

The Election Commission of Pakistan v. Tehreek-e-Insaf:
The Supreme Court of Pakistan Establishes that the Sword Is,
in Fact, Mightier than the Cricket Bat

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I. OVERVIEW

The game of cricket is a dance between pitcher and batter, where the crack of the leather hitting the willow sends reverberations miles away. National pride and individual prowess is on full display, and in Pakistan (where cricket is the country's national pastime), no one knows this dance better than Imran Khan. Khan, the internationally recognized star cricketer who led Pakistan to their only World Cup title in 1992, rose to political power in 2018 when his political party, Pakistan Tehreek-e-Insaf (PTI), un-surreptitiously swept the general election.¹ The cricket bat embodied Khan's legacy and was PTI's electoral symbol, but a month before Pakistan's 2024 general election, The Election Commission of Pakistan (ECP) stripped PTI of its electoral symbol.² Stripping a political party of their electoral symbol is a death sentence in a country like Pakistan, as electoral symbols are not only used during political rallies to

1. Hena Allaqqaband, *From Cricket to Corruption: How Imran Khan Won an Election*, BERKELEY POL. REV. (Mar. 13, 2024), <https://bpr.studentorg.berkeley.edu/2024/03/13/from-cricket-to-corruption-how-imran-khan-won-an-election-from-prison/>.

2. The Election Commission of Pakistan and Others. v. Pakistan Tehreek-e-Insaf and Others, (2024) 38 PLD (SC) 1, 9 (Pak.).

stir up fever, or as decorative lapels to smugly indicate ones political leanings, they are instead crucially used on ballot tickets to signify party loyalty to illiterate voters. Without recognizable party symbols, illiterate voters are left disenfranchised and forced to blindly vote for candidates that they may not even support.

The ECP, on December 22, 2023, stripped PTI of their electoral symbol, citing PTI's failure to hold intra-party elections as mandated by the Elections Act (Act).³ The ECP used its apparent authority under section 215 of the Act, which it claimed granted it the power to strip political parties of their party symbol if they failed to fulfill their obligations under sections 209 and 210 of the Act.⁴ Petitions by PTI followed simultaneously to both the Lahore High Court (LHC) and the Peshawar High Court (PHC), which raised issues of *res judicata*.⁵ On January 10, 2024, the PHC initially ruled in PTI's favor, claiming that the ECP had no authority under section 215 of the Act to strip any political party of their designated symbol.⁶

The ECP then appealed the case to the Supreme Court of Pakistan.⁷ On appeal, PTI made four defensive arguments. First, PTI argued that the ECP's stripping of their symbol violated their party's fundamental rights as protected under Article 17(2) of the Constitution.⁸ Second, PTI alleged that there was not enough time to conduct an election due to mitigating factors attributed to Covid-19.⁹ Third, in the alternative, if it was established that PTI had enough time to hold elections, then PTI asserts that they conducted an election and have proof of it via certification, which the ECP is simply not approving.¹⁰ Lastly, PTI stated that the ECP was acting with *mala fide* (malicious intent) by focusing on their party solely for a seemingly administrative overlap.¹¹ All arguments fell on deaf ears.¹² The Pakistan Supreme Court held that the ECP did have the constitutional power to strip PTI of their political symbol by using a narrow reading of section 215 of the Act while disregarding their

3. *Id.*; The Elections Act, No. 32 of 2017, 158, Pak. Code (2d ed. 2017).

4. *Tehreek-e-Insaf* 38 PLD (SC) at 9 (Pak.).

5. *Id.*

6. The Election Commission of Pakistan through its Secretary and others. v. Pakistan Tehreek-e-Insaf through its authorized person and others. (2024) 38 PLD (Peshawar High Court) 1 (Pak.).

7. *Tehreek-e-Insaf* 38 PLD (SC) at 1 (Pak.).

8. *Id.* at 13

9. *Id.* at 24.

10. *Id.* at 7-9.

11. *Id.* at 21.

12. *Id.* at 35-38.

established precedent.¹³ The Election Commission of Pakistan, through its Secretary and Others v. Pakistan Tehreek-e-Insaf and Others. (2024) 38 PLD (SC) 1 (Pak.).

II. BACKGROUND

A. *Political Background of Pakistan's 2024 Elections*

Corruption, political controversy, and intrusive overreach marred the 2024 Pakistan general election.¹⁴ When Khan and the PTI gained control of the government in 2018, it was heralded as the end of an era, marking the weighing power of Pakistan's military-industrial complex after neither of its two backed parties were able to win a majority of the seats, as it had done for the last four decades.¹⁵ In April 2022, after a vote of no confidence, Khan was removed from office.¹⁶ Portraying the vote of no confidence as a result of inflation and economic downturn is misleading, as experts point to Khan's strained relationship with the military as being the driver of his downfall, as well as to his firing of General Syed Asim Munir from his position as head of Inter-Services Intelligence—a position that holds the second most power only to the Chief of Staff in Pakistan's army, which is now headed by the very same, previously fired General Munir, who gained his promotion a mere six months after Khan's ousting.¹⁷ Authorities arrested Khan a month after his vote of no confidence on a number of charges ranging from corruption to violations of morality laws.¹⁸ Khan is still awaiting trial on 150

13. *Id.* (The court was composed of a three-member panel consisting of Chief Justice Isa, Justice Hilali, and Justice Mazhar. The Court in this instance disregards their own prior precedence of *Benazir Bhutto v. Federation of Pakistan and Another* 38 PLD (SC) 416 (Pak.).

14. Madiha Afzal, *Pakistan's Surprising and Marred 2024 Election, and What Comes Next*, BROOKINGS (Feb. 29, 2024), <https://www.brookings.edu/articles/pakistans-surprising-and-marred-2024-election-and-what-comes-next/>.

15. Asad Hashim, *Imran Khan Elected as Pakistan's Prime Minister*, ALJAZEERA (Aug. 17, 2018), <https://www.aljazeera.com/news/2018/8/17/imran-khan-elected-as-pakistans-prime-minister>.

16. Madiha Afzal & Adrianna Pita, *Why Is Pakistani PM Imran Khan Facing a No-Confidence Vote*, BROOKINGS (Mar. 5, 2022), <https://www.brookings.edu/articles/why-is-pakistani-pm-imran-khan-facing-a-no-confidence-vote/>.

17. Hasan Ali, *Pakistan's Army Buried Imran Khan with Legal Cases. The Courts Are Digging Him Out.*, CHRISTIAN SCI. MONITOR (June 11, 2024), <https://www.csmonitor.com/World/Asia-South-Central/2024/0611/Imran-Khan-case-overturned-Pakistan>.

18. *Id.* (The charges against Khan included corruption for selling state gifts while prime minister, the mishandling of a diplomatic cable, and for marrying his wife without satisfying the requirements of Islamic law, because he had married her when she had been previously divorced. Khan's corruption charges were successfully appealed, and he still awaits a decision for his violation of morality law.).

outstanding charges, all of which appear to be politically motivated and orchestrated by the military.¹⁹ While their political leader was behind bars, PTI attempted to mount a successful reelection campaign in 2024 but were almost thwarted when they were stripped of their iconic cricket bat electoral symbol by the ECP.²⁰

*B. The Election Commission of Pakistan's Statutory Authority
Rationale for Stripping Pakistan Tehreek-e-Insaf of Their Electoral
Symbol*

The ECP was able to strip PTI of their electoral symbol under the Act, a piece of legislation that is self-described to “amend, consolidate and unify laws relating to the conduct of elections and matters connected therewith or ancillary to it.”²¹ The Act creates a uniform way to govern all elections, whether it be of satellite administrative units, countrywide general elections, or even intra-party elections.²² The Act recognizes the right of political parties to make their constitutions, given that they comply with section 201, which mandates both the necessity and the procedure for holding intra-party elections.²³ Chapter XI section 208 further mandates that elections within political parties occur every five years, and section 209 establishes that the results of those intra-party elections must be certified and submitted to the ECP.²⁴ It is only after this long and bureaucratic process that a political party will be eligible to obtain an electoral symbol under sections 215 and 215(5). This section also explicitly states that in regards to a

political party . . . to whom show cause notice has been issued under sub-section (4) [and which] fails to comply with the provision of Section 209 or Section 210, the Commission may after affording . . . them an opportunity of being heard, declare . . . them ineligible to obtain an election symbol for election to Majlis-e-Shoora (Parliament).²⁵

Under this specific provision, the ECP asserted that PTI had not held general elections within the mandatory five year period and issued a preliminary letter on May 24, 2021, calling for the holding of intra-party

19. *Id.*

20. *Id.*

21. *Tehreek-e-Insaf* 38 PLD (SC) at 3 (Pak.).

22. *Id.* at 3-7.

23. *Id.*

24. *Id.*

25. The Elections Act, No. 32 of 2017, 215(5), PAK. CODE (2d ed. 2017).

elections.²⁶ After PTI ignored this letter, the ECP issued a show-cause notice on July 27, 2021.²⁷ PTI's reply assented to the fact that they had not held intra-party elections, but they requested an extension because of mitigating circumstances surrounding the Covid-19 pandemic.²⁸ The ECP granted an extension.²⁹ Even with the extension, PTI still failed to comply, and the ECP issued three more letters reminding PTI of its obligations.³⁰ The ECP sent the letters on the March 27, the April 16, and May 21, 2022.³¹ On receipt of the last letter, the PTI stated that they had held elections on June 8, 2022.³² But the ECP rejected the certification because of several discrepancies linked to the potentially illegal expulsion of party members who contested that the intra-party election had taken place.³³ The ECP sent numerous other demand letters to the PTI to conduct intra-party elections and sent an additional show cause notice on November 23, 2023, which is required to strip parties of their political symbol under section 215(5).³⁴ In response, PTI asserted that they had certified their intra-party elections, which they had held on December 2, 2023. However, the ECP found similar discrepancies, noting that the PTI had still not resolved the issue of the illegally expelled members who had contested that an intra-party election had taken place.³⁵ Based on these findings, the ECP on December 22, 2023, composed of their commissioner and four members, held a hearing and unanimously stripped PTI of their political party symbol a mere four months before the April 2, 2024 general election.³⁶

C. *Tehreek-e-Insaf's Successful Statutory Arguments and Procedural History to Retain Its Electoral Symbol at the Peshawar High Court*

Because of the ECP's mandate stripping PTI of their electoral symbol, two simultaneous writ appeal petitions were submitted by PTI, raising issues of res judicata.³⁷ The first writ appellation petition dealt with the validity and certification of PTI's June 8, 2022 election; this writ was

26. *Tehreek-e-Insaf* 38 PLD (SC) at 7-9 (Pak.).

27. *Id.*

28. *Id.* at 24.

29. *Id.*

30. *Id.* at 7-9.

31. *Id.*

32. *Id.*

33. *Id.* at 16-18.

34. *Id.* at 7-9; The Elections Act, No. 32 of 2017, 215(5), PAK. CODE (2d ed. 2017).

35. *Tehreek-e-Insaf* 38 PLD (SC) at 16-8 (Pak.).

36. *Id.* at 8-9.

37. *Tehreek-e-Insaf* 38 PLD (SC) at 14-15 (Pak.).

submitted and heard on December 8, 2023, in the Lahore High Court (LHC). At the hearing an en banc was requested and scheduled, but never came to fruition.³⁸ The second writ petition was submitted to the Peshawar High Court (PHC) on December 9, 2023, dealing with the validity and certification of PTI's December 2, 2023 election.³⁹ The PHC heard oral arguments and issued a provisional injunction barring the ECP from stripping PTI of their electoral symbol, which they followed up with a full judgment on January 10, 2023, declaring that the ECP had no lawful authority to rescind PTI's electoral symbol.⁴⁰ However, PHC's decision was quickly contested and overturned by the Court in their January 13, 2024 short order, which was later expounded upon in a full judgment on January 24, 2024.⁴¹

The PRC's initial judgment, disputing the ECP's powers to strip political parties of their electoral symbols is instrumental in understanding how the Court later came to a contrary determination. The PHC, in the first half of their decision, carefully walked through why they had appropriate jurisdiction to a claim supposedly infected by issues of res judicata, non-reviewability, and injury occurring outside of their supervisory boundary.⁴² Then, it went into the merits addressing whether the ECP has the power and authority under Articles 218(3) and 21(9) of the Constitution, read with sections 208 and 215(5) of the Act, to investigate and adjudicate whether or not political parties have actually conducted intra-party elections and if, based on those findings, it could punitively sanction those who did not by withholding their electoral symbol.⁴³

The ECP vehemently opposed the PHC's jurisdiction to hear the case, arguing that issues of res judicata barred the PHC from hearing it, as PTI had already filed a similar case with the LHC on December 8, 2023. The ECP also contended that because PTI's sub judice filing with the PHC came later in time, the PHC should not have heard it under the rules of propriety and by the precedent established in *Salahuddin Tirmizi v. Election Commission of Pakistan*, (2008) 38 PLD (SC) 735 (Pak.).⁴⁴ Secondly, the ECP asserted that because it is a constitutional body entailing independence and exclusive jurisdiction when performing its

38. *Id.* at 10-15.

39. *Id.*

40. *Tehreek-e-Insaf* 38 PLD (Peshawar High Court) at 25 (Pak.).

41. *Tehreek-e-Insaf* 38 PLD (SC) at 35-38 (Pak.).

42. *Tehreek-e-Insaf* 38 PLD (Peshawar High Court) at 1-6 (Pak.).

43. *Id.*

44. *Id.* at 8-14.

duties under the Act, it is only subject to judicial review when it conducts a patently illegal act, as surmised by the face of the record.⁴⁵ Here, because the ECP contests that it was only acting per the boundaries of sections 208, 209, and 215 of the Act, it should not be subject to judicial review as established by the precedent in *Sheikh Rashid Ahmad* (2010) 8 PLD (SC) 573.⁴⁶ The ECP's last attack as to whether or not the PHC had jurisdiction over this matter was to call into question its territorial jurisdiction.⁴⁷ The ECP argued that it maintained its principal office in Islamabad, and because the hearing and adjudication over the removal of PTI's election symbol occurred at this office, it falls outside of PHC's territorial jurisdiction.⁴⁸

The PHC addressed these jurisdictional issues by explaining that, although the ECP is a constitutional and independent body as it derives its authority from the constitution, jurisdiction could be exercised over it only if the ECP acted manifestly illegally, arbitrarily, or by mala fide as established by *Malik Ameer Haider Sansa v. Mrs. Sumera Malik and Others*, (2018) 38 PLD (SCMR) 1166 (Pak.).⁴⁹ Here, the PHC implicitly asserted that the ECP acted illegally and potentially with malice by stripping the PTI of their political party symbol.⁵⁰ Regarding territorial jurisdiction, the PHC referenced a range of cases establishing that if any agency derives its authority from the Constitution or federal law, and performs functions related to the Federation's affairs, and has a nexus with any province, its actions may fall under the jurisdiction of the High Court in that province; this applies regardless of where the agency's office or leadership are located. Therefore, if an agency issues an order or undertakes a proceeding affecting someone in a different province then that person may petition their provincial High Court, and the court would have jurisdiction over the matter.⁵¹ Essentially, the PHC held that illiterate

45. *Id.* at 14-23.

46. *Id.* at 4.

47. *Id.* at 4-6.

48. *Id.*

49. *Id.*

50. *Tehreek-e-Insaf* (2024) 38 PLD (Peshawar High Court) 1 (Pak.). P. 1-6.

51. *Id.* at 8-14; See *Malik Ameer Haider Sansa v. Mrs. Sumera Malik and Others*, (2018) 38 PLD (SCMR) 1166 (Pak.); *Asshar Hussain v. the Election Commission of Pakistan* (1968) 38 PLD (SC) 381 (Pak.); *The Federal Government v. Avan Ali and Others* (2017) 38 PLD (SCMR) 117g (Pak.); *Messrs Al-Iblash Ltd. Lahore vs. The Convriekt Board Karachi and Others* (1985) 8 PLD (SCMR) 748 (Pak.); *LPG Association of Pakistan through Chairman vs. Federal of Pakistan through Secretary Ministry of Petroleum and Natural Resources Islamabad and Others* (2009) 38 PLD (CLD) 1498 (Pak.).

voters within their territorial jurisdiction would potentially be injured by being disenfranchised if the ECP removed PTI's electoral symbol.⁵²

Therefore, even though the impugned election took place in the region of Khyber Pakhtunkhwa (KP) and the ECP resides and performs all of their tasks in the region of Islamabad, the PHC still has jurisdiction concurrently with the Islamabad High Court (IHC) because the ECP's directives affect individuals in PK, which is in the territorial jurisdiction of PHC.⁵³ Lastly, the PHC asserts that while there were two pending petitions in courts having concurrent jurisdictions related to the same cause of action, raising issues of res judicata, those issues are not applicable in this specific instance because the PHC believes that they were the first venue that the petitions were completely filled in and that they were also the first court which had issued orders on the matter, which was then subsequently appealed, and that the LHC has dismissed the case owing to the pendency of the petition at the PHC.⁵⁴ Therefore, because the PHC heard and issued orders on the case before the LHC, and the LHC later dismissed the case, issues of res judicata, the doctrine of propriety, and the ECP's cited precedent of *Tirmizi* are not applicable here.⁵⁵

PHC affirmatively denied that the ECP had any power or authority to withhold political party symbols because of what it believes to be a party's failure to hold intra-elections under Articles 218(3) and 21(9) of the Constitution, read with sections 208 and 215(5) of the Act.⁵⁶ The PHC, in its judgment, laid out two arguments as to why the ECP lacked this authority.⁵⁷ First, it showcased the limits of the ECP's power by stating that the ECP is, in fact, a constitutional body whose jurisdictional powers derive from the Constitution and the Act.⁵⁸ Its general powers directly emanate from Article 218(3) of the Constitution, and whatever other powers it retained through the Act must be expressly stated and narrowly tailored.⁵⁹ Section 208 of the Act mandates that the office bearers of any political party shall be elected internally periodically at least every five years.⁶⁰ Explicitly mentioned in section 208 of the Act, the only sanction

52. *Tehreek-e-Insaf* 38 PLD (SC) at 6 (Pak.).

53. *Tehreek-e-Insaf* (2024) 38 PLD (Peshawar High Court) at 12 (Pak.).

54. *Id.* at 8-14.

55. *Id.* at 13; *Salahuddin Tirmizi v. Election Commission of Pakistan*, (2008) 38 PLD (SC) 735 (Pak.).

56. *Id.* at 14-23.

57. *Tehreek-e-Insaf* (2024) 38 PLD (Peshawar High Court) at 14-23 (Pak.).

58. *Id.* at 17.

59. *Id.* at 14-23.

60. *Id.*; *The Elections Act, No. 32 of 2017*, 208, PAK. CODE (2d ed. 2017).

allowable by the ECP when a party has failed to hold intra-party elections is to levy a fine running from one to three thousand rupees, while no verbiage in section 208 of the Act authorizes the ECP to either supervise intra-party elections or to investigate or even question any supposed irregularity in the intra-party election.⁶¹ While section 209 of the Act does affirmatively place a duty on the electoral party to certify their results within seven days and submit a signed certificate to the ECP, it also equally burdens the ECP to affirmatively publish said certificate. Similarly, section 209 does not confer any powers to ECP to question the validity of the intra-party election.⁶² Chapter 21 of the Act establishes those eligible to receive an electoral symbol, which appears on ballots of public elections next to the affiliated candidate's name; eligibility is determined by those who comply with the provisions of sections 202, 206, 209, and 210.⁶³ However, section 215(5) contains a penal clause that stipulates parties could be ineligible to retain their election symbol if, despite a show cause notice, they fail to comply with the provisions of sections 209 or 210 of the Act. section 209 governs the procedural parameters of certifying an intra-party election, while section 210 addresses the disclosure of funds.⁶⁴

Penal and regulatory provisions that deprive individuals of guaranteed rights are construed strictly.⁶⁵ By rescinding PTI's electoral symbol, PHC held that the ECP deprived PTI and its members of their ability to participate in government affairs as protected by Article 17(2) of the Constitution. This action may have prejudiced PTI's illiterate constituents by adversely affecting their ability to vote.⁶⁶ Therefore, because PTI would have their rights negatively impaired by section 215(5) of the Act, which is in a sense a penal provision, it must be read narrowly, which would prohibit the ECP from liberally applying such powers and assuming the role of an ad hoc investigatory and judicial administrative unit that can extrajudicially take away the constitutionally protected rights of entities.⁶⁷ *Benazir Bhutto v. Federation of Pakistan* (1989) 38 PLD (SC) 66 (Pak.) specifically held that the allocation of electoral symbols is a fundamental right as protected by Article 17(2) of the Constitution, which states that every individual "shall have the right

61. *Id.* (\$1 as of Nov. 13, 2024, is approximately 276.70 Pakistani Rupees).

62. *Tehreek-e-Insaf*(2024) 38 PLD (Peshawar High Court) at 19 (Pak.).

63. The Elections Act, No. 32 of 2017, 202, 206, 209, 210, PAK. CODE (2d ed. 2017).

64. *Id.*

65. *Tehreek-e-Insaf*(2024) 38 PLD (Peshawar High Court) at 19 (Pak.).

66. *Id.* at 19-23.

67. *Id.*

to form or be a member of a political party,” and not being able to have an electoral symbol prevents the formation of political parties.⁶⁸

Therefore, the PHC held that they had jurisdiction over the issue because the res judicata issue was moot and that they had specific and subject matter jurisdiction over ECP because ECP is a constitutional body that performed a patently unconstitutional act of stripping PTI of their electoral symbol which adversely affected constituents of PHC’s territorial jurisdiction.⁶⁹ Finally, the PHC methodically and through their narrow reading and interpretation of Article 218(3) and Article 21(9) of the Constitution with sections 208 and 215(5) of the Act found that the ECP had no vested power to act as a quasi-ad hoc investigatory judicial administrative unit that could extrajudicially take away the constitutionally protected rights of entities, like the protected rights of electoral parties to their party symbols, as established by the Court in *Bhutto*.⁷⁰ However, the Court disagreed with the PHC on the merits of their judgment and summarily reversed them within days of PHC’s order being issued.

III. COURT’S DECISION

In the noted case the Court did not find any jurisdictional defects with PHC’s hearing of the case but attacked the merits of their judgment by finding that the ECP had broad unenumerated powers under section 215 of the Act⁷¹—powers to be both a quasi-investigatory and judicial administrative unit that could deprive entities of their fundamental rights, such as by withholding electoral symbols from political parties if there was a finding that no intra-party elections had taken place as mandated by section 208 of the Act.⁷² Because of these broad powers, the Court affirmed the ECP’s order to strip PHC of their electoral symbol, as there was an investigatory finding that no intra-party elections had been held or even certified.⁷³

The Court reached this decision by first reaffirming that the ECP had provided ample notice to PTI to comply with the intra-party election requirements of section 208 of the Act with the ECP, even going as far as to offer a one-year extension to PTI to hold their intra-party elections due to the mitigating circumstances surrounding the COVID-19 pandemic;

68. *Id.* at 24.

69. *Id.* at 8-24.

70. *Id.* at 25-26.

71. *Tehreek-e-Insaf* 38 PLD (SC) at 22-25 (Pak.).

72. *Id.*

73. *Id.* at 31-34.

even with this extension, the PTI still failed to certify an intra-party election to the ECP.⁷⁴ The PTI did attempt to furnish corroborating evidence, to no avail, that they had in fact held their intra-party elections.⁷⁵ The Court asserted that the evidence PTI had tried to use to prove the holding of elections was fraudulent.⁷⁶ The fraud came in the form of fourteen disenfranchised PTI members who were allegedly illegally expelled from the party and were denied their ability to vote in direct violation of section 205 of the Act.⁷⁷ The Court found that the ECP had not acted with *mala fide*, as no evidence supported claims that PTI was targeted specifically because of its political leanings.⁷⁸ The Court further stated that the ECP was merely doing its job and was well within its mandate to inquire into the authenticity of any certificate submitted to it regarding intra-party elections.⁷⁹

Additionally, the Court established that the ECP had the authority and jurisdiction to strip PTI of their electoral symbol under Chapter 21 of the Act.⁸⁰ The court gracefully sidestepped Chapter 11 of the Act by declaring that even though section 208(5) of Chapter 11, which explicitly only mandated a monetary penalty for a party who fails to conduct an intra-party election, was overridden by Chapter 21 section 215(5) of the Act, as it came later in time, and this later section allowed the ECP to strip PTI of their electoral symbol after issuing a show cause notice.⁸¹ The Court asserted that the ECP furnished to the PTI multiple notices to hold their intra-party election and even furnished two separate show cause notices on both July 27, 2021 and November 23, 2023. Therefore, procedurally, the ECP was well within their rights to strip PTI of their electoral symbol; the only remaining step was to have a hearing on the matter, which the ECP did on December 22, 2023.⁸² Therefore, the Court found that the ECP had upheld its duties and provided adequate notice to PTI and was well within its rights to sanction PTI for its failure to hold intra-party elections under section 215(5) of the Act.⁸³

74. *Id.* at 7-15.

75. *Id.* at 17-20.

76. *Id.*

77. *Id.*

78. *Id.* at 21-25.

79. *Id.*

80. *Id.* 22-29.

81. *Id.* at 7.

82. *Id.* at 8.

83. *Id.* at 7-9.

Lastly, the court addressed the constitutional issue of Article 17(2).⁸⁴ Article 17(2) of the Constitution establishes that the right to form a political party is guaranteed and over the years, the Court has robustly interpreted Article 17(2) to ensure that a political party can contest elections under a unified symbol, as exemplified in *Bhutto*, which held that changing the requirements for which parties could have election symbols was ruled unconstitutional under Article 17 of the Constitution, and held that any unreasonable restriction would be void.⁸⁵ However, the Court contrasted *Bhutto* with the noted case by showing that the laws in question differed in that a democratically elected parliament promulgated the Act, while the same was not the case in *Bhutto*, and that principally intra-party elections aid in the democratic function.⁸⁶

In sum, the Court found that while PHC did have jurisdictional purview of the case, the reasoning for holding that the ECP was without authority to strip the PTI of their electoral symbol was legally incorrect.⁸⁷ The Court held that the PHC was legally incorrect because they relied on section 208(5) of the Act, which limited the ECP's plenary power only to sanction political parties who did not hold intra-party elections to monetary fines, while they should have instead relied on section 215(5) of the Act because it came later in time, and therefore usurps the authority of section 208(5), with section 215(5) providing broad investigatory and judicial authority to the ECP to strip political parties of their electoral symbol.⁸⁸

IV. ANALYSIS

The question of whether an entire political system's democratic processes can be halted because an unelected bureaucratic agency, extra-judicially, prohibits using a political party's symbols calls into question the integrity of Pakistan's political apparatus. The judicialization of politics is the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies, which generally take on the form of courts' influencing the outcome of general elections to expand or solidify their influence by

84. *Id.* at 25.

85. *Id.* at 29-31.

86. *Id.*

87. *Id.* at 33-34.

88. *Id.* at 7-9; Sameer Asad Qureshi, *Election Commission of Pakistan and Others vs. Pakistan Tehreek-i-Insaf and Others*, 2-4 (2024), <https://sahsol.lums.edu.pk/sites/default/files/2024-09/Election%20Commission%20of%20Pakistan%20v.%20Pakistan%20Tehreek-e-Insaf%20-%20PLD%202024%20SC%20267.pdf>.

reinterpreting laws and renegeing on precedent in a favorable way that maximizes the potential for courts to increase their influence, and nowhere is this as apparent as it is in the noted case.⁸⁹

In the noted case, the Court erroneously reads sections 208(5) and 215 of the Act and sidesteps its own precedent to grow its influence by appeasing its long-term ally, Pakistan's military-industrial complex.

For much of Pakistan's turbulent history, the country's judiciary was seen as a junior partner of the military, a tool used to legitimize its more direct forays into the political sphere. It offered legal justification when military generals seized power from civilian governments in 1958, then in 1977 and again in 1999. They also provided legal cover in the 1990s when the military dismissed two governments, both led by former Prime Minister Benazir Bhutto. In the following decade, when a chief justice of the Supreme Court began to challenge the state's use of power, the country's military ruler, Gen. Pervez Musharraf, suspended the justice.⁹⁰

To meet the whims of its military overseers the judicialized Court applied a functionalist approach in the noted case. It gave expansive, unenumerated powers to an essentially procedural administrative agency.⁹¹

The Court adhered to the status quo by executing the will of Pakistan's military-industrial complex by deviating from its own established precedent of *Bhutto*, which held that the withholding of a potential party's electoral symbol violates Article 17(2) of the Constitution.⁹² The Court did not address arguments of whether or not PTI had their constitutional rights infringed and chose in a one-paragraph explanation to proclaim that the two cases were so dissimilar that the same precedent could not be applied even though the main legal issue revolved around Article 17(2) of the Constitution in relation to political party symbols.⁹³ The Court's deviation in precedent from *Bhutto* demonstrates

89. Ran Hirschl, *The Judicialization of Mega-Politics and the Rise of Political Courts*, 11 ANN. REV. OF POL. SCI. 1 (2008).

90. Christina Goldbaum and Salman Masoo, *Pakistan's Powerful Military Faces New Resistance from Courts*, N.Y. TIMES, May 31, 2023.

91. *Tehreek-e-Insaf* 38 PLD (SC) at 22-28 (Pak.); Hirschl, *supra* note 89 (Hirschl explains that the judicialization of politics has taken on four different forms, the first being the functionalist approach. The functionalist approach describes the judicialization of recent decades as the result of the proliferation in levels of government, and the corresponding emergence of a wide variety of semi-autonomous administrative and regulatory state agencies. According to this approach, independent and active judiciaries armed with judicial review shape the powers that these agencies have in order to in turn expand their own influence.).

92. *Tehreek-e-Insaf* 38 PLD (SC) at 29-31 (Pak.).

93. *Id.*

the functionalist approach to the judicialization of politics, where independent and active judiciaries armed with judicial review insert themselves in cases involving political power to grow their own influence, by misapplying laws and side-stepping established precedent.⁹⁴ The Court saw the noted case as an opportunity to strengthen the position of its military overseers and, by extension, their own, by making sure that the upcoming elections would go uncontested by the military's strongest political opponents, PTI; the Court's erroneous reading of section 208(5) and section 215 of the Act was in pursuit of this aim. Textually these statutes only confer onto the ECP the ability to levy fines at political parties who fail to certify their intra-party elections and do not allow the ECP investigatory powers to determine if certifications of intra-party elections tendered to it are legitimate. Their constitutional limits bind them only to being an administrative unit.⁹⁵

The unforeseen consequence of this decision is that it did not have its intended consequences. The PTI, being stripped of its electoral symbol and with all of their candidates running as independents (without their iconic cricket bat logo on the election ballot tickets next to their names), was still able to win the most seats of any political party, although not enough to form a majority.⁹⁶ One could only imagine how many more votes the PTI could have collected if they had not been unconstitutionally stripped of their electoral symbol. The failure of the military-industrial complex to snuff out their opponents has given more power and freedom to their political opponents to be heard on the national stage, and also has given the judicial branch of government new tools to interpret and provide unenumerated powers to agencies that they have purview over, which could in turn increase the judiciary's influence, and by increasing their influence, they may eventually become a coequal branch of government, which would allow for the stabilization of Pakistan's burgeoning democracy.

V. CONCLUSION

This decision may appear to have negative reverberations for years to come through delegitimizing the judiciary's power and authority while simultaneously allowing the military-industrial complex to continue its rule uncontested with its corrupt and authoritarian tendencies. However,

94. Hirsch, *supra* note 89.

95. *Tehreek-e-Insaf* (2024) 38 PLD (Peshawar High Court) at 14-23 (Pak.).

96. Madiha Afzal, *Pakistan's Surprising and Marred 2024 Election, and What Comes Next*, BROOKINGS (Feb. 29, 2024), <https://www.brookings.edu/articles/pakistans-surprising-and-marred-2024-election-and-what-comes-next/>.

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in burgeoning democracies like Pakistan, it is only when each branch of government is given a coequal share of power that one can hope that liberty and freedom will flourish. With each subsequent judicialized act the military-industrial complex succeeded to the judicial branch they also unwittingly ceded a share of their power. If, in the alternative, the military-industrial complex chose to act only in their executive capacity by violently suppressing their political opponents, they would have been wholly successful, and what would have remained would have been an unworkable democracy. With political opponents being silenced by quasi-judicial means, there is at least an opportunity for each branch of government to covertly gain more power, which in turn leads to an equal share of power between the different branches of government.

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* © 2025 Semaite Abiy, J.D. Candidate 2026, Tulane University Law School. The author is grateful to his undergraduate International Relations Professors, Rachel Ellett and Beth Dougherty, for their unwavering guidance and support, and would like to thank the hardworking members of the *Tulane Journal of International and Comparative Law* for all their time and dedication put into the publication of Vol. 33, Issue 2. In addition, the author thanks his family and friends for their unfailing support.