

YAHYA AFRIDI, J.

Background

A three-member Bench of this Court, while hearing the **Civil Appeal Nos.981, 984 and 985 of 2018**, was faced with an apparent conflict between a recent amendment introduced by the Elections (Amendment) Act, 2023 (“**the Amending Act**”) in section 232(2) of the Elections Act, 2017 (“**the Elections Act**”) and a prior judgment rendered by a five-member Bench of this Court in the case of **Sami Ullah Baloch and others v. Abdul Karim Nousherwani and others** (PLD 2018 SC 405); both relating to disqualification of a person to be elected, chosen or to remain a member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly (hereinafter collectively referred to as the “**Parliament**”) in terms of the provision provided under Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”).

2. In order to address this apparent conflict and to ensure clarity before the upcoming general elections, the Court referred the matter for constituting a larger Bench. In addition, thereto, not only notices were issued to the Attorney General for Pakistan, all Provincial Advocates General, and the Election Commission, but the publication of a public notice in prominent English and Urdu newspapers was also directed, inviting all potential candidates, whose interests would be affected by the apparent discrepancy between the amended Elections Act and the **Sami Ullah Baloch case** (*supra*) to participate in the proceedings:

“4. The learned AAG points out that the Supreme Court (Practice and Procedure) Act, 2023 (‘the Act’) requires that where constitutional interpretation is required a Bench of a minimum of five Judges has to hear it. He further states that the interpretation of a Federal law, the Constitution and applicability of the decision of the Supreme Court is required,

which will also impact elections to the provincial assemblies, and as such requisite notices be issued. Therefore, notices under Order XXVIA of the Code of Civil Procedure, 1908 be issued to the Attorney-General for Pakistan and to all the Advocate Generals of the provinces. Notice be also issued to the Election Commission of Pakistan and public notice be published in a prominent English and Urdu newspaper having wide circulation as the decision in these appeals may also affect those who are not parties hereto."

The Conflict - Judgment and Section 232(2)

3. To appreciate the apparent conflict, we must first review and understand, what was the *ratio* of the judgment and the purport of the Amending Act. This Court in the **Sami Ullah Baloch** case (*supra*) unanimously decided on 14.02.2018 that:

36. In the result, we are inclined to hold that the incapacity created for failing to meet the qualifications under Article 62(1)(f) of the Constitution imposes a permanent bar which remains in effect so long as the declaratory judgment supporting the conclusion of one of the delinquent kinds of conduct under Article 62(1)(f) of the Constitution remains in effect.

While on the other hand, section 4 of the Amending Act, promulgated on 26.06.2023, substituted section 232, in the Elections Act in terms that:

4. Substitution of section 232, Act XXXIII of 2017.- In the said Act, for section 232, the following shall be substituted and shall, notwithstanding anything contained in sub-section (3) of section 1 of the said Act, always be deemed to have been so substituted on and from commencement of the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010), namely; -

"232. Qualifications and disqualifications.- (1)
The qualifications and disqualifications of a person to be elected, chosen or to remain as a member of the *Majlis-e-Shoora* (Parliament) or a Provincial Assembly shall be such as provided for in Articles 62 and 63 of the Constitution:

Provided that the procedure, manner and duration of the qualifications and disqualifications under this section shall be such as specifically provided for in the relevant provisions of Articles 62 and 63 of the Constitution and where no such procedure, manner or duration has been provided for therein, the provisions of this Act shall apply.

(2) Notwithstanding anything contained in any other provisions of this Act, any other law for the

time being in force and judgment, order or decree of any court, including the Supreme Court and a High Court, the disqualification of a person to be elected, chosen or to remain as a member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly under paragraph (f) of clause (1) of Article 62 of the Constitution shall be for a period not exceeding five years from the declaration by the court of law in that regard and such declaration shall be subject to the due process of law.”

Upon reading the newly inserted provision of section 232(2) of the Elections Act in juxtaposition with the declaration rendered by this Court in the **Sami Ullah Baloch case** (*supra*), we see an apparent discrepancy. The former restricts disqualification to five years, following an adverse declaration of a court of law, whereas the latter imposes a disqualification that persists, as long as the declaration remains in the field. One cannot escape the conclusion that the two appear to be irreconcilable.

Issues for determination

4. To resolve the conflict between the period of disqualification of a person to be elected, chosen or to remain a member of the Parliament under Article 62(1)(f) of the Constitution, as per the interpretation rendered in the **Sami Ullah Baloch case** (*supra*), and as provided in Section 232(2) of the Elections Act, we are required to address the following four issues:

- I. Whether the Parliament can legislate contrary on a matter, notwithstanding the authoritative judgment rendered by this Court, and to what legal effect?
- II. What is the intent and purport of the lack of qualification/disqualification envisaged in Article 62(1)(f) of the Constitution?

- III. Whether the interpretation of Article 62(1)(f) in the **Sami Ullah Baloch case** (*supra*) remains a correct statement of law or does it require reconsideration?
- IV. Whether the period of disqualification under Article 62(1)(f) of the Constitution, as determined by this Court in the **Sami Ullah Baloch case** (*supra*), would prevail when the Parliament has set a specific disqualification period for Article 62(1)(f) of the Constitution under section 232(2) of the Elections Act?

Contentions

5. Two opposing views were presented before us. One side argued that the newly amended section 232(2) of the Elections Act should be applied, contending that the **Sami Ullah Baloch case** (*supra*) was wrongly decided and should be overruled. They further argued that since the *vires* of section 232(2) of the Elections Act had not been challenged, commenting on it would merely be an academic exercise. While the other side maintained that, the **Sami Ullah Baloch case** (*supra*) was the correct law and the amended section 232(2) of the Elections Act was *ultra vires* and of no legal effect. Therefore, they argued, a ruling from this Court on the issue was essential.

6. Upon considering the submissions of the learned counsel for the parties and the valuable opinion rendered by the *amici curiae* on the matter in hand, my respectful views on the above issues are as follows, in *seriatim*:

Issue No. I.

Whether the Parliament can legislate contrary on a matter, notwithstanding the authoritative judgment rendered by this Court, and to what legal effect?

7. The Parliament can legislate on any matter it is authorized under the Constitution, but it cannot reverse or set aside the

judgment of this Court. Even an express pronouncement in a statute, and that too, through a non-obstante clause, cannot render the decision of this Court non-binding. Such an action would constitute an attempt to reverse a judicial decision rendered in the exercise of judicial power, which lies beyond the legislative domain. However, it cannot be denied that the effect of a judicial decision can be nullified by legislative action. The legislature can alter even with retrospective effect, the law which formed the basis of the judicial decision; the provisions on which the decision of the Court was based on may be altered, so fundamentally that, the decision no longer remains applicable to the altered circumstances. More importantly, the *vires* of any such law cannot be questioned on the ground that it nullifies the judgment of the Court. However, the same may be questioned being violative of any of the provisions of the Constitution, and this Court is competent to examine the *vires* of a statute, if it has been enacted in derogation of any of the provisions of the Constitution.

Issue No. II.

What is the intent and purport of the lack of qualification/disqualification envisaged in Article 62(1)(f) of the Constitution?

8. Given that the core controversy before us revolves around the interpretation of Article 62(1)(f) of the Constitution, let us wade through the evolution of constitutional provisions relating to qualifications and disqualifications for membership of Parliament starting from the original text of the Constitution and culminating in its present state, introduced *vide* the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010) ("**18th Constitutional Amendment**"). The picture that emerges is best reflected, as under:

Article Nos.	Original Constitution	Presidential Order 14 of 1985 (Revival of the Constitution of 1973 Order, 1985) (reaffirmed by Article 270-A vide 8 th Constitution (Eighth Amendment) Act, 1985)	Constitution (Eighteenth Amendment Act, 2010
Article 62	<p>62. Qualifications for Membership of Parliament (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—</p> <p>(a) he is a citizen of Pakistan;</p> <p>(b) he is, in the case of the National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll in for election to that Assembly;</p> <p>(c) he is, in the case of the Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal areas, from where he seeks membership; and</p> <p>(d) he possesses such other qualifications as may be prescribed by Act of Parliament.</p>	<p>For these Articles the following shall be substituted, namely:--</p> <p>"62. Qualifications for membership of Majlis-e-Shoora (Parliament). A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless--</p> <p>(a) he is a citizen of Pakistan;</p> <p>(b) he is, in the case of National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll for election to a Muslim seat or a non-Muslim seat, as the case may be, in that Assembly;</p> <p>(c) he is, in the case of Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;</p> <p>(d) he is of good character and is not commonly known as one who violates Islamic Injunctions;</p> <p>(e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;</p> <p>(f) he is sagacious, righteous and non-profligate and honest and ameen;</p> <p>(g) he has not been convicted for crime involving moral turpitude or for giving false evidence;</p> <p>(h) he has not, after the establishment of Pakistan, work against the integrity of the country or</p>	<p>Substitution of Article 62 of the Constitution:</p> <p>In the Constitution, for Article 62, the following shall be substituted, namely:-</p> <p>"62. Qualifications for membership of Majlis-e-Shoora (Parliament):(1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-</p> <p>(a) he is a citizen of Pakistan;</p> <p>(b) he is, in the case of the National Assembly, not less than twenty -five years of age and is enrolled as a voter in any electoral roll in-</p> <p>(i) any part of Pakistan, for election to a general seat or a seat reserved for non-Muslims; and</p> <p>(ii) any area in a Province from which she seeks membership for election to a seat reserved for women.</p> <p>(c) he is, in the case of Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;</p> <p>(d) he is of good character and is not commonly known as one who violates Islamic Injunctions;</p> <p>(e) he has adequate knowledge of Islamic teachings and practises obligatory duties prescribed by Islam as well as abstains from major sins;</p> <p>(f) he is sagacious, righteous and non-profligate, honest and ameen, <u>there being no declaration to the contrary by a court of law;</u></p> <p>(g) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan.</p> <p>(2) The disqualifications specified in paragraphs (d) and (e) shall not apply to a person</p>

		<p>opposed the ideology of Pakistan; Provided that the disqualifications specified in paragraphs (d) and (e) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation; and</p> <p>(i) he possesses such other qualifications as may be prescribed by Act of Majlis-e-Shoora (Parliament)."</p>	<p>who is a non-Muslim, but such a person shall have good moral reputation."</p>
<p>Article 63</p>	<p>63. Disqualification for Membership of Parliament (1) A person shall be disqualified from being elected or chosen as, and from being, a member of Parliament, if –</p> <p>(a) he is of unsound mind and has been so declared by a competent court; or</p> <p>(b) he is an undischarged solvent; or</p> <p>(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or</p> <p>(d) he holds any office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or</p> <p>(e) he is so disqualified by Act of Parliament</p> <p>(2) If any question arises whether a member of Parliament has become disqualified from being a</p>	<p>Substitution of Article 63 of the Constitution</p> <p>"63. Disqualifications for membership of Majlis-e-Shoora (Parliament).</p> <p>(1) A person shall be disqualified from being elected or chosen as, and from being a member of the Majlis-e-Shoora (Parliament), if --</p> <p>(a) he is of unsound mind and has been so declared by a competent Court; or</p> <p>.....</p> <p>(g) he is propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan; or</p> <p>(h) he has been, on conviction for any offence which in the opinion of the Chief Election Commissioner involves moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release; or</p> <p>(i) he has been dismissed from the service of Pakistan on the ground of misconduct, unless a period of five years has elapsed</p>	<p>Substitution of Article 63 of the Constitution:</p> <p>In the Constitution, for Article 63, the following shall be substituted, namely:-</p> <p>"63. Disqualifications for membership of Majlis-e-Shoora (Parliament): (1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:-</p> <p>(a) he is of unsound mind and has been so declared by a competent court; or</p> <p>.....</p> <p>(g) he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, <u>unless a period of five years has elapsed since his release;</u> or</p> <p>(h) he has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a <u>term of not less than two years, unless a period of five years has elapsed since his release;</u> or</p> <p>(i) he has been dismissed from the service of Pakistan or service of a corporation or office set up or, controlled, by the Federal</p>

	<p>member, the Speaker or, as the case may be, the Chairman shall refer the question to the Chief Election Commissioner and, if the Chief Election Commissioner is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.</p>	<p>since his dismissal; or (j) he has been removed or compulsorily retired from the service of Pakistan on the ground of misconduct unless a period of three years has elapsed since his removal or compulsory retirement; or"</p>	<p>Government, Provincial Government or a Local Government on the grounds of misconduct, <u>unless a period of five years has elapsed since his dismissal</u>; or (j) he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the ground of misconduct, <u>unless a period of three years has elapsed since his removal or compulsory retirement</u>; or " (Emphasis provided)</p>
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9. On a careful reading of the above provisions, one cannot ignore the simplicity and clarity manifest in the conditions of qualifications prescribed for membership of the Parliament in the original Constitution, and at the same time, one is struck by the vagueness that has crept in, with the insertion of general and that too, undefined words; '*sagacious, righteous, non-profligate, honest and ameen*', introduced in Article 62(1)(f) *vide* 8th Constitutional Amendment. This constitutional insertion being made under the shadows of Martial Law can surely be viewed with legal circumspection. However, the very fact that the same provision, since its insertion almost four decades ago has been examined by seven successively elected parliaments, and yet survived their watchful legislative scrutiny, suggests the intent of the *makers* of the Constitution - the Parliament - to preserve it.

The 18th Constitutional Amendment

10. The 18th Constitutional Amendment in my earnest opinion was a constitutional watershed in our democratic history; its constitutional, social, and economic impact on all spheres, including governance strategy and provincial autonomy, are far

reaching, not only for the changes it introduced, but also for the fact that the same was brought with consensual support of all the major political parties. Thus, the amendments in the Constitution that were introduced *vide* the 18th Constitutional Amendment must be not only carefully viewed, but also respectfully preserved.

11. The 18th Constitutional Amendment introduced several changes to the Constitution. Among those most relevant to the present discussion, are that, Articles 62 and 63 of the Constitution were entirely replaced. Notably, the amendment in Article 62(1)(f) introduced the phrase "*there being no declaration to the contrary by a court of law*" but conspicuously no specific time limit was inserted therein. This deliberate and well thought out omission clearly reveals the intent of the Parliament to avoid giving a specific time duration for disqualification under Article 62(1)(f).

Intent of the Makers

12. To my mind, the letter of the law, as provided in Article 62(1)(f) of the Constitution is not only clear in its content but also in its intent. Article 62(1)(f) of the Constitution, in essence, simply states that a person shall not be qualified to be elected or chosen, as a Member of the Parliament, if there is a clear finding amounting to a declaration by a court of law that he is not *sagacious, righteous, non-profligate, honest and ameen*, and this disqualification remains in effect, as long as the declaration remains in the field.

13. There seems great wisdom behind the amendment introduced *vide* 18th Constitutional Amendment in Article 62(1)(f) with the insertion of the words '*there being no declaration to the contrary by a court of law*'. It appears that the intention of the

Parliament for introducing the said amendment was to ensure that disqualification of a person be restricted to an adverse declaration passed by a court of law, providing a check on random disqualifications rendered by different authorities without due process. And further that, such adverse declaration should not be made behind the back of an aspirant, and that too, without providing him the opportunity to contest the same before a court of law. And finally, one finds that this disqualification was made conditional upon the duration of the declaration of the court of law.

14. The terms *sagacious, righteous, non-profligate, honest and ameen* mentioned in Article 62(1)(f), when not defined in the Constitution would have to be read in their ordinary dictionary meaning. While, the term, *court of law*, stated in Article 62(1)(f), refers to a Court established and exercising its jurisdiction under the law, as provided in Article 175 of the Constitution. Thus, any finding passed by any Court constituted under Article 175 of the Constitution amounting to a declaration that a person is not *sagacious, righteous, non-profligate, honest and ameen*, would render the said person disabled to be chosen or to remain a member of the Parliament, till the time such declaration remains in the field.

Reconcilability of Article 62(1)(f) with Article 63(1)(g), (h), (i) and (j)

15. Serious concern was raised regarding the efficacy of Article 62(1)(f) not being reasonably reconcilable to the express time period of disqualification prescribed in Article 63 for a person having been convicted and sentenced for far serious offences

relating to moral turpitude, corruption, and against the State to be allowed to become Members of the Parliament.

16. Let us first consider the period of disqualification of persons convicted and sentenced for commission of offences specified in Article 63 of the Constitution. The same are reiterated hereunder: -

Article 63(1)(g) - Offences against the State

For a person convicted and sentenced for the commission of an offence against the State, we note that a period of five years has to elapse since his release for an offence, propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan for offence against the State.

Article 63(1)(h) - Offences of Moral Turpitude

Interestingly, for a person convicted for an offence of moral turpitude, where his sentence is for a term not less than two years, a period of five years has to elapse since his release after serving his sentence. The logical corollary of this would be that a person convicted for an offence of moral turpitude, where his sentence is for a term less than two years would not fall within the mischief of disqualification provided under this provision.

Article 63(1)(i) - Dismissal for Misconduct of a Government Servant

A period of five years has to elapse since his dismissal from the service of Pakistan or service of a corporation or office set up or, controlled, by the Federal Government, Provincial Government or a Local Government on the grounds of misconduct.

Article 63(1)(j) - Removal or Compulsory Retirement from Service

A period of three years has to elapse since his removal or compulsory retirement from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the ground of misconduct.

17. Given the time prescribed for disqualification provided in the above stated provisions of Article 63 and the conditional disqualification contained in Article 62(1)(f), I find the concern to the reconcilability of the latter to be misdirected, and in my earnest view, none should question the wisdom of the Parliament to decide and define the qualifications or disqualifications of its members. And thus, judicial restraint be exercised, lest it may infringe upon parliamentary independence and violate the cherished principles of separation of powers ingrained in the Constitution.

18. Even otherwise, the said provisions can be harmonized: on one hand, we have a general rule for disqualification provided under Article 62(1)(f), wherein the use of general and undefined words, *sagacious, righteous, non-profligate, honest and ameen*, renders a wide scope for disqualification; while on the other hand, we have the special well-defined exceptions to general rule of disqualification, as contained in the clauses (g),(h),(i), and (j) of sub-Article (1) of Article 63. Thus, the disqualification of a person for the convictions awarded for commission of offences provided in clauses (g),(h),(i), and (j) of sub-Article (1) of Article 63 could render the same to be a finding amounting to a declaration of a court of law that the person is not *sagacious, righteous, non-profligate, honest and ameen*, and thus, come within the mischief of disqualification contained in Article 62(1)(f). However, the former

being an exception to the general rule of disqualification would prevail over the latter.

19. Accordingly, the person would be eligible to become a member of the Parliament upon the expiry of the disqualification period provided under clauses (g), (h), (i), and (j) of sub-Article (1) of Article 63, and thus, there would be no legal requirement for the said declaration to be set aside, as contemplated in Article 62(1)(f). Such is the clear intent of the *makers* of the Constitution, and we must respect and preserve it. One must not ignore that a person convicted for the commission of moral turpitude, and sentenced to a term of imprisonment of less than two years would also be covered under the exception to the general rule covered under Article 63(1)(h), and not hit by the general disqualification provision envisaged under Article 62(1)(f) of the Constitution.

Self-Executory Provision

20. Much was argued to reduce the legal effect of Article 62(1)(f) of the Constitution to a provision being not self-executory. I have no manner of doubt that the lack of qualification/disqualification, as provided under Article 62(1)(f) is not only clearly live, but most certainly self-executory. In fact, declaring Article 62(1)(f) non-executory would most certainly render the very provision redundant, and that would be affront to the most basic principles of interpretation of constitutional provisions.

Issue No. III.

Whether the interpretation of Article 62(1)(f) in the *Sami Ullah Baloch* case (*supra*) remains a correct statement of law or does it require reconsideration?

Sami Ullah Baloch's case – need not be overruled

21. Much has been said about the reasons leading to the conclusion drawn by this Court in the *Sami Ullah Baloch* case (*supra*).

We must be mindful that overruling a decision on a point of law should not appear to be a game of numbers in favour of the ruling Bench, and all efforts should be made to conserve the question already decided and settled by a Court, unless there is a glaring error in the judgment under review. *Stare decisis* requires judges to give “sober second thought” to overruling precedent irrespective of the reasoning behind the decision. In all fairness, even if the Court disagrees with the reasoning rendered in the **Sami Ullah Baloch case** (*supra*), I find that it would not be legally proper to discuss and overrule the same, when the conclusion drawn in the said judgment is in consonance with the settled principles already interpreted by this Court in its prior precedents.

22. None can fairly assert that what was presented before us was not so ably done before the five-member Bench of this Court that heard and decided the **Sami Ullah Baloch case** (*supra*). Simply because a different perspective could have been adopted is not a sufficient ground to overturn the well-considered opinion of a five-member Bench, arrived after solemn argument and mature deliberation on the issue at hand. To disturb such a precedent, would disturb and undermine the most essential element of an orderly administration of justice – consistency and predictability of the law.

A solitary instance of unchecked discretion is not a ground to revisit precedent

23. To undermine and counter the conclusion drawn in the judgment of the **Sami Ullah Baloch case** (*supra*), it was argued that one of the interveners in response to Public Notice of the Court was disqualified by a declaration rendered by this Court, which was

permanent. I am afraid, this line of argument is rather miscued. It is not enough to assert that a precedent be overruled merely because of one instance of unchecked discretion. Also, the factual matrices of that particular case need not be confused with the statement of law enunciated in the **Sami Ullah Baloch case** (*supra*).

24. To my mind, the original jurisdiction of Article 184(3) of the Constitution is an extraordinary jurisdiction not usually seen in other Constitutions, vesting this Court with authority to come to the rescue of the poor and the needy in matters of public importance involving the enforcement of the Fundamental Rights enshrined in the Constitution. While exercising its original jurisdiction under Article 184(3) of the Constitution, this Court ought to have been judicially cautious, not to meddle in political matters, more so, when its declaration would lead a person disqualified by a solitary declaration without an opportunity of legal redressal. However, I have no manner of doubt that the wrong done to the intervener should not be made basis for rendering Article 62(1)(f) of the Constitution to be redundant.

25. What follows from the above is that the contentions raised before us do not meet the high threshold required to overrule one of the earlier decisions of this Court. Therefore, in my earnest view, the conclusion drawn in the **Sami Ullah Baloch case** (*supra*) regarding Article 62(1)(f) of the Constitution remains a correct statement of law requiring no interference by this Bench.

Issue No. IV

Whether the period of disqualification under Article 62(1)(f) of the Constitution, as determined by this Court in the **Sami Ullah Baloch case** (*supra*), would prevail when the Parliament has set a specific disqualification period for Article 62(1)(f) of the Constitution under section 232(2) of the Elections Act?

26. With few exceptions, there was a general consensus amongst the learned counsel for the parties and the *amici curiae* that the issue of constitutionality of Section 232(2) of the Elections Act should not be dealt with in the instant case, more so, if the judgment rendered in the **Sami Ullah Baloch case** (*supra*) was to be overruled.

27. As I am of the opinion that the conclusion drawn in the said case is in accord with the law and should not be overruled, Section 232(2) of the Elections Act requires judicial attention. I am constrained to say so, as the very reason for constituting this larger Bench and issuing a public notice was to address the apparent conflict between the judgment rendered in the **Sami Ullah Baloch case** (*supra*) and the provisions inserted in sub-section (2) of Section 232 of the Elections Act.

28. For reference, we may again refresh our attention to Section 232(2) of the Elections Act. The said provision reads:

"232. Qualifications and disqualifications.- (1)

(2) Notwithstanding anything contained in any other provisions of this Act, any other law for the time being in force and judgment, order or decree of any court, including the Supreme Court and a High Court, the disqualification of a person to be elected, chosen or to remain as a member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly under paragraph (f) of clause (1) of Article 62 of the Constitution shall be for a period not exceeding five years from the declaration by the court of law in that regard and such declaration shall be subject to the due process of law."

When we read sub-section (2) of Section 232 of the Elections Act, it provides the following: firstly, there is a non-obstante clause introduced declaring the provision to prevail over any other

provision of law in force, judgment, order or decree of any court including the High Court and the Supreme Court; and secondly, the disqualification of a person to be elected or to remain, as a Member of the Parliament under Article 62(1)(f) of the Constitution shall be for a period not exceeding five years from the declaration made by a Court of law.

29. As discussed earlier, in the context of the authority of the legislature to affect judicial decisions, it is sufficient to note that: firstly, the legislature cannot reverse or set aside the judgment of the Court, and the same remains binding notwithstanding legislative action; secondly, the legislature is, however, entitled to change, with retrospective effect, the law, which formed the basis of the judicial decision, and thereby, the conditions on which the decision of the Court was based on are altered so fundamentally that the decision no longer remains applicable to the altered circumstances; and finally, the *vires* of any such law can only be questioned on the ground that it offends any provision of the Constitution or nullifies the same, and not that it nullifies the judgment of the Court.

30. Let us see whether the legislature has validly exercised its authority, to render the judgment of this Court in the **Sami Ullah Baloch case** (*supra*) ineffective by removing its basis through a retrospective change in the law, within the constitutional limitations. Article 62(1)(f) of the Constitution notably does not specify a time period for the disqualification. In contrast, the amended Section 232(2) of the Elections Act prescribes a time period for a disqualification of the nature of Article 62(1)(f). The absence of a specified period of time for the disqualification envisaged in Article 62(1)(f) of the Constitution, indicates a

deliberate choice by the framers of the Constitution not to define the specific duration for disqualification under this provision. Any attempt to impose a time limit to the effect of Article 62(1)(f), such as stipulating a maximum period of five years, would require a constitutional amendment, rather than introducing it through ordinary legislation. It is imperative to recognize that a provision introduced through ordinary legislation cannot supersede the clear mandate provided in the Constitution. Therefore, the amended Section 232(2) of the Elections Act, by imposing a duration for disqualification of the nature of Article 62(1)(f), contradicts the said constitutional provision.

31. Further, the **Sami Ullah Baloch case** (*supra*) interpreted the purport and effect of Article 62(1)(f) of the Constitution. It was held therein that the effect of the disability under Article 62(1)(f) would last as long as the effect of the declaration required under Article 62(1)(f) continued. The conclusion reached in the **Sami Ullah Baloch case** (*supra*) is based on Article 62(1)(f) of the Constitution. In order to remove the basis of the judgment rendered in the **Sami Ullah Baloch case** (*supra*), a change in law through simple legislation was not enough. Rather, an amendment in the Constitution was required. An ordinary legislation cannot nullify a judgment rendered by a constitutional Court, while interpreting a provision of the Constitution.

32. In continuation of the above, I am of the view that the period of disqualification under Article 62(1)(f) of the Constitution, as determined by this Court in the **Sami Ullah Baloch case** (*supra*), would prevail over the five-years disqualification period for Article 62(1)(f), as provided under section 232(2) of the Elections Act.

Conclusion

33. I would, in these circumstances, declare that: the conclusion drawn in the judgment of the **Sami Ullah Baloch case** (*supra*) is legally correct, as it is in consonance with the settled principles already interpreted by this Court in its prior precedents and clear parliamentary intent, and thus, need not be overruled; and that the lack of qualification/disqualification envisaged under Article 62(1)(f) of the Constitution only renders a person disabled to be chosen or to remain a member of the Parliament, till the adverse declaration remains in the field, and is thus, not permanent.

Judge

Islamabad

25.3.2024

Approved for reporting