

**RESEARCH PAPER****President of Pakistan: Analytical Study of the Vagueness in the Articles of the Constitution of Pakistan****¹Ali Raza Laghari*, ²Shabana Kausar and ³Abdul Salam Soomro**

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***Corresponding Author:** aliraza.laghari@usindh.edu.pk**ABSTRACT**

This research study specifically covers the comparative analytical study of the articles of the Constitution of Pakistan and India which are relevant with the President with main focus on the Constitutional drawbacks, vagueness in the relevant articles which may cause Constitutional crisis at any time. In this regard comparative analysis of the articles of the Constitution of Pakistan and India has been given. To conduct this research qualitative doctrinal methodology has been applied and utilized data collection methods such as review of relevant documents constitutional provisions and case laws. Through this method this researcher reached on a conclusion and proposed solutions to address the vagueness in the provisions of the Constitution of Pakistan. From this research it appeared that on many issues Constitution of Pakistan is silent and some articles are vague in language need amendment and interpretation therefore there is need of amendment and interpretation in such articles.

KEYWORDS: Comparative Study of the Constitutions, President of Pakistan, Vagueness**Introduction**

After independence Pakistan was governed under "Government of India Act 1935" as adopted by the Constituent Assembly of Pakistan which was performing functions of federal legislature and facing main task to frame Constitution. Before it could finalize draft of the Constitution on 24th October 1954 Constituent Assembly was dismissed by Governor General Ghulam Mohammed. In 1956 the second Constituent Assembly of Pakistan passed the first Constitution and was enforced on 23rd March 1956 but after two years on 7th October 1958 this Constitution was abrogated and legislative Assemblies were dissolved by General Sikander Mirza. He dismissed the Central and Provincial Governments and proclaimed Martial Law. With gap of almost four years on 8th June 1962 a new Constitution was came into force. However this Constitution too could exist only till 1969 when General Yahya Khan took over all the powers and assumed the office of the President of the country. The Government machinery had to run according to the Constitution of 1962. General Yahya could not handle the situation in the country and on 21 December 1971 Z.A Bhutto was given the power of Chief Martial Law Administrator. After four months of assuming powers he gave an interim Constitution to the nation. Current Constitution which is third Constitution of the country passed from National Assembly on 10th April and on 12th April 1973 President signed

Literature Review

If we look into the constitutional history of Pakistan we will found clashes between the vital interests of the main social groups (Masood). Three factors are most important for good or bad fortune of a nation as stated by former French Prime Minister

George Bidault: (i) Constitution, (ii) the way the Constitution is made to work and (iii) the respect it inspires. Constitutionalism in Pakistan faces grave challenges from multiple power centers existing parallel in the country and affecting the constitutional procedures according to their own interests (Khan, 2017). Constitution of Pakistan is soul of the national and living testament to Pakistan's democratic ideals however there is need of thoughtful reforms to address the contemporary challenges faced by the Constitution of Pakistan. To address disparities and promote equitable development continuous refinement is required. By Constitutional reforms with focus on enhancing the efficiency of Government Institutions and addressing legal ambiguities Pakistan can strengthen its constitutional foundation (Ahmad). Various amendments have been incorporated in the Constitution of Pakistan which mainly includes 8th, 13th, 17th and 18th amendments. In 8th and 17th amendments government was changed from Parliamentary system to a semi Presidential system; however in 18th amendment it was reversed. Constitutional history shows so many constitutional conflicts brought before the Supreme Court. Following are few cases involving constitutional conflicts mainly relevant with the President, government, election and powers. (Nawaz Sharif V. President, PLD 1993, Page 473) (PLD 2001 Central Statutes , Page 392) (Nawaz Sharif v. President, PLD 1993, Page 473). (Syed Ali Raza Asad Abidi B. Sardar Farooq Ahmad Khan Laghari, MLD 1994, Page 1852) (PLD 1994 SC 738) (Rafiq Tarrar V. Acting Chief Election Commissioner, PLD 1998, Page 461) (Aftab Mirani V. President, SCMR 1998, Page 1863) (M.P Khan and another V. Justice (R) M. Rafique Tarrar SCMR 1999, Page 90) (Watan Party Case PLD 2003, Page 74) (Pakistan Lawyers Forum V. Federation of Pakistan and other, PLD 2004, Page 130) (PLD 2001 Central Statutes , Page 392) (Referendum Order 2002 PLD 2002 Central Statutes Page 218), (Hussain Ahmed v. General Pervez Musharraf, PLD 2002, Page 853) (Wajihuddin Ahmad v. Chief Election Commissioner, PLD 2008, Page 25) (PLD 2008 SC, Page 13) (Syed Ali Raza V. Ghulam Ishaq Khan, President, PLD 1991, Page 420) (Nawaz Sharif V. President, PLD 1993, Page 473) (Zafar Ali Shah v. General Pervez musharraf, PLD 2000, Page 869) (PLD 2001 Central Statutes , Page 392).

President of Pakistan, qualification and procedure of election:

President is Head of the State and represents unity of Republic. Article 41 to 49 of the Constitution covers the topics relevant with the President including his election, powers and removal etc. Article 41 describes required qualification, according to this Article Presidential candidate should be;

- i. Muslim
- ii. 45 years old
- iii. Qualify to be elected as member of the National Assembly

Election procedure is prescribed in the second schedule and the Electoral College consists of:

- i. Members of National Assembly and Senate; and
- ii. Members of the Provincial Assemblies

According to same Article i-e 41 before the expiry of the term; Presidential election should be held in the last two months. However if National Assembly is dissolved and election cannot be held due to its dissolution; election is required to be conducted after general election of the National Assembly but for this thirty days time period is fixed. In the situation if a sudden vacancy arise for the office of the President election is required to be conducted within thirty days from the date of vacancy. Again if there is

same situation i-e National Assembly is dissolved and due to its dissolution election cannot be held, Article 41 of the Constitution states that election shall be held within thirty days after the general election.

According to second schedule conducting Presidential election is responsibility of the Election Commission of Pakistan. In this process Chief Election Commissioner serves as Returning Officer, for meetings of the Parliament and Provincial Assemblies Presiding officers are appointed by the Election Commission of Pakistan. For conducting Presidential election a schedule is issued which covers the date and place for submission of nomination papers, scrutiny, withdrawals and holding polls. Before the last date a candidate may submit his nomination paper duly signed by him and proposed and seconded by the member of the Parliament or Provincial Assembly. Chief Election Commissioner conducts scrutiny of the nomination forms and if after scrutiny only one person remains validly nominated that person shall be declared as elected otherwise names of the validly declared candidates shall be announced by notification. After completion of notified time period for the withdrawal of the forms polling shall be conducted through secret ballot at Parliament and each Provincial Assembly, this process is to be supervised by Chief Election Commissioner. Members present at Parliament House or respective Provincial Assemblies shall receive ballot paper and shall exercise his vote personally.

After completion of voting each Presiding Officer shall count the votes of each candidate and shall communicate result to the Chief Election Commissioner. On receiving whole result from all presiding officer votes shall be compiled by the Chief Election Commissioner; for this following method shall be applied.

- i. Total votes cast in the Parliament
- ii. Votes cast in each Provincial Assembly multiplied by the total seats in the Provincial Assembly for the time being having the less seats and divided by the total seats in the voter's Provincial Assembly; and
- iii. Number of votes in accordance with above given formula received from each Provincial Assembly shall be added to the votes secured in the Parliament

The candidate securing largest number of votes in accordance with above given method of compilation shall be declared as successful. Soon after announcement by the Chief Election Commissioner; result shall be declared by the Federal Government through notification. Presidential election cannot be challenged (Article 41 of the Constitution of Pakistan). As above prescribed qualification President should be Muslim for the reason perhaps that for in a State which lay claim to being called Islamic Republic, its Constitutional head must be a person who should owe allegiance to the faith and who must reflect character, which is enjoined by Islam. Perhaps the logic behind the age is that the person who is a President should have experience, knowledge and observation on national and international legal and political situation, so that he can take decision with prudence.

Removal or impeachment of President of Pakistan

Constitution of Pakistan also provides mechanism for this. President can be removed or impeached on the following grounds.

- i. physical or mental incapacity
- ii. violating the Constitution or gross misconduct

In this regard Article 47 of the Constitution of Pakistan provides very comprehensive procedure. According to this Article this process can be initiated either in the National Assembly or Senate however for this a written notice of such intention is required to be submitted. In this regard not below than one half of the members of the House will submit notice of intention to move a resolution to the Custodian of their House. This notice shall include charge against the President. If such notice was submitted in Senate, Chairman Senate shall transmit it to the Speaker who shall cause to transmit to the President. For transmitting notice to the President there is three days time limit. After completion of this Constitutional procedural requirement meeting of the two Houses shall be summoned. However there is a limitation that the meeting shall be summoned within seven to fourteen days from the date of transmitting notice to the President. In this meeting charges against the President as prescribed in the notice shall be investigated or cause to be investigated. During the process of any such investigation or before the jointed sitting of the both Houses President shall have the right to appear. After consideration of result of such investigation; subject to following conditions if a resolution is passed; the President shall stand relinquished. (Article 47 of the Constitution of Pakistan).

- i. The resolution is to be passed in joint sitting of both Houses
- ii. Two third majority of the total members support this resolution
- iii. In passing the resolution it is declared that the President is unfit

In Mian Muhammad Nawaz Sharif case it was held that if President declines advice, he can be impeached. President takes oath under Article 42 to perform faithfully of Constitution that means on the advice under Article 48. Therefore, non compliance of its provisions amounts violation of the Constitution and misconduct (Nawaz Sharif V. President, PLD 1993, Page 473). However on 20 June 2001 General Pervez Musharraf as Chief Executive promulgated the President's Succession Order 2001 and declared the Office of the President as vacant and empowering Chief Executive to become President of Pakistan (PLD 2001 Central Statutes , Page 392) though the neither President Tarar resigned from the Office nor his term was expired. Chief Justice Irshad Hassan Khan administered oath of Office as President to Musharraf.

President also represents the unity of Republic. Therefore the President has to be a neutral person for all the political parties. A person who belongs to a political party is allowed to contest Presidential Election, the Constitution does not restrict politicians to contest such election but once such a person is elected as President of Pakistan he must rise above party politics to fulfill the requirements and expectations as Head of the State (Rizvi, 2005).

Being a symbol of the unity of Federation and neutral position President deserves highest respect. However if President take side of one or other party in the Assembly he may lose such image and may face criticism (Nawaz Sharif v. President, PLD 1993, Page 473).

The term Republic has nowhere been defined in the Constitution, and it is permissible as a rule of construction, to investigate what the ordinary meaning of that term is, and this is so because, a legislature must be presumed to use the term which it has not defined, in its ordinary sense. By the Republican form of Government" says Judge Cooly, "is understood a Government of chosen representatives of people; and it contrast on one side with a democracy and on the other one man rule as King, Emperor (Brohi, 1958). Federalism may be broadly described as a system of double government in same State. (Brohi, Fundamental Law of Pakistan, 1958). From the plain reading of the Constitutional provisions it appears that

- i. Non Muslim or less than 45 years in age cannot be President of Pakistan.
- ii. There is no bar to contest Presidential election subject to fulfillment of required qualification
- iii. Electoral College consists of both House of the Parliament and all Provincial Assemblies
- iv. Removal/Impeachment process of the President is to be held in the joint sitting of National Assembly and Senate

If these arguments were valid, would it not be strange:

- i. That our Constitution impliedly permits a person who is less in required qualification to become President which include even a non Muslim.
- ii. In the process of removal/impeachment The President can be condemned unheard which is in violation of the principles of justice.
- iii. Our Constitution is silent in certain situations.

These questions rose above required discussion and need to be addressed with research based discussion. This researcher has made an attempt to discuss and address above questions. In this regard comparison with other countries has also been discussed.

Material and Methods

To conduct this research qualitative doctrinal methodology has been applied and utilized data collection methods such as review of relevant documents constitutional provisions and case laws. Through this method this researcher reached on a conclusion and proposed solutions to address the vagueness in the provisions of the Constitution of Pakistan.

Questions on the qualification of the President and law

It has been held by the Lahore High Court that validity of the election of the Head of the State cannot be questioned before any Court (Syed Ali Raza Asad Abidi B. Sardar Farooq Ahmad Khan Laghari, MLD 1994, Page 1852) However if the action is demonstrated is malafide then notwithstanding the language used, the interference by the superior judiciary is fully justified. (PLD 1994 SC 738). In 1998 Chief Election Commissioner of Pakistan declared disqualified Mr Muhammad Rafiq Tarrar as the candidate for Presidential election. Lahore High Court held that for ascertainment of qualification of a candidate clause 2 of Article 41 and provision of Article 62 should be read together to judge eligibility of a candidate. The Lahore High Court held that while considering qualification under Article 62, disqualification cannot be considered or can affect the status of a candidate for the Presidentship of Pakistan because qualification and disqualifications are not interchangeable and at the time of filing nomination papers qualifications are required to be seen to declare a person as an eligible candidate for an office (Rafiq Tarrar V. Acting Chief Election Commissioner, PLD 1998, Page 461). This decision was upheld by the Supreme Court (Aftab Mirani V. President, SCMR 1998, Page 1863) In the process of scrutiny of same Presidential election nomination papers of two candidates were rejected by the Acting Chief Election Commissioner, on the ground that the nomination papers were neither proposed nor seconded as required under. The order of the Chief Election Commissioner was affirmed by the Lahore High Court. Against the order petitioners approached the Supreme Court but failed to find favour of the Court. The Court held " both the petitioners, who appeared in person could not substantiate

their case before us and failed to point out any illegality in the order impugned so as to justify interference by this Court (M.P Khan and another V. Justice (R) M. Rafique Tarrar SCMR 1999, Page 90).

On 30-4-2002 a referendum was held whereby General Pervez Musharraf was declared as President of Pakistan. This referendum Order 2002 was upheld by the Supreme Court (Watan Party Case PLD 2003, Page 74) Later this referendum was challenged, however Supreme Court also dismissed the same (Pakistan Lawyers Forum V. Federation of Pakistan and other, PLD 2004, Page 130). However on 20 June 2001 General Pervez Musharraf as Chief Executive promulgated the President's Succession Order 2001 and declared the Office of the President as vacant and empowering Chief Executive to become President of Pakistan (PLD 2001 Central Statutes, Page 392) though the neither President Tarar resigned from the Office nor his term was expired. Chief Justice Irshad Hassan Khan administered oath of Office as President to Musharraf. Prior to this General Ziaul Haq, General Ayub had assumed the Office of the President by way of referendum (Khan, 2017). On 8th April 2002 General Pervez Musharraf announced to hold referendum on 30th April 2002 for his Presidentship for next five years (Referendum Order 2002 PLD 2002 Central Statutes Page 218), the answer of the question was required to be answered by yes or no. In result of this referendum General Pervez Musharraf was declared as President for next five years. This referendum was challenged before the Supreme Court by way of filing Petitions but petitions were rejected by Supreme Court (Hussain Ahmed v. General Pervez Musharraf, PLD 2002, Page 853). It was first time in the history of Pakistan that on 1st January 2004 General Pervez Musharraf got vote of confidence from the combine session of National Assembly, Senate and all Provincial Assemblies. There was no such provision in the Constitution of Pakistan for President to get vote of confidence. Not only was this but prescribed Constitutional (Second Schedule of the Constitution) methodology for compilation and weightage was also violated.

Later in 2007 General Pervez Musharraf announced to contest Presidential election, at that time there was same Electoral College which elected General Musharraf for the his existing term. Numbers of petitions were filed in the Supreme Court in which vires of dual office law was challenged. (President to hold another Office Act 2004). It was also contended that outgoing Assemblies could not form a valid Electoral College to elect an incoming President and particularly the same Electoral College could not elect the same person twice as President (Khan, Constitutional and Political History of Pakistan, 2017). It was also argued that Musharraf has already served two consecutive terms as President and was barred under the Constitution to run for the third term (Article 44 of the Constitution). However nomination papers of General Pervez Musharraf were accepted by Chief Election Commissioner and all the objections were rejected. Presidential candidate Justice Wajihuddin Ahmed challenged the acceptance of nomination papers of General Pervez Musharraf in the Supreme Court.

Supreme Court conditionally allowed Presidential election subject to the decision of the Court and stayed the issuance of the final notification of the returned candidate. As per schedule Presidential Election was conducted on 6th October 2007 and General Pervez Musharraf was elected as the President of Pakistan official result was not declared. However later on 3rd November 2007 an emergency was imposed and PCO was promulgated. After imposition of emergency and issuance of PCO newly constituted Supreme Court on 6th November 2007 declared that an Injunction Order passed by the seven members Bench of the Supreme Court was void as they were not remained as Judges of the Supreme Court (Wajihuddin Ahmad v. Chief Election Commissioner, PLD 2008, Page 25). President of Pakistan was qualified for Presidential Election 2007. Interim order by the Supreme Court was vacated. (PLD 2008 SC, Page 13).

Acting President of Pakistan

In the situation of vacancy of the Presidential Office or his absence or inability; the Chairman Senate or in his absence Speaker has to perform the functions as an Acting President till the election of new President or his resumption in the Office. (Article 49 of the Constitution).

Vice President

In 1971 to 1973 there was an office of the Vice President of Pakistan. Mr Noorul Amin was the first Vice President of Pakistan. After promulgation of the Constitution of Pakistan 1973 this post abolished as there was no such post in the Constitution of Pakistan.

Speaker and Deputy Speaker

In the first meeting of elected members of the National Assembly after conduct of general election, Custodian of the House (Speaker) and Acting Successor Custodian of the House (Deputy Speaker) from the members of the Lower House are required to be elected by the companion Assembly Members. (Article 53 of the Constitution of Pakistan 1973). In the following situation the offices of Custodians shall become vacant if—

- (a) he resigns;
- (b) he discontinues as member (on disqualification or otherwise); or
- (c) he is removed,

In the situation of the dissolution of the National Assembly either on completion of term or otherwise custodian of the House (Speaker) shall continue in his office till election of new Speaker.

Chairman and Deputy Chairman of Senate

After duly constitution; Senate is required to elect Chairman and Deputy Chairman from among its members for three years. If the office of the Chairman becomes vacant or he is unable to perform his functions due to any reason Deputy Chairman shall perform his functions as an acting Chairman (Article 60 of the Constitution of Pakistan 1973).

Qualifications for membership of Parliament

Qualification to be member of the Parliament is given below.

- i. he should be a citizen of Pakistan
- ii. he should be not below than twenty five years old in the case of National Assembly and enrolled as voter
- iii. he should be not below than thirty years old in the case of Senate and enrolled as voter (Article 62 of the Constitution of Pakistan 1973).

Discussion

From plain reading of article 53, 60 and 62 of the Constitution of Pakistan it is very much clear that there is no specific qualification for the Chairman Senate or Speaker National Assembly

- i. There is no bar on non Muslim member to become Chairman or Speaker.
- ii. Required age to be member of the Senate is 30 and for National Assembly it is 25, hence a member having 30 years age or even a non Muslim can be Chairman of the Senate and in the case of National Assembly a member having 25 years age even a non Muslim can be Speaker.
- iii. Same is applicable in the case of Deputy Chairman Senate and Deputy Speaker. Article 60 of the Constitution speaks that after completion of the Senate in its first meeting Chairman and Deputy Chairman will be elected.

Though Chairman or Speaker can perform as Acting President but in no way the powers of the Acting President are less. We can understand that practically it may not be that a non Muslim 25/30 year old person becomes President but constitutionally it is not barred. As a citizen of a democratic country Pakistan no one may be opposing such position to be availed by a non Muslim member of the Parliament but here is just discussion on contradiction in Constitution of Pakistan. If a 25/30 years old Senate Chairman or Speaker becomes Acting President, can we expect mature prudent minded national or international decisions? Though such situation has not arisen but it does not mean that it cannot arise in future.

Not only this but there arise some other questions of law mentioned below which need resolution but Constitution is silent and possibly may arise in future and Supreme Court address these questions

- i. After Chairman, Deputy Chairman, Speaker or Deputy Speaker who will perform as an Acting President.
- ii. If Chairman Senate assumes the office as an Acting President and his term is also about to expire what will be the Constitutional position? Whether he will continue as an Acting President even that his term has expired or on expiry of term Senate Chairman will quit office of the President and Speaker will assume the office of the President?
- iii. In a situation when owing to death, resignation or other reasons the office of the Head of State becomes vacant and Chairman Senate or Deputy Chairman has not been elected, who will become Acting President? Expected answer may be Speaker but if National Assembly is also dissolved and it's outgoing Speaker is not available in the Country or due to sickness or otherwise he is unable to assume charge as Acting President or he is not alive who will be the Acting President?

Term of office of President

The term of the President of Pakistan as prescribed in the Constitution is five years; however he will continue to hold office until newly elected President enters upon his office. If President intends to resign from his office he can do so by writing to the Speaker.

Late President General Zia ul Haw entered upon his Office in 1985 for term of five years. But the Late President could not complete his term as he dies in 1988. Senate Chairman Ghulam Ishaq Khan assumed the Office as an Acting President and he contested election after resigning from the Office of Chairman Senate. The question raised was whether he would complete a new five years term or remaining period of late President General Zia ul Haq? Lahore High Court held that term of the Office of the President is five

years and there is no distinction in the President election on the occurrence of vacancy or otherwise (Syed Ali Raza V. Ghulam Ishaq Khan, President, PLD 1991, Page 420).

Constitutional position in India

In the Constitution of India it is very clear. Eligibility to contest the Presidential election is given below.

- i. He should be citizen of India
- ii. He should be 35 years.
- iii. He should qualify to be elected as member of the Lok Sabha (Article 58 of the Constitution of India).

In the absence of President the Vice President (Article 63 of the Constitution of India) discharges his functions. The Qualifications for Vice President are same as those for the President except that he should qualify to be elected as member of the Council of States (Article 66 of the Constitution of India). The Vice President is elected by both Houses. In Pakistan Chairman Senate is elected from its members. The term of the Office of the President (Article 56 of the Constitution of India) and Vice President is same i-e five years. If the President intends to resign from his Office he can do so by writing addressed to the Vice President (Article 56 of the Constitution of India).

The term of Vice President is five years (Article 67 of the Constitution of India): If Vice President intends to resign; by addressing to the President in writing he can do so. (Article 67 of the Constitution of India) However owing to death, removal, resignation or otherwise the Offices of President and his Acting Successor became vacant simultaneously the Chief Justice or any other senior judge of the Supreme Court of India will discharge the functions of the President (The President (Discharge of Functions) Act, 1969). In 1969 in India such situation was arise and Justice Muhammad Hidayatullah served as the Acting President. Hence in India for reasons mentioned below there is no likelihood of creation of Constitutional crisis; however there are such chances in the Pakistan.

- i. If Presidential office becomes vacant, Vice President can assumes the office as an Acting President
- ii. Qualification and term of the office of the Vice President is same, hence there cannot be any chance of conflict of qualification of both
- iii. If both Offices of these two Executives simultaneously becomes vacant the Chief Justice or any senior judge of Supreme Court may perform functions of the Office of the President

Further lacunaes in the Constitution of Pakistan

Electoral College for the election of the President is members of both houses and the members of the Provincial Assemblies but can there be election in the situation when Electoral College is not complete?

Senate is not subject to dissolution however in the case of dissolution of the National Assembly Article 41 describes that election will be held within thirty days of the general election. But Constitution is silent on the point of dissolution of the Provincial Assembly. In Presidential election of Musharraf, Khyber Pakhtunkhwa Assembly was dissolved but elections were held subject to final decision of the Supreme Court

notification of successful candidate was stayed. By this precedent following questions arise out,

- i. If there would have been more Provincial Assemblies dissolved Presidential election would be held? Would it be violation of the Constitution or not?
- ii. What would have been the situation if dissolved Assembly had been the Baluchistan Assembly
- iii. In the case of the dissolution of Baluchistan Assembly what formula for the calculation of the votes cast in the Presidential election would have been applied

However there is no answer of above questions in the Constitution of Pakistan. Supreme Court of Pakistan can provide guidelines when such situations arise.

Removal or impeachment of the President and violation of the principles of natural justice

The President is elected by the votes of the members of the National Assembly, Senate and the Provincial Assemblies. To challenge the validity of the election of the President is barred. (Article 41 of the Constitution 1973). On election as President seat of the member in Parliament or Assembly will become vacant (Article 43 of the Constitution of Pakistan 1973).

It means a candidate from Provincial Assembly also can contest Presidential election and if succeeded can becomes President. However he cannot be protected by members of the same Provincial Assembly or other Provincial Assemblies having casted vote to him as members of these Assemblies are not entitled to vote in the process of removal or impeachment of the President of Pakistan, though he may have secured more votes from the Provincial Assemblies, would it not be against the principles of natural justice?

If we look on the process of the election of the President there are total 696 votes (National Assembly 336 members, Senate 100 members each member have right of one vote and in Provincial Assembly strength of each Assembly is equal to lower strength of Assembly e.g Balouchistan Assembly has 65 members hence in the election of President each other Assembly have 65 votes, means all total votes of all the Provincial Assemblies are 260) and according to second schedule of the Constitution any candidate who secures largest votes shall be declared successful. If there are three or four candidates, the candidate who secures largest votes from them shall be declared as President.

For easy understanding we can take example of recent past Presidential election held in 2018. Three candidates namely Mr Dr Arif Alvi, Mr Aitzaz Hussain and Mr Fazal ul Rehman contested election. Dr Arif Alvi secured 352 votes and declared successful for the Office of the President. Details of the total seats and votes secured by the candidates are given below.

Total seats

- | | | |
|-----|-------------------|-----|
| i. | National Assembly | 336 |
| ii. | Senate | 100 |

iii. Provincial Assemblies 260

Total votes 696

Votes secured by the Presidential candidates are mentioned below.

i. Dr Arif Alvi 352

ii. Mr Fazal ul Rehman 184

iii. Mr Aitzaz Ahsan 124

Total casted votes 660

In view of above number of votes Dr Arif Alvi was declared successful as he got majority of the votes and he became President of Pakistan. However details of the votes secured from National Assembly, Senate and Provincial Assemblies are not given there. Let we take a hypothetical situation to further understand process of removal or impeachment. From the above result it is clear that 308 votes were casted against the President Dr Arif Alvi. If President Alvi has secured majority of the votes from the Provincial Assemblies (as there was their government in Punjab, KPK and Balouchistan) and less number of votes from the National Assembly and Senate; it means if a removal process is initiated against the current President then it can be successful as in removal or impeachment process only members of National Assembly and Senate are entitle to case vote, members of the Provincial Assemblies are not given constitutional right to give vote and protect their candidate, consequently President can go to home. Can we say that this removal is against the principles of natural justice and may amount as condemned unheard?

Dissolution of the National Assembly and issue of charge against President

As prescribed in the Constitution of Pakistan process of removal or impeachment against the President can be initiated Parliament. (Article 47 of the Constitution of Pakistan 1973). But when a National Assembly is dissolved process or removal or impeachment cannot be initiated against the President even though there may be reasonable grounds of charge against him. If a President does not act in accordance with the advice of the care taker Prime Minister or Cabinet it amounts to misconduct or if the President becomes mentally or physically unfit; no action can be initiated for his removal or impeachment as because of National Assembly is dissolved. In such a situation Prime Minister or Cabinet can do nothing. (Article 48 of the Constitution). In Mian Muhammad Nawaz Sharif case it was held that if President refuses to accept the advice, he can be impeached on the ground of violation of the Constitution. According to the Court the President takes oath under Article 42 to perform faithfully to the Constitution that means on the advice under Article 48. Therefore, non compliance of Article 48 amounts violation of the Constitution and misconduct (Nawaz Sharif V. President, PLD 1993, Page 473). Expected action may be impeachment but in the situation when National Assembly is dissolved and there is a Caretaker Government, no action can be initiated.

Elected Prime Minister, Caretaker Prime Minister and President

After general election in its first meeting National Assembly has to elect Speaker and Deputy Speaker. Under the supervision of newly elected Speaker one of the Muslim

member of Lower House shall be elected as Prime Minister, he shall hold office during the pleasure of the President. If President is satisfied that Head of the Government has lost confidence of the majority he can ask him to seek vote of confidence. (Article 91 of the Constitution of Pakistan 1973). If a majority of the total members pass a resolution of no confidence against the Prime Minister he shall be no more Head of the Government. (Article 95 of the Constituion of Pakistan) If Lower House is dissolved by the President; a date shall be fixed for general election to be held within ninety days under the supervision of Caretaker Government. (Article 48 of the Constitution of Pakistan 1973) However in the case of Caretaker Prime Minister Constitution is silent. Even if the President is dissatisfied he cannot take any action against the Caretaker Prime Minister. It can be impliedly presumed that he can be removed by President but there is no such provision in the Constitution. In Pakistan on 10th August 2023 National Assembly has been dissolved and Ghulam Sarwar kakar has been appointed as Caretaker Prime Minister. In view of the above discussion it can be said that in the situation of caretaker set up no Constitutional action can be initiated against the President or Prime Minister. However on 12 October 1999 General Pervez Musharraf toppled the Nawaz Sharif Government and took control of the reign of the Government. This act of General Pervez Musharraf was validated by the Supreme Court (Zafar Ali Shah v. General Pervez musharraf, PLD 2000, Page 869). Later on 20 June 2001 General Pervez Musharraf as Chief Executive promulgated the President's Succession Order 2001 and declared the Office of the President as vacant and empowering Chief Executive to become President of Pakistan (PLD 2001 Central Statutes .

Removal of the President of India

President on the ground of violation of the Constitution can be impeached. For initiating impeachment process against the President of India it is required that a resolution shall be moved. At least one-fourth of the total members of the either House are required to sign such resolution which shall also cover the charge against the President. If such resolution is passed by required majority it shall be sent to other House. The charge shall be investigated or cause to be investigated by that House. President shall have right of representation during course of this investigation. However if the House investigating the charge in consequence of the investigation pass a resolution with two third majority of the total membership; the President shall cease to hold office. (Article 61 of the Constitution of India). Though there is bit difference in the impeachment process of the President; likewise Pakistan there in India also members of the State Assemblies has not been given right of vote to protect their elected President from impeachment, though they took part in the Presidential election.

Legislation and President

When a bill is passed from both Houses and presented before the President for his assent, as prescribed in the Constitution the President has following options (Article 75 of the Constitution of Pakistan);

- i. To sign the bill
- ii. To sent it back for reconsideration

Whether President can retain the bill in its office as pending? Constitution is silent. However bill is returned by the President shall be reconsidered in the joint sitting and if it is again passed it shall be placed before the President for his assent. In such situation President has following options;

- i. to sign the bill immediately; or

- ii. keep in pending for ten days

However if President keep in pending the bill shall be deemed to have been signed by the President after expiry of ten days. (Article 75 of the Constitution of Pakistan). On 20th August 2023 President of Pakistan issued a statement clarifying that he has not signed two laws Official Secrets (Amendment) Bill 2023 and the Pakistan Army (Amendment) Bill passed by National Assembly and Senate and sent to him for assent. However a gazette notification issued by Senate Secretariat says that these two bills were deemed as given assent by the President. It has been stated by law ministry in the news story published in daily Dawn widely published English news paper that President has no third option he has to sign the bill or return for reconsideration but he did not returned the bills.

A bill in following situations on dissolution of National Assembly becomes lapse

- i. A bill pending in the National Assembly, or passed by the National Assembly is pending in the Senate
- ii. A bill pending in National Assembly will lapse; it is immaterial whether it was originated in National Assembly or Senate. (Article 76 of the Constitution of Pakistan)

However if a bill is passed from both Houses and has been sent to the President for his assent and the bill is pending there; meanwhile the National Assembly is dissolved what will be the fate of the bill if President do not give assent, Constitution is silent, however there may be presumption that it may become Act of Parliament if President gives his assent.

Caretaker Government in India

In India at the time of the dissolution of Lok Sabha existing Government continues until the process of election becomes complete and new Government take over. Cabinet ministers including Prime Ministers are allowed to continue for six months without being member of the either House, hence other than legislatures can also be appointed as minister for shorter time period.

Legislation in India

A Bill passed by both Houses is placed before the President for his assent. After his assent it becomes law, however President of India has following options.

- i. He may give his assent by signature on it; or
- ii. Return it for reconsideration; or
- iii. Keep it in pending

However if President returns the Bill it will be reconsidered by both Houses and if the Bill is passes by both Houses it shall be resend to President and he cannot withhold his assent (Article 111 of the Constitution of India)

Conclusion

A Constitution is a social contract between people and the State considered as fundamental law of a State. State Institutions are created and identified under the Constitution whereupon the State sovereignty has been distributed along with the modes

and limitations for the exercise thereof. However this research shows that Constitution of Pakistan 1973 is silent on certain important issues which relate with the powers and election of the head of the State i-e President of Pakistan.

- i. Constitution of Pakistan impliedly permits a person who is less in required qualification to become President which includes even a non Muslim.
- ii. In the process of removal/impeachment The President can be condemned unheard which is in violation of the principles of justice.
- iii. Constitution of Pakistan is silent in certain situations including in the process of legislation.

Recommendations

By amendment vagueness in the articles of the Constitution of Pakistan relevant with election and powers of the President of Pakistan should be removed. Articles/provisions should be added to address those issues about which there is silence in the Constitution of Pakistan.

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