Qazi Faez Isa, CJ. I agreed with the short order dated 12 July 2024 authored by Justice Jamal Khan Mandokhail and agree with his detailed reasons thereof which have been issued today.

2. However, I consider it my duty to point out the constitutional violations and illegalities in the majority's short order of 12 July 2024, and the majority's detailed judgment of 23 September 2024, the order/clarification of 14 September 2024 and the Clarification of 18 October 2024 (respectively '**the majority's short order**', '**the majority's judgment**', '**the majority's order/clarification**' and '**the majority's Clarification**'). I do hope and expect that my distinguished colleagues in the majority[1] will reflect and correct their mistakes and ensure that Pakistan is governed in accordance with the Constitution of the Islamic Republic of Pakistan ('**the Constitution**'). Unfortunately, the review petitions against the majority short order could not be heard because my Hon'ble colleagues (Justice Syed Mansoor Ali Shah and Justice Munib Akhtar) outvoted me on the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023; attached is my separate note to the minutes of the meeting held on 18 July 2024.

3. These appeals were heard by a thirteen-member Bench of this Court, comprising of all judges of the Supreme Court.[2] The majority's short order concluded by permitting the Election Commission of Pakistan ('**ECP**') and Pakistan Tehreek-i-Insaf ('**PTI**') to, '*apply to the Court by making an appropriate application, which shall be put up before the Judges constituting the majority in chambers for such orders and directions as may be deemed appropriate*'. This deviated from how courts have always functioned, was novel and unprecedented.

4. The majority of eight judges decided to part ways with the Court, comprising of thirteen judges, which had heard the appeals. The majority set up its own virtual *court*, permitted the making of '*an appropriate application*' by the ECP and PTI, and directed that such *appropriate application* would only be heard by them whilst cloistered in Chambers. In doing this the majority of the Hon'ble Judges effectively legislated, because

[1] Justice Syed Mansoor Ali Shah, Justice Munib Akhtar, Justice Muhammad Ali Mazhar, Justice Ayesha A. Malik, Justice Athar Minallah, Justice Syed Hasan Azhar Rizvi, Justice Shahid Waheed and Justice Irfan Saadat Khan.

[2] Except Justice Musarrat Hilali, who had undergone open heart surgery.

neither the Constitution nor any law permits what they did. Incidentally no party or counsel during the hearing ever suggested the course of action which the majority adopted, and neither the majority's short order nor the majority's judgment offers an explanation to justify it. In effectively legislating the Hon'ble Judges in the majority also contradicted themselves. They stated that the ECP and the PTI may '*apply to the Court*' but then proceeded to state that only the '*judges constituting the majority*' would hear the '*appropriate application*'. This was not the only contradiction. It has been settled by the Supreme Court that a hearing of a case after it has been decided (which would be a review petition) should be by the same Bench and by the same number of Judges as had earlier heard the case:[3]

> 'Needless to mention that the dissenting Judges on the Bench that heard the case, subject to their availability, are necessary members of the Bench constituted to hear review petition filed against the majority judgment, i.e., judgment of the Court,... .'
>
> '10. As the judgment of the Court is considered to be the judgment of all the members of that Bench, irrespective of its being majority judgment or unanimous judgment, there can be no difference in judicial powers of the members ... . Hence, there can be no fetters on the exercise of his judicial power as that would offend the fundamental constitutional value of independence of the judiciary.'

5. The majority disregarded the precedents of this Court, including the above. They not only carved out a separate eight-member '*court*' from the thirteen-member Court, but also innovated further by not finally concluding the hearing of the appeals, because they permitted *appropriate application* to be filed, introduced timelines and changed what the Constitution provided.

6. The timelines that were introduced were as under:

(i) 41 returned candidates to file a statement within 15 days;
(ii) Upon receipt of the above statements the ECP to give notice to the political party concerned;
(iii) Then within 15 days the political party to submit its '*confirmation that the candidates contesting the General Elections as its candidates*'; and
(iv) The ECP within 7 days to issue and post on its website '*the list of candidates now MNAs*'.

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[3] *Per* Justice Syed Mansoor Ali Shah, PLD 2022 Supreme Court 119, 152, 153.

7. Judges may decide or dispose of a case as per their understanding of the Constitution and the law but it is critical that the case must be decided or disposed of. Permitting *appropriate application* to be filed by the ECP or the PTI meant that the case was not decided or disposed of. This coupled with the stated timelines effectively kept the appeals pending. In civil cases after a judgment is pronounced the decree follows. In constitutional cases too a judgment can be executed, provided it is finally and conclusively decided. The majority's short order and the majority's judgment did not conclude the appeals. The well trodden legal path was abandoned by the majority which created unnecessary and avoidable problems. Since the appeals were not finally decided there was no *decision* which could be stated to be binding, in terms of Article 189 of the Constitution. Similarly, contempt of court proceedings for any non-compliance of the '*order of the Court*', under Article 204 of the Constitution, cannot be initiated. The right of review, which Article 188 of the Constitution grants, was also effectively negated.

8. The majority's short order was announced on 12 July 2024, following which the Hon'ble Judges had to issue their detailed reasons for the same. Instead something inexplicable happened. A purported '*order*' was uploaded on the Supreme Court's website on 14 September 2024, and this was done without informing the Chief Justice, the other Judges (in the minority), and bypassing the Registrar and the office of the Supreme Court. And, this was done on a Saturday, after the Registrar had left. The Deputy Registrar who was still in the premises of the Supreme Court submitted the following note to (me) the Chief Justice, after 8 pm on Saturday, 14 September 2024:

> 'I bring it to your kind notice that a news is floating on the media that Supreme Court of Pakistan has issued clarification of order dated 12.07.2024 passed in C.A. No. 333/2024 (Election – National Assembly / Reserved Seats). However, neither cause list was issued, nor notices were issued to the parties by the office and the order has still not been received in office till 8.00pm and was uploaded on the website.
>
> Submitted for information, please.'

9. In view of the unusual happenings (mentioned above) I sought the following information from the Registrar; my questions and the answers from the Registrar are mentioned below:

Questions by the Chief Justice	Answers by the Registrar
1) When were the said applications filed?	The application of the ECP was received in the office of the Registrar on 26 August 2024.
2) Why were the said applications not fixed before the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023?	These applications were not placed before the Committee in view of the majority's short order as directed by them to hear it in Chambers.
3) How were the said applications fixed for hearing and how was this done without issuance of cause list disclosing their fixation?	These applications were not fixed for hearing rather were placed before the majority Judges in Chambers. As such no cause list was issued.
4) Did the office issue notices to the parties and to the Attorney-General for Pakistan?	Notices were not issued to the parties nor to the Attorney-General for Pakistan.
5) In which courtroom/chamber were the applications heard, and by whom?	No hearing took place on these applications as the applications were placed before the majority Judges in Chambers.
6) Why was a cause list not issued for announcement of the said order?	As the matter was placed before the majority Judges in Chambers and no hearing took place on the applications, therefore, the cause list for announcement of the said order was not issued.
7) Why was the said order not fixed for announcement?	Neither any hearing took place on the applications nor the judgment/order was reserved, rather the same was decided by the majority Judges in Chambers.
8) Without first depositing the original file and the said order in the Supreme Court's office how was the said order uploaded on the website?	Webmaster of IT Directorate uploads orders on the official website of this Court and did so on the directions of the Hon'ble Judges.
9) Who directed the uploading of the said order on the Supreme Court's website?	As reported, the Webmaster of IT Directorate uploaded the said order on the official website of this court on 14 September 2024 on the direction of Mr. Sadaqat Hussain, Sr. PS to Justice Syed Mansoor Ali Shah (HJ-1). As also reported, he received the said order via Whatsapp from Mr. Sadaqat Hussain at 4:32 pm on 14 September 2024 along with the Tagline.

10. The majority's order/clarification was admittedly passed without first listing the cases, without issuing notices to the parties and without

issuance of the requisite notice to the Attorney-General for Pakistan. The title of the '*order*' stated - '*In Chambers*'. However, not all of the said eight Hon'ble Judges were in the Supreme Court premises and some were not even in Islamabad. By not issuing notices, not granting an opportunity of hearing, and not conducting the hearing in open Court, the well established rules of natural justice were transgressed, and Article 10A of the Constitution, which gives protection to procedural fairness and has elevated *due process* and *fair trial* to the status of a Fundamental Right, was contravened. A nine-member Bench of this Court had recently rendered the following unanimous opinion:

> 'The proceedings of the trial by the Lahore High Court and of the appeal by the Supreme Court of Pakistan do not meet the requirements of the Fundamental Right to a fair trial and due process enshrined in Articles 4 and 9 of the Constitution and later guaranteed as a separate and independent Fundamental Right under Article 10A of the Constitution.'[4]

11. The majority's order/clarification was incorporated into the majority's judgment (in its paragraph 58), however, the title of the 'order' was changed to '*clarification*'. The Hon'ble Judges may have realized their non-compliance with Article 10A of the Constitution, therefore, in the majority's judgment they stated that, '*there was no legal requirement nor did we find it necessary to hear the parties before clarifying our own order*'. However, it was acknowledged that the same was done '*without issuing notice to or hearing the parties*'. With respect, to say that there was *no legal requirement* to hear the parties disregarded innumerable judgments of this Court. '*It has been laid down as principle of law by the superior courts that in every statute, principle of natural justice of hearing a person... shall be deemed to have been embodied.*'[5] It is a '*...principle of natural justice that an order affecting the rights of a party cannot be passed without an opportunity of hearing.*'[6] '*...the appellant shall have the right of being heard.*'[7] By not hearing the parties to the appeals the Hon'ble Judges also effaced several

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[4] Reference No.1 of 2011, decided on 5 July 2024. Three of the Hon'ble Judges in the majority were on the Bench which decided this reference, namely, Justice Syed Mansoor Ali Shah, Justice Muhammad Ali Mazhar and Justice Syed Hasan Azhar Rizvi.
[5] *Mst. Zahida Sattar v Federation*, PLD 2002 Supreme Court 408.
[6] *Sayyid Abul A'la Maududi v The Government of West Pakistan*, PLD 1964 Supreme Court 673, 736.
[7] *Chief Commissioner Karachi v Mrs. Dina Sohrab Katrak*, PLD 1959 Supreme Court 45.

millennia of jurisprudence.[8] No provision of the Constitution, law or precedent was cited to support that there was '*no legal requirement*' to hear the parties. The mandatory requirement of openness and transparency were also transgressed. Secrecy and one-sided determinations are the harbingers of suspicion and mistrust, and undermine the trustworthiness and standing of courts.

12. The majority's order/clarification was followed by yet another; the majority's Clarification which, like the earlier one of 14 September 2024, was uploaded on the website of the Supreme Court in similar manner. This was done on Friday, 18 October 2024 at 3.59 pm. This time too the cause list was not issued, parties were not informed, and an opportunity of hearing was not provided. Where and when the Hon'ble Judges had met also remains a mystery. The title of the majority's Clarification is baffling, it stated, '*In Chambers at Islamabad and Karachi*', that is, simultaneously in two cities. The majority's judgment (in paragraph 120) had stated that they were '*parting with the judgment*', but almost a month later (on 18 October 2024) in the majority's Clarification they invalidated their own *parting*.

13. In my 46 years association with the law, I have not come across such novel methodology (as mentioned above), nor learnt of such practice being

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[8] *The Rule of Laws – A 4,000–Year Quest to Order the World* by Fernanda Pirie (Profile Books, 2021). This 570 page book deals with the subject comprehensively. It opens by stating that by the third millennium before the common era Mesopotamian kings made laws which protected the rights of the people.
Islamic jurisprudence: Surat an-Nisa' (4), verse 135, Surat al-Ma'idah (5), verse 8, Surat an-Nisa' (4) verse 58 and Surat ar-Rahman (55), verses 7-9 of the Holy Qur'an mandate that principles of justice, impartiality and balance must be observed while deciding disputes.
Prophet Muhammad (peace and blessings of Allah be upon him) elaborated upon the Qur'anic concept of justice, including the obligation to hear the parties before deciding a case. When he appointed 'Ali (Allah be pleased with him) as a judge in Yemen he instructed him: '*If two men seek judgment from you, do not rule in favour of one until you listen to what the other one says; then you will know how to decide*' (*Sunan al-Tirmidhi*, Book on Rulings, Hadith No. 1331.)
The Islamic jurist Abu Sulayman Hamd ibn Muhammad al-Khattabi in the tenth century (CE) stated: '*The judge must not decide the case in the absence of a party because when the Prophet (peace and blessings be upon him) prohibited him from deciding in favor of one party …The reason is that he may have some argument which may refute the claim of the one who is present*' (*Ma'alim as-Sunan*, vol. 4, p. 162.) A century later the renowned Islamic jurist Abu Bakr Muhammad ibn Abi Sahl as-Sarakhsi further elaborated this principle in stating that clarity can only be achieved if both parties are present when the case is decided which will '*not be achieved unless it is decided in his presence*' (*Al-Mabsut*, vol. 17, p. 39).
British jurisprudence: '*The days when it used to be said that a person seeking a privilege is not entitled to be heard are long gone*' (*R v Secretary of State ex Parte Fayed* (1997) 1 All ER 228, 239). '*The body with the power to decide cannot lawfully proceed to make a decision until it has afforded the person affected a proper opportunity to state his case*' (*Ridge v Baldwin* (1963) 2 All ER 66).

in vogue in any other country governed by the rule of law. In *Chittaranjan Cotton Mills Ltd. v Staff Union*[9] this Court had (over four decades ago) stated the consequences of an improperly constituted court:

> 'Where the Court is not properly constituted at all the proceedings must be held to be *coram non judice* and, therefore, non-existent in the eye of law. There can also be no doubt that in such circumstances "it would never be too late to admit and give effect to the plea that the order was a nullity", as was observed by the Privy Council in the case of *Chief Kwame Asante, Tredahone v Chief Kwame Tawia* (9 DLR 686 (PC)).'

The majority's order/clarification and the majority's Clarification cannot be stated to have been issued by a 'Court'; the forum which issued them was *coram non judice*. Moreover, such forum did not comply with the rudimentary principles of natural justice, of due process and of fair trial. Therefore, with great respect, the same do not constitute legal orders, and are of no legal effect. They also cannot be categorized as a '*decision*' of the Supreme Court (in terms of Article 189 of the Constitution), resultantly, they need not be followed or acted upon.

14. Another significant departure from the Constitution by the majority's short order was to repeatedly refer to *minorities* therein. *Minorities* are neither mentioned in Article 51 nor in Article 106, and instead both provisions state '*non-Muslims*'. Muslims and non-Muslims denote religious status; without reducing either's citizenship rights. To designate non-Muslims as minorities is suggestive of a reduced citizenship status. Minorities in the context of the Constitution could be any number of groups, such as, those with disabilities, the illiterate, racial or ethnic minorities, and may also include religious minorities (a sect within the same religion or of another religion). Substituting non-Muslims with minorities and disregarding the placement of these two words in the Constitution is neither linguistically nor textually correct.

15. The word *minorities* is used in the Constitution three times; in its *Preamble* and in the *Principles of Policy*.[10] *Non-Muslims* is used fifteen times

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[9] PLD 1971 Supreme Court 197.

[10] Preamble: '*adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures*' and '*adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes*'.

in the Constitution.[11] Everyone who considers the Constitution, particularly Judges, must adhere to its language and not lift anything from one place and superimpose it on another provision. An eleven-member Bench of this Court in *Benazir Bhutto v Federation of Pakistan*[12] held that:

> 'In construing constitutional provisions the expression used in one provision cannot be lifted and superimposed on the other provision which is not only against the canons of interpretation but also makes the reading of the provisions as a whole discordant.'

16. Articles 51 and 106 of the Constitution were under consideration in the appeals, however, the majority's short order and the majority's judgment not only disregarded their texts but effectively amended the Constitution. The Constitution can only be amended in the manner as stipulated therein (Articles 238 and 239), and judges have no role in amending it. In *Hamza Rasheed Khan v Election Commission of Pakistan*[13] six judges of this Court categorically stated the obvious, which was that no court, including the Supreme Court, could confer jurisdiction upon itself:[14]

> '12. Any court, including this Court, cannot by a judicial order confer jurisdiction on itself or any other court, tribunal or authority. The power to confer jurisdiction is legislative in character; only the legislature possesses it. No court can create or enlarge its own jurisdiction or any other court's jurisdiction. Nor any court has any inherent or plenary jurisdiction.

Principles of Policy: '*The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services*', Article 36.

[11] '*The State shall prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes*', Article 37(h).

'*…seats reserved for women and non-Muslims*', Article 51(1).

'*…ten seats reserved for non-Muslims*', Article 51(4).

'*…members to the seats reserved for non-Muslims…*', Article 51(6)(h).

'*The Senate…four non-Muslims…*', Article 59(1)(f).

'*…a seat reserved for non-Muslims*', Article 62(1)(b)(i).

'*…shall not apply to a person who is a non-Muslim…*', Article 62(2).

'*Each Provincial Assembly…seats reserved for women and non-Muslims…*', Article 106(1).

'*…one seat for non-Muslims in respect of the Federally Administered Tribal Areas*', Article 106(1A).

'*…each Province shall be a single constituency for all seats reserved for women and non-Muslims…*', Article 106(3)(b).

'*…the members to fill seats reserved for women and non-Muslims allocated to a Province…*', Article 106(3)(c).

'*When a seat reserved for women or non-Muslims…*', Article 224(6).

'*Nothing in this Part* [IX] *shall affect the personal laws of non-Muslim citizens or their status as citizens,*' Article 227(3).

'*"…non-Muslim" means…*', Article 260(3)(b).

'*In this paragraph, "total number of seats" includes seats reserved for non-Muslims and women,*' Second Schedule, Explanation to paragraph 18(1).

[12] PLD 1988 Supreme Court 416, 512.

[13] Civil Appeals No.982 of 2018, etc., decided *vide* short order dated 8 January 2024 and detailed Judgment dated 19 February 2024, https://www.supremecourt.gov.pk/downloads_judgements/c.a._982_2018_19022024_2.pdf

[14] *Ibid.*, *per* Justice Syed Mansoor Ali Shah.

> Because of the constitutional command in Article 175(2) of the Constitution, the courts in Pakistan do not possess any inherent jurisdiction on the basis of some principles of common law, equity or good conscience and only have that jurisdiction which is conferred on them by the Constitution or by or under any law.'
>
> '26. …conferring the jurisdiction, vesting the right of action, specifying the acts and providing the procedure would clearly amount to legislating rather than interpreting law.'

17. The majority's short order did not state that an implementation Bench had been constituted. However, even if it is assumed (for the sake of argument alone) that this is what the majority had done, even then the majority's order/clarification and the majority's Clarification could not be issued by such a purported implementation Bench. In *Adnan A. Khawaja v State*[15] a five-member Bench of this Court held, that:

> 'It goes without saying that an implementation Bench cannot go behind a concluded and final judgment or revisit the same.'

18. This Court is empowered to call others to account, therefore, it must all the more be self-accountable, as was expressed by a nine-member Bench of this Court in *Liaquat Hussain v Federation of Pakistan*:[16]

> 'It may be seen that independence of Judiciary and its separation from Executive as mandated by the Constitution does not make its authority absolute but require its regulation within the four corners of laws, rules and procedure. Its normal functioning should be transparent and inspire confidence amongst general public. It is bound to exercise jurisdiction and authority within the prescribed domain so that it remains self-accountable.'
>
> '…so long as the Parliament acts within the parameters of the Constitution, there is no restriction or prohibition to legislate on any subjects … .'

19. Justice Syed Mansoor Ali Shah had disagreed with the then Chief Justice Umar Ata Bandial and Justice Ijaz ul Ahsan, and had dismissed the constitution petitions challenging the amendments made to the National Accountability Ordinance, 1999, stating that:

> '…the majority judgment through a long winding conjectural path of far-fetched "in turn" effects has tried hard to "ultimately" reach an apprehended violation of the fundamental rights. The majority judgment has also fallen short to

[15] PLD 2012 Supreme Court 866, 870B.
[16] PLD 1999 Supreme Court 504, 878B.

> appreciate that what Parliament has done, Parliament can undo; the legislative power of the Parliament is never exhausted. If the Parliament can enact the NAB law, it can also repeal the entire law or amend the same.'

The five-member Bench of this Court in its decision (in the Intra Court Appeals[17] arising out of the above petitions), agreed with Justice Shah, and also agreed with him that the courts must not be influenced by politics and should preserve the future of democracy:

> 'Courts must rise above the 'hooting throng' and keep their eyes set on the future of democracy, undeterred by the changing politics of today. Courts unlike political parties don't have to win popular support. Courts are to decide according to the Constitution and the law even if the public sentiment is against them.'

20. Justice Syed Mansoor Ali Shah (in stating the above) had departed from his earlier decision in *Jurist Foundation v Federation and Pakistan*[18] wherein a challenge to the appointment of General Qamar Javed Bajwa as the Chief of the Army Staff was made. The Government of the then Prime Minister Mr. Imran Khan, the then Law Minister Mr. Muhammad Farogh Naseem and the then Attorney-General Mr. Anwar Mansoor Khan wanted General Bajwa to continue as the Chief of the Army Staff. Mr. Muhammad Farogh Naseem even resigned from his position of Federal Law Minister to represent General Bajwa in Court. He was assisted by the learned Mr. Abid Shahid Zuberi. Within two days of the filing of the petition the petition was decided. The petition was neither allowed nor dismissed; instead what the respondents[19] wanted was given. The Court extended the tenure of General Bajwa by six months; which constituted legislating, and this is demonstrable from the judgment authored by Justice Syed Mansoor Ali Shah:

> '*<u>Continuity of Incumbent COAS for Six Months</u>*
> 48. ...the tenure of a COAS and in the light of the assurance given by the Federal Government to address these issues through fresh legislation within six months, we ... find it appropriate to allow the current status of the COAS to continue for a period of six months, whereafter the new legislation (Act of

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[17] *Islamic Republic of Pakistan v Imran Ahmed Khan Niazi*, Intra Court Appeals No. 2, 3 and 4 of 2023, Judgment dated 6 September 2024, https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._2_2023_06092024.pdf

[18] PLD 2020 Supreme Court 1.

[19] Respondent No. 1 was the Federal Government, respondent No. 2 was the then Prime Minister Mr. Imran Khan, respondent No. 3 was the then President of Pakistan Dr. Arif Alvi and respondent No. 4 was General Qamar Javed Bajwa.

> the Parliament) shall determine his tenure and other terms of his service.' (p. 44)

The Constitution must never be made subservient to personal ambition, and those who do so, as well as their abettors and facilitators, should be made to face the consequences of their actions.

21. These appeals arise out of two civil petitions for leave to appeal[20] ('**the said CPLAs**') which had assailed the unanimous judgment dated 25 March 2024 of a five-member Bench of the Peshawar High Court by a political party, the Sunni Ittehad Council, which stated that the designated independent candidates in the National Assembly, who had joined it within the prescribed three days, as stipulated in the provisos to sub-clauses (d) and (e) of clause (1) of Article 51 of the Constitution, were their candidates, therefore, the Sunni Itthehad Council be given proportional representation from the seats reserved for women and non-Muslims, and the same be done in respect of the Provincial Assemblies, under sub-clause (c) of clause (1) of Article 106.

22. The said CPLAs came up for hearing before a three-member Bench[21] of this Court on 6 May 2024 when leave to appeal was granted, and on the very same day, the impugned judgment of the Peshawar High Court and ECP's order dated 1 March 2024 were suspended. The Court then stated that since the interpretation of the Constitution was required, therefore, the cases be placed before the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023 for the constitution of a larger Bench. The appeals (emanating from the said CPLAs), however, were ordered to be fixed on 3 June 2024, which was after almost a month.

23. I as Chief Justice, heading the Committee, proposed that these appeals should not be heard by those who may be considered to be the beneficiaries or affectees of the constitutional amendment which was then being discussed; to consider making the office of the Chief Justice a tenured three year post. The potential beneficiaries/affectees would have been the Chief Justice and five Judges,[22] and they would have been

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[20] CPLAs No. 1328 and 1329 of 2024.

[21] Comprising of Justice Syed Mansoor Ali Shah, Justice Muhammad Ali Mazhar and Justice Athar Minallah.

[22] Chief Justice Qazi Faez Isa, Justice Syed Mansoor Ali Shah, Justice Munib Akhtar, Justice Yahya Afridi, Justice Ayesha A. Malik and Justice Shahid Waheed.

excluded from the Bench. However, the majority (Justice Syed Mansoor Ali Shah and Justice Munib Akhtar) did not agree. Therefore, I next proposed that the Full Court should hear these appeals.

24. The issue in these appeals was straightforward, which was to consider certain provisions of Articles 51 and 106 of the Constitution. However, these provisions were attended to in the majority's judgment cursorily. The first 58 paragraphs of the majority's judgment are devoted to a general discourse on elections, political parties, Articles 17 and 19 of the Constitution, certain provisions of the Elections Act of 2017, the rules made thereunder, the majority's short order and the majority's order/clarification. Reference was also made to an application (CMA No. 5913 of 2024, filed on 26 June 2024) on behalf of the PTI and Mr. Gohar Khan, but neither had signed it; the application was signed by an Advocate-on-Record of this Court. The application states that the applicants '*may kindly be allowed to assist this August Court as interveners.*' The majority's judgment also refers to eight articles, seven books mentioned fourteen times, fourteen foreign cases and two excerpts from speeches, but without stating their relevance to our Constitution, the Elections Act and the rules made thereunder.

25. Pakistan has a written constitution. The language used in the Constitution is easily understandable. Unlike the constitutions of some countries our Constitution is not centuries old nor does it use archaic words requiring extrapolating meaning therefrom. The majority's judgment, with respect, lost sight of the basics. The people of Pakistan are governed by the Constitution and by the laws enacted by their elected representatives, they do not want to be told how to govern themselves or made to encounter foreign doctrines, like the one expounded by the Austrian jurist and philosopher Hans Kelsen which was misapplied by the Supreme Court, and had caused untold misery to Pakistanis. In a rule based system like ours the applicable rules have to be applied, irrespective of one's own personal preferences. It is best not to interpolate one country's constitution with that of another. For instance, our Constitution requires that those wanting to contest elections must be a minimum twenty-five years of age, but in the United Kingdom the minimum age is eighteen years, and the minimum prescribed age for the President of Pakistan is forty

years, but in the United States of America the age is thirty-five years. Just because in the United Kingdom or in the United State of America the stated age is different does not mean that it is correct or better, let alone that we should adopt it. We should do what our Constitution states.

26. The applicable provisions of our constitution are clear and self-evident, and it is best not to look for meaning which does not exist in the Constitution of the Islamic Republic of Pakistan.

Qazi Faez Isa,
Chief Justice

Islamabad
22.10.2024

Approved for reporting

ATTACHMENT

Agenda Item No. 1: Urgency applications - Constitution of Bench in CRP No. 312-313/2024 in CA No. 333-334/2024 (Election National Assembly/Allocation of Reserved Seats on Proportional Representation System).

The Secretary informs that in Civil Appeal No. 333/2024 Civil Review Petition No. 312/2024 and in Civil Appeal No. 334/2024 Civil Review Petition No. 313/2024 have been filed (‘**the review petitions**’). Both the review petitions challenge the short order of the Court dated 12 July 2024.

2. CMA Nos. 7426 and 7427 of 2024 in the said review petitions have been filed ‘*under section 7 of the Supreme Court (Practice and Procedure) Act, 2023 for urgent fixation of the matter.*’ The applications state:

> ‘4. That the order under Review has given strict timeline of 15 days from the date of the Order and hence if the Order under Review is implemented then the instant Review Petition will become infructuous.’

3. In the review petitions CMA Nos. 7430 and 7431 of 2024 have also been filed, under Order XXXIII, rule 6 of the Supreme Court Rules, 1980 seeking the suspension of the order dated 12 July 2024 and state that the balance of convenience lies in favour of the petitioner and if the operation of the order under review is not suspended the petitioner will suffer irreparable loss.

4. The order dated 12 July 2024 was by a majority of eight to five, and the detailed reasons of the order of the majority, review whereof has been sought, is awaited. If the urgent applications are not granted and the review petitions and the said applications are not fixed in Court before the expiry of the stipulated fifteen days the same may become infructuous.

5. Article 188 of the Constitution of the Islamic Republic of Pakistan specifically grants to the Supreme Court the power to review its judgments. Section 7 of the Supreme Court (Practice and Procedure) Act, 2023 (‘**the Act**’) stipulates that ‘*An application pleading urgency or seeking interim relief, filed in a cause, appeal or matter, shall be fixed for hearing within fourteen days from the date of its filing*’. The right provided by the Constitution to file a review petition and to have it urgently heard cannot be made redundant or negated. With great respect, two untenable reasons have been given by my distinguished colleagues for not listing the review petitions for hearing. One is that ‘*the detailed reason is still awaited*’, which is a matter within the determination of the Judges themselves. It is an established jurisprudential principle that no one's rights can be adversely affected on account of an act of the Court, which in the instant case is the Court's own delay. If such a scenario is accepted then it would be equally valid that detailed reasons are purposely delayed and or never provided and thus render the Constitution, which provides for a review petition, and the law, which mandates urgent hearing, utterly meaningless. The other reason cited by my distinguished colleagues for not hearing the review petitions is the commencement of summer vacations and that a Judge is abroad, and in this regard reference is made to the Supreme Court Rules, 1980 (‘**the Rules**’).

6. However, we have to abide by the Constitution and the law. Therefore, the review petitions and the said applications must be fixed as soon as possible. The Judges’ oath requires to abide by the Constitution and the law (not the Rules) and the same prevail over all other personal considerations.

7. The Constitution and the law cannot be disregarded. The review petitions and the accompanying applications must be fixed for hearing in Court after one week before the Judges who had earlier heard the said cases; one week gives sufficient time to enable Justice Ayesha A. Malik (who is abroad) to join the proceedings.