

REFLECTIONS ON THE DISSOLUTION  
OF THE NATIONAL ASSEMBLY

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## SOME REFLECTIONS ON THE DISSOLUTION OF THE NATIONAL ASSEMBLY

By Senator Prof. Khurshid Ahmad

April 18th, 1993 would go in the history of Pakistan as a black day. The directly elected National Assembly was dissolved by the President for the third time, — within a short span of five years, by resort to his discretionary powers. The nation was stunned. Pakistan's image abroad was given a rude shock. Whatever little good name had been achieved in the past was tarnished, both at home and abroad. Doubts began to be openly expressed about the future of democracy in the country. All the surveys that have been conducted within the country suggest that between 60 to 70 percent of the people interviewed have expressed disapproval over this action, only less than 30 percent have expressed any degree of agreement.

With the dissolution of the National Assembly, Senate is left as the only elected national forum available to discuss national issues. It is heartening that a special session of the Senate has been requisitioned to discuss the situation created by the dissolution of the National Assembly. The Senate provides a high level platform for discussion on this action which has grave constitutional, legal, political and moral implications. The High Court of Lahore and the Supreme Court of Pakistan are also seized of the issue. It is a very critical national moment. It is hoped the debate on this issue at elected and other platforms would help clarify the issues involved and enable the nation to finally resolve the question of the future political order of the country.

Before we come to the alleged rationale for the presidential action it may be worthwhile to make a few observations about the overall political context in which this action has taken place.

It is unfortunate that the democratic process has again and again been disrupted in Pakistan, on one pretext or the other. The first major blow to democracy came when constitution-making was delayed, the elected Prime Minister was dismissed and the constituent Assembly dissolved by Mr. Ghulam Mohammad, the then Governor General of Pakistan. The superior courts tried to save the political process but only by pursuing the path of compromise: while the dissolution was upheld on the basis of the dubious law of necessity, the need for a new assembly was also emphasised to bring the democratic process back.

The first Constitution of Pakistan was adopted on 23rd March 1956. Instead of holding the first national elections scheduled for October 1958 and later postponed to February 1959 direct military rule was imposed on the country in October 1958. An effort was made to abridge and deform the democratic process and go for a system of "basic" and "controlled" democracy. It did not work. Field Marshal Ayub Khan had to go, but with him also went the system he had established. He crucified the system by his own hands by handing over the reins power to the then Commander-in-Chief instead of inducting the Speaker of the National Assembly as Acting President, as provided in his own constitution. Yahya's martial law witnessed the bifurcation of Pakistan." East Pakistan was lost. The Constitution of 1973 represented a new national consensus,

yet it was never allowed to become fully operational. The country was ruled under emergency laws and through suspension of human rights. Six amendments were made in the Constitution which mauled and j mutilated it. The large scale rigging in 1977 elections created a national crisis, whose final beneficiaries were the civil and military bureaucracy of the country. Martial law j reigned from July 1977 to end 1985.

The revival of Constitution in 1985 took place alongwith a multitude of amendments in the Constitution. Some of these amendments resulted in bestowing certain discretionary powers to the President which are normally looked upon as inconsistent with the parliamentary system of government. While the need for a proper system of checks and balances is undeniable, no political system can operate smoothly with two parallel poles of political power. This is bound to degenerate into diarchy. Eighth amendment has certain healthy elements but those provisions which deal with the distribution of power between the President and the Parliament were a compromise made in view of the specific situation that obtained in 1985. It is time this arrangement is reviewed in the light of the experience of the last seven years and a real balance in the distribution of power be made to ensure effective working of a parliamentary system.

Powers given to the President in Article 58(2) have been used by the President thrice during the last five years. First by the late Gen. Ziaul Haq in May 1988 and twice by President Ghulam Ishaq Khan in August 1990 and April 1993. Courts were invoked to examine this action and the higher judiciary held that they action taken by Gen. Zia was unjustified. It also observed that the President was not free to dissolve the Assembly merely on the basis of his subjective opinion, or personal preferences. He is bound by the Constitution to arrive at a judgment on the basis of facts which could be objectively ascertained and were also open to judicial review, It was also held that mere break down of law and order or corruption and nepotism are not enough reasons for the dissolution of the Assembly and the consequent derailment of the democratic process. The courts laid down that the Presidential discretion had to be exercised in the light of an objective criteria and the only situation that justifies dissolution of an elected national assembly is one in which a real break down of the constitutional machinery had taken place, making it impossible for the government to operate under the Constitution. The Supreme Court in Ahmad Taria Rahim versus the Federation of Pakistan, which related to the dissolution of the National Assembly in August 1990, upheld the dissolution without in any way relaxing the criteria. It did not endorse all the elements of the justification that was given by the President for the dissolution of the Assembly. Most of the points in the said justification were looked upon by the court as irrelevant It justified the action on the basis of two points only i.e. (a) horse-trading in the National Assemblies and consequent loss of their credibility, and (b) the grim crisis in the relationship between the Federal and the Provincial Governments, which had adversely affected the actual working of the constitution and other institutions which enabled the Federation and the Provinces to operate in harmony with each other.

The action taken by President Ghulam Ishaq Khan on 18th April 1993 has to be reviewed and examined in this constitutional and political context.

The Constitution of Pakistan, as it stands today, represents a particular variant of the parliamentary system of government. It does not provide for a Presidential system or a President, who is the effective executive head of the government directly controlling policy-making and/or legislation in the country. While it is correct that it represents a deviation from the Westminster model, the British model not being the only model for a parliamentary form of government. Even the Indian Constitution has certain unique aspects. Other parliamentary forms that are being pursued in countries like France, Australia, Malaysia, Canada and others represent different varieties of the parliamentary model. In the same way Pakistani model is also unique. It is very clear that the President under the Pakistani Constitution is the head of the State, a symbol of the unity of the Federation, yet that the business of government has to be run only in his name by a Council of Ministers headed by the Prime Minister, who are responsible to the Parliament. While the President has a number of discretionary powers which include certain key-appointments and also the right to dissolve the National Assembly in certain circumstances and appoint a care-taker government these discretionary powers represent specific powers, to be more precise, specific exemptions and not the general rule. The normal business of the government has to be run by the Prime Minister and his Cabinet responsible to the Parliament. The President has to normally act on the advice of the Prime Minister particularly in respect of all other matters where he does not enjoy specific discretionary authority. Article 48(1) clearly provides: "in the exercise of his functions the President shall act in accordance with the advice of the Cabinet or the Prime Minister."

The President has the right to ask the Cabinet to reconsider its advice and has also the right to send back a piece of legislation approved by the parliament for reconsideration. But once an advice is given after reconsideration or a piece of legislation is sent by the parliament after reconsideration the President has no choice but to accept and assent. It is the obligation of the Prime Minister to keep the President informed about major developments and decisions, yet the seat for decision-making is the Cabinet and the Parliament. The principle of Prime Minister's holding office "in the pleasure of the President" has been conditioned in Article 91(5) which lays down: "The Prime Minister would hold office during the pleasure of the President but the President shall not exercise his powers in this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of members of the National Assembly, in which case he shall summon the National Assembly and require the Prime Minister to obtain a vote of confidence from the Assembly." This makes it very clear that it is not the personal pleasure of the President which is decisive. "Pleasure of the President" would mean the confidence of the National Assembly and if the National Assembly expresses confidence in the Prime Minister, the President has no authority to over-rule or dismiss the Prime Minister. This means that the constitution is based on the principle of "responsibility of the parliament" and not "absolute or personal pleasure of the President". In this respect it may be worthwhile to refer to a major work entitled. *The Constitutional Law of India, Vol. 1* edited by Mr. M. Hidayatullah, former Judge of the Supreme Court of India. In this major work of reference Dr. Mohammad Ghaus observes:

"To appreciate the position of the President properly it has to be noted that in a responsible government the real repository of executive powers can only be the agency responsible to the parliament. According to Article 75(3) which enshrines the essence of parliamentary system of government the Council of Ministers shall be responsible to the House of the People. So the President who is not responsible to parliament can never be the repository of real executive power." (p. 751).

"Ministerial responsibility saves the head of the state from entering the market place of politics. Lord Esher brought this fact into sharp focus when he said "If the Cabinet exercise his own judgment, the ground could not stand for long. The head of the state must, therefore, accept, ultimately the decision of the Council of Ministers." (p. 751)

The Indian judiciary has expressed a similar opinion. Justice Krishna Iyer in *Shamsher Singh*. (Supra, N. 97 at 2224,) quoted in "The Constitutional Law of India" (p. 751-752) observes:

"The President of India is not at all a glorified cipher. He represents the majesty of the state, is at the apex, though only symbolically, and has rapport with the people and parties, being above politics. The imprint of his personality may chasten and correct the political government, although the actual exercise of the functions entrusted to him by law is in effect and in law carried on by his duly appointed mentors, i.e. the Prime Minister and his colleagues."

Despite certain differences in the position of the President in the Constitutions of India and Pakistan it is undeniable that the final decision-making on matters and policies of legislation, as envisioned in the Pakistani Constitution, rests with the Cabinet and the Parliament This has also been borne out from the judgment of the higher judiciary of Pakistan. Justice Rustam S. Sidwa, his separate judgment in *Ahmed Tariq Rahim versus Federation of Pakistan* observes (PLD, vol. XLIV, 1992, 1 S.C. 6, 1980-81);

"The Pakistan Constitution framed in 1973, as amended up-to-date of the dissolution of the assemblies, is basically federal in character, partaking of the British Parliamentary system, with the executive having the primary responsibility for the formation of the government policy and its implementation through the process of law subject to its retaining confidence of the legislature. The executive has to act subject to the control of the legislature....."

"Under article 91, there is Cabinet of Ministers, with the Prime Minister as its head, to aid and advise the President in exercise of his functions. In article 48(1) the President in exercise of his function, has to act in accordance with the advice of the Cabinet or the Prime Minister without prejudice to his right under article 48(2), to act on his discretion, in respect of any matter in respect of which he is

empowered to do so. The President is thus a fairly strong constitutional head of the executive, with the real power vesting in the Cabinet and the Prime Minister.....

"The Cabinet is, therefore, the guardian-knot which binds the legislature to the executive both in the federation and in the provinces. The Cabinet enjoying majority support in the legislature controls both the legislative and the executive functions. Whether they are agreed on fundamentals and represent a collective will of the nation, they control policy in all its forms. All these provisions, bring out a clearly federal character of the Constitution based on the Parliamentary System." –

In the light of the above discussion it can be submitted that while the former Prime Minister, Mian Muhammad Nawaz Sharif, failed on a number of counts, particularly in implementation of the LTI manifesto, on which he was given by the electorate a mandate to rule. He also failed to fully respect the norms and etiquettes of the parliamentary form of government. He was expected to keep the President informed on all important national issues but his equation with the President remained erratic. There were strong objections to the way decisions were made by him arbitrarily and in disregard of Cabinet or parliamentary procedures. As far as Cabinet's real accountability before the parliament is concerned, much was left to be desired. Yet lapses on these counts do not justify violations of the Constitution by other authorities of the State. It is also a reality that President's intervention in the system has violated the threshold within which the constitution obliges him to operate. It is very unfortunate that there was crisis of confidence between the Prime Minister and President and this impaired the democratic process and the constitutional arrangement.

The President, if he was so terribly dissatisfied with the performance of the Cabinet had every right to ask the Prime Minister to go to the Assembly and take a fresh vote of confidence. He had every right to send message to the Cabinet or the Parliament He could also have called the National Assembly or a joint session of the Parliament and addressed the same about his differences with the government. All this was within the parameters of the constitution. But to dissolve the National Assembly arbitrarily and throw the entire country into a constitutional crisis can have no justification. The Gazette Notification spelling out reasons for the dissolution of the National Assembly is full of generalities and statements about which the courts have already upheld that they do not constitute valid grounds for the dissolution of the Assembly. The anomaly increases manifold when one recalls that the President had paid tributes to the Assemblies in both of his addresses made to the Joint Session in November 1991 and finally in December 1992. A comparison of the speech of the President made to the joint session in December 1992 and the speech he delivered on 18th April 1993 and contents of the Gazette Notification of 18th April leave one with the impression that either truth was not being told' in December 1992 or definitely it is not being told in April 1993. It is impossible to believe that all the changes had occurred in the last three months which metamorphosed the entire system.

Coming to the contents of the charge-sheet against the Prime Minister, one is constrained to say, particularly in the light of the nation's reaction to earlier dissolutions and the judgments of the courts that the President's dissolution order does not seem to be in keeping with the constitutional and the legal imperatives. It is very surprising that an experienced conscientious person like the present head of the State, in his speech of the 18th April made certain statements which cannot be justified on any count. His reference to the differences with the Prime Minister on the appointment of COAS violates the constitutional and political principle of secrecy of the ministerial advice. His reference to the complaint of the former Chief of Staff's wife Begum Asif Janjua, something not yet proved and still under investigation by a high powered judicial commission, smacks of partiality. His criticism on privatisation and reference to revival of public sector with reference to the current political debate in USA is totally understandable. Here the speech writer has confused between 'public sector' and 'public services'. The whole US debate is about strengthening of the public services and not any increase in the role of the public sector. The two represent different categories and it is unfortunate that in the speech of the President the two were mixed up.

Analysing the dissolution order it is very clear that the first ground about mass resignations lacks credibility because under the Constitution resignations should be given to the Speaker, through whom alone they are desired to be sent to the Election Commission. President does not come in anywhere.

As to the grave internal and international problems it is the legislators and the cabinet that are responsible. On the basis of likes or dislikes of policies or persons the Constitution does not empower the President to dissolve the Assembly. The speech of the Prime Minister on 17th April was in bad taste and highly geared to a political campaign he wanted to launch. Even that does not provide a very valid basis for the dissolution of the Assembly. The question of relationship between the Federation and the Provinces is relevant and enough evidence that there was a real crisis and an effective break down of relationships between the Federation and the Provinces is only conspicuous by its absence.

Maladministration, corruption and nepotism, however, condemnable are not valid reasons for dissolution of Assembly. The alleged reign of terror referred to in ground (e) relates more to the era of the former Chief Minister of Sind who operated with the full support and patronage of the President. Even the question of wastage of public resources and use of public money for non-sanguine purposes however condemnable cannot be invoked as a ground for dissolution.

The whole charge-sheet does not carry a single allegation against the Assembly as such and that is why it would be very difficult to believe that this action has been taken within the parameters and norms laid down by the Constitution, law and ethics. It is a tragic development and it is hoped the country would be saved of any future crisis by respecting the judgment of the Supreme Court when it comes. If the judgment provides for the restoration of the Assembly it should be done



without any reservations and if the judgment approves the action then new elections should be held within the prescribed constitutional time limit. This is the only way to come out of the crisis.

The dismissal of the Government and the dissolution of the National Assembly at mid-term, however, has brought a very bad name to Pakistan all over the world. We have yet to see a single positive comment in the world press! It may be help glance through some of the comments that have appeared in the world press:

The Daily Telegraph. London, writes editorially (April 21, 1993):

### **DEADLOCK IN PAKISTAN**

The President's arbitrary behaviour will damage Pakistan's image at a time when the ending of the Cold War has already deprived the country of much of its strategic value to the West. To the outside world there is little difference between the ousting of an elected government by military coup d'état as in the past or its dismissal by a civilian-president. Both betray a volatility that will not reassure foreign investors.

On the first occasion there were reasonable grounds for presidential intervention, the Pakistan government's minority status in parliament had reduced the legislative almost to a standstill. This time the reasons are more suspect in dismissing Mr. Nawaz Sharif as Prime Minister and dissolving the National Assembly. President Ghulam Ishaq Khan has removed a government whose comfortable majority had enabled it to push through an impressive programme of economic deregulation. The President would argue that by exercising the prerogatives he inherited from General Zia-ul-Haq, he has prevented the reimposition of martial law by the military. In his struggle with Mr. Sharif, however, he appears to have been motivated more by self-interest than the national good. ...

The Financial Times. London, comments editorially as follows (April 20, 1993):

### **DEMOCRACY, PAKISTAN-STYLE**

"It does not say much for the development of democracy in Pakistan that all three civilian governments since the lifting of martial law in 1985 have been sacked by a president acting with the consent, though on this occasion apparently not the active co-operation of the military. President Ghulam Ishaq Khan has tarred the dismissed Prime Minister, Mr. Nawaz Sharif, once his protégé and now his victim, with the same brush as Ms Benazir Bhutto, whose government he removed in 1990. Then, as now, the charge was corruption. But this time the president's motive is clearly to preserve his ultimate sanction over governments.

"It is perhaps too much to expect Pakistan's elected politicians to develop stature when their powers are so constrained. Those foreign companies which have been cautious about Pakistan



despite its encouraging reforms may thus have been proved wise and aid donors, who meet this week in Paris, will have to consider whether Pakistan can fulfill economic promises given the country's evident political fragility.

Editorial comments of The Independent London (21 April, 1993) are as follows:

### **DEMOCRACY IS THE LOSER IN PAKISTAN**

"The sacking of Prime Minister Nawaz Sharif of Pakistan by President Ghulam Ishaq Khan is only the latest manifestation of the country's apparent ungovernability. The reasons given - corruption, subversion and nepotism - are the same as those cited for the removal of Mr. Sharif's predecessor, Benazir Bhutto, in 1990.

"The underlying cause of Pakistan's history of failure as a political entity is common to much of Asia, Africa, and even Italy, the inability or refusal of the governing classes to put the country's interests before their own. There is ample evidence around the Third World that the people want democracy. But as long as politicians and generals continue succumbing to the temptation to feather their own nests and buy support, democracy will never take firm root. ...

"The governance of Pakistan has been described as a triarchy, consisting of the army, the president and the prime minister. Cynics might say they are bound together by a common desire to keep democracy at bay. ..."

The Economist London, observes: (May 1, 1993):

### **BROKEN PROMISES, BROKEN CHAIRS**

'As Pakistan plays out its political crisis, the plot has taken another twist. The wily old president, Ghulam Ishaq Khan, who temporarily joined up with the opposition leader, Benazir Bhutto, in order to get rid of the prime minister, is now scheming against her, too. She is furious at the betrayal; and supporters of the sacked Prime Minister, Nawaz Sharif, have resorted to fisticuffs. Pakistanis are used to politicians behaving badly; but even they are shocked at this week's outbreak of trickery and thuggery.

"A verdict is due next month. If it upholds the president's decision, elections will go ahead on July 14th. If it does not, anything might happen. Pakistanis know that the army is watching the chaos with disgust"

The Far Eastern Economic Review. sums up its verdict on Pakistan's predicament: (29th April 1993):

"Pakistan has seen the curtain fall on the third act of a political tragic-comedy which began in the mid-1980s. In the late evening of 18 April, a solemn looking President Ghulam Ishaq Khan dismissed the elected Prime Minister Nawaz Sharif. ...

"In all three cases the incumbent president charged the government with corruption, nepotism and maladministration and promised fresh elections. The presidential actions, though strictly in accordance with the constitution, have been described by many observers as administrative or constitutional coups. More significant, each sacking of an elected government has plunged the country's politics into deeper turmoil."

The reaction on the international political scene has naturally been dismal - Pakistan's image has once again been tarnished and blackened because {of the actions of her own leaders!

The economic climate has also been affected very adversely. The stock; exchange has nose-dived. Foreign investments have stalled. Depositors in foreign exchange accounts have become shaby. Withdrawal of foreign exchange has begun; Exports have been adversely affected and economic uncertainty has beclouded the entire economy.

These are very serious challenges and the care-taker government must take effective steps to save the situation from further deterioration. It is also very strange that such a large care-taker government has been formed with 62 ministers, which is a record figure in Pakistan's history. Earlier two care-taker governments had only 17 to 19 ministers respectively. People fail to understand the criteria on which selection of ministers has been made. The care-taker government lacks credibility expertise and leadership. It cannot be projected as a Cabinet of national consensus. It should not try to play beyond its mandate: It has only one task to accomplish and that is: holding of elections according to the schedule.

Finally, I would like to submit that all political parties and forces in the country should make maximum efforts to avoid clash and confrontation. Polarization has already gone too far. There is an urgent need for dialogue and rapprochement.

Democracy can only thrive if all the actors are prepared to respect the rules of the game. Moderation and tolerance are the most important principles of democracy and respect to them can bring us back to the healthy working of the democratic process.

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