

## **Scenario 119**

### **CONST'L ARTICLES 62 & 63 VIOLATED:**

The fundamental moral edge of parliamentary democracy over other forms of political governance is that the parliamentary system is based on the precise ethical standards of personal and collective conduct of the political leadership that comes into power by virtue of a public mandate. When the said public mandate is violated in any shape or form, the accountability of political leadership becomes a necessity, in collective as well as of the individual capacity whenever a breach of public trust occurs.

If a cabinet member is accused of an unlawful act or a political action or personal conduct that is detrimental to national interests, violates public trust, or breaches the constitutional pledge, the Prime Minister immediately asks the accused Minister to resign; a time-honoured convention it remains. Political history is full of instances where an elected government is voted out through '**no confidence move**' if and when it fails in its public mandate, accused of incompetence, mismanagement, corruption, inefficiency and personal or collective loss or violation of public trust.

### **DR QADRI SPEAKS LOUD:**

**On 17<sup>th</sup> January 2013**, virtually the entire political opposition - worried at Dr Tahirul Qadri's popular uprising - joined hands and gathered in Lahore to pass a counter resolution against him. The height of hypocrisy was that they all had themselves been highly critical of the government's performance and their NRO brand of rapprochement. In fact they were unconsciously favouring the status quo, aimed at another innings of unaccounted loot and plunder.

President Asif Zardari had once again manoeuvred the opposition - that had not only been gunning for each other's throats, but also the ruling political elite - to fall into his lap by declaring to save the system; a system that had brought nothing but misery and despondency to the masses. Imran Khan's PTI, however, distanced itself from the lot; he also stayed away from Dr Qadri's march, though agreeing, in principle, with his demands for 'change'.

On the rejection of Dr Qadri's petition for reconstitution of the Election Commission, the whole nation was assured of thorough vetting of the candidates in 30 days time by the ECP. Moreover, Federal Board of Revenue [FBR], State Bank of Pakistan [SBP], NADRA, NAB and other relevant institutions were asked to extend all possible help to the Election Commission. The ECP and its Chief Election Commissioner [CEC] Fakhru Bhai were declared '**dishonest**' by the masses and media when they finally gave only seven days for that process in the final schedule of elections 2013.

The general populace was hopeful that tax evaders, loan defaulters and those who got their loans written off, did not pay their dues: in short all cheats and fraudsters would not be able to avail a smooth-sailing like in the past, and would be obstructed; but later, the ECP's nefarious and wicked designs brought utter disappointment for all. Keeping all the critics and reservations about Dr Qadri's person aside, he did his job well as the nation would not enter the next elections in the same half-asleep manner with asymmetrical minds like before.

Referring to '**the Nation**' of **7<sup>th</sup> February 2013**, Mr Zardari, being the democratic head of state, should have terminated his party secretary Jehangir Badar for being named as 'helping hand' in OGRA's Rs:82 billion scam; should have ended the NAB Chairman's services for politicising his office in an ugly row with the Supreme Court. Let the Pakistanis wait for a bleak tomorrow and the days that follow a political irrationality of such kind if such rogue practice continued.

Dr Tahirul Qadri of Pakistan Awami Tehreek [PAT]'s aggressive intervention in that dark political arena was considered a hope. He demanded that:

- *The massive developmental funds given to parliamentarians must be made illegal [then being used to pre-rig the coming elections of 2013] and should be used to subsidise gas, power, petrol and other daily consumable items for the public.*
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- *To ensure free & fair elections, all the four members of the Election Commission of Pakistan [ECP] should immediately be removed; these members were appointees of two vested regimes in power.*
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- *To immediately freeze the discretionary funds of the Prime Minister and Chief Ministers; these funds were being used to influence voters amounting to pre-poll rigging again.*

The two ruling political parties opposed Dr Qadri labelling him as a '*foreign agent*' or '*a clergyman backed by the army*' but indeed, his points served as

the real **catalyst for 'change'**; the politicians should have thanked him for waking them up from a deep slumber. He had successfully addressed the country's middle and lower middle class to an unprecedented show of resilience and discipline. He had successfully sent out a loud and clear message - locally and internationally – that:

*'Pakistan is a peace-loving and disciplined state, and if given a clean, trustworthy and inspiring leadership, its people can play a crucial role in conflict prevention and peace building worldwide.'*

Articles 62 and 63 of Pakistan's constitution were meaningfully reinvented for the constitution by much-reviled Gen Ziaul Haq [*the original clauses of Articles 62-63 were there in ZA Bhutto's Constitution of 1973 which contained almost the same words but Gen Ziaul Haq had added 10-15% momentous stuff in it*] but the post-Musharraf democratic order under Pakistan's most liberal political party PPP found no difficulty in retaining the two clauses intact; hence, the embarrassment for status quo gurus was there.

*[These articles were part of the 1973 Constitution, subsequently amended in 1974 and made harsher in 1985. Article 62 deals with the qualifications for becoming a Member of Parliament and Article 63 deals with grounds or basis for disqualification from the membership. Gen Musharraf also amended some clauses in a positive direction to clean the muddle and mess.]*

In **'the News' of 14<sup>th</sup> April 2013**, an essay pointed out that *'the moral standards, incorporated in the said articles have been interpreted by the honourable higher courts in numerous judgments, including **Shahid Nabi Malik v. Muhammad Ishaq Dar** (1996 MLD 295), that the moral and subjective qualifications are not self-executing'*, and thus could not be used as a sword to disqualify candidates on mere allegations or popular belief.

Under this judicial restraint, the *'mischief'* of Gen Ziaul Haq's constitutional intervention remained under check; though the successive so called democratic parliaments, since 1989 till today, should have found time to reconsider or reframe these provisions. The politicians wanted to do it much earlier but each time the compromises and constraints prevailed.

However, starting with the NRO case and continuing with the disqualification of former PM Mr Gilani in 2012, Articles 62 and 63 made a comeback into Pakistani jurisprudence. Though in the said later situation too, the intelligentsia believed that it was President Zardari's studious and scholarly plan to get rid of his prime minister without roars from PPP's workers.

Then a phase of disqualifications of certain parliamentarians on the basis of their dual nationalities and fake degrees was seen. These actions at the hands of the superior court, though taken after much care of due process of law, generated intense debates all around in the print and electronic media, making Pakistan a laughing stock in the name of Articles 62 & 63.

That was the moment when Dr Qadri entered the scene with an entire agenda of electoral reforms, focused primarily on capricious application of Articles 62 and 63. Dr Qadri's long march and *dharna*, initiating a cogent debate about the partisanship and bias role of the Election Commission of Pakistan [ECP] ended with loud voices and high expectations of weeding out the corrupt politicians from the electoral process; but astonishingly the SC emerged as thick shield for them all.

Taking strength from the apex court's mood, the ECP played a dubious role through the judicial officers, in their capacity as Returning Officers — grilling the prospective candidates about reciting *Dua-e-Qunoot* and the fourth *Kalima*, and ascertained their loyalty to the 'ideology of Pakistan' by asking if they knew who wrote the national anthem. All fundamental rights were pushed into ***'backseat to this witch-hunt, culminating perhaps most manifestly in the disqualification of one Ayaz Amir from Chakwal for exercising freedom of speech and expression'***.

Intelligentsia also opined that application of Article 63, relating to loan defaults and criminal liabilities, required a conviction by court of competent jurisdiction, as held in judgment ***BoP v. ACRO Spinning*** (2012 CLD 1819) following the due process of law. The judicious application of this clause was not possible within few days, before the deadline of 17<sup>th</sup> April whatsoever; the date the final list of candidates displayed for elections 2013.

It was widely felt that the ECP and its Returning Officers used the provisions of said Articles 62 and 63 as a blanket license to embarrass, weed-out [and thus defame] prospective candidates, in a subjective and arbitrary manner. As a result the Election Tribunals had to face with a plethora of appeals, which were not at all decided within the given timeframe of six days and established standards of natural justice could not be applied. Before the Election Tribunal of Multan, comprising of two LHC judges, exactly ***200 appeals were launched on 10<sup>th</sup> April 2013; in one day only.***

So, coming back and keeping in view the five-year performance of the democratically elected PPP government, during which several amendments were made in the constitution to suit the needs of the corrupt, uneducated and tax-evading politicians, Dr Qadri had rightly demanded the realistic and

truthful implementation of constitutional provisions like Article 62 & 63 in letter and spirit, which could bar the defaulters from contesting elections.

Earlier during ending March 2013, the ECP announced for adding a vacant space in the ballot paper to be marked by the voter if he considered none of the candidate deserving. ECP announced for holding re-elections in constituencies where 51% of electorate would tick the 'vote for none' option on the ballot paper; meaning thereby rejection of the whole lot of candidates.

But astonishingly, the ECP itself avoided to implement its own announcement and preferred to conduct elections as per routine gimmicks.

The Returning Officers (ROs) were asking meaningless questions about religious rituals instead of screening the character of the candidates; making a mockery of the whole process. The PAT had also demanded 30 days time in order to enable all relevant organizations to help the ECP in conducting fair, strict and meaningful scrutiny; but all wishes in vain at last.

The ROs were not sufficiently briefed by the ECP except that a questionnaire containing 40 phrases was sent to them as their curriculum. There were only three tangible criteria that were actually required to find out the suitability of aspirants to the public offices:

- *Firstly; if they had a criminal record;*
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- *Secondly; if they defaulted on loans or have evaded taxes given their assets and declared properties;*
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- *Thirdly; if they have been charged for forgery or cheating on account of possessing counterfeit educational degrees that they may have submitted to qualify for a member of the legislature.*

The FIA, SBP, NAB, FBR and the respective courts could easily determine a candidate's suitability to seek nomination but, due to ECP's utter bad intentions and lack of fore-sightedness, the ROs confined themselves up to *kal-mas* and *duas* and nothing beyond. Uproar was natural and expected then.

The ECP during the first week of April 2013 rejected the nomination papers of **Nawaz Sharif, Shahbaz Sharif** and **Imran Khan** on the basis of discrepancies in the statements of their debts, assets, and sources of income and tax payments. These accusations, as ECP claimed, had been supported by the NAB's record. **The NAB immediately issued statement that there were no unpaid debts on accounts of both the Sharif brothers**, their nomination papers were instantly approved.

It is on record that the papers of **Musarrat Shaheen**, a veteran film actress, were approved because she had successfully recited the 2nd Kalma before the Returning Officer when asked. The RO had asked the people like **Ahsan Iqbal** to recite the Azan and approved his papers. **Ayaz Amir's** nomination papers were rejected by the RO Chakwal on the basis that he once in his writings had made an objection on the Two-nation Theory; next day his papers were approved in appeal.

**On 12<sup>th</sup> April 2013**, a full bench of the Lahore High Court, headed by Justice Ijazul Ahsan, admonished the ECP for not obeying the court's orders on provision of lists of defaulter candidates, and observed that the Commission's non-cooperation amounted to compelling the court to postpone the electoral process.

The 3-judge bench, comprising Justice Ijazul Ahsan, Mansoor Ali Shah and Justice Mazahar Ali Akbar Naqvi, had shown disappointment with the ECP for disobeying the court's repeated orders for producing defaulter's lists along with the reports, issued by national institutions like the SBP, FBR and the NAB etc. The court said that they wanted to devise some rules for the upcoming elections.

In fact the ECP was not providing the details of defaulter candidates deliberately despite various court orders. The ECP had failed to perform its duties as per the Constitution, it was argued. The court and the clients all agreed that the elections should be held on time, but a detailed review of the adverse reports of contestants was necessary before the elections. The ECP told the bench it was impossible for the commission to prepare the lists of nearly 27,000 candidates. The bench observed that as if the ECP wanted the court to stop the election process.

Amicus curie Advocates Babar Sattar and Bilal Hassan Minto assisted the bench by arguing that the office of RO was of administrative nature and it could not take action against any contestant whatsoever. The court was also told that **"the Returning Officers have no powers to interpret any article of the constitution;"** whereas the other lawyers in the court argued that **"the personal lives of the contestants should not be discussed on the basis of Article 62 and 63"**.

Purposefully a pseudo-consensus opinion was spread through media that only the public [voters] had the right of accountability of their representatives, not the Returning Officers. Finally, all agreed that the affidavits of candidates and their summary inquiry was enough for clearing their nomination papers instead of asking unnecessary questions from them.

The fact remained that the scrutiny of candidates was not held correctly and the FBR and SBP had not provided the ROs with the list of defaulters. About 1,000 appeals [out of more than 27,000 nomination papers] were filed. It was urged that the court should postpone the elections for two months so that strict scrutiny of the candidates could be held. The request was thrown away as per usual slogan of the plunderers that **'some forces want to derail the democratic system'**.

The bench, however, observed that how a RO would verify the credentials if false affidavits were submitted by a contestant. Justice Mansoor Ali Shah observed how transparency in the election could be maintained if no-objection had been filed against a loan or tax-defaulter contestant.

On the final day, over 14000 candidates survived with their nomination papers for 11<sup>th</sup> May 2013 election but details of tax defaulters had not been made public till then. **Over 4000 candidates did not possess National Tax Numbers [NTN].**

The court was urged that all mega schemes for jobs or plots announced by federal and provincial governments should be cancelled till the setting up of new governments, being a bribe to win votes at the expense of national exchequer. But ultimately this desire was also thrown in the dust bin.

The people were genuinely upset because the ECP did not have any authenticated mechanism to scrutinise the nomination papers of the contestants. Mostly the fake degree holders and defaulters were elected in the previous elections and made amendments in the Constitution for their own benefits; it was available on record.

In reality, all the election machinery was gradually bowing before demands of powerful traditional and dynastic politicians who during last five years had destroyed key institutions of the country and sunk its economy. People were demanding the care-taker government and the ECP to give no relaxation to candidates who were not fit to contest election; but their prayers and agitations were blown away in the air.

**On 13<sup>th</sup> April 2013**, the bench, however, issued a written order in the above case to ensure implementation of the Article 62 and 63 of the Constitution on nominees hoping to contest the coming general election; but at that particular moment, there was no likelihood that the honourable Court's orders would be considered by the governments or the ECP for implementation.

The bench, headed by Justice Ijazul Hasan, had also taken notice of the discrepancy in the data provided by the ECP and the National Accountability Bureau [NAB]. The ECP's representative had submitted a categorical written statement that **'the NAB, State Bank of Pakistan and FBR have not provided any record or list to the ECP regarding participating loan eaters or defaulters.'**

The court's six-page written order said the ECP had provided the court with data on 24,094 candidates whereas NAB had conveyed the details of 23,599 candidates. The court pointed out discrepancies between the information provided by the two departments over declaring 500 candidates and their family members as defaulters.

The LHC bench had also summoned details on the candidates whose names appeared in the list of defaulters from WAPDA, SNGPL, PTCL and other departments but the exercise went futile.

The bench, in its interim order, directed the FBR to add a column of defaulters in its records and to publish all the details on its website within three weeks but the orders were on deaf ears. On the same day, JUI(F)'s Chief Maulana Fazlur Rehman during a public address in his home town [DI Khan], urged that:

***'The Articles 62 and 63 of the Constitution are essential to the electoral process. Those who have objections to the said articles should change it through the proper process and make necessary amendments. He would never give a returning officer the right to decide upon how patriotic he is for Pakistan.'***

The participating lawyers appreciated that the awakening process of the Pakistani nation in fact took start with the long march of Dr Tahirul Qadri in mid January 2013 when he, in his 15<sup>th</sup> January's open public address to a million people crowd in Islamabad, enlightened them about the Articles 62 & 63 of the Constitution declaring the ECP unconstitutional, illegal, unauthorised, unlawful and un-democratic by all means.

*[Though once, on 3<sup>rd</sup> July 2007; MQM had filed a reference against Imran Khan in the National Assembly under Articles 62-63 of the constitution. This was in reaction to Imran Khan accusing MQM's leader Altaf Hussain of terrorism after the murder of 43 people in Karachi on 12<sup>th</sup> May 2007 and preparing to file a case against him in the British courts. The matter, however, could not catch momentum in Islamabad or in London from either side.]*



The MQM had presented a resolution against Imran Khan that ***'these articles can only be applied to angels and not human beings'***.

In the PM Gilani's disqualification case of March 2012, though the Supreme Court had not invoked Article 63(1)g directly and convicted the prime minister under Section 5 of the Contempt of Court Ordinance, but it did mention the said article in its verdict saying that *'the finding and the conviction are likely to entail some serious consequences in terms of this article which may be treated as a mitigating factor to the sentence they pass'*.

The contesting members of the two outgoing governments kept the view that the terms like good character, good moral reputation, moral turpitude, practising obligatory duties prescribed by Islam, abstaining from major sins, Islamic injunctions, Ideology of Pakistan, bringing into ridicule the judiciary or the armed forces, etc were vague, immeasurable and hard to establish in a just way. They urged:

*'For instance, in legal terms, public life is affected by crime and not sin. Morality is a relative concept and good reputation is highly subjective.'*

*'There was a two-nation theory when Pakistan was created. The Ideology of Pakistan became a usable term only after Gen Sher Ali Pataudi promoted it in 1969, soon to be desecrated in the eastern wing of the country.'*

### **DEMOCRACY ON RESTRAINT:**

#### **I**

**On 15<sup>th</sup> March 2013;** for the first time, an elected government handed off power to another one after serving out its term in Pakistan.

The Pakistan Peoples Party (PPP) government, which came into power in February 2008, held a number of dubious distinctions -- its massive corruption, its refusal to expand Pakistan's miniscule tax base by imposing industrial and agricultural taxes on parliamentarians and their legal patronage for terrorism networks, its inability to address the colossal power and gas shortages that had plagued the country, its weakness in addressing Pakistan's pervasive security problems, and its inability to stem intolerance against religious and ethnic minorities.

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The PPP's achievements were more concentrated on savoury parliamentary legislation to safeguard their political family - kingdoms, from which of course, the PML(N), PML(Q), ANP and JU(I) brewed more advantage as side beneficiaries. 18<sup>th</sup> & 19<sup>th</sup> Constitutional Amendments were the glaring scenarios for which the PPP stalwarts still feel pride – and all that jugglery was manifested in the name of democracy. Amendment of Local Bodies Law in the Sindh Assembly is another example in which the PPP made drastic changes just to suit their candidates.

No law was focussed on the betterment of the general populace.

The foreign press was, however, happy that the government had gone a long way making considerable efforts to take responsibility for foreign and defence policy-making, which had been typically the domain of the army in Pakistan. They could realize that the room for such development was also provided by the sober attitude of the Army Chief Gen Kayani.

A positive development can be taken that President Zardari made unprecedented strides to pass power to the provinces, in order to mitigate the long-standing grievances of those in Balochistan, Sindh, and Khyber PK, as well as the tribal areas.

The PPP government, like the preceding civil and, military governments, did nothing to seriously reform how the FATA should be governed. The current codes date back to the colonial era and would remain a stigma on the face of democracy for which the Pakistani politicians have been dying since decades; FATA affairs has never been the priority of the ruling elite, both political and military, since 67 years.

The PPP government left numerous and daunting tasks for the next government; shortage of power and gas particularly in the industrial sector was on the top. The next government was left to bravely seek economic reforms against the wishes of their constituents and their own economic interests. This was a Herculean agenda. Although the PPP government propagated its movements by leaps and bounds during their regime but the actual depiction was totally different.

In Pakistan; the army shoulders most of the blame for failure of democracy; but it is also true that the army never came to power without reason. It remains hard fact that whenever the Generals seized power, they usually did so with the support of the people. Two cases which had escalated political crisis made army's interventions legitimate; 1957's take over by Gen Ayub Khan and 1977's Martial law of Gen Ziaul Haq can be placed in that list. After seizing power then, all the four army chiefs had declared them-

selves as the head of government, suspended the constitution, and dismissed the respective parliaments. The Superior Courts were made to swear an oath to the Chief Executive. Some of those with integrity had chosen not to do so and were retired or forced out, but they were easily replaced – a *'fine characteristics'* of Pakistan's typical judiciary.

In Pakistan, invariably all the in-coming Martial law Administrators announced general elections but three out of four got the elections engineered to produce a parliament that was amenable to their rule; because the army chief was not able to rule alone. This required creating a **"king's party,"** cobbled together by poaching those politicians from the existing parties who would rather serve the army than lose power altogether.

Pakistan's intelligence agencies also, at times, raised an **"opposition of choice,"** featuring Pakistan's various **Islamist & 'right handed'** parties found suitable at that given time. Country's history is replete with many such instances.

Usually after five / seven years or so the military Generals relinquished direct control and democracy re-established, but the two major political parties came up in succession – both proved in-competent. The politicians did not censure their colleagues who had collaborated with the army – in most cases they were welcomed and given much privileged slots in the cabinets. Similarly, the judiciary did not punish those justices who broke their oath to uphold the constitution –CJP Chaudhry himself twice took oath under the military directions.

Taking light from **Christine Fair's essay** of **14<sup>th</sup> March 2013**, appeared at **foreignaffairs** media site:

*'.....worse, because the politicians feared that their time in power would be short, they focussed not on governance but rather on looting what they could before they were forced either to flee the country again or tossed in jail. Whichever party landed in the opposition had often stalled the return to democracy by conniving with the army to bring about early elections.*

*In the 1990s, governments were lucky if they lasted three years. The prime minister's slot was volleyed back and forth between the inefficacious and corrupt prime ministers Benazir Bhutto and Nawaz Sharif. The army was always pleased to oblige; the chaos always made the people believe that the army saved the country while inept civilian dolts ran it into the ground – really in fiasco, disaster and shambles.'*

Gen Ziaul Haq & Gen Musharraf's military regimes over Pakistan brought negative effects on the armed forces and the population at large due to their controversial decision to cooperate with the United States in the deeply detested "**war on terror**". More so perhaps the later General had agreed to permit US drones to operate in and from Pakistan to control Pakistan border with Afghanistan. This drone factor diminished the public support for the military, even though it remained acceptable due to its mentionable achievements in the economic fields.

Later, in ending 2013, the people had started realising that Gen Musharraf was right allowing the US drone attacks in FATA because of rising terror tides from the Taliban – Gen Raheel Sharif dealt with the same problem directly through Pakistan's own air force and military troops.

During 2008-13, the Pak-Army under Gen Kayani displayed little opposition toward the PPP government but the truth remained that the army was not in a position to abandon civilian authority. Despite several inconvenient decisions by the Zardari government, the army was unable to muster a coup.

Pakistanis were there to welcome another martial Law in an arena of corruption stories spread over all media concerns but it avoided for a simple hope that democratic system might prevail at last. **Furthermore, Gen Kayani was not from that greedy breed as the politicians were known for – a little shy, restrained and sober.**

The army was not all that helpless, especially since it still had backers in the Supreme Court. Even though the court had at times opposed the army, there was a tacit alliance between the men in khaki and the men in black when it came to managing the PPP in the given situation. CJP Chaudhry hated PPP's styles of governance – forget the old roots of enmity amongst the two. The NRO did not work for Gen Musharraf because Bhutto was killed in a suicide attack in December 2007 but it did pave the way for a PPP victory in the 2008 elections.

On the question of reinstatement of Justice Chaudhry's judiciary after PPP's take over in early 2008, the PML(N) had to pull out its ministerial component when the PPP resisted. PML(N) went on to launch massive protests against the PPP. It is believed that the months-long impasse was resolved by Gen Kayani, who, fearing that the standoff between the two parties would cause the country a colossal loss, persuaded Mr Zardari to reinstate the chief justice and its team. CJP Chaudhry, once reinstated, voided the NRO and ordered the government to reinstate all pending cases against Zardari and other PPP politicians.

Ironically, CJP Iftikhar Chaudhry behaved in a different way in Sindh. There were about 3800 NAB cases and references mostly against the members of the MQM. The CJP simply asked the government to make out an 'over-view committee' to look into all the files of all those NAB references. The committee was formed; the files were placed before it and after three days all the 3800 cases / references were consigned to record room – mysteriously declared finished and the CJP never bothered to call for details.

What a selective justice and what a quick disposal of NAB references it was. Not a single case was considered to be taken further. ***The brave Chief Justice was so scared of the MQM's revenge recalling the fine treatment he was given by them on 12<sup>th</sup> May 2007 when he was simply kept confined up to the Karachi Airport lounge till evening and was un-ceremonially despatched back to Islamabad.***

The Supreme Court had apparently justified its commitment to the rule of law; had offered to the PPP government to get the NRO ratified by the Parliament within 120 days but the PPP failed to get vote of approval from within their own benches. But why the CJP Chaudhry had not okayed the formation of a similar committee here in Islamabad or Punjab as in Sindh.

Politicians notorious for corruption are abundantly available at all ranks of every Pakistani political party – including the religious ones; why Karachi or Sindh was declared highly innocent then.

Judicial activism against the PPP government touched its peak when the general populace found a viable alternative to the PPP – that was Pakistan Tehreek e Insaaf [PTI]. The army was not at all moved when the only other option was PML(N), which had soured relationship with GHQ.

Notably, during 2011 and 2012, Supreme Court efforts to prosecute PPP politicians coincided with the sudden rise of Imran Khan, Chief of PTI. His term '***tsunami***' strengthened the electorate and mobilized them on the counter-themes of corruption, restoring Pakistani sovereignty, opposition to US drone strikes, and scaling back military cooperation with the US. When Khan's prospects dimmed, the apex court returned to its normal 'rule of law' feelings.

### **WINNERS & LOSERS IN 2013 ELECTIONS:**

Already given in detail above that in ending December 2013, Maulana Tahirul Qadri suddenly appeared on the scene. He was nonetheless able to marshal some of the largest crowds to protest against corruption. It appeared that his rapid rise, extensive funding, and access to Pakistan's media had the support of the army. His bomb - proof container, a fortified mobile residence, offered resistance to even high - velocity bullets and improvised explosive devices – even high profile Pakistani politicians were not able to afford such secure conveyances then.

Dr Qadri and his followers camped out in front of the parliament and insisted that the PPP government end its term early and form a caretaker government with his consultation. Although many of the clauses on his agenda were appealing, his methodology was shocking. Just a coincidence, that the Supreme Court in early January 2013, ordered arrest of the sitting Prime Minister Raja Ashraf in the Rental Power Cases. Dr Qadri projected it as his first winning step and his '*dharna*' in Islamabad extended.

In the end, the politicians succeeded in sidelining Dr Qadri and undercut a coup in the making. The critics termed it as a 'soft coup' through Dr Qadri but further developments around did not corroborate that fearful analysis.

Dr Qadri was able to dictate certain terms but could not achieve the real goal of '**improvements in the Election Commission rules**', at least to make sure that the coming up Parliament would be comprised of representatives filtered through Articles of 62 & 63 of the Pakistan's Constitution.

Nevertheless, the challenges Pakistan faced were enormous: It required fiscal reforms, police reforms by changing Police rules of 1937, and a legislative overhaul – while throwing the Evidence Laws and CrPC of 1880s, Arms Act of 1965 and disgruntled Jail Manuals into the garbage bin - that would allow it to deal with the computer-era criminals and terrorist threats to the nation. The PPP's democratic government miserably failed to address such mega issues.

**Two months later**; the polling day was three weeks away but with the publication of the final list of candidates cleared by the ECP during the 3<sup>rd</sup> week of April 2013, it could be estimated that who would win and who would be disappointed. **Asif Ezdi**, in his article appeared in media **on 22<sup>nd</sup> April 2013** commented that:

*'.....the winner is the same class of tax cheats, loan defaulters, looters of public money and other parasites which dominated the last parliament and whose foremost concern is to use their position to preserve the country's rotten political and*

*socio-economic system which concentrates power and wealth in the hands of a small privileged class of hereditary politicians.*

*And the losers are the millions of ordinary Pakistanis who have been hoping for a real political change through the ballot box that would rid the country of its predatory rulers.'*

After a 14-day period during which the eligibility of nearly 25,000 candidates was examined ***under the criteria laid down in Articles 62 and 63 of the constitution, no one was disqualified for tax evasion, non-filing of tax returns, defaulting on payment of bank loans or for false declaration of assets and liabilities.*** The fact that hundreds of those who had abused public trust to enrich themselves massively, cheated on the payment of their taxes or committed other misdeeds which should have disqualified them for election – but were cleared.

Doubts were raised about the ability AND the willingness of the ECP to implement Articles 62 and 63 in their true spirit. ***ECP's earlier announcement on setting up of a permanent scrutiny cell comprising representatives of the ECP, the SBP, the FBR, the NAB and NADRA empowering to delve into the record of the candidates – all went into the air,*** nothing moved.

As per ECP's announcement and plans, the new CELL was to be part of its political finance wing, tasked with inquiring into the annual assets declarations of members of the legislatures. That wing too, it transpired later, did not see the light of day; the ECP had buckled under the pressure of the entrenched political class based mainly in Sindh and Punjab.

Media criticism for the scrutiny process was shooting sky high. The FBR launched a belated probe into the tax matters of all the candidates to catch tax evaders. The NAB Chairman too declared that the bureau would hold another round of detailed scrutiny of successful candidates ***after the elections.*** But the general populace knew the dismal past record of the FBR and NAB so no one believed them.

- **Till this book going to the press in December 2015 at least, that process was not started – not on ECP cards even.**

Except some criticism from the PTI, all other political parties were delighted over the failure of ECP. Tax evaders, non-filers of tax returns and loan defaulters all were allowed to continue with their routine businesses of loot and plunder of the public money.

The two big parties, PPP & the PML[N], after gaining success through 18<sup>th</sup> Amendment **that the political parties were their family businesses** – seriously aimed at amendments to Articles 62 and 63 in order to do away with some of the disqualification clauses that they considered inconvenient.

Likewise, the PPP government did introduce a bill in the parliament seeking to remove the disqualification on holders of dual nationality and to nullify the judgement of the Supreme Court on the subject. An amended version of that bill was passed in December 2013 by the Senate but it was not introduced in the National Assembly because it lacked the necessary two-thirds majority.

In the wake of the debate over the new scrutiny process introduced for the 2013 elections, there was also a proposal from some of the politicians that Articles 62 and 63 should be restored in their original form as adopted in 1973. This effort was immediately discarded by the intelligentsia as it could open the doors to all kinds of manipulation and abuse by Pakistan's mostly tainted politicians.

In 1973's original Constitution, apart from the conditions of citizenship and age, it was left to an act of parliament to determine the qualifications and disqualifications for election to the legislatures.

In other words, the federal government was free to add, delete or modify the said requirements at will if it had the support of a simple majority in the two houses of parliament or, failing that, through an ordinance. That power could easily be misused by the ruling party for weird political purposes. It was, therefore, kept intact that the conditions for membership placed incorporated in the constitution and could only be modified with the two-thirds majority needed for a constitutional amendment in both houses.

Some of the qualifications for membership introduced during military rules of Gen Zia and Gen Musharraf were changed through the 18th Amendment - no doubt bad laws and needed to be scrapped or modified. It should not be, for example, left to the returning officer – or some official or agency - to decide what level of knowledge about Islam would be adequate for a perspective candidate. Again in the words of **Asif Ezdi**, referred above:

*'There was one clause of the constitution, namely Article 63 (2), which must be restored in its original form. This clause, as enacted in 1973, provided that all questions on the disqualification of a member of parliament would be referred to the Chief Election Commissioner [CEC] for decision.*



*Under an amendment sneaked in through the 18th Amendment, the reference to the Election Commission can now be stopped by the Speaker of the assembly or the Chairman of the Senate.*

*In other words, a member who is disqualified by the constitution can still retain his seat if the Speaker or the Chairman refuses to refer the question to the commission.'*

Two well-known instances of the misuse of this power in 2012:

Firstly; the speaker refused to refer the question of former PM Mr Gilani's disqualification to the Election Commission after he was convicted of contempt of court. It was only after the intervention of the Supreme Court that he was made to quit his post.

Secondly; the Senate Chairman refused to refer the question of **disqualification of Rehman Malik** to the Election Commission despite the Supreme Court ruling that **'since he had made a false declaration on the question of dual nationality, he cannot be regarded as honest and ameen under Article 62'**. Because of the Senate Chairman's blatantly partisan ruling, the interior minister retained his seat in the upper house.

The amendment to Article 63(2) made secretly through the 18th Amendment was one instance of the many tricks - the Raza Rabbani Committee resorted to in order to favour President Zardari. Together with other members of the Committee, **Rabbani was rewarded for such services with the grant of Nishan e Imtiaz**, although Article 259(2) of the constitution bans the conferment of any such honours on the citizens of the country.

In Pakistan, the Amendments and laws are tailored and framed as per individual needs of the ruling elite – that too in the name of democracy; after all it is Islamic Republic.

### **Dictatorship of 'Electables'**

Imran Khan's political start from Lahore was marvellous. He thought that so much gathering would take him in the sky and his PTI to the Parliament. Youngsters from all of the Punjab were there to listen him because he had announced for a change.

After a year, he developed thinking that to reach the Parliament, only youngsters would not be enough. He went out for **'elect-ables'**, Shah

Mahmood Qureshi and Makhdoom Javed Hashmi and Jehangir Tareen joined him – it was a good gesture but the youth had taken a step back. Some people considered it as Imran Khan's mistake through which the confidence of the young generation was shaken a lot. Yet the coming elections were to prove if Imran Khan was wrong.

Imran Khan was rightly moving on Z A Bhutto's track. Bhutto's PPP had come with a slogan of change so he had swept margins from all the four provinces of [West] Pakistan in 1970's elections. In his Parliament there were every kind of people; from all walks of life, of all age, of all sects and clans, students and professors, *haris* [labour] and landlords, old and young.

Much before 1977 elections Bhutto had started depending upon *electables*, he recruited them in his PPP, given them tickets instead of poor persons who had links with masses – therefore, got a humiliating defeat and ultimately gallows, too.

Bhutto was hanged but those *elect-ables* continued to change horses with the time; as a result they were there and still there in power – earning hatred from the general populace, from all corners. **'They know which party's chips are up, you would find them there sooner or later'**, was a businessman's loud thinking.

Referring to **'the Nation'** of 6<sup>th</sup> & 16<sup>th</sup> March 2013; a common Pakistani is skeptical given the reality of the contemporary political culture there.

It is an unsound impression that the populace in the rural areas of Pakistan is politically illiterate, conceptually uneducated and politically apathetic. Wrong – indeed, they have been powerless and oppressed for decades since the last 60 years. But now they have political consciousness and awareness of their democratic rights: they understand the underlying reasons for their deprivations, their poverty and their sufferings are now poised to fight back with adequate spirit, determination and political will.

Imran Khan's rise was witness to the above statement. He, in fact, has been instrumental in giving the nation an awareness and political consciousness of an anti-statusquo political movement. That in itself was a monumental achievement aimed to insure for the deprived people, their future dignity, self-reliance and self-determination, prosperity and survival.

Why this uprising? There were head lines in the media **on 6<sup>th</sup> March 2013; "PML(N) pockets Balochistan political gurus."** An analytical scrutiny of the background factors behind the said news reflected the typical mindset and the intrinsic political beliefs of the leadership involved.

Meaning thereby that inducting the traditional 'political elect-ables' into the party was the only way to ensure victory in the forthcoming general elections of 11<sup>th</sup> May 2013. This strategic political view also underlined that the PML(N) had no concerns with the economic and social issues related with the poor masses there – they were only interested in more seats through Sardars. The other parties like PPP or ANP followed the same pursuits.

Political agendas of any political party in Pakistan [they definitely announce during election days] are for election campaigns only. The PPP government had not bothered to see it again once the ministers took oaths nor the PML(N) government had any plan to read it again – their five years respective terms would go as per one top leader's personal whims, impulses, urges and wishful thinking.

There were, through the whole 2008-13 regime of the PPP, serious public apprehensions of the PML(N)'s role of a sham "**Muk-Muka**" democracy [give and take of wrongful gains]. The party leaders of both PPP & PML(N), behind closed doors, manipulated and collaborated on a number of national issues especially quick passing of 18<sup>th</sup> Amendment. The urban-rural divide in developmental schemes was also a bone of contention but solved through 'personal shares' basis.

By choosing the traditional politicians considered as '**elect-ables**' for the May 2013 national elections and exclusively promoting them and wholly depending on them for election victory, the PML(N) and the PPP both, dragged the nation backwards in time towards a political abyss – see Pakistan's Parliament & Senate. Referring to the '**Express Tribune**' of **7<sup>th</sup> March 2013**:

*'.....the Hugo Chavez's economic and political legacy could be a model for Pakistan.... No harm in trying it....'*

*'When Chavez came...Venezuela was one of the poorest and unequal societies in the world with around 50% of its population below the poverty line...(in 2013) extreme poverty is only visible in 3.5% of the population...Chavez's efforts meant several structural changes for Venezuela. He set up communal councils that handle local budgetary issues and legislation. The move helped improve poverty-stricken areas while empowering the people.'*

And here in Pakistan, the champions of democracy, both PPP & PML(N) had not allowed their local body elections since 2008 – **salute to Gen Musharaff who believed in decentralization of powers and budgetary allocations through local elections.**

Referring to another essay from Saad Rasool appeared in the '**Pakistan Today**' dated **17<sup>th</sup> March 2013**;

***The promise of democracy is larger than the simple idea of 'one man one vote'. The true spirit of democracy embodies the right of equal participation in all facets of the governance structure. It entails not only the right to have an opinion, but also to have the opinion be counted; not just the right to speak, but also to be heard; not only the right to vote, but the right to be counted; and, perhaps most importantly, not only the right to elect, but also (an equal) right to have a chance of being elected - [this last characteristic] must take the centre stage.'***

An appropriate question then: should the opportunity to contest for public office be the inheritance of only the very affluent and privileged? Or should the contours of democracy be extended to incorporate in its fold, those whose voices have been muted under unfortunate circumstances? Majority would agree that the doors of the electoral process must be opened to a larger fraction of the populace - surely the greatest impediment in this regard has been the forces of status quo.

Frequently, it is inherent and contained in the meanings of 'democracy' that it can be achieved only through '**education of masses**' and '**economic empowerment of the middle-class**'. Then why the PPP & the PML(N) failed to adopt that way – and when they had planned to take start – never in their five stints of rule together. Where was the starting mark?

It was possible through real **Land Reforms** [not of ZA Bhutto's in 1970s] and breaking of the **Jagirdar's role** in our politics. In a country still reeling from its history of colonial rule through a system of land revenues, hereditary power centres, and primarily an agro-based economy, the gates of democracy shall stay shut to the people at large so long as a few select families and individuals continue to own and control majority of the land.

An attempt to break this hegemony was made through Land Reform Regulation 1972, and the Land Reforms Act 1977, which introduced maximum caps on individual and family land-holdings. These reforms were challenged before the Federal Shariat Court (FSC) on the touchstone of being un-Islamic [*Hafiz Muhammad Ameen* case, PLD 1981 FSC 23 is referred], but the court dismissed the petition, holding that, firstly; the land reforms were not un-Islamic. Secondly; the FSC did not have jurisdiction to examine the validity of the land reforms, (the same being protected under Article 24 (Protection of Property Rights) and 253 (Maximum Limits as to Property) of the Constitution).

This judgment of the FSC was appealed before the Shariat Appellate Bench of the Supreme Court in the (in)famous [***Qazalbash Waqf case PLD 1990 SC 99***], in which a bench comprising three Supreme Court judges and two *Ulema* accepted the appeals, declaring the land reforms to be un-Islamic (despite the fact that the same, in effect, nullified other substantial provisions of the Pakistani Constitution).

Then in early 2013, as part of the larger electoral reforms challenge in the ***Workers Party Pakistan Case***, Abid Hassan Minto and Bilal Minto, challenged the decision of the *Qazalbash Waqf case*, and asked for re-institution of Land Reforms, as an imperative precondition to the holding of free and fair elections. The petition argued, inter-alia, that land reforms must be introduced (and upheld as constitutional), not only as part of the constitutional mandate of Article 24 and 253 of the Constitution, but also as a necessary part of a democratic dispensation that required a 'level playing field' in the electoral process.

The Minto's Petition also emphasized how the existing feudal landholdings act as an instrument of subjugation, persistently affected the right to a 'better life' of a large proportion of our population. The petition correctly pointed out that those subjugated depend on their landowners for their livelihood and security. In such circumstances, these citizens cannot participate in the political process, as voters or candidates, in accordance with their own free will as visualized by the spirit of Article 17 of the same Pakistani Constitution.

The CJP Iftikhar Chaudhry's Supreme Court did not allocate required attention to that petition – the court's interest remained confined to the issuance of the notices to the concerned and nothing beyond. The general elections were ahead. The apex court kept on sleeping over that imperative issue which could have been the landmark of Pakistan's electoral process and its democratic hypothesis. A sarcastic saying:

***'Never mind our beloved countrymen! We'll be there once more in the Parliament; doesn't matter to which party you vote for.'***