

Tahir Sadiq vs. Faisal Ali

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The brief facts giving rise to this case were that the nomination papers of Mr. Tahir Sadiq (“petitioner”), a candidate running for a seat in the National Assembly from NA-49 Attock-I, were rejected by the returning officer on the ground that the petitioner was a “proclaimed offender.” On appeal, the Appellate Tribunal accepted his nomination papers. Mr. Faisal Ali (“respondent”) filed a constitutional petition before the Lahore High Court, invoking Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) and challenging the order of the Tribunal. The said petition was allowed. Consequently, the nomination papers of the petitioner were rejected again. A leave to appeal was then filed before the Supreme Court of Pakistan (“Court”) under Article 185(3) of the Constitution.

Given that the Lahore High Court had rejected the petitioner’s nomination papers on the basis that he was a “proclaimed offender,” the counsel for the Election Commission of Pakistan (“ECP”) and the respondent were asked to provide—which they failed to do—any order or proclamation issued against the petitioner under Section 87 of the Code of Criminal Procedure, 1898 (“CrPC”). The Court noted that in the absence of any record of such order or proclamation or any proceedings initiated under Section 87 of the CrPC, the petitioner could not be classified as a “proclaimed offender.” The Court advanced its reasoning by drawing parallel to instances where an individual is declared a “proclaimed offender” based on concrete evidence. The Court ruled that any resulting disadvantage would be limited only to the specific case in which the individual was so declared, without extending such disadvantage to unrelated matters lacking a direct nexus. Notwithstanding a person’s status as a “proclaimed offender,” the Court ruled that they are entitled by law to institute proceedings regarding their civil rights. This includes the civil right to contest an election, as there is nothing in the Constitution or the Elections Act, 2017 (“Elections Act”) which provides for any restriction on the basis of a person’s status as a “proclaimed offender.” Thus, the Court allowed the appeal and accepted the nomination papers of the petitioner, setting aside the judgment of the Lahore High Court.

This crucial judgment underscores the importance of Article 17 of the Constitution which guarantees the right to form or be a member of a political party. It builds and relies upon seminal decisions which delineated the scope of Article 17 of the Constitution. For instance, as held in the *Benazir Bhutto* cases, the right to form or be a member of a political party guaranteed under Article 17(2) includes the right to participate in and contest elections.¹ In *Nawaz Sharif vs. President of Pakistan*, a full court bench of the Court not only endorsed the foregoing scope of the right guaranteed by Article 17(2) of the Constitution but also advanced it further.² The Court held that the right to form or be a member of a political party also includes the right to form the government and complete the prescribed tenure if the members of the political party constitute the requisite majority. Depriving any candidate of such a right would be tantamount to violating the text and spirit of Article 17. By affirming both these decisions and drawing parlance from them, the Court in its decision in *Sunni Ittehad vs. Election Commission of Pakistan*³ then held that the right to participate in and contest elections as a political party through its nominated candidates is a fundamental right.

Moreover, the judgment also reconciles Article 17 with Article 19 of the Constitution which provides for the right to freedom of expression—the right of citizens to participate in national elections and their right to vote in such elections was deemed a form of their expression.⁴ By actualizing this right, citizens shape their destiny by helping their chosen candidates form the government. From this perspective, the judgment has actualized the legislative intention behind the constitutionally guaranteed rights to association and freedom of expression. Besides, the judgment highlights a divergence between the constitutional mandate of the ECP to conduct free and fair elections in a bona-fide manner⁵ and adjudicate upon electoral disputes⁶ and its role in the instant case. Following the Eighteenth Constitutional Amendment (“18th Amendment”), the ECP, as a constitutional body, has enjoyed great autonomy and insulation from executive interference—as provided by Article 218 of the Constitution—and has emerged as a fourth-branch guarantor institution. Tarunabh Khaitan defines such institution in a given political context as a ‘tailor made constitutional institution, vested with material as well as expressive capacities, whose function is to provide a credible

¹ *Benazir Bhutto vs. Federation of Pakistan* PLD 1988 SC 416 (decided on 20 June 1988) and *Benazir Bhutto vs. Federation of Pakistan* PLD 1989 SC 66.

² PLD 1993 SC 473.

³ 2024 SCP 319.

⁴ *Reynold vs. Sims* (1964) 377 U.S. 533 and *Anoop Baranwal vs. Union of India* (2023) 6 SCC 161.

⁵ The Constitution of the Islamic Republic of Pakistan 1973, art 218.

⁶ *Ibid* art 222.

and enduring guarantee to a specific, non-self-enforcing constitutional norm.’⁷ However, ECP’s conduct as a guarantor institution in the instant case falls short of providing such credible and enduring guarantee to the constitutional norm it is obligated to protect.

For instance, the ECP’s decision to reject the nomination papers without any cogent evidence and on mere conjectures reveals its troubling reliance on procedural technicalities at the expense of substantive justice. It can be argued that the ECP currently is not a guarantor institution but an adversarial party in this significant dispute before the Court. Therefore, the judgment has ruled out such technicalities and paved way for substantive justice in compliance with the broader constitutional framework. In doing so, the Court has held the ECP accountable. Yet, the conduct of the ECP raises the need for courts to strike a delicate balance between their deference towards the ECP and their constitutional duty to uphold the fundamental rights of the electorate through legal accountability of such institutions.⁸

In conclusion, the Court’s judgment in *Tahir Sadiq vs. Faisal Ali* reaffirms the core principles of democratic participation and legal accountability. By ruling that a “proclaimed offender” is still entitled to contest elections, the Court emphasized the need for judicial scrutiny of institutional actions, particularly those of the ECP. Lastly, this case signals a shift towards prioritizing substantive justice over procedural formalities and calls for greater accountability of and transparency from constitutional bodies.

⁷ Tarunabh Khaitan, ‘Guarantor Institutions’ (2021) 16(S1) AJSL 40, 40.

⁸ Mohsin Alam Bhatt, ‘Between Trust and Democracy: The Election Commission of India and the Question of Constitutional Accountability’ in Swati Jhaveri, Tarunabh Khaitan and Dinesha Samararatne (eds), *Constitutional Resilience in South Asia* (Bloomsbury Publishing 2023).