

WHERE IS THE LEGALITY OF
PRESIDENT'S REFERENCE
TO THE SUPREME COURT?

PRESS RELEASE

Rao Muhammad Akhtar - Press Secretary

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PROF. KHURSHID AHMAD



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Member Senate of Pakistan

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Islamabad (July 19, 2005): In a statement released to the press on July 19th 2005, MMA Senator and Jamaat-e-Islami's Deputy Chief, Prof. Khurshid Ahmad, has expressed his strong reservation on the legality as well as propriety of President Pervaiz Musharraf's reference to the Supreme Court of Pakistan under Article 186 of the Constitution in respect of the Hisba Bill passed by the NWFP Provincial Assembly with overwhelming majority.

"This Article of the Constitution", Prof. Khurshid Ahmad said, "provides the President with an opportunity to seek prior advice of the Supreme Court in respect of matters related to the discharge of the functions that are his direct responsibility under the Constitution". He further said that it is not a kind of a free-for-all type of provision where the President may seek Supreme Court's opinion on any legal matter, under the sun. He emphasized that "Public importance" has to be understood in relation to the constitutional responsibilities of the President, and not any academic issue.

Substantiating his point of view the Senator said that under this Article all the eight reference that have been made to the Supreme Court in the past directly related to the Constitutional responsibilities of the President. The only reference that related to a provincial issue was made by Ghulam Mohammad which sought to find out whether that Provincial Assembly was rightly dissolved or not. According to Prof. Khurshid Ahmad, the position with respect of the Hisba Bill passed by the NWFP Provincial Assembly is a very different. Here the Assembly has passed a bill under its constitutional authority because in respect of administrative courts or Provincial Ombudsman it is the exclusive prerogative of the Provincial Assembly to legislate. It does not require any prior permission or otherwise any input or intervention from the President or the Federal Government, at any stage.

Prof. Khurshid Ahmad further emphasized that the Provincial Government is empowered to pass any bill within its constitutional jurisdiction and the Governor is bound by the Constitution to either give his assent or send it back to the Assembly for reconsideration. He is obliged to give his consent to a bill approved second time by the Assembly in whatever form. "The constitution does not" Prof. Khurshid Ahmad said, "empower the Governor to refer any matter to the Supreme Court under Article 186 and there is no constitutional provision which entitles the President to seek advice on behalf of the Governor, who is expected to use his own mind and judgment."

"Prima facie it is very clear that reference to the Supreme Court is devoid of legal vires. I would therefore suggest that the President should withdraw this petition and should not overstep his constitutional limits and obligations", he concluded.
