**Judicial impartiality?**

**[Saad Rasool](https://nation.com.pk/Columnist/saad-rasool)**

February 14, 2021

The saga concerning honourable Justice Qazi Faez Isa and his ongoing friction with the Federal Government, State institutions, and even fellow brethren of the honourable Supreme Court, seem to be deepening with each passing event. The latest, in this series of (almost) inexplicable events has been the order of the honourable Supreme Court, dated 11th February, 2021, passed in C.M.A. No. 490 OF 2021 in C.P No. 20 of 2013, concerning ‘action against distribution of development funds to MNAs/MPAs by the Prime Minister’.

Before, commenting on the substance of this order, it is pertinent to briefly review the sequence of events that culminated in its passing.

On February 3, 2021, a two-member bench of the apex Court, comprising Justice Qazi Faez Isa and Justice Maqbool Baqir, had taken notice of PTI government’s announcement for release of Rs500 million each, to certain elected officials, under the garb of ‘development funds’. This announcement, allegedly made by the Prime Minister, was taken notice of by the honourable Supreme Court, and replies were duly sought from the relevant State officials. Specifically, during the course of hearing, Justice Qazi Faez Isa had sought confirmation on whether or not the said funds had been released by the Prime Minister, to the relevant members of his party; and if so, under what authority of law did the Prime Minister sanction this release?

[Pakistan accuses India of nuclearizing Indian Ocean](https://nation.com.pk/16-Feb-2021/pakistan-accuses-india-of-nuclearizing-indian-ocean)

While seeking instructions from the Attorney General, as well as from relevant provincial law officers, Justice Isa referred the matter to the honourable Chief Justice of Pakistan for constitution of an appropriate ‘larger’ bench to hear the case in detail. One of the key aspects of this case, per the questions raised by Justice Isa, was whether these funds had been issued to oblige relevant elected officials, with the aim of influencing the upcoming Senate elections.

In this context, five-member larger bench of the honourable Supreme Court, headed by the Chief Justice Gulzar Ahmed, and comprising Justice Mushir Alam, Justice Umar Ata Bandial, Justice Qazi Faez Isa and Justice Ijazul Ahsan, was constituted to hear the matter.

This larger bench of the honourable Supreme Court issued notices to Prime Minister’s Principal Secretary, Cabinet Division Secretary, Finance Secretary, Attorney General, respective Provincial Advocates General and Chief Secretaries. In response, the learned Attorney General of Pakistan submitted a report, signed by the Secretary Finance, contending, inter alia, that “there is no discretionary allocation at the disposal of the Prime Minister, Federal Minister, Parliamentarian, or any other person, under the existing budgetary system. As such, expenditures incurred are never person specific. Rather they are demand-specific, duly approved by the National Assembly.” Furthermore, despite enjoying protection under Article 248 of the Constitution, the Prime Minister, “in deference to” the honourable Court’s order, under his signature, submitted that “no public funds are being distributed to Parliamentarians by the Federal Government and any report to the contrary in media is incorrect. No money will be handed over to the legislators to carry out development schemes.”

[Myanmar deploys military tanks amid anti-coup protests](https://nation.com.pk/16-Feb-2021/myanmar-deploys-military-tanks-amid-anti-coup-protests)

Similarly, each of the provinces, through their respective Advocates General, also submitted their replies, contending therein that no development funds have been, or will be, placed at the discretion of “MPAs/Ministers/Notables of their respective Provinces”, and that all development funds shall only be utilised in accordance with the “constitutional mandate and the rules framed by the respective Governments for utilisation of the development funds, provided in their annual budget”.

In view of these replies by the Federal and Provincial Governments, the larger bench of the honourable Supreme Court concluded that “it appears that the queries raised by this Court” in its earlier order “have been responded/addressed by all the respective Governments and thus, we see no reason to further proceed with the matter”.

None of this would be out of the ordinary, were it not for the honourable Court’s observations/directions in paragraph No. 6 of its order dated February 11, 2021, concerning honourable Justice Isa’s conduct in the instant matter. Specifically, the larger bench observed that, during the course of the proceedings, Justice Isa “sought to place on record photocopies of certain documents statedly received by him from some anonymous source through a WhatsApp message.” Honourable Justice Isa arranged for copies of the said documents to be handed over to other members of the larger bench, as well as to the Attorney General of Pakistan. Per the order of the honourable Supreme Court, Justice Isa contended that “he was unsure if the documents were genuine”, and sought confirmation of the same from government officials.

[Nigeria’s Ngozi Okonjo-Iweala named new WTO chief](https://nation.com.pk/16-Feb-2021/nigeria-s-ngozi-okonjo-iweala-named-new-wto-chief)

In response, the learned Attorney General submitted that “since the authenticity of the documents was questionable, the same may not be taken on record”. Also that, in the circumstances, “the Hon. Judge [Justice Isa] would become a complainant in the matter and in that capacity it would not be appropriate for the Hon. Judge to hear the matter”.

In light of this unprecedented turn of events, the honourable Chief Justice of Pakistan observed that “it would not be proper for Hon. Judge [Justice Isa] to hear the matter”. Also, per the Court’s order, since Justice Isa “had already filed a petition against the Prime Minister of Pakistan, in his personal capacity”, during the course of challenging the Reference filed against him, under Article 209 of the Constitution, the honourable larger bench of the Supreme Court held that, “to uphold the principle of un-biasness and impartiality, it would be in the interest of justice that the Hon. Judge [Justice Isa] should not hear matters involving the Prime Minister of Pakistan.” And just like that, through an order of the honourable Supreme Court, a sitting member of the Bench (and possible future Chief Justice) has been barred from hearing the matter concerning the Prime Minister.

[Lavrov accuses EU of breaking ties with Russia](https://nation.com.pk/16-Feb-2021/lavrov-accuses-eu-of-breaking-ties-with-russia)

In terms of the substance of law, there can be no real cavil with this order of the honourable Supreme Court. International precedents, as well as domestic jurisprudence of the honourable superior Courts of Pakistan, have repeatedly held that ‘impartiality’ of a judge is paramount to the project of justice; and that, even the slightest whiff of partiality or prejudice, would vitiate the mandate of due process. Unfortunately, in the circumstances, Justice Isa has not done himself any favours; despite being an intellectual giant in the field of law, Justice Isa seems to have triggered an impression of bias, which in itself is sufficient to bar him from hearing cases involving Imran Khan.

What needs to be seen, however, is whether the applicability of this order will remain restricted to the person of the Prime Minister alone, or instead, will its effects extend to other State officials and institutions, against whom Justice Isa has also levelled allegations (in his personal capacity).

[Erin Holland marries Ben Cutting](https://nation.com.pk/16-Feb-2021/erin-holland-marries-ben-cutting)

Be that as it may, there are other peculiarities concerning this order of the honourable Supreme Court, which do not conform to established judicial practices. As an example, this order (for now) does not carry the signatures of the respective judges of the honourable larger bench. In fact, per his letter, dated February 12, 2021, addressed to the Registrar of the honourable Supreme Court, Justice Isa has claimed that the order of the larger bench was “released to the media”, even though he had “not received the file with the order/judgment.” In the circumstances, through the letter dated February 12, 2021, Justice Isa has raised five poignant queries for the Registrar—each requiring a purposeful response from the Registrar, in the interest of justice.

This saga will likely deepen in the days and weeks to come. At its core, these developments do not just concern one judge, or one case, or one bench. At the heart of it, the very integrity of our judicial system, and its respective participants, hangs in the balance. And in the interest of a (barely) functional constitutional democracy, it is prayed that saner heads will prevail on all sides of the isle.