

ARTICLE

Pakistan: Supreme Court Issues Detailed Judgment on Dismissal of Resolution of No-Confidence Motion Against Then-PM Imran Khan

On July 13, 2022, the Supreme Court of Pakistan published a [judgment](#) detailing the reasons for issuing its landmark unanimous [short order](#) dated April 7, 2022. That order declared the [ruling](#) of the deputy speaker of the National Assembly (NA) dismissing the resolution of no confidence (RNC) motion against the country's prime minister (PM) "to be contrary to the Constitution and the law and of no legal effect." The judgment held that the ruling and the "subsequent acts of the PM and the President" dissolving the NA "were a nullity in the eye of the law."

Background to the Judgment

On April 3, 2022, PM Imran Khan was set to face a no-confidence resolution vote under [Article 95 \("Vote of No-Confidence Against Prime Minister"\)](#) of Pakistan's [Constitution](#), after the opposition said it had the simple majority numbers needed to remove him. However, NA Deputy Speaker Qasim Khan Suri dismissed the motion, [ruling](#) that it was in breach of [Article 5 of the Constitution \("Loyalty to State and Obedience to Constitution and Law"\)](#) because the opposition was alleged to be complicit in a "collusion" with a foreign state purportedly evidenced by a diplomatic cipher. The foreign state and a "few members of the National Assembly" were said to be using the RNC process to "oust" the PM. Although it is not mentioned in the ruling, short order, or judgment, the alleged "foreign state" was widely identified in [media reports](#) as the United States. On the same day, the PM advised the country's president to dissolve the NA under [Article 58 \("Dissolution of National Assembly"\)](#) of the Constitution and prepare for new national elections.

On its own motion, the Supreme Court of Pakistan took notice of the matter. On April 7, 2022, it issued a short order unanimously setting aside the deputy speaker's ruling on the no-trust motion. The court said the ruling was "contrary to the Constitution and the law and of no legal effect." It restored the NA by declaring that the advice given by the PM and the order of the president were unconstitutional and null. The court declared that the NA was in existence at all times and continues to remain so. (Short Order ¶ 5.)

The order also stated that detailed reasons for the order would be "recorded later."

Detailed Judgment

The detailed judgment was authored by Chief Justice Umar Ata Bandial, with concurring judgments by Justice Mazhar Alam Khan Miankhal and Justice Jamal Khan Mandokhal.

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Preliminarily, the court said it had original constitutional jurisdiction under article 184(3) of Pakistan's Constitution, as it relates to the enforcement of a fundamental right or the concerns of the public at large. The court found that the ruling and subsequent actions of the PM and president "prima facie infringed the fundamental rights of the Opposition Parties and the public at large." (Judgment ¶ 28.) Namely, "the Deputy Speaker's ruling and the actions of the PM and the President defeated the right of the Opposition Parties to test their voting strength in support of the RNC and if successful, to form the next Government in exercise of their fundamental right under Article 17(2) of the Constitution." (¶ 26.)

Regarding the invocation of Article 5 and "national security" in the deputy speaker's ruling, the court said that, although courts should exercise caution and restraint in matters of national security, judicial review is permissible on narrow grounds. The court said, "[W]hen national security is taken as a defence to sustain a decision by the Government that is prima facie unconstitutional then the Government is under an obligation to substantiate the bona fides of its defence. To do so the Government must produce evidence to demonstrate the defence in order to escape legal scrutiny of its impugned action." (¶ 32.) Because the contents of the cipher were not produced and other evidence detailing that members of the national assembly were involved in the conspiracy was not provided, "the Court cannot accept the Respondents defence that the alleged contravention of Article 95 of the Constitution by the Deputy Speaker is protected from judicial scrutiny on the claim of national security." (¶ 35.)

The court also found that the deputy speaker's ruling is not protected by the immunity provided by Article 69(1), which bars courts from inquiring into proceedings in Parliament "to the extent that these suffer from an irregularity of procedure." (¶ 42.) The ruling "fails to qualify for protection as part of the internal proceedings of Parliament," as the ruling was not "the outcome of a vote in the NA" but "[i]nstead, it was a unilateral decision taken by the Deputy Speaker at the behest of the Law Minister." (¶ 55.) The court also observed that the current Constitution empowers the superior courts "to examine and adjudicate the validity of proceedings in Parliament if these contravene the substantive or procedural provisions of the Constitution." (¶ 45.) Although courts will "ordinarily exercise restraint and not enter into the domains of the Legislature and the Executive, they will intervene when either of these branches overstep their constitutionally prescribed limits," the court stated. (¶ 46.)

Because the deputy speaker's ruling is unconstitutional, "the RNC against the PM stands revived," the court held. Furthermore, in light of the Explanation to Article 58(1) of the Constitution, a PM against whom notice of an RNC has been given cannot advise the president to dissolve the NA, and thus, the president's order also loses "constitutional legitimacy." The court concluded, "These findings accord with a settled principle of law that when the basic order is without lawful authority and void ab initio, then the entire superstructure raised thereon falls to the ground automatically." (¶ 81.) Therefore, the NA "stands restored with immediate effect," and in fact, "it is deemed to have been in existence at all times." (¶ 92.)

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