushed over the section of the 2002 Political Parties Order that invalidated Nawaz's leadership claim to the PML(N) for not meeting the high standard of the honesty-clause. But like for the membership of any parliamentary body, here too, lay enshrined the provision that the party head shall not have been "disqualified from being elected a chosen member of the *Majlis-e-Shoora* (Parliament)".

The petitioner-alliance forwarded their grudge in the following way: Article 63 (A) of the Constitution, submitted "wide ranging powers" to the party head in "matters where Members of his party vote or abstain from voting in the House". Therefore, the petitioners concluded: "a person who has been disqualified under the Constitution should not head a political party or have the power to control Parliamentarians in the Senate of Pakistan, the National Assembly and/or the Provincial Assembly". Having a dishonest party chief leading honest parliamentarians would defeat the very

purpose of a constitutionally embedded honesty-requirement.

For the PML(N)–government the case was not so clear. They held that freedom of speech, particularly the freedom of citizens to organise themselves in political parties and to "freely determine their association and choose office-bearers including Party Head", outweighed the 2002 Political Party Order, which was, in any case, historically outdated.

Enter the ruling. After copy-pasting almost the entirety of the Objective Resolutions (the constitution's preamble) to set the mood, the Court throws the reader into an Islamist utopia, where "it is clear and obvious" that the "qualifications prescribed" for parliamentary membership have "unmistakable Islamic underpinnings".

Only a good Muslim makes a parliamentarian. The Court finds "this not hard to understand". The "constitutional intent" and "design", that the Court was under "constitutional obligation" to enforce, left no doubt that the "Legislative Units of the State" had to be "purified" top-down to keep the "sacred trust" between Allah Almighty and Pakistani parliamentarians alive.

The party head was not a common civilian. Rather, the Court reasoned, the party head could declare that a parliamentarian had "deflected from the political party"––through Article 63(A)––and thus enjoyed special constitutional powers that justified the heightened level of moral scrutiny he had to undergo.

But the Objective Resolution, from which the Court extrapolated much of their legal rational, did not fall from heaven. History tells us, that on 12 March 1949 the Resolution was rammed through the Constituent Assembly in record-speed, with a large number of delegates already on their way home to the provinces. This lead to tumultuous scenes, with a non-Muslim repeatedly pointing out: "Sir, there is no quorum in the House!".

When it came to non-Muslims climbing up to high political offices, the key player in the drafting process, Liaquat Ali Khan, who also introduced the Objective Resolution into the Assembly, held a different view to what the current Supreme Court had to say. After being challenged by a few non-Muslim delegates that his Objective Resolution would effectively ban them from ascending to political leadership roles, Liaquat Khan observed dryly: "This is absolutely wrong. A non-Muslim can be the head of the administration under a constitutional government."

The Court has put itself in the awkward positon of policing parliamentarians' "Islamic moral standards [and knowledge]" (underlining not mine). As long as the Court directs this wobbly legal concept against sentenced criminals and thugs, one could accept it as just another quirk of a system still in its *Sturm-und-Drang* phase. If, however, the Court starts examining the Islamic knowledge of parliamentarians through standardised tests, stuff that it could easily justify with the same legal provisions, Pakistan's in for a hell of a ride in the next decade.

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