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Syed Mansoor Ali Shah, J.-

Preface

Elections play a critical role in democracies, serving as the primary mechanism through which citizens exercise their right to choose their leaders and influence government policies. Elections encourage civic participation and engagement, allowing citizens to be part of the decision-making process that affects their lives. Elections confer legitimacy on a government by providing a transparent and systematic method for the transfer of power. This legitimacy is crucial for the stability and functioning of a democratic society.

2. How disqualifications to contest elections are viewed, touch on the core values of democratic governance, rule of law and individual rights. Disqualifying a candidate from contesting elections should be viewed by courts with caution and circumspection, recognizing it as a severe restriction on the democratic right to vote and contest elections. Ddisqualification must be based in law, not on surmises or inferences. This principle ensures that disqualification is applied uniformly, fairly and transparently, in accordance with established legal standards rather than arbitrary decisions. Character of a candidate should generally not be judged by courts in the absence of specific laws dictating such criteria for eligibility. In democracies, the assessment of a candidate's character is primarily a matter for the voters to consider based on the information available to them. In democratic societies, the emphasis is on ensuring that the electoral process remains open, fair and reflective of the society's values, rather than allowing judicial or governmental overreach to dictate the outcomes of elections or to unduly influence the eligibility of candidates based on subjective criteria.

3. Electoral laws typically rely on objective, verifiable criteria for disqualification, such as age, citizenship, criminal convictions, etc. These criteria can be directly verified through official documents or public records, based on tangible evidence. This ensures that disqualification decisions are grounded in concrete facts rather than subjective opinions. Assessing qualities like character, honesty or religious knowledge is inherently subjective and can vary significantly depending on the evaluator's perspectives, biases, or cultural background. Establishing uniform standards for such qualities is practically impossible and legally contentious. Given these considerations, electoral laws and practices

generally avoid subjective criteria for disqualification, focusing instead on objective, verifiable standards.

4. With this understanding of the importance of elections in a democracy and of the rights of citizens to contest elections and vote for the candidates of their choice, we approach and deal with the question involved in the present cases. Further, we are guided by two principles: First, the judges have nothing to do with shades of public opinion or with passions of the day that sway public opinion; their task is to tenaciously and fiercely uphold and implement the Constitution and the law.[1] They are not to make efforts to win accolades from the public but to simply decide the matters presented before them in accordance with the Constitution and the law.[2] Second, the courts are to construe the fundamental rights guaranteed in the Constitution progressively and liberally,[3] but the provisions whether in the Constitution or in any law that curtail or limit the fundamental rights are to be construed restrictively and narrowly;[4] for the fundamental rights guaranteed in a Constitution are the heart and soul of the Constitution.

Interpretation of Article 62(1)(f) of the Constitution and revisiting of *Sami Ullah Baloch*

5. The facts of the present cases are somewhat different from each other, which shall be described later, but they have given rise to a common question as to the interpretation of Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan ("Constitution") and reconsideration of the construction put to the provisions thereof by a five-member Bench of this Court in *Sami Ullah Baloch v. Abdul Karim Nousherwani* (PLD 2018 SC 405).

6. Since the whole matter revolves around the provisions of Article 62(1)(f), they are cited at the outset for reading and reference:

> 62. (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-
> ... ...
> (f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law;
>
> *(Emphasis added)*

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[1] Aamer Raza v. Minhaj Ahmad 2012 SCMR 6 per Tassaduq Hussain Jillani, J.
[2] Justice Qazi Faez Isa v. President of Pakistan PLD 2021 SC 1 per Syed Mansoor Ali Shah, J.
[3] Nawaz Sharif v. President of Pakistan PLD 1993 SC 473 and Justice Qazi Faez Isa v. President of Pakistan 2022 SCP 140 per Maqbool Baqar, J., et al.
[4] Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416; Ghulam Mustafa Jatoi v. Returning Officer 1994 SCMR 1299 and Wukala Mahaz Barai Thafaz Dastoor v. Federation of Pakistan PLD 1998 SC 1263.

A bare reading of Article 62(1)(f) shows that the qualification of being *sagacious, righteous, non-profligate, honest and ameen* is presumed to be fulfilled by every person unless there is a declaration against him or her to the contrary by a court of law. The matter of interpretation of Article 62(1)(f), therefore, begs answers to the following questions raised in *Ishaq Khakwani*[5], which have slightly been rephrased for precision and clarity:

(i) Which court is competent to make the declaration mentioned in Article 62(1)(f)?

(ii) Who has *locus standi* to seek such declaration?

(iii) What is the procedure for making such declaration, and is Article 10A of the Constitution attracted in making such declaration?

(iv) What is the standard of proof required for making such declaration?

Ishaq Khakwani left these questions to be addressed in some other 'appropriate case' while *Sami Ullah Baloch* provided the answer only to the first question which has, with respect, instead of resolving the question added a further complication. Having the invaluable assistance of numerous distinguished lawyers, we are of the opinion that this is the 'appropriate case' in which the above questions should be considered and addressed. Therefore, we undertake to do so.

Question (i): Which court is competent to make the declaration mentioned in Article 62(1)(f)?

7. Article 62(1)(f) of the Constitution though mentions a declaration to be made by a 'court of law' that a person is not *sagacious, righteous, non-profligate, honest and ameen*, it does not specify which court from among the several courts of law will be competent to make such declaration as all courts established by the Constitution or any law in terms of Article 175(1) of the Constitution are the 'courts of law'. Different Benches of this Court have, therefore, been endeavouring to identify the 'court of law' which is competent to make such declaration. Some instances of such endeavours are cited and discussed hereunder:

[5] Ishaq Khakwani v. Nawaz Sharif PLD 2015 SC 275 (7MB).

Judicial definitions of the expressions 'declaration' and 'court of law' as used in Article 62(1)(f)

7.1. In *Aftab Ahmad*,[6] a three-member Bench of this Court observed that the declaration mentioned in Article 62(1)(f) can possibly be made by the Retuning Officer or the Appellate Tribunal in appeal arising from the order of the Returning Officer accepting or rejecting the nomination paper, but it cannot be made in writ jurisdiction under Article 199 of the Constitution by the High Courts when there is a factual controversy involved. The relevant extract is reproduced for ready reference:

> 12. ..... This means that the declaration, determination and adjudication of a person falling within the mischief of the noted Article [62(1)(f)] by appropriate forum is a pre-requisite. Such determination in appropriate cases can also be possible though the medium of Retuning Officer or the appeal arising therefrom, but it can hardly be agreed if it should be straight away done in the Writ Jurisdiction when there is a factual controversy involved.

Both these statements made in *Aftab Ahmad* were dissented from, though without reference to *Aftab Ahmad* in later cases.

7.2. In *Murad Ali Shah*,[7] a three-member Bench of this Court negated the statement made in *Aftab Ahmad,* though without referring thereto, that the declaration mentioned in Article 62(1)(f) can be made by the Retuning Officer, by holding that the declaration given by a Returning Officer, who is not a court of law, while rejecting nomination paper in summary proceedings is not a declaration mentioned in Article 62(1)(f) of the Constitution. The relevant extract from *Murad Ali Shah* is reproduced:

> 9. ..... In the present case, the only declaration against the respondent under Article 62(1)(f) of the Constitution was given in summary proceedings by the Returning Officer on 06.04.2013. As already noted above, no evidence was recorded by the Returning Officer to sustain his finding nor he recorded reasons for invoking disqualification under Article 62(1)(f) of the Constitution. He is not a Court of law but a statutory forum of limited jurisdiction. Therefore, the condition that only a Court of law can issue a declaration of disqualification under Article 62(1)(f) of the Constitution is not met in the present case.
>
> *(Emphasis added)*

The same view was reiterated in *Allah Dino Bhayo*[8]. While the second statement made in *Aftab Ahmad,* that the declaration mentioned in Article 62(1)(f) cannot be made in writ jurisdiction under Article 199 of

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[6] Aftab Ahmad v. Muhammad Ajmal PLD 2010 SC 1066 (3MB).
[7] Roshan Ali Buriro v. Murad Ali Shah 2019 SCMR 1939 (3MB).
[8] Allah Dino Bhayo v. Election Commission of Pakistan PLD 2020 SC 591 (3MB).

the Constitution by the High Courts when there is a factual controversy involved, was reversed in *Sher Alam*[9] by holding that such declaration can be made in constitutional jurisdiction of the High Courts and this Court under Article 199 and Article 184(3) of the Constitution respectively, by holding thus:

> 18. .... [W]here unqualified or disqualified person manages to escape through the net [under the ROPA of 1976] and trespass into the Majlis-e-Shoora or the Provincial Assembly, the Constitutional jurisdiction of the learned High Court under Article 199 of the Constitution and of this Court under Article 184(3) of the Constitution can always be invoked.

7.3. In the well-known *Panama case*,[10] the majority of a five-member Bench of this Court also attempted to give a judicial definition to the expression 'court of law' used in Article 62(1)(f) as under:

> 20. ... The expression "a court of law" has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded. Such a court would include a court exercising original, appellate or revisional jurisdiction in civil and criminal cases.

The *Panama case*, thus, identified the 'court of law' mentioned in Article 62(1)(f) as a 'court of plenary jurisdiction', which has the power to record evidence and give a declaration on the basis of the evidence so recorded, and further explained that such court includes a court exercising original, appellate or revisional jurisdiction in civil and criminal cases. The notable point is that the *Panama case* included in the definition of a 'court of law' not only the courts exercising 'civil jurisdiction' but also the courts exercising 'criminal jurisdiction'; which statement, as mentioned herein later, was negated by *Sami Ullah Baloch*. Although the *Panama case* did not explain how this Court while exercising its original jurisdiction under Article 184(3) of the Constitution is a 'court of plenary jurisdiction', it proceeded to determine the matter of qualification of a person (the respondent therein) under Article 62(1)(f) by assuming that this Court is a court of 'plenary jurisdiction' while exercising its original jurisdiction under Article 184(3) of the Constitution. The *Panama case* thus also negated the statement made in *Aftab Ahmad,* that the declaration mentioned in Article 62(1)(f) cannot be made in writ jurisdiction when there is a factual controversy involved, by proceeding to determine the disputed facts in writ jurisdiction of this Court under

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[9] Sher Alam v. Abdul Munim PLD 2018 SC 449 (3MB). The same view was reiterated in Shaukat Bhatti v. Iftikhar Kiani PLD 2018 SC 578 (3MB).
[10] Imran Khan v. Nawaz Sharif PLD 2017 SC 265 (5MB).

Article 184(3) of the Constitution. Further, the Bench was perhaps not sure of even the definition provided by itself, as it also mentioned the possibility of making such declaration by the Election Tribunal, in addition to the courts of law identified, by observing:

> 20. ... Returning Officer or any other fora in the hierarchy would not reject the nomination of a person from being elected as a member of Parliament unless a court of law has given a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Even the Election Tribunal, unless it itself proceeds to give the requisite declaration on the basis of the material before it, would not disqualify the returned candidate where no declaration, as mentioned above, has been given by a court of law.
>
> *(Emphasis added)*

The same uncertain definition of the 'court of law' mentioned in Article 62(1)(f) was reiterated in *Allah Dino Bhayo*:

> 7. ..... [T]he finding given by the Returning Officer in the present case was rendered in 2007 prior to the amendment in Article 62(1)(f) of the Constitution. Such a finding was not a verdict given after a trial by a court of law; namely, for the purposes of this case, an Election Tribunal or a Court of plenary jurisdiction.
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> *(Emphasis added)*

Thus, as per the *Panama case* and *Allah Dino Bhayo* the court of law mentioned in Article 62(1)(f) means a court of plenary jurisdiction and the Election Tribunal though they do not describe in clear and certain terms which courts are the courts of plenary jurisdiction, which aspect shall be discussed herein later.

7.4. The next important case that also struggled with the definition of the expression 'court of law' used in Article 62(1)(f) is *Sami Ullah Baloch*. Interestingly, the definition given by *Sami Ullah Baloch* when examined closely is found quite different from all the above definitions: firstly, it stated that it is a court of 'civil jurisdiction', not of criminal jurisdiction, that is to make the declaration; secondly, the declaration made by such court involves 'the breach of a legal duty or obligation owed by the candidate for election to another person or the violation of the latter's legal right or privilege'; and thirdly, such breach of a legal duty or obligation warrants an inference of '[the candidate's] misrepresentation, dishonesty, breach of trust, fraud, cheating, lack of fiduciary duty, conflict of interest, deception, dishonest misappropriation, etc.,' which through further inference describes him as a person who is not *sagacious, righteous, non-profligate, honest and ameen* in terms of Article 62(1)(f). As for the disqualifying effect of such

an inferential declaration by a court of civil jurisdiction, *Sami Ullah Baloch* held that the same shall 'last for as long as the declaration is in force' and 'if the declaration by the Court has attained finality, the embargo under Article 62(1)(f) of the Constitution acquires permanent effect'. The relevant extracts from *Sami Ullah Baloch* are cited here for reference:

> 23. ... Where a declaration made by a Court of law against a candidate for election warrants a conclusion of his misrepresentation, dishonesty, breach of trust, fraud, cheating, lack of fiduciary duty, conflict of interest, deception, dishonest misappropriation, etc. to be derived from such a verdict, then it stands to reason that the consequential incapacity imposed upon the candidate for election should last for as long as the declaration is in force.
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> 24. .... [A] valid declaration by the Court would involve the breach of a legal duty or obligation owed by the candidate for election to another person or the violation of the latter's legal right or privilege.
>
> 25. .... A final decree has binding effect and is commonly described as a past and closed transaction having permanent effect. Therefore, the consequence of permanent nature i.e. incapacity, following a final and binding decree of Court of civil jurisdiction, is the ordinary and lawful outcome of civil litigation.
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> 36. .... [T]he incapacity created for failing to meet the qualifications under Article 62(1)(f) of the Constitution imposes a permanent bar which remains in effect so long as the declaratory judgment supporting the conclusion of one of the delinquent kinds of conduct under Article 62(1)(f) of the Constitution remains in effect.

Thus, as per *Sami Ullah Baloch* the declaration mentioned in Article 62(1)(f) is a declaration made by a court of civil jurisdiction as to the commission of misrepresentation, dishonesty, breach of trust, fraud, cheating, etc., while adjudicating upon an issue arising on a dispute between two parties regarding the breach of certain civil rights and obligations. This definition of the 'declaration' and the 'court of law' contradicts the definition given in the *Panama case* and *Sher Alam.* These cases included in those expressions the 'declarations' made by the High Courts and this Court in exercise of their jurisdiction under Article 199 and Article 184(3) of the Constitution respectively, whereby the legal requirements for holding a public office are enforced; not the adjudication of civil rights and obligations of two private persons as observed in *Sami Ullah Baloch.*

Analysis of the judicial definitions

8. We have seen that in several cases, different Benches of this Court have been grappling with the problem of ascertaining the true meaning and scope of the expressions 'declaration' and 'court of law' as used in

Article 62(1)(f) and have come up with different rather divergent conclusions. In one case, it is asserted that the Returning Officer can make the requisite declaration, while in another, it is stated that, no, he cannot. Then, it is asserted that it is a 'court of plenary jurisdiction' that can make the declaration, which may be a court of civil jurisdiction or a court of criminal jurisdiction. However, the next case maintains that, no, it is only a court of civil jurisdiction that can make the declaration, and that too, indirectly, while adjudicating upon the issue of the breach of certain civil rights and obligations between two parties. At times, it is suggested that the Election Tribunal also can make such a declaration, in addition to a court of plenary jurisdiction. One case says that the requisite declaration cannot be made in writ jurisdiction when there is a factual controversy, while the other proceeds to determine the disputed facts in writ jurisdiction. With due respect, we observe that this is not the interpretation of a constitutional provision but rather is an unwarranted reading into the Constitution that amounts to amending the Constitution or at best passes for mere conjecturing.

Difference between progressive interpretation and amending the Constitution

9. We are fully cognizant of, and also agree with, the well-settled approach of this Court in the matter of interpreting the constitutional provisions, i.e., while interpreting constitutional provisions, the judicial approach should be dynamic rather than static, pragmatic rather than pedantic and elastic rather than rigid. Courts are to interpret the constitutional provisions broadly so that they may meet the requirements of an ever-changing society.[11] The doctrine of progressive interpretation, which is also referred to as the doctrine of living constitution, is one of the means by which the Constitution adapts to the changes in society. What this doctrine stipulates is that the meaning of the constitutional provisions is not frozen in time but carries in it the flexibility to continuously adapt to new conditions.[12] This doctrine is premised on the belief that a constitution must be relevant to the society it governs, which

[11] M.Q.M. v. Pakistan PLD 2022 SC 439; Khurshid Industries v. Federation of Pakistan PLD 2020 SC 641 per Syed Mansoor Ali Shah, J.; Sindh Revenue Board v. Civil Aviation Authority 2017 SCMR 1344, LDA v. Imrana Tiwana 2015 SCMR 1739; Province of Sindh v. M.Q.M. PLD 2014 SC 531; Reference by the President of Pakistan PLD 2013 SC 279; Aamer Raza v. Minhaj Ahmad 2012 SCMR 6; Al-Raham Travels v. Ministry of Religious Affairs 2011 SCMR 1621; Arshad Mehmood v. Govt. of Punjab PLD 2005 SC 193; Pakistan Tobacco Company v. Govt. of N.W.F.P. PLD 2002 SC 460; Elahi Cotton Ltd. v. Federation of Pakistan PLD 1997 SC 582 and Govt. of Balochistan v. Azizullah Memon PLD 1993 SC 341.

[12] Peter W. Hogg, Constitutional Law of Canada, (South Asian Edition-2017), Vol-I, 15.9(f).

inevitably evolves over time. With their progressive approach, the courts look to the purpose or intent behind a constitutional provision to guide its application in modern contexts. It is a necessary tool for ensuring the Constitution remains relevant and capable of protecting the rights of citizens and the governmental structure in changing societal contexts, ensuring the Constitution remains a living document that evolves alongside societal changes. It is, however, important to underline that there is a marked difference between progressive interpretation and amendment of the Constitution. By way of progressive interpretation, as observed in *M.Q.M*,[13] "a particular provision, a term or word" of the Constitution is "interpreted dynamically and purposively with a view to achieve the constitutional intent". Courts cannot, under the disguise of progressive interpretation, amend the Constitution and read that into it which is not enshrined in any provision of the Constitution. Progressive interpretation is rooted in constitutional text viewed through a lens of contemporary social, economic and political values but any interpretation that does not have any textual mooring or is not entrenched in or flows from any constitutional provision passes for a constitutional amendment by unwarranted reading into the Constitution and is beyond the permissible scope of the judicial act of interpreting the Constitution.

10. With the able assistance rendered at the Bar, we made an earnest effort to understand the meaning and scope of the expressions 'declaration' and 'court of law' used in Article 62(1)(f) both in light of the earlier opinions of this Court and independently thereof. With respect, we are of the considered opinion that there has been a fundamental error in the approach of the Benches that dealt with the question under consideration and attempted to determine the 'court of law' that has, or may have, the jurisdiction to make the 'declaration' mentioned in Article 62(1)(f), without considering and discussing the provisions of Article 175(2) of the Constitution.

Scope of Article 175(2) of the Constitution

11. Article 175(2) of the Constitution declares it in unequivocal terms that no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. The opinions of different

[13] Province of Sindh v. M.Q.M. PLD 2014 SC 531.

Benches of this Court, asserting the competence of various courts to make the declaration mentioned in Article 62(1)(f) without referring to any provisions of the Constitution or any law that confers such jurisdiction upon those courts, completely lack a legal basis. This approach amounts to conferring such jurisdiction on courts by judicial decision which is not conferred on them by the Constitution or by or under any law in terms of Article 175(2) of the Constitution and is thus intrinsically unconstitutional.

12. Any court, including this Court, cannot by a judicial order confer jurisdiction on itself or any other court, tribunal or authority.[14] The power to confer jurisdiction is legislative in character; only the legislature possesses it. No court can create or enlarge its own jurisdiction or any other court's jurisdiction. Nor any court has any inherent or plenary jurisdiction. Because of the constitutional command in Article 175(2) of the Constitution, the courts in Pakistan do not possess any inherent jurisdiction on the basis of some principles of common law, equity or good conscience and only have that jurisdiction which is conferred on them by the Constitution or by or under any law.[15] The same is the position with the claim of plenary jurisdiction in favour of any court; no court has plenary, i.e., unlimited or indefinite, jurisdiction. Some courts may be called the courts of general jurisdiction because of the general terms in which the jurisdiction is conferred on them by any law, such as the civil courts on which Section 9 of the Code of Civil Procedure 1908[16] confers jurisdiction in general terms; but such general jurisdiction is also limited and defined in terms of the relevant provisions of the law. Therefore, in order to assert that a particular court has the jurisdiction to make the declaration mentioned in Article 62(1)(f) that any person is not *sagacious, righteous, non-profligate, honest and ameen*, it is imperative to identify the provision in the Constitution or under any law that confers such jurisdiction.

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[14] Justice Qazi Faez Isa v. President of Pakistan PLD 2022 SC 119 per Maqbool Baqar, J. Et al.; Badshah Begum v. Additional Commissioner 2003 SCMR 629; Masjid Bilal v. Wali Muhammad 2006 CLC 1757 and Zeeshan Zaidi v. State 1988 PCr.LJ 843.

[15] Sindh Employees' Social Security v. Adamjee Cotton Mills PLD 1975 SC 32; Brother Steel Mills v. Ilyas Miraj PLD 1996 SC 543 per Fazal Karim, J.; Hitachi Limited v. Rupali Polyester 1998 SCMR 1618 and Khalid Mehmood v. Chaklala Cantonment Board 2023 SCMR 1843 per Syed Mansoor Ali Shah, J.

[16] Section 9. Courts to try all Civil Suits unless barred.- The Courts shall (subject to the provisions herein cone tamed) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

13. The above-discussed cases have held, by espousing conflicting views, that the Supreme Court, the High Courts, the Election Tribunals, and the civil courts have the jurisdiction to make the declaration mentioned in Article 62(1)(f). The basis and sustainability of their findings need to be examined in terms of the provisions of Article 175(2) of the Constitution, i.e., which provisions of the Constitution or any law confer such jurisdiction on them.

No jurisdiction vested in Supreme Court and High Courts to make the declaration

14. First, we take up the matter of competency of the Supreme Court and the High Courts to make the said declaration. Some of the cases that so held have referred to the power of the High Courts to make an order of the nature of a *writ of quo warranto* under Article 199(1)(b)(ii)[17] and the power of the Supreme Court to make an order of the same nature under Article 184(3)[18] of the Constitution. The basic case they relied upon for this point is *Farzand Ali*[19], decided by a four-member bench of this Court. We have, therefore, minutely examined that case and found that the reliance upon it for holding that the declaration mentioned in Article 62(1)(f) can be made by the High Courts and the Supreme Court in their *quo warranto* jurisdiction is utterly misplaced.

15. In *Farzand Ali*, some Government servants had challenged before the High Court of West Pakistan in its writ jurisdiction the orders of their compulsory retirement made under the provisions added in the 1962 Constitution through certain constitutional amendments. They had also challenged those constitutional amendments and collaterally the eligibility of some members of the National Assembly who had participated in voting for those amendments. The challenge was based on the assertion that those members being *lambadar* of the villages, chairmen of the union councils and reservists of the armed forces were holding offices of profit in the service of Pakistan and were thereby disqualified under Article 103(2)(a) of the 1962 Constitution. The High

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[17] Article 199. Jurisdiction of High Court.-(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—(b) on the application of any person, make an order—(ii) 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.

[18] Article 184. Original Jurisdiction of Supreme Court.- (3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article.

[19] Farzand Ali v. Province of West Pakistan, PLD 1970 SC 98.

Court dismissed their petitions without delving into the question of whether the offices held by those members were really the offices of profit in the service of Pakistan, holding that this question could not be agitated in writ jurisdiction under Article 98 of the 1962 Constitution. On appeal, this Court took up and decided the question of examining in writ jurisdiction the matter of disqualification of a member of the National Assembly. Hamoodur Rahman, C.J., speaking for the Bench, held:

> [T]he 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 [H]ouse even after his election, if that disqualification is still continuing. Indeed a writ of *quo warranto* or a proceeding in the nature of information for a *quo warranto* ... is available precisely for such a purpose.[20]
>
> 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 [of *quo warranto*] but have not excluded it altogether.[21]
>
> I can see no reason why relief by way of *quo warranto* should not be available in a case where the remedy by way of an election petition is no longer possible or is not the appropriate remedy or the disqualification is a continuing one which debars a person not only from being elected to an office but also from holding that office.[22]

Although the Court decided the question of law in the above terms, it also, like the High Court, did not determine the issue of whether the offices held by those members were really the offices of profit in the service of Pakistan and they were thereby disqualified under Article 103(2)(a) of the 1962 Constitution as the National Assembly had by then already dissolved. Rather, the Court dismissed the appeal by holding that the members concerned were not mere intruders as they had not acted either mala fide or totally without colour of any right or title and that their acts were protected not only under Article 110(1)(d) of the 1962 Constitution but also on the principle that in collateral proceedings the acts of *de facto* members of a body cannot be invalidated but must be treated as being equivalent to or as good as the acts of *de jure* members.

16. We have no cavil, but rather agree, to the law declared in *Farzand Ali* that in a case where the disqualification is a continuing one which debars a person not only from being elected but also from continuing to hold the office of a member of Parliament and where the remedy by way

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[20] Farzand Ali, p. 113.
[21] Ibid, p. 113.
[22] Ibid, p. 114.

of an election petition is no longer possible, the remedy of writ of *quo warranto* remains available. We, with respect, only disagree as to using the power to issue a writ of *quo warranto*, i.e., to make an order in terms of Article 199(1)(b)(ii), by first creating a disqualification through making a declaration mentioned in Article 62(1)(f) and then applying that disqualification to declare the person as disqualified to hold the office of a member of Parliament.

Scope of quo warranto proceedings

17. A *quo warranto* proceeding, in terms of Article 199(1)(b)(ii), involves a judicial inquiry in which the person holding a public office is called upon to show under what authority of law he holds that office. In essence, through such proceeding the appointment or election of a person to a public office is challenged on the ground that the same has not been made in accordance with the law, which may include that he does not fulfill the qualification or suffers from any disqualification prescribed by the law. On this challenge, the scope of inquiry extends to examining whether the person holding a public office fulfills the required qualifications or suffers from any disqualification prescribed by the law for holding such office. A q*uo warranto* proceeding, thus, seeks to ensure that the person holding a public office does so in accordance with the law, including the fulfilment of the qualification prescribed therein for holding that office. It is not a medium to first create a disqualification and then apply that disqualification to the person holding the office for making him ineligible to hold the office. Rather, its purpose is to examine only existing disqualifications or lack of qualifications that may render a person ineligible for holding the office he currently holds.

18. Therefore, in a *quo warranto* proceeding the disqualification of a person holding the office of a member of Parliament cannot be created by making a ‘declaration’ in such proceeding in terms of Article 62(1)(f) that he is not sagacious, righteous, non-profligate, honest and ameen; just as his disqualification cannot be created, in such proceeding, by ‘convicting’ him for an offence involving moral turpitude in terms of Article 63(1)(h) of the Constitution. In a *quo warranto* proceeding, the scope of judicial inquiry as to qualification prescribed in Article 62(1)(f) is limited to see whether or not there is a ‘declaration’ by a ‘court of law’ of competent jurisdiction against a member of Parliament that has declared that he is

not sagacious, righteous, non-profligate, honest and ameen. If the court, exercising *quo warranto* jurisdiction, finds that there exists such a declaration, either before or after his election, rendering him disqualified from holding the office of a member of Parliament, it shall declare that the office is not held by him under the authority of law, and consequently, the office is vacant, to be filled in accordance with the law. But if the court finds that there exists no such declaration, it will drop the proceeding. In no way can the court proceed to make the 'declaration' mentioned in Article 62(1)(f) itself in exercise of its *quo warranto* jurisdiction. Therefore, in *quo warranto* proceedings the Supreme Court and the High Courts do not have the jurisdiction to make the 'declaration' mentioned in Article 62(1)(f) of the Constitution.

No jurisdiction vested in Election Tribunals to make the declaration

19. Next, we examine whether the Election Tribunals have the jurisdiction to make the declaration mentioned in Article 62(1)(f). The Election Tribunals are not constitutional bodies but rather are statutory bodies, which are established under an Act of Parliament enacted in pursuance to Article 225 read with Article 222 of the Constitution. In this regard, the law for the time being in force is the Elections Act 2017. The Election Tribunals are established by the Election Commission under Section 140[23] of the Elections Act for the trial of election petitions under the said Act, whereas the scope of jurisdiction of the Election Tribunals in relation to election petitions is defined in Section 154, which is reproduced here for ready reference:

> 154. Decision of the Election Tribunal.—(1) The Election Tribunal may, upon the conclusion of the trial of an election petition, make an order—
>
> (a) dismissing the petition;
>
> (b) declaring—
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> (i) the election of the returned candidate to be void and directing that fresh poll be held in one or more polling stations;
>
> (ii) the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been elected; or
>
> (iii) the election as a whole to be void and directing that fresh election be held in the entire constituency.
>
> (2) Save as provided in section 155, the decision of an Election Tribunal on an election petition shall be final.

[23] Section 140. Appointment of Election Tribunals.-(1) For the trial of election petitions under this Act, the Commission shall appoint as many Election Tribunals as may be necessary for swift disposal of election petitions.

A bare reading of the provisions of Section 154 shows that the Election Tribunals have no jurisdiction to make the 'declaration' mentioned in Article 62(1)(f) that the returned candidate is not sagacious, righteous, non-profligate, honest and ameen. Their jurisdiction is restricted only to making the above three declarations, which do not include the declaration mentioned in Article 62(1)(f).

20. It would also be pertinent to mention here and also briefly discuss the scope of Section 156(1)(b) of the Elections Act, which provides that the Election Tribunals shall declare the election of the returned candidate to be void if the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a Member. This provision as explicitly mentioned therein relates to the lack of qualification or disqualification as existed on the 'nomination day', which means that the scope of inquiry in the election petition by the Elections Tribunals is restricted to the existing lack of qualification or disqualification and that too, on the nomination day only.[24] If there exists no declaration as mentioned in Article 62(1)(f) against a returned candidate on the nomination day, the Elections Tribunals cannot themselves make the declaration and apply it to the returned candidate retroactively from the 'nomination day'. Therefore, the Election Tribunals also do not have the jurisdiction to make the 'declaration' mentioned in Article 62(1)(f) of the Constitution.

No jurisdiction vested in civil courts to make the declaration

21. The courts of law that remain to be discussed in relation to their asserted competency to make the declaration mentioned in Article 62(1)(f) are the civil courts. No doubt, as conferred by Section 9 of the Code of Civil Procedure 1908, the civil courts have general jurisdiction to try 'all suits of a civil nature' except those of which their cognizance is either expressly or impliedly barred. While referring to the explanation of Section 9, which says *inter alia* that a suit in which the right to an office is contested is a suit of a civil nature, it was contended before us that a civil court can try a suit praying for a declaration as mentioned in Article 62(1)(f) as such a suit also involves the right to contest election for the

[24] It may be mentioned here for clarity that the jurisdiction of the High Courts and the Supreme Court in *quo warranto* proceedings extends to lack of qualification or to disqualification that existed on the nomination day or occurred subsequently, but the jurisdiction of the Elections Tribunals is restricted to lack of qualification or to disqualification that existed on the nomination day .

office of a member of Parliament. We are afraid, the contention is half correct. It is true that Section 9 confers jurisdiction on the civil courts in general terms to try 'all suits of a civil nature' unless their cognizance is either expressly or impliedly barred, but it does not grant a substantive right of action. The right of action is to be established by reference to some substantive law, statutory law or common law. As the 'suit of a civil nature' is that which involves the enforcement of a 'civil right', in order to invoke the general jurisdiction of the civil courts, a person must have such a right under some statute, which for this matter includes the Constitution, or under the common law. It is only when such a right exists that the civil courts have the jurisdiction to take cognizance and try the suit involving enforcement of that right.[25] In the matter under consideration, no provision in the Constitution or any statutory law was pointed out to us that confers a right on any person to seek a declaration that another person is not sagacious, righteous, non-profligate, honest and ameen. Nor was it even argued, and we may say rightly, that such a right exists in common law. There is at present no such law, neither statutory law nor common law, that confers such a civil right on any person. Therefore, until any law confers such a civil right the civil courts also have no jurisdiction to try a civil suit filed by a person, seeking against an other person a 'declaration' as mentioned in Article 62(1)(f) of the Constitution.

22. The above discussion leads to the conclusion that the Supreme Court, the High Courts, the Election Tribunals and the civil courts do not have the jurisdiction to make the declaration mentioned in Article 62(1)(f). The cases that held otherwise, including *Sami Ullah Baloch*, have not declared the correct law. Not only these courts, we may clarify, but also no other court of law, at present, has such jurisdiction.

Question (ii): Who has *locus standi* to seek such declaration?

23. The answer to this question, we think, is covered by the discussion made above as to the asserted competency of the civil courts to make the declaration mentioned in Article 62(1)(f). We have found that since no law, including the Constitution, confers on any person a right to seek the declaration as mentioned in Article 62(1)(f), the civil courts have no jurisdiction to try a suit seeking such declaration. The said finding also

[25] Abdur Rahman v. Amir Ali PLD 1978 Lah 113 (DB).

answers this question in terms that as per the existing legal position, no person has *locus standi* to seek against an other person the declaration mentioned in Article 62(1)(f).

Question (iii): What is the procedure for making such declaration, and is Article 10A of the Constitution attracted to making such declaration?

24. Though we have found that no court of law is, at present, competent to make the declaration mentioned in Article 62(1)(f) nor is there any law that prescribes the procedure for making such declaration, we are of the firm opinion that whenever any law confers the right on any person to seek, and the jurisdiction on any court of law to make, the said declaration, Article 10A of the Constitution will definitely stand attracted to the proceedings conducted in exercise of that jurisdiction for the enforcement of that right. Since any determination made in such proceedings shall have the effect of curtailing a fundamental right[26] of the person in respect of whom such declaration is sought, the right to a fair trial and due process guaranteed by Article 10A shall also be available to such person. *Aftab Ahmad* and *Allah Dino Bhayo* also held for applicability of Article 10A to the procedure for making the declaration mentioned in Article 62(1)(f). To this extent, we endorse them.

Question (iv): What is the standard of proof required for making such declaration?

25. The declaration that a person is not sagacious, righteous, non-profligate, honest and ameen is such that creates a serious stigma on the reputation of that person. The standard of proof in making such declaration should, therefore, not be a mere preponderance of probability applied generally in civil cases. Rather, the higher standard of 'clear and convincing proof' should be applied for making such declaration. In this regard, we endorse the principle enunciated in *Siddique Baloch*[27] and *Sumaira Malik*[28] that the finding on the fact of disqualification of a person under Article 62(1)(f) must be based on affirmative evidence, not on presumptions and surmises. These cases, it may be mentioned, borrowed the principle enunciated in *Muhammad Yusuf*[29] regarding all

[26] That is, the right to contest the election for the office of member of Parliament, which is enshrined in the fundamental right to form or be a member of a political party guaranteed by Article 17(2) of the Constitution as held in Nawaz Sharif v. Federation of Pakistan PLD 1993 SC 473, P.M.L. (Q) v. Chief Executive of Islamic Republic of Pakistan PLD 2002 SC 994 and Javed Jabbar v. Federation of Pakistan PLD 2003 SC 955.
[27] Siddique Baloch v. Jehangir Tareen PLD 2016 SC 97.
[28] Sumaira Malik v. Umar Aslam 2018 SCMR 1432.
[29] Muhammad Yusuf v. S. M. Ayub PLD 1973 SC 160.

disqualifications in general by holding that 'the law of election requires strict proof of the disqualification of a candidate as a corrupt practice and a finding with regard to disqualification must be based on positive evidence and not inferentially on mere surmises'.

Article 62(1)(f) is not a self-executory provision

26. As we have seen, Article 62(1)(f) by itself does not identify the court of law that has the jurisdiction to make, and the persons who have the right to seek, the declaration mentioned in the said Article nor does it provide for the manner and procedure of making such declaration. That being so, a court tasked to interpret the provisions of Article 62(1)(f) may arguably have two options:

> (i) to progressively and liberally interpret the phrase, "there being no declaration to the contrary by a court of law", used in Article 62(1)(f) and hold that this phrase has impliedly conferred the jurisdiction on all courts of law to make, and the right of action on all persons to seek, the declaration that a person is not sagacious, righteous, non-profligate, honest and ameen;
>
> or
>
> (ii) to restrictively and narrowly interpret this phrase and hold that it only means what it has expressly said, nothing more nothing less, and that it is for the legislature to make it operative by conferring the jurisdiction on a specific court of law to make, and the right of action on specified persons to seek, such declaration.

The first option obviously has the nuance of conferring by a farfetched interpretation or judicial order the jurisdiction on courts of law to make and the right of action to seek, the declaration mentioned in Article 62(1)(f), as has been done by different Benches of this Court in the afore-discussed cases. This option also challenges the unchallenged legal position that only the legislature by enacting a law can confer any jurisdiction on a court of law and a right of action on a person that does not exist in common law. Besides, while adopting such interpretation, a court also has to specify the acts of a person that may entail such declaration and provide the procedure for making such declaration. All these four acts of conferring the jurisdiction, vesting the right of action, specifying the acts and providing the procedure would clearly amount to legislating rather than interpreting law.

27. Whereas the second option is consistent with the principle mentioned in the preface that the courts are to construe the fundamental rights guaranteed in the Constitution progressively and liberally, but the provisions whether in the Constitution or in any law that curtail or limit the fundamental rights are to be construed restrictively and narrowly. The declaration by a court of law mentioned in Article 62(1)(f) has the consequence of curtailing the fundamental right of a person to contest the election for the office of a member of Parliament;[30] therefore, the said principle requires that the provisions that mention such declaration should be construed restrictively and narrowly, and not in a progressive and liberal manner to include or read into that which is not expressly provided therein. Such reading into the Constitution is also against the principle of harmonious interpretation of the provisions of the Constitution as it abridges the fundamental right of citizens to contest the elections and vote for a candidate of their choice enshrined in Article 17(2) of the Constitution, in the absence of reasonable restrictions imposed by law.

28. Besides, being aware of the fact that the phrase "there being no declaration to the contrary by a court of law" was added in Article 62(1)(f) by the 18th Amendment in the year 2010, we cannot hold that this addition has made no change in the meaning and scope of Article 62(1)(f) as being previously understood and applied. Ignoring the purpose of the change would be tantamount to ignoring the intent of the legislature, which defies the very object of the judicial act of interpreting a provision of law, i.e., to ascertain the legislature's intent. Nor can redundancy be attributed to the framers of the Constitution in making this addition in Article 62(1)(f). Before this addition, there were several instances[31] in which without determining the disputed facts through a fair trial and due process, the provisions of Article 62(1)(f) were applied, or sought to be applied, for holding a person to be not sagacious, righteous, non-profligate, honest and ameen. It was this arbitrary and whimsical application of Article 62(1)(f), or the posisisbility of its application in such manner, that was intended to be remedied by the legislature through the

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[30] Javed Jabbar v. Federation of Pakistan PLD 2003 SC 955; P.M.L. (Q) v. Chief Executive of Islamic Republic of Pakistan PLD 2002 SC 994; Nawaz Sharif v. President of Pakistan PLD 1993 SC 473.

[31] Muhammad Afzal v. Altaf Hussain 1986 SCMR 1736; Ghulam Dastgir v. Benazir Bhutto 1991 CLC 571; Muhammad Munir v. Appellate Tribunal 1993 SCMR 2348; Rafique Haider Leghari v. Election Tribunal PLD 1997 SC 283; Ghazanfar Ali v. Tajammal Hussain 1997 CLC 1628 and Qamar Javed v. Intisar Hussain PLD 2008 Lah 130.

addition of that phrase. The legislature's intent was to restrict, not to liberalise, the applicability of Article 62(1)(f).

29. In making this addition, the legislature's intent is more than clear in that every person must be presumed *sagacious, righteous, non-profligate, honest and ameen* unless a court of law has made a declaration against him to the contrary. Holding that the special forums under the elections law or the constitutional courts can declare a person disqualified under Article 62(1)(f) in the same way as they were doing before the addition of that phrase would be a sheer negation of the legislature's intent. By adding that phrase, the legislature made it clear that Article 62(1)(f) is not self-executory and therefore cannot be applied by the special forums under the elections law or by the constitutional courts to disqualify a person from contesting the election for, or holding, the office of a member of Parliament, unless a court of law has made a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Therefore, Article 62(1)(f) of the Constitution, in our considered opinion, is not a self-executory provision.

Self-executory or non-self-executory provisions of the Constitution

30. We may, however, underline here that our Constitution, like most of the modern constitutions, contains extensive provisions on certain matters that operate directly upon the rights and obligations of people and also delineates mostly the functions of different constitutional bodies and offices in sufficient details to make them operative *per se*.[32] Therefore, it may be presumed that all provisions of the Constitution are self-executory unless there is an express provision or a necessary implication that requires or envisages a legislative act to enforce the constitutional mandate. As a constitutional provision is self-executory if it does not require legislation to put it into effect,[33] the question of whether a constitutional provision is self-executory is largely determined by whether legislation is a necessary prerequisite to the operation of the

[32] See Justice Qazi Faez Isa v. President of Pakistan PLD 2023 SC 661 per Maqbool Baqar, J., et al. wherein it was observed that right conferred by Article 19A is effective in operation (self-executory) without enactment of a law; Sharaf Faridi v. Federation of Pakistan PLD 1989 Kar 404 (7MB), wherein it was held that Article 203 of the Constitution is effective in operation (self-executory) – This judgment was upheld in Govt. of Sindh v. Sharaf Faridi PLD 1994 SC 105 with some modifications; and Hakim Khan v. Govt. of Pakistan PLD 1992 SC 595, wherein it was held that Article 2A of the Constitution is not self-executory.

[33] Hakim Khan v. Govt. of Pakistan PLD 1992 SC 595 per Shafiur Rahman, J., cited Bindra's Interpretation of Statutes, 7th ed., which describes that a constitutional provision is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced without the aid of a legislative enactment.

provision.[34] And the insurmountable difficulties in giving effect to a constitutional provision without legislation afford the strongest reason for concluding that the provision is not self-executory.[35]

31. How then can the disqualification envisaged by Article 62(1)(f) be made executory is the question that also begs the answer. The answer is quite simple and straightforward: through the legislative action, i.e., the enactment of a law. Just as the declaration and the convictions mentioned in Article 63(1)(a), (g) and (h) are to be made by the courts of law that have been conferred jurisdiction, and in accordance with the procedure provided, by or under the laws enacted by the legislature, the declaration mentioned in Article 62(1)(f) is also to be made by a court of law that is conferred jurisdiction, and in accordance with the procedure provided, by or under the law enacted by the legislature. There is, at present, no such law. Until such law is enacted to make its provisions executory, Article 62(1)(f) stands on a similar footing as Article 62(1)(d), (e) and (g), and only serves as a guideline for the voters in exercising their right to vote.

Failure of *Sami Ullah Baloch* to adhere to the principle of harmonious interpretation

32. One of the most celebrated principles of constitutional interpretation is that a Constitution is to be read as an organic whole and its provisions, especially those closely related to each other, are to be harmoniously reconciled instead of making out inconsistencies between them. One constitutional provision cannot, unless expressly so provided, override the other nor can one be so construed as to destroy the other but rather both are to be construed harmoniously, each sustaining the other.[36] The meaning and scope of an obscure provision is to be ascertained in light of that provision which manifests the intent of the constitution makers in unequivocal terms. Because the different parts of a Constitution are linked into a whole, i.e., the Constitution, and are not merely an unconnected bunch of isolated provisions; every provision is

[34] Wolverine Golf Club v. Hare 24 Mich App 711 (1970).
[35] Griffin v. Rhoton 85 Ark. 89 (1907).
[36] Hakim Khan v. Government of Pakistan PLD 1992 SC 595; Kaneez Fatima v. Wali Muhammad PLD 1993 SC 901; Zaheeruddin v. State; 1993 SCMR 1718; Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324; Raja Afzal v. Government of Pakistan PLD 1998 SC 92; Wukala Mahaz Barai Tahafaz Dastoor v. Federation of Pakistan PLD 1998 SC 1263; Judges' Pension case PLD 2013 SC 829); Presidential Reference on Judges' Appointment Matter PLD 2013 SC 279 and LDA v. Imrana Tiwana 2015 SCMR 1739.

related to a systemic plan and contributes to the functioning of an integrated scheme.[37]

33. While interpreting Article 62(1)(f), *Sami Ullah Baloch* did not notice the provisions of Article 175(2), Article 4 and Article 10A; did not give due effect to the provisions of Article 17(2); and did not read the provisions thereof in harmony with the closely related Article 63(1)(h) of the Constitution as it failed *inter alia* to appreciate:

(i) that as per Article 175(2), the jurisdiction to make the declaration mentioned in Article 62(1)(f) can only be conferred on a court of law by the Constitution or by or under any law;

(ii) that as per Article 4, no action detrimental to the reputation of a person, such as making the declaration mentioned in Article 62(1)(f), can be taken except in accordance with law, which requires that there must be a law specifying those acts of a person that may entail the making of the declaration mentioned in Article 62(1)(f);

(iii) that as per Article 10A, the person in respect of whom such declaration is to be made has a right to a fair trial and due process, which requires that the manner and procedure for seeking and defending such declaration must be specified by law;

(iv) that as per Article 17(2), the right to contest the election for the office of a member of Parliament can only be curtailed by restrictions imposed by law and that those restrictions must also be reasonable; and

(v) that as per Article 63(1)(h), the acts of a person that may also justify the making of a declaration as mentioned in Article 62(1)(f) entail disqualification only for a period of five years, recognizing the possibility of reformation in the character of persons whereas the imposition of lifetime disqualification even takes away the incentive to reform one's character.

In so doing, *Sami Ullah Baloch* sidestepped the above-mentioned cherished principle of harmonious interpretation. The most perplexing aspect of *Sami Ullah Baloch* is that although it stated that 'since the two provisions [Article 62(1)(f) and Article 63(1)(h)] pertain to the same subject matter, therefore, they ought to be construed harmoniously',[38] it failed to adhere to this principle. It overlooked the fact that as per Article

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[37] Lawrence H. Tribe, et al., On Reading the Constitution (1991) cited in Munir Bhatti v. Federation of Pakistan PLD 2011 SC 407 per Jawad S. Khawaja, J.
[38] Sami Ullah Baloch, para 28.

63(1)(h), a conviction and less than a two-year sentence for an offence involving moral turpitude does not entail a disqualification, even for a single day. Therefore, while interpreting Article 62(1)(f), an implied intention that directly conflicts with the express constitutional mandate cannot be attributed to the constitution-makers, by holding that they intended for a civil declaration for the same conduct to have a lifelong disqualifying effect.

Failure of *Sami Ullah Baloch* to adhere to the principle of interpreting laws in accordance with Islamic injunctions

34. The second, but no less important, principle of interpreting laws, as established not only by several judgments of this Court[39] but also having been incorporated in an Act of Parliament[40], is that while interpreting laws if more than one interpretations are possible, the courts should adopt that which is more consistent with the Islamic injunctions. On noticing certain directives enshrined in several provisions of the Constitution, including Article 227(1) which mandates that all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah and no law shall be enacted which is repugnant to such injunctions, this Court observed in *Hamida Begum*[41]:

> While the responsibility for bringing the existing laws in conformity with the Injunctions of Islam, and ensuring that no law shall be enacted which is repugnant to such Injunctions, must rest with the executive and the legislative organs of the State, responsibility also devolves on the Judiciary to implement the spirit underlying these provisions of the Constitution. If, therefore, in any given situation, two interpretations are possible, one of which is conducive to the application of the laws of Islam, then the Courts ought to lean in favour of its adoption.

In interpreting Article 62(1)(f), *Sami Ullah Baloch* circumvented this principle also. It though mentioned the Islamic concept of repentance and reformation (*tawba* and *islah*) as argued by some of the learned counsel but did not address the same and determine its scope and applicability to the duration of the disqualification incurred by the declaration mentioned in Article 62(1)(f). It failed to appreciate that lifetime disqualification amounts to condemnation in perpetuity and shuts the door to repentance and reformation (*tawba* and *islah*), which is

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[39] Hamida Begum v. Murad Begum PLD 1975 SC 624; A.M. Queshi v. U.S.S.R. P LD 1981 SC 377; Muhammad Bashir v. State PLD 1982 SC 139; Pakistan v. Public-at-Large PLD 1986 SC 240; Aziz A. Sheikh v. Commr. of Income-Tax PLD 1989 SC 613; Zar Wali Shah v. Yousaf Ali Shah 1992 SCMR 1778; Akbar Zaman v. State 1993 SCMR 229 and Nazeer v. State PLD 2007 SC 202.
[40] The Enforcement of Shariat Act 1991, Section 4.
[41] Hamida Begum v. Murad Begum PLD 1975 SC 624.

not consistent with the Islamic injunctions as laid down in the Holy Quran.[42] In this regard, *Sami Ullah Baloch* also overlooked a six-member Bench judgment that had given effect to the Islamic concept of repentance in *Iftikhar Bar*[43] thus:

> 15. However, on account of his confessing repentance shown through the resignation tendered by him and also on account of the fact that we are not called upon, in these proceedings, to punish him for his above-noticed acts, we have decided to exercise restraint in the said connection.

A later case of *Faisal Vawda*[44] also toed the line of *Iftikhar Bar.*

<u>*Sami Ullah Baloch* is overruled</u>

35. There is no provision in the Constitution that obligates this Court to follow the law declared or the principle of law enunciated in its previous decision but rather it is the doctrine of *stare decisis* based on the rule of convenience, expediency and public policy which requires this Court to adhere to its previous decisions. We fully recognize the importance of this doctrine which helps maintain certainty and consistency, one of the essential elements of the rule of law, and believe that unless there are compelling reasons to depart, it must be adhered to. Though it is not possible to give an exhaustive list of the reasons that may justify such departure, one reason may be stated confidently, i.e., when the previous decision is found to be 'plainly and palpably wrong', the doctrine of stare decisis does not prevent a court from overruling it.[45] This reason is also named as 'a clear manifestation of error'.[46]

36. While overruling *Dosso*[47] in *Asma Jilani*[48], after referring to certain authorities on the point that in the matter of constitutional interpretation, the doctrine of *stare decisis* has limited application, Hamoodur Rehman, CJ. speaking for the Court, observed:

> Whatever be the scope of stare decisis and its limited application to the interpretation of constitutional instruments, Kelsen's theory on which Munir, C. J., relied was neither a norm of the National Legal Order, nor a statutory provision. Its application in upholding the "victorious revolution" by Iskander Mirza did not, therefore, attract the doctrine of stare decisis.

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[42] Qu'ranic verses on the subject include: surah 2, al-Baqarah, verse 160; surah 4, al-Nisa, verse 146; surah 6, al-An'am, verse 54; surah 7, al-Aa'raf, verse 153; and surah 25, al-Furqan, verse 70..
[43] Iftikhar Bar v. Chief Election Commissioner PLD 2010 SC 817.
[44] Faisal Vawda v E.C.P. 2023 SCMR 370.
[45] Garner et al., <u>The Law of Judicial Precedent</u>, ed. 2016, p. 388.
[46] Cooley, <u>A Treatise on the Constitutional Limitations</u>, p. 50, approvingly cited in Pir Bakhsh v. Chairman Allotment Committee PLD 1987 SC 145. See also Nasir Mahmood v. Federation of Pakistan PLD 2009 SC 107 (previous cases cited in it).
[47] State v. Dosso PLD 1958 SC 533.
[48] Asma Jilani v. Govt. of Punjab PLD 1972 SC 139.

The principle deducible from the above observation of the learned Chief Justice is that where the decision of a court is not based upon some constitutional or statutory provision, the doctrine of *stare decisis* does not apply to such decision.

37. As observed above, neither the Constitution nor any law specifies the court of law that is competent to make the declaration mentioned in Article 62(1)(f) and provides for the manner and procedure of making such declaration. The decision given in *Sami Ullah Baloch* that the declaration made by a court of civil jurisdiction regarding breach of certain civil rights and obligations is a declaration mentioned in Article 62(1)(f) and that such declaration has a lifelong disqualifying effect, is not based on any constitutional or statutory provision but rather amounts to legislating and reading into the Constitution and is therefore found to be 'plainly and palpably wrong'. Thus, with great respect to the learned Judges who rendered the decision in *Sami Ullah Baloch*, we hold that the statement of law made therein is not correct and is therefore overruled.

Validity of Section 232(2) of the Elections Act 2017

38. Section 232(2) added in the Elections Act 2017 *vide* the Elections (Amendment) Act 2023 has prescribed a period of five years for the disqualification incurred by any judgment, order or decree of any court in terms of Article 62(1)(f) of the Constitution and has also made such declaration subject to the due process of law. Although while relying upon a case[49] from the neighbouring jurisdiction it was argued before us that under the doctrine of constitutional silence or abeyance, the legislature can by a sub-constitutional law provide for the duration of the effect of the declaration mentioned in Article 62(1)(f), we are of the opinion, in view of our finding that Article 62(1)(f) is not self-executory, there remains no need to examine the validity and scope of Section 232(2) of the Elections Act.

Facts of and decisions on the appeals and petitions

39. Having found that Article 62(1)(f) is not a self-executory provision and is to be made operative through enacting a law that specifies the court of law which is competent to make the declaration mentioned in

[49] Bhanumati v. State of Uttar Pradesh AIR 2010 SC 3796.

Article 62(1)(f) and provides for the manner and procedure of making such declaration, and that until such law is enacted, Article 62(1)(f) only serves as a guideline for the voters in exercising their right to vote, we proceed to examine the facts of the present appeals and petitions and decide them in accordance with the said legal position.

Civil Appeal No. 982/2018

40. The respondent, Muhammad Islam, was found to have filed fake testimonials of his education, in the general elections held in 2013; therefore, the notification of the Election Commission declaring him the returned candidate for a seat of the Punjab Provincial Assembly was set aside by this Court vide its order dated 18.07.2013 passed on a CMA in Civil Appeals No.191-L and 409 of 2010. Later, in the general elections of 2018, the nomination paper of the respondent was accepted by the Returning Officer. The appellant, Hamza Rasheed Khan, alleging disqualification of the resplendent under Article 62(1)(f), filed an appeal against the order of the Returning Officer, which was dismissed by the Appellate Tribunal with the observation that since there had been no declaration against the respondent by a court of law that he was not sagacious, righteous, non-profligate, honest and ameen, the objection was not sustainable. The appellant challenged the order of the Appellate Tribunal before the Lahore High Court in its writ jurisdiction. The High Court dismissed the writ petition of the appellant, by not only endorsing the said observation of the Appellate Tribunal but also further observing that in the absence of a positive declaration as contemplated by Article 62(1)(f), it could not be inferred that the respondent was not sagacious, righteous, non-profligate, honest and ameen. Hence, this appeal. We find that the observations of the Appellate Tribunal and the High Court are perfectly correct and warrant no interference by this Court. This appeal is meritless and is, therefore, dismissed. We may clarify here that in the short order, the appeal was mistakenly mentioned as involving disqualification of the appellant, instead of the respondent, which error stands corrected as per this clarification.

Civil Appeal No. 984/2018

41. The respondent, Fazal Mehmood, was found to have filed a fake certificate of his educational qualification as B.A., in the general elections

held in 2008; therefore, his nomination paper was rejected by the Appellate Tribunal. Later, in the general elections of 2018, the nomination paper of the respondent was accepted by the Returning Officer. The appellant, Mumtaz Ahmad, filed an appeal against the order of the Returning Officer, which was allowed by the Appellate Tribunal, and the Returning Officer was directed to exclude the name of the respondent from the list of the contesting candidates, on the ground that he did not fulfil the disqualification contained in Article 62(1)(f). The respondent challenged the order of the Appellate Tribunal before the Lahore High Court in its writ jurisdiction. The High Court accepted the writ petition of the respondent and directed the Returning Officer to include his name in the list of the contesting candidates, with the observation that in the absence of a positive declaration as contemplated by Article 62(1)(f), it could not be inferred that the respondent was not sagacious, righteous, non-profligate, honest and ameen. Hence, this appeal. We find that the observation of the High Court and the impugned judgment based thereon are perfectly correct and warrant no interference by this Court. This appeal is meritless and is, therefore, dismissed.

Civil Appeal No. 880/2015

42. The appellant, Ch. Muhammad Arif Hussain, a returned candidate for a seat of the National Assembly in the general elections of 2013, was found to have filed fake testimonials of his education, in the election petition filed by the respondent, Fayyaz Ahmad Khan Ghouri; therefore, the Election Tribunal declared his election as a returned candidate void, holding him disqualified under Article 62(1)(f). Hence, this appeal. In pursuance of the judgment of the Election Tribunal, the bye-election for the seat vacated by the appellant was held and the term of the said Assembly has also since long expired. The appeal as such has become infructuous and is, therefore, disposed of with the clarification that the impugned judgment of the Election Tribunal is not a declaration as mentioned in Article 62(1)(f).

Civil Appeal No. 1946/2023

43. The appellant, Muhammad Khan Junejo, was found to have filed fake testimonials of his education, in the general elections of 2002;

therefore, his election as a returned candidate for a seat of the National Assembly was declared void. In the later elections of 2013, he was again declared disqualified to contest the elections because of his foul play detected in the previous election, holding that he was not sagacious, righteous, non-profligate, honest and ameen as required to be under Article 62(1)(f). His nomination paper for the bye-election for a seat of the National Assembly to be held in 2023 was also rejected on the same ground. In 2023, the appellant while relying upon *Allah Dino Bhayo*, filed a writ petition in the High Court of Sindh seeking a preemptive relief of declaration of his eligibility to contest the upcoming general elections of 2024, on the ground that any determination of his disqualification made under Article 62(1)(f) before the addition of the phrase "there being no declaration to the contrary by a court of law" in that article through the 18th amendment did not disqualify him for future elections. The High Court disposed of the petition, with the observation that the appellant may plead that ground at the appropriate stage before the relevant forum in the forthcoming elections. Hence, this appeal. We find that the observation of the High Court was correct in the legal position then prevailing. But as we have reconsidered the interpretation of Article 62(1)(f) and made certain declarations as to its meaning, scope and applicability, this appeal is disposed of in terms of those declarations.

C.P.L.A No. 2680/2023

44. The petitioner, Kashif Mehmood, was found to have wrongly mentioned his educational qualification as B.B.A. in his nomination paper filed in the general elections held in 2018 and in this regard, to have also filed a false affidavit; therefore, he was de-seated by the Islamabad High Court from a seat of the Punjab Provincial Assembly for which he had been elected. For the forthcoming elections of 2024, his nomination paper was rejected by the Returning Officer holding him disqualified under Article 62(1)(f) but on his appeal, the same was accepted by the Appellate Tribunal with the observation that the determination made by the Islamabad High Court was not a declaration as mentioned in Article 62(1)(f). On the writ petition filed by the respondent, Mehmood Ahmed, the High Court reversed the decision of the Appellate Tribunal and restored that of the Returning Officer. Hence,

this appeal. We find that the observation of the Appellate Tribunal and the order based thereon were legally correct, and should not have been interfered with by the High Court. The impugned judgment of the High Court, even otherwise, is not sustainable in view of the declarations made above as to the meaning, scope and applicability of Article 62(1)(f). This petition is, therefore, converted into an appeal and the same is allowed. The impugned judgment is set aside. Consequently, the nomination paper of the petitioner stands accepted.

45. Civil Appeals No. 981 and 985 of 2018 have different facts, involving conviction for certain offences; while C.M. Appeal No. 135 of 2022 and Constitution Petition No. 40 of 2022 invoke different jurisdictions, involving different implications. These cases are, therefore, de-listed, which shall be posted for hearing separately before appropriate Benches.

46. These are the reasons for our short order dated 8 January 2023, which has been reproduced in the leading judgment authored by Hon'ble the Chief Justice.

Judge

Islamabad
Approved for Reporting
(Sadaqat)