

Scenario 282

RESERVE SEATS SAGA

JANUARY 2024's CHRONICLE:

What happened in January 2024? few verdicts in recent memory have been more ridiculous in reasoning, more corrosive in outcome, and more damaging for democracy than the '**BAT SYMBOL RULING**' by the SC', stripping the country's largest party (PTI) of its electoral sign right before polls.

[On 13th January 2024: In a late-night decision after holding a marathon hearing, the Supreme Court upheld the ECP's decision dated 22nd December 2023, depriving the *Pakistan Tehreek-e-Insaf* (PTI) of its iconic poll symbol — 'BAT' — 'BALLA' in local dialect.

The decision was announced minutes before the expiry of the fifth extended deadline by the election watchdog (ECP) for the intending candidates for the submission of party tickets. The three-member bench consisting of CJP Qazi Faez Isa, J Muhammad Ali Mazhar, and J Musarrat Hilali announced the judgement at 11:15pm, after a delay of several hours. The CJP observed:

"Democracy founded Pakistan, a fundamental aspect of which is the ability to put oneself forward as a candidate and to be able to vote, both within a political party and in general elections. Anything less would give rise to authoritarianism which may lead to dictatorship."

PTI lawyer Hamid Khan, while concluding his arguments, cited Article 2A of the Constitution and highlighted that depriving the PTI from participating in the elections would "virtually mean depriving millions of voters" of their fundamental rights. He added: *'This is a fundamental principle of jurisprudence that courts while*

interpreting constitutional provisions never ignore political consequences of its decision which may come back to haunt for years.'

Citing different judgements, the PTI counsel contended that Article 17 of the Constitution always prevails - on mere technicalities the parties should not be sent out of the election arena.

The hearing commenced at 10:00am that day — a day when the court never assembled (at least in near past then) to hear cases. The bench had taken up an appeal by the ECP challenging the Peshawar High Court (PHC) decision regarding the restoration of the PTI's election symbol; it took multiple breaks during the hearing. The ECP staffers, had to extend their deadlines several times due to a delay in the court order AND they were there in the court since morning. First, time was extended from 4:00pm then 7:00pm, then 10:00pm, later 11:00pm, and lastly to 11:30pm. Finally, the apex court held:

".... The ECP did not act in a mala fide manner nor was the PTI discriminated against in the present case.... that ECP had passed orders against 13 other registered political parties which were far more severe than the order passed against PTI; one such case, of All Pakistan Muslim League, came before this court on Jan 12, 2024, and the order of the ECP, delisting the said political party, was upheld.

.... the mere production of a certificate stating that intra-party elections were held would not suffice to establish that the elections had been held when a challenge was thrown to such an assertion.

Nor, in our opinion, should the ECP concern itself with minor irregularities in the holding of a political party's elections. However, in the instant case not even prima facie evidence was produced to show that a semblance of elections had been held.

.... 14 PTI members, with stated credentials, had complained to ECP that elections had not been held. These complaints were brushed aside in the writ petition by simply asserting that they were not members of PTI...but this bare denial was insufficient... And, if any member of

a political party is expelled it must be done by Section 205 of the Act, but no evidence in this regard was forthcoming.

Section 208 of the Elections Act 2017 mandates that political parties must hold intra-party elections periodically...every member of a political party be provided with an equal opportunity.... (that) these aforementioned members were not provided with nomination papers when they went to get them.

Incidentally, the notice issued by the PTI secretariat stated that the elections were to be held in Peshawar but did not mention the venue and then the venue was shifted to Chamkani, which is a village adjacent to Peshawar.

Neither before the Lahore High Court (LHC) nor before the PHC any provision of the [Elections] Act, including Section 215(5), was challenged.... that observation of the judges that the provision of the law was 'absurd' was uncalled for, particularly when no provision thereof was declared to be unconstitutional.

If it had been established that elections had been held then the ECP would have to justify if any legal benefit to such a political party was being withheld, but if intra-party polls were not held, the benefits accruing pursuant to the holding of elections could not be claimed."

The Supreme Court did not agree that ECP did not have "any jurisdiction to question or adjudicate such elections. If such an interpretation is accepted, it would render all provisions in the Elections Act requiring the holding of intra-party elections illusory and of no consequence and be redundant. "]

Despite facing a nationwide crackdown for nearly two years, with its leader, former Prime Minister Imran Khan, imprisoned since August 2023, and its candidates unable to campaign freely, PTI still emerged as the single largest bloc, with its candidates (independents) winning 93 seats. While the party claimed widespread rigging across the country and alleged a '**stolen mandate through forgery in Forms 45 & 47**' its rivals, Pakistan Muslim League-Nawaz (PMLN) and Pakistan People's Party (PPP), managed to cobble together a ruling alliance, with 75 and

54 seats respectively, in coalition with other smaller parties including *Mu-tahida Qaumi Movement* (MQM).

RESERVED SEATS (?)
IN PAKISTAN'S PARLIAMRNT:

On 8th February 2024; Pakistan's general elections for the National Assembly and four provincial assemblies took place. But there were an additional 70 reserved seats (60 for women and 10 for minorities in the National Assembly) which give the body a total size of (266+70) 336 seats. To achieve a simple majority to form a government, a total of 169 seats was required. However, a two-thirds majority — or 224 votes — was necessary to make any constitutional amendments.

{Reserved seats are allocated only to political parties that win seats in the National Assembly, and the distribution is done based on their proportional representation after the general elections. Similarly, reserved seats are allocated in provincial assemblies based on the parties' proportionate performances.

According to regulations, any political party contesting the polls must submit a list of their nominations for reserved seats prior to elections, as per the schedule given by the ECP. However, after the polls, if a party has over-performed and needs to submit additional names for reserved candidates, it has two weeks to do so.

Independents have three days after their win announcement to declare their affiliation with a party in the assembly. The party they join gets a boost in the number of reserved seats it gets, commensurate with the number of independents that join it.}

In Pakistan's National Assembly, after Elections-2024, the Election Commission of Pakistan (ECP) allocated about 40 out of 60 seats to different political parties for their reserved quota for women. Similarly, seven out of 10 seats reserved for the minorities' quota were allocated in the lower house of the parliament. The rest were left vacant because of the pending hearings & decisions over election petitions in various courts of provinces, capital and in the ECP.

In Elections-2024: Forced to contest the general elections on 8th February 2024 without its party symbol – the cricket bat – allegedly due to violation of certain election rules, PTI fielded its members as independent candidates.

On 4th March 2024, the Election Commission of Pakistan (ECP) declared that the PTI-backed *Sunni Ittehad Council* (SIC) would not be able to claim allocated reserved seats in the national and provincial assemblies - it was the latest setback for former Prime Minister Imran Khan's *Pakistan Tehreek-e-Insaf* (PTI). PTI, while he was in jail then, unable to contest the elections due to a ban on their electoral symbol, had instructed its candidates to join the right-wing peripheral religious party named ***Sunni-Ittehad-Council*** (SIC) in order to extend their numerical strength in the National Assembly.

In its 22-page judgment, the five-member electoral body decided 4-1 that the SIC failed to submit a party list for reserved candidates before the ECP's deadline of 22nd February 2024, two weeks after the 8th February elections that year. (*Pakistan's National Assembly has a total of 70 reserved seats; similarly, the four provincial assemblies have a combined total of 149 reserved seats that are likewise distributed.*) A majority of these reserved seats had already been allocated — leaving about 77 vacant for that decision. PTI criticised the ECP judgement and got recorded its protest immediately before media.

- 'This is the last assault on the heart of democracy,' Senator Ali Zafar of PTI said during a speech in the Senate, the upper house of the assembly on the same day after the decision was announced.

The PTI leadership, as they had won the most seats, under orders from Imran Khan, decided not to form a government with any of the major parties (***on behalf of the PPP, Mr Zardari had THRICE offered the PTI to form coalition govt***) and instead joined hands with a fringe, right-wing religious party, the *Sunni Ittehad Council* (SIC), to claim reserved seats.

*{ The fact remained that the SIC, despite being a registered political party, did not contest the general elections AS PARTY. Its leader, **Sahibzada Hamid Raza**, chose to contest independently, winning his seat from Faisalabad city of Punjab. }*

Meanwhile, in its verdict, the ECP stated that the SIC was not entitled to claim the quota for reserved seats due to **'violation of a mandatory**

provision of submitting a party list for reserved seats, which is a legal requirement. The SIC had not done so because it had not participated in the Elections-2024 as a political party. The ECP also said that the then vacant seats in the national assembly, 23 in numbers, ***'will not remain vacant and will be distributed among other parties based on the elected seats they won'***. The ECP wrote further:

".... that they (SIC) were given a specific timeframe to submit a list of nominations, which the party did not. Every political party, while making any decision regarding crucial steps concerning matters of the political party required under law, should be aware of the potential consequences they may face in the future."

Afterwards, in routine schedule of proceedings in the National Assembly, on 3rd March 2024, Shehbaz Sharif of PMLN was elected the country's new prime minister, securing 201 votes. Omar Ayub Khan, the PTI leader backed by the PTI / SIC, managed to secure 92 votes. Thus, the biggest beneficiary of the ECP's above quoted decision was Sharif's PMLN, along with the PPP and the MQM, which had won the next respective number of seats in the general elections, with 75, 54 and 17 respectively.

It was very likelihood that in case PTI's legal challenge failed to bring them any relief (***AND which was evident from the day to day media news referring to the highly prejudiced and biased ECP***) it was a certainty that the ruling coalition would cross the magic figure of 224, which was required to achieve a two-thirds majority in the National Assembly. The ECP's decision opened the door for a prolonged legal battle, as PTI was going to challenge the decision in higher courts. There was no likelihood that PTI would be able to overturn it in the given circumstances; it could further dent its position in the lower house of parliament, potentially allowing the ruling coalition of PMLN+PPP to gain a two-thirds majority in the 336-member National Assembly.

The ECP decision was widely criticised by lawyers, with many calling the order a 'farce' or even 'unconstitutional'. Most constitutional experts held:

"The ECP's verdict aligns with its previous decisions that have disenfranchised the people of Pakistan. There are precedents expressly barring the minor technicalities on the basis of which the ECP barred the largest party. However, an even greater subversion of the democratic mandate is its division of the remaining seats among the smaller parties."

*Some also questioned the decision to distribute the unallocated seats to other, smaller parties; arguing that no legal or constitutional provision permitted this '**absurd distribution**'. The entire framework of the Constitution and law dictates that a political party should receive reserved seats through a system of proportional representation. It is entirely undemocratic for other political parties to get a share of reserved seats beyond their proportional strength of general seats in the National Assembly.*

*Some noted that the ECP decision lacks any '**convincing justification**' for allocating the unallocated seats to other parties. The impact may well be granting the coalition government a full two-thirds majority in the National Assembly, in fact."*

[AL-JAZEERA dated 7th March 2024 is referred.]

Some constitutional lawyers viewed the ECP verdict as another '**technical knockout**' suffered by PTI – because PTI leadership thought that they were still a political party, albeit without a symbol - whereas the ECP interpreted it otherwise. The PTI, most probably, had decided to challenge the ECP's order before the Supreme Court – BUT was badly mistaken about the Supreme Court's narrow interpretation of election laws - referring to the CJP Qazi Faez Isa's verdict of 13th January 2024 upholding the ECP decision to strip the party of its cricket bat symbol.

However, the SC's decision of 12th July 2024 reversed that PMLN's plan.

SC RESTORED PTI BACK WITH BENEFITS:

On 12th July 2024: Pakistan's Supreme Court ruled that former Prime Minister Imran Khan's PTI would receive 23 additional seats in Parliament, a decision that was expected to deepen the political turmoil that had embroiled the country since Mr Khan was ousted from power in April 2022. The ruling stripped the governing coalition, led by Prime Minister Shehbaz Sharif, of its two-thirds majority in Parliament, weakening his already fragile government and emboldening the opposition led by Khan's party, the PTI.

'As a political party, the PTI is entitled to its reserved seats,' said Chief Justice Qazi Faez Isa while reading out the order, which was supported by eight judges and opposed by five of the 13-member full

court bench. That 8-5 decision, broadcast live, overturned an earlier verdict of the Peshawar High Court and the ECP that had deprived the PTI, of about 80 reserved seats in the national and provincial legislatures.

The puzzle started when in earlier months, the ECP took away the party's symbol after it declared PTI's intra-party elections invalid. In 2024's general elections, PTI candidates still won 93 seats in the National Assembly, leaving behind Sharif's PMLN and the PPP of the Bhutto dynasty. To maintain a unified presence in the legislature, PTI-backed candidates joined the *Sunni Ittehad Council* [SIC], making the right-wing religious party the parliamentary face of PTI. ***However, the ECP rejected SIC's claim to reserved seats in March 2024, citing technicalities, including that it did not submit a list of names for reserved seats before the election.***

- The ECP then doled out reserved seats to other parties boosting PTI's opponents' position across national and provincial legislatures. Later the same month, the Peshawar High Court upheld the ECP's decision.

In May 2024, however, the Supreme Court suspended those verdicts, putting the ruling alliance's two-thirds majority on hold and the status of several lawmakers occupying reserved seats in limbo. Overturning the ECP and Peshawar High Court's decisions that day, ***the top court's majority declared PTI did not lose its status as a political party in the assemblies despite losing its electoral symbol prior to polls and running candidates as independents.***

The apex court asked PTI-backed lawmakers, the independents, to declare their party affiliation with the ECP within fifteen days. It ordered the Commission to allot the party its share of reserved seats across all legislatures. The decision undeniably bolstered the political position of Mr Khan's supporters, whose rallying cry had been that the ECP and a pro-military caretaker government that oversaw the polls indulged in electoral fraud to deprive the PTI of a victory. The Commission and military denied the charges, but questions were raised in the West about the transparency of the polls.

- ***The US House of Representatives, as well as European countries, had called on PM Shehbaz Sharif's coalition government to open a probe into the allegations - The***

ECP and PM Sharif's ruling coalition had rejected all foreign calls to investigate alleged electoral discrepancies.

PM Shehbaz Sharif's government came to power in February 2024, just five months ago after general elections that were marred by allegations that the country's powerful military had rigged on dozens of seats and tipped the scales against Khan's PTI. Referring to the **New York Times** dated 12th July 2024:

"Pakistan's some military Generals, who allegedly had long been seen as an invisible hand guiding the nation's politics, were at odds with Imran Khan since he was ousted from prime ministerial slot. But in a stunning rebuke to those few military leaders, candidates loyal to Mr Khan won a majority of seats in the National Assembly in the said elections — a victory that shattered many including the top judiciary and the military in Pakistan.

The opposition's victory reflected the recent swell of discontent with the Generals' influence in politics since Mr. Khan's ouster, which he accused the military of orchestrating. Those accusations sparked mass protests across the country, challenging the military's authority like never before. Mr. Khan, a former captain of the country's popular national cricket team, was imprisoned in August (2023) on what he says were trumped up political charges."

Despite winning the majority of seats in Parliament during the last election, Mr Khan's PTI, was not allotted any of the 70 unelected seats reserved for women and minorities, which were typically handed out in proportion to the number of elected seats a party secures. Instead, those seats were allocated to parties in Mr Sharif's governing coalition, giving it a critical two-thirds majority. The Top Court ruling on that day forced the National Assembly to redistribute some of those reserved seats to PTI, making it the single largest party in the National Assembly. The NYT further wrote:

"... hailed the decision as a major victory in the country where the military has increasingly taken a front seat in politics, more overtly shaping the country's foreign and domestic policies. At a time when Pakistan's democracy faces severe threats and all democratic norms are being eroded, the Supreme Court's decision is a welcome relief - this ruling is a crucial step forward in fortifying democracy in Pakistan."

The decision came at very crucial time as PM Sharif had planned to introduce broad ***judicial reforms, including extending the tenure of the Supreme Court chief justice.*** Critics said these measures were aimed at influencing the judiciary for political gain. While PM Sharif's coalition retained a simple majority in Parliament, without a two-thirds majority it was unable to enact those planned reforms. His coalition, which was already considered weak because it lacked popular support, became ripe to face additional questions over its ability to govern. No prime minister has ever completed a full term in office in Pakistan.

- The ruling of that day added to speculation that PM Sharif's government could, too, face an early exit. However, Azam Nazeer Tarar, the federal law minister, said at a news conference: *'As far as the government's stability is concerned, the ruling coalition has a visible majority. A simple majority in the Parliament is 169 out of a total of 336 seats.'*

The fact remained that the PMLN government's ability to pass crucial legislation had been affected. SC's that decision was the latest sign of the country's judiciary growing more assertive; analysts held the opinion. In earlier months, judges in several High Courts had accused the country's intelligence agencies of trying to coerce them and resorted to openly criticize the military's meddling in judicial affairs. The tension between the courts and the military had been exacerbated by the legal cases against Mr Khan. The **NYT** quoted Talat Hussain, an Islamabad-based political analyst, saying:

"The judges are upending everything that the military establishment had put in place. They have on their side the lawyer bars, a popular party, a popular narrative, and an extremely incompetent government that doesn't know whether it is staying or going."

Even before the general election was held in February (2024), anger at the military was brewing across the country among Mr Khan's supporters who took to the streets to criticize military leaders more openly and boldly than ever before. While military leaders hoped the general elections would quell that unrest, it only added to the growing discontent. One major point of contention was that Pakistan's Election Commission (ECP) forced PTI candidates to run as independents — making them ineligible to receive any of the unelected, reserved seats in Parliament. The SC's FULL-13 JUDGES BENCH verdict manifestly overruled the ECP's all dubi-

ous decisions, saying that '***PTI should be afforded all of the constitutional and legal rights of any political party***'— thrusting PTI back onto the political main stage.

SEAT POSITION IN KHYBER PK:

The Supreme Court's decision to award reserved assembly seats for women and minorities to *Pakistan Tehreek-e-Insaf* (PTI) significantly affected five opposition parties in the Khyber PK Assembly that had previously benefited from the ECP's ruling of 1st March 2024. The affected parties included *Jamiat Ulema-i-Islam-Fazal* [JUI-F], PMLN, PPP-Parliamentarians, *Awami National Party* [ANP], and PTI-Parliamentarians, which were allocated reserved seats in the national and provincial assemblies through various ECP notifications.

Originally, out of KP Assembly's 26 seats reserved for women, the ECP allocated two each to the JUI-F and PMLN, and one to the PPP. However, its decision of 1st March led to the award of the controversial 21 reserved seats to these five parties with the JUI-F getting eight, PMLN six, PPP five and the ANP and PTI-P one each. Also, the ECP initially didn't allot any of the four seats reserved for non-Muslims in the provincial assembly to any party. However, after the 1st March order, it allotted two of the seats to the JUI-F and one each to the PMLN and PPP.

Despite the allocation of the controversial reserved seats to different parties in the assembly, ***the MPAs-elect couldn't take oath as after their respective notifications, the assembly wasn't convened until the Supreme Court issued a stay order and suspended their notifications***. After the apex court's judgement of 12th July 2024, the PTI was entitled to get all 21 seats reserved for women and three for non-Muslims.

Similarly, Khyber PK has 10 reserved seats for women in the National Assembly. Of them, the notification of eight got set aside by the Supreme Court's decision. Initially, one of these seats was allotted to the JUI-F and PMLN each; but the ECP, after its 1st March order, awarded four seats to the PMLN and two each to JUI-F and PPP. Then, after the SC's verdict, the PTI was entitled to the NA's eight reserved seats.

Of late, 92 of Khyber PK assembly's 115 general seats were held by the PTI-backed MPAs, who had joined the *Sunni Ittehad Council* (SIC). However, Chief Minister Ali Amin Khan Gandapur didn't join the council and maintained his independent status.

Out of the 45 National Assembly's general seats in KP, three were held by PMLN, two by the JUI-F, and one each by the PPPP and *Majlis Wahdat-i-Muslimeen*. The SIC was joined by 34 of the PTI-backed independent MNAs, whereas three of the PTI leaders opted to remain independent, including its Chairman Barrister Gohar Ali, Secretary General Umer Ayub Khan and one Ali Asghar.

PTI dissident Mubarik Zaib was an independent MNA from Bajaur tribal district.

SC's [CORRECTIVE+] JUDGMENT AT LAST:

Finally, the verdict on reserved-seats was there. ***It was the PTI, not 'the independents', which won the most seats in the 8th February 2024 general election.*** Every sane person in Pakistan and abroad knew that if the independents had won 92 seats, over and above the stalwarts of PMLN, PPP, JUI-F or other minions, it was due to Imran Khan's name linked with them. The people voted for them after searching their odd symbols, not searching for the party symbol of BAT – they knew what had happened with their BAT / BALLA in ECP's corridors.

The said distinction, for those not familiar with the twists and turns of the reserved seats saga, was especially significant as it was later by the Supreme Court itself. The majority judgement meant that not only would the PTI be restored as a lawful political party in the national and provincial assemblies, but it would also be able to claim a large share of reserved seats for minorities and women and, thereby, solidify its position in the various legislatures.

A stunning reversal of fortunes that was, both before and after the 2024's general election, being treated as a defunct entity with seemingly no political rights based on the ECP's gross misinterpretation of the Supreme Court's verdict dated 13th January 2024 that denied PTI the use of its 'bat' as election-symbol.

PTI was and remained a political party, 'the Supreme Court clarified shortly afternoon to an anxious crowd gathered on its premises on that scorching day. On that point, 11 of the 13 judges seemed to agree. The majority upheld that:

"...the denial of an election symbol to a political party does not affect its constitutional and legal rights to continue functioning as a political entity, including its right to participate in an election or to field its candidates."

It was these rights that the ECP had so blatantly subverted when it repeatedly refused to let PTI candidates contest on their party-issued tickets and insisted on treating its returned candidates as independents. Now, through its judgement, the Supreme Court has, **as a form of restorative justice**, allowed the PTI to reorganise itself in parliament and make a fresh bid for the reserved seats that were denied to it, as was its right.

In so doing, the Supreme Court unfastened and corrected a historic injustice. The PTI-SIC alliance was always seen as an abnormality, a marriage of convenience necessitated by the unique and arbitrary conditions and restrictions imposed on the PTI by the ECP. To make matters worse, the ECP not only refused to recognise the coalition's right to a share of reserved seats, it also gifted the same to other opponent parties. The decision flew in the face of reason and the principles of proportional representation and, therefore, had to be undone.

Fortunately, majority of the judges decided to go further and did complete justice by undoing the series of wrongs that had been caused by the ECP's reprehensible decisions based on the 'bat' judgement. It was a REAL step towards positive change – with the hope that this judgement would preclude the kind of blatant engineering that defined the previous general election. The government and establishment were expected NOT to stand in the way of implementation of the said historical full-court judgment. The salient features remained:

- ***Full court bench ruled 8-5 in favour of awarding reserved seats to PTI.***
- ***All 13 judges backed PTI's claim of being a parliamentary party.***
- ***39 MNAs who declared party affiliation to be considered 'PTI lawmakers'.***

- ***ECP told to seek statements from other independents within fortnight.***
- ***Once party okays their nominations, they would be notified as returned candidates.***
- ***Nothing was there to suggest that the said judgement 'tantamount to rewriting the Constitution'.***

In a unique majority verdict, the Supreme Court declared the opposition *Pakistan Tehreek-i-Insaf* (PTI) eligible to receive reserved seats for women and non-Muslims in the national and provincial assemblies, giving it a new lease on life in the legislature by declaring it to be a parliamentary party.

On that day, as the full bench consisting of 13 judges settled into their seats inside Courtroom No.1, the CJP Qazi Faez Isa asked J Syed Mansoor Ali Shah — the senior judge — to announce the majority verdict he authored, which was supported by seven other judges: J Munib Akhtar, J Muhammad Ali Mazhar, J Ayesha A Malik, J Athar Minallah, J Syed Hasan Azhar Rizvi, J Shahid Waheed and J Irfan Saadat Khan.

Despite the 8-5 split, all 13 judges declared the PTI a parliamentary party. The majority judgement explained that 39 out of the 80 MNAs, shown by the ECP as PTI candidates, belonged to PTI. The rest of the 41 independents were to file duly signed and notarised statements before the commission within 15 days, explaining that they contested the 8th February 2024 general elections as a candidate of (which) particular political party.

Thereafter, under Article 51 of the Constitution, ECP would post on its website a list of the returned candidates and submit a compliance report before the apex court. The order explained that under Article 51(5) of the Constitution, the PTI would be entitled to reserved seats for women and minorities in the National and provincial assemblies of KP, Punjab and Sindh according to the number of general seats secured by the party latest by then.

In case ECP or PTI need any clarification, the majority judgement said, the commission could apply to the court by making an appropriate application, which would be placed before judges constituting the majority in chambers, for directions as would be deemed appropriate.

The majority judgement set aside the Peshawar High Court's judgment dated 25th March 2024 and ECP's decision of 1st March 2024 which had denied reserved seats to the SIC as ultra vires of the Constitution, without lawful authority and of no legal effect, and thus quashed the same. The SC's apex bench wrote in the decision that:

"The lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in the elections, whether general or by-elections and the commission was under a constitutional duty to act, and construe and apply all statutory provisions, accordingly.

*... for purposes, and within the meaning, of paragraphs (d) and (e) of clause (6) of Article 51 ('Article 51 Provisions') and paragraph (c) of clause (3) of Article 106 ('Article 106 Provisions') of the Constitution, **the Pakistan Tehreek e Insaf ('PTI') was and is a political party**, which secured or won (the two terms being interchangeable) general seats in the national and provincial assemblies in the general elections of 2024".*

The SC's order further said:

"The notifications of various dates, whereby the persons respectively mentioned therein, being the persons identified in the commission's notifications, dated 13th May 2024, have been declared to be returned candidates for reserved seats for women and minorities in the national and provincial assemblies, are declared to be ultra vires to the Constitution, without lawful authority and of no legal effect, and are quashed from 6th of May 2024 onwards, being the date an interim order was made by the court in CPLA no. 13289 of 2024, the leave petitions out of which the instant appeals arise."

Later, CJP Qazi Faez Isa read out **the minority judgement**, written by Justice Jamal Khan Mandokhail, which also declared the PTI a parliamentary party – BUT the minority view explained that those who joined the SIC were presumed to have done so out of their own free will. None of them claimed to have joined the party because of any misunderstanding of any judgement, the law, compulsion, coercion or undue influence and it was not for the Supreme Court to presume otherwise. The minority view added:

"We must ensure that words are not read into the Constitution nor to ascribe artificial meaning to commonly understood words;

we must also abide by validly enacted laws and must not do anything either to hinder or facilitate a political party by ignoring the law's mandate."

Meanwhile, Justice Yahya Afridi ordered the ECP to decide the allocation of the reserved seats to the political parties in the National and provincial assemblies after providing an opportunity to the parties concerned and, if required, to revisit its earlier decision within seven days.

- ***Justice Aminuddin Khan and Justice Naeem Akhtar Afghan, however, rejected the appeals by the SIC and upheld the 25th March 2024's Peshawar High Court (PHC) judgement, denying them the reserved seats.***

The minority view explained that women and non-Muslims cannot be deprived of this right by leaving these seats vacant, therefore the reserved seats must be filled in, as provided by Article 224(6) of the Constitution. The impugned judgement however set aside PHC and ECP order to the extent of ECP calculating and allocating the reserved seats to the parties by exclusion of PTI candidates.

During the hearing, it transpired that a number of candidates had submitted their nomination papers declaring on oath that they belonged to PTI supported by an affiliation certificate, though some did not submit affiliation certificates of PTI, however, since they stated on oath that they belonged to PTI and did not contradict themselves, they should be considered PTI members. ***The ECP, by misinterpreting the Jan 13 judgement, mentioned those PTI candidates as independents.*** The ECP had no authority to declare validly nominated candidates of a political party to be independent candidates, the minority judgement explained.

Justice Yahya Afridi dismissed the petitions of SIC, since the party did not fulfil the conditions prescribed for a political party to be allocated reserved seats for women and non-Muslims in the National Assembly or the provincial assemblies.

PTI's SMILES OVER ITS RE-ENTRY:

Outside the courtroom, jubilant PTI supporters, especially the women who had turned out in large numbers, were chanting slogans in favour

of jailed PTI founder Imran Khan and appreciating the Supreme Court's verdict; saying:

"It is a step back from the brink; it is a triumph for the Constitution, democracy and the independence of the judiciary. The senior puisine judge along with his concurring brother judges has righted a grievous wrong. It portends well for the future; an institution publicly reviled for its history of failures and tattered moral authority appears to rise above its former self.

The verdict, as expected, was unambiguous and crystal clear. Complete justice has been done by the court. The verdict also ended the confusion caused by ECP by denying PTI its election symbol."

A post from the PTI's official X account demanded the immediate resignation of Chief Election Commissioner Sikander Sultan Raja for violating [the] Constitution of Pakistan; some also raised voices for trying them under Art 6 of the constitution - that there were serious questions on the *malafide* intent of the ECP.

THE BACKGROUND: the SIC had filed a petition before the SC **on 1st April 2024**; — moved by party chief Sahibzada Hamid Raza — seeking to set aside the PHC judgment dated 14th March 2024. The apex court on 6th May had suspended the said PHC judgment as well as the ECP decision of 1st March 2024 for depriving the SIC of seats reserved for women and minorities.

The SC had also ordered placing the present petitions before the three-judge committee that determines the constitution of the bench for the reconstitution of a larger bench when Attorney General for Pakistan Mansoor Usman Awan highlighted that under Section 4 of the Supreme Court (Practice and Procedure) Act 2023, the present case should be heard by a larger bench since the issue concerns the interpretation of constitutional provisions.

The ECP subsequently suspended victory notifications of as many as 77 members of the national and provincial assemblies elected on those seats. The suspended lawmakers included 44 from PMLN, 15 from PPP, 13 from JUI-F and one each from PML-Q, IPP, PTI-P, MQM-P and ANP. Resultantly, the ruling coalition lost a two-thirds majority in the lower house of Parliament for then, with its numerical strength shrinking to 209 from 228. In the House of 336, the magic figure to attain a two-thirds majority comes to 224. The PMLN's strength in the House reduced from

121 to 107 while PPP's from 72 to 67. Those suspended included 22 members of the National Assembly elected on reserved seats for women and minorities. They included 14 from PMLN, five from PPP and three from JUI-F.

Headed by the CJP, a full-court meeting on 10th July 2024 had considered various aspects of the controversy at length since the case would have a far-reaching impact on the allotment of the reserved seats among political parties in the legislature in the future as well. The real controversy before the court was how to deal with the reserved seats as they were neither doled out to other parties having a presence in Parliament and provincial assemblies nor allotted to the SIC that did not contest the 8th Feb general elections as party and thus failed to secure a single seat — a legal requirement for the allotment of reserved seats according to the ECP.

The SIC, however, argued that under the concept of a proportionate representation system, it was not a constitutional requirement for the allocation of reserved seats that a political party having general seats in the assemblies had contested the general elections.

The voters could consider the chaos: with its bat broken, the PTI fell afoul of Rule 94 of the Election Rules — '*...parties are entitled to reserved seats only if allotted a symbol*'. That was why PTI-backed independents swung far right to join the *Sunni Ittehad Council* (SIC). Then the ECP sprung a second trap: '*... the Election Act requires parties to submit candidate lists to the ECP before polling if they want reserved seats*.' The SIC had a symbol, but no list, just as the PTI had a list, but no symbol.

It all sounded like legal *jiggery-pokery* to suppress the will of the people — how the elected representatives could be denied their rightful strength in the assembly; Article 51(6)(d) and (e) of the Constitution, says general seats against which reserved seats are distributed 'include' independents who join a party post-election.

- It was on record that the ECP had handed the Balochistan Awami Party (BAP) a reserved seat in 2019 without the latter contesting provincial polls or submitting a list. Astonishingly, the ECP shrugged saying that 'it was wrong then but correct now'.

Referring to an earlier article of **daily DAWN** dated 6th July 2024:

{While hearing the said case, the chief justice said: "...I do subscribe to the literal interpretation of the Constitution theory." One could think about a recent development within the personality trait of the CJP that '... when 'turning lifetime disqualification of one party's leader, he erased Article 62(1)(f), saying the provision was 'non-self-executory' — and didn't mean what it plainly said: **that a court of law could declare an electoral candidate dishonest**'.

- 'His decision didn't reinterpret 62(1)(f); he deleted it outright.' He was the honourable Judge who had challenged the PTI's reference against him in the Supreme Judicial Council (SJC). This was despite Article 211; which bars council proceedings being taken up by the Supreme Court. BUT the matter was not only taken up, the council was knocked aside.}

Interestingly, the fight for reserved seats has an old and explosive history here. In his destined stand for Indian unity in Calcutta in 1928, Jinnah once staked his future on a core demand: one-third reserved seats for Muslims in the assembly; the far less popular Hindu Mahasabha had mocked at him instead. Nearly a century since, the betrayal of reserved seats not only concerned minority representation, but the fate of democracy itself. Good luck for the country that the 13th Jan dilemma was NOT back in the **said judgment of 12th July 2024**.

AFTER EFFECTS OF THE SC DECISION:

The matter of PTI's reserved seats was resolved but there were several equally pressing issues pertaining to the general election-2024 that needed attention. Foremost among them was the question of how quickly and fairly the dozens of petitions pending before election tribunals could be resolved. In their separate verdicts on the reserved seats case, the judges of the Supreme Court, including the chief justice, had noted **that the ECP acted unlawfully by disbarring the PTI from contesting the said election** - a 'damning indictment' of the ECP's decisions.

- The **question** remained: *could the ECP be trusted to ensure that election tribunals would dispense justice fairly and in a timely manner, especially after it was gifted legal powers to appoint retired judges of its own choice to oversee them?*

- *The **answer**, after the given experiences, was a resounding 'no' from most observers. In fact, there were growing calls for the chief election commissioner (CEC), as well as the provincial commissioners, to resign and take responsibility for one of the most controversial general elections in recent memory.*

Still, the major question regarding to the Senate elections was there, which were conducted after the ECP, in violation of the Constitution, handed over the PTI's share of reserved seats to other parties. Naturally, this action affected the outcome of the Senate elections by giving rival parties more votes than they deserved. If the ECP's illegal and unconstitutional decisions thwarted the public will and distorted the mandate given to each party by the people, then, for the sake of democracy, this injustice, too, could have to be undone. The process needed to begin with closer scrutiny of all contested results before the election tribunals. It was imperative to set a precedent that could forever dissuade any institution from interfering in the democratic process based on arbitrary decisions made by saleable commodities like CEC and his stooge members.

ECP RELUCTANT TO SC's RULING:

On 14th September 2024: The Supreme Court reprimanded the *mis-conceived* request by the Election Commission of Pakistan (ECP) seeking clarification from the top court on its verdict of 12th July 2024 in the reserved seats case and ordered the immediate implementation of its original directions.

- *On 12th July 2024, a 13-judge full bench of the apex court had declared that the opposition PTI was eligible to receive reserved seats for women and non-Muslims in the national and provincial assemblies, dealing a major setback to Prime Minister Shehbaz Sharif's ruling coalition and potentially making the PTI the single largest party in both houses of Parliament.*
- *The Supreme Court had also declared the PTI a parliamentary party. The majority judgement explained that 39 out of the 80 MNAs, shown by the ECP as PTI candidates, belonged to the party. The rest of the 41 independents would have to file duly signed and notarised statements before the commission within 15 days, explaining that they contested the February 8 general elections as a candidate of a particular political party.*

The ECP had subsequently finally decided to implement the Supreme Court decision; media reports of 20th July 2024 are referred. Instructions were issued to the ECP's legal team to identify obstacles in the implementation of the judgement so that further guidance could be sought from the top court. The ECP had raised concerns about who in the PTI should be contacted for verification, given the party's lack of structure and unrecognised intra-party elections, suggesting that the commission might need to seek further directions from the court.

However, on 14th September 2024, a written order from the apex court was issued on the ECP's request seeking guidance on certain legal and factual issues said that:

*"...considering all evidence placed before the court left little doubt that the clarification sought by the commission ... is nothing more than a contrived device and the adoption of **dilatory tactics, adopted to delay, defeat and obstruct implementation of the decision of the court.** This cannot be countenanced. Even on the application of elementary principles of law, **the application filed by the commission (ECP) is misconceived**".*

The fact remained that the PTI had attached many notices to it by the ECP which identified Barrister Gohar Ali Khan as the party chairman and there were PTI documents as well identifying him as the chairman. Thus, the court said:

"Having itself recognised Barrister Gohar Ali Khan as the chairman of PTI, the commission cannot now turn around and purport to seek guidance from the court with regard to how the certifications are to be dealt with. The commission cannot approbate and reprobate, taking whatever [shifting] stance as it desires and as may seem to suit its immediate purposes for the moment.

Furthermore, the commission, even if one were to consider the application in the most sympathetic light, has apparently forgotten the well-known de facto doctrine or rule, in terms of which the acts of a person who holds an office are protected even if there may be [and no such conclusion is reached here in relation to the PTI] any issue with the position de jure. It sufficed and the commission was duty-bound in terms of the Constitution to keep in mind that the admitted position [as stated before the court during the hearing of the appeals] is that the PTI was, and is, an enlisted political party."

The apex Court's order said that dissenting judges had also recognised Barrister Gohar's validity as chairman, adding that this sufficed to act on the court's reserved seats verdict.

"It would be completely illogical to assume that a political party, a juristic person, is fully functional yet there are no natural persons who are either de facto or de jure performing its functions or running its affairs. Saying ... that a political party is an enlisted political party, fully functional for the purposes of its formation, yet there is no one that can perform its functions and run its affairs, amounts to blowing hot and cold in the same breath or, as noted, approbating and reprobating one and the same fact.

There could have been no conceivable doubt that the certifications referred to above were correct and valid in terms of the short order and the continued denial and refusal of the commission to accept the same, as and when filed, is constitutionally and legally incorrect and may expose the commission to such further or other action as may be warranted in terms of the Constitution and the law."

On the issue of the reserved candidates themselves, the order noted that 'the court had categorically declared in its verdict that on filing the requisite statement and its confirmation by the political party concerned, the seat secured by such a candidate would immediately be deemed to be a seat secured by that political party. The said SC's order said further:

"Therefore, upon submission of the declarations and certifications referred to above, the position of the returned candidates (now respectively MNAs and MPAs) immediately and ipso facto stood determined and fixed as a matter of law as on those dates and no subsequent act can alter what became, on the respective dates, past and closed transactions.

As per the position so determined, the said returned candidates were and are the returned candidates of PTI and thus members of the parliamentary party of PTI in the National Assembly and provincial assemblies concerned, for all constitutional and legal purposes.

The attempt by the commission to confuse and cloud what is otherwise absolutely clear as a matter of the Constitution and the law must therefore be strongly deprecated. The list required

to be issued by the commission ... is nothing more than a ministerial act, for the information and convenience of all concerned, and has no substantive effect. Nonetheless, the continued failure of, and refusal by, the commission to perform this legally binding obligation may, as noted, have consequences. This obligation must be discharged forthwith."

In August 2024, SC's senior judge J Mansoor Ali Shah had stressed that there could be no possibility of the top court's orders going unimplemented as such a scenario could amount to a constitutional violation and the executive had no choice but to comply with court orders. The remarks had emphasised that the apex court's orders were not merely recommendations or advisories, but legal mandates which must be trailed and tracked.

In the meantime another development took place; the government had bulldozed a controversial election law in the form of 26th Constitutional Amendment just to avert that SC's Order regarding reinstating the PTI's status. The proposed law apparently aimed at circumventing the Supreme Court verdict on reserved seats and sapping the expected strength of PTI in Parliament, through both houses of parliament. The law had passed despite fierce protest by PTI members, who later approached the top court against the move. Changes to the election law were set to become the latest legal battleground between the government, the opposition, and the judiciary. The real controversy before the court was how to deal with the reserved seats if neither doled out to other parties having a presence in Parliament and provincial assemblies nor allotted to the SIC that did not contest the 8th February general elections and thus failed to secure a single seat.

- *The SIC, however, argued that under the concept of a proportionate representation system, it was not a constitutional requirement for the allocation of reserved seats that a political party having general seats in the assemblies had contested the general elections.*

The ECP had since, along with the PPP and federal government, filed a review appeal in the apex court against its reserved seats verdict.

That ruling of the SC was later overturned by a seven-judge majority in June 2025.