

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

Mr. Sikandar Sultan Raja,	Chairman
Mr. Nisar Ahmed Durrani,	Member
Mr. Shah Mohammad Jatoi,	Member
Mr. Babar Hassan Bharwana,	Member
Mr. Justice (R) Ikram Ullah Khan,	Member

Case No. 12(5)/2022-Law.

In re: REFERENCE ON THE QUESTION OF DISQUALIFICATION
OF MR. IMRAN AHMED KHAN AS MEMBER OF NATIONAL
ASSEMBLY UNDER ARTICLE 63(2) OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973

1. Mr. Mohsin Nawaz Ranjha, MNA, NA-89.
2. Mr. Agha Hassan Baloch, MNA, NA-206.
3. Mr. Salah Uddin Ayubi, MNA, NA 263.
4. Mr. Ali Gohar Khan, MNA, NA-103.
5. Mr. Syed Rafi Ullah Agha, MNA, NA-236.
6. Mr. Saad Waseem Shaikh, MNA, NA-137.

.....Applicant/Petitioner

Versus

Mr. Imran Ahmed Khan, MNA, NA-5

.....Respondent

For the Petitioner No. 1, 4 & 6	:	Khalid Ishaq Advocate Supreme Court along with petitioner No. 6 In-person.
For the Petitioner No. 3	:	Mr Kamran Murtaza, Sr. ASC
For the Petitioner 2 & 5	:	Nemo
For the Respondent	:	Barrister Ali Zafar, Sr ASC along with Mr. Gohar Ali Khan, ASC
Date of Hearing	:	19-09-2022

ORDER

SIKANDAR SULTAN RAJA, CHAIRMAN:- Brief Facts of the case are that a



reference for disqualification of Mr. Imran Ahmed Khan (MNA), under Article 63(2) of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred as the Constitution) has been forwarded by the Speaker National Assembly to this Commission for exercise of its jurisdiction under Article 63(3) of the Constitution therein. The Reference was forwarded by the Speaker of National Assembly through Additional Secretary (LEGIS) on 02. Aug.2022 and was received by the Secretary Election Commission on 04.08.2022. The reference in question was moved before the Speaker by 6 members of National Assembly on account of alleged concealment of gifts received by Mr. Imran Khan from foreign countries as Prime Minister of Pakistan, which are part of Tosha Khana

2. On receipt of reference from the Speaker, notices were issued to the petitioners (MNA's) and Mr. Imran Khan and matter was fixed for hearing on 18.08.2022. Counsel for the Respondent Mr. Imran Khan submitted written reply on 07.09.2022 and matter was adjourned for arguments on 19.09.2022.

3. Today Mr. Khalid Ishaq, ASC, appeared on behalf of petitioner No. 1, 4 & 6 and argued the matter at length. He submitted that respondent did not disclose gifts and precious items which he has acquired from the foreign countries in the statement of assets and liabilities filed before the Election Commission of Pakistan from the year 2017-2021. He added that the list attached with the reference clearly shows the nature of gift items which included flower vase, watches, cufflinks, decoration pieces and other precious jewelry items etc. which according to Tosha Khana procedure and rules 6(i) can be retained if the price of the item is less then Rs. 30,000/- (Thirty Thousand Only) and where the valued amount is more than thirty thousand can be retained subject to deposit of 50% of the valued amount of the gift received. He added that Election Commission of Pakistan is the proper forum and has jurisdiction to decide the matter. He in support of his arguments placed reliance upon the Judgement of Hon'ble Supreme Court reported as 2022 SCMR 1454. He further argued that there are two separate stages of disqualifications, one is pre-election disqualification and the other is post-election disqualification during the tenure of the house to which he has been lawfully elected and notified. He elaborated that for the first type of disqualification a complete mechanism, procedure and provisions are



available in the Elections Act, 2017 starting from the scrutiny under Section 62 of the Elections Act, 2017 and then filing of Election Petition and Complaint in term of Article 225 of the Constitution and chapter 10 of the Elections Act, 2017. He further added that in case of second situation for disqualification after being notified as a member, special mechanism is provided under Article 63(2) and 63(A) of the Constitution. He argued that Clause 2 of the Article 63 provides the mechanism for determining whether a person is disqualified from elected or chosen and from being a member of Majlis-e-Shoora (Parliament). He further elaborated that if any question arises whether a member of Parliament has become disqualified, the Speaker or the Chairman shall refer the question to the Election Commission of Pakistan. He extended his arguments and submitted that the jurisdiction under Article 63(2) and Article 63(A) is a special and exclusive jurisdiction of this Commission. He argued that the Commission in terms of Section 3 and 4 of the Elections Act, 2017 can regulate its own procedure and the powers and jurisdictions of Election Commission cannot be confined. In support of his arguments he has placed reliance on the judgment passed by the August Supreme Court of Pakistan in Muhammad Salman's case 2021 SCMR 1675 and 2022 SCMR 42. He further added that Election Commission of Pakistan is not a court of law, however, in various instances the Honorable Supreme Court of Pakistan has upheld the orders passed by the Commission under Article 62(1)(f) of the Constitution. He while referring the judgment in Panama Case titled as "Imran Khan vs. Mian Muhammad Nawaz Sharif" reported in PLD 2017 SC 265 argued that the August Court while considering a question regarding the question of Article 62(1)(f) and 63(2) of the Constitution observed that the expression, 'court of law' has not been defined under Article 62(1)(f) or any other provision of the Constitution but it essentially means a court of plenary jurisdiction which has the power to record evidence and on the basis of recorded evidence can pass an order, if, the question is not disputed. He added that in the subject matter the respondent has not denied receiving of gifts nor there is a disputed question to resolve. He extended that Election Commission of Pakistan (ECP) can record evidence and give declaration on the basis of said evidence. He also added that respondent has admitted the non-disclosure of Tosha Khana assets in his reply submitted before the Commission on 07.09.2022. He while concluding the arguments prayed for issuance of order for disqualification of respondent on the basis of concealment of facts, assets and liabilities in the earlier submitted reports of assets and liabilities before the Commission. In support of his arguments he also placed

reliance on the judgments of Apex Courts i.e 2019 SCMR 1939, PLD 2020 SC 137, PLD 2013 SC 482, Faisal Vawda's case, 2019 SCMR 1684, PLD 2010 SC 828, PLD 2010 SC 817, PLD 2013 SC 482, 2018 SCMR 2128, PLD 2018 SC 578 and PLD 2018 SC 449.

4. Learned counsel for the Respondent Barrister Ali Zafar, Sr. ASC appeared and argued the matter in detail. At the very outset he argued that the Speaker National Assembly has made the decision of the reference moved by Ali Gohar Khan, ASC and 5 other MNA's. While reading the decisions of the Speaker he added that the Speaker has invoked Article 63(2) of the Constitution and has given the decision on two grounds. He elaborated that according to Speaker the First ground of his decision is that the respondent has deliberately concealed the assets relating to Tosha Khana gifts in the statements of 2017-2018 and 2018-2019 under Section 137 of the Elections Act, 2017 and the second ground is that the respondent is disqualified under Article 62(1)(f). He also added that the Speaker has also reflected in his reference that the respondent has shown the gifts in the income tax returns for the year 2020-21. He while raising the preliminary objections contended that the Election Commission of Pakistan cannot make declaration under Article 62(1)(f) of the Constitution. He also argued that no question involved under Article 63(1), therefore according to him no reference can be initiated under Article 63(2) of the Constitution. He also elaborated that the concealment under Section 137 of the Elections Act, 2017 cannot be a question in a reference under Article 63. He also argued that Scrutiny of Assets and Liabilities cannot be under taken after 120 days after filing of statements before the Commission. The counsel submitted to elaborate his legal submissions one by one. In support of his first legal objection he added that a person is liable to be disqualified under Article 62(1)(f) if there is a declaration by a court of law that a person is not Honest and Ameen. He extended his arguments and contended that the August Supreme Court of Pakistan has interpreted Article 62(1)(f) in many judgments. He further argued that when there is no declaration from a competent court of law the Speaker has no power and jurisdiction to refer any matter for disqualification to the Commission. He also added that no such declaration of any court of law is produced before the Speaker nor the Election Commission of Pakistan (ECP) in the instant matter. In support of his arguments he has placed reliance on the judgments PLD 2015 SC 275 at 290, PLD 2018 SC 405 at para (23) and (35), PLD 2020 SC 591 at para



(4,5,6&7), PLD 2017 SC 265, 2019 SCMR 1936, PLD 2018 Sindh 263, 2021 SCMR 1675 at para (25, 27, 28 & 41), PLD 2018 SC 449 and PLD 2018 SC 578. He further argued that ECP is not a court of law and cannot declare a person to be dishonest under Article 62(1)(f) of the Constitution. In addition to his arguments he referred to Article 175 of the Constitution that court of law means Supreme Court, High Court and the Courts which are sub-ordinate to and controlled by the High Courts. He elaborated that ECP is a constitutional body and not a court of law. He has placed reliance on PLD 2018 Sindh 263, 2021 SCMR 1675, PLD 2020 SC 591, PLD 2018 SC 449 and PLD 2018 SC 578. In response to his second legal objection that no question under Article 63(1) is involved, therefore no reference can be initiated under Article 63(2), he added that after 18th amendments in the Constitution, qualifications and disqualifications of the members have been changed and previously, according to him, there were about 26 qualifications and disqualifications and now there are only 7 qualifications under Article 62 and 16 disqualifications under Article 63(1)(a) to (p). He extended his arguments that when a question arises under Article 63(1)(a) to (p), it can be referred by the Speaker to the Election Commission and the Commission is required to answer it. He argued that Article 63(2) becomes applicable only when the grounds specified in (a) to (p) are applicable. In support of his arguments, he has placed reliance on PLD 2005 SC 52 at para (7) PLD 2012 SC 774 at para (40), PLD 2017 SC 265, PLD 2017 Sindh 464 and PLD 2018 Sindh 263. He contended that none of the question as contained in Article 63(1)(a) to (p) are involved in the instant matter. He also added that the Commission cannot take cognizance in the matter. In support of his third legal objection which is that the concealment under Section 137 cannot be a question for under Article 63(2) in a reference, he elaborated his arguments and added that the Speaker cannot raise a question regarding violation of Section 137 of the Elections Act, 2017. He also argued that the Speaker has exclusive jurisdiction under Article 63(2) only in respect of grounds mentioned in Article 63(1)(a) to (p). He further added that the provisions of Section 137 of the Elections Act, 2017 cannot be read into Article 63(1)(a) to (p) of the Constitution. In support of his arguments he placed reliance on para 25 of the judgment, titled Muhammad Salman reported in 2021 SCMR 1675. He further argued that Section 137 is a standalone provision under the Elections Act, 2017 which has to be read with Rule 137 of the Election Rules, 2017 and the ECP on its own motion or information received, after scrutiny, may file a complaint of corrupt practices to the Sessions Judge. He also added that the complaint



is to be decided by the court after due trial which cannot be done by ECP. He also submitted that the provisions of Article 63 of the Constitution and Section 137 of the Elections Act, 2017 are not the same and cannot be part of each other. In support of his fourth legal objection that scrutiny cannot be under taken after 120 days, he submitted that there is a limitation of 120 days in the Elections Act, 2017 for scrutiny of assets and liabilities by the Commission which is also observed by the Supreme Court in Nida Khoro case reported in PLD 2019 SC 1684. He elaborated that the limitation of 120 days has expired and he further added that the Commission has become functus-officio and cannot take further objections. He further submitted that there is no provision in law for re-opening of the matter after expiry of 120 days' limitation. In support of his arguments he has placed reliance on PLD 2018 SC 189 Hanif Abbasis case and 2018 SCMR 2128 Khuwaja Asif's case. He further placed reliance on PLD 2018 SC 1276, PLD 2019 SC 201, 2013 SCMR 1246 and PLD 2017 SC 70. He while referring the above mentioned judgments has added that failure to disclose an asset is not an automatic disqualification but it has to be deliberated, intentional and for some ulterior motives. While referring to the legal objections the counsel added that noting has been concealed and the facts about the gifts and statements of assets have been submitted before the Commission. He argued that the list of gifts attached by the petitioners with the reference is an un attested document upon which the Speaker has relied without seeking disqualification. He further elaborated that the gifts governed by Tosha Khana procedure which applies to all including President, PM, MNA's, Ministers, Judges etc. and it is the requirement that all gifts are reported to Tosha Khana. He submitted that as per rule 6(i) and gifts valued less than Rs. 30,000/- (Thirty Thousand Only) can be retained by the recipient and gifts valued more than Rs. 30,000/- (Thirty Thousand Only) can be taken upon deposit of 50% of the valued amount. He elaborated that during the financial year 2018-2022, 58 gift items were received by the Prime Minister and Begum Prime Minister. He argued that year wise detail of gifts received and then in that respect year wise declaration in statements of assets is attached with the reply. He extended that in the financial year 2018-2019, respondent received 31 gifts from which 4 gifts were retained upon deposit of amount. He further added that these gifts were sold before June, 2019 so there was nothing to declare in the statement. He further added that if an asset is not in hand there is no obligation to mention that asset in the statement. In support of this argument he has placed reliance on the judgment PLD 2018 SC 189



and 2018 SCMR 2128. He further elaborated that the sale value was declared in the statements filed by the respondents and was deposited in Bank Account of Alfalah Bank and the same was declared in Income Tax Returns for Tax Year 2019. He also added that the sale and purchase of the gift items is also declared in income tax returns for the year 2019 filed on 09.12.2019 in which purchase amount is declared as Rs. Twenty-One Million under Code 5088 and sale value of Rs. Fifty-Eight Million under Code 5028 for which 9.5 Million tax was paid. He also extended his arguments and submitted that the amount was declared in the statement on 31.12.2019 by referring financial year 2018-19. The counsel for the respondent added that 9 gifts were received in this financial year 2019-20, from which 3 gifts were retained upon deposit. He submitted that these 3 gifts were worth Rs. 1,719,700/- (One Million Seven Hundred Nineteen Thousand Seven Hundred Only) and these being small gifts, were not mentioned in the statement of assets and liabilities but its cost on purchase was declared in the income tax returns which came to Eight Million with Code 7087. In respect to the gift items received during financial year 2020 and 2021, the counsel argued that 12 gifts were received out of which 5 gifts were retained upon deposit which were mentioned with the name of precious items in the statement of assets filed on 27.12.2021. The counsel added that nothing has been concealed during the year 2020-21 by the respondent. The counsel further submitted that entire reference is based on malafide intentions, political motivation and baseless character assassination and he also added that the documents attached with the reference are forged and photo copies and cannot be placed reliance on it. The counsel while concluding his arguments prayed for rejection of the reference.

05. In rebuttal to the arguments made by the counsel for the respondents Mr. Khalid Ishaq, ASC representing the petitioner while placing reliance upon the judgments passed by the Apex Courts submitted that the arguments advanced by the counsel for the respondent are based on presumptions and he has admitted that the gifts were sold out by the respondents. However, he argued that the detail of amount and purchase and sale receipts are not presented before the Commission. He also argued that the Commission has exclusive jurisdiction to entertain the matter referred by the Speaker under Article 63(2) of the Constitution. While discussing the jurisdiction of the Commission the counsel added by referring Article 63(1)(p) that the bear reading of the provisions of Article 63(1)(p) clarifies that the disqualification occurs under any



other law which he submitted that in the instance case is the Elections Act, 2017. He further elaborated that concealment of assets can be inquired by the Commission and such concealment is defined under Section 167 of the Elections Act, 2017. Thus while concluding his arguments he submitted that it has direct nexus with the disqualification mentioned under Article 63(1) of the Constitution. He further submitted that the respondent is stopped by his own conduct and actions as while deciding the objections raised on the nomination papers of the respondents for which he in his reply categorically admitted that the jurisdiction in respect of Tosha Khana issue is that of this Commission and the Returning Officer cannot look into the matter. He argued that it is well settled law that one who approbates cannot be allowed to reprobates. In support of his arguments, he placed reliance on the judgment passed by the August Supreme Court, reported as 2022 SCMR 1454. He prayed for decision of reference in accordance with law.

06. Arguments heard from both the parties and record perused.

07. Before discussing the details of the case, we deem it appropriate to refer to the relevant Provisions of the Constitution and law which are reproduced below; Article 63(2)(3), 218(3) of the Constitution of Islamic Republic of Pakistan and Relevant Provisions of the Election Act, 2017. Section 3, Section 4(2)(3), Section 137, Section 167, Section 173, Section 174, Section 190, Section 231, Section 232.

Article 63(1) of the Constitution Provides as under:-

Disqualifications for membership of Majlis-e-Shoora (Parliament)

63(1) *A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if*

(a) to (o).....

(p) *he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.*

(2) *If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and if he fails to*



do so within the aforesaid period it shall be deemed to have been referred to the Election Commission.

(3) The Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.

Article 218(3) of the Constitution Provides as under: -.

(1).....

(2).....

(3) It shall be the duty of the Election Commission 4[Omitted] to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

Relevant Provisions of the Elections Act, 2017.

Section (3) Procedure of the Commission. — (1) In the performance of its functions, and duties and exercise of its powers, the Commission shall regulate its own procedure.

Section (4) Power to issue directions. — (1) The Commission shall have the power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order for doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.



(3) Anything required to be done for carrying out the purposes of this Act, for which no provision or no sufficient provision exists, shall be done by such authority and in such manner as the Commission may direct.

137. Submission of statement of assets and liabilities. — (1) Every Member of an Assembly and Senate shall submit to the Commission, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding thirtieth day of June on Form B.

(2).....

(3)....

(4) Where a Member submits the statement of assets and liabilities under this section which is found to be false in material particulars, he may, within one hundred and twenty days from the date submission of the statement, be proceeded against for committing the offence of corrupt practice.

167. Corrupt practice. — A person is guilty of the offence of corrupt practice if he—

(a) is guilty of bribery, personation, exercising undue influence, capturing of polling station or polling booth, tampering with papers, and making or publishing a false statement or declaration;

173. Making or publishing a false statement or declaration. — A person is guilty of making or publishing a false statement or declaration if he makes or publishes a false statement or submits false or incorrect declaration in any material particular—

(a).....

(b).....

(c).....

(d) in respect of statement of assets and liabilities or any liability with regard to payment of loans, taxes, government dues and utility expenses.

174. Penalty for corrupt practice. — Any person guilty of the offence of corrupt practice shall be punished with imprisonment for a term which may

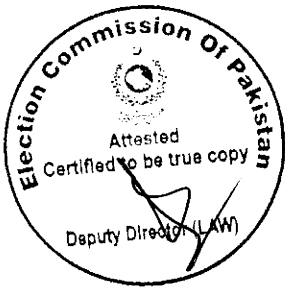


extend to three years or with fine which may extend to one hundred thousand rupees or with both.

190. Cognizance and trial. — (1) *Notwithstanding anything contained in any other law but subject to section 193, an offence under this Chapter shall be tried by the Sessions Judge and any aggrieved person may, within thirty days of the passing of the final order, file an appeal against the order in the High Court which shall be heard by a Division Bench of the High Court..*

08. The following questions are formulated for decision of the question referred by the Speaker under Article 63(2) of the Constitution through the instant Reference;

1. Whether the Commission has the jurisdiction to entertain the matter referred by the Speaker under Article 63(2) of the Constitution?
2. How many gifts were received, retained and sold out by the Respondent during the financial year 2018-19?
3. Whether the amount of sold out gift items has been mentioned in the statement of assets and liabilities submitted by the respondent and whether the figures are in line with the bank statements of financial year 2018-19?
4. How many gifts were received by the respondent in financial year 2019-20 and what is the effect of non-disclosure of gift items/amount in the statement of assets and liabilities?
5. What is the effect of disclosure of cost value of the gift items in the FBR, in financial year 2019-20 and its non-disclosure in the statement of assets and liabilities by the respondent before the Commission?
6. How many gifts were received, retained and sold out by the Respondent during the financial year 2020-21?
7. Whether the amount declared by the respondent in financial year 2020-21 is in accordance with the requirement of Form-B or not?



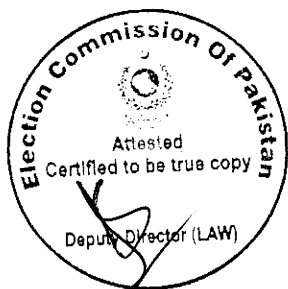
09. In response to Question No. 1, it is on record that the Counsel for the Respondent in his reply and subsequently during the course of his arguments raised objection qua the jurisdiction of the Commission on the following grounds;

- i. That the commission has no jurisdiction to re-open the matter regarding statement of assets and liabilities after expiry of 120 days as mentioned in Section 137 of the Elections Act, 2017.
 - ii. That the Commission has no jurisdiction to adjudicate upon the question of the disqualification of the Respondent under Article 62(1)(f) the Constitution.
 - iii. That no Question of disqualification of the Respondent under Article 63(1) (a-p) of the Constitution has arisen, Hence, the Commission has no jurisdiction under Article 63(3) to decide the matter of disqualification.
10. In response to the above raised objections, it is pertinent to mention that the Honorable Supreme Court of Pakistan in the case titled as "Muhammad Salman vs. Naveed Anjum" and others reported as 2021 SCMR 1675 held that; -

"Now, the Constitution itself confers a jurisdiction on the Commission with regard to the disqualification of member of the federal and provincial legislatures. This is contained in clause (2) and (3) of Article 63(read, as appropriate, with Article 113), which provide as follows;

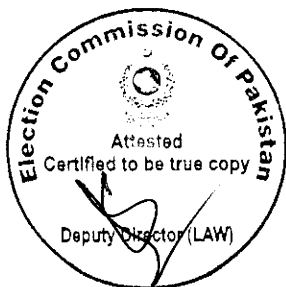
"(2) If any question arises whether a member of Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within 30 days and should he fail to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission."

(3) The Election Commission shall decide the question within 90 days from its receipt are deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant"



11. The August Supreme court in the case of "Imran Khan vs. Mian Muhammad Nawaz Sharif" reported in PLD 2017 SC 265 has held that the hierarchy for pre-election disqualification and post-election disqualification is provided in the Constitution and the Election laws. The Apex court while dealing with the question of qualification and disqualification of Member of the Parliament has observed as follows;

"... The next question emerging for the consideration of this Court is what are the fora provided by the Constitution and the law to deal with the questions emerging from Articles 62(1)(f) and 63(2) of the Constitution. To answer this question we will have to fall back upon Articles 62 and 63 of the Constitution. A careful reading of the said Articles would reveal that the one deals with qualifications of a person to be elected or chosen as a member of Parliament while the other deals with disqualifications of a person not only from being elected or chosen but also from being a member of Parliament. If a candidate is not qualified or is disqualified from being elected or chosen as a member of Parliament in terms of Articles 62 and 63 of the Constitution, his nomination could be rejected by the Returning Officer or any other forum functioning in the hierarchy. But where the returned candidate was not, on the nomination day, qualified for or disqualified from being elected or chosen as a member, his election could be declared void by the Election Tribunal constituted under Article 225 of the Constitution. While election of a member whose disqualification was overlooked, illegally condoned or went unquestioned on the nomination day before the Returning Officer or before the Election Tribunal, could still be challenged under Article 199(1)(b)(ii) or Article 184(3) of the Constitution of Pakistan, 1973 as was held in the cases of Lt. Col. Farzand Ali and others v. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore (PLD 1970 SC 98) and Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1054). However, disqualifications envisaged by Article 62(1)(f) and Article 63(2) of the Constitution in view of words used therein have to be dealt with differently. In the former case the Returning Officer or any other fora in the hierarchy would not reject the nomination of a person from being elected as a member of Parliament unless a court of law has given a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Even the Election Tribunal, unless it itself proceeds to give the requisite declaration on the basis of the material before it, would not



disqualify the returned candidate where no declaration, as mentioned above, has been given by a court of law. The expression a court of law has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded. Such a court would include a court exercising original, appellate or revisional jurisdiction in civil and criminal cases. But in any case a court or a forum lacking plenary jurisdiction cannot decide questions of this nature at least when disputed. In the latter case when any question arises whether a member of Parliament has become disqualified it shall be dealt with only by the Election Commission on a reference from the Speaker of the Parliament in terms of Articles 63(2) and 63(3) of the Constitution. (Emphasis supplied). We would have sent this case to the Speaker in terms of 63(2) or the Election Commission in terms of Article 63(3) of the Constitution but we do not think a question of such nature has arisen in this case as respondent No. 1 has been alleged to be disqualified even on the nomination day on account of having failed to disclose his assets and those of his dependents.

12. The Commission is competent to entertain the reference from the Speaker under Article 63(2) of the Constitution and adjudicate upon the same under Article 63(3) and the Question of disqualification as and when raised is not dependent upon time. The August Supreme Court in the case of "Mian Najeeb-ud-Din owasi versus Amir yar Waran" reported in PLD 2013 SC 482 has held as under;

"We have no objection on the decision of ECP, falling under categories A and B. But as category C-H are concerned, we may observe that for declaring a person to be disqualified, no period of limitation, as pointed out, would be relevant because such disqualification, was suffered at the time when he filed the nomination papers by making a declaration while having a fake degree in his hand, therefore in such case no time period can be prescribed."



13. It is noted that the record regarding the gift items received by the President, Prime Minister, Ministers, Judges etc. is maintained by Tosha Khana and the Commission is confined to scrutinize the entries made by the Respondent in the

statement of assets and liabilities. Moreover, it was the obligation of the Respondent to declare complete details of assets whether in shape of gifts or amount including transfer of any assets to any person during the financial year in the annual statement of assets and liabilities along with details and its cost value in column number 2 and 3 of Form-B (remarks). The Commission has the jurisdiction to inquire into any matter or objection raised by any person including a reference from Speaker against any member of the parliament or an Assembly regarding concealment, false or mis-declaration in the statement of assets and liabilities after 120 days.

14. It is also highlighted that the Commission under Article 63(1)(p) read with Article 63(2) has the jurisdiction to entertain the matter in shape of reference forwarded by the Speaker National Assembly with respect to disqualification of Members of the Assembly, Article 63(1)(p) is reproduced below;

Article 63(1) of the Constitution Provides as under: -

Disqualifications for membership of Majlis-e-Shoora (Parliament)

63(1) *A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if*

(a) to (o).....

(p) *he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.*

15. As mentioned above that the disqualification of the Members may be made under any law for the time being in force. In the instant case Elections Act, 2017 is the relevant law and the violation or non-compliance or mis-declaration made by any Member of Majlis-e-Shoora (Parliament) comes under the ambit of disqualification and the Commission has the jurisdiction to adjudicate upon the question of disqualification on any of the grounds mentioned in Article 63(1). The Commission is also competent to direct filing of criminal complaint under Section 190 for violation of section 137, 167 and Section 173 of the Elections Act, 2017 which is a criminal liability while mis-declaration, false declaration and concealment of assets also bears civil liabilities. It is pertinent to mention here that the Honorable Supreme Court of Pakistan



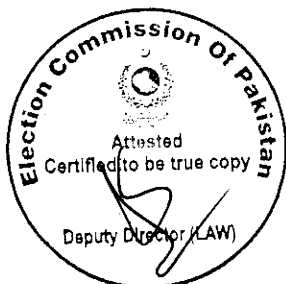
in its judgment titled as "Mian Najeeb ud Din Owaisi vs. Amir Yar Waran and Others" reported as PLD 2013 SC 482, held that;

"We may again point out that ECP must adopt a distinction in between making, of a declaration, which is against the provisions of Article 62 & 63 of the Constitution and the process of criminal proceedings as a result of making miss-representation of. Once a person has filed a declaration under his signature declaring that he fulfills the condition of Article 62 & 63 of the Constitution and he under takes that the statement is correct and if such declaration is in-correct the ECP, shall de-notify him for such miss-representation, retrospectively."

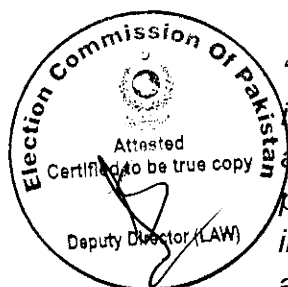
16. The August Supreme Court in the "Worker party through Akhter Hussain, Advocate versus the Federation of Pakistan" reported in PLD 2012 SC 681 has held that;

"..... Article 218(3) also empowers the Election Commission to ensure that the election process does not suffer from any corrupt and/or illegal practices. Sections 78, 79, 80, 80-A, 81 and 83 of ROPA comprehensively define the terms "corrupt practices" and "illegal practices". ROPA in sections 82, 99 and 100 further elaborates the consequences of such practices and enunciate that the same form a sufficient basis for the Election Commission to, inter alia, imprison, fine and disqualify those who violate them. These provisions, therefore, subsume all those impugned activities as cognizable by the Election Commission. Similarly, Section 103(a) of ROPA instructs the Election Commission to ensure a "fair election". In doing so it implies that "large scale malpractices including coercion, intimidation and pressures, prevailing at the election" would negate the 'fairness' elections are to embody. While sections 78, 79, 80, 80-A, 81 and 83 specify activities that the Election Commission can regulate and check under Article 218(3), section 103(a), substantially enhances this defined spectrum of cognizable activities and reinforces the obligation to check them. In section 103(c) section it empowers the Election Commission to issue instructions, exercise its powers and make orders to effectuate the said standard."

".... While there is no cavil with the proposition that the Election Commission stands as an independent and fully empowered constitutional body, the 18th and 20th Constitutional Amendments, have substantially enhanced the degree of independence and the



scope of powers enjoyed by the Election Commission. Prior to 18th Constitutional Amendment, the Commission comprised the Chief Election Commissioner and two retired Judges as members thereof. Vide the 18th Amendment, the strength of the members has been increased from two to four, with the additional requirement that each of the members be a Judge of High Court of each Province, duly appointed by the President as per prescribed procedure provided for appointment of the Commissioner in clauses (2)(a) & (b) of Article 218(1) of the Constitution. The entrustment of greater responsibility and the enhancement of its strength are part of an effort fully to equip the Commission to discharge its broad set of responsibilities. These also reflect a growing trust in the Commission to act independently and without influence in conducting and organizing elections "fairly, honestly, justly and in accordance with law". In the parliamentary system of government, a constitutionally independent and empowered Election Commission rests as one of the foundational stones of a democratic setup. In the past, the Election Commission has succumbed to external influence and failed to discharge its responsibilities successfully. The inadequacy of the Commission's effort in organizing and conducting the election to the above standards has had detrimental repercussions for the democratic system in Pakistan. Not only has it undermined the legitimacy of the elections and the claim of the winning party to form government, but has also, by disregarding express constitutional dictates regulating the same, devastated the trust and faith reposed by the citizenry in the rule of law and supremacy of the Constitution. This is why Pakistan has witnessed political parties, individual candidates, as well as the citizenry, reject and denounce some of the election results. The rigging of elections was cited as a major ground for the imposition of martial law in the country in 1977, which was unfortunately validated by the Supreme Court. Consequently, an unconstitutional order was imposed on the people of Pakistan with the false hope of holding fair and free elections within 90 days. The solemn commitment made by General Ziaul Haq, Chief Martial Law Administrator, however, was never honoured and the people of Pakistan remained subject to an unconstitutional regime for nearly 11 years. In light of the powers and independence that the Election Commission enjoys today, such an unfortunate abuse of power and disregard of the constitutional dictate to establish and preserve democracy seems impossible."



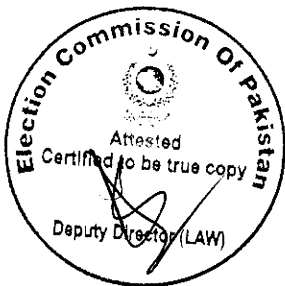
".... It is of utmost importance that the Election Commission executes its functions and discharges its responsibilities effectively, efficiently and in letter and in spirit. By declaring that the representatives of the people "shall be elected by direct and free vote, in accordance with law" in Article 51(6)(a), the Constitution identifies 'elections' as the first and an integral step in effectuating the aforesaid constitutional dictates. At page 254 of the judgment given in the *Al-Jehad Trust v. Federation of Pakistan* (PLD 1997 SC 84), this Court commented on the important

role of the Election Commission and observed that by fulfilling its mandated duties and responsibilities, the Election Commission essentially "give(s) birth to a body/institution of the nation, called Parliament". The effective fulfilment and honest discharge of this tremendous responsibility would lend greater legitimacy to an elected democratic government and give effect to its constitutional mandate. It is, therefore, imperative that the Election Commission employs its extensive powers to regulate the election process. Any shortfall in the discharge of its responsibilities would violate express dictates of our Constitution; devastate the efficacy of our constitutional order and the envisioned operation of the State. Therefore, in appropriate circumstances, the Election Commission may be directed to fulfil its constitutional and legislative dictates by *inter alia* bringing all relevant political practices into conformity with the Constitution and the law".

17. The August Supreme Court in the case of "Nida khuhro Versus Moazzam Ali Khan" reported in 2019 SCMR,1684 has held as under.

"....Section 137(4) of the Act provides that where a Member submits a statement of assets and liabilities which is found to be false in material particulars, he may, within 120 days from the date of submission of the statement be proceeded against for committing the offence of corrupt practice. While it is correct that the Returning Officer has been given the power to allow correction of mistakes, errors and omissions in the nomination papers within a specified time but in the instant case no attempt was made to correct such omission at any stage".

"....In terms of section 137(4) of the Act reproduced above, submission of a statement of assets and liabilities, which is found to be false in material particulars constitutes corrupt practice. More importantly, the declarations given by Respondent No.1 under solemn affirmation as part of his nomination papers, and the affidavit submitted by him pursuant to the judgment of this Court in the case of Speaker, National Assembly *ibid* also exposes him to disqualification not only under the provisions of the Elections Act but also under the provisions of Article 62(1)(f) of the Constitution. By reason of making a false statement under oath, Respondent No.1 ceases to be qualified to be elected or chosen as a Member of Majlis-e-Shoora (Parliament) because he cannot be termed as righteous and honest. The false statement having been made in the nomination papers, in the statement of assets and in the affidavit exposes Respondent No.1 to serious legal consequences under the law as well as the Constitution."



18. In view of the above discussion, it is held that the Election Commission has exclusive jurisdiction to adjudicate upon the question of disqualification of a member of parliament or assembly received from the speaker or chairman senate in terms of Article 63(2) and to decide the referred question under Article 63(3) of the Constitution. Therefore, the Commission is competent to adjudicate upon the instant matter under Article 63(1)(p) of the Constitution read with section 137, 167 and 173 of the Elections Act, 2017. Question regarding jurisdiction of the commission is decided accordingly.

19. Before responding to the question No 2 and 3, it is deemed necessary to tabulate the gift items, its assessment value, date of purchase, gift retained by the respondent or not and if retained how much amount is deposited as purchased value in the year 2018-19. Detail is given below for easy reference;

Sr. No.	Detail of Gifts Items	Date	Assessed Value in Rs.	Retained or not	Retained on retention cost
1.	Decoration piece	29.08.2018	20,000/-	Retained	Free of cost
2.	One table mat	03.09.2018	30,000/-	Retained	Free of cost
3.	One silk carpet	03.09.2018	300,000/-	Not retained	Deposited
4.	One decoration piece + one locket	06.09.2018	8,000/- 20,000/-	Retained	Free of cost
5.	Model of Makkah Clock Tower	10.09.2018	25,000/-	Retained	Free of cost
6.	One decoration piece	12.09.2018	9,000/-	Retained	Free of cost
7.	One wall hanging	12.09.2018	8,000/-	Retained	Free of cost
8.	One decoration piece	18.09.2018	25,000/-	Retained	Free of cost
9.	One Watch (Graff) Pair of Cufflinks One pen One Ring	24.09.2018	85,000,000/- 5,670,000/- 1500,000/- 8,750,000/-	Retained	20,178,000/-
10.	A box of Oudh Wood	24.09.2018	500,000/-	Not Retained	Deposited
11.	One wall hanging	01.10.2018	18,000/-	Retained	Free of Cost
12.	One W/watch (Rolex)	01.10.2018	3,800,000/-	Retained	754,000/-
13.	One W/watch (Rolex)	22.10.2018	1,500,000/-	Retained	294,000/-
14.	One photograph Large One photograph Small One book One Chaddar One Prasad One Incense sticks packets One pocket of green cardimon	30.10.2018	500/- 400/- NVC 400/- NVC NVC NVC	Not Retained	Deposited
15.	One Carpet	08.11.2018	500,000/-	Not Retained	Deposited
16.	One Flower vase	08.11.2018	15,000/-	Retained	Free of Cost
17.	One Wall hanging	08.11.2018	40,000/-	Not Retained	Deposited

18.	One tea set	08.11.2018	35,00/-	Retained	Free of Cost
19.	One W/watch (Rolex) Gents One W/watch (Rolex) Ladies One I-Phone Two Gents Suits One Perfume (Dolce and Gabbana) One Perfume Bvlgari LE Gemme (Ashlemah) One Perfume Bvlgari LE Gamme (Onekh) One Perfume Ruby (Bound No. 09) One Wallet Samsonite (Gents) One Wallet Aigner (Ladies) One Ball Pen (Mont Bl Anc)	13.11.2018	900,000/- 400,000/- 2,10,000/- 30,000/- 35,000/- 30,000/- 26,000/- 40,000/- 6,000/- 18,000/- 28,000/- Total- 17,23,000/-	Retained	338,600/-
20.	One model of mask (glass work)	23.11.2018	80,000/-	Not Retained	Deposited
21.	One Tepack Sireh One Calligraphy	23.11.2018	100,000/- 12,000/-	Not Retained	Deposited
22.	One Qehwa set (19 pieces)	18.12.2018	160,000/-	Not Retained	Deposited
23.	One Decoration piece and books	09.01.2019	15,000/- NCV	Retained	Free of Cost
24.	One wall hanging	09.01.2019	15,000/-	Retained	Free of Cost
25.	One Frame One Decoration Piece and Books	09.01.2019	15,000/- 18,000/- NCV	NCV Retained And other two gifts are deposited	Free of Cost
26.	One Decoration Piece	09-01- 2019	25,000/-	Retained	Free of Cost
27.	One Decoration Piece	09-01- 2019	30,000/-	Retained	Free of Cost
28.	One Frame	09-01- 2019	20,000/-	Retained	Free of Cost
29.	One Silk Carpet	09-01- 2019	140,000/-	Not Retained	Deposited
30.	One Flower vase(ceramic)	15-01- 2019	30,000/-	Retained	Free of Cost
31.	One Table Clock	23-01- 2019	500,000/-	Not Retained	Deposited
32.	One Kalashnikov AK- 47	12-02- 2019	600,000/-	Not Retained	Deposited
33.	One Carpet	14-03- 2019	20,000/-	Retained	Free of Cost
34.	One Sword	20-03- 2019	45,000/-	Not Retained	Deposited
35.	One Frame	26-03- 2019	NCV	Retained	Free of Cost
36.	One Wooden Box(Table Watch, Card Holder and paper weight)	10-04- 2019	3500/-	Retained	Free of Cost

37.	One Box containing one gown, OUD wood and two small perfumes	15-04-2019	30,000/-	Retained	Free of Cost
38.	One Silk Carpet	24-04-2019	85,000/-	Not Retained	Deposited
39.	One Carpet	24-04-2019	30,000/-	Retained	Free of Cost
40.	One Calligraphy	24-04-2019	5000/-	Retained	Free of Cost
41.	One Flower Vase	30-04-2019	30,000/-	Retained	Free of Cost
42.	One Mobile One wooden locker box	30-04-2019	90,000/- 10,000/-	Not Retained	Deposited
43.	One Carpet	30-04-2019	30,000/-	Retained	Free of Cost
44.	One Model of truck	30-04-2019	NCV	Retained	Free of Cost
45.	One Decoration Piece(peace Emblem) One Decoration plate One painting(Duly Framed)	30-04-2019	NCV 30,000/- 30,000/-	NCV Retained	Other two gifts are deposited
46.	Wall hanging	30-04-2019	30,000/-	Retained	Free of Cost
47.	One Paper Wall hanging	30-04-2019	5000/-	Retained	Free Of Cost
48.	One Box Containing Tea set 8 pieces	30-04-2019	35,000/-	Not Retained	Deposited
49.	One Decoration piece(Turquoise)	17-06-2019	75000/-	Not Retained	Deposited
50.	One Box containing i.Oud Wood (2kg Approx) ii. Two Bottles of Attar iii.Tasbeh (Mouward)	17-06-2019	200,000/- 180,000/- 130,000/-	Retained	240,000/-
51.	One Carpet (10*3)	18-06-2019	50,000/-	Not Retained	Deposited

20. In response to Question No-2 and 3, as mentioned above, the attested copies of details of gift items have been obtained from the Cabinet Division, Islamabad. The Respondent in his reply contended that out of all gift items mentioned above, only four (4) items were sold out before closing of financial year and the amount was disclosed in the statement of assets and liabilities in shape of cash in bank accounts.

21. From the perusal of available record and arguments advanced by the counsel for the parties, it transpires that the respondent has attached copies of challan forms along with his reply and also mentioned in the written submission that gift items were



purchased on payment of Rs. 21,564,600/- (Twenty-One Million Five Hundred Sixty-Four Thousand Six Hundred only) from Tosha Khana on the basis of assessed value. The total value of the gift items was 107,943,000/- (One Hundred Seven Million Nine Hundred Forty-Three Thousand Only). The respondent in his reply admitted that the gift items were sold during that financial year and according to him he did not had those by 30.06.2019. Therefore, as alleged these items were not mentioned by name in the statement of assets filed on 31.12.2019. He has also mentioned in the reply that the sale amount was received in Bank Alfalah Account No. 00351002493256 and the same amount was also declared in the tax return for the year 2019. He also contended that the total cost of the gifts was Rs. 21,226,000/- (Twenty-One Million Two Hundred Twenty-Six Thousand Only) and the sale proceeds of Rs. 58 Million was also mentioned in the tax returns.

22. It is also pertinent to mention here that in order to verify the contentions of the respondent, the commission has obtained bank statements of the accounts mentioned by the respondent in the statement of assets and liabilities through the State Bank of Pakistan. From the perusal of the bank account mentioned by the respondent in his reply i.e Bank Alfalah Account No. 00351002493256, it transpires that the closing balance of the respondent for the year 2018-19 was Rs. 51,821,865.13/- (Fifty-One Million Eight Hundred Twenty-One Thousand Eight Hundred Sixty-Five and Paisa Thirteen Only). The closing bank balance of the said account is approximately half of the total amount of the gift items, assessed by the record of Tosha Khana obtained from the Cabinet Division. The respondent while declaring the amount in the statement of assets and liabilities declared the closing balance of the account, not the amount of Tosha Khana gifts actually assessed. The respondent has also not highlighted or provided break up and details of sale proceeds. If, for a moment we presume that the respondent has actually declared the amount of Tosha Khana gifts, as claimed by him, the above-mentioned bank statement reveals that he has Rs. 51,821,865.13/- (Fifty-One Million Eight Hundred Twenty-One Thousand Eight Hundred Sixty-Five and Paisa Thirteen Only) as the closing balance and there is still short fall of Rs. 34,849,135 as the total amount should be Rs. 86,671,000/- (Eighty-Six Million Six Hundred Seventy-One Thousand Only). It is also on record that after the dates when respondent purchased the gift items, only an amount of Rs. 31,611,299/- (Thirty One Million Six Hundred Eleven Thousand Two

Hundred Ninty Nine Only) was deposited on or after 22-03-2019. The Respondent has not attached details of gift items, its sale particulars and the amount received and deposited in the bank as required under Form-B. The respondent was required to provide the details of the cash and bank accounts as annexure with Form B. The copy of Form B is reproduced below for ready reference;

FORM B

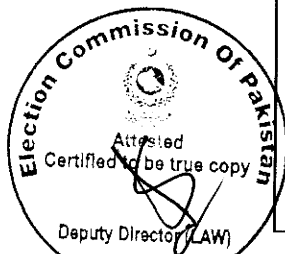
[See sections 60, 110 & 137]

STATEMENT OF ASSETS AND LIABILITIES

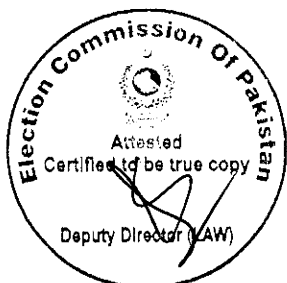
I,..... candidate/ Member,*National Assembly/ Senate, Provincial Assembly, Punjab/ Sindh/ Khyber Pakhtunkhwa/ Balochistan from constituency...../ from the seats reserved for women/ non-Muslims hereby declare that no immovable and moveable property, including bonds, shares, certificates, securities, insurance policies and jewelry, other than specified herein below, is held by me, my spouse(s) and dependent children on 30th day of June,.....

ASSETS

ASSET	COST OF ASSET	REMARKS
1	2	3
<p>1. <u>IMMOVABLE PROPERTY</u> Open plots, houses, apartments, commercial buildings, under construction properties, agricultural property, etc.</p> <p>(a) <u>Held within Pakistan*</u></p> <p>(i) _____</p> <p>(ii) _____</p> <p>(iii) _____</p> <p>(b) <u>Held outside Pakistan*</u></p> <p>(i) _____</p> <p>(ii) _____</p> <p>2. <u>MOVABLE ASSETS</u></p> <p>(a) <u>Business capital within Pakistan</u></p> <p>(i) Name of business</p> <p>(ii) Capital amount</p> <p>(b) <u>Business capital outside Pakistan</u></p> <p>(i) Name of business</p> <p>(ii) Capital amount</p> <p>(c) <u>Assets brought or remitted from outside Pakistan*</u></p> <p>(i) Bank drafts/ Remittances</p> <p>(ii) Machinery</p> <p>(iii) Other</p> <p>(d) <u>Assets brought out of remittance from abroad*</u></p>		



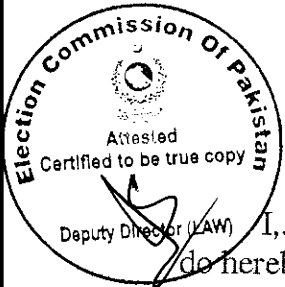
ASSET	COST OF ASSET	REMARKS
1	2	3
<p>(e) <u>Investments</u></p> <p>(i) Stock and Shares</p> <p>(ii) Debentures</p> <p>(iii) National Investment (Unit) Trust</p> <p>(iv) ICP Certificates</p> <p>(v) National Savings Schemes</p> <p>-- Defence Savings Certificate</p> <p>-- Special Savings Certificate</p> <p>-- Regular Income Certificate</p> <p>(vi) Unsecured loans</p> <p>(vii) Mortgages</p> <p>(viii) Any other</p> <p>(f) <u>Motor Vehicles*</u></p> <p>Make Model Reg. No.</p> <p>(i) _____</p> <p>(ii) _____</p> <p>(g) <u>Jewelry etc.</u></p> <p>(i) Weight _____</p> <p>(ii) Description _____</p> <p>(h) <u>Cash and Bank Accounts*</u></p> <p>(i) Cash in hand</p> <p>(ii) Cash at Bank</p> <p>Account No. Bank & Branch</p> <p>Current _____</p> <p>Deposit _____</p> <p>Saving _____</p> <p>Other Deposit _____</p> <p>(i) <u>Furniture, Fittings & articles of personal use-</u></p> <p>(j) <u>Assets transferred to any person-</u></p> <p>(i) Without adequate consideration, or</p> <p>(ii) by revocable transfer</p> <p>(k) <u>Any other assets.</u></p>		



LIABILITIES

LIABILITY	AMOUNT	REMARKS
(i) Mortgages secured on Property or land		
(ii) Unsecured Loans owing		
(iii) Bank Overdraft		
(iv) Bank Loans		
(v) Amounts due under Hire Purchase Agreement		
(vi) House Building Loans		
(vii) Advances from Provident Funds etc.		
(viii) Other debts due*		
(ix) Liabilities in the names of dependent children (in respect of assets standing in their names)		
<u>Total</u>		

*Details to be annexed.

VERIFICATION

I, S/o, W/o, D/o
do hereby declare that, to the best of my knowledge and belief, the above statement of the assets and liabilities of myself, my spouse(s), dependent children is correct and complete as on 30th June and nothing has been concealed therefrom.

Date.....

Signature of the Candidate/ Member

23. It has been held by the August court in the case titled "Nawabzada Iftikhar Ahmed versus the Chief Election Commissioner" reported in PLD 2010 SC 817 as

" The Parliament of any country is one of its noblest, honourable and important institutions making not only the policies and the laws for the nation but in fact shaping and carving its very destiny. And here is a man who being constitutionally and legally debarred from being its member, managed to sneak into it by making a false statement on oath and by using bogus, fake and forged documents polluting the piety of this pious body. His said conduct demonstrates not only his callous contempt for the basic norms of honesty, integrity and even for his own oath but also undermines the sanctity, the dignity and the majesty of the said august House. He is guilty, inter alia, of impersonation --- posing to be what he was not i.e. a graduate. He is also guilty of having been a party to the making of false documents and then dishonestly using them for his benefit knowing them to be false. He is further guilty of cheating ---cheating not only his own constituents but the nation at large.

... Such-like 'HOUSE-BREAKING' tendencies on the part of dishonest and unscrupulous individuals need to be strongly checked before the virus becomes an uncontrollable epidemic."

24. The respondent has not given any explanation that the non-disclosure of aforementioned details is un intentional, accidental or bona fide mistake. The above-mentioned deficiencies in the statement of assets and liabilities submitted by the respondent in the Election Commission and being not in consonance with the bank statements. the respondent has clearly violated the provisions of Section 137 and 173 of the Elections Act,2017 by commission and omission which amounts to submission of false statement and incorrect Declaration attracting Disqualification under Article 63(1)(p) of the Constitution. Question No.2 and 3 are decided accordingly

25.. Before responding to the question No 4 and 5, it is deemed necessary to tabulate the details of gift items, its assessment value, date of purchase, gifts retained by the respondent or not and if retained in the year 2019-20.

26. The respondent has received following gift items in the year 2019-20, the detail of which is given below; -



Sr. No.	Detail of Gifts Items	Date	Assessed Value in Rs.	Retained or not	Retained on retention cost
1.	(1) One decoration piece	29.05.2019	23000/-	Retained	Free of cost
2.	(2) One box containing; (i) One locket with chain (gold) (ii) One pair of Ear tops (gold) (iii) One ring 1 (gold + diamond) (iv) One ring 2 (gold + diamond) (v) One bracelet 1 (gold) (vi) One bracelet 2 (gold)	29.05.2019	(i) 269350/- (ii) 1118000/- (iii) 81000/- (iv) 149400/- (v) 272350/- (vi) 235500/-	Retained	544700/-
3.	One carpet	25.06.2019	65,000/-	Not Retained	Deposited
4.	One model of Horse	07.07.2019	150,000/-	Not Retained	Deposited
5.	One silk Carpet	11.09.2019	130,000/-	Not Retained	Deposited
6.	One Dagger	11.09.2019	40,000/-	Not Retained	Deposited
7.	(1) One decoration piece (Horse) (2) One decoration piece (plate with stand)	11.09.2019	1. 12,000/- 2. 18,000/-	Retained	Free of Cost
8.	i) Two boxes containing of dates ii) Two Ja-e-Namaz iii) Two Tasbeeh iv) Six bottles of honey	10.10.2019	i) 6000/- ii) NCV iii) 9000/- iv) 14,700/-	Retained	Free of Cost
9.	1 One piece of carpet duly framed (Hazrat Imam Raza) 2 One decoration piece (Turquoise)	03.10.2019	1 4000/- 2 18,000/-	Retained	Free of cost
10.	One box containing i one w/Watch serial no. 0687a7072 ii (a) one necklace (b) pair of ear ring (c) One bracelet iii (a) Bottle of perfume (90 ml) (b) Bottle of perfume (16 ml) iv one suit (pant coat)	14.10.2019	i) 1900,000/- ii) (a) 258,500/- (b) 46,000/- (c) 87,000/- iii) (a) 10,000/- (b) 25,000/- iv) 5,500/- v) 70,000/- Total 2,402,000/-	Only wrist watch retained amount 935,000/- deposited	Serial no. ii-v gifts deposited in Tosha Khana

	V One box containing 1 * packet of oud wood and 4* bottles of Attar (small)				
11.	One dagger (silver-Omani)	17.10.2019	47,000/-	Not Retained	Gift deposited in Toshah Khana
12.	i) One Quran-e-Pak ii) One decoration piece (Markhor) iii) One shield	17.10.2019	i) NCV	Retained	Free of Cost
13.	One Proton car (X-70) vehicle Model 2019	23.10.2019			As per Toshah Khana procedure car as at disposal of CPC Cabinet Division
14.	One Whool Carpet	24.12.2019	28,000/-	Retained	Free of Cost
15.	One Model of Mosque	30.12.2019	NCV	Retained	Free of Cost
16.	1 Two perfumes "Amouage Lyric" (One for Male and One for Female) 2 One Dagger	09.01.2020	i) 16,000/- ii) 16,000/- 2 42,000/- Total 74,000/-	Not Retained	Deposited in Toshah Khana
17.	1 One Calligraphy 2 One Ladies Hand Bag	10.02.2020	1. NCV 2. 5,000/-	Retained	Free of Cost
18.	One table clock HILSER for Grant Macdonald	03.03.2020	3,25,000/-	Not Retained	Deposited in Toshah Khana
19.	One decoration piece crystal	28.02.2020	40,000/-	Not Retained	Deposited in Toshah Khana

27. In response to Question No. 04 and 5, It is admitted by the respondent that the gift items or its sale proceeds have not been shown in the statement of assets and liabilities submitted to the Election Commission for the year 2019-20. However, the respondent added that the cost value in respect of gift items were mentioned in

the tax returns for the year 2019-20 under the code 7087 (other personal/household expenses amounting Rs. 8,000,000/- (Eight Million). The respondent in his reply also submitted that the major three (3) gift items were further gifted by him or on his behalf. However, he has not provided any explanation that the gifts were given in this financial year or in other financial year and to whom. Similarly, the detail of gift items and the persons to whom the same were given is also missing in the relevant column of Form.B.

28. The statement of Assets and liabilities for the year 2019-20 is scanned and reproduced for the sake of convenience;

FORM B

STATEMENT

OF ASSETS AND LIABILITIES

Imran Ahmed Khan Niazi, Member, National Assembly from constituency No. NA-95, hereby declare on solemn affirmation that no immovable and movable property, including bonds, shares, certificates, securities, insurance policies and jewellery, other than specified wherein below, is held by me, spouse and dependents on 30th day of June, 2020.

ASSETS

	Cost of Assets	Remarks
IMMOVEABLE PROPERTY		
Open plots, houses, apartments, commercial buildings, under construction properties, agricultural property etc.(attach location, description, built up area and present market value of the house / apartment in which you are presently living.		
(a) <u>Held within Pakistan*</u>		
(i) House No 2 Zaman Park Lahore 7 Kanal 8 Marla	Inherited	
(ii) Construction Cost on House No. 2, Zaman Park Lahore	48,660,000	
(iii) 300 Kanals House at Bani Gala, Village Mohra, Islamabad	Gifted	
(iv) Addition/Construction in Tax Year 2015 & 2016 in House at Bani Gala, Village Mohra Noor, Islamabad	11,471,000	
(v) Renovation & Regularization Cost (Incurred in Tax year 2020) at Khan House, Mohra Noor, Bani Gala, Islamabad	3,905,479	
(vi) 6 KANAL 16 MARLA Land at Mohra Noor Islamabad	5,050,000	
(vii) Share in 10 Marla House at Mianwali Inherited	Inherited	
(viii) 115 Kanal 8 Marla Land at Sheikh Dagar Bhakkar Inherited	Inherited	
(ix) 17 Kanal 3 Marla Land at Gadola Dagar Bhakkar Inherited	Inherited	
(x) 56 Kanal 11 Marla Land at Chak No 185 TDA Bhakkar	Inherited	
(xi) 530-Kanal 15-Marlas Agricultural Land at Chak No.104/15L Mian Channu, Khanewal including expenses (Inherited)	50,000	
(b) <u>Held outside Pakistan*</u>		
(i) <u>Not Applicable</u>	N/A	
MOVABLE PROPERTY		
(a) <u>Business capital within Pakistan</u>		
(i) Name of business	Not Applicable	
(ii) Capital amount	Not Applicable	
(b) <u>Business capital outside Pakistan</u>		
(i) Name of business	Not Applicable	
(ii) Capital amount	Not Applicable	
(c) <u>Assets brought or remitted from outside Pakistan*</u>		
Bank drafts/Remittances	N/A	
Machinery	N/A	
Others	N/A	



(d) <u>Assets brought out of ren...</u>			N/A	
(e) <u>Investments</u>			N/A	
(i)	Stock and Shares	Not Applicable		
(ii)	GBP Account 0035-1002493091 Alfalah Blue Area Islamabad (518 Pounds) - Saving			518 GBP
(iii)	Dollar Account 0035-1002488477 Alfalah Blue Area Islamabad (329,760 Dollars) - Saving			32,7726 USD
(iv)	Euro Account 0035-1002493044 Alfalah Blue Area Islamabad (NIL Euro)			Nil
(v)	Dollar Account 0035-1002492797 Alfalah Blue Area Islamabad (1,470 Dollars) - Saving			1,470 USD
(vi)	Debentures	Not Applicable	N/A	
(vii)	National Investment (Unit) Trust	Not Applicable	N/A	
(viii)	ICP Certificates	Not Applicable	N/A	
(ix)	National Savings Schemes	Not Applicable	N/A	
	--- Defence Savings Certificate	Not Applicable	N/A	
	--- Special Savings Certificate	Not Applicable	N/A	
	--- Regular Income Certificate	Not Applicable	N/A	
(x)	Unsecured loans	Not Applicable	N/A	
(xi)	Mortgages	Not Applicable	N/A	
(xii)	Advance for 2 Bed Flat Type E, Level 11, Tower C, Consitution Avenue Grand Hyatt Development Islamabad		11,970,000	
(f) <u>Motor Vehicles**</u>				
	Make	Model	Reg. No.	
	Nil	Nil	Nil	
(g) <u>Jewellery, etc.</u>				
(i)	Weight	Not Applicable	N/A	
(ii)	Description	Not Applicable	N/A	
(h) <u>Cash and Bank Accounts*</u>				
(i)	Cash in hand		20,842,375	
(ii)	Cash at Bank A/c # 00351002493256, Bank Alfalah IBD, Blue Area Islamabad - Saving Account		34,752,610	
(iii)	Cash at Bank A/c # 0010026873270010, Bank Allied Bank, Parliament House, Islamabad. - Current		3,279,023	
(iv)	Allied Bank Parliament House, Islamabad A/c No. 0010026873270026 - Current		1,025,340	
(v)	Bank Alfalah Islamabad A/c No. (0035-1006410523) - Current		98,856	
(vi)	Bank Alfalah Islamabad A/c No. (0035-1006410520) - Current		102,779	
(vii)	Bank Alfalah Islamabad A/c No. (0035-1006410517) - Current		22,602	
(viii)	Bank Alfalah Islamabad A/c No. (0035-1006410514) - Current		99,203	
(ix)	Bank Alfalah Islamabad A/c No. (0035-1006403219) - Current		89,900	
(i)	<u>Furniture, Fittings and articles of personal use:</u>		500,000	
	<u>Cattles (4 Goats)</u>		200,000	



(j) <u>Assets transferred to any person</u>		
(i) Without adequate consideration, or		
(ii) by revocable transfer <u>Not Applicable</u>		
(k) <u>Any other assets</u>		
<u>Assets in name of Wife Mrs. Bushra Bibi</u>		
(i) 52 Kanal 11 Marla land in Mouza Maneki, Pakpattan Sharif		
(ii) 379 Kanal 1 Marla land in Mouza Pir Ghani, Pakpattan Sharif		
(iii) 267 Kanal 6 Marla land in Mouza Faridabad, Depalpur, Okara		
(iv) House No. 3, Street 2, Bani Gala Islamabad (3 Kanal House)		
TOTAL	142,119,167	

*Details to be annexed.

**Use extra sheets if necessary.

LIABILITIES

Liabilities	Amount	Remarks
(i) Mortgages secured on Property of land	-	
(ii) Unsecured Loans owing	-	
(iii) Bank Overdraft	-	
(iv) Bank Loans	-	
(v) Amounts due under Hire Purchase Agreement-	-	
(vi) House Building Loans - Security against rent	-	
(vii) Advances from Provident Funds etc.	-	
(viii) Advance against sale of land at Sheikhpura	-	
(ix) Other debts due	-	
(x) standing in their names)	-	
(xi) Personal expenditure	-	
Total	-	

*Details to be annexed.

Net Assets

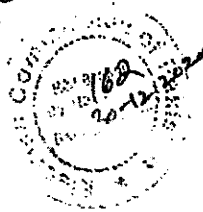
142,119,167

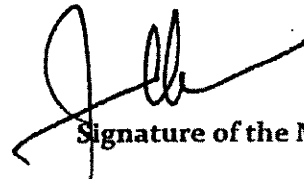
Amount in words: One hundred forty two million, one hundred nineteen thousand one hundred sixty seven only

VERIFICATION

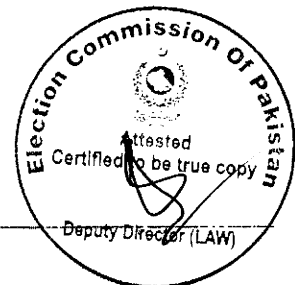
I, Imran Ahmed Khan Niazi s/o Ikram Ullah Khan Niazi do hereby declare solemnly that, to the best of my knowledge and belief, the above statement of the assets and liabilities of myself, my spouse, dependend children is correct and complete and nothing has been as on 30th June 2020, concealed therefrom.

Dated: 30/12/2020





Signature of the Member



29. However, perusal of the statement of assets and liabilities for the year 2019-20 in the relevant column J(i) shows that no such transfer of the gifts has been shown and N/A is recorded which was required to be filled with details by the respondent in column number 3 of Form-B (remarks). Likewise, FBR has its own procedure and law for declaration or submission of details in respect of filing of annual tax returns and in case of failure there are consequences under their own laws. The Election Commission of Pakistan is an independent Constitutional body mandated under Constitution and law for holding of free and fair elections and to guard against corrupt practices. For performance of its functions and duties separate election laws in the shape of Elections Act, 2017 and Election Rules, 2017 are in field and all the members of National Assembly and Provincial Assemblies are required to submit the annual statement of assets and liabilities under Section 137 of the Act. There are separate consequences in case of failure or submission of false declaration. Both the organizations are doing different nature of work under their different laws and it would be a weak argument that the statement submitted before one can be considered for the other. There are different requirements for FBR and this Commission for filing of tax returns and statements of assets and liabilities.

30. The respondent has not given any explanation that the non-disclosure of aforementioned details is un intentional, accidental or bona fide mistake. There are deficiencies in the statement of assets and liabilities submitted by the respondent in the Election Commission. The respondent has clearly violated the provisions of Section 137 and 173 of the Elections Act, 2017 by commission and omission which amounts to submission of false statement and incorrect declaration and is guilty of corrupt practices and also attract disqualification under Article 63(1)(p) of the Constitution read with Section 137 and 173 of the Elections Act, 2017.

31. The consequences of incorrect statement and false declaration has been deliberated upon in the Judgments of the August Supreme Court reported in PLD 2010 SC 828 and PLD 2010 SC 817 supra.

32. For responding to Question No.6 and 7 the details of gift items received, retained and sold out by the respondent is given below for the year 2020-21:



Sr. No.	Detail of Gifts Items	Date	Assessed Value in Rs.	Retained or not	Retained on retention cost
1.	One silk carpet	17.09.2020	4,0000/-	Not Retained	Deposited in Tosha Khana
2.	One box containing i) one wrist watch (Rolex No. P 6757 4v3) ii) Pair of Cufflinks iii) One ring iv) Un stitched cloth of pant coat b) one box containing i) one necklace ii) one bracelet iii) one ring iv) pair of ear ring	24.09.2020	i) 4,408,000/- ii) 255,000/- iii) 230,000/- iv) 7,000/- Total 4,900,000/- b) i) 10,970,000/- ii) 2,430,000/- iii) 2836,000/- iv) 1,856,000/- Total 18,092,000/-	Retained	a) 2,435,000/- b) 9,031,000/-
3.	One decoration piece (stone)	30.09.2020	70,000/-	Not Retained	Deposited in Tosha-Khana
4.	One carpet	26.10.2020	3,000/-	Retained	Free of Cost
5.	One wall hanging	26.10.2020	20,000/-	Retained	Free of Cost
6.	i) One Calligraphy ii) One Chogha	02.11.2020	i) 50,000/- ii) 10,000/-	Not Retained	Deposited in Tosha Khana
7.	One wall hanging (frame)	06.11.2020	15,000/-	Retained	Free of Cost
8.	One carpet (12 meter)	01.12.2020	175,000/-	Not Retained	Deposited in Tosha Khana
9.	One decoration piece (Artificial Flower Tray)	02.12.2020	20,000/-	Retained	Free of Cost
10.	One Carpet	13.01.2021	32,000/-	Retained	1,000/-
11.	One Carpet	22.02.2021	22,000/-	Retained	Free of Cost
12.	Noritake dinner set (26 pieces)	04.03.2021	110,000/-	Retained	40,000/-
13.	i) Noritake dinner set (34 pieces) ii) pair of Cufflinks	04.03.2021	i) 100,000/- ii) 20,000/-	Retained	45,000/-
14.	i) Jem stones of Sri Lanka (duly framed) ii) Tasbeeh	04.03.2021	i) 5,000/- ii) 25,000/-	Retained	Free of Cost
15.	i) Surahe (silver 1.268 Kg approx.)	04.03.2021	100,000/-	Not Retained	Deposited in Tosha Khana
16.	Three Tables in oriental style	11.03.2021	45,000/-	Not Retained	Deposited in Tosha Khana

	(handmade wood carving)				
17.	1) One box containing a) Oud Wood b) Two Bottle of Oud C) Two Chogs 2) One box containing a) 03 packets of dates b) Three bottles of Honey c) Three bottles of olive oil d) Three packets of coffee 3) One box containing 01 book (Craft of Kindgom)	18.05.2021	1) 254,000/- 2) (a,b,c,d) Rs. 42,000/- 3) 500/-	Retained	133250/-
18.	One box containing a) One necklace b) one pair of earring c) one ring d) one bracelet	18.05.2021	a) 1359,000/- b) 275,000/- c) 225,000/- d) 4000,000/- Total 5859,000/-	Ratained	2,914,500/-
19.	One table clock with two candle stand	04.06.2021	130,000/-	Not Retained	Deposited in Tosha Khana

33. In response to Question No. 6 and 7, the Respondent in his reply has admitted that 5 gift items were retained by him after paying a total amount of Rs. 11,684,250/- (Eleven Million Six Hundred Eighty-Four Thousand Two Hundred Fifty Only) and that the total cost amount has been declared against precious items in the statement of assets and liabilities for the year 2020-21 and that a declaration to this effect has also been made in the Tax Returns for the year 2020-21. In this regard, it is pointed out that the respondent has declared amount of precious items of Rs. 11,684,250/- (Eleven Million Six Hundred Eighty-Four Thousand Two Hundred Fifty Only) under the heading 2(i) Furniture, Fittings & Articles of personal use. However, no details of the gift items in regard to particulars of items have been disclosed in column number 3 of Form-B (remarks). Moreover, as we know from the documents received from the Cabinet Division, that the items retained by the Respondent include W/Watch, Necklace, Bracelet, Ring, Earring, Carpet, Wall Hanging, etc. Hence, the

respondent was required to declare these items under various headings specifically defined in Form-B under the main heading of Moveable Assets i.e. Jewellery (items 2g), any other assets (para 2k), Assets transferred to any person (para 2j), which was not done in this manner and the lump sum amount has been mentioned under the heading 2(i) as Furniture, Fittings and Articles of personal use.

34. In view of above discussion, it is established that the respondent has not complied with the provisions of Section 137 and 173 of the Elections Act, 2017 and has made False declaration and incorrect statement before the Commission, therefore, he is also guilty of corrupt practices under Section 173 of the Elections Act, 2017 and disqualification is attracted under Article 63(1)(P) of the Constitution read with Section 137 and 173 of the Elections Act, 2017.

35. On the basis of record forwarded by the Speaker National Assembly and obtained by the Election Commission of Pakistan from Cabinet Division and bank statement of the respondent through State Bank of Pakistan, we are satisfied and are of the opinion that;

i. The respondent has deliberately concealed the material facts by not disclosing the details of gifts in statement of his assets and liabilities for the year 2018-19 nor has accounted for the sale proceed. He has also not provided details of the gift items as required under column number 3 of Form-B. He has also failed to annex the details of cash and bank account of the sale proceeds as required under column h(i)&(ii) of Form-B for which all the details of the gifted amount has to be mentioned. The amount allegedly received in his bank account does not commensurate with the assessed value of the gift items. Hence, the respondent has filed false statement and incorrect declaration in material particular for the financial year 2018-19.

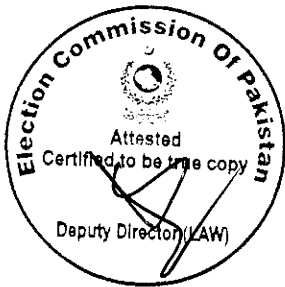
ii. The Respondent has also made evasive and ambiguous statement in his written reply that the gifts purchased by him during the financial year 2019-20 were further gifted by him or on his behalf to others. However, the relevant column j(i) of Form-B is marked as N/A and there is no explanation in the remarks of column 3. Therefore, it is established that he has deliberately concealed material facts and



has submitted false declaration of his assets and liabilities in particular material which entails serious consequences under the Constitution and law.

iii. The respondent has intentionally and deliberately violated the provisions contained Section 137, 167 and 173 of the Elections Act, 2017, who has made false Statement and incorrect declaration before the Commission in the statement of assets and liabilities filed by him for the year 2020-21. Hence, attracts disqualification under Article 63(1)(p) of the Constitution read with section 137 and 173 of the Elections Act, 2017.

As sequel to our abovementioned findings, facts available on record and keeping in view the argument of learned counsel for parties herein, we are of the considered opinion that the Respondent has become disqualified under Article 63(1)(p) of the Constitution read with Section 137, 167 and 173 of the Elections Act, 2017, consequently he ceases to be a member of the National Assembly of Pakistan and his seat has become vacant accordingly. As the respondent has made false statements and incorrect declaration, therefore he has also committed offence of corrupt practices defined under Section 167 and 173 of the Elections Act, 2017, punishable under Section 174 of the Elections Act, 2017. Office is directed to initiate legal proceedings and to take follow-up action under Section 190(2) of the Elections Act, 2017.



Sikandar Sultan Raja
Chairman

Nisar Ahmed Durrani
Member

Shah Muhammad Jatoi
Member

Babar Hassan Bhargwana
Member

Justice (R) Ikram Ullah Khan
Member