[**Laws for lifetimes**](https://www.dawn.com/news/1672849/laws-for-lifetimes)

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SOME time back, there was a noisy debate around the 21st Amendment: parliament approving military courts, then dubbed the magic pill for terrorism. While backed by far smarter lawyers, this contributor wrote the opposite on Jan 5, 2015: that military courts hadn’t worked before and had no utility now. The solution lay with improving a civilian justice system that remained unreformed, its prosecutors untrained, and its judges unprotected.

This had the effect of most columns, which is to say none: military courts sailed through the Assembly unopposed. “…[T]he political leadership has abdicated its democratic responsibilities,” read this paper’s editorial. “Surrender perhaps comes easily.”

So it was that the few un-surrendered went to the Supreme Court, and prayed the amendment be struck down. But the majority bench upheld it, and military courts stayed on the books.

This wasn’t exactly unexpected: it is parliament that frames our Constitution. It’s also why the court has never struck down a constitutional amendment (despite ruling it can).

Parliament didn’t undo 62(1)(f). And then it was too late.

Fast-forward some years later and we have another petition seeking to de-claw another part of the Constitution: Article 62(1)(f). The Supreme Court Bar Association wants their lordships to revisit the judgement in ‘Samiullah Baloch vs Abdul Karim Nousherwani’, which held that electoral disqualification was for life.

Yet again, the bar and bench are forced to weigh in on what parliament must resolve. Article 62(1)(f) was pushed through by the Zia-era assembly’s Eighth Amendment. At the time, it read, “A person shall not be qualified to be elected or chosen as a member of Parliament unless … he is sagacious, righteous and non-profligate, honest and ameen.”

The problem was obvious: what counted as honest or ameen? Writing in 1988, young lawyer Asif Saeed Khosa called it “a feast of legal obscurities”, and that even the devil knew not “the intention of man”.

But that was also the silver lining: 62(1)(f) seemed much too vague to ever ruin the lives of our political class. Why worry about being ameen when there was no legal mechanism that could say otherwise?

That changed with the 18th Amendment. A democratic miracle by itself, the amendment should also have deleted 62(1)(f). Instead, it gave it teeth: the new law read that a candidate wouldn’t be qualified unless he was “…honest and ameen, there being no declaration to the contrary by a court of law”.

The effect was immediate: the courts got involved. The timing didn’t help either; Justice Iftikhar Chaudhry was riding a wave of populist anger, and his bench went on to disqualify a string of lawmakers.

But then he left, and the court cooled down. In ‘Ishaq Khakwani vs Nawaz Sharif’in 2015, when Mian sahib’s foes wanted him disqualified for dishonesty (he was alleged to have lied about the army mediating between his government and the PTI dharna wallahs), the Supreme Court not only threw the petition out, it cited a list of legal questions swirling around 62(1)(f). It was the best time for parliament to undo it. It didn’t, and then it was too late.

In his note in ‘Khakwani’, now Justice Khosa quoted Lincoln, “It is my experience that folks who have no vices have very few virtues.” But just a year later, the Panama Papers exploded, and the PTI turbocharged the issue of vice and virtue. Whatever its gripes with the law, the same Supreme Court now reasoned in one of its initial Panama opinions that 62(1)(f) was “still very much a part of the Constitution” and that the courts had “no other option but to make some practical sense of (such provisions), and to apply them as best as can be done”. Three months later, Mian sahib was disqualified.

The ‘Samiullah’ judgment, which the SCBA wants revisited, is the final nail holding that such lack of qualification is for life. But as much is plain from reading 62(1)(f): unlike other parts of Articles 62 and 63, parliament wrote in no time limit. As long as a court has declared to the contrary, a candidate will remain unqualified.

In any event, ‘Samiullah’ wasn’t unprecedented; it echoed the court’s consistent position from 2013 in Bhayo’s case (reaffirmed in review): “If a person is held not to be qualified in terms of Article 62(1)(f) of the Constitution, such absence of qualification in law will haunt him forever.”

Doubtless, this is out of Kafka: a declaration under Article 62(1)(f) isn’t a criminal conviction, for which a lawmaker can atone and return to the assembly. It is damnation: the highest court in the land holding that a man’s soul is inherently immoral, and unfit to serve forever. (Contrast this with Article 63[1][h], where actual convictions entail just five years.)

To move the courts again is to avoid the root cause. In a parliamentary democracy, the people’s representatives are at the fore. So too are their lessons: the PML-N fell on the axe it had sharpened for the PPP; the PTI is happy to make the same mistake. Best to fix the law, rather than pray it be misread.

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