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PLD 1993 Supreme Court 473

[Original Jurisdiction]

*Present. Nashn Hasan Shah, CJ., Shaflur Rahman,*

*Saad Saood Jan, Abdul Qadeer Chaudliry, Ajnial Mian,*

*Muhammad Aftab Lone, SajjadAli Shah, Multanimad Rafique Tarar,*

*Saleem Akhtar,, Saeeduzzanian Siddiqui and Fazal Elahi 10tan, J1*

Mian MUHAMMAD NAWAZ SHARIF ‑‑‑ Petitioner

versus

PRESIDENT OF PAKISTAN and others ‑‑‑ Respondents

Constitutional Petition No. 8 of 1993, decided on 26th May, 1993.

Per Dr. Nasim Hasan Shah, C.J.; Abdul Qudeer Chaudhry and Fazal Elahi Khan, JJ. agreeing; Sajjad All Miah, J. Contra‑‑‑

(a) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Arts. 184(3) & 58(2)(b) ‑‑‑ Constitutional petition under Art.184(3) before Supreme Court ‑‑‑ Maintainability ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President of Pakistan under Art.58(2)(b) of the Constitution ‑‑‑ Petition under Art.184(3) of the Constitution praying that order of dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President be declared mala fide, without lawful authority, null and void and of no legal effect and all steps taken in implementation of or taken as a result of the said order of dissolution including the appointment of the Care‑taker Cabinet be also declared as null and void with a further prayer that the President of Pakistan and others be‑ restrained from interfering with the functions and duties of the elected Government headed by the petitioner and no impediments be placed in the functioning of the National Assembly ‑‑‑ Preliminary objection was raised to the effect that petition filed under Art,184(3) of the Constitution directly before the Supreme

Court was not maintainable and was liable to be dismissed on that ground‑‑­ Supreme Court proceeded to join the preliminary objection (regarding the maintainability of the petition) with the questions arising on merits and observed that both of these questions shall be heard and decided together and adjourned the matter for full and final arguments, the parties having been directed to complete the records in the meanwhile.

(b) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Part 11, Chap. 1 ‑‑‑ Fundamental rights ‑‑‑ Concept ‑‑‑ Fundamental rights are to be construed in consonance with the changed conditions of the society and must be viewed and interpreted with a vision to the future ‑‑‑ Need to reevaluate the essence and soul of Fundamental Rights as originally provided in the Constitution emphasized.

Fundamental Rights in essence are restraints on the arbitrary exercise of power by the State in relation to any activity that an individual can engage. Although Constitutional guarantees are often couched in permissive terminology, in essence they impose limitations on the power of the State to restrict such activities. Moreover, Basic or Fundamental Rights of individuals which presently stand formally incorporated in the modern Constitutional documents derive their lineage from and are traceable to the ancient Natural Law. With the passage of time and the evolution of civil society great changes occur in the political, social and economic conditions of society. There is, therefore, the corresponding need to re‑evaluate the essence and soul of the fundamental rights as originally provided in the Constitution. They require to be construed in consonance with the changed conditions of the society and must be viewed and interpreted with a vision to the future.

Hurtadc v. California 110 US 516 and Benazir Bhutto’s case PLD 1988

(c) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Art. 17 ‑‑‑ Term “operating” occurring in Art.17(2) ‑‑‑ Connotation‑‑­Fundamental Right guaranteed by Art.17(2) ‑‑‑ Scope and extent ‑‑‑ Right conferred by Art.17 includes not merely the right to form a political party but comprises also other consequential rights ‑‑‑ Guarantee “to form a political party’ must be deemed to comprise also the right by that political party to form the Government, wherever the said political party possesses the requisite majority in the Assembly‑‑‑Any unlawful order which results in frustrating such activity, by removing such party from office before the completion of its normal tenure would, therefore, constitute an infringement of Fundamental Right guaranteed in Art. 17(2) of the Constitution.

i Term “operating” as used in Article 17(2) includes both healthy and unhealthy operation of a political party. While Article 17 contains limitations and checks against unhealthy operation of the political party; no provision exists therein in relation to its healthy operation. However, the mere omission to make any specific provision in regard to this aspect does not imply that Fundamental Right 17 does not also comprise this aspect of the matter. Indeed, a positive right implies, as part of the same right, a negative right and vice versa.

The right conferred by Article 17 includes not merely the right to form a political party but comprises also other consequential rights.

Fundamental Right conferred by Article 17(2) of the Constitution whereby every citizen has been given “the right” to form or to be a member of a political party comprises the right to participate in and contest an election.

Forming of associations necessarily implies carrying on the activities of an association, for the mere forming of association would be of no avail.

The ordinary conception of a political party includes a right within the framework of the Constitution to exert itself through its following and Organization, and using all available channels of mass communication, to propagate its views in relation to the whole complex of the administrative machine, including the Legislatures, in respect of matters which appear to it to require attention for the amelioration of conditions generally throughout the nation, for improvements particularly in administrative procedures and policies as well as in the legislative field, even to the extent of proposing and pressing for amendment of the Constitution itself.

Reading Article 17(2) of the Constitution as a whole it not only guarantees the right to form or be a member of a political party but also to operate as a political party ... ... Again, the forming of a political party necessarily implies the right of carrying on of all its activities as otherwise the formation itself would be of no consequence. In other words, the functioning is implicit in the formation of the party

Article 17(2) provides a basic guarantee to the citizen against usurpation of his will to freely participate in the affairs and governance of Pakistan through political activity relating thereto.

Thus, in the scheme of the Constitution, the guarantee “to form a political party’ must be deemed to comprise also the right by that political party to form the Government, wherever the said political party possesses the requisite majority in the Assembly.

Accordingly, the basic right “to form or be a member of a political party” conferred by Article 17(2) comprises the right of that political party not only to form a political party, contest elections under its banner but also, after successfully contesting the elections, the right to form the Government if its members, elected to that body, are in possession of the requisite majority. The Government of the political party so formed must implement the programme of the political party which the electorate has mandated it to carry into effect. Any unlawful order which results in frustrating this activity, by removing it from office before the completion of its normal tenure would, therefore, constitute an infringement of this Fundamental Right.

if the lawful functioning of Government of a political party is frustrated (by its dismissal) by an unlawful order, such an order is an impediment in the healthy functioning of the political party and would, therefore, constitute an infringement of the fundamental right conferred by Article 17(2). A petition under Article 184(3) for its enforcement would, accordingly, be maintainable.

View that rights guaranteed under Article 17(2) extend only to the right to form a political party and the right to become a member of a political party or for that matter the right guaranteed under Article 17(2) extends only to all the political processes culminating in the election of its members to the National Assembly and no more, cannot therefore be accepted.

Hurtade v. California 110 US 516; Benazir Bhutto’s case PLD 1988 SC 416; Symbol’s case PLD 1989 SC 66; Maudoodi’s case PLD 1964 SC 673 and West Virginia State Board of Education v. Barnette (1942) 319 US 624 ref.

**d) Constitution**of Pakistan (1973)‑‑

‑‑‑‑ Arts. 184(3), 17(2) & 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President of Pakistan under Art.58(2)(b) of the Constitution‑‑‑Petition under Art.184(3) of the Constitution to the Supreme Court praying that order of dissolution of National Assembly and dismissal of the Prime Minister by the President be declared as mala fide, without lawful authority, null and void and of no legal effect and ail steps taken in implementation of or taken as result of the said order of dissolution including the appointment of the Care‑taker Cabinet be also declared as null and void with a further prayer that the President of Pakistan and others be restrained from interfering with the functions and duties of the elected Government headed by the petitioner and no impediment be placed in the

functioning of the National Assembly ‑‑‑ Maintainability of petition under Art.184(3) challenged ‑‑‑ Held, if the lawful functioning of a Government of political party was frustrated by its dismissal by an unlawful order, such an order being an impediment in the healthy functioning of the political party would constitute an infringement of Fundamental Right conferred by Art.17(2)

and petition under Art. 184(3) for its enforcement would be maintainable.

Term “operating” as used in Article 17(2) includes both healthy and unhealthy operation of a‑ political party. While Article 17 contains limitations and checks against unhealthy operation of the political party; no provision exists therein in relation to its healthy operation. However, the mere omission to make any specific provision in regard to this aspect does not imply that Fundamental Right 17 does not also comprise this aspect of the matter. Indeed, a positive right implies, as part of the same right, a negative right and vice versa.

If the lawful functioning, of a Government of political party is frustrated. (by its dismissal) by an unlawful order, such an order is an impediment in the healthy functioning of the political party and would, therefore, constitute an infringement of the fundamental right conferred by Article 17(2). A petition under Article 184(3) for its enforcement would, accordingly, be maintainable.

View that rights guaranteed under Article 17(2) extend only to the fight to form a political party and the, right to become a member of a political party or for that matter the right guaranteed under Article 17(2) extends only to all the political processes culminating in the election of its member to the National Assembly and no more, cannot therefore be accepted.

The preliminary objection that petition under Article 184(3) of the, Constitution was not maintainable could not be sustained.

Hurtade v. California 110 US 516; Benazir Bhutto’s case PLD 1988 SC 416; Symbol’s case PLD 1989 SC 60; Maudoodi’s case PLD 1964 SC 673 and West Virginia State Board of Education v. Barnette (1942) 319 US 624 ref.

(e) **Constitution**of Pakistan (1973)‑‑

‑‑‑‑ Arts. 184(3) & 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President of Pakistan under Art.58(2)(b) of the Constitution of Pakistan‑‑‑Grounds and material which form the basis of the order of dissolution are open to scrutiny and judicially reviewable.

Haji Muhammad Saifullah’s cage PLD 1989 SC 166 ref.

**(f) Constitution**of Pakistan (1973)‑‑

‑‑‑‑ Art. 58(2)(b) [as added by Constitution (Eighth Amendment) Act (XVIII of 1985), S.5(b)] ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President of Pakistan under Art.58(2)(b)‑‑­ Such an action of the President proceeded on an incorrect appreciation of the role assigned to him in the Constitution and of the powers vested in him after the amendment made in’ the Constitution of Pakistan (1973) by the Constitution (Eighth Amendment) Act, 1985.

Dissolution of National Assembly and dismissal of Prime Minister and Cabinet proceeds on an incorrect appreciation of the role assigned to the President in the Constitution and of the powers vested in him after the amendment made in the Constitution of 1973 by the Constitution (Eighth Amendment) Act, 1985 introduced in the Constitution of 1973 shortly before its revival on 30th December, 1985.

**(g) Constitution of Pakistan**(1973)‑‑

‑‑‑‑ Art. 58(2)(b) [as added by Constitution (Eighth Amendment) Act (XVIII of 1985), S.5(b)] ‑‑‑ Legislative history and effect of constitutional amendments including amendment of Arts. 58 and 48.

**(h) Constitution of Pakistan**(1973)‑

‑‑‑‑ Art. 58(2)(b)‑‑‑Dissolution Of National Assembly and dismissal of Prime Minister and Cabinet by the President of Pakistan under Art.58(2)(b) of the Constitution ‑‑‑ Held, if it could be shown that no grounds existed on the basis of which an honest opinion could be formed “that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary” the exercise of the power by the President would be unconstitutional and open to correction through judicial review.

Haji Muhammad Saifullah’s case PLD 1989 SC 166 quoted and observation made that after having found that order of dissolution was not sustainable Court should have granted consequential relief.

Kh. Ahmed Tariq Rahim’s case PLD 1992 SC 646 **distinguished.**

**(i) Constitution of Pakistan (1973)‑‑**

‑‑‑‑ Arts. 58(2)(b), 46, 48(l)(6), 101, 91(4)(5), 242(IA), 243(2)(c) & 213 [as added by Constitution (Eighth Amendment) Act (XVIII of 1985), Preamble]‑‑­Role assigned to the President and the powers vested in him after the adoption of the Constitution (Eighth Amendment) Act, 1985 and responsibilities of the Prime Minister expounded ‑‑‑ Distinctive features of a written Constitution‑‑­Constitution of Pakistan creates. a parliamentary democracy ‑‑‑ Scheme of Constitution vis‑a‑vis working relationship of President and Prime Minister elaborated.

The role assigned to the President and the powers vested in him after the adoption of the Constitution (Eighth Amendment) Act, 1985, to dissolve the National Assembly by clause (2) of Article 58, which power was not earlier vested in him, in addition he was empowered also to appoint, in his discretion, the Chief Election Commissioner (Article 213), the Chairman of the Public Service Commission (Article 242 (IA)) and the Chairman, Joint Chiefs of Staff Committee (Article 243(2)(c)). He was also empowered to appoint the Governors of the Provinces after consulting the Prime Minister (Article 101). Powers were also conferred on him to refer any matter of national importance to a referendum (Article 48(6)). Duty was cast on the Prime Minister vide the substituted Article 46 to keep the President fully cognizant of the doings of his Government.

In view of newly‑added provisions in the Constitution of Pakistan (1973) by the Constitution (Eighth Amendment) Act, 1985, it was argued in the present case, wherein the President had dissolved the National Assembly and dismissed the Prime Minister and the Cabinet under Article 58(2)(b), that a pre‑eminent role had been assigned to the President. He was not now merely the Constitutional Head of the State simply enjoying a high ceremonial office but had, in fact, become a full partner in the governance of the country and indeed the more important partner. In view of this pre‑eminent position as the\* Head of the State and in consonance with the spirit of the modified Constitution (after the amendments made therein during the Martial Law period and sanctified by the 8th Constitutional Amendment adopted in 1995) the Prime Minister was expected to accept the guidance of the President and to act in accordance with his advice and to mould his conduct accordingly. This perception of the President became manifest from the terms of the impugned order of dissolution itself. Reliance was placed not only on the specific powers conferred on him by clause (2)(b) of Article 58 but also on “all other powers enabling him” in that behalf. This was indicative of his belief that besides the powers specifically conferred upon him by the terms of the Constitution, some residual or implied powers also inhere in him.

Unfortunately, this belief that he enjoys some inherent or implied powers besides those specifically conferred on him under Articles 46, 48(6), 101, 242 (1A) and 243(2)(c) is a mistaken one. In a Constitution contained in a written document wherein the powers and duties of the various agencies established by it are formulated with precision, it is the wording of the Constitution itself that is enforced and applied and this wording can never be overridden or supplemented by extraneous principles or non‑specified enabling powers not explicitly incorporated in the Constitution itself. In view of the express provisions of written Constitution of Pakistan detailing with fullness, the powers and duties of the various agencies of the Government that it holds in balance there is no room of any residual or enabling powers inhering in any authority established by it besides those conferred upon it by specific words.

Constitution of Pakistan, in fact, is designed to create a parliamentary democracy. The President in this set‑up is bound to act, in the exercise of his functions, in ‑accordance with the advice of the Cabinet or the Prime Minister (Article 48(l)) and the Cabinet in its turn is collectively responsible to the National Assembly (Article 91(4)) though the Prime Minister holds office at the pleasure of the President. However, the President cannot remove him from

his office as long as he commands the confidence of the majority of the members of the National Assembly (Article 91(5)). In view of these provisions, the system of Government envisaged by the Constitution of 1973 is of the parliamentary type wherein the Prime Minister as Head of the Cabinet is responsible to the ‑Parliament, which consists of the representatives of the nation.

It is manifest, therefore, that in the scheme of the Constitution of Pakistan the Prime Minister in administering the affairs of the Government is neither answerable to the President nor in any way subordinate to him. In formulation of the policies of his Government and in the running of its affairs, the Prime Minister is answerable only to the National Assembly and not to the President. Indeed, it is the President who is bound by the advice of the Prime Minister or the Cabinet in all matters concerning formulation of policies and administration of the affairs of the Government and not the other way about, as appears to have been mistakenly understood. Undoubtedly, the President may require the Cabinet or the Prime Minister, as the case may be, to reconsider any advice tendered to him but the President is bound to act on the advice tendered, even if it be the same, after reconsideration. Undoubtedly,  both are expected to work in harmony and in close collaboration for the efficient running of the affairs of the State but as their roles in the  constitution are defined, which do not overlap, both can exercise their respective functions unhindered and without bringing the machinery of the Government to a standstill. Despite personal likes or dislikes, the two can co‑exist constitutionally. Their personal likes or dislikes are irrelevant so far as the discharge of their constitutional obligations are concerned. Despite personal rancour, ill‑will and incompatibility of temperament, no deadlock, no stalemate, no breakdown can arise if both act in accordance with the terms of the Oath taken by them, while accepting their high office.

a) **Constitution of Pakistan (1973)‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ President of Pakistan can pass order of dissolution of National Assembly and appeal to the electorate can be made only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution.

The people of Pakistan have willed to establish an order wherein the State shall exercise its powers and authority through the chosen representatives of the people; wherein the principles of democracy,’ freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed (Article 2A).

No one man how-high-so-ever can, therefore, destroy an organ consisting of chosen representatives of the people unless cogent, proper and sufficient cause exists for taking such a grave action. Article 58(2)(b), no doubt, empowers the President to take this action but only where it is shown that “a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution”.

The expression ‘cannot be carried on’ sandwiched as it is between ‘Federal Government’ and ‘in accordance with the provisions of the Constitution’ acquires a very potent, a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of progress, the shade of the quality or the degree of the performance or the quantum of the achievement. It concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution.

The intention of the law‑makers, as evidenced from their speeches and the terms in which the law was enacted, shows that any order of dissolution by the President can be passed and an appeal to the electorate made only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution.

 Constitution of Pakistan (1973)‑‑

‑‑‑‑ Art. 41 ‑‑‑ President as the symbol of the unity of the Federation is entitled to the highest respect and esteem by all the functionaries of the State, but this respect and esteem will be forthcoming if he conducts himself with utmost impartiality and neutrality, that he keeps himself entirely aloof from party politics and does not give the impression to any one that he is siding with one faction or working against the other.

(1) **Constitution of Pakistan (1973)‑.**

‑‑‑‑ Arts. 58(2)(b), 17 & 184(3) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet under Art.58(2)(b) of the Constitution of Pakistan by the President of Pakistan vide Order dated 18th April, 1993 being not within the ambit of the powers conferred on the President of Pakistan under Art.58(2)(b) of the Constitution of Pakistan and other enabling powers available to him in that behalf, was violative of Art. 17 of the Constitution and without lawful authority and of no legal effect‑‑­National Assembly, Prime Minister and the Cabinet consequently were to stand restored and entitled to function as immediately before the Presidential Order of 18th April, 1993 was passed; all steps taken pursuant to the Presidential Order dated 18th April, 1993 passed under Art. 58(2)(b) of the Constitution of Pakistan such as appointment of Care‑taker Cabinet etc. were to be of no legal effect ‑‑‑ Supreme Court, however, observed that all orders passed, acts done and measures taken in the meanwhile by the Care‑taker Government which had been done, taken and given effect to in accordance with the terms of the Constitution and were required to be done or taken for the ordinary orderly running of the State would all be deemed to have been validly and legally done.

**(in) Interpretation**or constitution‑‑‑

‑‑‑‑ Held, in a Constitution ‘ contained in a written document wherein the powers and duties of the various agencies established by it were formulated with precision, it was the wording of the Constitution itself that was enforced and applied and this wording could never be overriden or supplemented by extraneous principles or non‑specified enabling powers not explicitly incorporated in the Constitution itself.

**Per Shaflur Rahman, J.;**Nasim **Hasan Shah, C.J.; Saad Saood Jan; Ajmal Mian; Muhammad Afzal Lone; Muhammad Rdfiq Tarar; Saleem Akhtar and Saeeduzzaman Siddiqui, JJ.**agreeing; Saiiad Ali Shah, J. Contra‑‑‑

(n) Constitution of Pakistan (1973)‑‑‑

‑Part 11, Chap. Fundamental Rights ‑‑‑ Fundamental Rights guaranteed in any Constitution, an organic instrument, ‑are not capable of precise or permanent definition and cannot be charted on a piece of paper delineating their boundaries for all times to come.

**(o) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Interpretation ‑‑‑ Article 58(2)(b) of the Constitution empowers the executive head to destroy the legislature and to remove the chosen representatives ‑‑‑ Provision conferring an exceptional power provided for an exceptional situation must receive the narrowest interpretation.

Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others PLD 1989 SC 166 ref.

**Per Saijad All Shah, J. (Contra)‑‑‑**

Article 58(2)(b) of the Constitution has come to stay in the Constitution whether it is liked or abhorred. Constitutions of two countries are not alike because Constitution of each country is framed keeping in view the objective conditions, historical and cultural background with pronounced customs and religious ethos. If Article 58(2)(b) has come into existence and forms part of the Constitution on account of some compromise and it is disapproved now it can be removed or diluted or amended in the manner prescribed in the Constitution. It is the function of the legislature to legislate and of the Court to interpret the law. The Court cannot and should not take upon itself the duty of entering into the field of legislature but should confine itself to its original function of interpreting the provisions of the Constitution as they are and other laws. While interpreting the provisions of the Constitution, it becomes the duty of the Court to see that interpretation is done in such a manner which advances the noble object of workability of the Constitution. The provisions of the Constitution cannot be interpreted by the Court in such narrow form to make that provision almost redundant and meaningless.

By rejecting the material in support of grounds of dissolution in the instant case, interpretation of Article 58(2)(b) is rendered by Supreme Court narrowing down its scope to almost zero point which amounts to declaring that no President would be able to ever dissolve the National Assembly and dismiss the Government of the Prime Minister in spite of the fact that he has substantial material in his possession because the Court is not satisfied with intrinsic value of the material. In other words Article 58(2)(b) is rendered almost redundant which can be done by the legislature only.

Supreme Court as highest Court of the country has to act within the limitations prescribed by the law while in the process of interpretation of the Constitution and the law. Supreme Court can interpret but not legislate and while interpreting can narrow down ‘the scope but not so much that the provision under the comment is rendered almost redundant . So far Article 58(2)(b) of the Constitution is concerned, it is already interpreted and construed very ably in the cases of Haji Saifullah Khan and Khawaja Ahmed Tariq Rahim. Power under Article 58(2)(b) can be exercised by the President when there is actually an imminent breakdown of the Constitutional machinery and there is failure of not one but many provisions of the Constitution giving impression that country is being run by methods extra‑Constitutional. The President must form his opinion on the basis of material before him.

Article 58(2)(b) is an independent provision under which the President is empowered to dissolve the National Assembly in his discretion if he is satisfied that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. Opinion of the President cannot be substituted by the Court. If he has formed such opinion and the grounds of dissolution are supported by material which was available before him at the time of formation of such opinion, the Court should allow order to stand and political sovereign to give final decision.

**(P) Constitution of Pakistan (1973)**

‑‑‑‑ Arts. 58(2)(b) & 64 ‑‑‑ Rules of Procedure and Conduct of Business in the National Assembly, 1992, R. 25 ‑‑‑ Resignations by members of National Assembly ‑‑‑ President of Pakistan could not have received such resignations at all muchless have acted on them for any purpose before they reached the Speaker ‑‑‑ Act of the President of receiving, entertaining and acting on such resignations of dissatisfied members of the National Assembly shifted the venue constitutionally provided for showing no confidence in the Government from the National Assembly to the Presidency ‑‑‑ Dissolution of National

Assembly and dismissal of the Prime Minister and the Cabinet by the President under Art. 58(2)(b) of the Constitution on the ground of such resignations, thus, was misconceived.

S.R. Bommai and others v. Union of India and others AIR 1990 Karnataka 5; A.K. Fazalul Ouader Chaudhury v. Sycd Sha h Nawaz and 2 others PLD 1966 SC 105 and Mirza Tahir Bcg v. Syed Kausar Ali Shah and others PLD 1976 SC 504 ref.

**(q) Constitution of Pakistan**(1973)...

‑‑‑‑ Art. 58(2) (b)‑‑Mal‑administ ration and the political victimisation were not the type of constitutional problems which could justify the dissolution of National Assembly by the President‑‑‑Proper course in such matters was to go to the constitutional and statutory bodies like the Parliament, the Courts and the press for redress rather than obtain and justify dissolution of the established Government of the country.

Haji Muhammad Saifullah Khan’s case PLD 1989 SC 166 ref.

**W Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b)‑Allegations made in the Press which remain undecided in Court of law in accordance with the prescribed procedure could not be taken as a ground for dissolution of National Assembly by the President under Art.58(2)(b) ‑‑‑ Such allegations were made  basis for forming the opinion giving harsh constitutional treatment to an established Government enjoying the support of the majority of the people.

**(s) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and Cabinet, inter alia,. on the ground of Prime Minister being. Guilty of subversion which was in fact high treason under the law ‑‑‑ Held, such an indictment and verdict given in a constitutional document was political career killer and such a finding could only be recorded after a judicial pronouncement and not in an executive and political instrument made under ‑Art. 58(2)(b) of the Constitution.

W Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Part II, Chap. I ‑‑‑ Fundamental Rights, enforcement of ‑‑‑ Constraints of adversary litigation do not inhibit the Court in the matter of enforcement of Fundamental Rights.

**(u) Constitution of Pakistan**(1973)...

‑‑‑‑ Arts. 6 & 12 ‑‑‑ High Treason (punishment) Act (LXVIII of 1973), Ss. 3 & 2 ‑‑‑ Punishment for high treason ‑‑‑ Procedure ‑‑‑ Failure of Federal Government in designating the authorised person on whose complaint offence of high treason can be taken cognizance of by the Court ‑‑‑ Such failure is not of the Constitution and Parliament but of the executive Government and that too since 1973 of not giving a salutary constitutional provision a meaningful content and operational mechanism thereby frustrating same altogether.

(v) **Interpretation of Constitution‑**

‑‑‑‑ Three rules of interpretation peculiar to the Constitution distinguishing it from every other instrument, stated.

There are three rules of interpretation peculiar to the Constitution distinguishing it from every other instrument. These principles stand recognised in all countries having written Constitutions.

While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield new and fuller import to its meaning.

The entire Constitution has to be read as an integrated whole, and no one particular provision destroying the, other but each sustaining the other.

This is the rule of harmony, rule of completeness and exhaustiveness and the rule of paramountcy of the written Constitution.

The words of the written Constitution prevail over all unwritten Conventions, Precedents and Practices.

Paul M. Sweezy v. State of New Hampshire by Louis C. Wyman, Attorney‑General 354 US 134 = 1 L ed 2d 1311 = 77 S Ct 1203 and Hurtado v. California 110 US 516, 528, 529 = 28 L ed 232, 236 = 4 S Ct 111, 292 and M’Culloch v. Maryland (US) 4 Wheat 316, 4 L ed 579.

**Per Sajjad Ali Shah, J. Contra‑**

It is the function of the, legislature to legislate and of the Court to interpret the law. The Court cannot and should not take upon itself the duty of entering into the field of legislature but should confine itself to its original function of interpreting the provisions of the Constitution as they are and other laws. While interpreting the provisions of the Constitution, it becomes the duty of the Court to see that interpretation is done in such a manner which advances the noble object of workability of the Constitution. The provisions o the Constitution cannot be interpreted by the Court in such narrow form to make that provision almost redundant and meaningless.

**(w) Constitution‑‑‑**

‑‑‑‑ What judgment and value to be brought to bear on the Constitutional provisions stated.

In the evaluation of facts, logic, experience and intuitions of public policy play mutually complementary parts. Without logic the law would be wholly at large, at the mercy of every gust of chance and favour; without experience, without clear intuitions of public policy, the consistency of concepts would exact too high a price of inconsistency with history, practical convenience and the welfare of society. The logic of law is the discipline which gives it such form and consistency as it may attain at successive stages of its development. Experience is the rich inheritance of its past development. Neither logic nor experience affords a sufficient, nor sometimes a relevant, answer to essentially new problems. To resolve such problems one must have recourse ‘to the deeper recesses of the mind. The facts define the problem. Neither they nor logic can solve it. Imagination furnishes an answer. The answer must be reconcilable with the facts and defensible in logic, but the test of its relevance and adequacy is neither the facts nor logic but purposes and values.

“Logic, Experience and Intuition” in A New World of Law by C Wilfred Jenks (1969), Chap. 19 ref.

**(x) Constitution of Pakistan (1973)‑**

‑‑‑‑ Art. 64 ‑‑‑ Resignation‑‑‑“Resignation from a public office”‑‑Meaning‑‑­Resignation from a public office has a very definite connotation and is defined as formal renouncement or relinquishment of an office ‑‑‑ Resignation must be made with intention of relinquishing the office accompanied by act of relinquishment.

Black’s Law Dictionary ref.

(y) **Constitution of Pakistan**(1973).

‑‑‑‑ Art. 64 ‑‑‑ Rules of Procedure and Conduct of Business in the National Assembly, 1992, R. 25 ‑‑‑ Resignation by member of National Assembly‑‑­Procedure ‑‑‑ Resignation is not only required to be addressed to the Speaker but it should be intended to be passed on to the Speaker of the Assembly‑‑­Pivotal role which Speaker plays in this regard and sanctity of the elected office stated ‑‑‑ Receiving of resignation outside the Parliament and non‑transmission ‘to the addressee so as to use the same, or permit its use by others as a negotiable instrument or as a weapon of offence directed against the opponent was not only grossly violating the Constitution but also indulging in a highly politically unethical conduct which was deplorable.

Not only is the resignation required to, be addressed to the Speaker but that it should be intended to be passed on to the Speaker of the Assembly

The Speaker in a Parliamentary form of Government holds an office of highest distinction and has the sole responsibility cast on him of maintaining the prestige and the dignity of the House and each and every member  composing the House. It is precisely for this reason that the Constitution has ordained that a resignation by a member is effective only when it is “addressed” to the Speaker: it was not intended to be an idle formality. To relinquish a Parliamentary scat by resignation is a grave and a solemn act. By and large our political institutions are fashioned on the pattern of those obtaining in England and it is a settled principle of Parliamentary law in England that a member of Parliament after he is duly chosen, cannot relinquish his scat by unilaterally resigning his membership. In order to evade this restriction a member who wishes to relinquish his seat, accepts office under the Crown which legally vacates his seat. This is enough to underline the gravity of the matter.

Resignations are resignations. If they are not resignations they are not worth the paper on which they arc written. in view of the established Constitutional and legal position in the country and abroad with regard to resignation from office by elected representative none so elected can draft a resignation, address it to the proper authority and yet not transmit to the addressee so as to use it, or permit its use by others as a negotiable instrument  or as a weapon of offence directed against the opponents. Any one engaging in such an activity and associating himself with it is not only grossly violating the Constitution but also indulging in a highly politically unethical conduct. That it happened on such a large scale in this case, at such a high level, and outside the Parliament is deplorable. Before any one rejects parliamentary democracy as unsuited to our conditions, let him see the mutilation of it, the level and by persons at whose hands it has taken place.

The preamble to our Constitution prescribes that “the State shall exercise its powers and authority through the chosen representatives of the people”. Defection of elected members has many vices. In the first place, if the member has been elected on the basis of a manifesto, or on account of his affiliation with a political party or on account of his particular stand on a question of public importance, his defection amounts to a clear breach of confidence reposed in him by the electorate. If his conscience dictates to him so, or he considers it expedient, the only course open to him is to resign, to shed off his representative character which he no longer represents and to right ,a re‑election. This will make him honourable, politics clean, and emergence of principled leadership possible. The second and more important, the political sovereign is rendered helpless by such betrayal of its own representative. In the normal course, the elector has to wait for years, till new elections take place, to repudiate such a person. In the meantime, the defector flourishes and continues to enjoy all the wordly gains. The third is that it destroys the normative moorings of the Constitution of an Islamic State. The normative moorings of the Constitution prescribe that “sovereignty over the entire universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust” and the State is enjoined to “exercise its powers and authority through the chosen representatives of the people”. An elected representative who defects his professed cause, his electorate, his party, his mandate, destroys his own representative character. He cannot on the mandated Constitutional prescription participate in the exercise of State power and authority. Even by purely secular standards carrying on of the Government in the face of such defections, and on the basis of such defections, is considered to be nothing but .mockery of the democratic Constitutional process”.

Mirza Tahir Beg v. Syed Kausar Ali Shah and others PLD 1976 SC 504 and Parliamentary Practice by May, 18th Edn., p. 45 rer.

Per Saijad Ali Shah, J. Contra‑‑‑

The question here is not of intrinsic value of resignations in the hands of the President, which are in transit and have not reached the Speaker, but these resignations are to be considered as material in support of the ground that members of the National Assembly had lost confidence in the Federal Government headed by the petitioner as Prime Minister and in such circumstances need was felt with justification by the President for exercise of his power and discretion under Article 58(2)(b) to dissolve the Assembly after objective assessment of the situation.

Without going into the question as to when in point of time the resignations would be deemed as valid causing vacancies stricto senso, it can be said that this material as such in the hands of the President could be considered by him to form an opinion that 88 members who resigned could turn the scales in conjunction with other concomitant circumstances showing that Federal Government headed by the Prime Minister and National Assembly had lost its mandate in the sense that its representative character was not same as it was before when people voted for it.

Resignations with the President can be considered as material in support of the ground of dissolution that National Assembly has lost representative character and mandate.

(Z) **Constitution of Pakistan (1973)...**

**‑‑‑‑ Art.**91(5)‑‑‑Held, the only way open to the President under the Constitution for coming to the conclusion whether the Prime Minister did, or did not command confidence of the majority of the National Assembly was by summoning the National Assembly and requiring the Prime Minister to obtain a vote of confidence from the Assembly ‑‑‑ Any other method adopted for achieving the object, for forming an opinion, for giving effect to it was not permissible.

There are three positive compulsive indicators in Article 91(5) of the Constitution of Pakistan. Firstly, there is the use of negative imperative “the President shall not exercise his power”. It operates as a mandatory prohibition. The second is the statement of the jurisdictional requirement and coupling it to the exercise of power‑ by the use of the word “unless”. The jurisdictional requirement is satisfaction of the President that the Prime Minister does not command the confidence of the majority of the members of the National Assembly. Thirdly the only course left constitutionally open for the President for arriving at his satisfaction in this matter is to “summon the National Assembly and require the Prime Minister to obtain a vote of confidence from the Assembly”. Such a comprehensiveness, such a clarity and such attention to the details is all in strict conformity with the established conventions of Parliamentary democracy, as practised in countries having no written Constitution.

The only way open to the President under the Constitution for coming to the conclusion whether the Prime Minister does or does not command confidence of the majority of the National Assembly is by summoning the National Assembly and requiring the Prime Minister to obtain a vote of confidence from the Assembly. Any other method adopted for achieving the object, for forming an opinion, for giving effect to it, is impermissible.

**Per Saijad Ali Shah, J. Contra‑‑‑**

When Constitutional petition, was entertained in the case in Supreme Court straight away without allowing it to be heard in the High Court and since there is no other forum of appeal after Supreme Court, it was the bounden duty of Supreme Court to have scrutinised the material produced in support of grounds of dissolution with more care and caution in conformity with guidelines laid down in the cases of Haji Saifullah Khan and Khawaja Ahmed Tariq Rahim decided by Supreme Court earlier in point of time.

**(aa) Words and phrases‑‑‑**

...                             Shall”‑‑‑Connotation.

The word “shall” is generally imperative or mandatory. It is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning and is generally imperative or mandatory. This word is defined as a mandate where appearing in a constitutional provision. The word “shall” be held to be merely directory when no advantage is lost, when no right is destroyed, when no benefit is sacrificed, either to the public or to any individual, by giving it that construction.

Black’s Law Dictionary and Ballentine’s Law Dictionary ref.

**(bb) Interpretation of Constitution‑**

‑‑‑‑ Prohibitory language in Constitution ‑‑‑ Rule of construction ‑Maxim “Expressio unius est exclusio alterius ‑‑‑ Application.

The word “shall” is generally imperative or mandatory. It is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning and is generally imperative or mandatory. This word is defined as a mandate where appearing in a constitutional provision. The word “shall” be held to be merely directory when no advantage is lost, when no right is destroyed, when no benefit is sacrificed, either to the public or to any individual, by giving it that construction.

Prohibitory language stated in a Constitution is nearly always construed as mandatory.

The general rule has been laid down that if directions arc given respecting the time and mode of proceeding in which a power should be exercised, there is at least a strong presumption that tile people designed it to be exercised in that time and mode only. And constitutional provisions imposing duties upon the Governor and the legislature have been held mandatory.

                A specific constitutional provision that its provisions are mandatory and prohibitory unless by express words declared to be otherwise will, of course, be given effect. Such a declaration applies to all sections of the Constitution alike, and is binding on every department of the State Government, whether legislative, executive, or judicial. And, as a result of the adoption of such a provision, a Court is not at liberty to say that any constitutional prerequisite to the validity of a law is of no practical effect, or to consider the policy of a provision whose language seems plain and positive. Although it has been stated that even in the absence of a declaration that its provisions arc mandatory and prohibitory, the Courts would not treat the provisions of a Constitution as merely directory or unessential, it has also been suggested that the reason for the insertion of a specific statement on the  matter in the Constitution of one State was that certain decisions had previously held **that the**provisions of the State’s earlier Constitution regarding the titles of legislative acts were directory and not mandatory.

                The word “shall” or “ought”, as used in a constitutional provision, is usually imperative or mandatory ... ... Mandatory constitutional provisions are binding on all departments of the Government. Long usage can neither repeal, nor justify the violation of such provisions, and disobedience or evasion is not permissible, even though the best interests of the public might apparently be promoted in some respects . ... ... Restrictions and prohibitions in constitutional provisions arc mandatory and must be obeyed . .... ... ... Generally, constitutional provisions that designate in express terms the time or manner of doing particular acts and that are silent as to performance in any other manner are mandatory and must be followed. Such provisions are, in general, exclusive in respect of the manner of performance and impliedly forbid performance in a.­ substantially different manner.

In the constitutional provision the word “not” following “shall” makes the requirement of the provision negative imperative leaving no scope for a departure therefrom. The word “unless” also limits and identifies the jurisdictional requirement and the prescription of the method by which that jurisdictional requirement is to be satisfied.

As a general rule, in the interpretation of statutes, the mention of one thing implies the exclusion of another thing. It therefore logically follows that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. For instance if the statute in question enumerates the matters over which a Court has jurisdiction, no other matters may be included. Similarly, where a statute forbids the performance of certain things, only those things expressly mentioned are forbidden. So also, if the statute directs that certain acts shall be done in a specified manner, or by certain persons, their performance in any other manner than that specified, or by ‑any other person than one of those named, is impliedly prohibited.

                Words of the written Constitution govern rather than are governed by Parliamentary Convention.

I

Pleasure in appointment and holding of office unless qualified also includes power of dismissal.

Limitations cannot be read in general words used in the constitutional provisions conferring power.

Court should not be swayed by considerations of Policy and Propriety while interpreting provisions of a written Constitution.

16 American Jurisprudence 2d at p. 507; Corpus Juris Sccundum, Vol. 16, p.175; BBC English Dictionary and Alhaji D.S. Adegbenro’s case (1963) AC 614 rer.

(cc) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Arts’ 92(3) & 64‑‑‑Rcsignations submitted by the Ministers from the Cabinet fall in a category quite different from those of the members of the  National Assembly ‑‑‑ If the resignation by the Minister is addressed to the President and is presented directly to the President and is given effect to by the President, then it is indeed in full compliance of Art. 92(3) of the Constitution.

**(dd) Constitution of Pakistan**(1973)‑‑

92 ‑‑‑ Cabinet ‑‑‑ Collective responsibility of Ministers of the 2abinct.

Collective Ministerial Responsibility and Collective Solidarily by David Ellis, published in Public Law (1980), pp. 307‑‑390 ref.

(ee) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 94 ‑‑‑ Prime Minister ‑‑‑ Collective responsibility and consultation with the Ministers.

Public Law (1982) on Choosing a Prime Minister by Rodney Brazier; Modern Foreign Governments by Frederic A. Ogg; Public Law (1968) on Prime Ministerial Powcr.by A.H. Brown and Indian Constitution by Jain, 1987 Edn., pp.102‑103 ref.

**Per Sajjad Ali**Shah, J. Contra‑‑‑

Under Article 46 it is the duty of the Prime Minister to communicate to the President all decisions of the Cabinet, relating to the administration of the ‑affairs of the Federation and proposals for legislation. Under this provision the President can require to submit for consideration of Cabinet matter on which decision had been taken by the Prime Minister or’ a Minister but which had not been considered by the Cabinet. Under Article 48 the President is to act on the advice of the Cabinet or the Prime Minister. Clause (4) of this Article provides that the question whether any, and if so what, advice was tendered to the President by the Cabinet, the Prime Minister, a Minister or Minister of State shall not be inquired into in, or by, any Court, Tribunal or other Authority. This shows that the President can see the Ministers as permitted by the Constitution.

YT) **Constitution of Pakistan**(1973)‑‑‑

‑‑‑‑ Arts. 58(2)(b) & 92(3) ‑‑‑ Resignation of Minister ‑‑‑ Effect ‑‑‑ Resignations of Ministers cannot form a ground for taking action under Art. 58(2)(b) of the Constitution, they being wholly irrelevant.

Resignations from the Cabinet are not at all a sure indication of lack of confidence in the Government nor do they affect or impair the smooth functioning of Parliamentary democracy.

The resignations of the Ministers should not have found place at all in the dissolution order, nor could they have been taken into consideration or formed ground for taking action under Article 58(2)(b) of the Constitution. They are wholly irrelevant.

Cabinet Government in India by R.J. Venkateswaran ref,

(gg) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President under Art. 58(2)(b) ‑‑‑ Recourse to any residual power cannot be had in view of the express provisions of the Constitution detailing in fullness both the procedure and power.

**(hh) Constitution of Pakistan**(1973)...

‑‑‑‑ Arts. 58(2)(b) & 14 ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President under Art. 58(2)(b) on the ground of speech by the Prime Minister which as alleged amounted to subversion ‑‑‑ Held, subversion being high treason which is regarded as the highest crime known to law and the most serious offence that may be committed against one’s own country, President had no authority under the Constitution to pronounce such a finding and to make a declaration against a citizen of Pakistan, ‘a leader 6f the majority Prliamentry party, the Prime Minister of the country, for sustaining order of dissolution of National Assembly and dismissal of Prime Minister and the Cabinet which was clearly violative of first part of Art. 14 of the Constitution of Pakistan.

**(I) Constitution of Pakistan (1973)‑‑‑**

~ ‑‑Art. 58(~)(b)‑ Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President under Art. 58(2)(b) of the Constitution on the grounds of. improper functioning of various Constitutional bodies provided for securing integration, cohesion and understanding between the Provinces; Parliament having not discharged its Constitution functions to exercise its powers as required by Arts. 153 & 154 of the Constitution, and in relation to Art. 161, and particularly in the context ‑of privatisation of Industries in relation to item 3, Part 11 of the Federal Legislative List and item 34 of the Concurrent Legislative List of the Constitution and allegations of corruption, of mal‑administration, of incorrect policies being pursued in matters financial, administrative and international ‑‑‑ Held, requirements of Art. 58(2)(b) of the Constitution of Pakistan were all objective and relatable to the various Constitutional provisions‑If any of the Provincial Governments was dissatisfied with a decision of the Council of Common Interests it could refer the matter to the Parliament in a joint sitting where decision in that behalf was final, unless there was specific and serious constitutional objection raised by the Provinces, the conduct of policy in these matters should have been left to the Prime Minister, action of President under Art. 58(2)(b) of the Constitution was not justified; privatization of nationalised units had the requisite statutory cover and none of such statutes had been objected to by the President or sent for reconsideration by the Cabinet, action of President dissolving the National Assembly under Art. 58(2)(b) on such ground was not justified ‑‑‑ Allegations of corruption, of mal‑administration, of incorrect policies being pursued in matters financial, administrative and international were independently neither decisive nor within the domain of President for action under Art.58(2)(b) as these were wholly extraneous and could not sustain the order of the President dissolving the National Assembly.

(jj) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Diss0luti0n’of National Assembly and dismissal of Prime Minister and the Cabinet under Art.58(2)(b) of the Constitution of Pakistan by the President vide Order dated 18th April, 1993 ‑‑‑ Held, none of the ground made the basis of the action had been established; that they bore no nexus to the order passed and grounds totally extraneous and irrelevant and in clear departure of the constitutional provisions had been invoked for taking action.

The order of the President dissolving the National Assembly and dismissing the Prime Minister and the Cabinet has too many subjective elements not recognized by the Constitution for exercise of Presidential power of dissolution of National Assembly. For example, the anticipatory action that the Government of the Federation is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic situation confronting the country are no considerations, nor can the President make an assessment of it independent of the Federal Government headed by the Prime Minister, as the Parliament ‑ is established for that purpose.

None of the grounds made the basis of the action has been established that they bear no nexus to the order passed and grounds totally extraneous and irrelevant and in clear departure of the Constitutional provisions have been invoked for taking action.

**(kk) Constitution of Pakistan**(1973)‑‑‑

 ‑‑‑‑ Arts. 58(2)(h), 14 & 91(5) ‑‑‑ President cannot dismiss the Prime Minister and his Cabinet while exercising powers under Art.58(2)(b).

(11) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 243 [as amended by Revival of the Constitution Order, 1985 and

Constitution (Eighth Amendment) Act (XVIII of 1985)] ‑‑‑ Scope ‑of the amendment ‑‑‑ Appointment of all the Chief‑, of Army, Air Force and the Navy had to take place on the advice of the Prime Minister ‑‑‑ Chairman Joint Chiefs of Staff Committee had to be appointed by the President in his discretion..

Prior to the amendment of Article 243 the appointment of all the Chiefs, of the Army, Air Force and the Navy had to take place on the advice of the Prime Minister. The content of the amendment introduced by the Revival of the Constitution Order was confined to one new post that was created, that was of the Chairman, Joint Chiefs of Staff Committee and in respect of that newly‑created post the appointing authority was made the President and in making that appointment lie was to act in his discretion. Throughout the world interpreting and understanding the Constitution and legislative instruments the punctuation are not allowed to play any decisive role. Even if they do here the authorisation or empowering by the Parliament and the provisions of the Revival of the Constitution Order being confined to the post of Joint Chiefs of Staff Committee it could not on any interpretation be extended to the other Chiefs.

(mm) Interpretation of Constitution...

\* ‑‑‑ Punctuations are not ‘allowed to play any decisive role while interpreting and understanding the Constitution and legislative instruments.

(nn) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Arts. 184(3), 58(2)(b), 17 & 14 ‑‑‑ Constitutional petition under Art.184(3) directly before the Supreme Court against Order by the President of Pakistan dated 18th April, I~W dissolving National Assembly and dismissing the Prime Minister and the Cabinet under Art.58(2)(b) and other enabling powers available to him in that behalf ‑‑‑ Competence‑‑‑ Held, provisions of the

Constitution which enabled political parties to reach the Government and after reaching the Government to continue their political purpose unimpeded were all directed towards ensuring fruition of Fundamental Rights guaranteed under Art.17 of the Constitution and the petition under Art.184(3) was not only competent because Fundamental Right 17 was directly involved but also because the first part of Art.14 of the Constitution stood violated by attributing subversion to the ousted Prime Minister and the Prime Minister was also being prevented by (lie President from extending the political activity of the Executive Government of the Federation to the Federally Administered Tribal Areas which too amounted to violation of Fundamental Right guaranteed under Art.17(2) of the Constitution.

“Political” has been defined as “pertaining or relating to the policy or the administration of Government, State or nation; pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of Government; relating to management of the affairs of the State”. “Political rights” have been defined as “those which may be exercised in the formation or administration of the Government, rights of citizens established or recognized by Constitutions which give them the power to participate directly or indirectly in the establishment or administration of Government.”

The expression “flowering of an idea, artistic style, or political movement is its successful development.

The provisions of the Constitution which enable political parties to reach the Government and after reaching the Government to continue (heir political purpose unimpeded are all directed towards ensuring fruition of Fundamental Right guaranteed under Art.17.

It was difficult to agree with the contention that clause (2) o Article 17 of the Constitution had a restricted field. If the Constitution‑makers chose to treat it separately, compendiously and expressly, unlike any other known Constitution of the world, why should one restrict and limit it. For an extensive interpretation of it there was a positive indicator in the word .operating”. There was healthy operating, there was unhealthy operating. By taking care of unhealthy operating, healthy operation had been kept free of all limitations to flourish and flower inside the Government as well as outside it.

Petition under Article 184(3) of the Constitution of Pakistan was competent not only because Fundamental Right 17 was directly involved but also because the first part of Article 14 of the Constitution stood violated by attributing subversion to the ousted Prime Minister. Further, the Prime Minister was being prevented by the President from extending the political activity of the Executive Government of the Federation to the Federally Administered Tribal Areas. This too amounted to violation of Fundamental Right 17(2).

Black’s Law Dictionary and Miss Benazir Bhutto v. Federation of Pakistan and another P L D 1988 SC 416 rer.

**Per SAUad Ali Shah, J. Contra‑‑‑**

Perusal of the Constitution shows that there are several other provisions which govern the continuation of the Government. Article 91(2A) envisages that the President shall invite the member of the National Assembly to be the Prime Minister who commands the confidence of the majority of the members and such person is to be given oath as is provided in clause (3) of the same Article. Clause (5) of Article 91 provides that the Prime Minister, who does not command confidence of the majority shall be required to obtain vote of confidence from the Assembly. Article 58(l) of the Constitution provides that the President shall dissolve the National Assembly if so advised by the Prime Minister. Clause (2) of this Article empowers the President to dissolve the National Assembly in his discretion. If provisions of the Constitution mentioned above, are read conjointly, it would appear that Article 17 gives right to form or be a , member of political party subject to any reasonable restrictions imposed by law but does not give any further Fundamental Right to that political party to continue the Government till its tenure has tome to an end.

Article 17(2) of the Constitution does not give Fundamental Right to the political party to conclude its tenure of office. Further I do not agree that by mentioning subversion of the Constitution in the order of dissolution, Fundamental Right of the Prime Minister under Article 14 of the Constitution is violated nor there is any justification to conclude that the Prime Minister was being prevented by the President from extending political activity of the executive Government of Federation to the Federally Administered Tribal Areas.

Ms. Benazir Bhutto v. Federation of Pakistan and another PLD 1988

In the instant case Article 184(3) cannot be invoked for the reason that impugned action of dissolution of the Assembly is not in conflict with Article 17(2) as there is no Fundamental Right available to the petitioner to continue the Government till the tenure comes to an end because that subject is covered by other provisions of the Constitution. Article 17(2) which guarantees Fundamental Right mentions such right to the extent of being a member of a political party subject to any reasonable restrictions imposed by law and nothing more than that. To continue in power for rive years till the end of tenure is a political wish and to be able to participate in political process, is governed by other Articles of the Constitution and not by Article 17(2). Article 17(2) mentions political party which has bundle of rights including political rights which are different from Fundamental Rights which are enumerated in the Constitution.

fundamental Rights are specifically mentioned in the Constitution  Fundamental Right can be deemed to be there by implication if not mentioned specifically. If legislature **wants to add any Fundamental Right**it can do so expressly. There is no dispute **about the fact that Article 2A**containing Objectives Resolution now is substantial part of the Constitution and this Article is now as good as any other Article of the **Constitution and at par with**it.

Petition under Article 184(3) cannot be riled straight away in the Supreme Court as Article 184(3) can be invoked only when question of public importance is involved with reference to the enforcement of any of Fundamental Rights and in the instant case petitioner cannot claim Fundamental Right under Article 17(2) to continue Government till its tenure comes to an end. Proper remedy for the petitioner was to rile the petition before the High Court under Article 199 of the Constitution and seek relief as contemplated therein challenging the validity of order of dissolution passed by the President.

Begum Nusr at Bhutto v. Chief of Army Staff etc. PLD 1977 SC 657 and Ms. Benazir Bhutto v. Fcd&ration of Pakistan PLD 1988 SC 416 rer.

The expression ‘political justice’ is very significant and it has been placed in the category  of Fundamental Rights. Political parties have become a subject‑matter of a Fundamental Right in consonance with the said provision in the Objectives Resolution.  Even otherwise, speaking broadly, our Constitution is a Federal Constitution based on the model of Parliamentary form of representative Government prevalent in United Kingdom. It is also clear from the Objectives Resolution that principles of democracy as enunciated by Islam are to be fully observed. True and fair elections and the existence of political parties, is an essential adjunct of a functional democratic system of Government.

Reference to “political justice” is academic in nature because Fundamental Right is already mentioned in Article 17(2) which is right to form or be a member of political party.

In the instant case a petition under Article 184(3) of the Constitution directly filed in the Supreme Court is not maintainable and for that purpose resort should have been\* made to the High Court.

The most important and pivotal point is the making of speech by the Prime Minister and its tenor and purport which is not disputed but on the contrary is being defended vociferously on the ground that the Prime Minister acted within his powers in the Constitution and the President had no business to advise the Prime Minister in, the Parliamentary form of Government. The tenor of the speech of the Prime Minister shows clearly that he endeavoured to take into confidence the Nation on the point that the situation had arisen in which the Government of Federation could not be carried on in accordance with the provisions of the Constitution and for such situation he was not to be blamed and the blame in its entirety lay on the door of the Presidency and the person of the President who colluded with elements inside the Ruling Party and outside, who were hell‑bent to destabilise the Government,

The question of apportionment of blame for creating such a situation is relegated in the background and the fact that such a situation is created bringing about deadlock and stalemate in the working relationship of two pillars of the Government of Federation had become a fait accompli which enabled the President to exercise his discretionary power under Article 58(2)(b).

It is clear that mandatory requirement of Article 154 was not followed and C.C.I. Was not called for to formulate and regulate policy giving opportunity to the Provinces to participate in the proceedings at such important stage.

Sale of properties owned by the Federal Government including Corporations was unconstitutional and in doing sd Articles 153, 154 and 156 read with Article 161 were violated by the petitioner and his Government.

‑in respect of policy of privatisation, constitutional requirements of provisions regarding CCI and NEC were not followed and Provinces were not given opportunity to participate in the formulation of such policies. It also appears that on the ground of mal‑administration, corruption and nepotism of the Federal Government there was sufficient material before the President which was considered in support of the ground of dissolution.

There is no reason to justify departure from the guidelines laid down in the cases of Haji Saifullah Khan and Khawaja Ahmad Tariq Rahim for consideration of material in support of grounds of dissolution. There is no difference in the material produced in support of grounds of dissolution in the case of Tariq Rahim and in the present case. The present line of reasoning in the majority judgment can be accepted only when positive assertion is made that case of Khawaja Ahmed Tariq Rahim was wrongly decided.

Supreme Court can examine the reasons and material in support of grounds of dissolution in order to find out whether it has any rational nexus with the satisfaction of the President.

S.R. Bonimai and others v. The Union of India and others AIR 1990 Karnataka 5; Mrs. Sajida Bcgum and others v. Union of India and others AIR 1977 SC 1301; A.K. Roy v. Union of India and ‘ another AIR 1982 SC 710; Capt. Kanwaijit Singh v. Union of India AIR I(Y)l Pb. and Har. 54; The State v. Zia­ur‑Rahman and others PLD 1973 SC 49; Fauji Foundation and another v. Shamimur Rchman PLD 1983 SC 457 and Dilip Kumar Sharma and others v. State of Madh. Pra. AIR 1976.SC 133 rer.

Decision of the Court should be strictly in accordance with law and not to please the nation. What may please the nation may turn out to be against the letter and spirit of the law and the Constitution.

**Per Saad Saood**Jan, J.; SaJJud **All Shah, J. Contra.‑‑‑**

**(oo) Constitution of Pakistan (1973)‑‑‑‑**

‑‑‑‑ Art.175(2) ‑‑‑ Expression “jurisdiction” in Art.175(2), meaning ‑‑‑ Term ‘Jurisdiction” is defined to be the power of the Court to hear and determine a cause and exercise judicial power in relation to it ‑‑‑ No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. 1p. 6411 A Chief Secretary v. Sikandar Hayat Khan PLD 1982 SC (AJ&K) 112

**(pp) Constitution**or **Pakistan (1973)‑‑‑‑**

‑‑‑‑Art.58(2)(b) ‑‑‑ Preconditions for the exercise of the power by the President under Art.58(2)(b).

The most important precondition laid down in Article 58(2)(b) for its exercise is that circumstances must exist which clearly indicate that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. The word ‘cannot’ as occurring in the clause brings in not only an element of impossibility but also that of permanence in its construction and thus the President can exercise his power thereunder only i there is material before him showing that the affairs of the State have come to such a stage that it is, no longer possible for the Government to function except by violating the Constitution.

Once the President forms an opinion that the Government of the Federation cannot be carried on in accordance with the Constitution he has just no option but to place the matter before the electorate, who are the political sovereign under the Constitution, to re‑exercise their choice with regard to the composition of the Government. The Constitution does not provide any other way out to the President for it is a parliamentary system of Government and except in some specified matters the President has to act on the advice of the Prime Minister in the performance of his functions irrespective of whether the latter is an elected one or merely his own nominee under Article 48(5)(b) of the Constitution.

Once the President is satisfied that the Government of the Federation cannot function in accordance with the Constitution he has no option but to place the matter before, i1he political sovereign of the country.

Under the system the Government of the Federation represents the majority of the members of the National Assembly and it cannot survive without their support. The Constitutional crisis or an impasse does not ordinarily develop overnight. If the majority of the members do not take remedial steps in time till the Constitutional stalemate actually occurs, the members can only blame themselves in the event the President intervenes to save the situation. Apart from that, dissolution of the Parliament is a normal incident of parliamentary democracy and no member can claim that he must be heard before dissolution.

Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 166 and Ahmad Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646 ret

(qq) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Arts.58(2)(b) & 54(3)‑‑‑President can exercise power under Art..58(2)(b) when the National Assembly is in session in pursuance of the requisition of the members under Art.54(3)‑‑‑Dissolution of National Assembly under Art.58(2) and summoning and prorogation of National Assembly under Art.54(3) are entirely different matters ‑‑‑ Summoning of National Assembly by Speaker under Art.54(3) does not operate as clog on the power of President under Art.58(2)(b).

(rr) Constitution of Pakistan (1973)...

‑‑‑‑ Art.58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) vide Order dated 18‑4‑1993 ‑‑‑ Grounds mentioned in the said Order, could not at all lead to the conclusion that the Government of the Federation could not be carried on in accordance with the Constitution and thus did not furnish an acceptable basis for the exercise of the discretionary power vested in the President under Art.58(2)(b) ‑‑‑ None of these grounds either by itself or in conjunction with others fulfilled the preconditions for the exerciser of the power under Art.58(2)(b).

Adegbenro v. Akintola and another (1963) 3 All ER 544 ref.

As **to the maintainability of petition under Art.184(3) of the Constitution of Pakistan on the ground**of **violation of Fundamental Right guaranteed under Art.17(2) of the Constitution and elaboration of expression “Political justice” as contained in the Objectives Resolution ‑‑‑ [Minority**view].

To invoke the jurisdiction of this Court under clause (3) of Article 184 it must be shown that the action complained against violates a Fundamental Right as set out in Chapter 1 of Part 11 either directly or transgresses the field in which the said right can reasonably be taken to be operative.

A perusal of Article 17(2) will show that the Fundamental Right contained therein has a somewhat limited scope inasmuch as it relates to the formation and membership of political parties. Thus, it no doubt gives freedom to the citizens to form political parties, enjoy the membership of the parties of their choice and by extension. of the said right to take part in all political activities; but then this Article was never intended to be a complete charter of all political rights. The content of the right which it guarantees is clearly delineated by the terms in which it is expressed and  it is doubtful whether even by rule of progressive interpretation its scope can be extended to guaranteeing the right to the membership of legislative bodies or to the formation of the Government of the day.

Article 17(2) is not a check against all violations of the Constitution the terms in which it is expressed set out the content of the right guaranteed by it; it relates to the formation, membership and legitimate functioning of the political parties. It does not concern itself with the rights of the citizens when they sit as members of a legislative body. The term of the National Assembly, its constitution and the manner of its dissolution arc regulated by other Articles of the Constitution; Article 17(2) has nothing to do with these matters. If the National Assembly is dissolved illegally it will be violation of Articles 52 and 58. One cannot complain that by the dissolution of the Assembly his right under Article 17(2) has been impinged upon. He will no doubt have a remedy under Article 199 of the Constitution before the High Court; the jurisdiction conferred on this Court by Article 184(3) is, by the language in which it is couched, far too restricted to cover the petition.

The expression ‘political justice’ represents an idea with myriad of facets and for that very reason does not admit of a precise definition. Broadly speaking, every time a group or a class or even an individual is deprived of a right or a privilege which is available to the majority of others similarly placed or is discriminated against, one immediately starts thinking in terms of political justice. So far as the Objectives Resolution is concerned it does not by itself add any new independent fundamental right in Chapter I of Part II of the Constitution so as to bring its violation within the compass of the jurisdiction conferred on this Court by Article 184(3).

Political justice has innumerable dimensions. Its theme runs throughout the Constitution. It is not confined to any particular portion thereof‑, in fact, the various Articles of the Constitution receive inspiration from or reflect one or the other aspect of political justice. There seems little doubt that the paramount consideration before the Constitution‑makers was that no section of the citizenry no matter how small it might be, should be deprived of equal participation in the national life and no one should feel that he has not had a fair deal.

The question was whether Supreme Court had the jurisdiction t entertain the petition directly; for that one has to show that there had been violation of his right as included in Chapter I of Part 11 of the Constitution. The mere assertion that the petitioner was seeking political justice was not sufficient in that regard. On the other hand, the dissolution of the National Assembly or the dismissal of the cabinet arc not matters which fall within the field in which Article 17(2) operates. The action of the President emanates from the provisions of Article 58(2)(b). Whether this action is legal or not has to be examined on the basis of the language of this clause and the relevancy of the material upon which it was stated to have been based. It has nothing to do with the violation of Article 17(2) for, the Fundamental Right incorporated in this clause does not extend to guaranteeing the duration of the membership of the National Assembly. Direct petition is not covered by clause (3) of Article 184 of the Constitution and as such it ought not to have been riled directly in the Supreme Court.

Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416 and PLD 1989 SC 00 distinguished.

Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416 and Hakam Khan v. Government of Pakistan PLD 1(Y)2 SC 595 rer.

Per Ajmul Mian, J.; Sullud All Sliali, J. Contra...

(ss) **Constitution of Pakistan (1973)...**

**‑‑‑‑ Art.**184(3)‑‘ interpretation, scope and application of Art.184(3) of the Constitution.

A perusal of Article 184(3) of the Constitution of Pakistan (1973), indicates that without prejudice to the provisions of Article 199 of the Constitution, which confers constitutional jurisdiction on the High Courts, the Supreme Court has been empowered to make an order of the nature mentioned in the above Article 191) provided the following two conditions are fulfilled:‑‑‑

(i) a question of public importance is involved;

with reference to the enforcement of any of the Fundamental Rights guaranteed by Chapter 1, Part, 11 of the Constitution, i.e. Articles 8 to 28.

(tt) Constitution of Pakistan (1973)...

.... Art. 2A ‑‑‑ Object of adopting the Objectives Resolution ‑‑‑ Fact that Objectives Resolution has been incorporated as a substantive part of the Constitution by virtue of Art.2A, does not justify reading into any additional Fundamental Rights in Chapter pertaining to Fundamental Rights contained in the Constitution ‑‑‑ Courts, however, while construing Fundamental Rights have to keep in view the Objectives Resolution and to place widest possible construction as to advance the goals targeted/envisaged therein.

                Factum that the Objectives Resolution has been incorporated as a substantive part of the Constitution by virtue of Article 2A, does not justify reading into any additional Fundamental Rights in the Chapter pertaining to Fundamental Rights contained in the Constitution. The object of adopting the Objectives Resolution in 1949, was to provide guideline and to serve as a beacon light to the framers of Constitution but it was never intended or designed to be enforced as Fundamental Rights. The framers of the Constitution have in fact acted upon, on the Objectives Resolution by incorporating the various Fundamental Rights contained in Articles 8 to 27,

which cover Political, Social and Economic Justice, to add to the above list any other undamental right on the basis of the Objectives Resolution is the function of the Parliament and not of the Court. However, the Courts while construing Fundamental Rights should keep in view the Objectives Resolution and should place widest possible construction as to advance the goals targeted/envisaged therein.

Hakim Khan and 3 others v. Government of Pakistan PLD )92 SC

(uu) Constitution of Pakistan (1973)‑

595 ref.

‑‑‑‑ Part 11, Chap. 1 ‑‑‑ Fundamental Rights ‑‑‑ Courts, while construing Fundamental Rights have to keep in view Objectives Resolution and place widest possible’ construction as to advance the goals targeted/envisaged therein.

Hakim Khan and 3 others v. Government of Pakistan PLD 1992 SC

(vv) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 17‑‑“Political rights” and “Political justice” are inter linked with each other ‑‑‑ Guarantees ensured under “political rights” and “political justice” detailed ‑‑‑ Need for expanding the same through legislation and judicial creativity emphasised.

The political rights and the political justice are inter linked with each other. The former encompasses the right to participate directly or indirectly in the establishment or management of the Government. These rights are delineated and demarcated in the Constitution of every country; whereas the latter caters for providing in the Constitution equal rights to engage and participate in the public affairs. It envisages that the Constitution should guarantee equal liberty and provide an efficient and honest machinery/mechanism through which people can elect their representativ6s in a manner which should ensure that‑‑‑

(i) each vote has approximately the same weight in determining the outcome of the election;

(ii) people similarly endowed and motivated should have roughly the same chance of attaining political authority irrespective of their economic and social class;

(iii) the majority should get into power.

The Fundamental Rights contained in the Constitution referred to herein above provide to some extent for the Political **Rights and the Political Justice.**However, there is a lot of scope for improving upon and expanding the same through legislation and the judicial creativity.

Justice and Natural Social and Political by Dr. Chatcrvedi; Black’s Law Dictionary, 5th Edn.; Words and Phrases (Permanent Edition ‑ West Publishing Co.), Vol. 32A; A Theory of Justice by John Rawls and Miss Benazir Bhutto v. Federation of Pakistan and others PLD 1988 SC 416 ref.

**(ww) Constitution of Pakistan**(1973)‑‑‑

‑‑‑‑ Art. 17‑‑‑Scope of Art.17 ‑‑‑ Forming of a political party necessarily implies the carrying on of all its activities as otherwise the formation itself would be of no consequence.

A perusal of Article 17 of the Constitution of Pakistan (1973) indicates that clause (1) thereof confers on every citizen the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. Whereas, clause (2) confers on every citizen, not being in the service of Pakistan, the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or intergtrity of Pakistan, it also empowers the Federal Government to declare that a political party has been formed, or is operating in a manner prejudicial to the sovereignty or intergtrity of Pakistan, subject to a reference to be made within 15 days from such declaration to the Supreme Court whose decision on such reference is to be final.

The forming of a political party necessarily implies the carrying on of all its activities as otherwise the formation itself would be of no consequence. [p. 0691 F

SC 416 ref.

Miss Benazir Bhutto v. Federation of Pakistan and others PLD 1988

(xx) Constitution or Pakistan (1973)‑‑‑

‑‑‑‑ Art. 184(3) ‑‑‑ Article 184(3) of the Constitution provides abundant scope for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction ‑‑‑ Supreme Court has to lay down the contours generally in order to regulate the proceedings of group or class of actions from case to case.

Miss Benazir Bhutto v. Federation of Pakistan and others PLD 1988

**(yy) Constitution of Pakistan**(1973)‑‑‑

‑‑‑‑                           Arts. 17(2) & 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) ‑‑‑ Right to form a political party and to be a member of a political party enshrined in Art.17(2) does not culminate upon winning of the elections but it. is a continuous political process which includes the right of a person to remain as a

member of the National Assembly or as a Prime Minister till the lifetime of the Assembly or the tenure of the Prime Minister ship is terminated lawfully in accordance with the provisions of the Constitution ‑‑‑ Member of National Assembly or Prime Minister, therefore, can claim that he should be allowed to function so long as the life of the Assembly or his tenure is not terminated in

accordance with the Constitution ‑‑‑ Any infraction of such right without legal basis will inter alia attract Art.17(2) of the Constitution besides being violative of      the relevant Constitutional or statutory provision ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet being violative of the          provisions of the Constitution, Art.17(2) was attracted as admittedly the ousted Prime Minister was the leader of a Political Party which commanded the    majority in the National Assembly.

The right to form a political party and to be a member of a political party enshrined in clause (2) of Article 17 does not culminate upon winning of the elections but it is a continuous political process which includes the right of the petitioner to remain as a member of the National assembly or as a Prime Minister till the time the life of the Assembly or the tenure of the Prime Minister ship is terminated lawfully in accordance with the provisions of the Constitution. It is true that nobody can claim any vested right to remain a member of the National Assembly or to be a Prime Minister for the period of five years but a Member of the National Assembly or a Primer Minister can claim that he should be allowed to function so long as the life of the Assembly or his tenure is not terminated in accordance with the provisions of the ‘Constitution. Any infraction of the above right without legal basis will inter alia attract Article 17 (2) of the Constitution besides being violative of the relevant Constitutional or statutory provision. Since the impugn6d Presidential Order of 18th April, 1993, dissolving the National Assembly and dismissing the Prime Minister and the Cabinet does not fall, within the ambit of Article 58 (2) (b) of the Constitution, the termination of the life of the Assembly and the tenure of the petitioner as the Prime Minister besides being violative of the above provision of the Constitution, will also attract Article 17(2) of the Constitution, as admittedly the petitioner was the leader of a Political party which commanded the majority in the National Assembly.

Kh. Ahmad Tariq Rahim v. Federation of Pakistan PLD 1991 Lah. 78;

Reference by his Excellency the Governor‑General PLD 1955 FC 435; State of Rajasthan v. Union of India AIR 1977 SC 1361; Capt. Kanwaijit Singh v. Union of Inida AIR 1991 Punj. 54 and All India Bank Employees’ Association v. The National Industrial Tribunal (Bank Disputes) and others AIR 1962 SC 171 **distinguished.**

There is a marked distinction between interpreting a constitutional provision containing a Fundamental Right and a provision of an ordinary statute. A constitutional provision containing a Fundamental Right is a permanent provision intended to cater for all times to come and, therefore, while interpreting such a provision the approach of the Court should be dynamic, progressive and liberal keeping in view ideals of the people, socio­economic and politico‑cultural values (which in Pakistan are enshrined in the Objectives Resolution) so as to extend the benefit of the same to the maximum possible. This is also called judicial activism or judicial creativity. In other words, the role of the Courts is to expand the scope of such a provision and not to extenuate the same. The construction placed on Article 17 of the Constitution herein above is in consonance with the above rules of construction.

Olga Tellis and others v. Bombay Municipal Corporation and others AIR 1986 SC 180; State of Himachal Pradesh and another v. Umcd Ram Sharma and others AIR 1986 SC 847; IA. Sharwani and others v. Government of Pakistan 1991 SCMR 1041; Muhammad Nur Hussain v. The Province of East Pakistan and others PLD 1959 SC (Pak.) 470 and Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd. and others AIR 1954 SC.119 ref.

(zz) **Interpretation of Constitution‑‑‑**

‑‑‑ Fundamental Rights guaranteed in the Constitution ‑‑‑ While interpreting Fundamental Rights the approach of the Court should be dynamic, progressive and liberal keeping in view ideals of the people, socio‑economic and politico­-cultural values which in Pakistan are enshrined in the Objectives Resolution so as to extend the benefit of the same to the maximum possible.

There is a marked distinction between interpreting a constitutional provision containing a Fundamental Right and a provision of an ordinary statute. A constitutional provision containing Fundamental Right is a permanent provision intended to cater for all times to come and, therefore, while interpreting such a provision the approach of the Court should be dynamic, progressive and liberal keeping in view idea of the people, socio­economic and politico‑cultural values (which in Pakistan are enshrined in the Objectives Resolution) so as to extend the benefit of the same to the maximum possible. This is also called judicial activism or judicial creativity. In other words, the role of the Courts is to expand the scope of such a provision and not to extenuate the same.

**(aaa) Constitution of Pakistan**(1973)‑‑‑

‑‑‑‑ Art. 184(3)‑~‑Direct petition under Art.184(3) of the Constitution could be filed before the Supreme Court if a petitioner could demonstrate any infraction of any of the Fundamental Rights.

, Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others PLD 1992 SC 723 clarified.

**(bbb) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Arts. 58(2)(h) & 54(3)‑‑‑Power of the President to dissolve the National Assembly under Art.58(2)(b) was not affected if the Speaker had already prorogued the National Assembly under Art.54(3) of the Constitution ‑‑‑ Once Parliament has been formally opened, it can be dissolved whether it is in session or not. the power to prorogue National Assembly is entirely distinct from the power to dissolve and, therefore, the factum that under clause (3) of Article 54 once the Speaker summons the National Assembly upon requisition signed by not less than one‑fourth of the total membership of the National Assembly, he can only prorogue and not any other authority, does not, in any way, control or curtail the power conferred on the President under clause (2) (b) of Article 58 of the Constitution. If the National Assembly can be dissolved while in session, there seems to be no legal basis as to why it cannot be dissolved when it is not in session but is summoned upon requisition under clause (3) of Article 54 of the Constitution. [p. 67611

Theory and Practice of Dissolution of Parliament compiled by  Cambridge and Studies in International and Comparative Law edited by C.J. Harrison and R.Y. Jennings ref.

(ccc) **Constitution of Pakistan**(1973)‑‑‑

‑‑‑‑ Art. 58 ‑‑‑ Interpretation and scope of Art.58 ‑‑‑ Power of President to dissolve National Assembly under Art.58(2)(b) ‑‑‑ Scope ‑‑‑ Dissolution of National Assembly under Art.58(2)(b) is inter linked with an appeal to the electorate ‑‑‑ Court will be entering into the domain of speculations, surmises and conjectures if it were to examine the question, whether an appeal to the electorate will achieve the desired result which is not warranted by the language of Art. 58.

A perusal of Article 58, Constitution of Pakistan shows that under clause (1), it is mandatory on the part of the President to dissolve the National Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646 and Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs~ Islamabad and others v. Aftab Ahmad Khan Sherpao and others PLD 1992 SC 723 ref.

“Inter‑Parliamentary Union” Parliaments of the World (A Reference Compendium)’by Valentine Herman and Francoise Mendel and the Theory and Practice of Dissolution of Parliaments, a Comparative Study with Special Reference to the United Kingdom and Greeks by **B.S. Markesinis distinguished.**

(eee) **Constitution of Pakistan**(1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and call to the electorate ‑‑‑ Effect ‑‑‑ Frequent dissolution of Assembly without justifiable reason affects adversely the democratic process, which results into instability in the country adversely affecting economic growth.

Indeed holding of a general election regularly in a democratic set­up/polity is an essential element. It inculcates political maturity among the masses, brings political stability in the democratic institutions and gives the masses sense of participation, in the affairs of the State and generates in them sense of responsibility and patriotism. But frequent dissolution of an assembly without justifiable reason affects adversely the above democratic process, which results into instability in the country adversely affecting economic growth.

Introduction to the Study of the Law of the Constitution by A.V. Dicey, Tenth Edn. ref.

**(M) Constitution of Pakistan**(1973)‑‑

‑‑‑‑ Preamble ‑‑‑ Sovereignty ‑‑‑ Marked distinction exists between the Islamic concept of sovereignty and modern concept of sovereignty.

Islamic Jurisprudence and International Perspective by C.G. Weeramantry and Hakim Khan and 3 others v. Government of Pakistan PLD 1992 SC 595 rer.

(ggg) **Constitution of Pakistan**(1973)‑‑‑

Assembly if so advised by the Prime Minister and unless sooner dissolved, it shall stand dissolved automatically at the expiration of f9rty‑eight hours after the Prime Minister has so advised. However, explanation to the above clause puts clog on the above right of the Prime Minister by providing that he cannot tender above advice if notice of a resolution for a vote of no‑confidence has been given against him.

Clause (2) provides that notwithstanding anything contained in clause (2) of Article 48 of the Constitution, the President may dissolve the National Assembly in his discretion where in his opinion‑‑‑

(a) a vote of no‑confidence has been passed against the Prime Minister and in the opinion of the President no other member of the National Assembly is likely to command the confidence of the majority of the members;

(b) the President may also dissolve the National Assembly in his discretion when in his opinion a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

Sub‑clause (b) of clause (;) of Article 58 of the Constitution is pertinent once the President forms the opinion objectively on the question that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution on the basis of the material having nexus with the above reason, he enters into the domain of discretion and it is for him to decide, as to whether the proper action would be the dissolution of the Assembly or some other action warranted by some other provisions of the Constitution or law

The dissolution of an Assembly is inter linked with an appeal to the electorate. If an Assembly is to be, dissolved as a corollary, an appeal to the electorate is to be made. Courts will be entering into the domain of speculations, surmises and conjectures if they were to examine the question, whether an appeal to the electorate, will achieve the desired result ‘which is not warranted by the language employed in the above provision of the Constitution. One cannot predict with certainty, what would be the outcome of an appeal to the electorate.

Kh. Ahmad Tariq Rahim~ v. Federation of Pakistan PLD 1991 SC **646**

**(ddd) Constitution**or Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Expression “situation has arisen in which the Government cannot be carried on in accordance with the provisions of the Constitution” occurring in Art.58(2)(b) ‑‑‑ Interpretation.

Haji Muhammad Saifullath Khan’s case PLD 1989 SC 166; Ahmad

‑‑‑‑ Art. 64(l) ‑‑‑ Resignations of Members of National Assembly ‑‑‑ Sub mission of such resignations to the President of Pakistan had no legal effect as they were not handed over to the Speaker in terms of Art.64(1) of the Constitution.

A.K. Fazlul Quader Chaudhury v. Shahnawaz and others PLD 1966 SC 105 and Mirza Tahir Beg v. Syed Kausar Ali Shah and others PLD 1976 SC 504 ref.

**(hhh)  constitution of Pakistan**

**‑‑‑‑ Art.**58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) ‑‑‑ Ground that Members of National Assembly submitted resignations to achieve the object of ousting the Prime Minister’s Government and dissolution of Assembly was foreign to the grounds mentioned in Art.58(2)(b) of the Constitution ‑‑‑ What cannot be achieved directly cannot be achieved indirectly by pressing into service Art.58(2)(b) of the Constitution.

The object of submission of the above resignations to the President was to get the Prime Minister’s Government ousted and in order to achieve the above object, the Assembly was to be dissolved. The above object is foreign to the ground mentioned in sub‑clause (b) of clause (2) of Article 58 of the Constitution as the facturn that 88 MNAs had submitted resignations to the President instead of to the Speaker, would not show that the Assembly lost the mandate of the people or that a situation had arisen in which the Federation could not be carried on in accordance with the provisions of the Constitution

What cannot be achieved directly cannot be achieved indirectly by pressing into service sub‑clause (b) of clause (2) of Article 58 of the Constitution. In this regard, it may be pertinent to mention that under clause (5) of Article 91 of the Constitution, it has been provided that the Prime Minister shall hold the office during the pleasure of the President but this pleasure is controlled by providing therein that the President shall not withdraw his pleasure under this clause unless he is satisfied that the Prime Minister does not command the confidence of majority of the 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. If the Prime Minister fails to obtain . a vote of confidence, the President is entitled to withdraw his pleasure by dismissing the Cabinet and the Prime Minister. Reference may also be made to clause (1) 6f Article 95 of the Constitution which provides that a resolution for a vote of no‑confidence moved by not less. than 20 per centum of the total membership of the National Assembly may be passed against the Prime Minister by the National Assembly. Whereas sub‑clause (a) of clause (2) of Article 58 of the Constitution empowers the President to dissolve the Assembly in his discretion if a vote of no confidence having been passed against the Prime Minister, no other member of the National Assembly is likely to command the confidence of the majority of the members of the National Assembly. This  is to be read with clause (5) of Article 48 which empowers the President upon dissolving the National Assembly either under sub‑clause (a) or sub‑clause (b) of clause (2) of Article 58 of the Constitution to‑‑‑

(a) . appoint a date not later than 90 days from the date of dissolution for hold7mg of general elections to the Assembly; and

 (b) appoint a Care‑taker Cabinet which. includes Prime Minister.

There seems to be no other provision under the Constitution, whereby a Prime Minister commanding majority of the House can be removed or dismissed. The factum that 88 MNAs had submitted resignations with the above object had no nexus with the ground mentioned in sub‑clause (b) of clause (2) of Article 58 of the Constitution. Even if the above 88 resignations would have been submitted to the Speaker, that would not have been sufficient to conclude that the situation had arisen in which the Government of the Federation could not be carried on in accordance with the provisions of the Constitution as the law provides the requisite provision for bye‑elections for filling in such vacancies.

The persons desirous to achieve the ouster of a Government commanding majority in the National Assembly cannot be allowed to achieve the above object by adopting the above mechanism instead of defeating the( Government through no‑confidence votes. The intention of the above MNA to submit their resignations was to oust the Government which command majority and to get into power through this indirect means, which fact stands established from the factum that Mr. Mir Balakh Sher Mazari was inducted as the Care‑taker Prime Minister and the Ministers who had resigned from the petitioner’s Cabinet were taken as the Care‑taker Ministers besides taking majority of the MNAs who submitted their resignations as Care‑taker Ministers in the Care‑taker Cabinet.

Adegbcrno v. Akintola and another ‘(1963) 3 All ER 544

(iii) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Exercise of powers under Art.58(2)(b) by the President‑‑­ Conditions ‑‑‑ Article 58(2)(b) was not intended and designed to be pressed into service at the behest of the elements hostile to the Government in power to oust it though it may command majority in the National Assembly ‑‑‑ If the exercise ‘ of the power is tainted with personal likes or dislikes, the same shall stand vitiated.

Under Article 41 of the Constitution, the President is the Head of the State and represents the unity of the Republic. His position is of a non‑partisan person. Article 58 (2) (b) of the Constitution was not intended and designed to be pressed into service at the behest of the elements hostile to the Government m power to oust it though it may command majority in the National Assembly The power under the above provision though discretionary, is to be exercised sparingly, independently, honestly, fairly and reasonably without any bias and ill‑will. If the exercise of the above power is tainted with personal likes or dislikes, the same shall stand vitiated. Furthermore, the above provision can be pressed into service when the machinery of Government is broken down

completely and its authority is eroded and that it does not concern with the pace of the progress, the shade of the quality or the degree of the performance or the quantum of achievement.

(W) **Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the ground of a speech by the Prime Minister ‑‑‑ Held, though the launching of personal attack by the Prime Minister was not warranted and desirable, but simpliciter, the same could not have furnished a ground to press into service Art.58(2)(b).

De Smith and Brazier Constitutional and Administrative Law, Sixth Edn. by Rodney Brazier and Constitutional and Administrative Law Text and Materials by David Pollard and David Hughes rer.

**(kkk) Constitution of Pakistan**(1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution inter alia on the ground of Prime Minister’s alleged inaction on internal and international problems ‑‑‑ Held, such ground was not sustainable as it had no nexus to the reasons contained in Art.58(2)(b) of the Constitution of Pakistan especially when there was no inaction on the part of the petitioner of the nature warranting the dissolution of National Assembly and dismissal of Cabinet.

**(111) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Powers to dissolve the National Assembly and to remove the Government by withdrawing the President’s pleasure are governed by the Constitutional provisions and they are controlled by the conditions contained therein.

Ahmad Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646; Constitution of India by Mangal Chandra Jain Kagzi, 1987 Edn. Vol. 1 and De Smith and Brazier’s Constitutional and Administrative Law Sixth Edn. by Rodney Brazier ref.

**(mmm) Constitution of Pakistan (1973)‑‑‑**

Arts. 58(2)(b), 46 & 48 ‑‑‑ Status of President and the Prime Minister under the Constitution.

Article 46 of the Constitution imposes the following Constitutional duties on the Prime Minister:‑‑‑

(a) to communicate to the President all decisions of the Cabinet relating

to the administration of the affairs of the  federation and proposals for legislation;

(b)           to furnish such information relating to the administration of the affairs of the Federation and proposals for legislation as the President may call for; and

(c)           if the President so requires, to submit for the consideration of the Cabinet any matter on which a decision has been taken by the Prime Minister or a Minister but which has not been considered by the Cabinet.

The above Article is to be read with the I other provisions of the Constitution particularly with clause (2) of Article 58 of the Constitution, which empowers the President to dissolve the National Assembly and as a result of which the Cabinet is to cease to function. The above powers cannot be exercised by the President unless he keeps himself abreast of the day to day working of the

Government. The cumulative effect of the various provisions of ‑the Constitution relating to the President is that the President enjoys the right to be consulted, the right to encourage and the right to warn. In order to discharge his above constitutional duties, he is expected to be vigilant and to

keep his eyes and cars open.

But at the same time the Prime Minister’s status is neither inferior nor is less important to that of the President. Except in the matters which are in the sole domain of the President, the President cannot act without the advice of the Prime Minister, whose advice is binding on him by virtue of Article 48(l) of the Constitution. The Prime Minister, in fact, runs the Government and formulates its policies in terms of the Constitution and is accountable to the Parliament. He represents the will of the people. Prior to the Eighth Amendment the Prime Minister was all in all, but after the above amendment the position has changed considerably.

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(nnn) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 154 ‑‑‑ Privatization of National units ‑‑‑ Federal Government should have brought the matter of privatization in respect of the items covered by the Constitutional provisions before the C.C.l.

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(ooo) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution inter alia on the ground that privatization in respect of items covered by the Constitutional provisions was not put before the C.C.I.‑Held, Privatization, which had the backing of law though should have been done through C.C.I. but it could not be said that lapse by the Government was of the nature, which hud jeopardised the very existence and subsistence of the Federation warranting to press into service Art. &’R(2)(b) of the Constitution of Pakistan.

(ppp) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the ground of mal‑administration, corruption and nepotism etc.‑‑‑Held, such grounds were not sufficient independently to warrant taking of action under Art.58(2)(b) of the Constitution and even not of the nature which could have nexus to the reasons mentioned in that Article.

Ahmed Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646 ref.

(qqq) Constitution or Pakistan (197.3)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the gr6iund that functionaries, authorities and agencies of the Government under the direction of Prime Minister and Ministers had unleashed a reign of terror against the opponents etc.‑‑‑Held, such grounds (allegations) having not been investigated into by any competent agency/forum in order to determine truthfulness of the allegations besides being not founded on any material worth consideration had no nexus with the reasons mentioned in Art.58(2)(b) of the Constitution.

(rrr) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) of the Constitution inter alia on the ground that one or two ministers of the Cabinet who resigned had raised a grievance to the effect that there was a kitchen Cabinet for attending the important matters and they were not consulted‑‑­Held, such ministers might have individual grievance but the same could not be made a ground for the purpose of Art.58(2)(b) of the Constitution as that had no nexus with the reasons mentioned therein.

(sss) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the ground that Prime Minister had instructed the Cabinet Ministers not to call on the President ‑‑‑ Held, such a ground had no nexus to the reasons mentioned in Art.58(2)(b) 6f the Constitution of Pakistan.

(ttt) Constitution of Pakistan (1973)‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the ground of mere allegations of irregularities/favours in the form of complaints or news items without ascertainment of their truthfulness ‑‑‑ Held, alleged irregularities/favours may be subject‑matter of appropriate legal proceedings under the relevant law if they constituted breach of such laws and were true, but such individual instances could not have nexus with the grounds mentioned in Art.58(2)(b) of the Constitution ‑‑‑ If, however, the corruption, nepotism and favourtism were on such a large scale, that it resulted in the breakdown of Constitutional machinery completely, it might have nexus with Art.58(2)(b).

**(uuu) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the ground that Prime Minister had made excess grants from his discretionary quota of Tameer‑e‑Watan Programme and extravagant expenses were incurred by him on foreign trips and in organising seminars in foreign countries for attracting foreign investments ‑‑‑ Held, all the allegations were no more than contained in the newspapers without any facts and figures as to excess amount wasted and therefore not worth relying upon ‑‑‑ Such irregularities could form the basis for some other appropriate proceedings under the appropriate laws if they constituted breach of such laws and were true, but they could not furnish foundation for passing order of dissolution under Art.58(2)(b).

**(Yvv) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the ground of deficit financing and indebtedness both domestic and international‑‑­Held, such ground had no nexus with the reasons mentioned in Art.58(2)(b) of the Constitution.

**(www) Constitution**Of **Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the ground of deviation in respect of induction of rive persons in civil service‑‑­Held, such deviation could not be desirable for running an efficient civil service, but it could not cause breakdown of the constitutional machinery so as to attract the action under Art.58(2)(b).

**(xxx) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter alia on the ground that wife of late Chief of Army Staff had alleged in a Press Conference that her husband did not die natural death but was poisoned ‑‑‑ held, Government had constituted on the same day when Press Conference was held a Commission comprising three Judges of the Supreme Court which had already submitted its report and statement of Army Medical Personnel recorded by the Commission and. reported in the Press in verbatim indicated that the late General died natural death ‑‑‑ Such ground which had no basis did not have any nexus with the conditions laid down in Art.58(2)(b) of the Constitution.

(yyy) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 184(l) ‑‑‑ Suit can be filed in Supreme Court under Art.184(l) in respect of any dispute between any two or more Governments.

(zzz) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑           Arts. 154 & 155 ‑‑‑ Disputes between any two or more Governments can be brought before the Council of Common Interests.

(aaaa) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Arts. 184(3), 199 & 58(2)(b) ‑‑‑ Constitutional petition ‑‑‑ Grant of relief‑‑­When can be denied ‑‑‑ If the petitioner succeeds in establishing breach of a Fundamental Right, he is entitled to the relief in exercise of Constitutional jurisdiction as a ‘matter of course ‑‑‑ Where the order of dissolution of National Assembly and dismissal of Prime Minister and the Cabinet was passed by the President under Art.58(2)(b) which order did not fall within the ambit of Art.58(2)(b) and there was no justifiable reason for that order, there was no reason to deny the restoration of the National Assembly and the Cabinet with the Prime Minister.

                If a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of Constitutional jurisdiction as a matter of course. However, the Court may decline relief if the grant of the same, instead of advancing/fostering the cause of justice, would perpetuate injustice or where the Court feels that it would not be just and proper, for example, in

the President dissolves the National Assembly under Article 58(2)(b) of the Constitution and before the Court decides the legality of such an order, elections take place which may show that 70% voters have cast their votes against the political party which was commanding the majority in the House before its dissolution and that it could secure 2% or 3% only of the total votes cast. In such an event, it will not be just and proper on the part of the Court to defeat the will of the political sovereign by reinstating the dissolved Assembly in spite of the above overwhelming verdict of the political sovereign against it. The Courts are established for dispensing justice. So if the grant of a relief for the enforcement of a fundamental right or any other legal right instead of fostering/advancing cause of justice, will perpetuate injustice, the Court will decline the same. in this regard, there seems to be no distinction between the enforcement of a fundamental right and a legal right under a general law.

In the present case, the impugned order does not fall within the ambit of Article 58(2)(b) of the Constitution. There is no justifiable reason to deny the restoration of the National Assembly and the Cabinet with the Prime Minister.

Capt. Kanwaijit Singh v. Union of India A I R 1991 Punj. and Har. 54; S.R. Bommai and others v. Union of India’and others A I R 1990 Karnataka 5; State of Rajasthan’s case A I R 1977 SC 1361 **distinguished.**

Sunderial Patwa v. The Union of India and others Misc. Petition No.~37 of 1993; Nawab Syed, Raunaq Ali etc. v. Chief Settlement Commissioner and others P L D 1973 SC 236; Wali Muhammad and others v. Sakhi Muhammad and others P L D 1974 SC 106; Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and others P L D 1975 SC 331; Syed Nazim Ali etc. v. Syed Mustafa Ali etc. 1981 S C M R 231; Muhammad Umar v. Member, Board of Revenue and 9 others 1985 S C M R 1591; Messrs Norwich Union Fire Insurance Society Limited v. Muhammad Javed lqbal and another 1986 S C M R 1071; Zameer Ahmad and another v. Bashir Ahmad and others 1988 S C M R 516; Syed Ali ‑Shah v. Abdul Saghir Khan Sherwani and others P L D 1990 SC 504; Inamur Rehman v. Federation of Pakistan and others 1992 S C M R 563; Daryao and others v. The State of U.P. and others A I R 1961 SC 1457; The Government of East Pakistan v. Mrs. Rowshan Bijaya Shaukat Ali Khan P L D 1966 SC ‑286; Ram Singh and others v. The State of Delhi’ and another A I R 1951 SC 270; Messrs Tilokchand Motichand and others v. H.B. Munshi, Commissioner of Sales Tax, Bombay and another A I R 1970 SC 898 and Amrit Lai Berry and others v. Collector of Central Excise Central Revenue and others A I R 1975 SC 538 ref.

**Per Muhammad Afzal Lone, J.; Sajjad Ali Shah, J. (Contra)‑‑‑**

**(bbbb) Constitution of Pakistan**(1973)‑‑

‑‑‑‑ Art. 184(3) ‑‑‑ Scope and application of Art.184(3) of the Constitution.

Article 184(3) of the Constitution of Pakistan pertains to original jurisdiction of the Supreme Court and its object is to ensure the enforcement of fundamental rights referred to therein. This provision is an edifice of democratic way of life and manifestation of responsibility cast on Supreme Court as a protector and guardian of the Constitution. The jurisdiction conferred by it is fairly wide and the Court can make an order of the nature envisaged by Article 199, in a case where a question of public importance, with reference to enforcement of any fundamental right conferred by Chapter 1 of Part 11 of the Constitution is involved. Article 184(3) is remedial in character and is conditioned by three prerequisites, namely‑‑‑‑

(i) There is a question of public importance.

(ii) Such a question involves enforcement of fundamental right, and \*

 (iii)        The fundamental right sought to be enforced ‑ is conferred by

                Chapter 1, Part 11 of the Constitution.

(cccc) **Constitution of Pakistan (1973)‑‑**

‑‑‑‑ Art. 17 ‑‑‑ Interpretation, guidelines‑‑‑While construing Art.17 approach of the Court should not be narrow and pedantic but ‘ elastic enough to march with the changing times and guided by the object for which it was embodied in the Constitution ‑‑‑ Full import and meaning of Art.17 must be gathered from other provisions such as Preamble of the Constitution, Principles of Policy and the

Objectives Resolution, which shed luster on the whole Constitution.

Bcnazir Bhutto v. Federation of Pakistan PLD 1988 SC **416 reE**

**(dddd) Constitution of Pakistan**(1973)‑‑

‑‑‑‑ Art. 2A‑‑‑“Political justice” and “political rights”‑‑‑Concept ‑‑‑ Effective functioning of political system ‑‑‑ Essentials ‑‑‑ Principles of democracy as enunciated in Islam are to be fully observed and true and fair elections and the existence of political parties, is an essential adjunct of a functional democratic system of Government.

In every democratic set‑up in the world, the political parties compete for the right to form a Government. It is the basic assumption of Parliamentary democracy that the party winning a majority of scats in the House should have complete control of Government. For democracy gives the majority the right to rule. Constitutionally, this power admits of no impediment. In British politics the “doctrine of mandate” signifies that the party which wins the general election has the right to implement its programme. In fact it is true of every country following parliamentary democracy. If a party attaining power fails to give effect to its manifesto it may be accused of deluding the electorate in catching the votes. For an effective functioning of a political system, the dominant institutions catered thereby though geared by the idea of contemporary social attitudes, must not be oblivious of moral and historical aspirations of the nation. The reason being that’ neither constitutional principles nor political attitudes can properly be appreciated without understanding their roots in the historical experiences of the society. In this behalf the Objectives Resolution (Art.2A) represents such attitudes, ethos, and values behind the Constitution.

The expression “political justice” is very significant and it has been placed in the category of fundamental rights. Political parties have become a subject‑matter of a fundamental right in consonance with the Objectives Resolution. Even otherwise, speaking broadly, the Constitution is a Federal Constitution based on the model of Parliamentary form of representative Government prevalent in United Kingdom. It is also clear from the Objectives Resolution that principles of democracy as enunciated by Islam are to be fully observed. True and fair elections and the existence of political parties, is an essential adjunct of a functional democratic system of Government.

Expression “political rights” is defined as those rights which may be exercised in the formation or administration of the Government . Rights of citizens established or recognized by Constitutions which give them the power to participate directly or indirectly in the establishment or administration of Government.

Benazir Bhutto v. Federation of Pakistan PLD 1968 SC 416 and Black’s Law Dictionary, 1979 Edn.. ref.

A Theory of Justice by John Rawals commented.

victims of Politics by Kurt Glaser Stefan T. Possony, 1979 Edn., p.349 published by Columbia University Press, New York; Philip Pettit, Professor of Philosophy in University of Bradford in his work Judging Justice and David Lyons in his work Ethics and the Rule of Law cited.

(eeee) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Arts. 17 & 184(3) ‑‑‑ Political justice ‑‑‑ Concept ‑‑‑ Illegal and unconstitutional denial to run the Government as long as one enjoyed the support of the majority in the House, will be the denial of political justice, guaranteed by Art.17 of the Constitution and petition under Art.184(3) of the Constitution will be maintainable against such denial.

The concept of political justice will also include the right to participate in political decision‑making. Thus illegal and unconstitutional denial to run the Government as long as one enjoyed the support of the majority in the House, will be the denial of political justice, guaranteed by Article 17.

There is no valid basis to sustain the objection to the maintainability of the petition under Article 184(3) of the Constitution which on account of infringement of Fundamental Right No.17 lies before Supreme Court.

A Theory of Justice by.John Rawals commented.

Victims Of Politics by Kurt Glaser Stefan T. Possony, 1979 Edn., p.349 published by Columbia University Press, New York; Philip Pettit, Professor of Philosophy in University of Bradford in his work Judging Justice and David Lyons in his work Ethics and the Rule of Law cited.

**(ffff) Constitution of Pakistan**(1973)‑‑

‑‑‑‑ Art. 64 ‑‑‑ Rules of Procedure and Conduct of Business in the National Assembly, 1992, R.25 ‑‑‑ Resignation by member of the Assembly in writing under the hand of the member concerned addressed and delivered to the  Speaker, if genuine and tendered voluntarily is sift qua nor, for its effectiveness.

(gggg) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Arts. 58(2)(b) & 64 ‑‑‑ Resignations of Members of National Assembly addressed to the Speaker and delivered to the President who did not pass on the same to the Speaker cannot be a ground available to the President to take action under Art. 58(2)(b) of the Constitution.

In the present case the letters of resignations were addressed to the Speaker, except those tendered by the Ministers, which is 1he essential requirement of Article 64. Conceivably, there was no legal or constitutional justification for receipt and then retention th0rcof by the. President. If at all. these were presented to the President in all fairness in adherence to the provision of the Constitution he should have forwarded the same to the Speaker. Such a mode of tendering the resignations and then retention thereof by the President is a sheer perversion of the Constitution and no concomitant of the legitimate “pressure politics” known to the Parliamentary system of Government. Encouraging of such tactics may become an effective vehicle of blackmailing the party in power, resulting in subversion of the parliamentary democracy in the country. Within the ambit of Article 58(2)(b) this ground was not at all available.

From press clippings an inference was justifiably sought to be drawn that the President did not act impartially and rather extended an active cooperation to the opposition and other dissatisfied elements, which was highly objectionable and against the spirit of the Constitution.

Mirza Tahir Beg v. Syed Kausar Ali Shah PLD 1976 SC 504 ref.

(hhhh) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Art. 19‑‑‑“Freedom of expression”‑‑‑Right of the citizenry to receive information can be spelt out from the “freedom of expression” guaranteed by Art.19 subject to inhibitions specified therein and such right must be preserved.

Party Politics, Vol.11, p.17 by Sir Ivon Jennings and The People and the Party System by Vernon Bogadanor ref.

**(iiii) Constitution of Pakistan**(1973)‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Speech of the Prime Minister dated 17‑4‑1993 could not be made a lawful basis for dissolution of National Assembly under Art.58(2)(b) by the President.

QW) **Constitution of Pakistan**(1973)‑‑

‑‑Art. 58(2)(b) ‑Objections to the Policies of the Government in Presidential

Order dated 18‑4‑1993 dissolving the National Assembly under Art.58(2)(b) of the Constitution having not been established, could not be made basis for the said Order by the President.

**(kkkk) Constitution of Pakistan**(1973)‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Two situations contemplated by Art.58(2)(b) to dissolve the National Assembly by the President stated.

Article 58(2) contemplates two situations for dissolution of National Assembly at the discretion of the President; firstly when a vote of no-­confidence has been passed against the Prime Minister and no other member of the National Assembly is likely to command majority #of its members and secondly when the Government of the Federation cannot be carried on in accordance with provisions of the Constitution and an appeal to the electorate is necessary.

(1111) **Constitution of Pakistan**(1973)‑‑

 ‑‑‑‑ Arts. 193(l) & 48(l) ‑‑‑ President to act on advice‑‑‑Question as to whether advice of Prime Minister is sine qua non for the validity of appointment of Judges of the High Court required serious research. [p. 75510 M.D. Tahir v. Federal Government 1988 CLC 1.309 **mentioned.**

**(mmmm) Constitution**of Pakistan (1973)‑‑

‑‑‑‑ Art. 91(l)(4) ‑‑‑ Parliamentary form of Government ‑‑‑ Salient features‑‑­Collective ministerial responsibility to the Parliament.

The salient features of the parliamentary form of Government are that real executive power is exercised by the Cabinet of the Ministers, with the Prime Minister at its head. The Crown (President) acts on the advice of the Cabinet, which is collectively responsible to the elected popular House.

Constitution ordains a parliamentary system of Government with collective ministerial responsibility to the Parliament.

Under Article 91(4) the Cabinet, together with the Ministers of State is collectively responsible to the National Assembly.

Theory and Practice of Modern Government, pp. 953,954 ref.

**(nnnn) Constitution of Pakistan**(1973)‑‑

The compulsory nature of the principle of advice is quite obvious. The President is bound to act on the advice of Prime Minister/Cabinet, commanding majority in the House, except where he has discretion or exercises prerogative such as under Article 94 and his satisfaction is secured

(Articles 232, 234, 235); if such satisfaction is borne out from the advice tendered to him by the Prime Minister or the Cabinet.. Compliance with Article 48(l) by the President is ensured by Articles 42 and 47. Under Article 42 he takes the oath to perform his functions faithfully in accordance

with the Constitution and further to preserve, protect. and defend the same. If he misconducts or refuses to accept the advice, he can be impeached under Article 47 for violation of the Constitution.

The concept of responsible Government visualize that the head of State himself can do no wrong; he acts on the advice of his Ministers on whom the responsibility for such act lies; they arc answerable to the House. Under our Constitution the Executive authority of the Federation, like other democratic Constitutions vests in the Head of the State. This principle has received recognition in Articic.90, which requires that the executive authority vesting in the President “shall be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution”. Since constitutionally the President is bound to follow the advice of the Prime Minister and Cabinet, the result is that practically the executive authority is placed in the hands of the Cabinet headed by the Prime Minister. The President is thus not responsible to anyone for the acts done in his name. The responsibility lies on the Cabinet alone.

. Since the Sovereign acts on the advice of the Cabinet, tendered through the Prime Minister, and the Government is carried on in the name of the Sovereign, the Cabinet is expected to keep the Sovereign informed of any departures in policy, of the general march of political events, and in particular of the deliberations of the Cabinet.

The above principle is embodied in Article 46, which casts an. obligation on the Prime Minister to communicate to the President all decisions of the Cabinet relating to the affairs of the State, including proposals of legislation. The President is also empowered to call for such information. Since the Cabinet is collectively responsible to the National Assembly, where a decision is taken by the Prime Minister or a Minister, but which has not been considered by the Cabinet, under Article 46(c) if the President so requires, it is the duty of the Prime Minister’ to submit such matter to the Cabinet for its consideration. Constitution of Pakistan is federal in structure but the aforesaid provisions fairly indicate that it is fundamentally modelled on the pattern of British Parliamentary system.

Tendering of advice to the Government is not constitutional obligation of the President. Such a claim is not countenanced by the Constitution or the law; rather the dictates of the Constitution are otherwise. The Constitution confers such a right on the Prime Minister and the Cabinet; the advice tendered by them is imperative and binding on the President.

                Constitutional and Administrative Law by 0. Hood Phillips, 4th Edn. p.308 and Constitution of India, Vol.1, p.182 by **Kagzi ref,**

**(oooo) Constitution of Pakistan (1973)‑‑**

‑‑‑‑ Part 111, Chap. 1‑‑‑Powers and duties of the President are to be gathered from the Constitution itself and there is no question of enjoyment of any enabling or implied power by the President.

**(pppp) Constitution of Pakistan (1973)‑‑**SC 166 **ref.**

‑‑‑‑ Art.58(2)(b) ‑‑‑ Article 58(2)(b) of the Constitution was introduced in the Constitution for preventing a wrong rather than securing a right for the  President ‑‑‑ Said provision exists for wise and careful employment in ‑grave situation within the parameters specified by Supreme Court in Federation of Pakistan v..Haji Muhammad Saifullah Khan PLD 1989 SC 166.

Federation of Pakistan v. Haji Muhammad ‘Saifullah **Khan PLD 1989**

**(qqqq) Constitution of Pakistan (1973)‑‑**

‑‑‑‑ Art. 41 ‑‑‑ Role of President ‑‑‑ Regulation of relations between the President and the Prime Minister ‑‑‑ Norms for regulating the relationship between President and the Prime Minister for operation of constitutional prescription stated.

                                  The President is a symbol of unity of Pakistan. He is elected by the

Provincial Assemblies as well as the National Assembly and is a binding force between the Federation and the federating units. In a pluralist Society rent with political polarization, ethnic, racial, provincialism and other diversities, for strengthening the process of social harmony, democracy and creative national enthusiasm, the role of the President becomes all the more important. These objects can meaningfully be achieved ‑if the President shuns politics and remains a non‑controversial figure. Article 33 included in Chapter 2 of the Constitution under the “Principles of Policy” casts an obligation on the State to discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens. Under Article 29 it is the responsibility of each organ and authority of the State to act in accordance with these principles. Regulation of relations between the President and the Prime Minister is a paramount national requirement. Both are expected to exercise tolerance, exhibit endurance and act within the limits of Constitutional propriety. The President is constitutionally required to act on the advice of the Prime Minister/Cabinet, but such advice ought not to be loaded with a perception of dominance and veto power. If the President counsels the Prime Minister or the Cabinet, his counselling is entitled to weight. These are some of the norms of constitutional jurisprudence for successful operation of the constitutional prescription.

**(rrrr) Constitution of Pakistan***(1973)‑.*Vol. XLV

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly by the President vide Order dated 18‑4‑1993 ‑‑‑ Expressions employed, the views expressed and inferences drawn in the said Order, sufficiently indicate that the President not only acted against the spirit of the Constitution but also violated it and there were no reasonable basis either in law or on facts to act in the manner as the President chose to proceed ‑‑‑ Dissolution Order by the President therefore was unconstitutional and otherwise than bona ride and thus was unsustainable.

Per *Sajjad All*Shah, J.‑

(ssss) Constitution of Pakistan *(1973)‑‑*

‑‑‑‑ Art. 184(3) ‑‑‑ Provision of Art.184(3) be given liberal interpretation to carve out and assert jurisdiction in respect of public interest litigation.

**Per Muhammad Rafiq Turar, J.; Sajjad**Ali **Shah, J. (Contra).;‑‑**

**(tttt) Constitution of Pakistan***(1973)‑‑*

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Legislative history and interpretation of Art.58(2)(b) of the Constitution of Pakistan.

Haji Saifullah’s case PLD 1989 SC 166 rer.

(Uuuu) Constitution 6f Pakistan *(1973)‑‑*. I

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Action of President of Pakistan under Art.58(2)(b) is justiciable

(vvvv) **Constitution of Pakistan,***(1973)‑‑*

*7*Art. 58(2)(b) ‑‑‑ Powers of President to dissolve the National Assembly ‑and dismiss the Cabinet ‑‑‑ Nature‑‑‑Premature dissolution of National Assembly‑‑‑Effect.

The President is empowered to dissolve the National Assembly but only in the situation mentioned in Article 58

Article 58(2)(b) of the Constitution of Pakistan mentions in its text, three organs of the State:

(i) The President;

(ii) The National Assembly; and

(iii) The Government of the Federation.

All these three organs are very important constituents of the State and the Constitution makes independent and distinct provisions for their creation and demise. It may be pertinent to note that the Cabinet and the Prime Minister do not figure there as such.

The National Assembly consists of the chosen representatives of the people, as mentioned in the Objectives Resolution. They are elected through adult franchise and they form/create the National Assembly under Article 51. Its normal term of office is 5 years. The members can individually resign under Article 64, so that if all the members resign, it will result in the dissolution of the entire National Assembly. However, Article 58 also empowers‑both the President and the Prime Minister, separately, to dissolve the National Assembly, only for the specific reasons given there.

The President is part of the administration and has the power to influence the decisions of the Cabinet, the Prime Minister and the Ministers, which are to be made and enforced in his name.

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President is the executive head of the Federation (Government of the Federation) and all actions are taken in his name. He also participates to some extent in the executive, decision‑making. Being a part of the Government of the Federation, he cannot blame the Prime Minister and the Cabinet alone for any unwise, illegal or even unconstitutional acts, what to speak of punishing them. If the President thinks that the Cabinet was aiding and advising him illegally, unconstitutionally or against public interest, despite his caution and warning, the only way open to him, under the. Constitution’, is to inform the National Assembly under Article 56 to which the Prime Minister/Cabinet is responsible or dissociate himself by resigning his office under Article 44(3) of the Constitution informing the nation about his doing so. However, he cannot blame the Prime Minister or the Cabinet in case the National Assembly raises no objection or endorses the objected to action or policy decision.

Again the President has no power to dismiss the Cabinet of his own. Sub‑Article (5) of Article 91 provides that the Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his power unless he is satisfied that the Prime Minister does not command the confidence of the majority of the 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. *Thus,*the President has no power to remove the Prime Minister or dismiss the Cabinet as long *as*the National Assembly offers its confidence to him and protects him.

What is not permitted to be done directly cannot be done indirectly. The Prime Minister who enjoys the confidence of the National Assembly cannot be removed or dismissed by the President. The reason may be that only the chosen representatives of the people are the repository of the sovereign power. They, therefore, know best what is good for the people and what is not. So if they approve the , policies and the actions of the Government, the President has no power of his own of interference, in any way. Be that as it **may, the President could**not get rid of the Prime Minister or the Cabinet indirectly, foe the alleged faults of theirs, by dissolving the National Assembly.

The President has neither a power to dismiss the Cabinet nor is he a controller or a supervisor of the National Assembly. Rather, he is compelled to accept and give his assent to whatever is done by the Cabinet on the one hand and the National Assembly alongwith the Senate on the other. He, according to the various provisions of the Constitution can, at the most, participate, individually, as a counsel or a warning. Like any other member of the Cabinet, he can influence but cannot veto. Rather he has an edge over others as he can once veto the decision of the Prime Minister, the Cabinet or a Minister. However, if his counsel or warning is not heeded to, he has, like any other member of the Cabinet, either to accept the things as presented to him, by the majority decision or quit if he so desires.

Therefore, after a decision is made, no constituent of that decision­making body can absolve himself of it, whether he participated in the decision­making or not; whether he opposed the motion or proposed any amendment; or was even absent at that time. In that view of the matter, the scrutiny of the governmental actions would thin lie with the Parliament, though even they cannot annul them as such, without formally legislating against them, or by passing a resolution disapproving a particular act of commission or omission of the Prime Minister or the Cabinet.

Article 91(5) lays down that the President cannot, straightaway, dissolve the National Assembly even if the Prime Minister fails to get a vote of confidence from the National Assembly. He has to first ascertain practically, under Article 58(2)(a), that no other member enjoys the confidence of the National Assembly, before he acts to dissolve. Thus the President has neither any control over the Cabinet nor has the National Assembly been placed at his mercy, in his discretion or at his bald pleasure. It is thus only the National Assembly which can decide the removal of one Prime Minister and his Cabinet, by withdrawing its support and electing another Prime Minister before the President may act under Article 58, for constitutional reasons, justiciable before the superior Courts of Pakistan.

The President has no power to dismiss a Prime Minister, directly or indirectly, howsoever illegal, unconstitutional or against public interest his actions might look to him. But if the person holding the office of the President pleases to remove a Prime Minister, who enjoys the confidence of the National Assembly, under the cloak of the powers contained in Article 58(2)(b) by dissolving the National Assembly, he may be accused of subverting the 4k~ Constitution within the meaning of Article 6 of the Constitution. It is pertinent to note that the protection provided in Article 248 from accountability and the remedy provided in Article 47 of impeachment, do not cover the acts of  subversion or abrogation of the Constitution or even attempting or conspiring to do so. The dissolution of the National Assembly, therefore, must be . strictly covered by Article 58(2)(b), in order to be condoned by the Courts and to 4,N avoid an action under Article 6 of the Constitution.

Article 58(2)(b) foresees one and only one situation, for dissolution of the National Assembly and that is where in the opinion of the President, the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. It is thus not a mere omission to act, on or in violation of, one or more Articles of the Constitution but a state of checkmake or a deadlock, which may be brought about by violation of one or more provisions of the Constitution separately or collectively.

The Court has to test each and every ground of the President for dissolving the National Assembly, on the following touchstones, and see that they satisfy the prescribed requirements, in order to condone the action taken:

(a)           Was there an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution?

(b)           Has there taken place any extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra‑Constitutional?

                (c) Is there an imminent danger of breakdown of the Constitutional

                machinery so as to take an immediate action for nipping it in the bud?

(d)                           Is it imperative to mend the ill‑effects of a breakdown that has

                occurred.

The words “cannot be carried on” show the helplessness of the Cabinet, in, a situation, unchecked or brought about by the National Assembly or some outside force against which even the National Assembly cannot afford a protection or cure, so that the Cabinet cannot be helped to carry on the Government of the Federation and it will have to go, with the National Assembly.

Constitution does not permit P to punish‑ N for the offence of G. The import of the Fundamental Rights 9, 10 and 12 to 15 supports the view. No system of law anywhere in the world permits that. The Holy Qur’an announces emphatically that “Each man shall reap the fruits of his own deeds: no soul shall bear an other’s burden”. (Q.6:165). In that view of the matter it will be wrong to say that the President has the power, to dissolve the National Assembly, for the reason that the Government of the Federation, in his view, is acting in illegal or unconstitutional manner or it cannot be run in

accordance with the Constitution, because of its acts of commission or omission.

The fault has thus to be found, not in the working of the Prime Minister or the Cabinet but in the working of the National Assembly. Again, it is not every fault but only that fault which has rendered the working of the Government of the Federation impossible and has also made an appeal‑to the electorate necessary.

So, no action in the nature of dissolution of the National Assembly or dismissal of the Cabinet by the President will be justified where the Prime Minister enjoys the confidence because of the working of the

of the House and no deadlock has appeared National Assembly. The result is that if the

National Assembly is working smoothly and there exists no deadlock for the Government to carry on its functions, the President neither has the power to dismiss the Prime Minister and his Cabinet nor can he dissolve the National Assembly.

Another important consideration to be closely looked at is about the phrase ‘and an appeal to the electorate is necessary’ as stipulated in Article 58(2)(b). The circumstances relied on by the President should not only show the situation in which ‘the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution’ but that nothing else in the Constitution can provide a remedy and therefore, ‘an appeal to the electorate is necessary’. It means that the extreme measure of dissolution must not be resorted to if another alternative is available.

The order of the President dissolving the National Assembly is not maintainable yet on another ground also. The ‑provisions and the principles as contained in the Objectives Resolution are now the substantive and effective part of the Constitution, in view of its Article 2A. According to the opening . part of the Objectives Resolution the sovereignty over the entire Universe belongs to Allah Almighty alone. The law of Allah is thus supreme, immutable, insurmountable and unalterable and every other man‑made law repugnant to it must be removed by Parliament or Courts or by other organs of the State in the mode contemplated in the Constitution. Almighty Allah has delegated His authority to be exercised by the people of Pakistan, within the limits prescribed by Him, as a sacred trust. Acting against it will thus be breach of trust also.

Premature dissolution of an Assembly is a very severe punishment to members and moreso to the people and the national exchequer. The members lose their remaining term of office, provided by the Constitution and they have to spend millions on fresh elections, with no guarantee of success. The nation is deprived of the continuance of the policies and projects, is exposed to instability and uncertainty, loses the confidence of the Governments and investors at home and abroad, faces economic and administrative chaos and is required to spend crores of rupees on the new election. So, in the case of dissolution of Assembly, for the  misdeeds of the Cabinet, the punishment is

awarded, not only to those few members who are in the Cabinet but also to the other majority whether they are in  majority of the members of the National Assembly the Opposition, the Independents or with the Treasury and also the people, for no fault of theirs.

**distinguished.**

Ahmad Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646 lah Khan PLD 1989 SC 166;

KhawajaFederation of Pakistan v. Haji Saiful         Muhammad Sharif v. Feder, ation of Pakistan PLD 1988 Lah. 725; Ahmad Tariq Rahim v. Federation of. Pakistan PLD 1991 Lah. 78; Ahmad

Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646; AIR 1977 SC 1361;

Law of the Constitution by Dicey, 1960 Edn., p.420 and Constitutional Law by

Wade, 7th Edn., p.118 ref.

(wwww) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) vide his Order dated 18th April, 1993 showed, that the grounds mentioned therein had no nexus or connection with the Constitutional power and the President punished the National Assembly for not withdrawing their support to an “insolent” and “rude” Prime Minister and the Cabinet ‑‑‑ Said Order was. passed in a fit o anger and vengeance and under a totally mistaken view that Constitution had conferred any such power on him ‑‑‑ Order of President dissolving the National Assembly and dismissing the Prime Minister and the Cabinet therefore could not be condoned and thus was declared to be unconstitutional and void.

Facts and circumstances of the case which persuaded the President to form his opinion to dissolve the National Assembly and dismiss the Cabinet go to show, without any doubt that they had no nexu’s or connection with the Constitutional power and so the President was punishing the National Assembly for not withdrawing their support to an ‘insolent’ and ‘rude’ Prime Minister and the Cabinet.

Order was passed in a fit of anger and vengeance.

The President, unfortunately assumed to himself the position of a Judge sitting on the performance of the Government and thought that he had the power to punish the 1~abinct for the acts of omission and commission as ascertained by him. He, therefore, taking himself as the Authority and the Cabinet as civil servants, inflicted on them the major penalty, as under the Efficiency and Discipline Rules. He was, however, totally mistaken that the Constitution conferred any such power on him. The exclusive power in respect of all the charges levelled by him vested in the National Assembly, to whom the Prime Minister and the Cabinet were accountable. The National Assembly, however, did not find any fault with the performance of the Cabinet and consequently took no action. Obviously, the National Assembly seemed to have been punished by the President for that omission. His order, therefore, could not be condoned.

The President’s Order, therefore, was declared to be unconstitutional and void and was to be deemed to have never been passed and promulgated. Therefore, the National Assembly and the Cabinet were to be placed in the same position in which they were before the impugned order of the President was promulgated.

**Per Saleem Akhtar, J.; Saijad All Shah, J. Contra‑‑‑**

**(xxxx) Constitution**or Pakistan (1973)‑‑‑

‑‑‑‑ Art. 184‑‑71ntcrpretation, scope, application and nature of Art.184‑‑­Article 184 is an effective weapon provided to secure and guarantee the fundamental rights.

Article 184(3) of the Constitution of Pakistan confers power on the Supreme Court to consider questions of public importance which are referable to the enforcement of any Fundamental Rights guaranteed by the Constitution and enumerated in Chapter 1 of Part 11. This power is without prejudice to the provisions of Article 199 which confer similar power with certain restrictions on the High Court. The power conferred depends upon two questions; one, that the case sought to be heard involves question of public importance and two, the question of public importance relates to the enforcement of Fundamental Rights. It is not every question of public importance which can be entertained by this Court, but such question should relate to the enforcement of Fundamental Rights. This provision confers a further safety and security to the Fundamental Rights conferred and guaranteed by the Constitution. This shows the importance which Fundamental Rights have in the scheme of the Constitution. They cannot be curtailed or abridged and any provision of law or action taken which violates Fundamental Rights conferred by the Constitution shall be void. The nature of jurisdiction and the relief which can be granted under this Article is much wider than Article 199. It confers a power to make an order of the nature mentioned in Article 199. The word ‘nature’ is not restrictive in meaning but extends the jurisdiction to pass an order which may not be strictly in conformity with Article 199 but it may have the same colour and the same scheme without any restrictions imposed under it. Article 184 is an effective weapon provided to secure and guarantee the fundamental rights. It can be exercised where the Fundamental Right exists and a breach has been committed or is threatened. The attributes of Article 199 of being an aggrieved person or of having an alternate remedy and depending upon the facts and circumstances even laches cannot restrain the power or non‑suit a petitioner from riling a petition under Article 184 and seeking relief under it. The relief being in the nature mentioned in Article 199 can be. modified and also consequential relief can be granted which may ensure effective protection and implementation of the Fundamental Rights. Even disputed questions of facts which do not require voluminous evidence can be looked into where Fundamental Right has been breached. However, in cases where intricate disputed questions of facts involving voluminous evidence are involved the Court will desist from entering into such controversies. Primarily, the questions involved are decided on admitted or prima facie established facts which can be determined by riling affidavits. Evidence in support of allegations can be taken orally in very exceptional cases where the breach is of a very serious nature affecting large section of the country and is of great general importance.

**(yyyy) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Arts.184(3), 17(2) & 58(2)(b) ‑‑‑ Political right guaranteed in Art.17(2)‑‑­Extent ‑‑‑ If the political right as conferred by Art.17 is violated in breach of the Constitution, Art. 184(3) can be invoked for violation of Fundamental Rights‑‑‑Order of President dissolving the National Assembly and dismissing the Prime Minister and the Cabinet under Art.58(2)(b) affects the right conferred under Art.17(2) of the Constitution ‑‑‑ Fundamental Rights can be restricted or controlled in terms of the provisions of the Constitution and no authority can derive power from any other source to restrict, 41bridgc, offend or violate Fundamental Rights.

Article 17(2) of the Constitution guarantees the right to form or to be a member of a political party and to operate as the formation and operation of a political party are two such spheres which by a process of legal path as provided by the Constitution and law the party attains its goal inside and outside the Assembly. The political functioning and activities of a political party do not end once its members arc elected to any assembly. It has multifarious activities within the Assembly and outside the Assembly. Election is merely a process to choose its representatives by the political sovereign, i.e., the electorate to authorise them to continue their political activity inside the Assembly. Election is merely a road leading a successful member to enter the Assembly but it does not end there. The process continues transforming into formation of the Ministry or becoming a Minister or to be a leader of the Opposition or member of the Opposition Party, to participate in the debates and discharge all such Constitutional and legal duties which are enshrined in the Constitution, responsibility of which is cast on the members. The elected members have far more responsibility than the members of the political parties working outside the Assembly as unelected representatives. The Minister is not only collectively responsible to the National Assembly, but he is also accountable to the people. Thus, if the political right as conferred by Article 17 is violated in breach of the provisions of the Constitution, Article 184(3) can be invoked for violation of Fundamental Rights.

he infringement of Fundamental Rights in be in many ways. Okt times even a law made by the legislature may offend a Fundamental Right and to that extent it may be void, but in certain cases the law may not be void, but the machinery adopted and the orders passed under it may be such which violate the Fundamental Rights, they are thus challengeable. The same principle will apply where the Constitution imposes any restriction on exercise of a Fundamental Right and provides parameters and conditions for exercise of such power. Any authority or person exceeding that jurisdiction passes an order which is not within the framework of the restrictions imposed, then such order violates the Fundamental Rights and can be scrutinized by Supreme Court as provided by the Constitution. Therefore, the order passed by the President dissolving National Assembly and dismissing the Prime Minister and the Cabinet under Article 58(2)(b) of the Constitution does affect the right conferred under Article 17(2). It is only to be seen that although the President of Pakistan is empowered to pass an order for dissolution of National Assembly in certain given circumstances, have they been observed without infringing the Fundamental Right. Because Fundamental Right can be restricted or controlled in terms of the provisions of the Constitution and no authority can derive power from any other source to restrict, abridge, offend or violate Fundamental Right.

Syed Abul A’ala Maudoodi’s case PLD 1964 SC 673; Bcnazir Bhutto’s case PLD 1988 SC 416 and Haji Saifullah’s case PLD 1989 SC 166 ref.

**(zzzz) Constitution of Pakistan**(1973)‑‑‑

‑‑‑‑ Art.2A ‑‑‑ Provision of Art.2A is not a supra‑Constitutional provision but is a part of the Constitution and does not override any other provision of the Constitution.

**(aaaaa) Constitution of Pakistan**(1973)...

‑‑‑‑ Art.2A ‑‑‑ Political justice ‑‑‑ Article 2A having been enacted in the

Constitution, the political justice as guaranteed in the Objectives Resolution is recognised and guaranteed by the Constitution.

Hakim Khan’s case PLD 1992 SC 595 ref.

(bbbbb) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art.17 ‑‑‑ Political right or political justice does not end with the election to the Assemblies but it is an on‑going process which starts with the formation of the political parties, participation in the elections and thereafter to operate and participate in governance of the country by the majority rule ‑‑‑ Provisions of Arts.51, 52, 91 & 92 will not put an end to the Fundamental Rights which had started with the formation of political parties.

democracy is a method of life which provides and paves way for achieving political, economic and social rights which a human being is entitled to and almost all of them have been guaranteed by the Constitution as Fundamental Rights. The political right or political justice does not end with the election to the Assemblies. It is an on‑going process which starts with the formation of the political parties, participation in the elections and thereafter to operate and participate in governance of the country by the majority rule. How can in these circumstances be it contended successfully that immediately after the election the political rights cease to exist. It is true that such Fundamental Rights which emanate from Article 17(2) travel to the Assemblies with the process of election and may be regulated by other provisions of the Constitution, namely, Articles 50, 51, 52, 91 and 92, but it will be a far cry to state that these provisions of the Constitution put an end to the Fundamental Rights which had started with the formation of political parties.

In a democratic just order every citizen has right to equal participation in the political process as required by the Constitution. Every citizen without any discrimination within the frontiers of the Constitution can profess, practise, exercise and operate his right to participate in the governance of the country. He is entitled to form or join a political party, contest for an elective position and to hold and exercise authority of politically elected office which by virtue of such political process he is entitled under the Constitution. If the objects of democracy have to be achieved, if economic, social and political justice as enshrined in the Constitution and proclaimed by a political democratic Government has to be attained, then the parties and the members of the Assemblies have to play their role inside the Assembly as well for governance of the country. So long they are not disqualified by Constitution or by law to remain as members of the National Assembly, their political right to operate in the Assembly cannot be curtailed, abridged or violated.

A Theory of Justice by John Rawl; The Foundations of Freedom by Durward V. Sandifer and L. Ronald Scheman and Universal Declaration of Human Rights, Art.21 ref.

Kh. Ahmad Tariq Rahim v. Federation of Pakistan PLD 1991 Lah.78 and PLD 1955 FC 435 distinguished.

(ccccc) **Constitution**of Pakistan (1973)‑‑‑

‑‑‑‑ Arts.184(3) & 17(2) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) ‑‑‑ Direct petition under Art.184(3) to the Supreme Court against such order is maintainable provided the petitioner is able to show that the impugned order has transgressed, impinged and infracted the Fundamental Rights of the petitioner or members of the Assembly or citizens‑at‑large.

**(ddddd) Constitution**or Pakistan (1973)‑‑‑

‑‑‑‑ Art,58(2)(b) ‑‑‑ Provision of Art.58(2)(b) is to be strictly construed ‑‑‑ Import, scope and extent of Art.58(2)(b) of the Constitution.

The President is empowered to dissolve the National Assembly if he forms an opinion that the Government cannot be run in accordance with the Constitution. This power is not absolute or unfettered. The President has first to form an opinion, an objective opinion on the basis of the material before him to come to the conclusion that the Government cannot be carried on in accordance with the Constitution. The formation of opinion being objective in nature can be judicially examined and reviewed by the Courts. While interpreting the Constitution one has to keep in mind the nature of this sacred document which is the supreme law and the law of the laws.

The Constitution is a living organism and has to be interpreted to keep alive the traditions of the past blended in the happenings of the present and keeping an eye on the future. Constitution is the symbol of statehood keeping united people of different races, diverse cultural, social, economic and historical traditions. It provides a method of legitimacy to the Government. it is the power behind the organs and institutions created by it. Constitution must be interpreted keeping in view the entire canvass of national fabric, be it political, social, economic or religious.

In interpreting Article 58(2)(b) the Constitutional background is to be taken into consideration. The Constitution envisages parliamentary form of Government. Therefore, if any provision has been inserted in the Constitution afterwards infringing, or impinging on the democratic and parliamentary system, it is to be construed in a manner that spirit and form of parliamentary system is not distorted. The conditions as laid down in Article 58(2)(b) should be strictly construed. Article 58(2)(b) conferring a power to dissolve the National Assembly in certain circumstances cannot be given a liberal or wide meaning. It has to be given a restricted meaning in the facts and circumstances of the case.

In the presence of clear and specific provisions in the Constitution, conventions and prerogatives of the United Kingdom can be of no avail and cannot be applied in this country.

Khalid Malik’s case PLD 1991 Kar. 1; Federation of Pakistan v. Haji Muhammad Saifullah Khan PLD 1989 SC 166 and Khawaja Ahmad Tariq Rahim’s case PLD 1992 SC 640 ref.

(eeeet) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Arts. 64, 63, 58(2)(b) & 91(5) ‑‑‑ Rules of Procedure and Conduct of Business in the National Assembly, 1992, R.25 ‑‑‑ Procedure for submitting a resignation by a member of the National Assembly emerging from both the provisions as contained in’ Art. 64 and Rule 25 of Rules of Procedure and Conduct of Business in the National Assembly ‑‑‑ Dut) of Speaker on receipt of resignation ‑‑‑ Resignation has T‑o be voluntary, genuine and intended to vacate

   the seat ‑‑‑ Resignallion.1s a voluntary act o( a member or person submitted with the intention to relinquish, relieve or quit that particular post or position and to vacate the same ‑‑‑ Resignations obtained by any person politically or officially in authority or not from the members and delivery to a third party other than the person authorised to receive them, with the intention to achieve political gains and create a ground for dissolution of the Assembly can neither form basis for such action nor be justified by any principle of law, morality and ethics.

From Article 64 of the Constitution of Pakistan and Rule 25 of the Rules of Procedure and Conduct of Business in the National Assembly, 1992 the procedure for submitting a resignation by a member of the National Assembly emerges as follows:‑‑

(i) The resignation should be in writing under his hand and should be addressed to the Speaker.

(ii) The resignation may be delivered by the member personally or through any other means.

(iii) If the letter of resignation is delivered personally, then the Member should inform the Speaker that the resignation is voluntary and genuine.

(iv) If the resignation is delivered by any other means’ then the Speaker shall make inquiry into the genuineness of the resignation and ascertain whether it is voluntary or not.

(v) The Speaker after satisfaction that the resignation is genuine and voluntary, shall inform the National Assembly and then the seat shall be declared vacant.

(vi) The date of resignation of a member shall be the same as specified in the letter of resignation or if no date has been given, then the date of receipt by the Speaker.

In order to make it valid and effective, besides complying with the procedure laid down, it should be voluntary, genuine and should be intended to vacate the seat. Resignation is a voluntary act of a member or person, submitted with the intention to relinquish, relieve or quit that particular post or position and to vacate the same. It cannot be a two‑way traffic or an act to use it for any purpose liked by any third person. The resignations obtained by any person politically or officially in authority or not from the members and delivery to a third party other than the person authorised to receive them, with the intention to achieve political gains and create a ground for dissolution of the Assembly can neither form basis for such action nor be justified by any principle of law, morality and ethics.

The resignations should not only be addressed to the Speaker, but they should be intended to be delivered to the Speaker.

The Constitution has ordained that the resignation by a member is effective only when it is “addressed” to the Speaker: it is not intended to be an idle formality. To relinquish the parliamentary seat by resignation is a grave and a solemn act. The letter of resignation should be signed by the member voluntarily and submitted personally to the Speaker or transmitted through duly authorised person for delivery to the Speaker.

The Constitution has thus cast onerous duty on the Speaker to make inquiry into the genuineness and voluntary nature of the resignation and also that it has come through an authorised person, if not submitted personally. The Speaker can neither refuse to discharge this duty nor can any authority bypass him. The solemnity and sanctity attached to the resignation by a member of the National Assembly shall be eroded if it is made in contravention of the provisions of the Constitution and the rules and furthermore if they are intended not to vacate the seat, but for any other purpose, ulterior, oblivious or clandestine. Such letters of resignation which do not have any validity or sanction under law can hardly be accepted muchless by a person of high position like the President to assess the confidence the members have in the Assembly and also to assess a situation whether the Government can be run in accordance with the Constitution. 1p. 81910

The exercise of pleasure by the President under Article 91(5) of the Constitution of Pakistan is conditional and not absolute. An embargo has been imposed on its exercise and the President is precluded from forming his opinion and satisfaction on the basis of anything but the votes given on the floor of the House. As the Constitution contains specific provisions for governing such a situation, and provides a procedure and manner for ascertaining the fact whether the Prime Minister has lost confidence of the House, no other mode of ascertainment can be adopted. If a statute provides anything to be done in a particular manner, no deviation from the give course is permissible. Any ascertainment of such fact in an unconstitutional manner or on extraneous consideration cannot be made basis for removing the Prime Minister. It is thus clear that most of the resignations collcoted and delivered to the President could not be made basis for reaching the conclusion or satisfying himself that the petitioner did not command confidence of the majority of the National Assembly. The only course open for the President was to summon the National Assembly and require the Prime Minister to obtain the vote of confidence from the Assembly. The determination of such fact is not left to the President or any authority except the National Assembly. Such resignations could hardly be made a ground for dissolving the National Assembly.

Speaker enjoys a unique position in the Constitutional structure of the country. He has to preside over the House and is required to maintain decorum and discipline. He should be impartial, just and disinterested and discharge his duties without fear or favour, ill‑will or affection. His most important duty is to maintain discipline amongst the members of the Assembly in the House and also control their conduct and utterances House made in violation of [he Constitution. In this regard reference can be made to Article 63 of the Constitution which provides disqualification for membership of the Majlis‑c‑Shoora. It enumerates several conditions when a person shall be disqualified from being elected or chosen and from being a member of the Parliament. It not only specifies the disqualification attaching before the elections, but even the disqualification which may occur or may be carried unnoticed after the election to the House. Once such disqualification or misconduct as enumerated therein are noticed and a question arises whether he has become disqualified from being a member, the Speaker shall refer the question to the Chief Election Commissioner and if he declares him to be disqualified, he shall cease to be a member and his seat shall become vacant. Therefore, heavy responsibility has been cast on the Speaker to be watchful and to maintain discipline with strict observance of the provisions of the Constitution. Pointed reference can be made to Article 63(l)(g) which though in existence has never found its importance by any authority or the Speaker concerned. Under sub‑clause (2) of Article 63 the Speaker should not wait for the question to be raised, but once it is brought to his notice or he suo motu notices any breach of any provision of Article 63, it is his **duty to refer the matter to the**Chief Election Commissioner. The word ‘shall’ in Article 63(2)’ indicates that a mandatory duty has been cast on the Speaker to refer the question to the Election  commissioner. If any breach has been brought to his notice, it is not for him to decide it, but he is merely to refer it to the Chief Election Commissioner. Any unreasonable delay in sending such matter

to the Chief Election Commissioner is bound to cloud the high status of the Speaker.

even outside the

A.K. Fazalul Quader Chaudliry v. Syed Shah Nawaz and 2 others PLD 1966 SC 105 and Mirza Tahir Beg v. Syed Kausar Ali Shah PLD 1976 SC 504 ref.

Adegbenro v. Akintola and another 1963) 3 All ;R 544

**distinguished.**

**(M11) constitution**or **Pakistan (1973)...**

**‑‑‑‑ Art.58(2)(b)**‑‑‑ Mere speech by the Prime Minister in which innuendos have been made, person at tile highest office (President) has been attacked, does not amount to subversion and does not necessarily mean that the relationship has completely broken down and both ends cannot meet together thus warranting action under Art.58(2)(b) of the Constitution by the President.

The high offices require high standards, high status, high morality and large heartedness as well. Mere speech in which innuendos have been made, person at the highest office has been attacked, does not necessarily mean that the relationship has completely broken down and both ends cannot meet together. The high off‑ice demands a sagacious, thoughtful, gracious and

benevolent attitude from the people at the high position and status. They should have the depth of the sea and the vastness of the horizon to absorb all sorts of follies, mistakes and even indecent conduct and attitude. There are instances in history that people at such high elected offices have been at variance, even belonging to different views and different parties, but in spite of that they have run the Government well and according to the Constitution. The best policy to run smoothly is to be above personalities and personal pride and prejudice. The tenor of the speech, in the background which would have subsided with the passage of time, though offensive in nature prima facie had some basis, but did not amount to subversion of the Constitution nor could it create a complete deadlock or stalemate resulting in collapse of the constitutional machinery. Subversion of the Constitution is high treason punishable with death. It cannot be determined by referring to the speech alone and by an authority not competent to decide it.

Constitution maintains the foundation and spirit of the democratic principles enshrined in it. Although it may have a different look than Westminster democratic principles, the spirit and the form is democratic. The Constitution provides for specific powers of the President and the duties of the Prime Minister with a view to keep them within their’ own boundaries and the limits provided by it.

(ggggg) **Constitutiofi of Pakistan (1973)‑‑‑**

‑‑‑‑ Part III, Chaps. 1 & 3 ‑‑‑ Duties and relationship of President and Prime Minister as provided in the Constitution detailed.

Khawaja Ahmad Tariq Rahim’s case PLD 1992 SC 646 ref.

**(hhhhh) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art.6 ‑‑‑ Subversion of the Constitution ‑‑‑ Effect, weight and impact of speech is to be judged from an overall appreciation by looking to its background, the truthful statement made in it and object with which it has been made ‑‑‑ If such a speech makes allegations or defames anyone without any justification, but does not create l4wlessness, disorder or threat to security or disruption it will hardly amount to subversion of the Constitution.

Right of expression and speech is conferred by the Constitution and is regulated by law. Every restriction on free speech must pass the test of reasonableness and overriding public interest. Restriction can be imposed and freedom of expression may be curtailed provided it is justified by the “clear and present danger” test that the substantive evil must be extremely serious and the degree of imminence extremely high. The danger should “imminently threaten immediate interference with the lawful and pressing purposes of the law” requiring immediate step to ensure security of the country. Speech would be unlawful if it is directed to inciting or producing imminent lawless action and is likely to produce such action. Speech and conduct are two different concepts. Speech relates to expression and conduct to action. Speech ends where conduct begins but if both are combined the Court has to draw the dividing line. The freedom of expression of views is curtailed or restricted when they “threaten clearly and imminently to ripen into conduct against which the public has a right to protect itself.

Fear of serious injury cannot alone justify suppression of free speech and assembly ... there must be reasonable ground to fear that serious evil will result if free speech is practised. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one ... In order to support a finding of clear and present danger it must be shown either that immediate ‑serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.

‘The effect, weight and impact of speech is to be judged from an overall appreciation by looking to its background, the truthful statement made in it and object with which it has been made. If such a speech makes allegation

or defames anyone without any justification disorder, or threat to security or disruption, i of the Constitution.

but does not create lawlessness, will hardly amount to subversion

Saia v. N.Y. (1948) 334 US 558; American Communications

,Association v. Douds (1950) 339 US 382 and Whitney v. California 274 US 357 (1927) ref.

**(iiiii) Constitution of Pakistan (1973)‑**

‑‑‑‑ Arts.153 & 154 ‑‑‑ Council of Common Interests ‑‑‑ Function.

I The Council of Common Interests is an important Constitutional institution which irons out differences, problems and irritants between the Provinces inter se and the Provinces and the Federation in respect of matters specified in Article 154. The Council is responsible to Majlis‑e‑Shoora, which in joint sitting may from time to time by resolution issue directions through the Federal Government generally or in particular matters to take action as the Parliament may deem just and proper and such directions shall be binding or the Council.

(0) **constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art.58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet by the President under Art.58(2)(b) inter aria on the ground . that Council of Common Interests had not discharged ‘its Constitutional functions to exercise its powers particularly in the context of privatization of industries in relation to subject‑matter mentioned in Art.154‑‑‑

Held, objections raised were in respect Of matters which were yet to be considered and could have been sorted out in future, however, working, the performance, the actions taken by the Council during the past two years had not been commented upon or objected to ‑‑‑ Allegation that the performance was not in accordance with the Constitution or it was not perfect and proper could not be made a ground for dissolution of National Assembly in circumstances.

Khalid Malik’s case PLD 1991 Kar. and Khawaja Ahmad Tariq Rahim’s case PLD 1992 SC 646 distinguished.

**(kkkkk) Constitution of Pakistan**.(1973)...

‑‑‑‑ Art.58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and Cabinet by the President under Art.58(2)(b) inter alia on the ground that Constitutional powers, rights and functions of the provinces had been usurped, frustrated and interfered with in violation of, inter alia, Art.97 of the Constitution ‑‑‑ Held, description of allegation being so vast, wide and

vague, the same could not justify the order of dissolution.

**(11111) Words and phrases...**

‑‑‑‑“Corruption”‑‑‑M caning.

The word ‘corruption’ has not been defined by any law, but it has diverse meanings and far‑reaching effects on society, government and the people. It covers a wide field and can apply to any colour of influence, to any office, any institution, any forum or public. A person working corruptly acts inconsistent with the official duty, the rights of others and the law governing it with intention to obtain an improbable advantage for himself or someone else.

. Khalid Malik’s case PLD 1991 Kar. 1 ref.

(mmmmm) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art.58(2)(b) ‑‑‑ Grounds like corruption, nepotism, misuse of banks and lack of transparency in the process of privatization and sale of cement factories cannot form an independent ground for dissolution of National Assembly‑by the President under Art.58(2)(b).

Ahmad Tariq Rahim’s case PLD 1992 SC (A6 ref.

**(nnnnn) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art.58(2)(b) ‑‑‑ Ground of unleashing a reign of terror against the opponents of the Government including political and personal rivals/relatives and mediamen, under direction, control, collaboration and partronage of the Prime Minister and Ministers leading to a situation where the Government could not be carried on in accordance with the provisions of the Constitution and law being too vague, could not be considered for dissolving the National Assembly by the President under Art.58(2)(b) of the Constitution.

(ooooo) **Constitution**or Pakistan (1973)‑‑‑

‑‑‑‑ Art.91 ‑‑‑ Principle of collective responsibility of the Cabinet.ref.

Theory of collective responsibility will be applicable to the working of the Cabinet and the Government. In a parliamentary form of Government the leader of the majority party becomes the Prime Minister and forms the Government. The Cabinet Minister are appointed by the President on the advice of the Prime Ministers. The principle of collective responsibility applies to the Ministers. They may differ inside on an issue, but if the Cabinet has taken a decision, the dissenting Minister in all propriety avoids expressing disagreement in public. The Cabinet decision is binding on all the Ministers whether they agreed or not and whether they were present or not in the meeting.

The principle of collective responsibility, as applied to Cabinet Ministers, means that each Minister accepts responsibility for the decisions of the whole Cabinet. Inside the Cabinet, a Minister may argue for a different course of action but he is expected not to express public disagreement with the course decided on though dispensation may be given to a Minister on a matter particularly affecting his constituency. If he feels very strongly on a matter he may resign in which case he will have an opportunity to make. a statement in Parliament. This version of the doctrine applies in the simplest case where Ministers are present at the Cabinet meeting where the decision is taken. But it also applies to Cabinet Ministers who are not present and so could not be said to participate in the making of the decision; and to those decisions of Cabinet Committees which are not required to be endorsed by the full Cabinet and the existence of which some Ministers may be unaware. The Chairman of each Cabinet Committee decides, after consultation with the Prime Minister (where the Chairman is not the Prime Minister), whether decisions of the Committee may be taken by a dissident Minister to the full Cabinet.

Practice and Procedures, p. 23 by J.A.G. Griffith and Michael Ryle

(ppppp) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art.58(2)(b) ‑‑‑ Mere instructions, orders or desire of the ?rime Minister asking the Ministers not to see the President cannot be , a ground for dissolution of the Assembly under Art.58(2)(1)).

**(qqq(1(1) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art.58(2)(b) ‑‑‑ Financial irregularities could not be an independent ground for dissolving the National Assembly by the President under Art.58(2)(b) of the institution.

**(rrrrr) Constitution**or Pakistan (1973)

‑‑‑‑ Art.58(2)(b) ‑‑‑ Allegation of wife of late Chief of Army Staff that her husband did not die the natural death but was poisoned was not a relevant ground for dissolving the National Assembly by the President.

**(sssss) Constitution of Pakistan**(1973)...

‑‑‑‑ Art.58(2)(b) ‑‑‑ Two requirements of Art.58(2)(b), viz. Government could not be carried on in accordance with the provisions of the Constitution and situation required fresh public mandate have to be satisfied ‑‑‑ Both the requisites being inseparable, if one requirement is not satisfied second requirement cannot be invoked.

That the Government cannot be carried on in accordance with the provisions of the Constitution and situation requires a fresh public mandate are the requirements of Article 58(2)(1)). These arc, two independent conditions and unless both are satisfied no order of dissolution can be passed. Both the conditions arc inter‑related and inter‑dependent. They are inseparable and indivisible. The second condition viz., “an appeal to the electorate is necessary’ limits and circumscribes the dimension and scope of the first condition. The facts attracting the first ‑condition should be so dangerous and explosive that they call for a fresh mandate. The opinion to be formed whether fresh mandate is required will be objective in nature which can be judicially reviewed. If the first condition was not satisfied, the second condition could not be invoked.

**(ttttt) Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art.54(3) ‑‑‑ Article 54(3) of the Constitution does not limit the power of the President to dissolve the Assembly if Speaker had summoned the requisitioned meeting of the Assembly under said Article.

**Per Sueeduzzurnan Sidoliqui, J.; Sajjad Ali Shah, J. Contra‑‑‑**

**(uuuuu) Constitution (if Pakistan**(1973)‑‑‑

‑‑‑‑ Arts. 17(2), 184(3) & 58(2)(b) ‑‑‑ Words “Political”, “Political Party” and “operation” occurring in Art.17(2) ‑‑‑ Connotation ‑‑‑ Right to form a political party guaranteed under Art.17(2) of the Constitution necessarily includes in it, the right to continue in power, if duly elected by the people for the full tenure, subject to other provisions of the Constitution ‑‑‑ If duly elected Government is ousted or interrupted from continuing in power through unconstitutional

means, same can legitimately make a grievance that its fundamental right under Art.17(2) has been violated and Constitutional petition under Art.184(3) much order is maintainable.

The words ‘Political’ and ‘Political Party’ are terms of Political Science.

A Political Party is a voluntary association of persons, formed with the object of propagating a definite political opinion/view on a matter of public importance, having an ultimate aim to get into the power seat of a Government, through the process of election, in order to give effect to its programme.

There is nothing in the language of Article 17(2) to suggest t6t the word “operation” is to be given any restricted meaning.

Sub‑clause (2) of Article 17 of the Constitution which guarantees the right to form and to become a member of a Political Party is a peculiarity of the Constitution, as no other Constitution of the world guaranteed such a right specifically under the Fundamental Right of freedom of Association. Specific mention of the right to form and to become a member of a Political Party in Article 17 of the Constitution, therefore, has to be given a special treatment in the scheme of the Constitution. It would not be correct to equate this specific right with the ordinary right of freedom of Association guaranteed under Article 17. In addition to the right to form and become a member of a Political Party, the Constitution also guaranteed Political Justice as a fundamental right, as would appear from the Objectives Resolution, which now forms part of the Constitution in the shape of Article 2A. The political activity of a Political Party does not terminate with the election of its members to the Assembly as election to Assembly is only a means and not the end for the objects of a Political Party.

The right to form a Political Party and to become its member has been specifically conferred by Article 17 of the Constitution. There is no other contemporary constitutional document in’ which a right to form a ‘Political Party’ and to become its member has been specifically guaranteed as a fundamental right under the concept of freedom of Association. It is a well ­established principle of interpretation that no surplusage or redundancy is to be attributed to the legislature, muchless to the framers of the Constitution. The Constitution is the basic and an organic document and therefore, every word used therein has to be assigned some meaning. Again the Courts while interpreting a provision of the Constitution relating to enforcement of Fundamental Right, will loan towards its more liberal and beneficial construction. Since the right to form a Political Party and to. become its member has been specifically guaranteed under Article 17 of the Constitution, it has to be given specific meaning apart from the general right of freedom of Association mentioned in Article 17. The expression ‘Political Party’ is not defined in the Constitution. However, the expression has been defined in section 2(c) of the Political Parties Act of 1962.

From the language of Article 7(2) it is quite clear that not only the formation and membership of a Political Party is within the contemplation of this Article but its operation and functioning is also within its purview. This is quite evident from the later part of Article 17(2) which provides that when the Federal Government declares that a Political Party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, it shall refer the matter to Supreme Court for decision.

The operation of a political party in its ambit includes the entire political process beginning from the formation of the party, propagation of its views on matters of public importance, taking part in elections and when Voted to power by a popular vote, to form the Government of its choice and to complete its term in tile office in accordance with the provisions of the Constitution. It needs no mention here that a long, vigorous and sustained effort is needed by a Political Party to win public support to its programme and sometimes it may require a lifetime effort by a Political Party to educate public opinion on issues of public importance ‘propagated by it. Therefore, to get elected to Assemblies and to form the Government of its choice, in the event of success, is not only the paramount and cherished goal of every Political Party but it is inherent in its operation and functioning.

Considering in tile above context, the right. to form a Political Party guaranteed under Article 17(2) of the Constitution necessarily includes in it, the right to continue in power, if duly elected by the people, for the full tenure, subject to other provisions of the Constitution. It, therefore, necessarily follows that a duly elected political Government if ousted or interrupted from continuing in power through unconstitutional means, can legitimately make a grievance that its Fundamental Right under Article 17(2) of the Constitution has been violated.

The right to form a Political Party mentioned under Article 17(2) of the Constitution necessarily implies the right of a Political Party duly voted to power in an election, to continue as such, in accordance with the provisions of the Constitution.

If the petitioner, who was heading the Government of the Federation, formed by a Political Party, on the basis of its majority in the National Assembly, succeeded in showing that his right to continue in the Government was disrupted or discontinued illegally and through unconstitutional means, he could legitimately make a grievance about violation of his fundamental right guaranteed under Article 17(2) and could also maintain the petition under Article ‑184(3) of the Constitution before this Court to challenge the impugned action.

Miss Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416; Mrs. Benazir Bhutto v. Federation of Pakistan PLD 1.989 SC 66; Concise Oxford Dictionary; Corpus J uris Secundum, Vols. 29, 72, pp. 107, 222 and Black’s Law Dictionary ref.

**(vvvvy) Constitution**or Pakistan (1973)‑‑‑

‑‑‑‑ Arts. 17(2) & 58(l.) ‑‑‑ Dissolution of National Assembly under the advice of the Prime Minister ‑‑‑ Prime Minister as leader of the House and as head of the Government, represents the will of the majority of the members of the National Assembly, when he advises dissolution of Assembly, he in fact reflects the will of the majority of the members of the Assembly ‑‑‑ Minority, in such a situation cannot prevent dissolution on the ground of violation of their rights.

Tile right to continue as member of National Assembly for a period of five ‘year’s is subject to other provisions of the Constitution including those relating ,to its dissolution. Therefore, if the Assembly is dissolved validly in accordance with the provisions of the Constitution, no vested right could be claimed against such ‘an action. The right to continue as member of the Assembly would only arise when the dissolution takes place contrary to the provisions of the Constitution. The dissolution of Assembly on the advice of Prime Minister is specifically provided for in the Constitution, and as such no question of Fundamental Right of any ‑member of the Assembly being infringed by such dissolution arises. Secondly, the Prime Minister as leader of the House and as head of the Government, represents the will of the majority of the members of the National Assembly. When the Prime Minister advises dissolution of Assembly, he in fact reflects the will of the majority of the members of the Assembly. Therefore, in such a situation the minority cannot prevent dissolution on the ground of violation of their rights as the National Assembly without majority : of1,.JLs,, members will otherwise become unrepresentative.

(wwwww) **Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ **Art. 58(2)(b)‑‘‑‑Parameters**within which power to dissolve the National Assembly can be, exercised by the President under Art.58(2)(b) or the

Constitution enumerated.

. I The broad principles governing exercise of power by. the President under Article 58(2)(b) of the Constitution, may be summed up as follows:‑‑‑

(i) The President, before exercising the power under Article 58 (2)(b) of the Constitution must form an opinion objectively that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary;

(ii) that although the exercise of discretion vesting **in the President under**Article 58 (2)(b) of the Constitution is not subject to control by the Courts, the opinion of the President must satisfy an objective lost as nothing has been left to surmises, likes or dislikes in tile process of opinion forming;

(iii) that the grounds of dissolution must bear nexus to **the preconditions mentioned**in Article 58(2)(b) of the Constitution;

 (iv) that the opinion formed by the President must be based on some material;

(v) that sufficiency or otherwise of the material before the President cannot be adjudicated upon by the Court while consider in the validity of dissolution order passed under Article 58(2)(b) of the Constitution;

(vi) that the Courts while commenting upon the Dissolution Order cannot substitute their own opinion for that of the President: and

.(vii) That the President having once validly formed the opinion that conditions prescribed in Article 58(2)(b) of the Constitution exist, is free to exercise the discretion one way or the other and existence of other alternate remedy in the Constitution could not control exercise of such discretion by the President.

Federation of Pakistan v. Haji Saifullah Khan P L D 1989 SC 106 and Khawaja Ahmed Tariq Rahim v. Federation of Pakistan P L D 1992 SC 646 ref.

(xxxxx) Constitution of Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Interpretation of Art.58(2)(b) ‑‑‑ Two objective conditions mentioned in Art.58(2)(b) of the Constitution are not in effect one and the same ‑‑‑ Where it is shown that the first condition, that a situation has arisen in which Of Government of Federation cannot be run in accordance with the provisions of the Constitution, exists in a case, the second condition, that an appeal to the electorate is necessary will not follows as a corollary of the first condition.

The use of conjunction “and” in between the expressions “a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution” and “an appeal to electorate is necessary” in Article 58(2)(b) of the Constitution, clearly indicates that the latter condition is to be‑ added to or taken alongwith the first condition. 4and’ is used in Article 58(2)(b) in its ordinary grammatical meaning. **The two**conditions in Article 58(2)(b) of the Constitution arc distinct and separate conditions and their existence as such in a case is a sine qua non for exercise of power by the President to dissolve the National Assembly. What arc those facts and circumstances which justify an inference that these ‘ two objective conditions mentioned in Article’ 58(2)(b) have been satisfied, must be answered with reference to the facts and circumstances of each, and no hard and fast rule in this regard can be laid down by the Courts.

The expression “the Government of Federation cannot be carried on in accordance with the provisions of the Constitution” in Article 58(2)(b)\* contemplates a situation where the affairs of the Government arc not capable of being Tun in accordance with the provisions of the Constitution either on account of persistent, deliberate and continued violation of various provisions of the Constitution by the Government in power, or on account of some defect in the structure of the Government, its functioning in accordance with the provisions of the Constitution is rendered impossible. The use of expression “cannot be carried on” necessarily imports an element of impossibility and disability and refers to an irretrievable and irreversible situation. An **unintentional**and bona ride omission to follow a particular provision of the Constitution, not resulting in the breakdown of Government machinery or creating a situation of a stalemate or deadlock in the working of the Government, will not be covered in the situations contemplated under Article 58(2)(b) of the Constitution.

Similarly, the use of expression in Article 58(2)(b) that “an appeal to

electorate is necessary”, implies that the Assembly has lost its representative character. This may happen where either majority of its members have resigned or where floor‑crossing and ‘horse‑trading’ by the members of the Assembly has become the order of the day, or there are other very strong circumstances suggesting that the electorate no more reposed confidence in the policies of the Government. The examples, referred above are, however, by no means exhaustive and there may be other facts and circumstances which may justify inference that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

It is, therefore, not correct to say that the two objective conditions mentioned in Article 58(2)(b) of the Constitution arc in effect one and the same, and where it is shown that the first completion, that a situation has arisen in which the Government of Federation cannot be run in accordance with the provisions of the Constitution, exists in a case, the second condition, that an appeal to the electorate is necessary, will follow as condition.

Federation of Pakistan v. Muhammad Saifullah Khan P L D 1989 SC

166 and Khawaja Ahmed Tariq Rahim v. Federation of Pakistan P L D 1992 SC 646 ref.

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(yyyyy) **constitution or Pakistan**(1973)‑‑‑

‑‑‑‑ Arts. 54 & 58 ‑‑‑ Exclusive power enjoyed by the Speaker to prorogue the session of National Assembly summoned by him under Art.54(3) is not at all determinative of the power of the President to dissolve the Assembly under Art .M of the Constitution ‑‑‑ Fact that Assembly is in session or that its session has been called or that it is not in session has no bearing on the exercise of the power of dissolution under Art.58 of the Constitution.

The exclusive power enjoyed by the Speaker to prorogue the session of National Assembly summoned by him under Article 54 (1) is not at all determinative of the power of the President to dissolve the Assembly under Article 58 of the Constitution. The power to dissolve the National Assembly under Article 58(2)(b) is undoubtedly a distinct and separate Constitutional power which is neither  subordinate to nor controlled by the provisions of Article 54 of the Constitution. There is nothing in the language of Article 54 or Article 458 or in any other provision of the Constitution to suggest or indicate that When a session of the National Assembly is summoned either by the President himself (Article 54(l)) or by the Speaker (Article 54(3)), the power to dissolve the National Assembly will not be exercised by the President under Article 58 of the Constitution or that the power of President to dissolve the National Assembly will remain suspended or dormant until the session of the National Assembly summoned under Article 54 is’ prorogued. The power to dissolve the Assembly under Article 58 4 the Constitution is an I ‘independent and distinct power which can be exercised at any i I tine after the Ass6im6ry is

formally opened. The fact that Assembly is in session or that it’s session has been called or that it is not in session has’ no bearing on the exercise of the power of dissolution under Article 58 of the Constitution. [p. 80410 (zzzzz) Evidence‑Press reports ‑‑‑ Evidentiary value

It is true that Press reports are not to be accepted as proof of facts stated therein but where such reports were ‑not contradicted by’ the concerned authority or person at the relevant time and are subsequently relied by either side in a case, these may be taken into consideration for forming an opinion generally as to the prevailing state of affairs at the relevant time.

(aaaaaa) constitution of Pakistan:

‑‑‑‑ Art. 64 ‑‑‑ Rules of Procedure and Conduct of Business in the National Assembly, 1992, R.25 ‑‑‑ Resignation by a Member of National Assembly‑‑­ Procedure to be followed for a resignation to be constitutionally valid.

                . Article 64 of the Constitution provides that a member of Parliament may by writing under his hand addressed to the Speaker or as the case may be, to the Chairman, resign his scat and thereupon his seat shall become vacant. Article 64 of the Constitution is to be read with Rule 25 of the Rules ‘of Procedure, and Conduct of Business in the National Assembly, 19( )2.

                The resignation of a member of National Assembly according to the provision contained in Article 64 and Rule 215  Of the Rules of Procedure and provisions contained Conduct of Business Rules, 1992 must be addressed, to the speaker and written under the hand of the member concerned.  resignation may  be handed over personally by the member concerned to the speaker and at that time he may inform the Speaker that it is voluntary and genuine and if the Speaker has no information or knowledge to the contrary, his scat becomes vacant immediately. In case, the Speaker receives the letter of resignation by any,

other means he may either hold enquiry himself or through ‑the National Assembly Secretariat or through any other agency regarding genuineness and voluntary nature of the resignation and as soon as the Speaker is satisfied that the resignation is genuine and voluntary, it becomes effective. According to sub‑rule (4) of Rule 25, the date of resignation shall be the date mentioned in the resignation letter and if no date is specified therein, the date of resignation will be the date on which the resignation is received by the Speaker. As soon as the, resignation becomes effective a notification is to be issued of the Secretariat of the ,Speaker in the Gazette and a .copy thereof is to be sent to .the Chief Election’ Commissioner for taking steps to, fill up the vacancy. Therefore, for a, resignation to be, constitutionally. valid, the above procedure has to be followed. In the proceeding case, majority of  the resignation, ,did not bear an

date. These  resignations, though addressed to the Speaker of National Assembly were received by the President who had no authority under the Constitution to receive them. These resignations received‑by the President in spite of passage of considerable time were not forwarded to the Speaker of National Assembly.

These resignations had no Constitutional validity or value and as such it was not possible on the basis of these documents to arrive at the conclusion that the National Assembly had lost its representative character.

(bbbbbb) Precedent.

‑‑‑‑ Mere similarity in the words .or phraseology can neither be a determinative’ factor nor a test for identity of the substance of the grounds in the two cases.

(cccece) Constitution of Pakistan (1973)‑

‑‑‑‑ Art.. 56.‑:‑Rulcs of Procedure and Conduct of Business in National Asscmbly,.!992’,’Rr’.46 t 47‑‑Address of the President to the joint  session of duty under, Art.56(3) of the Constitution ‑‑‑ President, in his such address is not bound by  the policy or view *of the*Government in power ‑‑‑ President is free to express his own views and assessment in respect of any    matter concerning the functioning of the Government in power in his address to the Joint ‘session of Parliament.. . . . . . . . . . . . . . . .

There is nothing either in Article 56 of the Constitution or in Rules 40 to 47 of the Rules of Procedure and Conduct of Business in National Assembly, 1992, to suggest, that address of the President to the joint session of the two Houses at the commencement of the first session after each general election to the National Assembly and at the commencement of the first session year, would reflect the policies of the Government and not the views of the President. The address of the President to the joint session of Parliament on the occasion of first session of each year, is his Constitutional duty under Article 56(3) of the Constitution and in his address’ the President is not bound by the policy, or views of the Government in power. The President is free to express his own views and assessment in respect of any matter concerning the functioning of the Government in power in his said address to the joint session of Parliament.

**(dddddd) Constitution of Pakistan (1973)‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National. Assembly and dismissal of Prime Minister and the Cabinet by the President ‑‑‑ Validity ‑‑‑ Main concern‑of the Court is to discover whether there was such deliberate, pervasive and continued violation of various provisions of the Constitution by the Prime Minister’s Government that it led to the impression that the Government of Federation was not run in accordance with the provisions of the Constitution but by extra‑Constitutional methods.

(eeeeee) **Constitution**of Pakistan (1971)‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Order of dissolution of Assembly by the President unless is found to he based on some relevant ground,,, such grounds will not be relevant ‑‑‑ Grounds which are vague and unsupported by any material and bearing no nexus to the preconditions do not satisfy the requirements of Art.58(2)(b).

(fffff) Constitution of Pakistan (1973)‑‑

‑‑‑‑ Art. 91(4) ‑‑‑ Cabinet ca n act only through the Prime Minister ‑‑‑ Concept of .collective responsibility of Cabinet has made the role of Ministers individually of, no consequence under the Constitution.

On the Constitutional plane, Article 91 of the Constitution provides that there shall be a Cabinet of Ministers with Prime Minister at its head, to aid and advise the President in the exercise of his functions. Clause (4) of Article 91 provides that the Cabinet together with Ministers of State shall be collectively responsible to the National Assembly. These provisions in the Constitution make it abundantly clear that the Cabinet including the Ministers of State are collectively responsible to the National Assembly and in aiding and advising the President in discharge of his functions, the Cabinet can act only through the Prime Minister. The concept of collective responsibility of Cabinet has made the role of Ministers individually of no consequence under the Constitution.

**(gggg) constitution**of Pakistan (1973)‑

‑‑‑‑ Arts. 41 & 91 ‑‑‑ Positions of the President and the Prime Minister in the Constitutional Scheme.

The President is elected under Article 41 of the Constitution through an electoral college, consisting of members of the two Houses of Parliament and four Provincial Assemblies. Articles 48,90 and 91 of the Constitution spell out the extent of power to be exercised by the President under the Constitution.

                On a careful examination of Articles 48, 90 and 91 of the Constitution it is quite clear that the President in discharge of his functions under the Constitution has to act on the advice of Prime Minister or the Cabinet, except in those cases where he is specifically authorised by the Constitution to act in his discretion. The discretionary powers of the President under the Constitution are limited to the extent of making a few appointments to the high Constitutional offices, besides his power to dissolve the National Assembly (Article 58(2)(a) and (b)), to refer a matter of national importance to

referendum (Article 48(6)) and to fix a date for election within 90 days on dissolution of National A.5sembly and to appoint a Caretaker Cabinet (Article 48(5)). Besides the above discretionary powers of the President under the Constitution, the Prime Minister is constitutionally bound to communicate to the President all decisions of the Cabinet relating to the administration of

the affairs of Federation and proposal for legislation (Article 46(a)). The President may also call for from the Prime Minister any information relating to the administration of the affairs of the ‑ Federation and may also require for ‑ submission to the Cabinet for consideration any matter on which a . decision has been taken by the Prime Minister or a Minister but not considered by the

Cabinet (Article 46(b) and (c~). The President also has the right to address  either House or both the Houses of Parliament (Article 56(1)) besides his right to send messages to either House and the matter contained in such messages to be considered by the House (Article 56(2)). At the commencement of first session of National Assembly after general elections and at the commencement of first session of each year, the President has the right to address the joint

session of the two  Houses of Majlis‑e‑Shoora (Parliament) Article 56(3)). It is quite significant that under Article 91.(4) of the Constitution, the Cabinet together with Ministers of State is collectively responsible to the National Assembly alone. It is also very important to note that although the Prime

Minister holds the office at  he pleasure of the President but this pleasure cannot be exercised by the President so long as the Prime Minister commands the confidence of the majority of the members of the National Assembly and in order to ascertain whether the Prime Minister has lost the confidence of the majority of the members of the National Assembly, the President is obliged to summon a session of National Assembly and’ ask the Prime Minister to seek a vote of confidence from the Assembly (Article 91(5)). From the above‑stated Constitutional position, there remains no room for any doubt that the Prime Minister in running the affairs of the Government is nether answerable to President nor in that capacity he is subordinate to the President. In formulating the policies of his Government and running its affairs the Prime Minister under the Constitution is answerable only to the National Assembly and the President has no constitutional role in\* this behalf. The President in all such matters is bound by the advice of Prime Minister or the Cabinet. No doubt, President may require  the Cabinet or the Prime Minister, as the case may be, to reconsider any advice tendered to him but the President is bound to act on the advice tendered after re‑consideration.

The President and the Prime Minister have defined roles under the Constitution which do not overlap. They exercise powers in their respective constitutional domain unhindered and uninterrupted by each other. No doubt, constitutionally it would be an ideal situation where both the President and the Prime Minister have identity of views on matters concerning the affairs of the Federation but ideals do not exist in reality as they are outcome of imagination. two top offices on any issue should not cause any stirring or ‑alarm as in spite of different perceptions, personal likes or dislikes ‘the two can co‑exist issue in discharge of their constitutional obligation, both the President and Prime Minister arc bound to act within the limitations Imposed on them by the Constitution and their personal feelings, likes or dislikes cannot override the constitutional mandate. One should have in mind that the method of election provided under the Constitution for these two top offices, also foresees a possibility that the holders of these two top posts may not belong to the same political party. Therefore, possibility of a play in the relationship between the holders of these two top posts cannot be ruled out.

                No doubt, the President as the symbol of the ‘ unity of Federation occupies a neutral position in the Constitution, and, in that capacity he is entitled to highest respect and regard by all the functionaries of the State. But it is equally important that in order to protect and preserve the dignity of this high office and this neutral image under the Constitution the President must keep aloof Quran all political imbroglio. If the President is unable to ward off the temptation ‑to keep away from, political game or he starts siding with one or the other political element in the Assembly, he is likely to lose his image as the neutral arbiter in national affairs and as a symbol of unity of Federation under the Constitution. In the latter event, his conduct may also come under criticism from those who may feel betrayed.

 Z (hhhhhh) Constitution or Pakistan (1973)‑‑‑

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of‑Prime Minister and the Cabinet by the President under Art.58(2)(b), inter alia, on the ground of speech by the Prime Minister on 17th April, 1V)3 ‑‑‑ Held, Prime Minister’s speech first listed the achievements of his Government, then referred to the conspiracies to destabilise his Government by political elements hostile to him by using the high office of Presidency, and finally he expressed his determination and resolve not to give in to these pressures ‑‑‑ Reaction of Prime Minister’s shown by him in his speech in the circumstances prevailing at the relevant time was neither unnatural nor unjustified ‑‑‑ Speech of the Prime Minister, however, did not have the effect of creating any deadlock o stalemate in the working of the Government of Federation warranting action of the President under Art.58(2)(g).

**(iiiiii) ConstitUtion of Pakistan (1973)**

‑‑‑‑Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly and dismissal of Prime Minister and the Cabinet under Art.58(2)(b) of the Constitution by the President of Pakistan vide Order dated 18th April, 1993 ‑‑‑ Said Order, held, neither collectively nor individually justified the inference that a situation had arisen in which the Government of Federation could not be carried on in accordance with the provisions of the Constitution and an a6eal to the electorate was necessary.

(UW) **Constitution of Pakistan (1973)‑‑‑**

‑‑‑‑ Art. 58(2)(b) ‑‑‑ Dissolution of National Assembly under Art.58(2)(b) by the President ‑‑‑ Held, Court in considering the grounds of dissolution is not concerned with the pace of progress, the shade of the quality or the degree of  the performance or quantum of achievement but is only concerned with the breakdown of. the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution.

Yahya Bakhtiar, Senior Advocate Supreme Court, Khalid Anwar Advocate Supreme Court, Khalid M. Ishaque, Zakiuddin Pal, Aftab Farrukh, Muhammad Farooq, Raja Muhammad Akrarn Senior Advocates Supreme Court, M. Akram Sheikh, Ashtar Ausaf Ali, Mian Saqib Nisar, Advocates Supreme Court and Ejaz Muhammad Khan, Advocate‑on‑Record for Petitioner.

Aziz A. Munshi, Attorncy‑Gencral for Pakistan, Malik Akhtar Hussain Awan, Advocate Supreme Court, Maqbool Elahi Malik, A.‑G. Punjab, Faqir Muhammad Khokhar, Dy. A.‑G., Ch. Ijaz Ahmad, Dy. A.‑G., M. Zahoorul Haq, Senior Advocate Supreme Court, Makhdoorn Ali Khan, Advocate Supreme Court and Ch. Fazic Hussain, Advocate‑on‑Record for Respondents Nos. 1 and 2.

S.M. Zafar, Senior Advocate Supreme Court, Syed Zahid Hussain, Advocate Supreme Court ‑ and Ch. Fazle Hussain, Advocate‑on‑Record ‑ for Respondent No.3.

Raja Muhammad Afsar, A.‑G. Balochistan, A.G. Mangi, Addl. A.‑G Sindh, M. Sardar Khan, A.‑G., N.‑W.F.P. and Maqbool Elahi Malik, A.‑G Punjab on Court’s Notice.

Dates of hearing: 26th April; 8th to 12th and 15th to 26th May, 1993

JUDGMENT

                NASIM HASAN SHAH, CJ.‑‑‑On the evening of 17th April, 1 1993, Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan addressed the Nation on the National Radio and Television Networks. It was an emotional address wherein he alleged, inter alia, that disgruntled political elements were working against his Government, hatching conspiracies to destabilise it and

trying to undo all the good work he was trying to do. All this, he alleged, was being done under the patronage of the President of Pakistan. He ended his speech with the following challenging words:‑

“I will not resign will not dissolve the National Assembly; and will not be dictated.”

On the evening of 18th April, 1993, barely 24 hours after this emotional and challenging address was delivered, the President of Pakistan called a Press conference at Aiwan‑i‑Sadar (President’s House) and declared that the speech of the Prime Minister of the previous evening and other acts of his Government had convinced him that the Government of the Federation could not be carried on in accordance with the provisions of the Constitution. He had, accordingly, in exercise of the powers conferred on him under Article 58(2)(b) of the Constitution, ordered the dissolution of the National Assembly, dismissed the Prime Minister and his Cabinet and called for General Elections in the country. A Care‑taker Cabinet was immediately sworn in the same evening, which was later expanded to include 62 Ministers.

A week later, the dismissed Prime Minister (Mian Muhammad Nawaz Sharif) moved this Court under its Original Constitutional Jurisdiction under Article 184(3) of the Constitution, on 25th April, 1993, praying that the order of dissolution dated 18‑4‑1993 be declared mala fide, without lawful authority, null and void and of no legal effect and all steps taken in implementation of or taken as result or the aforesaid order of dissolution including the appointment of the Care‑taker Cabinet be also declared as null and void. It was further prayed that the respondents be restrained from interfering with the functions and duties of the elected Government headed by him and no impediments be placed in the functioning of the National Assembly.

The petition came up for preliminary hearing the next day viz. the 26th April, 1993 before a Full Bench of the eleven Permanent Judges of this Court. Herein, the Attorney‑General of Pakistan raised a preliminary objection to the effect that the petition filed under Article 184 of the Constitution directly before the Supreme Court was not maintainable and was liable to be dismissed on this short ground.

The Court, after hearing the reply of the learned counsel for he petitioner on this point proceeded to join the preliminary objection (regarding A the maintainability of the petition) with the questions arising on merits and observed that both of these questions shall be heard and decided together. The matter was adjourned for full and final arguments to 8th May, 1993; the parties being directed to complete the records in the meanwhile.

Accordingly, the learned counsel of the parties have been fully heard. Two questions in the main arise for decision in this case, namely:‑‑

(1)                           Is this petition under Article 184(3) of the Constitution maintainable?

                and

(2)           If so, has the President exceeded the powers conferred on him under clause (b) of Article 58(2) of the Constitution in ordering the dissolution of the National Assembly?

My learned brother Shaflur Rahman, J. in his well‑considered judgment, which has already been circulated to all of us and which I have had the privilege to peruse, has answered both these questions in the affirmative. I respectfully and entirely agree with the answers returned by him. However, in view of the importance of the questions raised in this petition I consider it appropriate to also say a few words of my own.

The first question, which requires consideration, is as to whether this petition could be riled directly in this Court and it is maintainable before us? This question was, indeed, raised as a preliminary objection by the learned Attorney‑General and must, therefore, necessarily be examined and answered in the first instance.

Article 184(3) of the Constitution, which has been invoked by the petitioner, lays down:

“184.‑‑(l)………………..

(2)………………………

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11 is involved, have the power to make an order of the nature mentioned in the said Article.”

In support of his preliminary objection, the learned Attorney‑General, Mr. Aziz A. Munshi, submits that this Constitutional Petition purporting to seek the enforcement of Fundamental Right 17 under Article 184(3) of the Constitution is not maintainable because Fundamental Right 17 merely guarantees the right to form a political party and the right to be a member of a political party and no more. However, the petitioner in his petition is not complaining that he is being prevented from forming a political party or from being a member thereof. His grievance is that even though the tenure of his office has not expired he is being deprived of the right to continue as Prime Minister on account of the unlawful order of dismissal of his Government. The learned Attorney‑General submits that redress for such a grievance is not through the enforcement of Fundamental Right 17 but by invoking other provisions of the Constitution. Elaborating this submission, it is submitted that Fundamental Right 17 is not attracted because the matter of the formation of a Government is provided for in Article 91; while the tenure of the National Assembly is provided for in Article 52 subject to the hazard of its premature curtailment, on account of its dissolution under Article 58 of the Constitution.

Learned counsel for respondent No.3, ‘Mr.S.M. Zafar, has also supported this objection. According to him, although the question raised in this petition satisfies the first part of the condition laid down in Article 184(3) namely that it should involve a question of public importance but, according to this Article, the question should also have reference to the enforcement of some Fundamental Right. But the question raised herein has no reference to the enforcement of any Fundamental Right. In this connection, the submission is that Fundamental Right 17 is not attracted because its scope can, at best, extend to all acts culminating in the election of a member of a political party to the National Assembly’. Once having been so elected he becomes vested with certain legal and political rights which can undoubtedly be enforced under the law. However, Fundamental Right 17 is not available to protect them. According to Mr. S. M. Zafar, the right of a member of a political party elected to a legislative assembly and to continue as such has been conferred on him, by a specific provision of the Constitution and in case of any unlawful interference therewith it can be redressed by recourse to the High Court under Article 199 of the Constitution by seeking an appropriate writ. Accordingly, as in the present case, where the petitioner complains that he has been deprived of his right to continue as a member of the National Assembly, the violation complained of is not of any of his Fundamental Right but only of a political or a legal right. In short, the submission is that though political parties and their members can move the Supreme Court directly if any of their Fundamental Rights is infringed it is not possible in this case because Fundamental Right 17 is available only against actions preventing its members from forming a political party or from contesting elections to the Assemblies and not available to them after they have become., members of the elected body. Having once reached there all rights inhering in them, as such members, like the right of tenure, are enforceable only by recourse to the provisions of Article 199 of the Constitution, namely, through a writ petition in the High Court.

Mr. Khalid Anwar, learned counsel for the petitioner and Dr. Farooq Hassan have been heard in reply.

The relevant part of Fundamental Right 17 reads as under:.

(2) Every citizen, not being in the Service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.”

I do not think that the preliminary objection that this petition is not maintainable can be sustained.

Fundamental Rights in essence are restraints on the arbitrary exercise of power by the State in relation to any activity that an individual can engage. Although Constitutional guarantees are often couched in permissive terminology, in essence they impose limitations on the power of the State to restrict such activities. Moreover, Basic or Fundamental Rights of individuals which presently stand formally incorporated in the modern Constitutional documents derive their lineage from and are traceable to the ancient Natural Law. With the passage of time and the evolution of civil society great changes occur in the political, social and economic conditions of society. There is, therefore, the corresponding need to re‑evaluate the essence and soul of the fundamental rights as originally provided in the Constitution. They require to be construed in consonance with the changed conditions of the society and must be viewed and interpreted with a vision to the future. Indeed, this progressive approach has been adopted by the Courts in the United States and the reason given for doing so is that:‑‑

“While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield a new and fuller import to its meaning: (Hurtade v. California ‑‑ 110 U.S. 516).

it is on this principle of interpretation that the import of the rights given in the U.S. Constitution such as the “right of Assembly and the “right of Association”, has been so expanded and so enlarged by the U.S. Supreme Court that even peripheral rights (or rights of penumbra as described in some judgments i.e. rights so closely associated to the basic right which is specifically given in the Constitution) are now being also enforced as basic rights.

This progressive approach has also found favour with this Court and has been endorsed by it. Speaking for the Court, the learned Chief Justice (Muhammad Haleem, CJ.) observed in Benazir Bhutto’s case (PLD 1988 SC 416 at page 490) as under:‑‑

‘The liberties, in this context if purposefully defined will serve to guarantee genuine freedom, freedom not only from arbitrary restraint of authority, but also freedom from want, from poverty and destitution and from ignorance and illiteracy ‑‑‑‑‑‑‑‑‑ This approach is in tune with the era of progress and is meant to establish that the Constitution is not merely an imprisonment of the 12ast, but is also alive to the unfolding‑ of the future”. (Emphasis supplied).

                                   In consonance with this progressive approach, it was held in this case that the right conferred by Article 17 includes not merely the right to form a political party but comprised also other consequential rights.

This approach was again in evidence in the Symbol’s case (PLD 1989 SC 66) wherein it was observed that the “Fundamental Right” conferred by Article 17(2) of the Constitution whereby every citizen has been given “the right” to form or to be a member of a political par‑y comprises the right to participate in and contest an election” (see page 75 of the Report).

Indeed, even earlier this Court had observed in Maudoodi’s case PLD 1964 SC 673 that “forming of associations necessarily implies carrying on the activities of an association for the mere forming of ‑association would be of no IG avail” (see page 764 of the Report). It was also observed in the same case, that I “the ordinary conception of a political party includes a right within the framework of the Constitution to exert itself through its following and Organization, and using all available channels of mass communication, to propagate its view in relation to the whole complex of the administrative machine, including the Legislatures, in respect of matters which appear to it to require attention. for the amelioration of conditions generally throughout the nation, for improvements particularly in administrative procedures and policies as well as in the legislative field, even to the extent of proposing and pressing for amendment of the Constitution itself” (see page 692 of the Report).

Actually, the objection being raised by the learned counsel for the respondents before us here stands practically answered already in Benazir Bhutto’s case PLD 1988 SC 416. It was herein, inter 41;.a, also observed:‑‑

“Reading Article 17(2) of the Constitution as a whole it not only guarantees the right to form or be a member of a political party but also to operate as political party ... ... ... ... .. Again, the forming of a political party necessarily implies the right of carrying on of all its activities as otherwise the formation itself would be of no consequence. In other words, the functioning is implicit in the formation of the party” (see page 511 of the Report).

In a ‑subsequent passage (at page 541) this aspect was commented upon as folilows:‑‑

“it (Article 17(2)) provides a basic guarantee to the citizen against usurpation of his will to freely participate in the affairs and of Pakistan               through political activity relating thereto.” (Emphasis supplied).

Thus, in the scheme of our Constitution, !he guarantee to form political party must be deemed to comprise also the right by that political party to form the Government, wherever the said political party possesses the requisite majority in the Assembly. AS was explained by Chief Justice Muhammad Haleem in the same Judgment:-

“Our Constitution is of the pattern of parliamentary democracy with a  Cabinet system based on party system as essentially it is composed of the representatives of a party which is in majority …..                It is a party system that converts the results of a Parliamentary election into a Government.’

Accordingly, the basic right “to form or be a member of a political  party’ conferred by Article 17(2) comprises the right of that political party not only to form’ a political party, contest elections under its banner but also, after successfully contesting the elections, the right to form the Government if its members, elected to that body, are in possession of the requisite majority. The Government of the political party so formed must implement the programme of the political party which the electorate has mandated it to carry into effect. Any unlawful order which results in frustrating this activity, by removing it from office before the completion of its normal tenure would, ‘therefore, constitute an infringement of this Fundamental Right.

In this connection, the interpretation of the word “Operating’ in Article 17(2) given by my learned brother Shafiur Rahman, J. further clarifies this aspect of the matter. He has rightly pointed out that the term “operating” includes both healthy and unhealthy operation of a political party. While Article 17 contains limitations and checks against unhealthy operation of the political party; no provision exists therein in relation to its healthy operation. However, the mere omission to make any specific provision in regard to this aspect does not imply that Fundamental Right 17 does not also comprise this aspect of the matter. Indeed, a positive right implies, as part of the same right, a negative right and vice a verse (see the views of Jeckson, J. for the majority and Murphy, J. concurring in West Virginia State Board of Education v. Barnette (1942) 319 U.S. 624. Hence, if the lawful functioning of a Government of political party is frustrated (by its dismissal) by an unlawful order, such an order is an impediment in the healthy functioning of the political party and would, therefore, constitute an ‘infringement of the fundamental right conferred by Article 17(2). A petition under Article 184(3) for its enforcement would, accordingly, be maintainable.

In this view of the matter, the submission of the learned Attorney‑

General that rights guaranteed under Article 17(2) extend only to the right to 0 form a political party and the right to become a member of a political party or for that matter the submission of Mr. S. M. War that the right guaranteed under Article 17(2) extends only to all the political processes culminating in the election of its member to the National Assembly and no more cannot therefore be accepted. The preliminary objection, accordingly, fails and is rejected.

Coming now to the second question requiring adjudication, namely, whether the President in ordering the dissolution of the National Assembly exceeded the power conferred on him under clause (b) of Article 58 of the Constitution, it is appropriate that the terms of this provision be clearly comprehended.

Article 58(2)(b) provides:

“58.‑‑(l) The President shall dissolve the National Assembly if so advised by the Prime Minister; and the National Assembly shall, unless sooner dissolved, stand dissolved at the expiration of forty‑eight hours after the Prime Minister has so advised.

(2)           Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion‑

(a)  …………………………….

(b)           a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.”

The order passed to dissolve the National Assembly was in the following terms:‑‑

“Order of Dissolution

The President having considered the situation in the country, the events that have taken place and the circumstances, the contents and consequences of the Prime Minister’s speech on 17th April, 1993 and among others for the reasons mentioned below is of the opinion that the Government of the Federation cannot be carried on in accordance with the provisions ‑of the Constitution and an appeal to the electorate is necessary”

The circumstances that were taken into consideration by the President for forming the opinion “that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate was necessary” were then recounted.

The operative part of the Order was expressed in these words:‑‑

“Now, therefore, 1, Ghulam Ishaq Khan, President of the Islamic Republic  of Pakistan in exercise of the powers conferred (in me by clause (2)(b) of Article 58 of the Constitution of the Islamic Republic         of Pakistan and all other powers enabling me, hereby dissolve the         National Assembly with immediate effect; and dismiss the Prime Minister and the Cabinet who shall cease to hold office forthwith.

                                                                                                                (Sd.)

                                                                                 Ghularn Ishaq Khan,

                                                                                    President.”

                                                                          Islamabad 18th April, 1993.

My learned brother Shaflur Rahman, J. has examined each and every ground adduced in support of the impugned order and after carefully analysing the gravamen of each ground found that not one of them can validly be relied nexus upon to sustain the order of  dissolution as none of them has any direct nexus with the conditions which are the prerequisite for the exercise of the powers under clause (b) of Article 58(2) of the Constitution. This Court in the case of Haji Muhammad Saifullah PLD 1989 SC 166 has held that the grounds and material which form the basis of the order of dissolution are open to scrutiny and judicially reviewable, observing in this connection:‑‑

“The discretion conferred by Article 58(2)(b) of the Constitution on the President cannot, therefore, be regarded to be an absolute one, but is to be deemed to be a qualified one, in the sense that it is circumscribed by the object of the law that confers it.

it must further be noted that the reading of the provisions of Articles 48(2) and 58(2) shows that the President has to first form his opinion, objectively and then, it is open to him to exercise his discretion one way or the other i.e. either to dissolve the Assembly or to decline to dissolve it. Even if some immunity envisaged by Article 48(2) is available to the action taken under Article 58(2) that can possibly be only in relation to the exercise of his discretion but not in relation to his ‘opinion’. An obligation is cast on the President by the aforesaid Constitutional provision that before exercising his discretion he has to form his ‘opinion’ that a situation of the kind envisaged in Article 58(2)(b) has arisen which necessitates the grave step of dissolving the National Assembly. In Abul A’la Maudoodi v. Government of West Pakistan PLD 1964 SC 673 Cornelius, CJ while interpreting certain provisions of the Criminal Law Amendment Act, 1908, construed the word ‘opinion’ as under:‑‑

‘                               it is a duty of Provincial Government to take into consideration all relevant facts and circumstances. That imports the exercise of an honest judgment as to the existence of conditions in which alone the opinion may be formed, consequent upon which the opinion must be formed honestly, that the restriction is necessary. In this process, the only element which I rind to possess a subjective quality as against objective determination, is the final formation of opinion that the action proposed is necessary. Even this is determined, for the most part, by the existence of circumstances compelling the conclusion. The scope for exercise of personal discretion is extremely limited ... ... ... ...

‑‑‑ ‑ ‑‑‑ ‑‑‑ ‑‑‑.... ... ... ... ... ... As I have pointed out, if the section be construed in a comprehensive manner, the requirement of an honest opinion based upon the ascertainment of certain matters which are entirely within the grasp and appreciation of the Governmental agency is clearly a prerequisite to the exercise of the power. In the period of foreign rule, such an argument, i.e. that the opinion of the person exercising authority is absolute may have at times prevailed, but under autonomous rule, where those who exercise power in the State are themselves citizens of the same State, it can hardly be tolerated.

Thus, though the President can make his own assessment of the situation as to the course of action to be followed but his opinion must be founded on some material. In the present case, the President himself chose to state the grounds on which he was basing his action. As the grounds have been disclosed their validity can be examined.”

Coming to the present case, doubtless the main reason which induced the President to dissolve the National Assembly was the speech delivered on 17th April, 1993 by the Prime Minister. Indeed that this was so was practically conceded by the learned Attorney‑General before us. But, according to him, the speech of the Prime Minister amounted to a subversion of the Constitution, that it was nothing short of a call for agitation against the Head of the State; that in any case no rapport.was possible between the President and the Prime Minister after such a speech and the relations between the two highest executive authorities in the State became so gravely strained that it was not possible for them to work in harmony thereafter. This stalemate, this deadlock between the two highest Constitutional functionaries in the State rendered the carrying on of the Federation ip accordance with the provisions of the Constitution impossible. Hence, the President had no alternative but to dissolve the National Assembly, dismiss the Prime Minister and his Cabinet and call for fresh general elections. This he was entitled to do under the powers conferred on him under Article 58(2)(b) and that he had exercised these powers legally and properly.

Although we can understand the point of view of the President, as presented before us by the learned Attorney‑General, we cannot subscribe to it. In our opinion it proceeds on an incorrect appreciation of the role assigned to him in the Constitution and of the powers vested in him after the amendment made In the Constitution of 1073 by the Constitution (Eighth Amendment) Act, 1985 introduced in the Constitution of 1973 shortly before its revival on 30th December, 1985.

Under the 1973 Constitution, as originally enacted the President, in the performance of his functions, was to act in accordance with the advice of the Prime Minister and ‑his advice was binding on him. indeed, the orders of the President required the counter‑signature of the Prime Minister for their validity (Article 48). The National Assembly could be dissolved only if so advised by the Prime Minister and the President himself had no power to order its dissolution under any circumstances (Article 58). The executive authority of the Federation was no doubt to be exercised in the name of the President but this was to be done by the Federal Government consisting of the Prime Minister and the Federal Ministers, through the Prime Minister who was to be

the Chief Executive of the federation.[Article 90(l)”.

The powers of the Prime Minister under the 1973‑Constitution were indeed transcendental and no check or control was provided over them. Undoubtedly, under the Constitution ,,the President was the Head of the State and represented the unity of the Republic (Article 41). But, in fact, he was no more than a Constitutional Head. All the responsibility of the administration was conferred on the, Prime Minister and in the discharge of his functions the President could only act in accordance with his advice. Indeed every order passed by him required his counter‑signatures for its validity. This total concentration of powers in the hands of the Prime Minister ultimately proved to be a liability for the smooth running of the Constitution.

On. March 7, 1977, general elections **were held in the country.**However, as soon as the results of the elections were announced practically the whole country rose in protest against them, being, convinced that they were manipulated and the outcome of massive rigging. The working of the Government came to a standstill. The main demands of the opposition parties involved in the agitation were that the Prime Minister should go, the National Assembly should be dissolved and fair and free elections be held afresh. The Prime Minister was not, however, prepared to dissolve the National Assembly and under the Constitution it was be. and he alone who could get the National

Assembly dissolved. To overcome this impasse and to remedy the situation the army decided to interven6 and on 5th of July, 1977 imposed Martial Law. This intervention ostensibly was for a temporary period (for the limited purpose of arranging free and fair elections, so as to enable the country to return to a democratic way of life but, in point of fact, lasted for 8‑1/2 years). This

tragedy, many people thought, could have been avoided if the President had also been vested, in exceptional circumstances, with the power of dissolving the National Assembly.

Accordingly, this deficiency, amongst others, was sought to be remedied when the 1973 Constitution (which was suspended on the imposition of Martial Law) was being revived in 1985 and to this end clause (2) added to Article 58 by the Constitution (Eighth Amendment) Act, 1985.

The full background of the terms in which Article 58(2) of the Constitution finally emerged is given in the judgment of this, Court in Haji Muhammad Saifullah’s case PLD 1989 SC 166. it would be relevant to reproduce some part thereof thereunder‑

“In the Revival of the Constitution of 1973 Order, 1985 (President’s Order 14 of 1985) the provisions of Article 48 and Article 58 were radically modified in comparison to the earlier provision contained in the 1973 Constitution ... .... .... .......

However, the National Assembly, before which the Revival of the Constitution Order, 1985 (President’s Order 14 of 1985) Was placed for adoption. did not agree to accept the provisions of clause (2) of Article 48 without qualifications particularly in so far as the power of the President to dissolve the National Assembly was concerned. Thus, the Constitution (Eighth Amendment) Act, 1985 as it was finally adopted by the National Assembly curtailed the absolute discretion of the President in the matter of dissolution of the National Assembly. The provisions of clause (2) of Article 48 provided that:‑‑

“Notwithstanding anything contained in clause (1) the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever.”

The amplitude of this provision was significantly cut down be the non obstante clause contained in sub‑Article (2) of Article 58 by introducing the words “Notwithstanding anything contained in clause (2) of Article 48” in the beginning of clause, before the words “the President may also dissolve the National Assembly in his discretion where in his opinion‑‑

(a)           ........

(b)           a situation has arisen in which the Government cannot be carried on in accordance with the provisions of the Constitution and an appeal to electorate is necessary.”

This Court, in Haji Muhammad Saifullah’s case (PLD 1989 SC 166) after a close analysis of this provision, in the light of the relevant background, held that if it could be shown that no grounds existed on the basis of which an honest opinion could be formed “that a situation had arisen in which the Government of the Federation cannot be carried in  accordance with the provisions of the Constitution and an appeal to the electorate is necessary’ the exercise of the power would be unconstitutional and open to correction through judicial review. As the examination of the grounds of the order d dissolution passed by the President on 29th May, 1988 revealed that the pre‑requisites prescribed for the exercise of the powers conferred by Article 58(2)(b) did not exist, the said action was found to be unlawful.

However, despite the above finding, the consequential relief of restoration of the National Assembly was not granted. It was observed that “the writ jurisdiction is discretionary in nature and even if the Court **finds that a party has**a good case, it may refrain from giving him the relief if greater harm is likely to be caused thereby than the one sought to be remedied. It is well­ settled that individual interest must be subordinated to the collective good. Therefore, we refrain from granting consequential reliefs, inter alia, the restoration of the National Assembly and the dissolved Federal Cabinet”.

Other important reasons for not restoring the National Assembly were that the country was geared for fresh elections and that the dissolved National Assembly was elected on the basis of partyless, elections, which elections had been boycotted by some of the political parties, rendering its representative character doubtful for some extent. Faced with the choice whether to restore such an Assembly or not, in exercise of its discretionary writ jurisdiction, the Court exercised its discretion. in favour of not doing so.

Undoubtedly, two opinions can legitimately be entertained as to the correctness of the course which was followed here. On hindsight, I now think  that after having found the action of dissolution of the National Assembly was not sustainable in law, the Court should not have denied the consequential relief and ought to have restored the National Assembly.

Be that as it may, it need to be clarified that in the case of Kh. Ahmad Tariq Rahim (PLD 1992 SC 646) the Court had no such choice. In that case, the majority had found the order of dissolution passed by the President under Article 58(2)(b) on 6th August, 1990 to be valid and upheld it. The dissolution of the National Assembly was found to be lawful and proper. Hence the said instance is of no relevance here.

Coming back to the question of the role assigned to the President and the powers vested in him after the adoption of the Constitution (Eighth Amendment) Act, 1985, reference to the power to dissolve the National Assembly conferred on him by clause (2) of Article 58, which power was not earlier vested in him, has already been made. In addition he was empowered also to appoint, in his discretion, the Chief Election Commissioner V (Article 213), the Chairman of the Public Service Commission [Article 242 (1‑A)l and the Chairman Joint Chiefs of Staff Committee [Article 243(2)(c)]. He was also empowered to appoint the Governors of the Province after consulting the Prime Minister [Article 1011. Powers were also conferred on him to, refer any matter of national importance to a referendum [Article 48(6)). Duty was cast on the Prime Minister vide the substituted Article 46 to keep the  President fully cognisant of the doings of his Government in the following

words:

46.          It shall be the duty of the Prime Minister‑‑‑

(a)           to communicate to the President all decisions of the Cabinet relating

                to the administration of the affairs the Federation and proposals for

                legislation;

(b)           to furnish such information relating to the administration of the affairs of the Federation and proposals for legislation as the President may call for; and

(c)           if the President so requires, to submit for the consideration of the Cabinet any matter on which a decision has been taken by the Prime Minister or a Minister but which has not been considered by the Cabinet.

In view of these newly‑added provisions, it was argued that a pre­eminent role had been assigned to the President. He was not now merely the Constitutional Head of the State simply enjoying a high ceremonial office but had, in fact, become a full partner in the governance of the country and indeed the more important partner. In view of this pre‑eminent position as the Head of the State and in consonance with the spirit of the modified Constitution (after the amendments made therein during the Martial Law period and sanctified by the 8th Constitutional Amendment adopted in 1985) the Prime Minister was expected to accept the guidance of the President and to act in accordance with his advice and to mould his conduct accordingly. This perception of the President becomes manifest from the terms of the impugned order of dissolution itself. Herein reliance is placed not only on the specific powers conferred on him by clause (2)(b) of Article 58 but also on “all other powers enabling him” in that behalf. This is indicative of his belief that besides the powers specifically conferred upon him by the terms of the Constitution, some residual or implied powers also inhere in him.

Unfortunately, this belief that he enjoys some inherent or implied powers besides these specifically conferred on him under Articles 46, 48(6), 101, 242 (1A) and 243(2)(c) is a mistaken one. In a Constitution contained in a written document wherein the powers and duties of the various agencies established by it are formulated with precision, it is the wording of the Constitution itself that is enforced and applied and this wording can never be overriden or supplemented by extraneous principles or non‑specified enabling powers not explicitly incorporated in the Constitution itself. In view of the express provisions of our written Constitution detailing with fullness, the powers and duties of the various agencies of the Government that it holds in balance there is no room of an y residual or enabling powers inhering in any authority established by it besides those conferred upon it by specific words.

                Our Constitution, in fact, is designed to create a parliamentary democracy. The President in this set‑up is bound to act, in the exercise of his functions, in accordance with the advice of the Cabinet or the Prime Minister [Article 48(l)] and the Cabinet in its turn is collectively responsible to the National Assembly [Article 91(4)] though the Prime Minister holds office at the pleasure of the President. However, the President cannot remove him from his office as long as he commands the confidence of the majority of the members of the National   Assembly [Article 91(5)1. In view of these provisions, the system of Government envisaged by the Constitution of 1973 is of the Parliamentary type wherein the Prime Minister as Head of the Cabinet is responsible to the Parliament, which consists of the representatives of the nation.

It is manifest, therefore, that in the scheme of our Constitution the Prime Minister in administering the affairs of the Government is neither answerable to the President nor in any way subordinate to him. In formulation of the policies of his Government and in the running of its affairs, the Prime W Minister is answerable only to the National Assembly and not to the President. Indeed, it is the President who is bound by the advice of the Prime Minister or the Cabinet in all matters concerning formulation of policies and administration of the affairs of the Government and not the other way about, as appears to have been mistakenly understood. Undoubtedly, the President may require the Cabinet or the Prime Minister, as the case may be, to reconsider any advice tendered to him but the President is bound to act on the advice tendered, even if it be the same, after consideration. Undoubtedly, both are expected to work in harmony and in close collaboration for the efficient running of the affairs of the State but as their roles in the Constitution are defined, which do not overlap, both can exercise their respective functions unhindered and without bringing the machinery of the Government to a standstill. Despite personal likes or dislikes, the two can co‑exist Constitutionally. Their personal likes or dislikes are irrelevant so far as the discharge of their Constitutional obligations are concerned. Despite personal rancour, ill‑will and incompatibility of temperament, no deadlock, no stalemate, no breakdown can arise if both act in accordance with the terms or the Oath taken ‑by them, while accepting their high office. They have sworn:

.not to allow their personal interest to influence their official conduct or their official decisions.”

And taken Oath:

“to do right in all circumstances, to all manner of people, according to law, without fear or favour, affection or ill‑will.”

Coming now to the speech of the Prime Minister made on 17th of April, 1993, which brought about his fall and led to the dissolution of the National Assembly, my learned brother has set out its terms in sufficient detail. Suffice it to say, that in his speech the Prime Minister accused disreputable and opportunistic self‑seekers of using the Presidency for destabilising his Government. He also alleged that dirty horse‑trading was taking place and conspiracies were being hatched for ousting the elected Prime Minister. He also said that the place which should have been a source for strengthening the democracy appeared now to be yearning for establishing “one man’s” rule. He, however, vowed that he would steadfastly oppose these machinations and not betray the people and defiantly declared “I shall not resign, I shall not dissolve the Assembly, I shall not take dictation”.

According to the learned Attorney‑General the said speech and conduct of the Prime Minister amounted, inter alia, to “subversion of the Constitution” and, therefore, was by itself a sufficient ground for dissolving the National Assembly under Article 58(2)(b).

The words “situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution, in which situation alone the President is empowered to dissolve the National Assembly also came up for interpretation by this Court in the case of Haji Muhammad Saifullah (PLD 1989 SC 166) and these words were explained by me to mean:‑‑

“Thus, the intention of the law‑makers, as evidenced from their speeches and the terms in which the law was enacted, shows that any order of dissolution by the President can be passed and an appeal to the electorate made only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution.”

And were explained by Shafiur Rahman, J. as follows:

“The expression ‘cannot be carried on’ sandwiched as it is between i ‘Federal Government’ and ‘in accordance with the provisions of the Constitution’, acquires a very potent, a very positive and very content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of progress, the shade of the quality or the degree of the performance or the quantum of the achievement. It concerns itself with the breakdown of the Constitutional machanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution.”

In the present case, the breakdown of the machinery of the Government is said to have occurred because of the Prime Minister’s speech as it made it impossible thereafter for these two pillars of the State to co‑exist.

Now, the President as the symbol of the unity of the Federation is z entitled to the highest respect and esteem by all the functionaries of the State. But it is equally true that this respect and esteem will be forthcoming if he conducts himself with utmost impartiality and neutrality, that he keep himself entirely aloof from party politics and does not give the impression to any one that he is siding with one faction or working against the other. If, on the other hand, ‑ he gets drawn into the arena of party politics, he will become, in the words used by Prime Minister Asquith in his memorandum to 1Gng George V, “the football of contending factions”.

The material placed before us shows, unfortunately, that the opinion formed by the Prime Minister that the President had ceased to be a neutral figure and started to align himself with his opponents and was encouraging them in their efforts to destabilise his Government, was an opinion that could indeed be reasonably entertained. In these circumstances, the charge against the Prime Minister of subverting the Constitution by his speech of April 17, 1993 when he was only protesting at this situation is reminiscent of the saying (in Urdu):

 (when the mighty strikes you are not permitted to protest).

The people of Pakistan have willed to establish an order wherein the State shall exercise its powers and authority through the chosen representatives of the people; wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed (Article 2A).

No one man howhighsoever can, therefore, destroy an organ consisting of, chosen representatives of the people unless cogent, proper and sufficient cause exists for taking such a grave action. Article 58(2)(b), no doubt, empowers the President to take this action but only where it is shown that ‘a situation has arisen in which the Government. of the Federation cannot be carried on in accordance was the provisions of the Constitution”.

Enough has been said above to indicate that no such situation had arisen here and that if any such situation could be said to have arisen it was not of the making of the Prime Minister.

In these circumstances, the dismissal of the Prime Minister alongwith his Cabinet and the dissolution of the National Assembly under the purported exercise of powers conferred on the President under Article 58(2)(b) cannot be B upheld. The action taken did not fall within the ambit of this provision. This unlawful action moreover was also violative of Fundamental Right 17. As this B Court is duty bound to enforce Fundamental Rights and will not hesitate to enforce them whenever it is established that they have been violated, the necessity for taking action under Article 184(3) of the Constitution arose in this case. Accordingly, on the. 26th May, 1993, on the conclusion of the arguments of the parties, the Court in furtherance, of its  duty decided to take action and pass the following Order:

**ORDER**

“We hold by majority (of 10 to 1) that the petition is maintainable under Article 184(3) of the Constitution.

On merits, by majority (of 10 to 1) we hold that the order of the 18th April, 1993, passed by the President of Pakistan is not within the ambit of the powers conferred on the President under Article 58(2)(b) of the Constitution and other enabling powers available to him in that behalf and has, therefore, been passed without lawful authority and is of no legal effect.

As a consequence of our order, the National Assembly, Prime Minister and the Cabinet shall stand restored and entitled to function as immediately before the impugned order was passed.

All steps taken pursuant to the order, dated 18th April, 1993 passed under Article 58(2)(b) of the Constitution such as‑the appointment of the Care‑taker Cabinet etc. will, therefore, be of no legal’ effect. However, all orders passed, acts done and measures taken in the meanwhile by the Care‑taker Government, which have been done, taken and given effect to in accordance with the terms of the Constitution and were required to be done or taken for the ordinary orderly running of the. State shall all be deemed to have been validly and legally done.”

The above are the ‘reasons for the short order we passed that day.

In the end our grateful thanks are due to all the learned counsel for the great ability, knowledge and industry with which they assisted the Court in the resolution of the highly difficult and sensitive questions which were involved in this matter. We are all deeply obligated to them.

ABDUL QADEER CHAUDHRY, J.‑‑‑l agree,

FAZAL ELAHI KHAN, J.‑‑‑l agree.

                SHAFIUR RAHMAN, J.‑‑‑Mr. Muhammad Nawaz Sharif, the ousted Prime Minister of the Islamic Republic of Pakistan, has presented before us a petition under Article 184(3) of the Constitution. He seeks thereunder the enforcement of Fundamental Right 17 which guarantees to him, like every other citizen of Pakistan, not being in the service of Pakistan, a right to form or

be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan. He feels that the President by invoking his . powers under Article 5,S(2)(1)) of the Constitution and dismissing him from the office of Prime Minister, and its Cabinet and by dissolving the National Assembly of which he was the majority party leader has violated this guaranteed Fundamental Right. There are two other such petitions coming up for hearing alongwith it.

The Federation of Pakistan, the President of Pakistan and the Care taker Prime Minister have raised a preliminary objection to the very commence of such a petition in this Court under Article 184(3) of the Const.1tw6on. Mr. Aziz A. Munshi, the learned Attorney‑General for Pakistan has, in support of his preliminary objections with regard to the maintainability of the Constitution petition under Article 184(3) of the Constitution in the Supreme Court of Pakistan, stated that on the express words of the Fundamental Right 1.7 that right extends to‑‑‑

(i) right to form a political party;

(ii) right to become a member of political party.

This right within the Constitutional framework does not extend to anything beyond these two. The rights claimed in these Constitution petitions are neither with reference to these rights nor do they directly arise out of it. None of these two questions is to be debated in this Court in these petitions.

According to him the crux of the petition is the right of the petitioner to continue in power, his right town Government politically, his‑right to a tenure to do so etc. All these matters are governed by different provisions of the Constitution having no connection whatsoever with Fundamental Right 17. For example, Article 51 of the Constitution provides for election by direct and free vote to ‘ the National Assembly. The formation of the Government is provided in Article 91 of the Constitution. TW tenure of the National Assembly has been limited by Article 52 of the Constitution. The tenure of the Federal Government has been limited by three specified eventualities‑‑ under clause (1) of Article 58, under clauses (a) and (b) of clause (2) of Article 58.

In View of these provisions of the Constitution and the invocation of such a power reserved for the President no question. of Fundamental Right arises at all. According to the learned Attorney‑General the formation of the party and of being a member of the Political Party, and nothing beyond this can be claimed tinder Fundamental Right 17.

Mr. S.M. Zafar, 5enior Advocate, in support of the preliminary objections admitted that the question raised in these petitions is undoubtedly of public importance. However, according to him, neither directly nor indirectly do these involve enforcement of any of the Fundamental Rights. According to him, the Fundamental Right guaranteed under Article 17 extends to all the political processes culminating in the election of a member to the National Assembly. Once he is so elected the political rights as defined and guaranteed in Fundamental Right 17 come to an end and an altogether different right referable to the other provisions of the Constitution comes into being. If it is only a right of functioning as a member after being elected as a member of the National Assembly, then necessarily the petitioner has to invoke Article 199 of the Constitution as no Fundamental Right as such is available for enforcement of tenure as a member of the National Assembly or as, a member of political party having been elected to it.

According ‘ to Mr. S.M. War, political parties have a bundle of rights, some are Fundamental Rights, some are Constitutional and legal rights and some are conventional. It is only Fundamental Rights that are enforceable by recourse to Article 184(3) of the Constitution and not the other rights howsoever strong their case may be and howsoever desirable it may appear to the onlooker. Political parties can be utilised under the Fundamental Right only for reaching the elected bodies and once they reach the elected body there is no fundamental right to continue for the normal tenure. They have no vested right in the tenure as such in spite of a life period having been provided for these elected bodies.

The Fundamental Rights guaranteed in any Constitution, an organic instrument, are not capable of precise or permanent definition. They cannot be charted on a piece of paper delineating their boundaries for all times to come. The treatment of this preliminary objection would be more comprehensive, conceptually more readily intelligible and complete once the substance of the impugned Constitutional order has been examined in the context of our political freedoms and Parliamentary system of Government, as brought out in a written Constitution of our own.

The President of Pakistan by an order dated 18‑4‑1993, in exercise of powers under clause 2(b) of Article 58 of the Constitution of the Islamic Republic of Pakistan, 1973 and all other powers enabling him, dissolved the National Assembly with immediate effect and dismissed the Prime Minister and the Cabinet who ceased to hold office forthwith. The text of the order is reproduced hereunder:‑‑

‘THE PRESIDENT

DISSOLUT1ON ORDER

The President having considered the situation in the country, the events that have taken place and the circumstances, the contents and consequences of the Prime Minister’s speech on 17th April, 1993 and among others for the reasons mentioned below is of the opinion that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary:‑‑

(a)           The mass resignation of the members of the Opposition and of considerable numbers from ‘ the Treasury Benches, including several Ministers, inter alia, showing their desire to seek fresh mandate from the people have resulted in the Government of the federation and the

National Assembly losing the confidence of the people, and that the dissension therein, has nullified its mandate.

(b)           The Prime Minister held meetings with the President in March and April and the last on 14th April, 1993 when the President urged him to take positive steps to resolve the grave **internal and international**problems confronting the country and the nation was anxiously looking forward to the announcement of concrete measures by the Government to improve the situation. Instead, the Prime Minister in his speech on 17th April, 1993 chose to divert the people’s attention by making false and malicious allegations against the President of Pakistan who is Head of State and represents the unity ‘of the Republic. The tenor of the speech was that the Government could not be carried on in accordance with the provisions of the Constitution and he advanced his own reasons and theory for the same which reasons and theory, in fact, are unwarranted and misleading. The Prime Minister tried to cover up the failures and defaults of the Government ‘although he was repeatedly apprised of the real reasons in this behalf, which he even accepted and agreed to rectify by specific measures on urgent basis. Further, the Prime ‑ Minister’s speech is tantamount to a call for agitation and in any case the speech and his conduct amounts to subversion of the Constitution.

(c)           Under the Constitution the Federation and the Provinces are required to exercise their executive and legislative authority as demarcated and defined and there are specific provisions and institutions to ensure its  working in the interests of the integrity, sovereignty, solidarity and well‑being of the Federation and to protect the autonomy granted to the Provinces by creating specific Constitutional institutions consisting of Federal and Provincial representatives, but the Government of the Federation has failed to uphold and protect these, as required, in that, inter alia:

(i)            The Council of Common Interests under Article 153 which is responsible only to Parliament has not discharged its Constitutional functions to exercise its powers as required by Articles 153 and 154, and in relation to Article 161, and particularly in the context of privatisation of industries in relation to item 3 of Part II of the Federal Legislative List and item 34 of the Concurrent Legislative List.

The National Economic Council under Article 156, and its Executive Committee, has been largely bypassed, inter,‑ alia, in the formulation of plans in respect of financial, commercial, social and economic policies.

Constitutional Powers, rights and functions of the Provinces have been usurped, frustrated and interfered with in violation of inter alia Article 97.

 (d)          Mala administration, corruption and nepotism have reached such proportions in the Federal Government, its various bodies, authorities and other corporations including banks supervised and controlled by the Federal Government, the lack of transparency in the process Of privatisation and in the disposal of public/Government properties, that they violate the requirements of the Oath(s) of the public representative together with the Prime Minister ,the Ministers and Ministers of State prescribed in the Constitution and prevent the Government fr6m functioning in accordance with the provisions of the Constitution.

(e) The functionaries, authorities and agencies of the Government under the direction, control, collaboration and patronage of the Prime Minister and Ministers have unleashed a reign of terror against the opponents of the Government including political and personal rivals/relatives, and mediamen, thus creating a situation wherein the Government cannot be carried on in accordance with the provisions of the Constitution and the law. ‑

(f)            In violation of the provisions of the Constitution:‑‑‑

(i)            The Cabinet has not been taken into confidence or decided upon    numerous Ordinances and matters of policy.

(ii)           Federal Ministers have for a period even been called upon not to see the President.

(iii)         Resources and agencies of the Government of the Federation, including statutory corporations, authorities and banks, have been misused for political ends and purposes and for personal gain.

(iv)          There has been massive wastage and dissipation of public funds and assets at the cost of the national exchequer without legal or valid justification resulting in increased deficit financing and indebtedness, both domestic and international, and adversely affecting the national interest including defence.

(v)           Articles 240 and 242 have been disregarded in respect of the Civil Services of Pakistan.

The serious allegations made by Begum Nuzhat Asif Nawaz as to the high‑handed treatment meted out to her husband, the late Army Chief of Staff, and the further allegations as to the circumstances culminating in his death indicate that the highest functionaries of the Federal Government have been subverting the authority of the Armed Forces and the machinery of the Government and the Constitution itself.

(h)           The Government of the Federation for the above reasons, inter alia, is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and‑‘the grave economic situation confronting the country, necessitating the requirement of a fresh mandate from the people of Pakistan.

2.                             Now, therefore, 1, Ghulam Ishaq Khan, President of the Islamic Republic of. Pakistan in exercise of the powers conferred on me by clause (2)(b) of Article 58 of the Constitution of the Islamic Republic of Pakistan and all other powers enabling me, hereby dissolve the National Assembly with immediate effect; and dismiss the Prime Minister and the Cabinet who shall cease to hold office forthwith.

                                                                                                ISLAMABAD, 18th April, 1993.

                                                                                          (Sd.)

                                                                                 GHULAM ISHAQ KHAN, PRESIDENT.”

This order of the President of Pakistan led to the filing of a number of Constitution Petitions. in various Courts of the Country and these are arranged chronologically as hereunder:‑‑

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| --- | --- | --- | --- |
| Date of Institution | Court  | Const. Petition No. and Parties name | Law under which filed  |
| 1.19/20‑4‑1993  | Lahore High Court, Rawalpindi Bench | W.P. No. 386/93 Mr. GoharAyyub Khan, Speaker v. Federation of Pakistan etc. | Art. 199 |
| 2. 20‑4‑1993 | Lahore High Court, Lahore.  | W.P. No. 4066/93 Iftikhar Hussain v. Federation. Of Pakistan. | Art. 199 |
| 3. 21‑4‑1993 | Lahore High Court, Lahore.  | W.P. No. 4071/93 Mr.. Art. 199 M.D. Tahir, Advocate v. federation of Pakistan. | Art. 199 |
| 4. 24‑4‑1993 | High Court of Balochistan,Quetta.  | Const. P 203/93 Aurangzeb Mir Advocate, v. Federation of Pakistan. | Art. 199 |
| 5. 25‑4‑1993  | Supreme Court of Pakistan, Rawalpindi. | Const. P. 8/93 Mian Muhammad Nawaz Sharif v. President of Pakistan, etc. ‑ | Art. 184(3) |
| 6. 26‑4‑1993 | Supreme Court of Pakistan,Rawalpindi. | Const. P. 9/93 Ch. Shujaat Hussain and others v. Federation of Pakistan and others. | Art. 184(3) |
| 7. 26‑4‑1993 | Lahore High Court, Lahore. | W.P. 4325/93 Mr. Muhammad Ajmal Khan Khattak v. Federation of Pakistan. | Art. 199 |
| 8. 26‑4‑1993 | Lahore High Court, Lahore. | W.P. 4326/93 Ch. Zafarullah v. Federationof Pakistan.. | Art. 199 |
| 9. 27‑4‑1993 | Lahore High Court, Lahore. | W.P. 4327/93 Muhammad  Akbar Cheema, Advocate v. President of Pakistan etc. | Art. 199 |
| 10. 27‑4‑1993 | Lahore High Court, Lahore. | W.P. 4328/93 Mian Abdul Waheed v. Pakistan | Art. 199 |
| 11. 2-5-1993 | Lahore High Court, Lahore. | W.P. 4705/93 Tahir Hameed               and 4 others v. Federation of Pakistan etc. | Art. 199 |
| 12. 5-5-1993 | Supreme Court of Pakistan,Rawalpindi. | Const. P. 10/93 Malik  Raees Ahmed v. Ghulam Ishaq Khan and others. | Art. 184(3) |
| 13. 5-5-1993 | Supreme Court of Pakistan,Lahore. | Const. P. 12/03 M. Ajmal   Khattak v. President of Pakistan etc. | Art. 184(3) |
| 14. 5-5-1993 | Supreme Court of Pakistan,Lahore. | Const. P. 13/93 Ch. Nazir  Ahmed v. Federation of Pakistan. | Art. 184(3) |
| 15. 6-5-1993 | Lahore High Court, Lahore. | W.P. 4706/93 MianMuhammad Akrarn v. Federation of Pakistan. | Art. 199 |
| 16. 9-5-1993 | Lahore High Court, Lahore. | W.P. 4707/93 M.P. Khan, Chairman, Pakistan Labour Party v. Federation of Pakistan etc. | Art. 199 |
| 17. 9-5-1993 | Supreme Court of Pakistan,Rawalpindi. | Const. P.11/1993 SA. Hameed, MPA v. The Federation of Pakistan and others. | Art. 184(3) |
| 18. 10-5-1993 | Supreme Court of Pakistan,Rawalpindi. | Const. P. 14/93 Iftikhar Art. Hussain v. Federation of Pakistan etc. | Art. 184(3) |

Mr. Khalid Anwar, Advocate, the learned counsel for the petitioner (in Constitution Petition No. 8/93) taking up the merits of the dissolution order observed that it has a totally extraneous hurtful content which cannot but be said to be a Freudian slip, a revelation of the mental state, reminiscent of the royal prerogative not recognised by any provision of our Constitution, not contained in any of the two previous dissolution orders. It is, according to him,

that while concluding the order of dissolution, the President of Pakistan has ordered and dismissed the Prime Minister and the Cabinet. ‘Dismissal’ is a word well‑understood in Pakistan and not used in our Constitution for the Prime Minister or the Cabinet. The expression used therein and the other Articles of the Constitution is ‘cease to hold office’ both for the Prime

Minister, the Cabinet and the President (Article 47(8)). Even the order passed by the late General Ziaul Haq had shown consideration and restraint in language while passing the dissolution order. The stigma, the infamy and the rejection attributable to the expression ‘dismissal’ is all there for no obvious cause or reason, supportable neither from Constitution, nor law or propriety.

                By referring to two sub‑clauses of clause (2) of Article 58 of the Constitution the learned counsel for the petitioner attempted to argue that a situation provided for and taken care of under sub‑clause (a) of Article 58(2) of the Constitution could not on account of its express mention and separate treatment be taken also to be part of and included in clause (b). For example,  if the President felt that the Prime Minister was on account of defections or resignations not in a position to command the majority of the House then he should have allowed the formal process of getting a ‘no‑confidence motion’ passed in the National Assembly and as required ensured that no other member of the National Assembly was likely to command the confidence of the majority of the members which had to be ascertained again on the express language of the sub‑clause in a session of the National Assembly. Sub­ clause (b), according to the learned counsel, deals with an altogether different situation‑and the expression “cannot” used therein implies not a political, not a transitory failure to observe the Constitutional provision but a permanent inability and a structural breakdown or the obstruction should be such as to

make an appeal to the electorate necessary for solving it. According to the learned counsel, the antecedent events clearly give                 the impression that events after ‘the 22nd of December, 1992 and none of an              earlier date were the basis of the dissolution order. President in his speech to

 the joint session of Houses of Parliament had answered every possible ‑objection against the Government of the ousted Prime Minister and defended and endorsed his policies.

What happened after that will be clear from the Press Release dated 14‑4‑1993 which reads as hereunder:‑‑

“Press Release

The Prime Minister called on the President today and they reviewed the grave and pressing national and international problems facing the country. The meeting lasted for about two hours.

The President urged the Prime Minister to undertake positive steps as early as possible to address effectively these problems to the satisfaction of the public representatives and the people. The Prime Minister undertook to do so on an urgent basis and to revert to the President with precise measures in this behalf.”

This Press Release was prepared and released by the Aiwan‑e‑Sadar. According to it the Prime Minister was required to satisfy the public representatives and the people. The people could be satisfied on electronic media and the representatives by calling a meeting of the National Assembly. Both these devices were adopted in the sense that the Prime Minister appeared on the electronic media to make a speech to explain and satisfy the people on 17‑4‑1993. On 18‑4‑1993 the Speaker of the National Assembly requisitioned a session of the National Assembly on the next day and this was notified as required under the Rules of Procedure and Conduct of Business in the National Assembly, 1992 by hourly broadcasts in the news from 5‑00 p.m. onwards as required by Rule 3(2) of National Assembly Rules of Procedure and Conduct of Business. Therefore, what the President desired was thwarted by the President himself and made a ground for taking the action against the ousted Prime Minister.

The learned counsel then referred to Article 91(4) of the Constitution to demonstrate that the Cabinet together with the Ministers of State were to be collectively responsible to the National Assembly. Again clause (5) of Article 91 of the Constitution provides that the Prime Minister shall hold office during the pleasure of the President but the President shall not exercise his powers under this clause unless he satisfies himself that the Prime Minister does not command the confidence of the majority of the members of the National Assembly in which case he shall summon the National Assembly and require the Prime Minister to obtain the vote of confidence from the Assembly. Clause (1) of Article 92 empowered the President to appoint Federal Ministers and Ministers of State only on the advice of the Prime Minister. Article 48 of the Constitution empowers the President to refer back the executive acts of the Government for reconsideration if he is not satisfied with the correctness of the decision taken, order passed or proposal made. Article 75 of the Constitution provides a **procedure for the President for e**xpressing dissatisfaction with the legislative measures. The legislation on privatisation had gone to the President and was cleared by him without expressing dissatisfaction. That enterprise has been made a ground for dissolving the National Assembly. Similarly, Article 46 empowers the President to send to the Cabinet for reconsideration any proposal which required fresh Cabinet attention. None of these steps having been ever taken, the policies, performance and the pace of progress etc. could not be made a ground for dissolution.

Article 58(2)(b) of the Constitution empowers the executive head to destroy the legislature and to remove the chosen representatives. It is an exceptional power provided for an exceptional situation and must receive as it has in Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others PLD 1989 SC 166 the narrowest interpretation.

‘The learned counsel for the petitioner distinguished a series of decisions rendered by the Indian Supreme Court by reference to Article 356 of the Indian Constitution. He pointed out how the scheme of that Constitution was different and how finally the Indian Supreme Court came round to restore a dissolved Assembly dealt with by the High Court in S.R. Bommai and others v. Union of India and others (AIR 1990 Karnataka 5).

Taking up the grounds of dissolution one by one, the learned counsel pointed out the rule 25 of the Rules of Procedure and Conduct of Business in the National Assembly, 1992 and Article 64 of the Constitution dealing with the resignations of the members of the National Assembly. The decisions of this Court on the subject of ‘resignation by the elected representatives’ in Mr. A.K. Fazalul Quader Chaudhury v. Syed Shah Nawaz and 2 others (PLD 1966 SC 105) and Mirza Tahir Beg v. Syed Kausar Ali Shah and others (PLD 1976 SC 478) were referred to. In view of these Constitutional provisions the President could not have received these resignations at all muchless have acted on them for any purpose before they reached the Speaker. It was a wholly misconceived ground. The act of the President of receiving, entertaining and acting on such resignations of dissatisfied Members of the National Assembly shifted the venue constitutionally provided for showing no confidence, in the Government from the National Assembly to the Presidency and as is evident from a fortnight’s antecedent press reports continuously appearing uncontradicted by the Presidency a lot of political confusion and destabilisation of the established Government went with it. He has extensively referred to the performance of Council of Common interests and National Economic Council to show that no such Constitutional impediment came into existence which could not be readily and immediately solved by resort to Constitutional remedies provided. As regards ‑the grounds of maladministration and the political victimisation, these are not the type of Constitutional problems as held in the case of Haji Muhammad Saifullah Khan PLD 1989 SC 166 which could justify the dissolution or be made a ground for dissolution. The proper course’ in all these matters was and always is to go to the Constitutional and statutory bodies like the Parliament, the Courts and the Press for redress rather than obtain and justify dissolution of the established Government of the country. The allegations made in the Press which remain undecided in Court of law in accordance with the prescribed procedure could not have at all found mention but, it appears from the dissolution order that the President had been entertaining all sorts of information appearing in the press or otherwise received by him and unjustifiably those have been made the basis for forming an opinion giving the harsh Constitutional treatment to an established Government enjoying the support of the majority of the people.

Finally, the Prime Minister has been held guilty of subversion which is in fact high treason according to our law. Such an indictment and verdict given in a Constitutional document is a political career killer. Such a finding could F only be recorded after a judicial pronouncement and not in an executive and political instrument made out under Article 58(2)(b) of the Constitution.

The learned counsel for the petitioner has taken us to the Press reports continuously appearing in the press and remaining uncontradicted from any official quarter which destabilised the established Government of the petitioner and they were traceable directly or indirectly and made specific mention of the Presidency.

Dr. Farooq Hassan, Advocate, the learned counsel representing petitioner in Constitution Petition No. 12 of 1993 contended that once a session of the National Assembly was convened under Article 54(3) of the Constitution as was done in this case, the power of the President under Article 58(2)(b) of the Constitution became dormant and only the Speaker could prorogue the session. He pointed to a diagnostic test for invocation of Article 58(2)(b) of the Constitution, that is prior exhausting of all the Constitutional options open to the President so as to demonstrate that it was still necessary to approach the electorate for giving a fresh mandate. Where the breakdown of the Constitutional machinery had not taken place nor ‘an appeal to the electorate was necessary, the exercise of power under Article 58(2)(b) of the Constitution was unconstitutional.

The learned counsel further contended that in such an exercise of Constitutional power it was not for the petitioner to prove positive malice in the exercise of it. On the contrary, it is for the repository of power to satisfy the Court that it was an honest and fair exercise of the power and it was a Constitutional requirement. According to him the Fundamental Right contained in Article 17 is dynamic, evolving, growing concept and the Courts have a duty to give the fullest ‑effect to it and read the other provisions of the Constitution as protecting, advancing and strengthening that right rather than curtailing, negating or stopping it at any particular stage. The Constitutional provisions which allow a life of rive years to the National Assembly and entitle the leader of the majority party to claim installation as Prime Minister of the country as of right under the Constitution should be read as an extended entrenchment of that Fundamental Right and not outside and beyond the pale of such Fundamental Right.

All conflicts between the Constitutional functionaries have to be resolved by reference to the Constitutional provisions. He has by reference to the various Articles of the Constitution pointed out that there is adequate provision in our Constitution f6r’rccohsideration of a matter where the functionaries differ. The reconsideration of the Prime Minister is provided for in Article 48(1), proviso, by the Cabinet in Article 40(c) and by the legislature in Article 75 of the Constitution. Besides there is provision for advisory opinion from the Court under Article 186. There is also provision, for a Referendum in Article 48(6) at the discretion of either of these functionaries. This mechanism of the Constitution ensures a smooth resolution of all the conflicts and in the process education to the people, the ultimate sovereign in politics, with a view to achieve the Constitutional goals.

The learned Attorney‑General in ‘reply contended that the President should have received at all hands a more dignified treatment and reference than was done in the speech of the Prime Minister on 17‑4‑1993, in the grounds taken up in the petition and in the arguments addressed and in the post dissolution public meetings. According to him, the President represents the unity of the State. He represents the State of Pakistan and every action under ‘Article 99 of the Constitution has to be taken in his name. An exceptional power was exercised by the President ‘ in dissolving the National Assembly under Article 58(2)(b) of the Constitution. He had the necessary material and applied his mind to the fullest. The nexus between the grounds and the action taken existed. The adequacy or the sufficiency of the material is not justiciable in Courts. The President had formed his opinion objectively and  all the attending circumstances clearly showed that the Government could not be carried on in accordance with the Constitution and such an order was necessary. The impugned. action was in accord with the oath of the President, his Constitutional obligation, and was a necessary requirement of ‘the situation.

Before considering the merits of the arguments addressed before us, it is necessary to clear certain factual aspects of the case. For this, the version of the petitioner as put forth in the petition and the reply of the respondent to it has been placed hereunder in juxtaposition preferably in the words used by each:‑‑

Petitioner’s case:

(1) 1 “All the progress made ordinarily should have pleased the President. But this did not happen. ‘Apparently this progress without direct participation of the President in policy‑making and decision‑making, displeased the President’. Notwithstanding the arrangement regarding the administration of the affairs of the Federation as stated in Article 48(l) and the entitlement of the President mentioned as per Art.46 of the Constitution, ‘the President started interfering in ordinary and routine affairs’. This was calculated to undermine the authority and credibility of the Federal Cabinet and to give the impression that what actually matters in the national affairs is the will of the President and not the people and their elected Government.”

Reply of the respondent:

“Argument regarding any conflict of views regarding Article 48(l) and Article 40 of the Constitution between the petitioner and the President is denied. In view of the provisions of Article 48(4), the subject of advice cannot be inquired into by the Honorable Court. It is denied that the President interfered in any matter in violation of the Constitution as alleged. It is denied that there was any intent on the part of the President to undermine the authority and credibility of the Federal Government to give the impression that the will of the President was to prevail.”

. Petitioner’s case: ‘

(2)           “In the circumstances an in depth discussion took place within the Ruling Party about the advisability of amending some Articles of the 8th Amendment of the Constitution. This fact it appears, to have further displeased the President and he apparently drew the conclusion that this was the first step covertly **taken to remove him**from office of the President. As such was not the intention of the Ruling Party, it met to allay the fears of the President and openly declared that it would back the President for a second term.”

Reply of the respondent:

“The President is not aware of any views or discussion within the party of the petitioner about the 8th Amendment as alleged and therefore the averment about the same having displeased the President is also incorrect. It is denied that the President drew any conclusion about his own removal as alleged. The declaration of the petitioner’s party backing the President for second term is its own unilateral and voluntary act and the President never made any request in this behalf, The petitioner has drawn his own unwarranted inferences about the President on the question of 8th Amendment. On the other hand, the  President made a public  statement that the Constitution could be amended in accordance      with the provisions of the constitution.”

Petitioner’. Case:

(3)           “But much to the surprise of the Ruling Party this firm promise was construed as a total surrender and the President who in total deplane of the terms and spirit of Article 41(l) and of the oath of his office openly and vigorously started entertaining and supporting persons hostile to the present Government, who were scheming and working to destabilise the elected Government. That regular campaign based on baseless stories was launched in a very organised manner. The bits and pieces of disinformation to feed the propaganda campaign clearly pointed in the direction of the Presidency.”

Reply of the respondent:

‘.’It is denied that the President entertained or supported persons hostile to the Government who were allegedly scheming and working against the Government as ‘alleged. The very existence of such persons is not within the knowledge of the President and is emphatically denied.”

Petitioner’s case:

(4)                           “All the newspapers were full of speculations about the imminent fall          of petitioner’s Government being engineered by the President.”

Reply of the respondent:

“The allegations made in para. 6 are denied. The respondent is not responsible for speculations in the newspapers since the press is free.”

Petitioner’s case:

(5)           “That the people and particularly those who opposed the elected Government were entertained in large numbers. Quite a few of them on coming out after their meetings with the President made public statements that President would shortly announce dismissal of the Federal Government headed by the petitioner. Such statements were never contradicted by the President or by anybody on his behalf. In fact, many a politician rejected by voters or discredited in public eye started a chorus about imminent dismissal of the petitioner’s Government. The President had started telling even members of Cabinet that they should join hands with him to bring about fall of the petitioner and the current campaign Would cease.” ‑

Reply of the respondent:

“The President is not responsible for the statements made by other persons nor is it the tradition of the President to issue contradictions from the Presidency. In conformity with his Oath of Office, the President is fully entitled to and grants interviews to all persons and public representatives and his action in meeting the people is his normal function as Head of the State and the same has been misconstrued by the petitioner‑who is under an illusion that the President is not free to meet people. It is denied that the President asked any member of the Cabinet to act against‑the petitioner.”

Petitioner’s case,

(6) “That on 14‑4‑1993 the petitioner met the President to once again clear the atmosphere of distrust and allay the hostilities which could jeopardize the democratic process in the country. Contrary to the discussion and apparent consensus, the Presidency issued a Press Release which was calculated to increase the tension and provide some justification for the final step taken, i.e. dismissal of the elected Government and the National Assembly.”

The petitioner’s perception of what transpired on 14‑4‑1993 is as hereunder as per draft prepared but not issued which draft was extensively utilised by the learned Attorney‑General for Pakistan:‑‑

“The Prime Minister, Mr. Muhammad Nawaz Sharif today called on the President, Mr. Ghulam Ishaq Khan at the Aiwan‑e‑Sadar. During the two‑hour meeting, the President and the Prime Minister went into the causes of the prevalent political situation in the country and it was agreed that necessary measures would be taken to defuse it.

Referring to speculations, discussions and debate on the 8th Amendment, the Prime Minister informed the President that the issue was well behind us. He said the recent statement of three Federal Ministers in this behalf fully reflected his own views.

Discussing the various policies and programmes of the Government, the Prime Minister said he valued the President’s guidance and counsel and looked forward to his continued advice at various stages of their formulation and implementation. It was agreed to bring about improvements in the functioning of Me Government, wherever necessary.

It was also agreed that such meetings and consultations will be held more frequently to ward off speculations and avoid misunderstanding,.

The two agreed that efforts should be made. to win  back friends and colleagues who have IL , the Cabinet as a result of misunderstanding and differences They hoped that most of them will be back before long.

Federal Ministers, Lt.‑Gen. (Retd.) Abdul Majeed Malik and Mr. Illahi Bakhsh Soomro  the President and the Prime minister at a later stage of the meeting,”

Reply     of the respondent

Adverse allegations and insinuations made in para. 8 are denied and the same have been commented upon hereinafter’

“The Prime Minister called on the President today and they reviewed the grave and pressing national and international problems facing the country. The meeting lasted for about two hours.

The President urged the Prime Minister to undertake positive steps as early as possible to address effectively these problems to the satisfaction of the public representatives and the people. The Prime Minister undertook to do so on an urgent basis and to revert to the President with precise measures in this behalf.”

Petitioner case:

it became necessary for the petitioner to take the nation into confidence about the factors which had led to the tense political atmosphere which had brought national activities to a standstill. The petitioner addressed the nation on 17‑4‑1993.”

Reply of the respondent

Adverse allegations and insinuations in para. 9 are denied. The ‑speech of the petitioner dated 17‑4‑199.3 was unjustified and has been replied to hereinafter.”

Petitioner case:-

(8) “on 18‑4‑1993 the members of the National Assembly requisitioned a session of the National Assembly to, inter alia, consider the Press Release, of the President of 14‑4‑1993, the speech of the Prime Minister and the problems facing the Nation. The session was fixed by the Speaker for 19‑4‑IW3 at 5 p.m.

However on 18-4-1993 to forestall such a move and consideration by the questions by the National Assembly the President dismissed the National Assembly by the impugned order dated 18‑4‑1993 riled as Annexure. It is submitted that the said impugned order is mala ride, unlawful, arbitrary, mechanical, violative of the rules of natural justice and the provisions of the Constitution.”

Reply of the respondent.‑

“Adverse allegations and insinuations in para. 10 are denied. The President Was totally unaware of the requisitioning of the Session on 18‑4‑1993 and the purpose for which the same was called. In any cast, the contents of this para. have been replied to hereinafter.

Adverse allegations and insinuations in para. 11 are denied. It is submitted that the order dated 18‑4‑1993 was passed by the President after consideration of the facts/documents/records/information before him and after forming an objective opinion that the Government of the Federation could not and cannot be carried on in accordance with the provisions of the Constitution. The said order is wholly Constitutional.”

Petitioner’s case‑

(9)           “As the petition contains several allegations of malice in fact, the President has been joined as a respondent as, per rule laid down by the Supreme Court in PLD 19% SC I(Y)2 at p. 1150. No notice under Article 248(4) is necessary because the malice complained of is in the official capacity of the President.”

Reply of the respondent

“Adverse allegations made in para. 12 are denied. There is Constitutional bar on impleading the President in the petition, in view of the provisions of Article 248 and any averment to the contrary is denied. No process can be issued to the President by the ‑Hon’ble Court.”

The speech o ‘ f the Prime Minister flashed on electronic media ‑­Television and Radio on 17‑4‑093 and that of the President on 18‑4‑1993, were addressed to the Nation and were both in Urdu. In order to keep their originality and thrust intact, the constitutionally important and relevant portions of it, repeatedly quoted during the course of the argument arc being reproduced‑ verbatim. No translation at this stage has been attempted.

The portions of the speech of the Prime Minister dated 17‑4‑1993 which received particular attention at the argument stage are listed hereunder:

Part I of the Const. P. 8 of 1993

(1)           Address of the President to the Joint Session of Parliament on          22‑12‑1992 (pages 31 to 42);

(2)           Address of the President to the Joint Session of parliament on          19‑12‑1992 (pages 43 to 55);

(3)           Performance of Government of the petitioner (pages 78 to 82);,

Part 11 of the Const.‑L8 of 1993

(1)           Paper clippings of Newspapers from December, 1992 to the end of’

                March, 1993 (pages I to 220).

Part II of the Rejoinder to the Written Statement:

(1)           Judgment dated 16‑11‑1992 and order dated 8/10‑3‑1993 passed in Civil Appeal No. 131‑K  of 1987 and the documents submitted in the Civil Appeal reflecting on the Privatisation of    Industries (Annexure I­A and Annexure I to IV);

(2)           Extract from the World Bank Report (Annexure V);

(3)           Comparative statement of References and Sale Prices (Annexure VI);

(4)           Reply to the President’s letter sent to the Finance Division through                Cabinet Secretariat, dated 10‑2‑1992 (Annexure VII);

(5)           Revised Prices Chart (Annexure VIII);

(6)           Note on fixation of Reference Prices (Annexure IX);

(7)           Sample of 0ctober Bidding (Annexure X);

(8)           Sample of Open Bidding (Annexure XI);

(9)           List of Buyers (Annexure XII);

(10) List of Cement Plants sold alongwith Buyers’ names (Annexure XIII);

(11) Analysis and evaluation of deficit Financing (pages 190 to 197);

(12) Impact of Nawaz Sliaril’s Economic policies (pages 198 to 200);

(13) Comments on the remarks of President of Pakistan speech about Foreign Direct investment (pages 201 to 200);

(14) Press Clippings from March, 1993 to May, 1993 on economic progress and investment and on the basis of it foreign investment (pages 207 to 213);

15) A note of evaluation of Privatizatiran process (pages 214 to 219);

 (16) Press Clippings showing the active role of the Presidency in obtaining resignations from the Ministers and the MPAs thereby politically destabilising the Government (pages 220 to 265).

The following material of antecedent date to the impugned action, made available by the respondent, deserves mention:‑‑

Volume If of file containing Annexure A to A‑12 (except A‑6 and A‑7) and Annexure B to T

(1)                           The Resignations of MNAs totaling 88 (pages 10 to 122);

(2)                           Press Release from the Aiwan‑e‑Sadar dated 14‑4‑1993 with regard to them meeting between the President and the Prime Minister (page 124);

The Draft prepared by the Prime Minister’s Secretariat of the same meeting but not issued (page 125);

(4)‑          Press Clippings of the advice and the guidance afforded by the President to the Prime Minister in the matter of running the Government properly (pages 126 to 132);

(5)                           President Secretariat’s letter dated 28‑12‑1992 to the Cabinet Division desiring that the Constitutional position as summarised in the Annexure to the letter may be brought to the notice of the Government (pages 133 to 137). The Annexure contained the following conclusion at page 137:‑‑

“The setting up of the two Privatization Commissions and the whole process of privatization, unilaterally initiated by the Federal Government, bypassing the Council of **Common Interests and the NEC,**appear to be ultra vires of the Constitution and, can be challenged in superior Courts.”

(6)                           Letter of the President Secretariat dated 19‑12‑1992 addressed to the Cabinet Secretary containing the remarks of the President that the notes on the Cabinet Committee on Energy should be brought to the notice of the concerned Authorities’ alongwith minutes of the meeting (pages 138 to 140) containing the‑ following minutes:‑‑

“The Provinces, which are directly concerned with such an important sector of the economy viz. energy,‑ and are directly affected by any policy change in it, have been completely excluded from participating in the process of approval of operational plans, proposals, schemes and projects relating to this sector. Even otherwise, the Constitution does not envisage such a situation inasmuch as the Council of Common Interests, where all the Provinces are represented has to formulate and regulate policies in relation to WAPDA, as per Article 153.”

 (7)          List of total Ordinances issued and referred/not referred to Cabinet during December, 19W to 18‑4‑1993 (pages 141 to 145), the abstract showing the total Ordinances issued during this period was 78, Ordinances referred to Cabinet were 50 and not referred to the Cabinet Were 28. The detail shows that 50 Ordinances were approved by the Cabinet and 28 not approved by the Cabinet and not that they were not placed before the Cabinet;

(8)           Harassment of Journalists and Sedition case against “The News”,                 complaints and Press clippings relating thereto (pages 146 to 184);

(9) Reference filed by Mr. Abdul Rashid Qurcshi, Advocate with the Speaker, National Assembly under Article 63(2) of the Constitution directed against Ittefaq Group of Companies and through it against the petitioner (pages 185 to 191.);

(10) President’s remarks conveyed to the Prime Minister on 17‑11‑1992 on the Corporate Restructuring, System Expansion and Future Plans of Sui Northern Gas Pipelines Ltd. (Disinvestment of Government Shares in SNGPL). The remarks of the President are “Monetary expansion and Inflation are the real problems. They must be addressed urgently before they and they are facets of the same coin ‑­get out of hand” (pages 192 and 193);

(11) Irregular Appointments/Promotion cases listed on pages 194 to 220;

(12) Press Clippings reproducing the complaint of the widow of late General Asif Nawaz that her husband was poisoned (pages 227 to 229);

(13) Press Clippings showing how frequently between October, 1992 and March, 1993 the National Assembly could not function for want of quorum (pages 254 to 275);

(14) Press Clippings containing newspaper comments and comments of the Opposition Leaders with regard to the 12th Amendment and the victimisation of the Opposition ‑ 31 pages (pages 276 to 306);

(15) List containing 12 cages of the President’s Observations on Irregularities/Lapses on the part of Federal Government, Detail extending over 105 pages (pages 307 to 410).

(i)            The First case is of 29‑4‑1992 and complains of Minister’s jurisdiction over the Tribal Areas which was denied by saying that no political interference is expected in these areas and the Prime Minister was cautioned in the following words:‑‑

It would be noticed that this act of the Minister is not only violative of  policy but also amounts to undue interference in the tribal matters which is not acceptable. Such acts should not go unnoticed because they are likely to create misunderstanding and disaffection amongst the tribal elders on the one hand and the Governor and his political administration on the other. Distribution of patronage in this blatant manner is also likely to create a rift between various tribes and different parts of tribal areas. Matters relating to tribal areas and individuals have to be very carefully and responsibly handled for which the Constitutional and institutional arrangements

must be followed in letter and spirit.

       The President requests that the Prime Minister may initiate appropriate measures to correct this situation.”

(ii)                           Another note is dated 19‑11‑1992 in respect of FATA Administration of Balochistan, wherein the President observed as hereunder‑‑‑

“P.M. orders the setting up, of a Committee (suggested composition attached) to enquire into the whole affair or pass other appropriate order in the case to rectify the wrong being done to FATA through a gross misuse of authority.”

(iii)         Islamabad Motorway Project‑‑ Report called for from Secretary Communications on‑ the basis of complaints, appearing in two newspapers of. last week of January, 1992. Report was furnished.

(iv)          On a reported delay in supply of electric water pumps to Zimbabwe and sewing machines to Zambia and Namibia under the Africa Fund Programme, the President passed in his own hand the following orders‑‑‑

“We are not the monitors of such day to day executive routine. The suggested administration and instructions should issue from the Prime Minister’s office who should also know ‑‑ and a copy of the foregoing note be sent to them ‑‑ how efficiently the system of administration is functioning and what attention is being paid to matters of daily routine involving hardly any (not legible) exercise.”

(v)           A caution was communicated to the Prime Minister by the President on 19‑12‑1992 on the subject of visit of Tribal Maliks to Kabul on 16th May, 1992, in the following words:‑‑

“I hope that those who encourage and helped the “adventure” will be more careful and circumspect in future.”

(vi)          The question of deficit of Universities when placed before the President was ordered to be taken to the Cabinet for thorough discussion and appropriate decision on 13‑9‑1992;

by the President Secretariat on 13th April, 1993 enquiring under what provision of Constitution and law a notification shifting the Supreme Court’s seat from Rawalpindi to Islamabad was issued without the President’s prior approval;

(viii) The Prime Minister’s summary on the administrative set‑up of Islamabad Capital Territory submitted to the President on 24110‑1991 which was returned by the President with the following remarks on 6th of May, 1992:‑‑

“The changes, effected in the administrative set‑up of the Islamabad Capital Territory in September 1991, carried serious legal and administrative implications some of which had been highlighted by the President’s Secretariat through U.0. No. 3012/202/26/Coord‑11, dated 22‑10‑1991 (Annex‑V). In the meanwhile, the present proposal of the Ministry of Interior was received which aims at introducing major changes but without explaining the justification or necessity for doing so. On the initiative of the Prime Minister’s Secretariat, a meeting was held between the Secretary to the President, Principal Secretary to the Prime Minister and Secretary Interior on 10‑3‑1992 in order to unanimously resolve the issues involved. A copy of the minutes of this meeting are at Annexure VI.

In the light of the views ‑expressed at the meeting, it is proposed that the original administrative arrangement for the Islamabad Capital Territory under Chief Commissioner may continue, as before.”

(ix) On 22‑12‑1991, the Prime Minister’s Secretariat was asked to explain . to the President’s Secretariat the following:‑‑

10(a) How was ICT declared as an Attached Department of Interior Division without prior approval of the President?

(b)           Under what authority of law, is the administration of ICT being run in the absence of an officer authorised by the President?”

(16) President’s observations on Privatisation of State‑owned enterprises ‑­the addresses are Finance Minister and the Cabinet Secretary;

(17) The Chief Minister of Sindh addresses a letter to the President on 21‑3‑1993 for proper representation of the Province in Energy, Highway and Telecommunications decision‑making authorities in order to truly reflects.

(18) Letter of Chief Minister of’N.‑W.F.P. dated 9‑1‑1993 on the same subject;

(19) Press clippings with regard to 8th Ameqdmznt, Privatisation and other complaints against the functioning of the Government (pages, 467 to 489);

(20) Salman Taaseer’s Petition under Article 63(2) of the Constitution riledwith the Speaker on 25‑1‑ 1 W2 (pages 490 to 490);

(21) Another. petition under the same law by Mr. Farooq Ahmed akbari addressed to the Speaker dated 11‑1‑1992 (pages 497 to 500);

(22) Third Petition under the same law by Mr. Abdur Rashid Quresh Advocate, dated 11 ‑ I ‑ 1992 (pages 501 to 503);

(23) Favouritism shown to Mr. Gohar Ayyub Khan, Speaker ‑‑ prepared after the dissolution order (pages 504 to 516);

(24) Expenditure by the Ex‑Prime Minister incurred in excess of his Discretionary grant by drawing upon budgetary allocation of other Ministries, Organizations etc.

(25) Press clippings of 18‑4‑1993 mostly by individuals opposed to the Prime Minister (pages 599 to 613);

(26) On 12th April, 1993, on the appointment of Judicial Commission of Inquiry on the allegations levelled by Begurn Nuzhat Asif Nawaz widow of late COAS General Asif Nawaz, the following communication was received from the Presidency in the Prime Minister’s Secretariat:‑‑

“Kindly refer to the ‘attached press clipping from the daily “News”, dated 12th April, 1993 regarding serious allegations levelled by Begum Nuzhat Nawaz widow of late General Asif Nawaz.

I am directed by the President to request you to please appoint a High Level Judicial Commission consisting of Judges of the Supreme Court and High Court to enquire into the allegations at priority and submit a report alongwith their recommendations.

16 the meanwhile immediate. interim measures may have to be taken in respect of the two persons named by the lady as regards the functions of their office.”

(2:7) Reply to this letter by the Principal Secretary to the Prime Minister dated 13‑4‑1993 in the following words:‑‑

“Kindly refer to President Secretariat (Public) U.0. No.5(7)/ PS/Legal/93, dated 12th April, 1993 on the subject noted above. The U.0. note was received by PSO to Principal Secretary at around 10 p.m. on 12th April, 1993 and the 9 p.m. News Bulletin had already announced the issue of notification by the Ministry of Law, Justice and Parliamentary Affairs regarding the appointment by the Prime Minister of a Commission of Inquiry comprising three Judges of Supreme Court. It would be seen that the Prime Minister has taken immediate suo motu cognizance of the allegations and appointed a Commission of Inquiry promptly. A copy of the notification is enclosed.

Regarding para. 3 of the U.0. note, it is not clear as to what action is envisaged to be taken by this Secretariat “in respect of the two persons named by the lady as regards the functions of their office” in anticipation of a judicial verdict on the authenticity or otherwise of the allegations. It will be seen that in accordance with clause (b) of para. 2 of the notification the Commission is required to identify the person or persons responsible for the mischief if the cause of death was other than natural. The Government will take prompt action against the persons, if so named by the Commission, in accordance with the law.”

Volume III of rile containing Annexure A‑7

(1)           Interview of the ousted Prime Minister appearing in monthly ‘Herald in, May, 1993;

(2) Charge‑sheet/References against Nawaz Sharif and the  Government prepared by the Combined Opposition Parties;

(3)           ‘Allegations against the relatives of the Prime Minister;

(4)           Complaints of harassment of journalists;

(5)           Plan for the privatisation of WAPDA; Decision of the Cabinet          Committee on Privatisation;

Decisions of. the Cabinet meeting held on 6th of April, 1991 in the Prime Minister’s Secretariat;

(7)           A working paper on Pakistan Telecommunication Corporation,\_

(8)           Privatisation of Muslim Commercial Bank;

(9)           Development in and around Raiwind;

(10) Permission to new Commercial Banks;

(11) Levy of customs duty on shredded and bundled waste and scrap.

Volume IV of rile containing Annexure A‑6

(1)           Press clippings about performance of the petitioner’s Government and

                the charges against it, during the period 1991‑ 1993 (193 pages).

Though at times documents and events of dates after 18‑4‑1993 have been mentioned or included in the list we have in considering the case totally excluded these because they raise no Constitutional question but rather deal with the matters political and administrative and on no principle of interpretation can be utilised for interpreting the events of earlier date which raise and deserve purely Constitutional and legal consideration on merits.

When the learned Attorney‑General had concluded giving us the outline of his argument I asked him to also look up the following four Constitutional points because from the material brought on record it appeared that these questions may also require fuller consideration. These questions were disclosed to the parties in order to obtain proper assistance from them and to give authoritative pronouncement if at all necessary.

(i) I          Whether the use of the expression dismissal for the Prime Minister and for the Cabinet and the expression of the conclusion “in any case the speech and his conduct amounts to subversion of the Constitution”, in the dissolution order passed under Article 58(2)(b) of the Constitution did not amount to violation of the first part of Fundamental Right 14 which guarantees in Pakistan that the dignity of man shall be inviolable?

(ii)           What was the design and object of the receiving, retaining and utilising such a large number of resignations collect‑d in the Presidency? Was it, as required under Rule 25 of the Rules of **Procedure and Conduct**of Business in the National Assembly, ‑1992, intended to be relinquishment of the office by elected representatives then or were intended to register a protest with the President for taking appropriate action against‑ the Leader of the House. In either case how was the partisanship of the Speaker at all relevant to non‑tendering and non­transmission of such resignations to him.

(iii)         Under the Constitutional provisions Article 243(2)(c) as it stands after 8th Amendment is it discretionary for the President to appoint only the Chairman of the Joint Chiefs of Staff Committee or is it equally in his discretion to appoint the other Chiefs of the Army-Staff, Naval Staff and of the Air Staff.

(,iv)         Whether in the matter of the enforcement of Fundamental Rights under Article 184(3) of the Constitution, this Court has any discretion in the grant of relief or the relief follows as a matter of course ex debito justiiae.

                These specific questions were put to the learned Attorney‑General to satisfy the salutary principle underlying the statutory provision, contained in proviso to Rule 2 of Order XLI of the Code of Civil Procedure, 1%)8. Additionally, for the reason that the constraints of adversary litigation do not 6 inhibit the Court in the matter of enforcement of Fundamental Rights.         propose to preface the judgment with two observations of my own which are relevant in the context of our Constitutional history and these observations in fact control and pervade what follows in this judgment. These may appear to be didactic, ponderous and trite but being a part of the oath of all Constitutional functionaries should form a foundation of our thoughts, actions and attitude in all our exertions on Constitutional and political matters.

The first is the misfortune that our Constitutions have ,not evoked that commitment, respect, regard and attention even from the Constitutional authorities and statutory functionaries which they deserve, and which, in any other independent country, they receive. Our Constitutions have been abrogated, held in abeyance for periods longer than promised and have been massively deviated from. For the present our Constitution itself requires and commands that obedience to the Constitution and law is obligation‑of every citizen wherever he may be and of every other person for the time being within Pakistan (Article 5(2)1:

Any person who abrogates or attempts or conspires to abrogate, subverts or attempts or conspires to subvert the Constitution by use of force .or show of force or by other unconstitutional means shall be guilty of high treason (Article 6 of the Constitution). The Parliament is to provide by law punishments of persons found guilty of high treason. While guaranteeing protection against retrospective punishment, the Constitution, ‑ under Article 12, makes an exception of the laws making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty­ third day of March, one thousand nine hundred and fifty‑six an offence. **Act LXVIII**of 1973 (High Treason (Punishment) Act, 1973) was enforced on 29‑9‑1973. It provides as hereunder:‑

1.             Punishment for high treason. etc .‑‑‑A person who is found guilty‑

(a)           of having committed an act of abrogation or subversion of Constitution in **force in Pakistan at any time since the twenty‑third**day of March, 1956; or

(b)           of high treason as defined in Article 6 of the Constitution,

shall be punishable with death or imprisonment for life.

3.             Procedure.‑‑‑No Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by a person authorised by the Federal Government in this behalf.”

In Corpus Juris Secundum (Volume 87) on the subject of “Treason” the following observations occur with regard to the nature and elements of the offence:‑‑

“Treason is regarded as the highest crime known to the law and is the most serious offence that may be committed against the United States. Our enquiries made from the Federal Government reveal that though the Constitution was framed in 1973 and the Parliament also discharged its

duty on 29‑9‑1973 by framing the requisite law on the subject, in terms of section 3 of the High Treason (Punishment) Act, 1973, the Federal Government has not so far designated the authorised person on whose complaint such an offence can be taken cognizance of by the Courts. The failure here is not of the Constitution, not of the Parliament but of the executive Government and that too since 1973 of not giving a salutary Constitutional provision a meaningful content and operational mechanism, thereby frustrating it altogether.

The other observation with which I want to preface what follows in the judgment are three rules of interpretation peculiar to the Constitution J distinguishing it from every other instrument. These principles stand recognised in all countries having written Constitutions. The first principle V1 interpretation was expressed tersely in Paul M. Swcezy v. State of New Hampshire by Louis C. Wyman, Attorney‑General (354 US 234 = 1 L ed 2d 1311 = 77 S Ct 1203), in the following words:‑‑

“While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield new and fuller import to its meaning. See Hurtado v. California (110 US 516, 528, 529 = 28 L ed 2321 236 = 4 S Ct 111, 292; M’Culloch v. Maryland (US) 4 Wheat 316, 4 L ed 579).”

The second principle which need not be supported by any authority is that the entire Constitution has to be read as an integrated whole, and no one  particular provision destroying the other but each sustaining the other. This Is the rule of harmony, rule of completeness and exhaustiveness and the rule of paramountcy of the written Constitution.

                The third principle equally entrenched is that the words of the written Constitution prevail over all unwritten Conventions, Precedents and Practices.

What judgment and value has to be brought to bear on the Constitutional provisions has been well‑expressed in the following words in Chapter 19 “Logic, Experience and Intuition”, in “A New World of Law” by C. Wilfred Jenks (1961)), as hereunder:‑ (Underlining throughout the judgment is ours for emphasizing the portions underlined):

 “in the evaluation of facts, logic, experience and intuitions of public policy play mutually complementary patios. Without logic the law would be wholly at large, at the mercy of every gust of chance and M favour; without experience, without clear intuitions of public policy, the consistency of concepts would exact too high a price of **inconsistency with history, practical convenience and the welfare of society. The logic of law is the discipline which gives it such form and consistency as it may attain at successive stages of its development. Experience is the rich inheritance of its past development. Neither logic nor experience affords a sufficient, nor sometimes a relevant,**IM **answer to essentially new problems. To resolve such problems we must have recourse to the deeper recesses of the mind, The facts define the problem. Neither they nor logic can solve it, Imagination furnishes an answer. The answer must be reconcilable with the facts and defensible**in logic. **but the test of its relevance and adequacy, neither the facts nor logic but purposes and values,”**

**Coming to the merits of the dissolution order the first ground mentioned therein is as hereunder:‑‑**

**“The mass resignation of the Members of the Opposition and of considerable numbers from the Treasury Benches, including several Ministers, inter alia, showing their desire to seek fresh mandate from the people have resulted in the Government of the Federation and the National Assembly losing the confidence of the people, and that the dissension therein, has nullified its mandate.”**

**The questions for consideration are whether in a Constitution like ours the most resignations of the Members of the Opposition and of considerable number’s from the Treasury Benches, including several Ministers showing their desire to seek fresh mandate from the people is indicative of loss of the confidence of the people of the Pakistan in the National Assembly, whether the differences within the party nullify the mandate of the majority party to run the Government, and finally whether these considerations are at all relevant, can be taken into consideration, outside the procedure prescribed in the Constitution for showing lack of confidence in the Government and in the Assembly, and for taking action under Article 58(2)(b) of the Constitution.**

**Resignation from a public office has a very definite connotation, In  Black’s Law Dictionary, it has been defined as “Formal renouncement or  relinquishment of an office. It must be made with intention of relinquishing the office  accompanied by act of relinquishment.” In Article 64 of the constitution resignation  has been provided for in the following words‑.‑‑**

**“64.        Vacation of scats.‑‑(l) A member of Majlis‑e‑Shoora (Parliament) may by writing under his hand addressed to the Speaker or, as the case may be, the Chairman, resign his seat, and thereupon his seat shall become vacant.**

**(2)           A House may declare the scat of a member vacant if, without leave of the House, he remains absent for forty consecutive days of its sittings.”**

**In two decisions of this Court the question of resignation by elected office­holders was considered.**

**In the case of Mr. A.K. Fazialul Quader Chaudhury v. Syed Shah Nawaz and 2 others (PLD 1966 SC 105), it was held that not only is the resignation required to be addressed to the Speaker but that it should be intended to be passed on to the Speaker of the Assembly. Pivotal role which the Speaker plays in such a matter and the sanctitv of the elected office was further made clear in the case of Mirza Tahir Beg v. Syed Kausar Ali Shah and others (PLD 1976 SC 504) in the following words:‑‑**

“Needless to say that the Speaker in a Parliamentary **form of**Government holds an office of **highest distinction and has the sole**responsibility cast on him of maintaining the prestige and the dignity of the House and each and every member composing the House. It is precisely for this reason that the Constitution has ordained that a resignation by a member is effective only when it is ‘addressed’ to the Speaker: it was not intended to be an idle formality. To relinquish a Parliamentary seat by resignation is a grave and a solemn act, By and large our political institutions are fashioned on the pattern of those obtaining in England and it is a settled principle of parliamentary law in England that a member of Parliament after he is duly chose, cannot relinquish his scat by unilaterally resigning his membership. In order to evade this restriction a member who wishes to relinquish his scat, accepts office under the Crown which legally vacates his seat. This is enough to underline the gravity of the matter. (See May’s Parliamentary Practice, 18th Edn., p. 45)

**On 5th August, 1992, National Assembly of Pakistan framed its own Rules of Procedure and Conduct of Business in the National Assembly under**Article 67(1) of the Constitution. Rule 25 comprehensively deals with the matter of resignation, which read with Article 64 and the two decisions of this Court completely cover the law on the subject.

“25.                        Resignation of seat.‑‑(1) A member may, by writing under his hand addressed to the Speaker resign his scat.

(2)                           If, ‑‑

(a)           a member hands over the letter of resignation to the Speaker             personally and informs him that the resignation is voluntary and genuine and the, Speaker has no information or knowledge to the contrary; or the Speaker receives the letter of resignation by any other means and

(b) he, after such inquiry as he thinks fit, either himself or through the National Assembly Secretariat or through any other agency is satisfied that the resignation is voluntary and genuine,

the Speaker shall inform the Assembly of the resignation:

Provided that if a member resigns his seat, when the Assembly is not in session, the Speaker shall direct that intimation of his resignation specifying the date of resignation be given to every member immediately.

 (3)          The Secretary ‑General shall, after the Speaker satisfies himself that the letter of resignation is voluntary and genuine, cause to be published in the Gazatte a notification to the effect that the member has resigned his seat and forward a copy of the notification to the Chief Election Commissioner for taking steps to fillthe vacancy thus caused.

(4)           The date of resignation of a member shall be the date specified in writing by which he has resigned or if no date is specified therein the date of receipt of such a writing by the Speaker.”

Some of the features of the eighty‑eight resignations, copies of which have been riled in Court, to be particularly noted and relevant for these proceedings are as hereunder:­

(i)            Most of the resignations are undated, even though some have date

(ii)           All of them, except one, are addressed . to the Speaker of the National Assembly.

(iii)         None of them expresses or shows, otherwise lack of confidence in the Speaker.

(iv)          Majority of the resignations do not give specific reasons for the resignation.

(v)           Quite a few resignations mention resignation by way of protest. The, exact nature of protest, the person against whom it is directed remained undisclosed,

Some of the resignations from the National Assembly (Not as a Minister/Advisor etc.) which are relevant for determining any one of the following questions are reproduced verbatim:­

(i)            approximately the time when they were submitted;

(ii)           the specific reason for their submission, personal inability, political inability, failure of their own party, or failure of any opposing party or of the party running the Government;

(iii)         the resignations were submitted for vacating parliamentary seat or to

                achieve any other collateral object;

                (iv), resignations were improperly drawn up.

REPRODUMON OF SOME OF THE RESIGNATIONS

(1)           “Mr. Speaker,

                National Assembly,

                Islamabad.

As the new Government is going ahead, with undemocratic actions and disqualification of Pakistan People’s Party Leadership and elected Members, I hereby tender my resignation as member of National Assembly as mark of protest.

(2)           “The Speaker National Assembly.

Letter of resignation.

                                                                                                                  (Sd.)

                                                                                                         Syed Zafar Ali Shah,

                                                                                                                      NA 159.”

On account of ‘ discriminatory traeatment against the leader of opposition, I hereby tender my resignation from the NA.

                                                                                                                    (Sd.)

Ch. Muhammad Niwaz, NA 84 Gujrat.”

(3)           “The Speaker National Assembly.

Letter of resignation.

Sir, ,

I tender resignation from my NA Seat on account of discrimination and atrocious treatment of the Leader of the Opposition.

                                                                                                                            (Sd.)

                                                                                                           (Ch. Altaf Hussain)

                                                                                                                NA 45‑Jhelum(l).”

(4)           “The Speaker,

                National Assembly of Pakistan,

                Islamabad.

Dear Sir,

I hereby tender my resignation from MY seat NA‑9 Kohat as a mark of protest against high‑handed and mala fide actions of the

Government.

Yours faithfully,                                                                                 (Sd.) IffikhaT Gllani:’

 (5) ‘The Speaker,

National Assembly of Pakistan.

This is to inform you that I have hereby tendered my resignation as a protest against the high‑handed and mala fide action of the Care. taker regime.

(Sd.) Makhdum Syed Faisal S. Hayat, NA 69, Jhang IV.”

(6) “To

The Speaker, National Assembly of Pakistan, Islamabad.

Dear Sir,

I do not think that I can serve any useful purpose by remaining a member under the present political situation prevailing in the country. Hence I have decided to resign from my seat in the National Assembly. Please accept my resignation and oblige.

                                                                 Yours sincerely,

                                                                                (Sd.)

                                                                                Sardar Dildar Ahmad Checma.”

(7)  To

The Speaker, National Assembly of Pakistan, Islamabad.

Dear Sir,

Under the present circumstances I do not think that I am serving any useful purpose in the National Assembly, hence I have decided to vacate my seat. Please accept my resignation.

                                                                                            Yours sincerely,

                                                                                                         Sd.

                                                                                            Mian Zahid Sarfraz,

                                                                                                     NA.64.”

(8) “To

The Speaker, National Assembly of Pakistan, Islamabad.

Resignation from the membership of National Assembly.

Dear Sir,

I Syed Tanvir‑ul‑Hassan Gilani, Member National Assembly from Constituency N.A. 116 desire to resign from the membership of the National Assembly. National Assembly has lost the confidence of the People of Pakistan because of the Corrupt Government and the way the disinvestment has been carried out. Interference of the Federal Government the Provincial Autonomy, I feel that to continue as member of the National Assembly shall not be beneficial to the Nation. Kindly accept my resignation from National Assembly.

Thanks.

(9) “To

The Speaker of the National Assembly of Pakistan, Islamabad.

                                                                                      Yours sincerely

                                                                                              Syed Tunvir‑ul‑Hosan Gilani

                                                                                                                NA. 116.’

At,                          Subject: My resignation from the National Assembly of Pakistan.

Dear Sir,

I represent Constituency No. NA 158 (Naushchra Feroze 1) in the National Assembly of Pakistan.

I was elected on the U.I. Ticket. I have been carefully watching the performance of Nawaz Sharif Government for the last 2‑1/2 years This Government cannot claim any success or achievement in any field. The ever‑increasing prices of the essential commodities deteriorating law and order, utter failure of the foreign policy, unemployment, corruption at the highest level, inflation, political victimisation, violation of the Constitution, favouritism, nepotism, gross financial indiscipline and deviation from the I‑I.I. manifesto and the break‑up of the I.J.1. leave me with no other option but to withdraw from the National Assembly.

Hence I do hereby tender my resignation as a member of the National Assembly of Pakistan.

                                                                                                                 (Sd.)

                                                                                                     Ghulam Mustafa Jatoi”

(10) “The Speaker, National Assembly of Pakistan Islamabad.

Dear Sir,

(11) “The Speaker, National Assembly of Pakistan, Islamabad.

This is to inform you that I hereby resign from my seat as member National Assembly N.A.‑160 Pakistan.

I was elected on I.J.1. Ticket and I.J.1. subsequently has’ disintegrated, and the present political condition in the country indicates that the Prime Minister has not lived up to the expectation of the electorate and does not command majority in the House.

I feel I am not justified to represent my Constituency under the

present circumstances.

I request you to please approve my resignation immediately.

                    Yours sincerely, (Sd.)

                          Ghulam Murtava Khan Jatoi. M.N.A.”

I hereby resign from my seat in the National Assembly under rule 64(l) of the Constitution of the Islamic Republic of Pakistan.

                                              (Sd.) Mir Ha7ar Khan Bijarani,” M.N.A.

                                                                                     NA 157, Jacobabad If.”

(12) “The Speaker/Deputy Speaker, National Assembly of Pakistan, Islamabad.

Dear Sir,

I write this to inform you that I am resigning from my membership of the National Assembly in which I was elected in 1990 from NA‑106.

This resignation may be accepted under the Rules of Conduct and Business of the House and the Constitution.

Kind regards.

(13) “To

                The Speaker, National Assembly

                of Pakistan.

Respected Sir,

M.N.A. NA 106

I Jam Mashooq Ali, Member, National Assembly of Pakistan (NA‑181 Sangher If) from Sindh Province, hereby resign from my seat due to my personal reasons.

Kindly accept my resignation.

                                                                                              Yours sincerely,

                                                                                     (Sol.)

                                                                                                 Sardar Asif Ahmad Ali,

                                                                                                         Yours sincerely,

                                                                                                                    (Sd.)

                                                                                                      Jam Mashooof Ali.’

(14) “My dear Mr. Speaker,

Under Article 04(l) of the Constitution of the Islamic Republic o Pakistan, I hereby submit my resignation from my National Assembly Seat N.A.‑134, Rajanpur. Kindly forward it to the Chief Election Commissioner for necessary action.

Yours faithfully, (Sol.) Mir Balakh Sher Mazari.’

(15) “The Speaker,

                National Assembly of Pakistan

Subject: Resignation

Under Article 64(l) of the Constitution of the Islamic Republic of Pakistan, I hereby resign my scat (N.A.‑74, Gujranwala. 1) in the National Assembly of Pakistan.

                                                                                                                         (Sd.)

                                                                                                            Hamid Nasir Chaltha.”

(16) “Speaker, National Assembly of Pakistan, Islamabad.

Subject: Resignation from M.N.A.ship of Constituency N.A. 195

Dated 15‑4‑1993

In discharge of my duties assigned to me by the masses of my constituency, I feel regret, but justified to submit my resignation from my scat of the National Assembly on the following reasons:

The Government of Prime Minister Mian Nawaz Sharif has failed to achieve the mandate given to him because of its poor economic and administrative policies.

There exists no hope from the present Government of solving the deteriorating law and order situation of the country in general and Sindh in particular.

The Prime Minister did not solve his earlier made promises of solving problem like Education, Health and Underpayment of Sindh Urban.

In the light of above I submit my resignation from NA‑195 and strongly demand you to dissolve the National Assembly and order for fresh election to fulfil your Constitutional responsibilities.

                                                                                                (Sd.)

                                                                     Rchan Umer Farooqui, NA‑195.”

 (17) “Rel No. WA/Reg. PD. 01 /93 dated 14‑4‑93

The Speaker,

National Assembly of Pakistan, Islamabad.

Subject: Resignation from MNAship of Constituency NA‑196.

In discharge, of my duties assigned to me by the masses of my Constituency I ‘feel regretted but justified to submit my resignation from my seat of the National Assembly on the following reasons:

The Government of the Prime Minister Mian Nawaz Sharif has failed to achieve the mandate given to him because of its poor economic and administrative policies.

There exists no hope from the present Government of solving the deteriorating law and order situation (if the country in general and of the Sindh in particular.

The Prime Minister did not solve his earlier made promises of solving’ problems like Waterlogging, Education, Health and Unemployment of Sindh Urban.

In the light of above I submit my resignation from NA,196 and strongly demand you to dissolve the National Assembly and order for fresh electorate to fulfil your Constitutional responsibilities.

                                                                                (Sd.)

                                                                 Wasim Ahmed, NA-196.”

The explanation given for submission of these resignations and their reception by the President of Pakistan appears in the written statement as hereunder:‑‑

“It is submitted that it is for the members of the National Assembly to select the mode of showing their protest and lack of confidence in the petitioner’s Government, National Assembly and the Speaker whether in or outside the House. In the instant case they have addressed their resignations to the Speaker of the National Assembly, but sent them to the President to register with the Head of the State their protest and as an expression of lack of confidence in the National Assembly, the Speaker and the Federal Government. The further reason was that the Speaker had not in the past acted upon any motion directed against the Prime Minister or any other Minister or member of the National Assembly supporting the Government or the Government itself and, as widely known, the concerned members had shown lack of confidence in the Speaker, who according to the general perception was in collusion with the former Prime Minister and was not acting independently. Speaker was getting preferential and special treatment in special allocation of funds for his constituency. As the Speaker’s conduct was objectionable and open to question, the concerned MNAs sent their resignations to the President, so that their protest etc., expression of lack of confidence be properly registered. The circumstances, background and the factors responsible for the handing over of the resignations by the Members to the President are as above. It demonstrated that the said Members had lost confidence in the National Assembly, the Federal Government and the Speaker, and that the mandate had been nullified. It is further submitted that the Speaker has to receive resignations only for the purpose. of creating a vacancy and consequent by‑elections. The circumstances in which the resignations were handed over to the President, have been mentioned above and the President could form his opinion in that behalf. Rest of the contentions arc repelled.”

In the middle of the arguments the learned Attorney‑General gave a written explanation for their submission to the President as hereunder:.;‑

“The resignations, were submitted by responsible members of the National Assembly including the Leader of the Opposition, the former Prime Minister and Mr. Ghulam Mustafa Jatoi and they were meant to be resignations as well as protests. The President in normal course could have forwarded them to the Speaker, and. under the Constitution and Rules of the National Assembly the vacancies would have inevitably occurred. could have formed an opinion by the result of the vacancies that would occur that ‘the Government of the Federation could not be run in accordance with the Constitution’; and that the Assembly had lost the mandate.”

At the conclusion of the argument, the learned Attorney‑General submitted a statistical analysis of the effect of these resignations on the voting pattern of the electorate as hereunder‑

“Original Position ‑ 1990

(Percentage of valid Votes cast)

PDA              -------------               37.37%

Haq Parast     --------------            36.83%

JUI (F)                                             2.94%

Others                                              17.32%

Position on 18‑4‑1993

(Percentage of valid Votes cast)

lJI (minus JI)                        28.15

JI                                             2.23

Care ‑taker

PDA.                                                                 36.83%

J L (F)                                                                2.94%

PML (Q)                                                             0.04%

iWP                                                                     0.61%

NPP                                                                    50.92%

JUP (N)                                                              1.47%

PKMP                                                                 0.35%

ANP (H)                                                             1.68%

PML (J)                                                               7.00%

NDA                                                                      …….

others less Haq Parast                                       13.16%                           13.16%

Grand total:                                                                                            94.46%

Resignations are resignations. If they are not resignations they are not worth the paper on which they arc written. In view of the established Constitutional and legal position in this country and abroad with regard to resignation from office by elected representative none so elected can draft a resignation, address it to the proper authority and yet not transmit to the addressee so as to use it, or permit its use by others as a negotiable instrument or as a weapon of offence directed against the opponents. Any one engaging in such an activity and associating himself with it is not only grossly violating the Constitution but also indulging in a highly politically unethical conduct. That it happened on such a large scale in this case, at such a high level, and outside the Parliament is deplorable. Before any one rejects parliamentary democracy as unsuited to our condition, let him see the mutilation of it, the level and by persons at whose hands it has taken place.

In Khawaja Ahmad Tariq Rahim v. Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and another (PLD 1992 SC 646), the Constitutional foundations for deprecating such an offensive conduct were indicated in the following words:‑‑

“The preamble to our Constitution prescribes that ‘the State shall exercise its powers and authority through the chosen representatives of the people.’ Defection of elected members has many vices. In the first place, if the member has been elected on the basis of a manifesto, or on account of his affiliation with a political party or on account of his particular stand on a question of public importance, his defection amounts to a clear breach of confidence reposed in him by the electorate. If his conscience dictates to him so, or he considers it expedient, the only course open to him is to resign, to shed off his representative character which **he no longer represents and to right a**re‑election. This will make him honourable, politics clean, and emergence of principled leadership possible. The second and more important, the political sovereign is rendered helpless by such betrayal of its own representative. In the normal course, the elector has, to wait for years, till new elections take place, to repudiate such a person. In the meantime, the defector flourishes and continues to enjoy all the wordly gains. The third is that it destroys the normative moorings of the Constitution of an Islamic State. The normative moorings of the Constitution prescribe that ‘sovereignty over the entire universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust’ and the State is enjoined to ‘exercise its powers and authority through the chosen representatives of the people’. An elected representative who defects his professed cause, his electorate, his party, his mandate, destroys his own representative character. He cannot on the mandated Constitutional prescription participate in the exercise of State power and authority‑ Even by’ purely’ secular  standards carrying on of the Government in the face of such defections, and on the basis of such defections, is considered to be nothing but ‘mockery of the democratic Constituti6nal process’.”

The President of Pakistan too in speech delivered on 6th August, 1990, expressed the following opinion on the subject:‑‑

“Everyone of you is, to some degree, a witness to things I am referring to. Who of you has not heard about the highly disgraceful violation of people’s mandate and of its treatment as a commodity of trade? Political stock exchanges were opened and political horse‑trading was

indulged in unabashedly. At the time of No‑confidence Motion against the Prime Minister, such lawful and unethical methods were employed to muster support for or against it that, our National Assembly became a laughing stock throughout the world. Members of the Assembly remained, in a way, in confinement like hostages and were kept” from voting according to their conscience through inducements or threats. As somebody put it, some sold their conscience for ministries and some for plots of land, some mortgaged their loyalties in return for‑ loans and some for promised gains. Those who apparently professed consistency of loyalty also claimed and received their price by threatening to cross over. And thus all those, who regarded politics as trade, cash on every turn of events. None of them bothered to realise that he was committing a violation of oath taken in the name of Allah, or that without the voters’ consent, he had no right to abandon the party on whose ticket he had been elected in party‑based polls. To do so was to betray the people’s trust, which is an act of sin in the, eyes of God. As a result of such a conduct of the elected representatives, our adversaries got a chance to remark that a take‑over bid can be made for Pakistan’s National Assembly in a sum of two to two‑and‑a‑half billion rupees.”          I I

In the Constitution there is ‘clause (5) of Article 01 which comprehensively deals With the subject‑matter ‘of confidence and lack of confidence:‑‑

“(5)         The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of the 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.” ‑

The only way open to the President under the Constitution for coming to e conclusion whether the Prime-Minister does or does not command in confidence of the majority of the National Assembly is by summoning the National Assembly and requiring the Prime Minister to obtain vote of confidence from the Assembly. Any other method adopted for achieving the object, for forming an opinion, for giving effect to it is impermissible.

There are three positive compulsive indicators in this clause. Firstly, there is the use of negative imperative “the President shall not exercise his power”. It operates as a mandatory prohibition. The second is the statement of the jurisdictional requirement and coupling it to the exercise of power by the use of the word “unless”. The jurisdictional requirement is satisfaction of the President that the Prime Minister does not command the‑confidence of the majority of the members of the National Assembly. Thirdly, the only course. left Constitutionally open for the President for arriving at his satisfaction in this matter is. to “summon the National Assembly and require the Prime Minister to obtain a vote of confidence from the Assembly’. Such a comprehensiveness, such a clarity and such attention to the details is all in strict conformity with the , established conventions of Parliamentary democracy, as practised in countrics4 having no written Constitution.

The word “shall”, according to Black’s Law Dictionary, is general imperative or mandatory. it is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning and is generally imperative or mandatory. Balicntine’,,; Law Dictionary defines this word as a mandate where appearing in a  Constitutional provision. It further observes the word “shall” be held to be merely directory when no advantage is lost, when no right is destroyed, when no benefit is sacrificed, either to the public or to any individual, by giving it that construction. In 16 American Jurisprudence 2d Ed. at page 507 the following comments have been made on the basis of Court decisions with regard to prohibitory language:‑‑

Prohibitory language stated in a Constitution is nearly always construed as mandatory.”

The general rule has been laid down that if directions are given should be respecting that time: and mode of, proceeding in which a power exercised, there is at least a strong: presumption that,, the people ‑designed it to be exercised in that time and mode only. And.. Constitutional provisions consider the policy of a provision whose language seems plain and positive. Although it has been stated that even in the absence of a declaration that its provisions are mandatory and prohibitory, the Courts would not treat the provisions of a Constitution as merely directory or unessential, it has also been V suggested that the reason for the insertion of a specific statement on the matter in the Constitution of one State was that certain decisions had previously held that the provisions of the State’s earlier Constitution regarding the titles of legislative acts were directory and not mandatory.”

In Corpus Juris Secundum (Volume 16) at page 175 a very lucid expression of the rule of construction of such following words:‑‑

“The word ‘shall’ or ‘ought, as used in a Constitutional provision, is usually imperative or mandatory Mandatory Constitutional provisions are, binding on all departments of the Government. Long usage can neither repeal, nor justify the violation of, such provisions, and disobedience or evasion is not permissible, even though the best interests of the public might apparently be promoted in some respects ......      Restrictions and prohibitions in Constitutional provisions are mandatory and must be obeyed.                Generally, Constitutional provisions that designate in express terms the time or manner of doing particular acts and that are silent as to performance in any other is manner arc mandatory and must be followed. Such provision. arc, in general , exclusive in respect of the manner of performance impliedly forbid  performance in a substantially different manner.”

In the Constitutional provision the word “not” following “shall” makes the requirement of the provision negative imperative leaving no scope for a departure therefrom. The word “unless” also limits and identifies the jurisdictional requirement and the prescription of the method by which that jurisdictional requirement is to be satisfied. The use of the word “unless” according to BBC English Dictionary is as follows:‑‑

“You use unless to introduce the only circumstances in which the event you are mentioning will not take place.”

All this attracts the application of well‑known maxim ‘Expression unius est exclusio alterius’. This maxim has been explained in the ‘Construction of Statutes by Earl T. Crawford in section 195 as hereunder:.‑

195. Express mention and implied exclusions (Expressio unius est exclusio alterius)As a general rule in the interpretation of statutes, the mention of one thing implies the exclusion’ of another thing. it therefore logically follows that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. For instance if         the statute in question enumerates the matters over which a Court has          jurisdiction, no other matters may be included. Similarly, where a           statute forbids the performance Of certain things, only those things

expressly mentioned arc forbidden. So also, if the statute directs that             certain acts shall be done in a specified manner, or by certain person,  their performance in any other manner than that specified, or by any              other person than one of those named, is impliedly prohibited.”

The decision of the Privy Council in Alhaji D.S. Adegbenro’s case (1963) Appeal Cases 614) is very instructive on the subject and has some resemblance on facts to the case in hand. That case concerned the right of the Governor of the Western Region of Nigeria to remove a Premier from office on the ground that it appeared to him that the Premier no longer commanded support of a majority of the members of the House of Assembly, although there had been no adverse vote in the House. In removing the Premier from office the Governor acted upon receipt of a letter, dated May 21, 1%2, signed by 66 members of the House of Assembly in which it was stated that they no longer supported Chief Akintola. The House of Assembly was composed of 124 members. Nigeria had a written Constitution, relevant clauses of its Article 31 being as hereunder:‑‑

“33.                        (1) There shall be a Premier of the Region, who shall be appointed by the Governor.

(2)           Whenever the Governor has occasion to appoint a Premier he shall appoint a member of the House of Assembly who appears to him likely to command the support of the majority of the members of the House.

(3)           There shall be, in addition to the office of Premier, such other offices of Minister of the Government of the Region as maybe established by the Legislature of the Region or, subject to the provisions of any Regional law, by the Governor, acting in accordance with the advice of the Premier.

(4)           Appointments to the office of Minister of the Government of the Region other than the office of Premier shall be made by the Governor, acting in accordance with the advice‑of the Premier:

Provided that at least two Ministers shall be appointed from among the members of the House of Chiefs . .........

(8)’          The office of the Premier shall become vacant‑‑‘

(a)           when, after any dissolution of the Legislative Houses of the Region, . the Premier is informed by the Governor that the Governor is about to reappoint him as Premier or to appoint another person as Premier; or

 (b) if he ceases to be a member of the House of Assembly otherwise than by reason of a dissolution of the Legislative Houses.

(9)           The office of a Minister of the Government of the Region other than the Premier shall become vacant if the office of Premier becomes vacant.

(10) Subject to the provisions of subsections (8) and (9) of this section, the Ministers of the Government of the Region shall hold office during the Governor’s pleasure:

Provided that‑‑

.(a)The Governor shall not remove the Premier from office unless it appears to him that the Premier  longer commands the support of a majority of the members of the House of Assembly; and

(b)the Governor shall not remove a Minister **other than the Premier**from office except in accordance with the advice of the Premier.”

Following propositions of law were laid down by the Privy Council while reversing the decision of Nigerian Federal Supreme Court:‑‑

(1) Words of the written Constitution govern rather governed by British Parliamentary Convention. The Court observing As hereunder:‑‑

“Lord Bryce once said, the British Constitution ‘works by‑a body of understandings which no writer can formulate;’ whereas the Constitution of Western Nigeria is now contained in a written instrument in which it has been sought to formulate with precision the powers and duties of the various agencies that it holds in balance. That instrument now stands in its own right; and, while it may well be useful ‘on occasions to draw on British practice or doctrine in interpreting a doubtful phrase whose origin can be traced or to study decisions on the Constitutions of Australia or the United States where federal issues are involved, it is in the end the wording of the Constitutions itself that is to be interpreted and applied, and this wording can never be overridden by the extraneous principles of other Constitutions which are not explicitly incorporated in the formulae that have been chosen as the frame of this Constitution.”

(2)Pleasure in appointment and holding of office unless ‑qualified also includes power of dismissal.

The Court observing as hereunder:‑‑

“It is clear, to begin with, that the Governor is invested with some power to dismiss the Premier. Logically, that power is a consequent of the enactment that Ministers shall hold office during the Governor’s pleasure, for, subject to the saving conditions of provisos (a) and (b) that follow, the Governor has only to withdraw his pleasure for a Minister’s tenure of office to be brought to an end. Where the Premier’s office is concerned it is proviso (a) that limits the Governor’s power to withdraw his pleasure constitutionally, for by that proviso he is precluded from removing the Premier from office ‘unless it appears to him that the Premier no longer commands the support of a majority of the members of the House of Assembly’. By these words, therefore, the power of removal is at once recognised and conditioned: and, since the condition of Constitutional action has been reduced to the formula of these words for the purpose of the written Constitution, it is their construction and nothing else that must determine the issue.”

                (3) Limitation cannot be read in general words used in the Constitutional provisions conferring power.

The Privy Council observing as hereunder:‑‑

“The difficulty of limiting the statutory power of the Governor in this way is that the limitation is not to be found in the words in which the makers of the Constitution have decided to record their description of his powers. By the words they have employed in their formula, ‘it appears to him,’ the judgment as to the support enjoyed by a Premier is left to the Governor’s own assessment and there is no limitation as to the material on which he is to base his judgment or the contacts to which he may resort for the purpose. There would have been no difficulty at all in so limiting him if it had been intended to do so. For instance, he might have been given power to act only after the passing of a resolution of the House ‘that, it has no confidence in the Government of the Region’, the very phrase employed in an adjoining section of the Constitution (see section 31(4), proviso (b) to delimit the Governor’s power of dissolving the House even without the Premier’s advice. According to any ordinary rule of construction weight must be given to the fact that the Governor’s power of removal is not limited in such precise terms as would confine his Judgment t( (lie actual proceedings of the House unless there arc compulsive reasons, to be found in the context of the Constitution or to be deduced from obvious general principles, that would impose the mote limited meaning for which the respondent contends.”

(4) Court should not be swayed by considerations by Policy a d Propriety while interpreting provisions of a written Constitution.

The Privy Council observed as hereunder:‑

**“But, while**there may be formidable arguments in favour of the Governor confining his conclusion on such a point to the recorded voting in the House, if the impartiality of the constitutional sovereign is not to be in danger of compromise, the arguments are considerations of policy and propriety which it is for him to weigh on each particular occasion: they arc not legal restrictions which a Court of law, interpreting the relevant provisions of the Constitution, can import into the written document and make it his legal duty to observe. To sum up, there arc many good arguments to discourage a Governor from exercising his power of removal except upon indisputable evidence of actual voting in the House, but it is nonetheless impossible to say that situations cannot arise in which these arguments are outweighed by considerations which afford to the Governor the evidence he is to look for, even without the testimony of recorded votes.”

5) British Constitutional history offers a negative guide:

The Privy Council made the following observations on this subject‑.‑

“The first is that British Constitutional history does not offer any but a general negative guide as to the circumstances in which a sovereign can dismiss a Prime Minister. Since the principles which are accepted today began to take shape with the passing of the Reform Bill of 1832 no British Sovereign has in fact dismissed or ‑removed a Prime Minister, even allowing for the ambiguous exchanges which took place between William IV and Lord Melbourne in 1834. Discussion of Constitutional doctrine bearing upon a Prime Minister’s loss of support in tile House of Commons concentrates therefore upon a Prime Minister’s duty to ask for liberty to resign or for a dissolution, rather than upon the Sovereign’s right of removal, an exercise of which is not treated as being within the scope of practical politics. In the state of affairs it is vain to look to British Precedent for Prudence upon the circumstances in which or the evidential material upon which a Prime Minister can be dismissed where dismissal is an actual possibility‑, and the right of removal which is explicitly recognised in the Nigerian Constitutions must be interpreted according to the wording of its own limitations and not to limitations which that wording does not import ... .... .... .... .... .... .... It recognises also one other principle that has come to be accepted in the United Kingdom that, subject to questions as to the right of dissolution and appeal to the electorate, a Prime Minister ought not to remain in office as such once it has been established that he has ceased to command the support of a majority of the House. But, when that is said, the practical application of these principles to a given situation, if it arose   in the United Kingdom, would depend less upon any simple statement of principle than upon the actual facts of that situation and the good sense and political sensitivity of the main actors called upon to take part.”

This judgment of the Privy Council was undone by a retroactive amendment.

Resignations submitted by the Ministers from the Cabinet fall in a category quite different from those of the members of the National Assembly. If they were addressed to the President and were presented directly to the President, and were given effect to by the President, then it was indeed in full I D compliance with requirements of Article 92(3) of the Constitution. There is an extensive article on “Collective Ministerial Responsibility and Collective Solidarity” by David L. Ellis, published in Public Law (1980) appearing at pages 367 to 390. It comments on collective responsibility as hereunder:‑‑

“Lord Salisbury in 1878 set out a formulation of the doctrine which has come to be accepted as tile locus classicus:

‘For all that passes in Cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues ... ... .. .. It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet, who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld and one of the most essential principles of Parliamentary” responsibility established The following observations were made with regard to the benefits of such a collective responsibility:‑‑

“It might be argued that unanimity creates the impression  had a Ministers are working together which promotes greater electoral In party confidence, as well as enhancing the Government image in the eyes of foreign politicians, investors and others.”

In another article published in Public Law (1982) on choosing a Prime Minister by Rodney Brazier, the following observations occur:‑‑

“No Prime Minister has enjoyed his tenure of office without criticism            from his own parliamentary party from time to time; some have faced revolts within their own party on particular issues; a few have, in effect, been forced from office by their Own party.”

In a book “Modern Foreign Governments” by Frederic A. Ogg, the Prime Minister’s Heavy Load has been described as hereunder:‑‑

“The Prime Minister’s Heavy Load.‑It goes without saying that the Prime Minister is hard‑worked and always pressed for time. He must  scan   multitude  of papers, carry on or supervise heavy   correspondence, receive persons seeking interviews on matters of public or private concern, hold Cabinet meetings, confer with individual ministers, visit and submit reports to the sovereign, and – as if that were not enough ‑‑ spend much of almost every day when Parliament is in session either on the Treasury Bench or in his private room behind the speaker’s chair, holding himself in constant readiness o answer questions, to decide points of tactical procedure put up to him by his lieutenants, and to plunge into debate in defence of some Government proposal or policy. As leader of his party, too, he must’ devote steady attention to its affairs. All in all, it is small wonder that the shoulders of many a Prime Minister have drooped under the burden.”

How this heavy burden is handled has been explained at page 90 in the following words:

“For, within Ministry and Cabinet alike, the Prime Minister is the key, man even if not always the outstanding personality. He has put the other ministers where they are. He exercises a general watchfulness and coordinating influence over their activities. He presides at Cabinet meetings, and counsels as continuously as time permits with individual members, encouraging, admonishing, advising, and instructing. He irons out difficulties arising between ministers or departments. If necessary, he can require of his colleagues that they accept his ‑ views. with the alternative of his resignation or theirs, for it is strategically essential that the Cabinet, however, divided in its opinions behind closed doors, present a solid front to Parliament and the world. Indeed, he can, and as we have seen occasionally does, request and secure from the sovereign the removal of a minister for insubordination or indiscretion. He is expected to be the leader of the ministerial group; as its chief spokesman, he will have to bear the brunt of attacks made upon it; and it is logical that his authority shall be disciplinary as well as merely moral. It goes without saying, however, that in all this he must not be overbearing, or harsh, or      unfair, or tactless. His Government will at best have enough obstacles to overcome, its solidarity must not be jeopardized or its morale impaired bygrudges or injured feelings within its ranks.”

In another article published in Public Law (1986), on Prime Ministerial Power by A. H. Brown, the following developments in the classic parliamentary democracy have been noted:-

“ For Ramsay Muir the Prime Minister was a potentate who appoints and can dismiss his colleagues. He is in fact, though not in law, the working head of the State, ended with such a plenitude of power as no other constitutional ruler in the world possesses, not even the President of the United States.’ But, in Muir’s view, the Prime Minister holds this power ‘so long as he controls a majority in the House of Commons’ and “it is necessary that he should carry his colleagues in the Cabinet, or a large majority of them, alongwith him . ... .... ... ... ... ... ... ... ... ... ... .. One of the difficulties in discussing ‘prime ministerial government’ is to know exactly what the notion entails, for it’ appears to mean different things to different people. It seems, however, to include the following propositions. 1. A Prime Minister has the effective power to give office only to those of whom he personally approves, and his ministers have been ‘reduced to the rank of lieutenants that he can dismiss as he wishes’. 2. Control of the machinery of Government ensures the Prime Minister’s preponderant influence over his colleagues. Through his ‘control’ of the Cabinet Office and of Cabinet Committees he can manipulate the Cabinet collectively and prevent ministers from putting items on the Cabinet agenda. 3. More generally (and most basic to a meaningful definition of Prime Ministerial Government), major policy decisions are taken or dominated by the Prime Minister. He dominates Cabinet deliberations to such an extent that he can rarely, if ever, be defeated in Cabinet. Formal meetings apart, he may also intervene at will to dominate the policies of any department he chooses to take an interest in. 4. These points constitute a great increase in the Prime Minister’s power within the Government, and are developments that date from the First World War (or, as some believe, from the Second).

They are changes sufficiently important to warrant the use of new term, ‘prime ministerial government’, to describe the British political system.”

In the commentary on the Indian Constitution by Jain (1987 Edition), the question of collective responsibility and consultation with the Ministers have been discussed at pages 102 and 103 in the following words:‑‑

“A Minister who disagrees with a Cabinet decision on a policy matter, and is not prepared to support and defend it, should no longer remain in the Council of Ministers and should better resign. There have been a number of resignations in the past because of differences with the Cabinet. Dr. Mathai resigned as a Finance Minister because he disagreed with the Cabinet on the question of scope and powers of the Planning Commission which was proposed to be set up then. C.D. Deshmukh resigned because he differed from the Cabinet on the issue of re‑organisation of States, especially on the question of Bombay. On September 5, 1967, Foreign Minister Chagla resigned because of his differences with the Government’s language policy, especially the place of English. Several other Ministers have resigned from the Cabinet.

The principle of collective responsibility does not mean that every Minister must take an active part in the formulation of policy, or he should be present in the committee room whenever a policy decision is taken. This is not possible because of the large size of the present day Council of Ministers. The effective decision‑making body is the Cabinet and not the entire Council of Ministers and, therefore, K the obligations of a Minister may be passive rather than active when K the decision does not relate to matters falling within his own sphere of responsibility. Collective responsibility ensures that the Council of Ministers presents a united front to Parliament. In the words of Laski, ‘Cabinet is by nature a unity: and collective responsibility is the method by which this unity is secured’. The principle of collective responsibility is both salutary and necessary. On no other condition can a Council of Ministers work as a team and carry on the Government of the country. It is the Prime Minister who enforces collective responsibility amongst the Ministers through his ultimate power to dismiss a Minister.”

Resignations from the Cabinet are not at all a sure indication of lack of confidence in the Government nor do they affect or impair the smooth  functioning of parliamentary democracy. In a book “Cabinet Government in L India” by R.J. Venkateswaran, the following observations lions have been made with regard to resignations by the Ministers in Chapter VI under the heading “Remarkable Resignations”:‑‑‑

“Ministerial resignations are a normal feature in a Parliamentary democracy. Ministers may leave the Cabinet for many reasons – ill­ health, old age, or for taking up diplomatic or other assignments. They may also retire voluntarily owing to serious differences in policy, or may be compelled to go by pressure of adverse public opinion, or asked by the Prime Minister to quit for incompetence or for any other reason. In India there were many resignations from the Cabinet during the seventeen years of Nehru’s regime, but here we are concerned only with those cases that involved important political and constitutional implications.”

The resignations of the Ministers should not have found place at all in the dissolution order, nor could they have been taken in the consider formed ground for taking action under Article 58(2)(b) of the Constitution. They are wholly irrelevant.

The first ground of the dissolution order was sought to be finally on the basis of a residual implied power of the President ordinarily IN conventionally available to the Crown in parliamentary democracy. In view of the express provisions of our written Constitution detailing in fullness both the procedure and power recourse to any residual power cannot be had. This is the rule of interpretation already discussed while examining the Nigerian case. Besides, the Crown has four conventional protect ions in the Parliamentary system which in our written Constitution the President does not enjoy.

Firstly, on a purely theoretical plane, it is indeed the plenary power of the Crown to dissolve the Parliament at his will. Secondly. the Crown is not controlled by any jurisdictional requirements in the matter of taking such a decision, Thirdly, Crown is irremovable. Fourthly, the Crown can do no wrong. All these four features are totally lacking in our Constitution. Besides, as pointed out by Mr. S. M. Zafar in an altogether different context, if the express provisions provide otherwise, the residual power derivable therefrom cannot on any principle of interpretation overreach them just as the stream cannot rise above its source. The first ground was, therefore, wholly misconceived, not available and cannot stand the test of our Constitutional requirements. The making of such a ground, the adoption of it, the giving recognition and effect to it, are all fraught with serious threat to our political morality, to our body politics and to our Constitution.

The second ground gets vitiated for the simple reason that in a formal Constitutional instrument made out in exercise of powers under Article 58(2)(b) of the Constitution, the President has, whatever be the tenor of the speech and its contents, come to the conclusion and conveyed to the world that in any case the speech and the conduct of ‑the Prime Minister amount to subversion of the Constitution. Subversion in our law is High Treason which is regarded as the highest crime **known to law and the most serious**offence that may be committed against one’s own country. The President had no authority under the Constitution to pronounce such a finding and to make a declaration against a citizen of Pakistan, a leader of the majority Parliamentary party, the Prime Minister of the country, for sustaining such an order. It is clearly violative of first part of Fundamental Right 14.

We have examined the contents of the speech of the Prime Minister both with regard to its form and substance and also whether or not it provided justification for the dissolution order. The President in his speech made it clear that he took no exception to Prime Minister criticizing him as a person. If that be so we too will not go into that aspect of the case. As regards the office of the President, the Constitutional validity of. the criticism will have to be examined. We have dealt with all the areas of conflict, the nature of conflict and the Constitutional provisions governing such conflicts and have **found that**there was substantial basis for such criticism. In a Constitutional set‑up restraint in language, exhibition of dignity and decorum from both sides should have been of a much higher. level. This should have been particularly so in this case because the two functionaries had cooperated for sufficiently long time, had praised each other publicly too often and had never brought their legal and Constitutional differences before appropriate forums. Such criticism by itself does not lead to the inference that the Constitution cannot work. It is the conduct of the office‑holders and not the content of the Constitution which is proving, if at all, an impediment in smooth functioning of the Constitutional Government. The answer lies not in ouster out of the one by the other but in abiding by the Constitution and Constitution alone. The oaths of the two functionaries are identical, word for word and letter for letter. It is only the difference in offices which lends a different scope to each one of them. Therefore, the test for exercise of power is not the oath but the exact Constitutional provision under which the power is exercised. The first duty cast by oath of office is to identify one’s own jurisdiction and power and next to faithfully remain within the confines of it. The **second ground too was not**available to the President for the exercise of power under Article 58(2)(b) of the Constitution.

The third ground of dissolution concerns the improper functioning of various Constitutional bodies provided for securing integration, cohesion and understanding between the Provinces. Articles 153 and 154 of the Constitution make provision for the establishment and functioning of the Council of Common Interests. The Council is required to formulate and regulate policies in relation to matters in Part 11 of the Federal Legislative List and in the matter of electricity in the Concurrent Legislative List. If any one of the Governments is dissatisfied with a decision of the Council, it can refer the matter to Parliament in a joint sitting whose decision in this behalf shall be final. The letters of the two Chief Ministers produced to show non‑compliance with the provisions do not demand the summoning of the Council of Common Interests for resolution of dispute nor do they call upon the Prime Minister or the President to refer the matter to t ‘ he Parliament in the joint sitting. They certainly. make a grievance of not receiving due representation in the privatisation proposals with regard to WAPDA, Electricity etc. None of the grievances relates to any industry which has been privatized. They all relate to matters which are still under consideration of the appropriate authority and only preliminary examination is being undertaken. Even if omissions have taken place while the matter is under active consideration, the scope for appropriate rectification, consensus and resolution is still there. It is normal feature of the functioning of the Government that a preliminary .exercise is undertaken by experts before a matter is taken up for final decision to the Constitutional body established for the purpose. Wherever rectifications are possible and the action is not yet finalized, the more appropriate course is to proceed about it constitutionally, to associate in the on‑going exercise and assist in final decision making. It is not the grievance made which is decisive of the constitutionality of the action but the final decision yet to follow.

During the course of the hearing certain other matters not made the basis and not the subject‑matter of the impugned order before us about which in grievance was made by any of the Provinces have been put in to condemn the governance of the country. This relates to disposal of surplus land by the Railways, the leasing out of the ticketing on the Railways and the disposal of certain nationalized and State industries. These actions were taken by the Government and did not directly concern the Council of Common Interests nor did any Provincial Government ever make a grievance of it.

The privatization of nationalized units had the requisite statutory cover under the following statutes none of which had been objected to by the President or sent for reconsideration by the Cabinet‑.‑‑

(1)                           President’s Order 12 of 1978 ‑‑ Transfer of Managed Establishments Order, 1978.

(2)                           Ordinance X1 of 1989 \_\_ Transfer of Managed Establishments        (Amendment) Ordinance, 1989.

(3)Ordinance XXXIII of 1991 ‑‑ Transfer of Managed Establishments (2nd Amendment) Ordinance, 1991.

(4)Act V of 1992 ‑ Transfer of Managed Establishments (Amendment) Act, 1992.

(5)                           Act LXV of 1.973 Hydrogenated Vegetable Oil Industry (Control     and Development) Act, 1973.

 (6) Ordinance XXXV of 1991 ‑‑ Hydrogenated Vegetable Industry  (Control and Development) (Amendment) Ordinance, 1991.

(7)                           Act XX of 1992 ‑‑ Hydrogenated V edible Oil Industry (Control and                Development) (Amendment) Act, 19

(8)                           Ordinance VII of 1992 ‑‑ Hydrogenated Vegetable Oil Industry         (Control and Development) (Amendment) Ordinance, 1992.

(9)                           Act XI of 1992 ‑‑ Hydrogenated Vegetable Oil Industry (Control and              Development) (2nd Amendment) Act, 1992.

(10) Act XII of 1992 ‑‑ Protection of Economic Reforms Act, 1992.

One of the ways of smooth integration of the country is when the same political party is in power at the Federal level as well as in the Provinces. It is happened to be so in the case of the petitioner. Therefore, unless there be specific and serious constitutional objection raised by the Provinces, the conduct of policy in these matters should have been better left to the **Prime!,**Minister himself.

The word “transparency” in administration or privatization is a word very pleasing to the ear and very impressive to rind established in a society. Where freedom to obtain information does not exist, where secrecy of all financial transactions including the declaration of assets by the public office  holders is the order of the ,day to expect transparency and make it a ground for taking action under Article 58(2)(~) of the Constitution would be far‑fetched, a’ matter of degree and quite unjustified. It is a vague criteria, not referable to any statutory provision and will make the satisfaction of the empowered authority subjective and not objective. This Court has already held that the requirements of Article 58(2)(b) of the Constitution arc all objective and relatable to the various Constitutional provisions.

The allegations of corruption, of maladministration, of incorrect policies being pursued in matters financial, administrative and international are independently neither decisive nor within the domain of President for action under Article 58(2)(b) of the Constitution. These are wholly extraneous and cannot sustain the impugned order.

The impugned order has too many subjective elements not recognized by the Constitution for exercise of Presidential power of dissolution of National Assembly. For example, the anticipatory action that the Government of the Federation is not in a position to meet properly and positively the threat to the I security and integrity of Pakistan and the grave economic situation confronting the country are no considerations, nor can the President make an assessment of it independent of the Federal Government headed by the Prime Minister, as the Parliament is established for that purpose.

We rind that none of the grounds made the basis of the impugned action has been established that they bear no nexus to the order passed and grounds totally extraneous and irrelevant and in clear departure of the Constitutional provisions have been invoked for taking action.

The question that was proposed to the learned Attorney‑General by me was ‑whether tile President could constitutionally dismiss the Prime Minister and his cabinet while exercising his powers under Article 58(2)(b). He has relied on the use of expression “The Prime Minister shall hold office during the pleasure of the President” in Article 91(5) of the Constitution read with the practice in India and United Kingdom to justify such use. What he failed to notice is that this pleasure of the Crown in United Kingdom and of the President in India is unqualified. Ours is qualified in two ways. First the very Article in which pleasure of the President is provided the stri6t modalities of the exercise of it have been expressly provided as hereunder:‑‑

“91(5) The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of the 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.”

The second difference is that unlike any other Constitution of the world ours expressly provides for the inviolability of the dignity of man as a Fundamental Right available to all citizens of Pakistan. For an order under Article 58(2)(b) of the Constitution the only power available is of dissolution of National Assembly. The question arises why add to it something unnecessary, Something hurtful, something that would look out of place and uncalled for in retrospect, create an impression of master and servant. I would not at this stage and in these proceedings go to the extent of holding that use of these expressions itself amounts to violation of Fundamental Right 14. All that I can say is it would have been constitutionally more graceful to avoid their use.

The question as to who, the President or the Prime Minister, is the final authority to appoint Chief of the Army Staff, does not directly arise out of the grounds of Dissolution Order. However, the pivotal role that this question played in souring the Constitutional relationship of the two is apparent from the following statement of fact by President in his speech:‑‑

The reply of the Prime Minister to this in his rejoinder to the written statement was as hereunder:‑‑

“It is denied that there was any **disagreement between the President**and the petitioner on the appointment of the COAS.”

Believing the statement of both to be correct the only conclusion permissible is that they had no difference of opinion over the person to be appointed. Their differences, if any, on this subject remained confined to the power to make that appointment. Not surprising that such a conflict should arise on President’s perception of the power, as one in his discretionary field.

Article 243 of the Constitution before suffering any of the amendments read as hereunder:‑‑

“243.‑‑(l) The Federal Government shall have **control and command of the Armed Forces.**

(2)           The President shall subject to law, have power‑‑

(a)                           to raise and maintain the Military, Naval and Air Forces of Pakistan;            and the Reserves of such Forces;

(b)           to grant Commissions in such Forces; and

(c)           to appoint the Chief of the Army Staff, the Chief of the Naval Staff and the Chief of the Air Staff, and determine their salaries and allowances.”

In the President’s Order 14 of 1985 (Revival of the Constitution of 1973 Order, 1985), enforced on 2‑3‑1985, it was provided that the Constitution of the Islamic Republic of Pakistan, 1973, is hereby amended to the extent and in the manner specified in the third column of the Schedule. Article 4 of this President’s Order 14 of 1985, provided that the provisions of the Constitution, as amended by this Order, shall stand revived on such day as President may, by Notification in the Official Gazette, appoint and different days may be so appointed in respect of different provisions. The entry No.50 in the Schedule in respect of Article 243 reads as hereunder:‑‑

1.             After clause (1), the following new clause shall be inserted, namely:‑‑

(1‑A)      Without prejudice to the generality of the foregoing provision, the Supreme Command of the Armed Forces shall vest in the President.

2. In’ clause (3), in paragraph (c), after the word “appoint”, the words and commas “in his discretion the Chairman, Joint Chiefs of Staff Committee,” shall be inserted.”

On 30‑12‑1985, the proclamation of withdrawal of Martial‑Law took over and the Constitution as amended by the Revival of the Constitution Order, 1985, and further amended by 8th Amendment (not this Article) was thereafter enforced.

                It is clear that prior to the amendment of Article 243 the appointment of all the Chiefs of the Army, Air Force and the Navy had to take place on the advice of the Prime Minister. The content of the amendment introduced by the Revival of the Constitution Order was confined to one new post that was created, that was of the Chairman, Joint Chiefs of Staff Committee and in respect of that newly‑created post the appointing authority was made the President and in making that appointment he was to act in his discretion. Throughout the world interpreting and understanding the Constitution and legislative instruments the punctuations are not allowed to play any decisive role. Even if they do here the authorisation or empowering by the Parliament and the provisions of the Revival of the Constitution Order being confined to the post of Joint Chiefs of Staff Committee it could not on any interpretation be extended to the other Chiefs.

 Mr. Yahya Bakhtiar, in making a submission on the point indicated that this view is consistent with the scheme (if the Constitution as modified by the Revival of the Constitution Order, 1.985. The power to appoint the Chief Election Commissioner, the Chairman of the Federal Public ‑Service Commission and the Chairman of **the Joint Chiefs of Staff Committee reserved**for being exercised in the **discretion by the President. So far as the others**constituting these bodies are concerned, namely, the Members of the Election Commission, the Members ‘ of the **Public Service Commission and the Chiefs‑of**the Army Staff, Navy and Air Force are ‘ **concerned, they were left unaffected**so far as the appointment to them on the advice of the Prime Minister was concerned. While examining this question another **quite startling fact**came to our notice and it was Schedule VI referable to Rule 15‑A (2) of the Ruler, of Business framed by. the Federal Government under Articles 90 and 99 of the Constitution. Schedule VI under Rule 15aA(2) has three portions as hereunder:‑‑

                                                                      SCHEDULE V1

                                                                   Rule 15‑A(2)

List of cases to be submitted to

the President for his orders in his

discretion.

S. No.                                                                                          Reference to

                                                                                              Constitutional provisions

                                                       CABINET DIVISION

1.             xxxxx                                               xxxxxxx                                               xxxxxx

2.                             Appointment of acting Governor during the                                      Article 101

                absence of Governor.

3.             Appointment of the Provincial                                                             Article  105

                Chief Ministers                                                                                         1(a)&(4)

DEFENCE DIVISION

                4. 1 Appointment of Chairman, Joint Chiefs of Staff Amended Committee, Chiefs of Army Staff, Naval Staff and provisions of Air Staff and determination of their salaries Article 243 Article 243 and allowances.

xxxx       xxxxxxx                xxxxxx xxxxxx It Schedule VI contains three entries which appear to be against –the Constitutional provisions reproduced above.

                It is not Article 101 but Article 104 which deals with the appointment of Acting Governor and is in the following words:

                “104. Acting, Governor.‑‑‑When the Governor is absent from Pakistan or is unable to perform the functions of his office due to any cause, such other person as the President may direct shall act as Governor.” This provision has not suffered any amendment since 1973 Constitution was framed.

Mr. S. M. Zafar in his analysis of the provisions has included this power as one to be exercised by the President on the advice of the Prime Minister. This appears to be correct view also. As regards entry No.3 of the Cabinet Division, Article 105(l) has no longer a sub‑clause (1). In the Revival of the Constitution Order, indeed there was a sub‑clause (a) relating to the appointment of the Chief Ministers which was deleted or not approved when the 8th Amendment was passed.

In respect of the Defence Division a wrong entry with regard to the appointment of the Chiefs, other than the Chairman, Joint Chiefs of Staff Committee was included as within the discretionary field of powers of the President. Such an incorrect unconstitutional Rules of Business for the functioning of the Federal Secretariat continued over such a long period reflects the apathy, the inattention and unawareness of the Constitutional mandates. Such mistakes are liable to breed avoidable controversies resulting in grave consequences as we have witnessed in the present case. The Attorney­ General has only said that these issues are not involved in the present case and should not be decided. In any society seriously striving to establish rule of law and to protect its Constitution from invasion, a duty to educate, a duty to inform, and a duty to exhibit at all times awareness of the Constitutional parameters is necessarily cast on all functionaries of the State. No occasion should be lost to understand them, to expound them, to clear the cobwebs of misunderstanding and likely areas of conflict and confusion with regard to them.

The learned Attorney‑General, instead of attending to the question No. (iv), mentioned at page 55 of the judgment, with regard to discretion of the Court in the matter of grant of relief cx debito justitiae attended to the discretion of the Court in entertaining a petition complaining breach of Fundamental Right. He cited M/s. Tilokchand Motichand and others v. H.B. Munshi, Commissioner of Sales Tax, Bombay and ‑another (AIR 1970 SC 898 at page 908, paragraph 36), Raj Kumar v. Union of India and others (AIR 1975 SC 530 at page 540, paragraph 16) and commentaries on the Constitution of India by Scervai and Kagzi establishing that acquiescence, estoppel, laches, inordinate delay etc. can and do stand in the way of entertainment of petition seeking enforcement of Fundamental Rights. The question did not concern itself with the threshold bar, as none was pleaded, raised or arose in this case. The question related to ultimate grant of relief, limitation if any, on it.

According to Mr. S. M. War, Senior Advocate, Political Justice has been expressed and ensured by the Constitution in two separate and distinct forms. The first of these forms is through the various Fundamental Rights. The second form is through the other provisions of the Constitution. According to him Political Justice is expressed and ensured through Fundamental Rights by‑‑

Article 9                                Security of person

Article 10                             Safeguards as to arrest and detention

Article 12                             Protection against retrospective punishment.

Article 13                             Protection against double punishment and self­-incrimination.

Article 14                             Inviolability of dignity of man, etc.

Article 15                             freedom of movement etc

Article 16                             freedom of assembly

Article 17                             freedom of association

Article 19                             freedom of speech

Article 25                             equality of citizens

Social Justice by‑‑

Article 9  ------------- Security of person

Article 11 ---------------- Slavery, forced labour, etc., prohibited.

Article 1.3--------------- Protection against double punishment and self-incrimination.

Article 14(l)------------ Inviolability of dignity of man, etc.

Article 26 -------------- Non‑discrimination in respect of access to public places.

Article 27 -------------- Safeguard against discrimination in services.

Article 28 -------------- Preservation of language, script and culture.

Economic Justice by‑

Article 18 ------------ Freedom of trade, business or profession.

Article 21------------- Safeguard against taxation for purposes of any particular religion.

Article 23 ------------ Provision as to property.

Article 24 ------------ Protection of property rights.

and unclassified Justice by‑‑

Article 20             Freedom to profess religion and to manage

                religious institutions.

Article 21             Safeguard against taxation for purposes of any

                              particular religion.

Article 22             Safeguard as to educational institutions in respect of religion, etc.

The second category is of the other provisions of the Constitution which ensure majoritarian rule. This is ensured by‑‑

Article 50             --------------- Majlis‑e‑Shoora (Parliament)

Article 51             -------------- National Assembly

Article 52             -------------- Duration of National Assembly

Article 91                                             The Cabinet.

The later content of Political Justice that is majoritarian  rule, was, according to Mr. S. M. Zafar violated thrice in this country. Once, when a majority Province was kept at par with the rest of the three provinces which formed a minority. Next, when one province was kept at par with three other Provinces. The third occasion arose when in the matter of No‑Confidence Motion against Prime Minister in the National Assembly proviso to clause (5) of Article 96 of 1973 Constitution as originally framed had the following content:‑‑

“Provided, that for a period of ten years from the commencing day or the holding of the second general election to the National Assembly whichever occurs later, the vote of a member elected to the National Assembly as a candidate ‑or nominee of a political party, cast ‘ in support of a resolution for a vote of no‑confidence shall be disregarded if the majority of the members of that political party in the National Assembly has cast its votes against the passing of such resolution.”

Mr. S. M. Zafar contends that clause . (2) of Article 17 is restrictive, an exception to clause (1), is negative in content, denying to civil servant right to joint Political Party and controlling under judicial cover. unhealthy political activity. This clause (2) cannot, therefore, go beyond clause (1) on the analogy that the stream cannot rise above its source.

By examining each provision of the Constitution Mr. S. M. Zafar was in a position to state that he following Articles of the Constitution keep intact the Parliamentary form of Government in Pakistan:‑‑

Article 41 -------------- The President

Article 46 -------------- Duties of Prime Minister in relation to President,

Article 48 -------------- President to act on advice, etc.

Article 91 -------------- The Cabinet.

Article 99 -------------- Conduct of business of Federal Government.

The learned counsel also pointed out that there are provisions in the Constitution, very peculiar to our Constitution, and these are discretionary powers of the President under‑‑

Article 48(2) ----------- When the discretion relates to dissolution of the National Assembly                under Article 58(2) read with Article 48(5).

Article 46(6) ----------- Referendum

Article 213 ------------- Appointment of Chief Election Commissioner.

Article 242(1‑A) ------ Appointment of Chairman, Joint Chiefs of Staff Committee.

                Another “category of powers of the President which can be called extraordinary powers are contained in‑‑

Article 177 -------------- Appointment of Chief Justice and Judges of Supreme Court in consultation.

Article 193 -------------- Appointment of High Court Judges in consultation.

Article 101 -------------- Appointment of Governors in consultation.

Article 218 -------------- Appointment of Members of Election Commission .in consultation.

The object of such a detailed, and lucid analysis of the provisions of the Constitution was to demonstrate and establish the following, facts:-

(i)            The President’s high office enjoyed independently of everyone else certain very important functions of the State for which purpose he had to remain Vigilant, concerned and alive to the issues..

**(ii)           President had also another duty to perform, namely of guiding, controlling and counseling the executive Government with regard to its policies and performance.**

**(iii)         The President in yet another domain was required to act on the advice     of the Prime Minister irrespective of his own notions and views.**

**(iv)          All these responsibilities coupled with**the **amalgam**of **our Constitution**and **accepted conventions**of the **Parliamentary democracy authorized him to act on the resignations which were meant to be resignations and on other material which has been made (lie grounds of dissolution.**

**(v)           A petition is not directly competent under Article 184(3) howsoever extended a meaning be given to Fundamental Right 17 and to concept of political justice.**

**So far as the first three conclusions arc concerned it is indeed so but these are mere aids to identification of powers and jurisdictions and for confining the actions within those identified limit. They cannot in a written Constitution be utilized for establishing the ascendency of one over the other for all purposes nor for claiming a residual power overreaching the source itself. So far as the fourth conclusion is concerned, the over elaborate discussion of the Nigerian case establishes the points that do not go outside the written Constitution for claiming more powers for anyone of the established authorities.**

**Now coming to the competence of the petition, the grounds of objections have already been noted. During the hearing of the arguments ‑I used an unusual expression “flowering of the Fundamental Rights in other provisions of the Constitution”. Learned Advocate‑General Punjab noted it and elicited the meaning and scope of it. In explaining this I hope to meet all the other objections taken to the competence of the petition.**

‘Political” has been defined in Black’s Law Dictionary as “pertaining or clothing to the Policy or the administration of Government, State or National; pertaining to, or incidental to, the exercise of the functions vested in those charged with the **conduct of Government; relating to management of the**affairs of the State.” In the same dictionary ‘Political rights” have been defined as “those which may be exercised in the formation or administration of the Government, Rights of citizens established or recognized by Constitutions whic1i give them the power to participate directly or indirectly in the establishment or administration of Government.”

The expression “flowering of an idea, artistic style, or political movement is its successful development” (BBC English Dictionary, page **44‑2).**

**In Miss Benazir Bhutto v. Federation of Pakistan and another PLD 1988 SC 416 at page 544, the following question and answer is recorded:‑**

**Question**

**“What is the remedy if a fully entrenched political party itself in power through Government constituted**by it, has **to account for what is provided in Article 17(2) relating to its accountability?”**

**Answer**

**“Theoretically**the **Government could make reference against its own party but practically it might never happen. For such eventuality it might be possible**for **the Supreme Court to act suo motu, if it holds so.”**

**The provisions of the Constitution which enable Political parties to reach the Government and after reaching the Government to continue their political purpose unimpeded are all directed towards ensuring fruition of this Fundamental Right.**

**It is difficult to agree with the contention that clause (2) of Article 17 of the Constitution has a restricted field. If the Constitution‑makers chose to treat it separately, compendiously and expressly, unlike any other known Constitution of the world, why should we restrict and limit it. For an extensive interpretation of it there is a positive indicator in the word “operating”. There is healthy operating, there is unhealthy operating. By taking care of unhealthy operating, healthy operation has been kept free of all limitations to flourish and flower inside the Government as well as outside it.**

I **I hold that petition is Competent not only because Fundamental Right 17 is directly involved but also because the first part of Article 14 of the Constitution stands violated by attributing subversion to the ousted Prime Minister. Further, the two documents described at page 45 of this judgment ‑­item 15(i) and (ii) reveal that the Prime Minister was being prevented by the President from extending the Political activity of the Executive Government of**the Federation to the Federally Administered Tribal Areas. This too amounted to violation of Fundamental Right 17(2).

This petition is allowed. The impugned order is declared to ‘ be without lawful authority and of no legal effect. As a consequence, the National Assembly, Prime Minister and the Cabinet shall stand restored and entitled to function as immediately before the impugned order was passed. All stops taken pursuant to the order, dated 18th April, 1W3 passed under Article 58(2)(b) of V the Constitution such as the appointment of the Care‑taker Cabinet etc. will, V therefore, be of no legal effect. However, all orders passed, acts done and measures taken in the meanwhile by the Care‑taker Government, which have been done, taken and given effect to in accordance with the terms of the Constitution and were required to be done or ‘taken for the ordinary orderly running of the State shall all be deemed to have been validly and legally done.

**SAAD SAOOD JAN, J.‑‑‑l**have had the privilege of reading the opinions of the learned Chief Justice and some of my learned brothers. In view of the importance of the controversy before the Court and the fact that I was unable to share the conclusion of my learned brothers on the question of the maintainability of this petition I am recording my opinion separately.

. 1‑A. This is a petition under Article 184(3) of ‑the Constitution, inter alia, calling in’ question the legality of the order, dated 18‑4‑1993 of the President of Pakistan whereby in exercise of his discretionary power under Article 58(2)(b) of the Constitution he dissolved the National Assembly and dismissed the Federal Cabinet of which the petitioner was the head as Prime Minister.

                ‑2. The petitioner was the Leader of the Islami Jamhoori Ittehad, an alliance of a number of political parties, In the General Election to the National ‑Assembly held in October 1990 the alliance was able to secure an, absolute majority. Accordingly, he formed the Government with ‘ himself as the Prime Minister. Under Article 52 of the Constitution the National Assembly was to enjoy a term of five years from the date of its first meeting. However, by t he order, dated 18‑4‑lV)3, the President dissolved the National Assembly,

dismissed him and his Cabinet and instead appointed a Care‑taker Cabinet

headed by respondent No.3.

.3. To challcng1c the legality of the order of the President, hereinafter called the Dissolution Order, a number of Constitution petitions were filed in the Lahore High Court and perhaps in some other High Courts also. One of the petitioners before the Lahore High Court was the Speaker of the National Assembly. However that may be, the petitioner and a number of other persons including Chaudhry Shujaat Hussain (Minister for Interior in the petitioner’s Cabinet) chose to rile petitions for the same reliefs directly in this Court under Article 184(3) of the Constitution. Except in the case of the petition filed by the petitioner no written statements \* were asked for from the respondents and Mr. Farooq Hassan who appeared on behalf of Chaudhry Shujaat Hussain was advised to confine his address to the legal questions arising in his petition. However, so far as the petitioner’s petition was concerned the respondents were called upon not only to rile written statements but also indicate the mat6rialwhich had persuaded the President to make the Dissolution Order.

4. The learned Attorney‑General opposed the petition both on legal and factual grounds. To begin with, he argued that a petition calling in question the legality of the Dissolution Order could not be entertained by this Court as it did not fall within the restricted jurisdiction vested in this Court under Article 18A(3), ibid. On merits his contention was that all the grounds stated in the Dissolution Order were well‑founded and these had a direct nexus with exercise of the power under Article, 58(2)(b), ibid.

5. The petition came up before the Court for preliminary hearing on 26‑4‑1993. After hearing counsel for the parties it was decided that the objection with regard to the maintainability of the petition and the issues arising on merits should be joined and that these should be heard and decided together.

6. To examine the objection taken up by the learned Attorney‑General with regard to the competency of this Court to entertain this petition two provisions of the Constitution may immediately be noticed. The first is contained in Article 175(2): it states that no Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. The expression ‘jurisdiction’ has been defined to be the power of the Court to hear and determine a cause and exercise judicial power in relation to it. (See Chief Secretary v. Sikandar Hayat Khan PLD 1982 SC (AJ&K) 112). Apart from Article 184 of the Constitution there is no other law which confers original jurisdiction on this Court in any matter requiring judicial determination of the rights of the parties. As regards Article 184, it contains two separate provisions. These are to be found in clauses (1) and (3) of the Article. Clause (1) relates to disputes between and among various governments of the Federation and it is therefore not relevant so far as this petition is concerned. Clause (3) reads as follows:

“Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any. of the Fundamental Rights conferred by Chapter 1 of Part 11 is involved, have the power to make an order of the nature mentioned in the said Article.”

According to the petitioner his case falls under clause (3) ibid, as he is seeking enforcement of his Fundamental Right as incorporated in clause (2) of Article 17. It need hardly be added that Article 17 ibid falls in Chapter 1 of Part 11 of the Constitution. Thus, if the petitioner can show that his petition is in substance one with reference to the enforcement of the Fundamental Right enshrined in clause (2) of Article 17 the objection of the learned Attorney ­General with regard to the competency of this petition will have to be repelled.

7.‑ It is contended by Mr. Farooq Hassan that the addition of the expression ‘with reference to’ before the words ‘the enforcement or in clause (3) of Article 184 is of great significance as it has the effect of enlarging the jurisdiction of the Court, for, with this addition the clause now not only encompasses matters which relate to the enforcement of the Fundamental Rights directly but embraces within its ambit such cases as well which have reference to the enforcement of these Rights. In this context, he also referred  to the case of Griswold v. Connecticut 381 US 479 wherein the scope of the right of freedom of association was held to extend to those matters also which fell within its penumbra. It was observed in this case:

“We protected the ‘freedom to associate and privacy is one’s association,’ noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a Constitutionally valid association, we held, was invalid ‘as entailing the likelihood of a substantial restraint upon the exercise by petitioner’s members of their right to freedom of association! **In other words, the**First Amendment has a penumbra where privacy is protected from Governmental intrusion...”

He has also contended that the Fundamental Rights are open ended’ and that there can never be any limit on the field in which they operate. Although, I am not prepared to accept this proposition without some reservation, but so far the original jurisdiction of this Court is concerned the position, to my mind is clear, that is, to invoke the jurisdiction of this Court under clause (3) of Article 184 it must be shown that the action complained against violates a Fundamental Right as set out in Chapter 1 of Part If either directly or transgresses the **field**in which the said right can reasonably be taken to be operative.

8. The case of the petitioner is that the Dissolution Order violates his Fundamental Right as enshrined in Article 17(2), ibid. It reads as follows:

“Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.”

Having been actively associated with the preparation of the draft of 1973 Constitution, as originally enacted in April 1973, it seems appropriate that I may say a few words about the background of this provision. It was a new addition to the list of Fundamental Rights inasmuch as it did not occur in the Constitutions of 1956 and 1962. The Constitution Committee of the National Assembly which was entrusted with the task of preparing the draft was of the opinion that the right of freedom of association as guaranteed in the earlier Constitutions of 1956 \*and 1962, qualified as it was with a number of restrictions, did not give sufficient protection to the political parties against the Executive which in the, past had no hesitation in limiting or stifling their ordinary activities, particularly if these were directed against the party in the Government. It was felt that for the democracy to flourish in the country, it was essential that the political parties should be entirely, unfettered except when they worked against the sovereignty and integrity of Pakistan. The experience of 1962 Constitution was before the Committee for despite the fact that it guaranteed freedom of association severest possible checks were placed on the otherwise legitimate functions of political parties. Some of the parties were election could hold himself  inter alia, that he was a member of a particular party. This was tantamount to denying to the political parties a place in the political processes in the country. In order to free the political parties from the strangle‑hold of the Executive and permit the citizens freedom of thought and action in political matters it was decided by the Constitution Committee to make a separate and independent provision so far as the political parties were concerned.

9. A perusal of Article 17(2) will show that the Fundamental Right contained therein has a somewhat limited scope inasmuch as it relates to the formation and membership of political parties. Thus, it no doubt gives freedom to the citizens to form political parties, enjoy the membership of the parties of their choice and by extension of the said right to take part in all political activities; but then this Article was never intended to be a complete charter of all political rights. The content of the right which it guarantees is clearly delineated by the terms in which it is expressed and I am not sure even if by the rule of progressive interpretation its scope can be extended to guaranteeing the right to the membership of legislative bodies or to the formation of the Government of the day.

. 10. On two earlier occasions this Court had the opportunity to examine the effect of Article 17(2) on certain existing laws. The judgments in both cases bear the same title, namely, Benazir Bhutto v. Federation of Pakistan. These are to be found in PLD 1988 SC 416 and PLD 1989 SC 66. In the first case the Court declared certain provisions of the Political Parties Act to‑be void as they clogged the proper and effective functioning of political parties. In the other case, the Court struck down section 21, Representation of the People Act, 1976, on account of its being violative of Article 17(2) to the extent it failed to recognize the existence and paticipation of the political parties in an election through allocation of common symbols for their candidates. In both these cases certain observations were made with regard to the role of political parties in a democracy, particularly of parliamentary type, but these observations have to be construed in the context of the controversies which arose in these cases; in one case the Court was considering the stifling effect of some of the provisions of the political Parties Act on the formation and functioning of political parties and in the second one it was faced with a situation where the members of political parties were being prevented from,, contesting election under a common colour.

11. But in the petition before us, the petitioner does not allege that he has been prevented from forming or being a member of a political party or that the political party of which he is the leader has in any manner been obstructed from carrying on its legitimate political activities or operations; on the other hand, what he says in substance is that the National Assembly where his party enjoys an absolute majority has been illegally dissolved. Now, Article 17(2) is not a check against all violations of the Constitution; as already stated, the terms in which it is expressed set out the content of the right guaranteed by it; it relates to the formation, membership and legitimate functioning of the political parties. It does not concern itself with the rights of the citizens when they sit as members of a legislative body. The term of the National Assembly, its constitution and the manner of its dissolution are regulated by other Articles of the Constitution; Article 17(2) has nothing to do with these matters. If the National Assembly is dissolved illegally it will be a violation of Articles 52 and 58. 1 do not see how anyone can complain that by the dissolution of the Assembly his right under Article 17(2) has been impinged upon. He will no doubt have a remedy under Article ‘ 199 of the Constitution before the High Court; the jurisdiction conferred on this Court by Article 184(3) is by the language in which it is, couched for too restricted to cover his petition.

13. Learned counsel for the petitioner **drew our attention to one of the**clauses of the Objectives Resolution which, with the insertion of Article 2A in the Constitution, is now a substantive part thereof. The said clause reads as follows:

“Wherein shall be guaranteed Fundamental Rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.”

The learned Counsel placed stress on the expression ‘political justice’ and went on to argue that the petitioner was seeking political justice from this Court when he directly filed the petition here. In this context, he also referred to a passage from the judgment of Zaffar Hussain Mir7a, J., in, the case of Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416. While commenting upon the above mentioned clause of the Objectives Resolution the learned Judge had observed:

“The expression ‘political justice’ is very significant and it has been placed in the category of Fundamental Rights. Political parties have become subject‑matter of Fundamental Right in consonance with the said provision in the Objectives Resolution. Even otherwise, speaking

broadly, our Constitution is a Federal Constitution based, on the model of Parliamentary form of representative Government prevalent in the United Kingdom. It is also clear from the Objectives Resolution that principles of democracy as indicate by Islam are I to be fully

observed. True, and far elections and the existence of political parties, is an essential adjunct of a functional democratic system of Government.”

The learned counsel for, the petitioner also referred to the meanings of the expressions ‘political justice’ and ‘political rights’ as given in certain dictionaries and drew our attention to a chapter on ‘political justice’ written by a distinguished author.

14. The expression ‘political justice’ represents an idea with myriad of facets and for that very reason it does not admit of a precise definition. Broadly speaking, every time a group or a class or even an individual is deprived of a right or a privilege which is available to the majority of others similarly placed or is discriminated against, one immediately starts thinking in terms of political E justice. So far as the Objectives Resolution is concerned it does not by itself add any new independent fundamental right in Chapter I of Part 11 of the Constitution so as to bring its violation within the compass of the jurisdiction conferred on this Court by Article 184(3), ibid. Its position vis‑a‑vis the other provisions of the Constitution was considered by this Court in the case of Hakam Khan v. Government of Pakistan PLD 1W2 SC 595. Speaking for the majority Nasim Hasan Shah, J. (now C.J.) observed:

“The role of the Objectives Resolution, accordingly in my humble view, notwithstanding the insertion of Article 2A in the Constitution (whereby the said Objectives Resolution has been made a substantive part thereof) has not been fundamentally transformed from the role envisaged for it at the outset; namely that it should serve as beacon light for the Constitution‑makers and guide them to formulate such provisions for the Constitution which reflect ideals and the objectives set forth therein. Thus, whereas after the adoption of the Objectives Resolution on 12th March, 1949, the Constitution‑makers were expected to draft such provisions for the Constitution which were to conform to its directives and the ideals enunciated by them in the Objectives Resolution and in case of any deviation from these directives, while drafting the proposed provisions for the Constitution the Constituent Assembly, before whom these draft provisions were to be placed, would .take the necessary remedial steps itself to ensure compliance with the principles laid down in the Objectives Resolution. However, when a Constitution already stands framed (in 1973) by the National Assembly of Pakistan exercising plenary powers in this behalf wherein detailed provisions in respect of all matters referred to in the Objectives Resolution have already been made and Article 2A was made a mandatory part thereof much later i.e. after 1985 accordingly now when a question arises whether any of the provisions of the 1973 Constitution exceeds in any particular respect the limits prescribed by Allah Almighty (within which His people alone can act) and some inconsistency is shown to exist between the existing provision of the Constitution and the limits to which the man‑made law can extend; this inconstancy will be resolved in the same manner as was originally envisaged by the authors and movers of the’ Objectives Resolution namely by the National Assembly itself. In practical terms, this implies in the changed context, that the impugned provision of the Constitution shall be corrected by suitably amending it through the amendment process laid down in the Constitution itself.”

As already mentioned, political justice has innumerable dimensions. Its theme runs throughout our Constitution. it is not confided to any particular portion thereof, in fact, the various Articles of the Constitution receive inspiration from or reflect one or the other aspect of political justice. There seems little doubt that the paramount consideration before the Constitution‑makers was that no section of the citizenry no matter how small it might be, should be deprived of equal participation in the national life and no one should feel that he has not had a fair deal. But then, the question before us is whether. this Court has the jurisdiction to entertain this petition directly; for that he has to show that there has been a violation of his right as included in Chapter 1 of Part 11 of the Constitution. The mere assertion that the petitioner is seeking political justice is not sufficient in this regard. On the other hand, in my opinion the dissolution of the National Assembly or the dismissal of his Cabinet are not matters which fall within the field in which Article 17(2) operates. As already noticed the action of the President emanates from the provisions of Article 58(2j(b). Whether this action is legal or not has to be examined on the basis of the language of this clause and the relevancy of the material upon which it was stated to have been based. It has nothing to do with the violation of Article 17(2) for, as already noticed, the Fundamental Right incorporated in this clause does not extend to guaranteeing the duration of the membership of the National Assembly. I am therefore of the opinion that this petition is not covered by clause (3) of Article 184 of the Constitution and as such it ought not to have been riled directly in this‑Court. However, as all my learned brothers, with, now, the exception of Sajjad Ali Shah, J., are of a different view I stand overruled.‑ Being thus placed I now proceed to record my views on the other question raised in the petition, that is, whether the preconditions for the exercise of the power under Article 58(2)(b) were satisfied in this case.

15. As already stated, the Dissolution order has been made by the President under Article 58(2)(b) of the Constitution. Although, the expression used in the Order is .... .... .... ... ... .... in exercise of the powers conferred on me by clause (2)(b) of Article 58 of the Constitution of the Islamic Republic of Pakistan and all other powers enabling me the learned Attorney‑General

made it clear that so far as the dissolution of the National Assembly was concerned the President had acted entirely under clause (2)(b), ibid. It reads as follows:

“Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where in his opinion,‑‑‑

(a)…………

(b)           a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.”

This clause has already been examined by this Court in great depth in two earlier cases reported as Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 106 and Ahmad Tariq Rahim v. Federation of Pakistan PLD 1992 SC 046. In Muhammad Saifullah Khan’s case, it was held after a threadbare analysis of the clause that an order of dissolution could be made by the President only when the machinery of the Government had broken down completely, its authority eroded and the Government could not be carried on in accordance with the provisions of the Constitution; it was further observed that the discretion given by the clause to the President was not absolute but was a qualified one in the sense that it was circumscribed by the objects of the law that conferred it and that before exercising it he had to form an opinion objectively with regard to the existence of the circumstances necessitating its exercise; it was also held that it was open to the Courts to examine the order of dissolution in order to see if it fell within the four corners of the clause. In Ahmad Tariq Rahim’s case, the Court stated:

“It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra‑Constitutional.”

In view of such extensive exposition of the nature ‑and extent of the power vesting in the President under the clause in question there is very little that I can add apart from merely reiterating that the most important precondition laid down for its exercise is that circumstances must exist which clearly indicate that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. The word ‘cannot’ as occurring in the clause H brings in not only an element of impossibility but also that of permanence in its construction and thus the President can exercise his power thereunder only if there is material before him showing that the affairs of the State have come to such a stage that it is no longer possible for the Government to function except by violating the Constitution.

16. Mr. Farooq Hassan argued that before dissolving the National Assembly the President must also specifically come to the conclusion, apart from the consideration that the Government of the Federation cannot function in accordance with the Constitution, that an appeal to the electorate is necessary. It is difficult to subscribe to this contention without qualification. Once the President forms an opinion that the Government of the Federation cannot be carried on in accordance with the Constitution he has just no option but to place the matter before the electorate, who are the political sovereign under our Constitution, to re‑exercise their choice with regard to the composition of the Government. The constitution does not provide any other. way out to the President for ours is a Parliamentary system of Government and except in some specified matters the President has to act on the advice of the Prime Minister in the performance of his functions irrespective of whether the latter is an elected one or merely his own nominee under Article 48(5)(b) of the Constitution. This feature of the Constitution was noticed by the Court in Muhammad Saifullah Khan’s case when it commented adversely upon the absence of the Prime Minister from the then Care‑taker cabinet. I should therefore think that once the President is satisfied that the Government of the Federation cannot function in accordance with the Constitution he has no option but to place the matter before the political sovereign of our country.

17. It was also contended by Mr. Farooq Hassan that the mere fact that the Government ‘of the Federation could not be carried on in accordance with the Constitution ought not to lead to the punishment of the members of the National Assembly through a dissolution order for it was against the rule of natural justice that the tenure of the members should be prematurely curtailed without giving them an opportunity of correcting the situation. This contention is also without substance. Under our system the Government of the Federation represents the majority of the members of the National Assembly and it cannot survive without their support. The Constitutional crisis or an impasse does not ordinarily develop overnight. If the majority of the members do not take remedial steps in time till the Constitutional stalemate actually occurs, the members can only blame themselves in the event the President intervenes to save the situation. Apart from that, dissolution of the Parliament is a normal incident of parliamentary democracy and no member can claim that he must be heard before dissolution.

18. Mr. Farooq Hassan also canvassed the view that the power of dissolution under Article 58(2)(b) could not be exercised by the President when the National Assembly was in session in pursuance of the requisition of the members under Article 54(3). In support of his argument he relied upon the provisions of the said clause (3) which states that when the Speaker summons the Assembly he alone can prorogue it. This contention is clearly without any merit as the summoning and prorogation of the Assembly and the dissolution of the Assembly are entirely different matters. In fact, if the argument of Mr. Farooq Hassan is accepted it will create a Constitutional I impasse inasmuch as to preclude the President from exercising his power of dissolution even when he has overwhelming evidence that the Government of the Federation cannot be carried on without violating the Constitution the members may requisition and hold an interminable session of the Assembly; this will clearly be an unwarranted clog on the power of **the President under**Article 58(2)(b), ibid.

18‑A. As already stated, the President made **the Dissolution Order on ~ 18‑4‑1993.**Shortly thereafter, he made a speech on the television and radio in which he elaborated some of the grounds on which the Order was based. The Order has been reproduced in extenso in some of the opinions recorded by my learned brothers. I need not therefore recite it here in full. It contains eight grounds. My learned brothers have made extensive comments on these grounds and have, with the exception of Sajjad Ali Shah, J. held that these do not furnish an acceptable basis for the exercise of the discretionary power vested in the President under Article 58(2)(b), ibid. As I agree with their conclusion I would content myself by making only some brief comments. J need hardly add that in exercising the jurisdiction of judicial review this Court is neither competent nor aims at to substitute its own opinion for that of the President.

19           ‘he first ground mentioned in the Dissolution Order is as follows:

‘The mass resignation of the members of the Opposition and of considerable numbers from the Treasury Benches, including several Ministers, inter alia, showing their desire to seek fresh mandate from the people have resulted in the Government of the Federation and the National Assembly losing the confidence of the people, and that the dissension therein, has nullified its mandate.”

In his speech the President referred to this ground and stated:

During the course of the arguments the learned Attorney‑General pointed out that the total strength of the National Assembly was 217. At the time of the dissolution 13 seats were already vacant on account of death and resignations of members. Of the remaining members 88 had handed over their letters of resignation to the President. Thus, if these resignations too had become effective there would have been 101 vacancies in the National Assembly which represented 50 per cent. of its total strength. He also pointed out that in the General Election held in October, 1990 the political alliance of which the petitioner was the leader had secured 37.3 per cent. of the total votes cast. Consequent upon shifting of political alliances in the National Assembly the petitioner now only represented 28.15 per cent. of the votes cast in the General Election. In the circumstances, the opinion of the President that the present National Assembly and the petitioner’s Government, had ceased to possess a representative character was well‑founded.

It will be noticed that in this ground reference has been made to the resignations of the members of the Opposition as well as of the treasury benches including some Ministers. It is also stated that those who had resigned were desirous of seeking fresh mandate from the people. It was not disputed by the learned Attorney‑General that despite these resignations the petitioner still had the support of members who constituted more than half of the total membership of the National Assembly. Further, the learned Attorney‑General was not clear that the resignation letters delivered to the President were intended to be acted upon. To begin with, his stand was that these resignation letters were handed over to the President only by way of protest and that these were not meant to be acted upon; later, he changed his position and stated that the resignation letters delivered to the President were also intended to be acted upon. However that may be, the position first adopted by him seems to be correct, ‘for, if those who had signed these letters were serious about leaving the National Assembly and seeking a fresh mandate from the people they would have sent them to the Speaker of the National Assembly who is the authority designated by the Constitution for the purpose. See Article 64(l) of the Constitution. The suggestion that the members had no faith in the Speaker and for that reason did not send the letters of resignation to him is entirely unconvincing for in none of the letters any such allegation has been made by the member concerned. In the circumstances, the recital in the Dissolution Order that those who had given their resignations to the President were desirous of seeking fresh mandate from the people is based on a mere surmise. As regards the percentage of the electorate which the petitioner now represents the statement prepared by the learned Attorney‑General is misleading for despite the shifting of the political alliances in the National Assembly the petitioner continues to have the support of more than 50 per cent. of the total membership of the National Assembly. The learned Attorney-­General did not care to work out the percentage of the electors which the members now supporting the petitioner represent.

21. During the course of the arguments Mr. S. M. Zafar, who appeared on behalf of the Care‑taker Prime Minister brought to our notice a case which came up for consideration from Western Nigeria before the Judicial Committee of the Private Council. It is reported as Adegbenro v. Akintola and another (1963) 3 All ER 544). In this case the Governor of Western Nigeria had removed the Premier from his office on receipt of a letter signed by a majority of the members of the House of the Assembly. This case has hardly any relevance to the petition before us for here it is not being alleged that the petitioner had lost the support of the majority of the members of the National Assembly.

22. As repeatedly stated above, ours is a parliamentary democracy. Ordinarily it is the Prime Minister who has the right to ask for the dissolution of the National Assembly. The Prime Minister can only be removed from office if he loses the support of the majority of the members of the Assembly. If the en mass resignation of the members of the Opposition is accepted as a valid test for determining if the Assembly has lost its representative character it will ‘ lead to a situation where a democratically elected Government can be blackmailed; in that case the majority in the Assembly will be at the mercy of the minority, for, though unable to defeat the Government in the House the latter will be able to use the device of en mass resignation in order to get the Government dismissed or have the Assembly dissolved.

23. 1 am therefore of the opinion that the material placed before the Court does not show that the National Assembly had lost the confidence of the people or the dissension therein had nullified its mandate. Accordingly, the first ground mentioned in the Dissolution Order was not available to the President for the exercise of his discretion under Article 58(2)(b), ibid.

24. It is the second ground which has elicited the most elaborate arguments from both sides. At one stage the learned Attorney‑General described it as the most important one from his point of view. It reads as follows:

“The Prime Minister held meetings with the President in March and April and the last on 14th April, 1993 when the President ‘urged him to take positive steps to resolve the grave internal and international problems confronting the country and the nation was anxiously looking forward to the announcement of concrete measures by the Government to improve the situation.’ Instead, the Prime Minister in his speech on 17th April, 1993 chose to divert the people’s attention by making false and malicious allegations against the President of Pakistan who is Head of State and represents the unity of the Republic. The tenor of the speech was that the Government could not be carried on in accordance with the provisions of the Constitution and he advanced his own reasons and theory for the same which reasons and theory, in fact, are unwarranted and misleading. The Prime Minister tried to cover up the failures and defaults of the Government although he was repeatedly apprised of the real reasons in this behalf, which he even accepted and agreed to rectify by specific measures on urgent basis. Further, the Prime Minister’s speech is tantamount to a call for agitation and in any case the speech and his conduct amounts to subversion of the Constitution.”

From the speech of the President, too, it is evident that he regarded this ground as one of the main considerations for making the Dissolution Order.

25. As will appear from its perusal, the President has in this ground referred to the several meetings which he had with the petitioner in the months of March and April, 1993, wherein he had been urging the latter to take positive steps to resolve the grave internal and international problems confronting the country as the people were anxiously looking forward to the announcement of concrete measures by his Government to improve the situation. In these meetings the petitioner had agreed to rectify the situation by taking remedial steps on an urgent basis. But then, without any justification he chose to deliver a speech on the electronic media on 17‑4‑1993 wherein he made false and malicious allegations against the President who was not only Head of the State but also represented the unity of the Republic. One of the objects of the speech of the petitioner was to divert the people’s attention from the real issues and he had attempted to do so by making unwarranted and misleading attacks on the President. The speech was a call to agitation and amounted to subversion of the Constitution.

26. The text of the speech made by‑the petitioner on 17‑4‑1993 has been placed before us. It is indeed strongly‑worded. There are clear references in‑it to the President and the Presidency, and allegations have been made that the office and place which were intended to represent the symbol of the unity of the Republic were being used to sow seeds of discord and destabilise an elected Government by subverting the loyalties of its supporters. It is indeed a harsh speech and constitutes a strong denunciation of the President.

27. It was ‘contended by Mr. Khalid Anwar who appeared for the petitioner that on the basis of the speech the petitioner and his cabinet ought not to have been condemned. He pointed out that it was made in the backdrop of extraordinary circumstances unheard of in a parliamentary democracy where the Head of the State had taken upon himself to weaken an elected Government. All that the petitioner did was to inform the people about the forces that were actively engaged in destabilising his Government. There was an atmosphere of uncertainty in the country and the people were in a state of bewilderance as all sorts of speculations were rife. They had the right to know what was transpiring in the corridors of powers. By making the speech the petitioner merely performed a duty which he owed to the people.

28. Although it may be debatable whether the petitioner should have made such a strongly‑worded speech or not but it cannot be denied that there are some extenuating circumstances in his favour which cannot be overlooked while assessing the propriety of his delivering such a speech. A large volume of clippings from the national Press has been placed on the record by both parties. It will appear from these clippings that for a few months preceding the dissolution of the Assembly the entire Press was persistently carrying reports of an irreconcilable rift between the President and the petitioner. The President Was being associated (whether rightly or wrongly) with a lobby which was actively advocating the dissolution of the National Assembly and the dismissal of the petitioner’s cabinet. There were also reports that the said lobby was weaning away. the loyalties of the members of the National Assembly supporting the petitioner’s Government with the threat of dissolution. In this context, the name of the Governor of a Province was also being taken, and it was alleged that while staying in the President House he was obtaining resignations of the members of the Assembly to strengthen the hands of the President for dissolving the National Assembly. The President must have been aware of what was being reported in the national press about him and the activities of the lobby which allegedly had his patronage. However, he did not take any steps to clarify his position. The learned Attorney‑General stated that the office that the President occupied was too exalted to permit him to take notice of the enamors and gossips that were being spread by irresponsible persons. I am afraid I cannot countenance such an explanation. No doubt the office of the President is a very high one but then he could not have ignored what the entire Press was reporting about his relations with the Prime Minister and the activities of the persons who were described to be close to him. He also could not afford to keep silent when the funnier‑makers and gossip­mongers were having a field day, creating an aura of uncertainty and insecurity in the country. In the prevailing circumstances it was but natural for the petitioner to feel threatened and alarmed that some forces outside the Constitution were out to destroy his Government through intrigues. His speech can hardly be treated as one aimed at subverting the Constitution.

29. The learned Attorney‑General described the speech of the petitioner as full of distortions and incorrect statements. In this context, he referred to the minutes of the meeting which the petitioner had with the President oil 14‑4‑1993. He placed before us a copy of the minutes of the meeting prepared by the petitioner’s secretariat. He pointed out that these minutes clearly indicate that the relations between the President and the Prime Minister were normal; the petitioner was looking forward to the President for guidance and counselling and bad even agreed that his meetings and consultations with the President should be more frequent to ward off speculations and avoid misunderstanding. He argued that this being the state of relations between the President and the petitioner on 14‑4‑1993 nothing had happened till 17‑4‑1993 when the petitioner came out with a speech extremely defamatory of the President.

30. It is difficult to treat the minutes as a true reflection of the relations between the President and the petitioner. To begin with, it may be mentioned that there was nothing on the record to show that the President had accepted these minutes as a correct record of what transpired between him and the petitioner; instead in respect of the meeting his secretariat chose to issue its own handout which reads as follows:‑‑

The Prime Minister called on the President today and they reviewed the grave and pressing national and international problems facing the country. The meeting lasted for above two hours.

The President urged the Prime Minister to undertake positive steps as early as possible to address effectively these problems to the satisfaction of the public representatives and the people. The Prime Minister undertook to do so on an urgent basis and to revert to the President which precise measures in this behalf.

The clippings from the national press do indicate that for sometime before the meeting the petitioner had been making efforts to improve his relations with the President. He had already altered his stand on the Eighth Amendment and had gone to the extent of nominating the President as his party’s candidate for the next Presidential Election. These were the two matters which according to the Press had soured his relations with the President. The manner in which the minutes have been worded too seems to be an effort on the para of the petitioner in that direction. In this regard, it should be noticed that these minutes were taken by two Federal Ministers to the President and were not forwarded to the latter’s Secretariat through the usual official channel. Admittedly, these Ministers were making serious efforts to resolve the differences between the President and the petitioner and to bring them close to each‑other. The tone of these minutes is very friendly and comes in sharp contrast with the language of the handout issued by the President’s Secretariat.

31. It is contended by the learned Attorney‑General that for the successful functioning of the Federal Government it was necessary that the President and the Prime Minister should have a working relationship. These were many matters relating to the affairs of the State, requiring these two high functionaries to get together for discussion across the table. After the petitioner had condemned the President as an intriguer, as a person who was destroying the Constitution and as one who had desecrated the office of the President there could not be any hope of the two meeting together face to face without acrimony. In the circumstances there could hardly be any doubt that with the petitioner as head of the Federal Cabinet the Government of the Federation could not be carried on in accordance with the provisions of the Constitution.

32. It seems difficult to support this contention. To begin with, personal feelings of the President and the Prime Minister towards each other do not enter into and are in fact irrelevant so far as the conduct ‘of the affairs of the Federation is concerned. Our Constitution clearly demarcates the spheres of activity of the President and the Prime Minister. Except in matters where the Constitution clearly expresses an intention to the contrary, the President has no option but to act on the advice of the Cabinet or the Prime Minister. This is exactly what Article 48 (1) of the Constitution states. If he does not approve of the advice given to him all that he can ask is that the advice should be re­considered by the cabinet. But if the same advice is re‑tendered to him he is under a duty to act in accordance therewith. I therefore do not see how the President can invoke his powers under Article 58(2)(b), ibid, to dissolve the National Assembly if his relations with the Prime Minister are on an edge.

33. The learned Advocate‑General of the Punjab was of the opinion that the Prime Minister was subordinate to the President. This opinion rinds no support whatsoever from the Constitution and the learned Advocate‑General did not even care to elaborate his contention. It has already been noticed that the Prime Minister represents the majority party of the members of the National Assembly which is a sovereign body. He is only responsible to the National Assembly. Except in certain specified matters the President to act upon this advice. The President cannot tell the Prime Minister how he should perform his functions which fall in the latter’s sphere except by way of advice which is not binding on him. The President cannot remove him from office unless he also chooses to dissolve the National Assembly whose representative he is. Thus, the element of subordination so far as the office of the Prime Minister vis‑a‑vis that of the President is concerned does not exist.

34. For the reasons just stated I am of the opinion that the second ground mentioned in the Dissolution Order does not furnish a legal basis for dissolving the National Assembly.

35. In the third ground mentioned in the Dissolution Order the petitioner’s Government has been accused of failing to **uphold and protect the provisions of the**Constitution which demarcate and define the respective spheres of activity, both executive and legislative, of the Federation and the Provinces and certain Constitutional institutions and in this context particular reference has been made to the Council of Common Interests and National Economic Council. It is further alleged that the Constitutional powers, rights and functions of the Provinces have been usurped, frustrated and interfered with in violation of the Constitution, in particular, Article 97, which sets down the extent of the executive authority of the Federation.

36. Consequent upon the General Elections to the Provincial Assemblies in October 1990 the Governments that were formed in the Provinces were very close to that of the  petitioner. In fact, in the Punjab the Alliance of which the petitioner was the head, assumed power. Consequently, there was greater cooperation among all the rive Governments than what had been witnessed in the immediate past. Now, it does not appear that any of the Provincial Governments ever charged the petitioner’s Government with trespassing into its field. The four letters of the Chief Ministers of the Provinces of Sindh, Balochistan and  N.W.F.P. which were placed on the record on behalf of the respondents to substantiate the accusation were of hardly any assistance to the learned Attorney‑General. Two of these letters were written by the Chief Minister of N.‑W.F.P. One was addressed to the petitioner and the other to the Minister for Provincial Coordination in his cabinet. The remaining two letters were written by the Chief Minister of Sindh to the President and the Chief Minister of Balochistan to the petitioner. As regards the letter of the Chief Minister, Sindh, it was written only on 21‑3‑1993, that is, when allegedly the President had started collecting material for dissolving the National Assembly. However that may be, it does not contain any assertion that the petitioner’s Government was flouting the Provincial autonomy as envisaged by the Constitution. it is also to be noticed that prior to this any complaint of the nature mentioned in this letter he had not made  against the petitioner’s  Government. In his letter the Chief Minister, Balochistan, has merely complained against the reduction of his Province’s share in the development surcharge. In the two letters written by Chief Minister of N.‑W.F.P., certain grievances of the Province with regard to non‑payment of net profits payable on hyderal generation in accordance with the decision of the Council of Common Interests, privatisation of WAPDA, Railways and Sid Northern Gas, concessions given to an industrial complex in the Port Qasim area and setting up of the National Highway  authority were agitated. These letters furnish too tenuous a basis to hold that the petitioner’s Government was not respecting the Constitutional limits in the exercise of the executive authority of the Federation or was .trespassing into the Provincial field.

37. As regards the Constitutional institutions like the Council of Common Interests and National Economic Council it was not the case of the Attorney­-General that no meetings of these Councils were ever held by the petitioner’s Government. On the other hand, he contended that the two Councils were not consulted by the petitioner’s Government in matters of vital importance even though these fell within their spheres. In this regard, he made particular reference to the policy of privatisation adopted by the petitioner’s Government. He pointed out that under Article 154 (1) of the Constitution it was the function of the Council of Common Interests to formulate and regulate policies in relation to matters included in Part 11 of the Federal Legislative List. According to him this List included the Railawys, WAPDA, nationalised banks and a large number of industrial units such as cement factories etc. Without asking the Council of Common Interests to first frame policies with regard to the functioning of these bodies the petitioner’s Government had started selling off their properties and had transferred the nationalised banks and industrial units to the private sector. This was, he argued, clearly a violation of the provisions of Article 154 (1), ibid.

38. There is substance in the assertion of the learned Attorney‑General that the Government ought not to have transferred any units included in Part II of the Federal Legislative List to the private sector in the absence of a policy or policies framed by the Council of Common Interests. But, then, perhaps this was a case of unintentional lapse on the part of the petitioner’s Government and not an instance of flagrant violation of the Constitution. It was for the first time in December 1992 that the Privatisation Commission which had been constituted to examine certain aspects of privatisation drew the

Government to this omission. It stated in its report:

 …….the whole process of privatisation, unilaterally initiated by the Federal Government, bypassing the Council of Common Interests and the NEC, appears to be ultra vires of the Constitution.”

Immediately thereafter the petitioner’s Government called a pre‑Council of Common Interests Meeting. It was held on 11‑4‑1993 and was attended by the representatives of the Provinces. It prepared agenda for the Council. However, before the Council could meet the Dissolution Order was made. In any case, the failure of the Government in asking the Council of Common Interests to frame a policy for privatisation can hardly lead to the conclusion that a stage had come where the Government of the Federation could not be carried on in accordance with the Constitution. The Council in any of its meetings could have regularised the steps already taken in ignorance of the Constitutional V position and even the joint session of the Parliament where the petitioner’s Government enjoyed the majority could have validated the past acts of the Governement in this regard. I am therefore of the opinion that ground (c) could also not form the basis for the exercise of power by the President under Article 58 (2) (b), ibid.

39. Ground (d) contains allegations of mal-administration, corruption and nepotism in the petitioner’s Government and ground (e) accuses the petitioner’s Government of unleashing a reign of terror against its opponents and mediamen. In support of these allegations the learned Attorney‑General relied entirely upon Press clippings. No doubt, these allegations if true would raise a serious question for consideration whether a Government which has stooped so low can be said to be functioning in accordance with the Constitution and if there would not be a sufficient justification for the President to invoke his powers under Article 58 (2)(b), ibid, to end the misery of the people. But then Press clippings can hardly form a basis for holding that the accusations made therein stand proved. It was not the case of the respondent that the allegations contained in the Press clippings were subjected to any inquiry of any sort or consequent upon an inquiry the petitioner’s Government was found guilty. An order of dissolution of the National Assembly on the basis of unsubstantiated allegations can hardly be sustained.

40. Ground (f) accuses the petitioner’s Government of violating the Constitution under rive separate sub‑heads. To begin with, it is alleged that the Cabinet w8 not taken into confidence when decisions on matters of policy were being taken and that numerous Ordinances had been issued without consulting it. Ordinarily in the Parliamentary form of Government the Cabinet is consulted when important decisions, (including issuance of **Ordinances) are taken because**of the collective responsibility of the members thereof. However, there is no such strict requirement that its non‑compliance would lay the Prime Minister open to the charge of violating the Constitution. It is then X stated that the Federal Ministers had at one time been asked not to see the President. Mr. Khalid Anwar denied that any such direction was given by the petitioner to any of his Cabinet colleagues and, if the Press reports are ‘ any indication, the members of the petitioner’s cabinet had been frequently seeing the President. However that may be, even if the petitioner had given any such direction that would be a case of extreme discourtesy and not one of violation of the Constitution, for, in respect of matters which do not fall within his exclusive sphere the President had only the right of information and that too only through the Prime Minister. See Article 46 of the Constitution.

Sub‑head (iii) refers to the misuse of the resources and agencies of the Government, including statutory corporations, authorities and banks, for political ends and purposes and for personal gains. The learned Attorney-­General was unable to refer to any case where the petitioner had used the said resources of agencies for his own enrichment of to secure political goals. Another sub‑head accused him for being responsible for massive wastage and dissipation of public funds and assets at the cost of the national exchequer without legal or valid justification resulting in increased deficit financing and indebtedness and ‘ thus adversely affecting the national interests including defence. In this context, the learned Attorney‑General has referred to an agreement which the petitioner’s Government was negotiating with ,a foreign firm for improving telecommunication facilities in Pakistan. According to him this agreement will not only compromise the defence of the country but also hand over an organization in which Pakistan had vital interest to a foreign company. It does not appear that the agreement has yet been finalised and there can be little doubt that the matter will come before the Parliament for enacting the requisite law to give effect to the provisions thereof. However that may be, it cannot reasonably be said on the basis of the agreement which has yet to be finalised that the petitioner’s Government cannot function in accordance with the Constitution. The last sub‑head relates to the treatment meted out by the petitioner’s Government to the Civil Services and in that context induction of certain officers of the armed forces in civil services and promotion of officers of Income tax Department have been referred.

41‑A. At this stage it may be noticed that the President has the right to address the National Assembly and to send messages to it. It does not appear that before exercising his extraordinary power of dissolution he sent any message to the National Assembly pointing out the shortcomings of the Government as detailed in sub‑heads (iii), (iv) and (v). On the other hand, it is quite clear from the address which he made to the joint session of the Parliament only four months before making the Dissolution Order that he was satisfied with the performance of both the petitioner’s Government and the National Assembly. In the circumstances, I am of the view that ground (1) was also not available to the President for dissolving the National Assembly.

42. Ground (g) takes into account the serious allegations which were made by Begum Nuzhat Asif Nawaz about the highhanded treatment meted out to her late husband by the petitioner’s Government and the circumstances culminating in his death. On the basis of these allegations a conclusion had **been drawn that the**highest functionaries of the petitioner’s Government had been subverting the authority of the Armed Forces and the machinery of the Government and the Constitution itself. It may be mentioned that General Asif Nawaz, Army Chief of Staff, suddenly died in January, 1W3. Three months later his widow held a Press conference wherein she alleged that her husband had not died a natural death and that some members of petitioner’s cabinet had been threatening and maltreatment him during his lifetime. As regards the allegation of maltreatment and issuance of threats is concerned there is no evidence before this Court apart from the assertion of the Begum Sahiba A herself. As regards the circumstances surrounding the death of the General Commission consisting of three Judges of this Court was constituted. According to the finding of the Commission the General had died on natural causes. In the circumstances, it is surprising that the allegation made by the begum Sahiba has been made a ground for dissolving the National Assembly.

(43)Ground (h) reads as follows:‑

“The Government of the Federation for the above reasons, inter alia, is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic situation confronting the country, necessitating the requirement of a fresh mandate from the people of Pakistan.”

So far as the grounds ‘a’ to ‘g’ are concerned I have already examined them. I am of the view that none of these either by itself or in conjunction with others fulfils the precondition for the exercise of the power under Article 58 (2) (b). As regards the allegation that the petitioner’s Government was not in a position to meet properly and positively the threat to the security and integrity of Pakistan or deal with the grave economic situation confronting the country it is‑too vague to require any comment. As already stated, only four months prior to the making of the Dissolution order the President had addressed the joint session of the Parliament. He did not in his address refer to the inability of petitioner’s Government to ‘deal ‑with the threats’ mentioned in ground (h). It is incredible that within a space of four months its performance had degenerated to the extent that it‑could no longer look after the affairs of the  State and that it became imperative that it should seek a fresh mandate from  the people of Pakistan. It was clearly an inadmissible ground for dissolving the National Assembly.

44. For the reasons stated above, I am in agreement with the view expressed by the majority of my learned brothers that the grounds given by the President in support of the Dissolution Order could not at all lead to the conclusion that the Government of the Federation could not be carried on in accordance with the Constitution. Accordingly, the precondition for the exercise of the power by the President under Article 58(2)(b) was not satisfied and as such the said Order was not sustainable.

45. The above are ‑my reasons in support of the Short Order already announced.

**AJMAL MIAN, J.‑‑‑I**have had the advantage of reading the proposed opinion of my learned brother Shaflur Rahman, J. Though I agree with the  conclusion recorded by his Lordship, but I would like to record my own reasons.

                The petitioner, who was the Prime Minister, through this petition under Article 184 (3) of the Constitution of the Islamic Republic of Pakistan  1973 (hereinafter referred to as ‘the Constitution’) has impugned the President’s Order dated 18‑4‑1993 dissolving the National Assembly and dismissing the Cabinet and the petitioner as the Prime Minister, passed pursuant to the power conferred on him under Article 58‑ (2) (b) of the Constitution.

                2. The learned Attorney‑General, Mr. Aziz A. Munshi, appearing for the Federation and Mr. S.M. War, learned Senior ASC appearing for the Care­ taker Prime Minister, have raised a preliminary objection as to the maintainability of above constitutional petition directly in this Court besides opposing the same on merits. It would be appropriate first to deal with the above preliminary objection before dilating upon the merits of the case. The precise objection raised by them was that the impugned order has not violated any of the Fundamental Rights contained in Chapter 1 of Part II of the Constitution and, therefore, clause (3) of Article 184 of the Constitution could not be pressed into service by the petitioner.

                On the other hand, Mr. Khalid Anwar, learned ASC appearing for the petitioner, has contended that in order to invoke above clause (3) of Article 184 of the Constitution, it is necessary to show that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part 11 of the Constitution is involved. According to him, the above requirement is met in the present case. Dr. Farooq Hassan, learned ASC appearing for another petitioner, namely, Mr. Ajmal Khattak, joined him in his above contention.

3. . In order to appreciate the above controversy, it may be advantageous to quote above clause (3) of Article 184 of the Constitution, which reads as follows.‑‑

“184(3).‑‑Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with                reference to the enforcement of any of the Fundamental Rights         conferred by Chapter I of Part 11 is involved, have the power to make               an order of the nature mentioned in the said Article.”

A perusal of the above‑quoted clause indicates that without prejudice  The provisions of Article, 199 of the Constitution, which confers A constitutional jurisdiction on the High Courts, the Supreme Court has been empowered to make an order of the nature mentioned in the above Article 199 provided the following two conditions are fulfilled:‑‑

a question of public importance is involved;

(ii)           with reference to the enforcement of any of the Fundamental Rights guaranteed by Chapter 1, Part 11 of the Constitution, i.e. Articles 8 to 28.

4. The parties are not at issue on the above first requirement. It is a common ground that the above case involves‑ questions of public importance. But according to the learned Attorney‑General and Mr. S.M. War, the above second requirement is not present in the case in hand. The thrust of their arguments was that in the instant case the question involved is, whether the impugned order falls within the ambit of Article 58(2)(b) of the Constitution and not, whether the above order is violative of any of the Fundamental Rights. According to them, there is no vested right in the petitioner or any other person to continue to be a member of the National Assembly for a period of five years nor there is any such right to continue to be the Prime Minister or a Minister for the above period. To reinforce the above submissions, they have further contended that there is a distinction between a Fundamental Right and a Political or Legal Right. According to Mr. S.M. Zafar, all political activities outside the Parliament fall under the category of Fundamental Rights guaranteed under Article 17 of the Constitution but once a political party gets inside the Parliament, the right becomes political or legal. Mr. Aziz A. Munshi, learned Attorney‑General, has put the above submission, somewhat differently by urging that the political process begins with the formation of a political party under Article 17 of the Constitution but it is carried forward or is taken over by other Articles of the Constitution and laws.

Whereas, Mr. Khalid Anwar in furtherance of his above submission besides relying on Article 17, has heavily relied upon the following portion of the Objectives Resolution, which was incorporated as a Preamble in original Constitution, and which has now been incorporated as a substantive part of the Constitution by Article 2A thereof‑

“Wherein shall be guaranteed Fundamental Rights, including equality of status, Of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;”

According to him the term “political justice” employed in above ­quoted portion of the Objectives Resolution encompasses the right to participate in election, to form the Government, and if one has majority, to run the Government so long as it is not lawfully terminated. His further submission was that by virtue of the above para. of the Objectives Resolution, three additional Fundamental Rights relating to Political, Social and Economic Justice are to be read into the Constitution. He also submitted that besides the violation of Article 17 of the Constitution, Article 19 relating to freedom of speech has also been violated as the impugned order was passed because of the speech made by the petitioner on 17th April, 1993, on the electric media.

5. It may be pertinent to observe that Article 2A, which has been incorporated by P.O. 14 of 1985, in order to make the Objectives Resolution as a substantive part of the Constitution, has been subject‑matter of a recent judgment of this Court in the case of Hakim Khan and 3 others v. Government of Pakistan (PLD 1992 SC 595), wherein Nasim Hasan Shah, J. (as his Lordship then was) and Shariur Rahman, J. have dealt with the effect of the incorporation of Article 2A as a part of the Constitution as under:‑‑

“Nasim Hasan Shah, J.‑‑‑The role of the Objectives Resolution, accordingly in my humble view, notwithstanding the insertion of Article 2A in the Constitution (whereby the said Objectives Resolution, has been made a substantive part thereof) has not been fundamentally transformed from the role envisaged for it at the outset; namely that it should serve as beacon light for the Constitution­ makers and guide them to formulate such provisions for the Constitution which reflect ideals and the objectives set forth therein. Thus, whereas after the adoption of the Objectives Resolution on 12th March, 1949, the Constitution‑makers were expected to draft such provisions for the Constitution which were to conform to its directives and the ideals enunciated by them in the Objectives Resolution and in case of any deviation from these directives, while drafting the proposed provisions for the Constitution the Constituent Assembly, before whom these draft provisions were to be placed, would take the necessary remedial steps itself to ensure compliance With the principles laid down in the objectives Resolution. However, when a Constitution already stands framed (in 1973) by the National Assembly of Pakistan exercising plenary ‑powers in this behalf wherein detailed provisions in respect of all matters referred to in the Objectives Resolution have already been made and Article 2A was made a mandatory part thereof much later i.e. after 1985 accordingly now when a question arises whether any of the provisions of the 1973’ Constitution exceeds in any particular respect, the limits prescribed by Allah Almighty (within which His people alone can act) and some inconsistency is shown to exist between the existing provision of the Constitution, and the limits to which the man‑made law can extend; this inconsistency will be resolved in the same manner as was originally envisaged by the authors and movers of the Objectives Resolution namely by the National Assembly itself. In practical terms, this implies in the changed context that the impugned provision of the Constitution shall be corrected by suitably amending it through the amendment process laid down in the Constitution itself.”

“Shafiur Rahman, J.‑‑‑18. The Court’s primary duty is to adjudicate by reference to positive law in a manner to lend certainty,, clarity and precision to the application of law to concrete questions of law and fact necessarily required to be decided. The Court should not undertake examination of theoretical academic questions nor should ordinarily look for anomalies in the Constitution with a view to suggest to Parliament amendment or improvement in the Constitution. If the introduction of Article 2A of the Constitution as a substantive provision of the Constitution does not by itself authorise the Court to adopt it as a test of repugnancy with regard to the other Constitutional provisions it would be better for the superior Courts not to undertake this exercise or to record opinions on merits with regard to such repugnancy. That would be a commitment not conducive to the purely judicial functions that the Courts are required to perform under the Constitution.”

6.                             1 am inclined to take the view that the factum that the Objectives Resolution has been incorporated as a substantive part of the Constitution by virtue of Article 2A, does not justify reading into any additional Fundamental Rights in the Chapter pertaining to Fundamental Rights contained in the Constitution. The object of adopting the Objectives Resolution in 1949 has been thoroughly discussed in the case of Hakim Khan (supra), namely, to provide guideline and to serve as a beacon light to the framers of Constitution but it was never intended or designed to be enforced as Fundamental Rights. The framers of the Constitution have in fact acted upon, on the Objectives Resolution by incorporating the various Fundamental Rights contained in Articles 8 to 27, which cover Political Social and Economic Justice, to add to the above list any other Fundamental Right on the basis of the Objectives Resolution is the function of the Parliament and not of the Court. Flow ever, the Courts while construing Fundamental Rights should keep in view the Objectives Resolution and should place widest possible construction as to advance the goals targeted/envisaged therein.

Mr. S.M. Zafar has pointed Gut that pursuant to the Objectives Resolution, Articles 9, 10, 12, 13, 14, 15, 16, 17, 19 and 25 inter alia pertaining to Political Justice have been incorporated. He has categorized the Fundamental Rights into following categories:‑‑

(i)            Fundamental Rights relating to Political Justice, namely, Articles 9 (Security of person), 10.(Safeguards as to arrest and detention), 12 (Protection against retrospective punishment), 13 (Protection against double punishment and self‑incrimination), 14 (Inviolability of dignity of man, etc.), 15 (Freedom of movement, etc.), 16 (Freedom of  movement)

 (ii)          Fundamental Rights pertaining to Social Justice, i.e. Articles 9 (Security of person), 11 (Slavery, forced labour, etc., prohibited), 13 (Protection against double punishment and self‑incrimination), 14 (1) (Inviolability of dignity of man, etc.), 26 (Non‑discrimination in respect of access to public), 27 (Safeguard against discrimination in services) and 28 (Preservation of language, script and culture).

(iii)         Fundamental Rights relating to Economic Justice, namely, Articles 18 (Freedom of Trade, business or profession), 21 (Safeguard against taxation for purposes of any particular religion), 23 (Provision as to property) and 24 (Protection of property rights); and assembly), 17 (Freedom of association), 19 (Freedom of speech etc) and 25 (Equality of citizens).

Fundamental Rights pertaining to Religious Rights, namely, Articles 20 (Freedom to profess religion and to manage religious institutions), 21 (Safeguard against taxation for purposes of any particular religion) and 22 (Safeguards as to educational institutions in respect of religion, etc.).

The above categorisation indicates that the framers of the Constitution were not oblivious of the mandate given to them by the Objectives Resolution.

7.‑‑‑(a) Both the parties have referred to the treatises and dictionaries on the term ‘Political Justice” in order to show, what it implies. Mr. Khalid Anwar has relied upon the following extracts from the book “Justice and Natural Social and Political” by Dr. Chatervedi, wherein the above term has been dilated upon as follows:‑‑

“Political justice would, therefore proceed much farther than mere right to adult suffrage or equal franchise and would embrace within its fold the ability and the liberty of the individual to share directly or indirectly in the administration of each body, institution or establishment serving his needs.

4.             Rights enforceable against State.‑‑Political justice in the sense in which it was conceived by Marcus Aurelius in his Mediations, is mere idea of a polity in which there is the same law for all, a polity administered with regard to equal rights and equal freedom of speech, and the idea of a Government which respects most of all the freedoms of the governed; and in that sense, it is mere overlapping of the other values ensured in the name of equality of status and of opportunity or liberty of thought, expression, belief, faith and worship. Political justice, in this sense stands for the guaranteed Fundamental Rights.” He has also referred to the meaning in ‘Black’s Law Dictionary’ (5th Edition) and in the ‘Words and Phrases, (Permanent Edition‑‑West Publishing Co.), Volume 32A:

Black’s Law Dictionary :

“Political rights, ‘‑‑Those which may be exercised in the formation or administration of the government. Rights of citizens established or recognized by Constitutions which give them the power to participate directly or indirectly in the establishment or administration of government.”

‘Political rights’ consist in the power to participate directly or indirectly in the establishment or administration of government such as the right of citizenship, suffrage, etc. Friendly v. Olcott, .123 P.53, 56, 61 Or. 580”

‘Political rights’ consist in the power to participate, directly or indirectly, in the establishment and management of the government. State ex rel. McGoveren v. Gilkison, 196 N.E. 231, 208 Ind. 416.”

‘Political rights’ are fixed by the Constitution and consist in the power to participate, directly or indirectly, in establishment or management of government, examples being right of voting for public officers, and of being elected. Caven v. Clark., D.C. Ark. 78 F. Supp. 295, 298, 303.

‘Political rights’ consist in the power to participate, directly or indirectly, in the establishment or management of the government These political rights are fixed by the Constitution. Every citizen ha the right of voting for public officers and of being elected. These are the political rights which the humblest citizen possesses. Winnett v Adams, 99 N.W. 681, 684, 71 Neb, 817, quoting 2 Bouv. Law Dict.”

(b) On the other hand, Mr. S.M. Zafar has quoted the following passages from the book titled, “A Theory of Justice” by John Rawals:

“I now wish to consider political justice, that is, the justice of the constitution, and to sketch the meaning of equal liberty for this part of the basic structure. Political justice has two aspects arising from the fact that a just constitution is a case of imperfect procedural justice. First, the constitution is to be a just procedure satisfying ‘the requirements of equal liberty; and second, it is to be framed so that of all the just arrangements which are feasible, it is more likely than any other to result in a just and effective system of legislation. The justice of the constitution is to be assessed under both headings in the light of what circumstances permit, these assessments being made from the standpoint of the Constitutional convention.

What is essential is that the Constitution should establish equal rights to engage in public affairs and that measures be taken to maintain the fair value of these liberties. In a well‑governed State only a small fraction of persons may devote much of their time to politics. There are many other forms of human good. But this fraction, whatever its size, will most likely be drawn more or less equally from all sectors of society. The many communities of interests and centres of political fife will have their active members who look after their concerns.

(c) Reference has also been made by the learned counsel for the parties to the following observations of Zaffar Hussain Mirza, J. in the case of Miss Bcnazir Bhutto v. Federation of Pakistan and others (PLD 1988 SC 416), relevant at page 616:‑‑

“The expression “political justice” is very significant and it has been placed in the category of fundamental rights. Political parties have become a subject‑matter of a fundamental right in consonance with the said provision in the Objectives Resolution. Even otherwise, speaking broadly on the model of Parliamentary form of representative Government prevalent in United Kingdom. It is also clear from the Objectives Resolution that principles of democracy as enunciated by Islam are to be fully observed.”

8. In my view, the political rights and the political justice are inter linked with each other. The former encompasses the right to participate directly or indirectly in the establishment or management of the Government. These rights ate delineated and demarcated in the Constitution of every country‑, whereas the latter caters for providing in the Constitution equal ‑rights to engage and participate in the public affairs. It envisages that the Constitution should guarantee equal liberty and provide an efficient and honest machinery/mechanism through which people can elect their representatives in a manner which should ensure that‑‑

(i)            each vote has approximately the same weight in determining the

                outcome of the election;

(ii)           people similarly endowed and motivated should have roughly the same chance of attaining political authority irrespective of their economic and social class;

the majority should get into power.

The Fundamental Rights contained in ‘ our Constitution referred to hereinabove provided to some extent for the Political Rights and the Political Justice. However, there is a lot of scope for improving upon and expanding the same through legislation and the judicial creativity.

9. 1 am inclined to hold that the question whether this Court can entertain the above petition under Article 184 (3) can be decided in favour of the petitioner, if I were to hold that the order of dissolution of **the Assembly and the dismissal**of the petitioner as the Prime Minister and his Cabinet in any way is violative of Article 17 of the Constitution or any other Fundamental Rights contained therein. It may be pertinent to refer to Article 17 of the Constitution, which reads as follows:‑‑

“17.‑‑(1.) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

(2)           Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of ,Pakistan, the Federal Government shall, within fifteen days of suit declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3)                           Every political party shall account for the source of its funds in

                accordance with law.”

                A perusal of the above Article indicates that clause (1) thereof confers on every citizen the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. Whereas, clause (2) confers on every citizen, not being in the service of Pakistan, the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan. It also empowers the Federal Government to declare that a political party has been formed, or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, subject to a reference to be made within 15 days from such declaration to the Supreme Court whose decision on such reference is to be, final.

10. The question in issue is, as to whether the right to form a political party or to be a member of such a party conferred under above clause (2) of Article 17 terminates upon the formation of a political party or upon becoming a member of such a party or does it continue up to the stage of contesting election on the basis of a political party, formation of a Government, if such a party has acquired majority in the House and to remain in power till the termination of the Constitutional duration by afflux of time or earlier in terms of the provisions of the Constitution.

                ,In this regard, reference may be made to the case of M iss  Benazir Bhutto (supra), Wherein a direct petition was riled challenging certain provisions of the Political Parties Act, 1962, which did not permit participation in elections on party basis. In the above case, the Federation raised an objection as to the maintainability of the above petitioner directly before this Court on two grounds. Firstly, that the petitioner was not an aggrieved party and secondly, for the reason of pendency of three petitions in the High Courts of Lahore and Sindh, claiming identical relief. On the above first ground, Muhammad Haleem, CJ. held that:

“If the framers of the Constitution had intended the proceedings for the enforcement of the Fundamental Rights to be in a strait‑jacket, then they would have said so, but not having done that, I would not read any constraint in it. Article 184 (3) therefore, provides abundant’ scope for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction. It would be for the Supreme Court to Jay down the contours generally in order to regulate the proceedings of group or class of actions from case to case.”

Whereas, on the above second ground, the then learned Chief Justice concluded, as under:‑.

“As to the choice of the forum, it is no doubt correct that ordinarily the forum of the Court in the lower hierarchy should be invoked but that principle is not inviolable and genuine exceptions can exist to take it out from that practice such, as in the present case where there was a denial of justice as a result of the proceedings being dilatory.

As the human right norm is higher than the law then any violation and its consequent enforcement can only be controlled by an inbuilt limitation in the provision itself. A rule of practice which has received recognition as a principle of law is not higher than the norm and the machinery for its enforcement, and, therefore, it cannot control judicial power so as to stultify it until, of course, the petitioner has herself, in the strict sense, elected to seek her remedy from a Court of lower hierarchy exercising concurrent jurisdiction which is not the case here.”

The learned Chief Justice and his companion Judges, who recorded their separate opinions had highlighted the importance of political parties in a Parliamentary form of Government. Suffice it to quote the following passage from Muhammad ‘Haleem, CJ.’s opinion:‑‑

“Our Constitution is of the pattern of Parliamentary’ democracy with a Cabinet system based on party system as essentially it is composed of the representatives of a party which is in majority .... it is a party system that converts the results of a Parliamentary election into a Government.”

Act, 1962, which did not ‘ permit the participation in the elections on party basis were declared as null and void being violative of Article 17(2) of the Constitution.

                11. The judgment, which is more aptly applicable is the case of Mrs. Banazir Bhutto and another v. Federation ‑of Pakistan and another (PLD 1989 SC 66), which was also a direct petition filed in this Court under Article 184(3) of the Constitution, challenging section 21(l)(b) of the Representation of the People Act, 1976, which allowed the allocation of symbol to each individual candidate and not to a party. In the above report, the Federation had raised an objection to the effect that the Constitutional petition was not maintainable because no Fundamental Right of an individual citizen, as such, was in jeopardy and that the freedom to join any political party remained unaffected. The above objection was overruled on the basis of the above earlier judgment in the case of Miss Benazir Bhutto v. Federation of Pakistan and others (PLD

1988 SC 416) (supra), wherein, inter alia, it has been held that “the forming of a political party necessarily implies the carrying on of all its activities as F otherwise the formation itself would be of no consequence.” The above provision of the  presentation of the People Act, namely, section 21 was declared as violative of Fundamental Rights contained in Article 17(2) of the Constitution inter alia for the following reasons recorded by Shaflur Ralunan, J. in his opinion:‑‑

“Our conclusion therefore, is that section 21 of the Act as amended by Ordinances Nos. 11 ‑and VIII of 1985, is violative of Fundamental Rights contained in Article 17 (2) of the Constitution in so far as it’ fails to recognise the ‘existence and participation of the Political Parties in the process of elections, particularly in the matter of allocation of symbols and is for that reason void to that extent. Every Political Party is eligible to participate in the Elections to every seat in the National and the Provincial Assemblies scheduled to be held on the 16th of November, 1988. The political parties shall be entitled to avail of the provisions of sub‑rule (2) of rule 9 of the Rules to seek allotment of any of the prescribed symbols. Both the petitions are allowed in these terms leaving the parties to bear their own costs. Federal Government shall pay a fee of Rs.5,000 each to two amicus curiae Mr. Ali Ahmed Fazeel and Mr. S.M. Zafar.”

It may be pertinent to point out that in the above case, it was also contended that Article 17 of the Constitution does not confer any right on a political party to seek allocation of a symbol‑in the party name and that the question of allocation of the symbol was covered by the Statutory provision in the form of section 21 of the Representation of the People Act, 1976, or the rules framed thereunder. The above contention was repelled. The above argument was in fact in line with what has been now urged by the learned Attorney‑General, Mr. Aziz A. Munshi and by Mr. S.M. Zafar in the present case, namely, that the petitioner had no vested right either to remain as a member of the National Assembly for a period of five years or to remain as the Prime Minister for the above period as’no such right can be spelt out from any of the Fundamental Rights, as the same are subject‑matters of other Constitutional provisions,

12. Learned Attorney‑General and Mr. S.M. Zafar have referred to the following cases in order to contend that the petitioner did not have any vested right to remain as a member of the National Assembly for a period of five years and that the termination of the life of the Assembly prior to the expiry of the period provided under Article 52 does not involve infringement of any Fundamental Right:

(i)            Kh. Ahmad Tariq Rahim v. Federation of Pakistan (PLD 1991 Lahore

                78 (relevant at page 116);

wherein Muhammad Rafiq Tarar, C.J. (as his Lordship then was) has held that the members of the dissolved National Assembly could claim no vested right to enjoy full term of five years when ostensibly they lost confidence of the people on account of their performance and conduct in the National Assembly.

(ii)           Reference by his Excellency the Governor‑General (PLD 1955 FC 435

                (at page 471);.

In the above case, the Federal Court while answering a reference made by the Governor‑General observed as follows:‑‑

“It should not be overlooked that dissolution does not in any way adversely affect the rights of the members of the Assembly. If their claim that they are in the Assembly by the consent of the people and as their representative and not merely because of a statutory provision is good, they can seek re‑election to the, new Constituent Assembly, there being no disqualification attaching to them from being chosen as members of that Assembly. If they receive a fresh electoral mandate, they can return to the Assembly with greater popular acclamation and thus disprove the allegation that they represent nobody except themselves.

(iii)         State of Rajasthan v. Union of India (AIR 1977 SC 1361, relevant at page 1402);

in which Bhagwati, J. speaking for himself and for A.C. Gupta, J. observed that they were of the view that the threatened dissolution of the Legislative Assembly did not involve any infraction of the Fundamental Right guaranteed to the petitioners under Articles 19(l)(0 and 31 and because of that Writ was not maintainable under Article 32.

 (iv)Capt. KanwaIjit Singh v. Union of India (AIR 1991 Punjab 54, relevant  at page 82);

In the above case, a Full Bench of the Punjab High Court while following the above Indian Supreme Court’s case held that:

“To be a member of the Assembly and the mechanism constituting the same is a statutory right vested by the statute. It cannot be stretched beyond the four corners of the statute on any equitable ground.”

It was also held that no provision of the Constitution had been pointed on under which the life of the Assembly could be extended.

(v)           All India Bank Employees’ Association v. The National Industrial Tribunal,(Bank Disputes) and others (AIR 1962 SC 171, relevant at page 179); in which the Indian Supreme Court while dealing with Article 19 (1) (c) of the Indian Constitution held that the same does not extend to concomitant right to effective bargaining or to strike. Ayyangar, J. while speaking on behalf of the Court also observed that “stream cannot rise higher than its source”.

13.                          Whereas, Mr. Khalid Anwar has referred to the following cases:‑‑

 (i) Olga Tellis and others v. Bombay Municipal Corporation and others (AIR 1986 SC 180); in which the Indian Supreme Court while construing Article 21 of the Indian Constitution pertaining to the right of life held that the above Article was to be viewed in conjunction with Articles 39 (a) and 41 relating to State policy requiring the State to secure to the citizens an adequate means of livelihood and the right to work, and that eviction of pavement dwellers and slums will lead to deprivation of their livelihood and consequently to the deprivation of life or personal liberty in terms of the above Article.‑ It was further held that though under section 314 of the Bombay Municipal Corporation Act, 1886, the Commissioner had the discretion to cause an encroachment to be removed with or without notice, that discretion is to be exercised in a reasonable manner so as to comply with the Constitutional mandate. It was also held that the pavement dwellers were entitled to be heard before they could be removed.

(ii)                           State of Himachal Pradesh and another v. Umed Ram Sharma and

                others (AIR 1986 SC 847);

In the above case the judgment of a Division Bench of the High Court was impugned, whereby the State Government was directed to construct road for providing access to certain village situated in hilly areas. The Indian Supreme Court while maintaining the above order with certain clarifications and while construing Articles 19(l)(d), 21 and 38 (2) has held that every person is entitled to life as enjoined in Article 21 of the Constitution and every personhas right under Article 19(l)(d) to move freely throughout the territory of India. It has been further held that the right to life under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself and that, accordingly, there should be road for communication in reasonable conditions in view of the above Constitutional imperatives.

 A. Sharwani and others v. Government of Pakistan (1991 SCMR 1041).

In this matter, several direct petitions under Article 184 (3) of the Constitution were riled by certain retired civil servants/pensioners and their Association impugning discriminatory treatment meted out to them in respect of certain benefits granted to the pensioners on the ground of violation of inter alia Article 25 of the Constitution. The Federation raised an objection as to the maintainability of above Constitutional petitions directly in this Court. I in my opinion (which was adopted as the judgment of the Court), while overruling the above objection observed as follows:‑‑

“13.        Even otherwise, the above proceedings are in the nature of public interest litigation and, therefore, in order to advance the cause of justice and public good, the power conferred on this Court under clause (3) of Article 184 of the Constitution is to be exercised liberally unfettered with technicalities.”

14.          Reference may also be made to the following cases:‑‑

(i)            Muhammad Nur Hussain v. The Province of East Pakistan and others

                (PLD 1959 SC (Pak.) 470);

In which this Court while dealing with the matter relating to the land acquisition under the East , Bengal (Emergency) Requisition of Property Act, 1948, and while construing Item 9 in the Provincial Legislative List of the Constitution relating to compulsory acquisition of land, observed as Wows as to the rule of interpretation of a provision of Constitution:‑‑‑

“It is well recognised that in interpreting a provision of a Constitution the widest construction on possible in its context should be given according to the ordinary meaning of the words used, and that each general word should be held to extend to all ancillary and subsidiary matters.”

(ii)           Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd.

                and other’s (AIR 1954 SC 119).

In the above case, the Indian Supreme Court while examining vires of an Ordinance which authorised the deprivation of the property of the company held that the provisions in the Constitution touching Fundamental Rights must be construed broadly and liberally in favour of those on whom the rights have been conferred.

15. The above cases relied upon by the learned Attorney‑General and Mr. S.M. War are distinguishable inasmuch as in the above Lahore case (Ahmad Tariq Rahim), it was held that the Assembly lost the confidence of the people, whereas in the present case, the position is otherwise. The above Federal Court judgment upon the  Governor‑General’s reference has also. no application as the judgment was rendered when there was no fundamental right in the field. The above cases of Indian jurisdiction referred to by the learned Attorney‑General and Mr. S.M. War are also distinguishable as the case of the Indian Supreme Court (1977) (State of Rajasthan) and of the Punjab High Court (1991) Capt. Kanwaijit Singh), pertained to the dissolution of the States Assemblies under Article 356 of the Indian Constitution which envisages vesting of the State legislative power in the Parliament and the, executive power in the President, the case of Indian Supreme Court 1962 (All India Bank Employees’ Association) relates to the right to be a collective bargaining agent though there is general observation that stream cannot rise higher than its source” which may have some bearing on the controversy in issue.

Whereas the above cases cited by Mr. Khalid Anwar referred to hereinabove show that Indian Supreme Court while construing Article 21 of the Indian Constitution pertaining to the right to life has held that it embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. Even the pavement dwellers were considered to have some right. The efforts were to construe the above provision liberally as to extend its scope. The same approach seems to have been adopted by this Court in IA. Sharwani and others and Muhammad Nur Hussain (supra) inasmuch as in the former case, Article 184 (3) of the Constitution was given liberal construction unfettered with technicalities, whereas in the latter ‘case, it has been held that while interpreting ‑a provision of the Constitution the widest construction possible in the context be given and that each general word should be construed in such a way that it should extend to all ancillary and subsidiary matters.

16. 1 am inclined to hold that the right to form a political party and to be a member of a political party enshrined in clause (2) of Article 17 does not culminate upon winning of the elections as was contended by the learned Attorney-General and Mr. S.M. Zafar but it is a continuous political process which includes the right of the petitioner to remain as a member of the National Assembly or as a Prime Minister till the time the life of the Assembly S or the tenure of \*the Prime Ministership is terminated lawfully in accordance with the provisions of the Constitution. It is true that nobody can claim any vested right to remain a member of. the National Assembly or to be a Prime Minister for the period of five years but an MNA or a Prime Minister can claim that he should be allowed to function so long as the life of the Assembly or his tenure is not terminated in accordance with the provisions of the Constitution. Any infraction of the above right without legal basis will inter alia attract Article 17 (2) of the Constitution besides being violative of the, relevant Constitutional or statutory provision. Since the majority, including me, has held that the impugned order of 18th April, 1993, does not fall within the ambits or Article 58 (2) (b) of the Constitution, the termination of the life of the %7 Assembly and the tenure of the petitioner as the Prime Minister besides being violative of the above provision of the Constitution will . also attract I Article 17(2) of the Constitution, as admittedly the petitioner was the leader of a political party which commanded the majority in the National Assembly.

17. . I may also observe that there is a. ‘Marked distinction between interpreting a Constitutional provision containing a Fundamental Right and a provision of an ordinary statute. A Constitutional provision containing Fundamental Right is a permanent provision intended to cater for all time to come and, therefore, while interpreting such a provision the approach of the Court should be dynamic, progressive and liberal keeping in view ideals of the people, socio‑economic and politico‑cultural values (which in Pakistan are enshrined in the Objectives Resolution) so as to extend the benefit of the same to the maximum possible. This is also called judicial activism or judicial creativity. In other words, the role of the Courts is to expand the scope of such a provision and not to extenuate the same. The construction placed by me on Article 17 of the Constitution hereinabove in para. 16, seems to be in consonance with the above rules of construction.

18. Before concluding the above discussion on the above controversy, I may also observe that Mr. Maqbool Elahi Malik, learned Advocate‑General, Punjab, has invited our attention to the following observation made by me in the case of Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others (PLD 1992 SC 723) and contended that the tenor of the said observation seems to be that a petition under Article 184 (3) of the Constitution directly to this Court is not competent:‑‑

“The above contention is not without force, but at the same time, I cannot overlook the fact that the electorates who are the real sovereigns in a democratic set‑up, have expressed their will. The newly‑elected Assembly and the new Cabinet have been functioning for the last about a year. Neither the M.P.As. of the new Assembly nor the Ministers and Advisors of the new Provincial Ministry are before us. Neither they have been impleaded as parties nor any notice has been issued to them. It would, therefore, be not just and fait to condemn them unheard. It is true that in terms of clause (5) of Article 48 of the Constitution, election of a dissolved Assembly is to take place within 90 days and by the time the controversy as to the legality of an order of dissolving an Assembly can be finally adjudicated upon by this Court, quite considerable period may elapse in the meantime the’ elections may take place and a new Minis ‘ try may be inducted. In my humble view, the above difficulty is to be resolved by the law‑makers by providing an appropriate provision in the Constitution. Since this Court has held that an order of dissolving an Assembly is justiciable, the question, whether a particular order of dissolving an Assembly is legal or illegal, should be adjudicated upon before holding fresh elections. If a criminal case by virtue of a Constitutional amendment is required to be decided within 30 days by a trial Court or appeal arising therefore a provision can be incorporated in the Constitution providing a direct Petition to the Supreme Court against an order of dissolving an Assembly, with the mandate that the same should be decided within 30 days from the date of its presentation, which should be presented within 7 days from the date of dissolution­.

                The above contention is devoid of any force, as the question, whether a direct petition under Article 184 (3) of the Constitution before this Court was competent or not, was not in issue in the above report but an appeal with –the leave of the Court was riled against the judgment of the Peshawar High Court, whereby the Governor’s order of dissolving of the Provincial Assembly of N.‑W.F.P. and dismissing the Cabinet including the Chief Minister was set aside and both were restored. Since I was maintaining the above High Court judgment with the modification relating to the relief of restoration of the Assembly and the Cabinet for the reasons recorded in the above‑quoted extract of my ‘opinion, I had suggested that a direct petition to this Court  against an order of dissolving am Assembly be provided in the Constitution with the mandate to decide the same within 30 days but the above suggestion does not imply that I had held that a direct petition under Article 184 (3) of the Constitution could not be riled if a petitioner could demonstrate any infraction of any of the Fundamental Rights.

In this view of the matter, the above preliminary objection fails.

19. At this juncture before touching upon the grounds of dissolution order on merits, it may be pertinent to take up two legal points raised by Dr. Farooq Hasan, namely:‑‑

since the Speaker ha         d summoned the National Assembly for 19‑4‑1993 a requisition under Article 54‑ (3) if the Constitution, the same upon could have been prorogued by the Speaker only in view of the language employed in the above clause (3) of Article 54 and therefore, the President was not competent to press into service Article 58(2)(b) of the Constitution and, hence, the impugned order is illegal’ and without jurisdiction;

 (ii)          that Article 58(2)(b) of the Constitution lays down two preconditions before the National Assembly can be dissolved‑‑

(a) ‑ a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution; and

(b)           an appeal to the electorate is necessary.

                According to Dr. Farooq Hasan, the President has not addressed to **himself to the,**above second requirement before the passing of the impugned order nor this Court attended to the above aspect in the earlier judgments in the case of Haji Saifullah (PLD 1989 SC 166) and in the case of Ahmad Tariq Rahim (PLD 1992 SC 646).

20. As regards the above first contention, it may be‑pertinent to **observe that the power**to prorogue is entirely distinct from the power to dissolve and, therefore, the factum’ that under clause (3) of Article 54 once the Speaker summons the National Assembly upon requisition signed by not less than one­ fourth of the total membership of the National Assembly, he can only prorogue and not any other authority, does not, in any way, control or curtail the power conferred on the President under clause (2)(b) of Article 58 of the Constitution. If the ‑National Assembly can be dissolved while in session, there seems to be no legal basis as to why it cannot be dissolved when it is not in session but is summoned upon requisition under clause (3) of Article 54 of the Constitution.

Mr. S. M. Zafar has invited our attention to the following observation from the treatise on the ‘Theory and Practice of Dissolution of Parliament’ compiled by Cambridge Studies in International and Comparative Law, edited

by CJ. Hamson and R.Y. Jennings:‑‑

“Once Parliament has been formally opened, if can be dissolved whether it is in session or not.”

The above observation seems to be in consonance with the view which am inclined to take. I

21. Adverting to the above second legal submission, it may be pertinent to quote Article 58 of the Constitution, which reads as follows:‑‑

“58.‑‑(l) The President shall dissolve the National Assembly if so advised by the Prime Minister; and the National Assembly shall, unless sooner dissolved, stand dissolved at the expiration of forty‑eight hours after the Prime Minister has so advised.

Explanation .‑‑Reference in this Article to “Prime Minister” shall not be construed to include reference to a Prime Minister against whom a notice of a resolution for a vote of non‑confidence has been given in the National Assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or. after the dissolution of the National Assembly.

(2)           Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion,‑‑

(a)           a vote of no‑confidence having been passed against the Prime Minister, no other member of the National Assembly is likely to command the confidence of the majority of the members of the National Assembly in accordance with the provisions of the Constitution, as ascertained in a session of the National Assembly summoned for the purpose; or

(b)           a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.”

A perusal of the above‑quoted Article shows that under clause (1), it is mandatory on the part of the President to dissolve the National Assembly if so advised by the Prime Minister and unless sooner dissolved, it shall stand dissolved automatically at the expiration of forty‑eight hours after the Prime Minister has so advised. However, explanation to the above clause puts clog on the above right of the Prime Minister by providing that he cannot tender above advice if notice of a resolution for a vote of no‑confidence has been given against him.

It may further be noticed that clause (2) provides that notwithstanding anything contained in clause (2) of Article 48 of the Constitution, the President may dissolve the National Assembly in his discretion where in his opinion‑‑

(a)           a vote of no‑confidence has been passed against the Prime Minister and in the opinion of the President no other member of the National. Assembly is likely to command the confidence of the majority of the members;

(b)           the President may also dissolve in his discretion when in his opinion a situation has arisen in which the Government of the. Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

22. The above sub‑clause (b) of clause (2) of Article 58 of the Constitution is pertinent to the point in issue. In my opinion, once the President forms the opinion objectively on the question that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution on the ‑basis of the material having nexus with the above, reason, he enters into the domain of discretion and it is for him to decide, as to whether the proper action would be the’ dissolution of the Assembly or some other action warranted by some other provisions of the Constitution or law. This question had come up for consideration before this Court in the case of Ahmad Tariq Rahim (supra), wherein Shaflur Rahman, J. speaking on behalf of the majority concluded as follows:‑‑

“There are three general arguments advanced by the learned counsel for petitioner which need attention at this stage before taking up the specifics. The first was that there were available to the President other alternative Constitutional remedies before resorting to this or such a drastic step. In advancing this argument a misconception with regard to the Constitutional powers enjoyed by the President in his discretion and by the Prime Minister has been exhibited. All the alternative powers referred to are exercisable by the President only on the advice of the Prime Minister and not in his discretion. It is not for the President to seek advice ‘of the Prime Minister and to obtain one. Nor is it open to the Courts to examine what advice, if any, was given and how it was received: None of the powers, be it under Article 186 (1), or Article 233(l) or Article 184(l) of the Constitution or even section 131‑A of the Criminal Procedure Code is exercisable by the President in his discretion. So there are no alternative remedies available to ‑the President but these alternative remedies. are available to the Prime Minister.”

Even otherwise the object of dissolving the Assembly in its essence is an appeal from the‑legal to the political sovereign as highlighted by Dicey \*in his. **celebrated book**“Introduction to the Study of the Law of the **Constitution”, Tenth**Edition, wherein he commented upon the above aspect as under:‑‑

“But the’ reason why the House can in accordance with the Constitution be deprived of power and of existence is that an occasion has arisen on which there is fair reason to suppose that the opinion of the House is not the opinion of the electors. A dissolution is in its essence an appeal from the legal to the, political sovereign. A dissolution is allowable., or necessary, whenever the wishes of the legislature are, or may fairly be presumed to be, different from the wishes of the nation.

This is the doctrine established by the celebrated contests of 1784 and of 1834. In each instance the King dismissed a Ministry which commanded the confidence of the House of Commons. In each case there was an appeal to the country by means of a dissolution. In 1784 the appeal resulted in a decisive verdict in favour of Pitt and his colleagues, who had been brought into office by the King against the will of the House of Commons. In 1834 the appeal led to a verdict equally decisive, against Pitt and Wellington, who also had been called to office by the Crown against the wishes of the House. The essential point to notice is that these contests each in effect admit the principle that it is the verdict of the political sovereign which ultimately determines the right of (what in politics is much the same thing) the ‘power of a Cabinet to retain office, namely, the nation.”

In my opinion, the dissolution of an Assembly is inter linked with an appeal to the electorate. If an Assembly is to be dissolved as a corollary, an appeal to the electorate is to be made. I am inclined to hold that we will be entering into the domain of speculations, surmises and conjectures if we were to examine the question, whether an appeal to the electorate will achieve the desired result which is not warranted by the language employed in the above provision of the Constitution. ‑One cannot predict with certainty, what would be the outcome of an appeal to the electorate.

23. 1 may now deal with the merits of the grounds. Both the parties were in agreement that the law as enunciated as to the scope of sub‑clause (b) of. clause (2) of Article 58 of the Constitution by this Court in its judgment in the case of Haji Muhammad Saifullah Khan (supra), Ahmad Tariq Rahim (supra) and the case Federation of Pakistan v. Aftab Ahmad Khan Sherpao (supra) is the correct law, which will govern the present case as well. In this connection, it may be pertinent to quote the relevant passages on the interpretation of the expression “situation has arisen in which the Government cannot be carried on in accordance with the provisions of the Constitution” employed in above sub­clause (b) of clause (2) of Article 58 of the Constitution, given in the ­first case of Haji Muhammad Saifullah:‑‑

Nasim Hasan Shah, J. (as his Lordship then was).‑‑‑Thus the intention of the law‑makers, as evidenced from their speeches and the terms in which the law was enacted, shows that any order of dissolution by  he  President can be passed and an appeal to the electorate made only I when the machinery of the Government has broken down  its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution.

Shaflur Rahman, J.‑‑The expression ‘cannot be carried on’ sandwiched as it is between ‘Federal Government’ and ‘in accordance with the provisions of the Constitution’, acquires a very potent, a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of progress, the shade of the quality or the degree of the performance or the quantum of the achievement. it concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution.”

                          I may also refer to the following construction placed by me on the above expression in the case of Federation of Pakistan v. Aftab Amaani Sherpao (supra):‑‑

“The words ‘that a situation has arisen in which the Government of the  Province cannot be carried on in accordance with the provisions of  Constitution’ are of wide import. If a Government, in order to remain in power, has to purchase the loyalties of the M.P.As. by allotting plots or granting other benefits in cash or kind at the cost of the public exchequer and/or is to induct them as Ministers and Advisors for the above purpose, in my humble view, it cannot be said that the Government is being carried on in accordance with the provisions of the Constitution.”

            24. The line of arguments adopted by Mr. S.M. War was that the dissolution of an Assembly in a democratic s ‘ et‑up‑,is a normal incident which in fact advances the cause of democracy by getting fresh mandate from the political sovereign. In this regard, he has referred to the book under the caption “Inter‑Parliamentary Union” Parliaments of the World (A Reference Compendium) by Valentine Herman with the collaboration of Francoise Mendal and the Theory and Practice of Dissolution of Parliaments, a comparative study with special reference to the United Kingdom and Greeks by B.S. Markesinis. In the former book, the author has given the following

table indicating the dissolution of the Parliament through various modes which

includes 12 at the initiates of the Head of the State:‑‑

“Circumstances                                                                           Number of Countries.”

At initiative of                                                                                               12

Head of State

When Government loses its majority through

 changes in the Political composition of Parliament.                                        3

When vote of censure or no confidence passed

against the Government                                                                                   9

When two Houses disagree                                                                              4

At request of Prime Minister                                                                           14

Automatic dissolution associated with

 Constitutional changes,                                                                                    4

At initiative of Parliament                                                                                  9

Whereas the tables given in the latter book, reflect dissolution of Parliaments in United Kingdom (during the period commencing from 1867 to 1970) in Greek (during the period from 1844 to 1970) and in Belgium (from 1850 to 1970). The statistics given therein indicate that during 11‑11‑1985 to 27‑6‑1986 and 10‑1‑1910 to 28‑11‑1910, the British Parliament was dissolved twice; whereas between 24‑10‑1922 to 9‑10‑1924, it was dissolved thrice and then from 7‑1‑1950 to 5‑10‑1951 twice. The tables relating to Greek and Belgium are also on the. above pattern. Though the above tables show that dissolution of Assemblies is not a new phenomenon, but the same cannot furnish any assistance for the purpose of construing above sub‑clause (b) of clause (2) of Article 58 of the Constitution. It may be pertinent to point out that though the King/the Queen of England possessed the power to dissolve the Parliament as the Royal Prerogative but the above power has not been exercised by the King or the Queen since 1834 due to a convention and the dissolution of the Parliament had been effected on the advice of the Prime Minister. In this behalf, reference may be made to the following passage from the treatise on the Introduction to the Study of the Law of the Constitution by AN. Dicey, Tenth Edition:‑‑

“The constitutionality therefore of the dissolution in 1834 turns at bottom upon the still disputable question of fact, whether the King and his advisors had reasonable ground for supposing that the re­formed House of Commons had lost the confidence of the nation. Whatever may be the answer given by historians to this inquiry, the precedents of 1784 and 1834 are decisive; they determine the principle on which the prerogative of dissolution ought to be exercised, and show that in modern times the rules as to the dissolution of Parliament are, like other conventions of the Constitution, intended to secure the ultimate supremacy of the electorate as the true political sovereign of the State; that, in short, the validity of Constitutional maxims is subordinate and subservient to the fundamental principle of popular sovereignty.

The necessity for dissolution stands in close connection with the existence of Parliamentary sovereignty.”

Indeed holding of a general election regularly in a democratic set­up/polity is an essential element. It inculcates political maturity among the masses, brings political stability in the democratic institutions and gives the masses sense of participation, in the affairs of the State and generates in them sense of responsibility and patriotism. But frequent dissolution of an Assembly without justifiable reason affects adversely the above democratic process, which results into instability in the country adversely affecting growth.

25. Mr. Yahya Bakhtiar who also appeared for the petitioner adopted somewhat different line of arguments than Mr. Khalid Anwar by urging that under the Preamble of the original Constitution. which has now become substantive part of the Constitution by incorporating Article 2A, the sovereignty over the entire Universe belongs to Almighty Allah alone and the authority to be exercised within the limits prescribed by Him is a sacred trust. According to him sub‑clause (b) of clause (2) of Article 58 of the Constitution is repugnant to the above basic Islamic concept Of sovereignty and that no person how so high he may be Placed can be vested with the power to destroy the chosen representatives of the people through an executive order, as under the above Preamble, the State is to exercise its power and authority through the chosen representatives of the people. To reinforce his above submission, he has invited our attention to the speech made by the Founder of the Nation Ouaid‑i‑Azam Muhammad Ali Jinnah in 1948 at Quetta’ He has particularly invited our attention to the following concluding para. of the speech:‑‑

“in proposing this scheme, I have had one underlying principle in mind, the principle of Muslim democracy. It is my belief that our salvation lies in following the golden rules of conduct set for us by our great law‑giver, the Prophet of Islam. Let us lay the foundation of our democracy on the basis of truly Islamic ideals and principles. God Almighty has taught us that ‘our decisions in the affairs of the State shall be guided by discussions and consultations’. I wish you, my brethren of Balochistan, God speed and all success in the opening of this new era. May your future be as bright as I have always prayed for and wished it to be. May you all prosper!”

He has also invited our attention to a passage from the treatise under the caption “Islamic Jurisprudence and International Perspective by C.G. Weeramantry, where the author has following observations:‑‑

“The Islamic position of subornation of the sovereign to God and his law comes through strongly in the following Qur’anic passage: ‘Say: 0 God, Lord of Sovereignty! Thou gavest sovereignty to whom Thou pleasest. Thou exaltest whom Thou pleasest and absest whom Thou pleascst. In Thy hand is all good for Thou has power over all things. (Qur’an, 111:26). For a discussion of sovereignty, see Asad (1980b), pp. 37 ff.

A ruler invested with sovereignty in the Hobbesian or Austinian sense was unthinkable at any stage in the history of Islamic law. Locke did indeed place limitations upon the ruler but this was in consequences of a man‑made social power…………………………………………………………………………………………………………………………………………………………………………..

The governance of the Unimah (the Muslim community) thus depended upon the principle of consultation (Shura) and no ruler was free of this obligation (see Qur’an XLII: 38).”

On the above basis, his submission was that not only the impugned order but also the above provision of Article 58 (2) (b) of the Constitution is violative of the above Islamic concept of sovereignty. There seems to be marked distinction between the Islamic concept of sovereignty and the modern concept of sovereignty enunciated by the various celebrated authors/scholars. However, it will suffice to observe that the effect of incorporation of the preamble as a substantive part of the Constitution has been considered by a Full Bench of this Court in the case of Hakim Khan and 3 others (supra) referred to hereinabove in para. 4. The above broader proposition of law now urged by Mr. Yahya Bakhtiar can be examined in an appropriate case at the appropriate time.

26. 1 may now deal with the grounds of the impugned order. It may be advantageous to reproduce the opening para. and sub‑para. (a) of the same, which read as follows:‑‑

“The President having considered the situation in the country, the events that have taken place and the circumstances, the contents and consequences of the Prime Minister’s speech on 17th April, 1993 and among others for the reasons mentioned below is of the opinion that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary:‑‑

(a)        The mass resignation of the members of the Opposition and of considerable numbers from the Treasury Benches, including several Ministers, inter alia, showing their desire to seek fresh mandate from the people have resulted in the Government of the Federation and the National Assembly losing the confidence of the people, and that the dissension therein, has‑nullified its mandate.”

In the above opening para. inter alia reference to the Prime Minister’s speech of 17‑4‑1993 has been made, which I intend to deal with alongwith ground ‘b’. The above ground ‘a’‑ speaks of mass resignation of the members of the Opposition and of considerable numbers from the Treasury Benches including several Ministers showing their desire to seek fresh mandate. On the basis of the above, it has been concluded that the National Assembly has lost the confidence of the people and that the dissension therein had nullified its mandate. From the record, it seems that the President received 88 resignations addressed to the Speaker from the M.N.As./Ministers out of the House of 217. 12 MQM members had resigned earlier about more than a year back. One of the members, namely, Mr’. Muhammad Khan Junejo expired; thus the total comes to 101. It may be observed that most of the resignations out of 88 received by the President are undated. Some are in identical language in the same handwriting. It is also not indicated as to when they were handed over and by whom. However, the newspaper clippings pertaining to the period preceding to the date of dissolution order indicate that some of the leaders of the Opposition were collecting resignations from MNAs besides one of the Governors of the Province. The daily English newspaper “Nation” in its publication of 3‑4‑1993 published a statement of Mr. Mir Balakh Sher Mazari, M.NA. who had allegedly stated that more than 80 members of the National Assembly including those of the P.DA. were ready to resign whenever President Ghulam Ishaq Khan asks them to do so. Incidentally, it may be stated that Mr. Mir Balakh Sher Mazari was appointed as the Care‑taker Prime Minister after the passing of the impugned dissolution order. Be that as it may, the question which requires consideration is, whether the submission of the above resignations to the President for the purpose of ousting a Government which commanded the majority in the National Assembly could be a ground for invoking sub‑clause (b) of clause (2) of Article 58 of the Constitution. In this behalf, it may be pertinent to refer to clause (1) of Article 64 of the Constitution, which provides that a member of Majlis‑e­Shoora (Parliament) may by writing under his hand addressed to the Speaker or, as the case may be, the Chairman, resign his seat and thereupon his seat shall become vacant. In the case of Mr. AX Fazlul Quader Chaudhry v. Shahnawaz and others (PLD 1966 SC 105), this Court while construing Article 107 (a) of the late Constitution of Pakistan, 1962, containing more or less identical provisions held that communication of resignation to the Speaker is an essential ingredient of the application of above Article 107 of the late Constitution and in the absence of any such communication, the resignation is of no effect.

The same view was taken in a‑ subsequent judgment of this Court in the case of Mirza Tahir Beg v. Syed Kausar Ali Shah and others (PLD 1976 SC 504), in which this Court while dilating upon Article 64 read with Article 127 of the Constitution relating to resignation of an M.P.A. held that:

“If on the other hand the resignation is not presented personally, but is sent through a messenger, as in the instant case, then Speaker will have to further satisfy himself that the transmission is by an authorized person. The resignation could not have taken effect unless it was voluntary and intended to reach the Speaker in a manner chosen by the appellant himself. There is nothing whatever, to show that the Speaker had satisfied himself about either of two conditions, and therefore failed to do what he was required by law and the Constitution.”

27. In para. 3 (iii) of the written statement dated 2‑5‑1993 riled on behalf of the Federation of Pakistan, the following averments as to the submission of resignations ‘to the President instead of to the Speaker were made:‑‑

“3(iii). Contents of para. 3 (iii) are misleading and incorrect.

It is submitted that it is for the members of the National Assembly to select the mode of showing their protest and lack of confidence in the petitioner’s Government, National Assembly and the Speaker whether in or outside the House. In the instant case they have addressed their resignations (Annex A‑1) to the Speaker of the National Assembly, but sent them to the President to register with the Head of the State their protest and as an expression of lack of confidence in the National Assembly, the Speaker and the Federal Government. The further reason was that the Speaker had not in the past acted upon any motion directed against the Prime. Minister/or any other Minister or member of the National Assembly supporting the Government or the

Government itself and, as widely known the concerned members had shown lack of confidence in the Speaker, who according to the general perception was in collusion with the former Prime Minister and was not acting independently (Annex‑N). Speaker was getting preferential and special treatment in special allocation of funds for his

Constituency (Annexes.  ‑1, N‑2, N‑3). As the Speaker conduct was objectionable and open to question, the concerned MNAs. sent their resignations to the President so that their protest etc. expression of lack of confidence be properly registered. The circumstances, background and the factors responsible for the handing over of the

resignations by the Members to the President arc as above. It demonstrated that the said Members had lost confidence in the National Assembly, the Federal Government and the Speaker, and that the mandate had been nullified. It is further submitted that the

Speaker has to receive resignations only for the purpose of creating a vacancy and consequent by‑elections. The circumstances in which the resignations were handed over to the President, have been mentioned above and the President could form his opinion in that behalf. Rest of the contentions are repelled.”

            Mr. Aziz A. Munshi, learned Attorncy‑Gencral, while arguing the          above point on 15‑5‑1993 in the morning session adhered to the pleas contained in the above‑quoted para. of the written statement and contended that the above resignations were intended as protest and were not to be acted upon as resignations. However, after tea break, he deviated from the above pleading and his earlier submission and urged that factually the resignations were intended to the resignations and they were also meant as protests. He

also filed a written statement on the above point on the following day. Alongwith it he also enclosed statistics indicating the percentage of valid votes cast originally in 1990 General Election and the position on 18‑5‑1993 after the submission of the resignations by the M.Q.M. members and above 88 M.N.As, which read as follows:‑‑

“Statement

The resignations were submitted by responsible members of the National Assembly including the Leader of the Opposition, the former Prime Minister and Mr. Ghulani Mustafa Jatoi and they were meant to be resignations as well as protests. The President in normal course could have forwarded them to the ‑Speaker, and under the Constitution and Rules of the National Assembly the vacancies would have inevitably occurred.

The President was not bound to wait as under Article 58 (2) (b) the words used are “cannot” which is different than “is not”. The President could have formed an opinion by the result of the vacancies that would occur that “the Government of the Federation could not be run in accordance with the Constitution”; and that the Assembly had lost the mandate.

Original Position

(Percentage or valid votes cast.)

 IJI                                                              37.37%

PDA                                                           36.83%

Haq Prasat                                                   5.54%

JUI(f)                                                          2.94%

Others                                                        17.32%

Position on 18‑5‑1993

(Percentage of valid votes cast)

IJI(minus JI)                                                  28.15%

JI                                                                    2.23%

PDA                                                              36.92%

JUI(F)                                                             2.94%

PML(Q)                                                            .04%

JWP                                                                 0.61%

JUP(N)                                                             1.47%

PKMP                                                               0.35%

ANP(H)                                                             1.68%

PML (J)                                                             7.00%

TI                                                                        ---

NDA                                                                    ----

Others less Haq Parast                                   13.16%

Grand Total:                                           94.46%

28. According to the learned Attorney‑General, on 18‑5‑1993 M.N.As. of IJI minus JI were representing only 28.15% of the total valid votes cast in 1990 election. On the above basis his submission was that the National Assembly lost its representative character warranting action under sub‑clause (b) Pf clause (2) of Article 58 of the Constitution.

Even if I were to ignore the above pleading of the Federation and allow the learned Attorney‑General to deviate from it, the fact remains that the submission of above 88 resignations to the President had no legal effect as they 0 were not handed over to the Speaker in terms of Clause (1) of Article 64 of the Constitution, in view of the above two judgments of this Court. The object of submission of the above resignations to the President was to get the petitioner’s Government ousted and in order to achieve the above object, the Assembly was to be dissolved. In my view, the above object is foreign to the ground mentioned in sub‑clause (b) of clause (2) of Article 58 of the Constitution as the factum that 88 MNAs had submitted resignations to the President instead of the Speaker, would not show that the Assembly lost the mandate of the people or that a situation had arisen in which the ‘Federation could not be carried on in accordance with the provisions \*of the Constitution. In Ahmad Tariq Rahim’s case (supra), it was held that the Assembly had lost its representative character because of defections, which ground was not factually contested (see PLD 1962 SC 666). There is no allegation of defections or horse‑trading in the impugned order. I am also not impressed by the learned Attorney‑General’s submission that on 18‑5‑1993, IJI MNAs minus JI represented only 28.15% of the total valid votes cast in 1990 General Elections. The above calculation is highly speculative and cannot ‘be made basis for pressing into service the above provision of sub‑clause (b) of clause (2) of Article 58 of the Constitution. In our country, we do not have two parties system but there is no limit as to the number of political parties which may participate in a General Election. In such a situation, a party having majority may not have secured even 30% of votes cast but as the Constitution stands, this does not, in any way, affect the right of such a party to form the Government and to run the same for a full period of rive years.

I am inclined to hold that what cannot be achieved directly cannot be achieved indirectly by pressing into service sub‑clause (b) of clause (2) of Article 58 of ‑the Constitution. In this regard, it may be pertinent to mention Lhat Under clause (5) of Article 91 of the Constitution. it has been provided **that the**Prime Minister shall hold the office during the pleasure of the President but this pleasure is controlled by providing therein that the President shall not withdraw his pleasure under this clause unless he is satisfied that the Prime Minister does not command the confidence of majority of the 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. If the Prime Minister fails to obtain a vote of confidence, the President is entitled to withdraw his pleasure by dismissing the Cabinet and the Prime Minister. Reference may also be made to clause (1) of Article 95 of the Constitution which provides that a resolution for. a vote of no‑confidence moved by not less than 20 per centurn of the total membership of the National Assembly may be passed against the Prime Minister by the National Assembly. Whereas sub‑clause (a) of clause (2) of Article 58 of the Constitution empowers the President to dissolve the Assembly in his discretion if a vote of no‑confidence having been passed against the Prime Minister, and no other member of the National Assembly is likely to command the confidence of the majority of the members of the National Assembly. This is to be read with clause (5) of Article 48 which empowers the President upon dissolving the National Assembly either under sub‑clause (a) or sub‑clause (b) of Clause (2) of Article 58 of the Constitution to‑‑

(a)        appoint a date not less than 90 days from the date of dissolution for

            holding of General Elections to the Assembly; and

(b)        appoint a Care‑taker Cabinet which includes Prime Minister.

There seems to be no other provision under the Constitution, whereby a Prime Minister commanding majority of the House can be removed or dismissed. I am, therefore, of the view that the facturn that 88 MNAs had submitted resignations with the above object had no nexus with the ground mentioned in sub‑clause (b) of clause (2) of Article 58 of the Constitution. Even if the above 88 resignations would have been submitted to the Speaker, that would not have been sufficient to conclude that the situation had arisen in which the Government of the Federation could not be carried on in accordance with the provisions of the Constitution as the law provides the requisite provision for bye‑elections for filling in such vacancies.

29. The persons desirous to achieve the ouster of a Government commanding majority in the National Assembly cannot be allowed to achieve the above object by adopting the above mechanism instead of defeating the Government through no‑confidence votes. The intention of the above MNAs to submit their resignations was to oust the Government which commanded majority and to get into power through this indirect means, which fact stands established from the facturn that Mr. Mir Balakh Sher Mazari was inducted as the Care‑taker Prime Minister and the Ministers who had resigned from the petitioner’s Cabinet were taken as the Care‑taker Ministers besides taking majority of the MNAs who submitted their resignations as Care‑taker Ministers in the Care‑taker cabinet. In this view, of the **above ground is not**sustainable;,

Both the parties have referred to the case of Adegb\*o v. Akintolame and another (1963) 5 All ER 544) in which the Premier of W stern Nigeria (respondent No.1) was dismissed by the Governor pursuant to the power contained under section 33 (10) of the Constitution of the Federation of Nigeria after receiving a representation from 66 members of the House of Assembly out of total 124 members stating therein that they Were no longer supporting respondent No.i. After the above removal, of respondent No.1 the appellant was appointed as the Care‑taker Premier’ The Federal Supreme Court upon respondent No.1’s petition declared the above Governor’s order as illegal and ordered his reinstatement. Thereupon, an appeal was riled before the Privy Council, which was allowed, It may be pertinent to reproduce subsection (10) of section 37 of the Nigerian Constitution, which reads as follows:‑‑

“(10). Subject to the provisions of subsections (8) and (9) of this section, the Ministers of the Government of the Region shall hold office during the Governor’s pleasure: Provided that‑‑(a) the Governor shall not remove the Premier from office unless it appears to him that the Premier no longer commands the support of a majority of the members of the House of Assembly; and, (b) the Governor shall not remove a Minister other than the Premier from office except in ‘accordance with those advice of the Premier.”

The Privy Council, while dealing upon the above controversy, repelled respondent No. Ys, contention that the Governor can not have exercised the above power without getting the votes cast in the  and held as follows:‑‑

“The difficulty of limiting the statutory power of the Governor in this  that the limitation is not to be found in the words in which the way decided to record the description of makers of the. Constitution have      his powers. By the words they have empowered in their formula ‘it  appears to him’, the judgment as to the support enjoyed by a Premier is left to the Governor’s own assessment, and, there is no limitation as to the material on which he ‑is to base his judgment or the contacts to which he may resort for the purpose. There would have been no difficulty at all in so limiting him, if it had been intended to do so. For instance, he might have been given power to list only after the  assigning of a resolution of the House ‘that it has no‑confidence in the Government of the Region’, the very please employed in an adjoining section of the Constitution (see section 31(4), proviso (b) to delimit  the Governor’s power of dissolving the House even without the Premier’s advice. According to any ordinary rule of construction weight must be given to the fact that the Governor’s power of removal is not limited in such,.‑precise terms as would confine his judgment to the actual proceedings of the House, unless there are compulsive reasons, to be found in the’ context of the Constitution or to be reduce from. obvious general principles, that would impose the more limited meaning for which the respondent contends.”

The above judgment is distinguishable from the facts of **the present case as the**language employed in sub‑clause (4) of clause (2) of Article 58 of the ‘Constitution is different :from the language used in, above‑quoted section 37(10) of the Constitution of Western Nigeria inasmuch’ as ‑the prescribed conditions therein for exercising the power are different. In the former provisions, it is the breakdown of the Constitutional machinery which is the determining factor and not the factum, whether the Prime Minister lost the confidence of the House for which there are separate provisions as pointed out hereinabove, namely, clause (5) of Article 91 of the Constitution and clause (1) of Article 95 of the Constitution; whereas under the latter provision, the criterion is, whether the Prime Minister lost the confidence of the majority in the House.

However, the observation of the Privy Council that in presence of a written Constitution, the British Constitutional history as to the power of the sovereign to dismiss a Prime Minister or other parliamentary practices cannot be pressed into service, is equally applicable to the present case. The above relevant observation reads as follows:‑‑ 1

“The first is that British constitutional history does not offer any but a general negative guide as to the circumstances in which a sovereign can dismiss a Prime Minister. Since the principles which are accepted today began to take shape with the passing of the Reform Bill of 1832, no British Sovereign has in fact dismissed or removed a Prime Minister, even allowing for the ambiguous exchanges which took place between William IV and. Lords Melbourne in 1834. Discussion of constitutional doctrine bearing on a Prime Minister’s loss ‑of support in the House of Consigns concentrates therefore on a Prime Minister’s duty to ask for liberty to resign or for a dissolution, rather than on the Sovereign’s right of removal, an exercise of which is not treated a s being within the scope of practical politics. In this state of affairs it is vain to look to British precedent for guidance on the circumstances in which or the evidential material on which a Prime Minister can be dismissed, where dismissal is an actual possibility and the right of removal which is explicitly recognised in the Nigerian Constitution must be interpreted according to the wording of its down limitations which that wording does not import.”

30. I may refer to the ground ‘b’ of the dissolution order, which reads as follows:‑

(b)The Prim( Minister held meetings with the President in March and April and the last on 14th April, 1993 when the President urged him to take positive steps to resolve the grave internal and. international problems confronting the country and the nation was anxiously looking forward to the announcement of concrete measures by the Government to improve the situation. Instead, the Prime Minister in his speech on 17th April, 1993 chose to divert the people’s attention by making false and malicious allegations against the President of Pakistan who it Head of State  and represents the unity of the Republic. The tenor of the speech was that the Government could not be carried on in accordance with the provisions of the Constitution and he advanced his own reasons and theory for the same which reasons and theory, in fact, are unwarranted and misleading. The ‘ Prime Minister tried to cover up the failures and defaults of the Government although he was repeatedly apprised of the real reasons in this behalf, which he even accepted and agreed to rectify by specific measures on urgent

basis. Further, the Prime Minister’s speech is tantamount to a call for agitation and in any case the speech and his conduct. Amounts to subversion of the Constitution.”

            The above ground is to be read with the above quoted opening para. of

the impugned order. It refers to the meetings held between the President and the Prime Minister in March‑April, 1993; the last being on 14‑4‑1993, wherein the President impressed upon the Prime Minister t.6 ‘.take positive steps to resolve the grave internal and international problems confronting the country and the nation. It. has been further stated that the President was anxiously looking forward to the, announcement of, concrete measures by the Government to improve the situation but the Prime Minister instead of that, made speech on 17‑4‑1993 in order to divert the people’s attention by making false and religious allegations against the President of Pakistan who is Head

of the State and represents unity of, the Republic. It has been also averred that the tenor of the speech was such that the ‑Government could not be carried on in accordance with the provisions of the Constitution and that the above speech is tantamount to call for agitation and, in any case, the speech and the above conduct of the Prime Minister amounts to subversion of the Constitution.

Mr. Khalid Anwar, learned counsel for the petitioner, has urged that

the above speech is to be viewed with the background what had taken place in the Presidency during last several months preceding to the making of the above speech, which prompted the, petitioner to take into confidence the nation.

On the other hand, Mr. Aziz A. Munshi, learned Attorney‑General, was at pains to highlight the objected portions of the speech and. submitted that because of the above speech the working relationship between the President and the Prime Minister ceased to exist resulting into a complete Constitutional deadlock and stalemate warranting pressing into service above sub‑clause (b) of clause (2) of Article 58 of the Constitution in order to resolve the deadlock and stalemate. He also invited our attention to the speeches made by the petitioner subsequent to the passing of the impugned order, to reinforce his above submission. Both, the parties have riled a large number of newspaper clippings to indicate, what had happened prior and subsequent to the passing of the impugned order.

31. It seems that the President in his address to the Joint Session of the Parliament made on 22‑12‑1992 though cautioned the Government on certain matters like having mod transparency in the matter of privatization, adoption of democratic norms, praised the performance of the Government over all. However, from the record it seems that in December, 1992, the President had made observation about the privatization and pointed out certain discrepancies/anomalies, for example, Secretary to the President in his letter dated 6‑12‑1992 addressed to the Finance Minister with reference to the meeting between the Finance \_Minister and the President on 1‑12‑1992 conveyed the following ‘minutes recorded by the President regarding the reference prices:‑‑

“I have not been able to discover any constant methodology for the fixation of the revised reference prices.”

Then there is a letter dated 28‑12‑1992 from the Secretary to the President addressed to the Cabinet Division with reference to the minutes/decision of the meeting of the Cabinet Committee o ii privatization held on 12‑11‑1992. In the annexures enclosed to ‘the above letter, the question that under the Constitution, Council of Common Interests was to formulate and regulate the policies in relation to institutions, ‘establishments, ‘bodies, corporations, projects, schemes, industries, owned wholly or partly by the Federation or by a corporation set ,, up by the Federation including WAPDA and P.I.D.C. was raised. The concluding para. 8 of I he above annexures reads as follows:‑‑

“The kt‑up of the two privatisation commissions and the whole process of privatisation, unilaterally initiated by the Federal Goverlithtnt, bypassing the Council of Common Interests and the N.E.C., appearW to be ultra vires of Constitution and can be challenged in superior Courts.”

The above letters were replied to. It is not necessary at this stage to refer to the stand taken by the petitioner.

            After the expiry of some time from the above Presidential address to the Joint Session of the House, two important developments had taken place, firstly, the Government Party started negotiations with the Opposition for undoing the Eighth Amendment and secondly, the petitioner was authorised by the Muslim League ‘ Parliamentary Party to nominate Presidential candidate for the coming elections in November, 1993, and the indications were that the ruling . party had some other persons in mind for having 1 Presidential candidate. After the above developments, the Opposition leaders and the MNAs adversely disposed towards the petitioner, became more activated, started frequently visiting the President. Statements were issued for formation of a national Government, change of Government and for dissolving the Assembly etc. In this behalf, reference may be made to the newspapers clippings inter alia contained at pages 150 to 218 of the petition File 11.

It may be pertinent to mention that on 28‑3‑1993 Mr. Hamid Nasir Chatha, Minister for Planning and Development, Mr. Anwar Saifullah khan, Minister for Environment and Urban Affairs, and Mr. Muhammad Asad ‘Ali Khan Junejo, Advisor to the, Primer Minister addressed the  resignations to the 1. President from the above Cabinet posts. They were followed by other’ Ministers/Ministers of State, Advisors and Parliamentary Secretaries. In all three Ministers, three Ministers of State, two Advisors and three Parliamentary Secretaries resigned. From the record produced by the Federation, it appears that the resignations of Mr. Muhammad Asad Ali Khan Jonejo bears the date of 28‑3‑19.93 and of Mr. Roedad Khan, Advisor to the Prime Minister of 12‑4‑1993, but none of the other resignations bears any date.

32. The above development created misunderstanding between the President and the petitioner. The petitioner saw the President on , or about 5‑4‑EW and informed him that he would be the Presidential candidate of the Ruling Party. The President was also conveyed that so long as he was President, the idea of undoing the Eighth Amendment would not be pressed The President reportedly remarked that he had not made up his mind to contest the election and, therefore, when the occasion would arise, he would consider the above proposal. It was also reported that he also remarked that the Eighth Amendment and the election of President were two different matters.

The petitioner’s above steps did not case the situation and a number of Opposition leaders continued to call on the President and to make press statements to the effect that there was no possibility of patch‑up between the President and the petitioner, for example, Senator Tariq Cliaudhry in his press statement published in daily English newspaper “Pakistan Observer” of 7‑4‑1993 alleged that the Government had launched a well thought campaign against the President by nominating him as the Presidential candidate of Pakistan Muslim League which had in fact insulted him. He emphasised that, the dismissal of the petitioner was the only solution.

In‑thc daily newspaper “The News” of Lahore dated 8‑4‑1993, a news item appeared to the effect that Governor Mahmood Haroon was seeking MNAs’ resignations on Ishaq’s behalf.

It may be pertinent to point out that as late as ‘on 10‑3‑1993 the ruled out dissolution of the Assembly while talking to the newsmen‑ at the Lady‑Reading Hospital, Peshawar, where he went to see Mr. Wali Khan as reported in the daily English newspapers “Pakistan Observer”, Islamabad, “Pakistan Times”, Lahore, “Frontier Post”, Lahore, “The News”, Lahore, an dated, 10‑3‑1993 (the relevant newspaper clippings are at pages 61 to 65 of Part 11 of the Petition rile).

In the daily “The News”, Islamabed of 15‑4‑1993, it was reported that in the above meeting of 14‑4‑1993 the President demanded removal of certain Ministers/officials. It may be appropriate to refer to the Press clippings of the period from 14‑4‑1993 to 17‑4‑1993 i.e. the 3 days, ‘which lapsed between the above meeting and the impugned speech.

            The daily “Dawn” dated 15‑4‑ , f993 under the caption “Ishaq‑Nawaz meeting‑ makes’ no headway” reported about ‘the above meeting between the President and the petitioner and reported that they had 90 minutes talk with each other, during which the petitioner was assisted by two Federal Ministers, namely, Lt.‑General (Retd.) Abdul Majid Malik and Mr. Ilahi Bux Soomro, but later the petitioner‑had a 40 minutes exclusive one to one meeting with the President. The former Minister for Planing, Hamid Nasir Chatha, when contacted, told ‘Dawn “that the above meeting did not pave the way for their reconciliation. The reaction of the President’s son‑in‑law and former Minister

for Environment and Urban Affairs, Mr. Anwar Saifullah Khan, was also the same as he reportedly told the correspondent of “Dawn” that situation remained the same as there was no solution. He further allegedly remarked “How can there be any reconciliation?” The daily “Nawa‑i‑Waqt” of Lahore dated 15‑4‑1993 reported with reference to B.B.C. under the caption:.

It gives the details what transpired in the above meeting. It may further be stated that the daily “Jang”, Lahore of 15‑4‑1993 published a news item under the caption:

(Above newspaper clippings arc at pages 129, 263 ‑and 264 of the File 11 of Rejoiner to the Written Statement File).

33. Another development which had taken place was that upon receipt of requisition on 18‑4‑1993 in terms of clause (3) of Article 54 of the Constitution, the Speaker summoned the session of the National Assembly for 19‑4‑1993 at 5‑00 p.m. for discussing the current political situation in the country. The above development was reported in the Press widely and the daily “Dawn”, Karachi of 20‑4‑1993 published an article under the caption “LOOSE ENDS

NEED TO,BE TIED UP.STATES”. The relevant portion of the same reads as under:‑‑

“According to an inside story of what happened on the fateful day on April 18 the President and his Advisors were still prepared to condone the atrocious language used by the Prime Minister in his address to the Nation, if he would explain his position and implement the promises he had made to the President.. But the decision to requisition the session and the Speaker’s decision to call the Session on Monday afternoon created panic in the Presidential camp.

The President was told if had to survive an impeachment motion ‘ he had to dissolve the House within hour,. a frequent visitor to the Presidency revealed. He agreed, but the justification for the dissolution was not complete until, the resignations of the MNAs were given to President. All the opposition parties had done the exercise except PDA whose leader was in session of her party’s central executive. So a call from the Presidency to Mg. Bhutto to immediately rush and see the President. She’ was‑pleasantly shocked and dashed leaving her party leaders in the middle of the discussion, the story went on. The meeting of the President and the Opposition leader, hitherto adversaries of the First order, went on very well as Benazir presented the 41 resignations. “Baba was now happy and satisfied that Bibi stood by him at a difficult moment, despite the good and bad things done by him to her. in the recent months”.

When, Benazir emerged from the meeting, she was met by NPP Leader Ghulam Mustafa Jatoi and JUP leader Gen. (Retd.) K.M. Azhar. She asked them whether it was true that the President was about to dissolve the Assemblies. She was told by an ever present Mr. Sharifuddin Pirzada that he was.”

It may be stated that the Prime Minister had earlier sent a summary for summoning of the National Assembly for 22‑4‑1993, which summary according to Mr. Aziz A. Munshi was cleared by the President on 17‑4‑1993 but it was not sent back to the Prime Minister Secretariat in view of what had happened in the evening of 18‑4‑1993. The National Assembly could not meet on 19‑4‑1993 as the impugned dissolution order was passed in the evening of 18‑4‑1993.

The resume of the events which culminated in the making of the above speech by the petitioner on 17‑4‑1993 on electronic media indicates that there was some background. It cannot be denied that the political elements hostile to the petitioner made all efforts to oust him from the Government. In their above efforts they also sought the help of the President and impressed upon him to press into service above Article 59 (2) (b) of the Constitution and with **that**object they collected and handed over 88 resignations from the MNAs. Keeping in view the above background, we may now refer to the objected portions of the petitioner’s speech in order to decide, whether the above objected portions, warranted the dissolution of the National Assembly and the dismissal of the Cabinet and the petitioner as the Prime Minister.

34. Mr. Aziz A. Munshi has furnished an English translation of the petitioner’s above speech and underlined the portions which, according to him, are objectionable and which indicate that there was’ a total deadlock and stalemate between the two pillars of the Federation. It may be advantageous to reproduce the relevant parts of the same; which reads as follows:‑‑

“The adverse effects of the atmosphere of uncertainty created by the

vested interests in the country during the last one month are now

beginning surface ... ... ... ..

..The people are restless and. comprehensive as to what will happen in the next few days, It is regrettable that the conspirators who have create(] such an atmosphere of uncertainty are using, a place for their nefarious activities which should have been a symbol of Pakistan’s integrity  federation and stability.

Unfortunately, these people seem to be totally oblivious of the senctity which is attached to that place and they are using it for creating instability and chaos which is a Constitutional symbol o Pakistan’s stability ... ... ... crisis further seems to be connected to that place where the sanctity of the , Constitution should have been respected.

But alas! the ‑kind of politics which I have to confront contained less decency and more filth, Let me tell you today about the nature of the people I have to deal with. I have learnt to respect the elders right from my home and I maintained this tradition even after coming over to Islamabad. However. it does not mean that I am working under an Body or dependent on any body of frightened of any body. I was given threats and asked to compromise on principles for the sake of protecting the business interest of my family. You would see that efforts would be made for my character assassination as a revenge for not compromising. My “well‑wishers” know well the art of finding faults for the sake of character assassination of any person. I have invariably subordinated my personal desires and interest to the national interest. Insha’Allah, my future conduct will also prove to be an ample testimony to the fact that I am an elected Prime Minister of the country supported by the majority of members of the Assembly. If any body has any doubt, he can test it within and outside the Assembly. Such attempts have been continuing with full force for the last few weeks and such dirty horse‑trading has taken place which cannot be explained to you.  Conspiracies were hatched to oust the elected Prime Minister at a place which should have been respected by every one in the country as a Centre of the greatness of the Federation of Pakistan. A Governor o a province is staying at this place which is the symbol of Federation‑, and conspiring against the Federal Government. A political orphan who could not rind a place anywhere was encouraged in this Centre of Federation.

A place from where I should have been given guidelines for the stability, unity and solidarity of the country, I was directed not to out in trouble Sardar Asif Ahmed Ali who declared Pakistan a terrorist State. I took a strong stand on it and told clearly that he tried to cause more harm to the country than an enemy and his arrest orders have been issued by me. My heart is burning with hot secrets but national interest and honour do not allow me to disclose them. But why should I keep secret from you which can be revealed. How shameful it is that whenever I proceeded abroad on State visits, a storm of conspiracies was raised in my absence. Attempts were made to belittle me before the foreign hosts. Is this disgraceful for me or for‑Pakistan? Pakistan I branded as a terrorist State amidst the clippings of Indian diplomats. Is it politics or treason?

The place which should have been a symbol of stability, progress and prosperity .

The place which should have been a source for strength democracy and for the welfare of people started showing signs of one man’s rule.

The outside attempts to destabilise the democratic process had their roots inside that place.

The tragedy is that the conspiracies to fragment the Muslim League, the mother party of Pakistan. were also hatched there.

My dear countrymen!

As Prime Minister I can only say that there arc many things to be narrated but I will say those in my political position. I ‘can say at this juncture that whatever had been done from there. should  have been done. Every pressure tactic was used to ‘force me‑ to leave the arena and I kept  for the completion of those projects which I had started for the progress and prosperity of the people ... ... ... ... ... ...

... ... ... ... ... ...  ... ... ... ... Today I am narrating all these things t you. The story does not end here. Conspiracies were hatched against me for committing the crime of loving the country and the people which touched such a high dimension that every third person among my companions was asked to’ change the loyal of all the MNAs and become the Prime Minister. At present, ten to fifteen Prime Ministers are wandering in Islamabad in search of Ministers. So much so that my real brother Shahbaz Sharif was offered the premiership. The bait for power was thrown everywhere. The ministries were offered to them besides other benefits.

My dear countrymen!

I have come to you Just to remove the uncertainties, created by certain conspirators and opportunists.‑ having been disappointed by their future, and they have created this situation by turning a respected place into a Centre of their unholy activities.

The nation is aware that my personal interest is not involved in these programmes of agricultural and industrial development. That is why the nation has trust in me and I will not betray this trust. I am aware of the difficulties which I may confront on the path I have chosen; but I won’t leave my mission unaccomplished. Insha’ Allah, I will take the

nation             to its cherished destination for which I had promised during the 1990 election campaign and for which I have to face the most difficult situation, but these momentary hurdles cannot deter me from my aim. Political expediencies and considerations cannot disappoint me, rather   they would further strengthen my determination. Recent crises have further strengthened my commitment and it is my resolve that I would perform all those duties which are in the interest of the country and the people and no hurdles in my way can stop me from achieving these goals, I will do all that is the need of my country, desire of my people and is in accordance with my official position.’ Therefore I shall not resign, I shall not dissolve the Assembly, I shall not take dictation. It will be, my majority in the Assembly, Insha’ Allah. But the question arises that why did threats were created for the   country’s  security and economy in the presence of a table Government, commanding absolute majority in the Assembly? Why a crisis was created in the country? Who is responsible for this? I leave the decision to you.” (The underlined are the portions objected to by the learned Attorney‑General).

            35. If the contents of the petitioner’s speech as a whole are to be examined in juxtaposition with what had happened during 2/3 months  preceding to the above speech, one can appreciate in what context it was made  I may observe that under Article 41 of the Constitution, the President is the Head of the State and represents the unity of the Republic. His position is of a non‑partisan person. As pointed out hereinabove that Article 58(2)(b) of the ,Constitution was not intended and designed to be pressed into service at the behest of the elements hostile to the Government in power to oust it though it may command majority in the National Assembly. The power under the above provision though discretionary, is to be exercised sparingly, independently, honestly, fairly and reasonably without any bias and ill‑will. If the exercise of the above power is tainted with personal likes or dislikes, the same shall stand Vitiated . Furthermore, it may again be pointed out that in the case of Muhammad Saifullah Khan, it has been held that the above provision can be pressed into service when the machinery of Government is broken down completely and its authority is eroded and that it does not concern with the pace of the progress, the shade of the quality or the degree of the performance or the quantum of achievement.

I

            The elements hostile to the petitioner sought the help of the President and in that connection  and . made the above Press statements. Though the President on 10‑3‑11Y)3 while speaking to the Press at Lady Reading Hospital, Peshawar., remarked that he had, no intention to dissolve the Assembly but the fact remained that the elements hostile to the petitioner continued to call on the President and continued to make Press statements to **the effect that**the petitioner’s days were numbered and that the dissolution of the Assembly was imminent.

There is no doubt that some of the remarks made by the petitioner in his above speech are couched in very strong words and they should not have been made as any public split between the two high functionaries of **the State may not**be conducive for maintaining good relations between them and in the interest of good government.

            Mr. S.M. Zafar has invited our attention t I o the following passages from the well‑known treatises, namely, de Smith and Brazier “Constitutional and Administrative Law”, Sixth Edition by Rodney Brazier, and the “Constitutional and Administrative Law”, Text and Materials by David Pollard and David Hughes:‑‑

“Passage from the \_,Constitutional and Administrative Law. ‑‑‑Any public disclosure of disagreement between the Queen and the Prime Minister of the day could be damaging. In 1986 a senior source within Buckingham Palace confirmed in a response to a newspaper’s inquiries that the Queen was dismayed by an uncaring Mrs. Thatcher and that the Queen disapproved of several major Government policies. The Queen’s Private Secretary intervened, however, in a rare letter to the Press to deny the published account.”

Passage from the Constitution and Administrative Law by David Pollard and avid HL1ghes.‑‑

“Any public revelation of disagreement could be damaging to the existing and future relationship between head of Government and head of State, for obviously if it became known that the Queen has criticized Government policy, she might be taken to be biased against that Government and to be in favour of another.”

            36. There cannot be any cavil with the above proposition that any public revelation of disagreement between head of State and, head of Government as observed hereinabove will be damaging. However, the question remains, whether the above speech could furnish a ground for dissolution of the Assembly and dismissal of the Cabinet and the petitioner as the Prime Minister. Mr. Aziz A. Munshi was at pains to lay emphasis that in order to have working relations between the President and the Prime Minister, they should be on good terms. He has furnished a chart to indicate in what different capacities President acts, namely:

(i)         Under discretionary power: Under Articles 48 (2) (5) (6), 58’(2), 101

            (1), 105 (3) (4) (5), 112 (2), 213 (1), 241 (1‑A) and 243 (2) (c).

(ii)        Upon the advice of the Prime Minister under Articles 48 (1) (4), 58

(1), 91 (1), 93 (1), 105(l), 112 (1), 130 (1), 132 (1), 156(l), 183 (2) and 198(4).

(iii)                   In consultation: Under Articles 72 (1), 101(l), 160(l), 177 (1), 193(l),

            200(l)(3), 203(c)(4), 235(l).

(iv)                   Accords approval, under Articles 87 (3), 170, 182, 183(2), 200(3), 221

            and 231.

Mr. Aziz A. Munshi, learned Attorney‑General has also invited our attention to the petitioner’s subsequent Press interviews and Press statements after the passing of the above dissolution order to indicate that it was not possible for the two to work together, particularly, he invited our attention to a Press interview given by the petitioner to the magazine “Herald” which was published in May, 1993, Issue, wherein the petitioner has allegedly used the following strong language:‑‑

“Because in my view he is too old to take correct decisions. I sincerely believe that the time for him to step down has come and if he refuses to do so, the people of Pakistan should lynch him so that no President dares to dissolve any assemblies in future. He has, in fact, challenged the wisdom of the people. So, he must not ,remain in power.”

He has also invited our attention to a number of newspaper clippings subsequent to the above dissolution order, *which*are at pages 599 to 613 of the Federation’s documents File No.11.

On the other hand, Mr. Khalid Anwar, has invited our attention to the factum that the President in his dissolution order had alleged that the petitioner was guilty of subversion of the Constitution which according to his amounts to high treason under Article 6 of the Constitution. He also invited our attention to certain portions of the President’s speech made on the night of 18‑4‑1993 in connection with the dissolution order, wherein according to him, strong language was used by the President.

He ,has further invited our attention to some newspaper clippings of the year 1992 to point out that Mohtarma Benazir Bhutto had used much stronger language than what was used by the petitioner in his above speech of 17‑4‑1993, particularly, he invited our attention to the daily newspaper ‘Muslim’ Islamabad, of 25‑2‑1992, wherein the Reporter attributed the following statement to Mohtarma Bcnazir Bhutto:‑‑

“She said the Aiwan‑e’‑Sardr had been converted into a den of conspiracies and sounded a warning that if efforts would be. made to crush people’s politics, they would be foiled.”

According to Mr. Khalid Anwar if the President’ can work with Mohtarma Benazir Bhutto or her nominees, why it will not be possible for the Preside **and the**petitioner to have working relationship in terms of the Constitution. In my view, there is a marked distinction between a statement made by a person holding a high public office, who is expected to be discreet and careful and a statement made by a politician while he or she is out of power. In the game of politics, politicians particularly in our region some times make statements for public consumption. The petitioner after the passing of the impugned order started public comparing for enlisting support of the public inter alia for election of the National Assembly which was then due on 14‑7‑1993. Thus we

will have to view the petitioner’s post‑dissolution statements differently and the same cannot be equated with the statements, which be made while in power. This will be equally applicable to the statements made by Mohtarma Benazir Bhutto. However, there is no doubt that strong language was used by the petitioner after his dismissal and so also by Mohtarma Benazir Bhutto in her Press statements made by her in early 1992. But at the same time, it is evident that persons having different point of views and having strained relations can work together, if the situation and dictates of time so demand. After the dismissal of the petitioner’s Government, Mohtarma Benazir Bhutto’s

nominees were ‘inducted into the Care‑taker Government which included her

husband.

It may also be stated that a distinction is to be drawn between personal relationship and the relationship’ of that of the President and the Prime Minister. The two persons may not have good personal relationship but they are supposed to have Constitutional relationship in terms of the Constitution. It may be stated that the oath of offices of both the above high functionaries enjoin them to do right to all manner of people, according to law, without fear or favour, affection or ill‑will. Our Constitution demarcates and delineates the powers of the President and the Prime Minister clearly. In case of any doubt, a reference can be made to the Supreme Court in terms of clause (6) of Article 48 of the Constitution for resolving the controversy.

In my view though the launching of personal attack by the petitioner on the President in his above speech of 17th April, 1993, was not warranted T’ and desirable but simpliciter same could not have furnished a ground to press into service Article 58

hereinabove.

I

We also heard the learned Attorney‑General with the assistance of the then Foreign Minister, Mr. Sharifuddin Pirzada, and the Foreign Secretary, Mr. Sheharyar M. Khan, in presence of the counsel for the petitioner about the internal and international problems referred to in above ground V. It will suffice to observe that I am unable to subscribe to the view that there was any inaction on the part of the petitioner of the nature which warranted the dissolution of the Assembly and the dismissal of the Cabinet particularly keeping in view that hardly two days had expired. I am, therefore, inclined to hold that the above ground ‘b’ is also not sustainable as it has no nexus, to the

(2) (b) inter alia for the reasons referred to

reasons contained in sub‑clause (b) of clause (2) of Article 58 of the

Constitution.

37. Before taking up any other ground of the impugned order, it may be pertinent to dilate upon the status of the President and the Prime Minister under our Constitution. It is wrong to assume that the President is merely a symbolic head. The provisions of the Constitution highlighted above indicate that he has to perform his Constitutional functions and duties in different capacities. Rustom S. Sidhwa, J. in the case of Ahmed Taiiq Rahim (supra) has after referring to the various provisions of the Constitution described the President as under‑

“8.       A few words may be stated about the position of the President. The President, as the Head of the State, represents the unity of the Republic. He is thus placed above the party. He is the benign moderator and the symbol of the impartial dignity of the State. He is entitled to certain communications and information, which is the duty of the Prime Minister to furnish, with power to submit for the consideration of the Cabinet any matter on which a decision may have been taken but which has not been considered by the Cabinet. He can call upon the Cabinet to reconsider any advice tendered or consider such advice. He has power to act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so, with entitlement to decide whether he is so empowered. He has power to refer any matter of national importance to a referendum. He has power to send messages to either House for their consideration. He has the right to address both Houses assembled together at the

commencement of the each Session of Parliament. He has the power to dissolve the National Assembly if, in his opinion, a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. He has the power inter alia to appoint the Chairman of the Joint Chiefs of Staff Committee and the three Chiefs of the Army Staff, Naval Staff and Air Force Staff. He is at the apex, as the executive authority of the Federation, which is vested in him, is exercised by him directly or through officers subordinate to him. He is to be aided and advised in the exercise of his functions by the Cabinet of Ministers, with the

Prime Minister at its head. In the exercise of his functions, he has to act in                 accordance with the advice of the Cabinet or the Prime Minister; except in cases where he is obliged to act in his discretion. The President is therefore no less powerful than the Prime Minister.”

In the book under the caption “Constitution of India’ by Mangal Chandra Jain Kagzi, 1987 Edition, Vol. 1, the author has summed up the position of the Indian President as under though he does not have many powers which have been conferred by our Constitution on our President inter alia by the Eighth Amendment as discretionary power:‑‑‑

“The Indian President, on the other hand, is a popular uniting symbol. Elected on the basis broader than the Prime Minister, although indirectly by the people, he has the privileges of the king and duties of a modern head of a democratic republican State. He is given the full ceremonial status of a monarch without any dynastic or hereditary claim for it. When outside India he has all the privileges and immunities accorded to the head of an independent sovereign State. At home he drives in the State‑coach when he goes to inaugurate a session of Parliament and addresses the Members of both Houses assembled together in the Central Hall of the Parliament House with all grandeur and regality very much like the British Queen, but he is not the means of executive decision. His is a privilege to b ‘ c consulted, and to be informed of all the affairs of the Union. He has the right to encourage and warn the Prime Minister and other Members of the Council of Ministers. However, he is not a mere figure‑head, and is in a position to bring considerable influence on the decisions of the Council of Ministers. On any particular issue he may require the Council to reconsider the implications of any decision taken by a Minister which he thinks is not correct. He may ask for such information as he may deem necessary with regard to administrative matters and proposals for legislation. His Constitutional position does not in any way affect his status. He is elected by the Members of the State Assemblies and Members of Parliament, and thus he cannot be looked upon as a mere dummy of the Central Government of the day. The provision for his indirect election seems to be deliberate, and remove the basis for any development on the lines of a presidential system of Government. This is, because of the desire to ensure the growth of a responsible system of Government in the country within the frame of a Parliamentary system. The President can be an imperceptible force in the capacity of the formal head of the executive Government, although he might have a few powers which might be exercisable by him in his discretion. He can decide questions as to qualifications of Members after obtaining the opinion of the Election Commission, the disputed question of a High Court Judge’s age, and can act similarly in certain other matters without depending on the advice of a Minister. Such discretionary powers might also include under certain conditions powers to dissolve the House of the people, power to prorogue the Houses of Parliament, the power to dismiss a Ministry. It cannot be denied that normally he is bound by the “aid and advice” of the Council of Ministers, although the possibility of exercise of his individual discretion under certain conditions cannot be altogether denied.”

De Smith and Brazier in their book “Constitutional and Administrative Law”, Sixth Edition by Rodney Brazier (supra) have described the status of the Queen in England in relation to the executive powers as under:‑‑‑

“This is not to say that the, monarch must be mere cypher. As Bagehot wrote, she has ‘the right to be consulted, the right to encourage, the right to warn’. He could have added that she also has the right to offer, on her own initiative, suggestions and advice to her Ministers even where she is obliged in the last resort to accept the formal advice tendered to her.

To be more explicit, she has the conventional rights to receive Cabinet papers and minutes to be kept adequately informed by the Prime Minister (with whom she has regular weekly audiences) on matters of national policy, to receive Foreign Office dispatches and telegrams and other State papers, and to be notified proposed appointments and awards to be made in her name so that she can express her views informally. She can make such private comments as she thinks fit: she can remonstrate and offer strong objections to a proposed course of action.”

I may ‑point out that the Indian President enjoys certain. discretionary powers, which according to the above Indian Author might also include under certain conditions powers to dissolve the House of the people and power to dismiss a Ministry. The Queen in England enjoys the above power under Royal Prerogative though subject to certain conventions. But in our Constitution powers to dissolve the Assembly and to remove the Government by withdrawing the President’s pleasure are governed by the Constitutional provisions and they are controlled by the conditions contained therein.

It may be pertinent to point out that Article 46 of the Constitution imposes the following Constitutional duties on the Prime Minister:‑‑

(a)        to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation;

(b)        to furnish such information relating to the administration of the affairs of the Federation and proposals for legislation as the’ President may call for; and

(c)        if the President so requires, to submit for the consideration of the Cabinet any matter on which a decision has been taken by the Prime Minister or a Minister but which has not been considered by the Cabinet.

The above Article is to be read with the other provisions of the Constitution  particularly with clause (2) of Article 58 of the Constitution, which empowers the President to dissolve the National Assembly and ‑as a result of which the Cabinet is to cease to function The *above, powers cannot be exercised by*the President unless he keeps him‑self abreast of the day to day working of the Government. In my view, **Lilt:**cumulative‑ effect of the various provisions of the Constitution relating to the President is *that the, President enjoys*the right to be consulted, the right to encourage and the *right to warn as rem*arked by Bagehot about the  British Crown. In order to discharge his above Constitutional duties, he is expected to be vigilant and to keep his eyes and ears open. The documents produced by the Federation demonstrate that the President has attended to the above Constitutional duties by highlighting the various deficiencies and the need of improvement in the working of ‘the Government.

But at the same time the Prime Minister’s status is neither inferior nor., is less important to that of the President. Except in the matters which are in the sole domain of the President, the President cannot act without the advice of the Prime Minister, whose advice is binding on him by virtue of Article 48(l) of the Constitution. The Prime Minister, in fact, runs the Government and formulates its policies in terms of the Constitution and is accountable to the Parliament. He represents the will of the‑ people. Prior to the Eighth Amendment the Prime Minister was all in all, but after the above amendment, the position has changed considerably.

38. After the above deviation, I may refer to ground ‘c’, which has three sub‑paras. and which reads as follows:‑‑‑ ‑

Cc’       Under the Constitution the Federation and the Provinces are required to exercise their executive and legislative authority as demarcated and defined and there are specific provisions and institutions to ensure its working in the interests of the integrity, sovereignty, solidarity and well‑being of the Federation and to protect the autonomy granted to the Provinces by creating specific Constitutional institutions consisting of Federal and Provincial representatives, but the Government of the Federation has failed to uphold and protect these, as required, in that, inter alia:

The Council of Common Interests under Article 153 which is responsible only to Parliament has not discharged its Constitutional functions to exercise its powers as required by Articles 153 and 154, and in relation to Article 161, and particularly in the context of privatisation of industries in relation to item 3 of Part 11 of the Federal Legislative List and item 34 of the Concurrent Legislative List.

(II) The National Economic Council under Article 156, and its Executive Committee, has been largely bypassed, inter alia, in the forumlation of plans in respect of financial, commercial, social and economic policies.

(iii)       Constitutional powers, rights and functions of the Provinces have been usurped, frustrated and interfered with in violation of inter alia Article 97.”

In order to appreciate the above ground, it may be pertinent to refer to the relevant Articles of the Constitution, pertinent pleadings and the documents on record.

39. Article 153 of the Constitution envisages establishment of a Council of Common Interests, hereinafter referred to as the Council. It further contemplates that the members of the Council shall be‑‑

(a)        Chief Ministers of the Provinces; and

(b)                    an equal number of members from the Federal Government to be            nominated by the Prime Minister from time to time.

It also provides that the Prime Minister if he is a member of the Council, shall be the Chairman of the Council but if at any time he is not a member, the President may nominate a Federal Minister who is a member of the Council to be its Chairman. It also envisages that the Council shall be responsible to the Mailis‑e‑Shoora.

It may also be pertinent to observe that clause (1) of Article 154 of the Constitution defines the functions of the Council by providing that it shall formulate and regulate policies in relation to matters in Part 11 of the Federal Legislative List and in so far as it is in relation to the affairs of the Federation, **and the matter**in entry 34 (electricity) in the Concurrent Legislative List. It further provides that the Council shall exercise supervision and control over the related institutions. At this juncture, it may be appropriate to refer to Part 11 of the Federal Legislative List referred to in the above clause, which has eight items. It will suffice to reproduce items 1 to 4, which read as follows:‑‑‑

(1)        Railways.

(2)        Mineral oil and natural gas; liquids and substances declared by   Federal Law to be dangerously inflammable.

(3)        Development of industries, where development under Federal Control is declared by Federal law to be expedient in the public interest; institutions, establishments, bodies and corporations administered of managed by the Federal Government immediately before the commencing day, including the Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation; all undertakings, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation.

(4) Council of Common Interests.”

Whereas item 34.in the Concurrent Legislative List relates to electricity.

It may also be pertinent to state that clause (2) of Article 154 lays down that the decision of the Council shall be expressed in terms of. the opinion of the majority, whereas clause (3) provides that until Majlis‑e‑Shoora makes provision by law in this behalf, the Council may make its rules of procedure. It may further be pointed out that under clause (4) Majlis‑e‑Shoora in joint sitting may from time to time by resolution issue directions through the Federal Government to the Council generally or in a particular matter to take action as Majlis‑e‑Shoora may deem just and proper and such directions are binding on the Council. It may further be pointed out that under clause (5), it has been provided that if the Federal Government or a Provincial Government is dissatisfied with the decision of the Council, it may refer the matter to the Majlis‑e‑Shoora in a joint sitting, whose decision in this behalf shall be final.

40. It may also be stated that Article 1 55 provides for the resolution of any dispute in respect of water from any natural source, arising out of any executive act on account of failure of the authority to exercise any of its powers with respect to the use and’ distribution or control of water from the source. It provides that the Federal or Provincial Government concerned may make a complaint in writing to the Council. The other clauses of the above Article deal with the procedural and other matters. However, it will suffice to observe that under clause (5) of the above Article 155, it has been provided that notwithstanding any law to the contrary but subject to the provision of clause (5) of Article 154, it shall be the duty of the Federal Government and the Provincial Government concerned in the matter in issue to give effect to the decision of the Council faithfully according to its terms and tenor.

It may also be stated that clause (1) of Article 156 envisages the constitution of a National Economic Council, hereinafter referred to as N.E.C. by the President consisting of the Prime Minister, who shall be its Chairman and such other members as the President may determine. However, the proviso to the above clause provides that the President shall nominate one member from each Province on the recommendation of the Governor of that Province. Whereas clause (2) thereof defines the functions of N.E.C. by providing that it shall review the overall economic conditions of the country and shall for advising the Federal Government and the Provincial Governments formulate plans in respect of financial, commercial, social and economic policies and in formulating such plans, it shall be guided by the principles of policy set out in Chapter 2 of Part 11 of the Constitution.

It may further be stated that Article 160 envisages the constitution of a National Finance Commission within six months of the commencing day and thereafter at intervals not exceeding rive years by ‘the President consisting of the Minister of Finance of the Federal Government, the Ministers of Finance of the Provincial Governments and such other persons as may be appointed by the President after consultation with the Governors of the Provinces. It may also be stated that clause (b) thereof provides that it shall be the duty of the National Finance Co m‑mission to make recommendation to the President as to‑‑

(a)                    the distribution between the Federation and the Provinces of the net proceeds of the taxes mentioned in clause (3);

(b)        the making of grants‑in‑aid by the Federal Government to the      Provincial Governments;

(c)        the exercise by the Federal Government and the Provincial Governments of the borrowing powers conferred by the Constitution; and

(d)                   any other matter relating to finance referred to the Commission by the President.

it may further be stated that clause (3) thereof lays down that the taxes referred to in paragraph (a) of clause (2) are the following taxes raised under the authority of Majlis‑e‑Shoora:‑

(i) taxes on income, including corporation tax but not including taxes on income consisting of remuneration paid out of the Federal Consolidated Fund;

(ii)        taxes on the sales and purchases of goods imported, exported,     produced, manufactured or consumed;

(iii)                   export duties on cotton, and such other export duties as may be specified by the President; ‑

(iv)                   such duties of excise as may be specified by the President; and

(v)                    such other taxes as may be specified. by the President.

Whereas clause (4) of the above Article,‑‑ empowers the President to pass an order on the recommendation of the N.F.C. about the share of the Provinces. It may also be observed that clause (5) thereof envisages that the recommendations of the National Finance Commission together with an explanatory memorandum as to the action taken thereof shall be placed before the Houses and the Provincial Assemblies.

It may also be pointed out that clause (6) empowers the President to make such amendment and modification in the law relating to the distribution of revenues between the Federal Government and the Provincial Governments as he may deem necessary or expedient at any time before an order under clause (4) is made. Whereas, clause (7) thereof provides that the President, by Order, may grant in aid of the revenues of the Provinces in need of assistance and such grant shall be upon the Federal Consolidated Fund.

it may further be stated that Article 161 of the Constitution provides that the Provinces are to receive net profits of the Federal duty of the excise on natural gas levied at well‑head and collected by the Federal Government and of the royalty collected by the Federal Government and that the same shall not form part of the Federal Consolidated Fund. The other provisions of the above Article need not be dealt with for the purpose of present controversy.

41. The petitioner in para. 5 of their petition which runs into six pages, has dealt with the above grounds exhaustively and has pointed out that since November, 1990, the petitioner Government has fully respected the Constitutional power, rights and functions of the Provinces inasmuch as under Article 161(2) for the first time since 1978 Rs.6,000 million were paid to N.‑W.F.P. Government for the year 1991‑92 as the net profit earned by the Federal Government from a Hydro Electric Station located in that Province and a similar amount was paid in 1992‑93, whereas under Article 161(l) the excise duty on natural gas recovered on the well‑head situated in Balochistan for the year 1991‑92 to the tune of about Rs.4,000 million (in addition to Rs.700 million excise duty on natural gas) were paid to Balochistan Province. It has also been averred that the institutions contemplated under the above Articles have been operating. As regards privatisation, the following averments have been made:‑‑

“(a/1) Privatization policy was effectively implemented for the first time. It has been continuously under consideration and implementation. Since 1977, some units were privatised between 1977 and in 1985 a dis investment committee was set up. In 1989, the then Government had identified 14 specific units for privatisation. Many new laws were enacted to implement the dis investment policy since 1978. None of the successive Governments had consulted the CCI.

(b/1) The Federal Government had Constitutional, legislative and executive authority under Articles 70 and 97 of the Constitution in respect of all matters in respect of which Parliament has powers to make law (i.e. the Fourth Schedule including its Part It which comes under the purview of CCI under Article 154). It had also the executive power to grant, sell or dispose of any property vested in the Federal Government under Article 173 of the Constitution. The Federal Government had accordingly continued to perform these functions in the absence of any clear directions from the‑ CCI under Article 154.

(c/1) The CCI had held three meetings in 1991, when the privatisation policy was under full implementation but no **member raised any issue**with regard to privatization, nor has the council so far defined, since its creation, the manner in which it will carry out the functions entrusted to it under Article 154.

Thus, after taking into consideration the several positive steps taken by the Government since November 1990 of strengthening the role of CCI the charge of lack of consultation with CCI and the policy of privatization which has been in operation since 1977 ;s baseless. It even otherwise does riot amount to a constitutional violation since Government’s actions in this respect are in line with and within the bounds of Constitution.”

As regards the meetings of CCI, NFC the following averments have been made:-

“(d/1) (i) The Council of Common Interests which had remained a dormant organization since its creation was activated and three meetings were held on 12th January, 1991, 21st March, 1991 and 16th September, 1991. The Council reached decision on the apportionment of Indus Waters at its meeting held on 21st March and approved the setting up of the Indus Water Authority. It also approved for the first time its Rules of Procedures. In preparation for the next meeting of the Council in May, 1993 a pre‑CCI meeting was held with the Chief Ministers.

(ii)        The National Finance Commission, which under Article 160(l) of the Constitution, is to be constituted every 5 years, had not given its award since 1975. A new Commission was constituted in January, 1991, and submitted a unanimous award in April, 1991. This has provided additional resources of Rs.25/30 billion each year to the Provinces and thus met one of the essential prerequisites for enabling the provinces to discharge the functions entrusted to them under the Constitution.

(iii)       A separate Ministry of Inter‑Provincial Coordination was set up. An inter‑Provincial Coordination Council was created consisting of several Ministers and the four Chief Ministers and Prime Minister AJK Government. The Council has met twice in a very cordial atmosphere and resolved many Inter‑Provincial issues. The first meeting was held on 13th January, 1993 and the second on 11th April, 1993.”

42. The Federation in para. 5 of the written statement has dealt with the question of privatization and holding of meetings of CCI and NEC as follows:‑‑

“5(l)(v) Averments made in para. 5(l)(v) are misleading and incorrect. The petitioner has accepted that these are two specific examples of the role of Constitutional bodies like CCI and NEC and its Executive Committee having been bypassed. The explanation about Council of Common Interests not being allowed to discharge its Constitutional functions with regard to privatisation of industries and power units is wholly unacceptable. This is not the issue where the Ministers concerned are authorised to bypass Constitutional bodies like CCI and NEC and its Executive Committee. This has prejudicially affected the rights of the Provinces and violated the Constitutional mandate and eroded the role of Parliament.

5(a)(l)‑Thc averments made in para. 5(a)(1) are incorrect and misleading. It is denied that privatisation policy was effectively implemented as alleged. The petitioner and his Government unilaterally formulated the Privatization policies in disregard of Constitutional provisions, in that CCI was not ‘ allowed to formulate and regulate policies in relation to matters mentioned in Article 154. In any event the process of privatization lacked transparency and was vitiated by various illegalities and irregularities e.g.;

(a)        The reference prices were frequently changed. (b) The methodology for fixation of net worth of units was not consistent. (c) Bidding system was not consistent and the units were transferred to favourites of the petitioner ignoring the highest bids, on various pretexts. (d) Recovery of sale price was not made in specified time frame and manner. This resulted in wastage of public assets at the cost of national exchequer. (c) The mode of sale/transfer enabled the transferees to manipulate prices of products of sold units and make fortunes overnight to the detriment of the consumer. (1) In fact by these devices the Transferees paid the Transfer price out of the windfall proceeds. Even the units which were making profits were sold without realising the loss to the National Exchequer. Eight Cement Factories were sold to one Group of Industrialists and the manner in which the Muslim Commercial Bank was sold to the favourites of tile petitioner namely Mansha Group is well‑known. Relevant record will be produced at the relevant time and if required, to show favouritism and misuse of power by the petitioner. In consequence of the sale of eight cement factories to his favourites Mansha Group the petitioner managed to have the major production of cement in tile country to be concentrated and monopolized. This was a clear misuse of power and has become public scandal throughout the country. Details of other questionable sales by and at the instance of the petitioner and his Government will be produced before the Honourable Court if necessary.

Privatization:

(a)        It is denied that there was any enthusiastic public response of petitioner’s policies as alleged. The real facts relating to the policies in regard to privatization and other matters are being brought to the notice of the Honourable Court. It is submitted that the petitioner’s policy of privatization and sale of properties owned by the **Federal**Government including Corporations was unconstitutional, illegal and suffered from many deficiencies and was not transparent at all. The specific provisions of the Constitution contained in Articles 153, 154,156 read with Article 161 **were violated by the petitioner and his Government.**Documents/records and **information in this behalf are**being placed on record of this Honourable Court (Annexure ‘A‑4, 5, 7 and E‑3). For example, the petitioner and his Government in violation of Constitutional provisions besides illegal selling of corporations, banks, industries decided to sell even to foreign investors and privatise national institutions/industrial units like WAPDA, Railway and Pakistan Telecommunication Corporation, PNSC. Port facilities without consulting the Provinces or the public representatives and the people whose interests were adversely affected thereby thus

endangering the structure and integrity or the Federation.”

43. Both the parties have produced a number of documents besides the President Secretary’s above letters dated 6‑12‑1SN2 and 28‑12‑1992 referred to in para. 31. The Federation has produced documents at pages 61 to 118 relating to proposed privatization of WAPDA, at pages 119 to 126 pertaining to proposed privatization of Railways, at pages 251 to 253 relating to privatization of Muslim Commercial Bank (all in File Vol.111) besides certain newspaper clippings, in which allegations about mal practices in the privatization have been made. In addition to that the respondent Federation has produced two letters of the Chief Minister of N.‑W.F.P., one letter each of Sindh and Balochistan Chief Ministers and also copies of the references made by Mr. M. Salman Taaseer, Information Secretary, P.P.P. Punjab, Mr. Farooq Leghari, Deputy Leader of the Opposition in the Assembly and Mr. Abdur Rashid Qureshi, all addressed to the Speaker besides the charge‑sheet of the combined Opposition.

On the other hand, the petitioner has produced a number of **documents including**privatization policy and its implementation published in November, 1991, by the Ministry of Finance, Government of Pakistan (at pages 50 to 71), privatization policy and its implementation published in January, 1992, by the Minister of Finance, Government of Pakistan (at pages 72 to 96), the booklet under the caption “Privatization and Economic Policy” by Mr. Saced Ahmed Qureshi , Secretary‑ General, Government of Pakistan (at pages 97 to 121), the booklet under the caption “Privatization and Pakistan Structure and Statistics” (at pages 122 to 140) relating to Power Sector at pages 141, 142 and pertaining to Telecommunication Sector (at pages 143 to 146) including revised prices chart, note on fixation of reference prices, sample of October bidding, sample of open bidding, list of buyers (Annexure XII), list of cement plants alongwith the buyer’s name (Annexure X111) all contained in Constitution petition Part 11.

In the case of Ahmed Turiq Rallint (supra), in tile majority view on ground (2) which was somewhat identical to above ground V, the following finding was recorded:‑‑

“As regards the second ground, we rind sufficient correspondence on record to indicate that persistent requests were made by the Provinces for making functional the Constitutional institutions like Council of Common Interests, National Finance Commission with a view to sort out disputes over claims and policy matters concerning the Federation and the Federating Units. as such. In spite of the intercession of the President, no heed was paid, Constitutional obligations were not discharged thereby jeopardizing the very existence and sustenance of the Federation.”

44. In Ahmad Tariq Rahim’s case (supra), in spite of the insistence of the two Provinces and riling of legal proceedings by them and intercession of the President, neither CCI nor NFC were operating. Whereas in the present case, CCI, NFC and NEC have been established. They have been functioning. Thus only point which needs consideration is that the matters covered by Part 11 of the Federal Legislative List have not been brought for formulating and regulating the policies. The plea taken by the petitioner in the present case is that it was not necessary to have placed the above matters before the CCI. Further plea raised during the arguments Was that neither WAPDA nor Telecommunication nor Railways have been privatized and that the item of the Government Privatization Policy was included as an item in Pre‑CCI meeting held on 11‑4‑1W3.

It may be pertinent to point out that the Chief Minister N.‑W.F.P. addressed his first letter dated 8‑1U‑1992 to Mr. Muhammad Aslam Khan Khattak, Minister for Inter‑Provincial Coordination, complaining about certain matters including bypassing of NEC. It was also pointed out that the policy matters affecting the Provinces referred to therein were decided without taking the Provinces into confidence. It was also stated that the Provinces felt that decisions to privatise Railways, Sui Northern Gas or WAPDA, which were national assets were to be taken after taking the provinces into confidence. He addressed his second letter dated 9‑1‑1993 to the petitioner inviting attention to the provisions of Article 154 of the Constitution and pointing out that the matters relating to privatization of WAPDA could only be considered by the CCI and its decision could only be amended by the joint session of the Parliament.

it may further be observed that there is a letter dated 6‑12‑1992 addressed by the Chief Minister, Baluchistan, to petitioner complaining about the non‑payment of the full amount awarded by NFC. The Chief Minister of Sindh addressed his letter dated 21‑3‑1993 to the President protesting against taking out the schemes pertaining to Highway and Telecommunication out of the purview of CWD/EC in violation of the Constitution of Pakistan and without getting matter of policy relating to development of industries, water **and power (WAPDA), Railways**and National Highway formulated and regulated by the forum, namely, CCI.

The President’s Secretary raised the above questions first time in the **aforesaid letter dated**28‑12‑1992. The Chief Minister, N.‑W .F .P.’s letter about NEC is of 8‑10‑1993 (sic) and about CCI of 9‑1‑1993 and of the Sindh Chief Minister is of 21‑3‑1993. The Balochistan Chief Minister’s letter of 6‑12‑1992 does not refer to CC[, but asked for the payment of balance amount. In my view, the Federal Government should have’ brought the matter of privatization X in respect of the items covered by the above Constitutional provisions before the CCI. The petitioner’s plea that, it was not mandatory is not sustainable. However, before the impugned order of dissolution was passed, the item of Government Privatization Policy was included as art item for consideration by CCI for the meeting which was scheduled after Pre‑Council of Common Interests fixed on 11‑4‑1993. It may be pertinent to reproduce Mr. Mansoor Ellahl, Joint Secretary to the Cabinet’s notice of the meeting dated 27‑3‑1993, which reads as under:‑‑

“A pro‑Council of Common Interests meeting to identify and discuss some of the main issues that may be raised before the CCI will be held immediately after the meeting of Inter Provincial Coordination Committee scheduled to be held at 9.30 a.m. on Sunday, the 11th April, 1993 in the Committee. Room of the Punjab Civil Secretariat, Lahore.

2                      The following will be the agenda for the meeting:

AGENDA

(1)                    Progress Report on the \*Indus (Ministry of Water and Power).

            Water Authority.

(2)                    Proposed Development Programme (Ministry of Railways)

            of Pakistan Railways.

(3)                    Demand and supply of Natural Gas. (Ministry of Petroleum and Natural Resources

(4)                    Privatization policy of the(Ministry of Finance

            Government

(5)                    Any other matter with permission

            of the Chairman.

3. Summaries for items Nos.1 and 4 were circulated vide Cabinet Division memo. No‑CCI‑1/M/93, dated the 21st March, 1993.

4                      Kindly make it convenient to attend.”

It may be pointed that the petitioner’s averment made in the petition quoted here in above that since privatization started in 1977, the above item has never been brought before CCI has not been denied, but identification of the units to be privatized was done by the Government in power. It may be mentioned that the process of privatization has the backing of the statutes. in this regard, it may be stated that the Transfer of Managed Establishment Order (P.O. 12 of 1978) was issued on 16‑9‑1978. This has been amended by Ordinance XT of 1989, Ordianncc XXXIII of 1991 and Act V of 1992. We have also Hydro generated Vegetable Oil Industry (Central and Development) Act, 1973 (LXV of 1973) which has been amended by Ordinances **XXXV and VII**of 1991 and 1992 respectively and Acts XX and XI of 1991 and 1992, respectively. Besides that the Parliament has passed Protection of Economic Reforms Act, 1992 (Act X11 of 1992), which was assented to by the President on 23rd July, 1992 (hereinafter referred to as the Act), providing cover inter alia to privatization. Clause (b) of section 2 of the Act defines term “economic reforms” as under:‑‑

(b)        ‘economic reforms’ means economic policies and programmes, laws and regulations announced, promulgated or implemented by the Government on and after the seventh day of November, 1990, relating to privatization of public sector enterprises, and nationalised banks, promotion of savings and investments, introduction of fiscal incentives for industrialization and deregulation of investment, banking, finance, exchange and payments systems, holding and transfer of currencies;”

Section 3 overrides other law by providing that:‑‑

“The provisions of this Act shall have effect notwithstanding anything contained in the Foreign Exchange Regulation Act, 1947 (VII of 1947), the Customs Act, 1969 (IV of 1969), the Income Tax Ordinance, 1979 (XXXI of 1979), or any other law for the time being in force.”

It may further be observed that section 7 provides protection against acquisition of privatised units by laying down that:‑‑

“The ownership, management and control of any banking, commercial, manufacturing or other company, establishment or enterprise transferred by the Government to any person under any law shall not again be compulsorily acquired or taken over by the Government for any reason whatsoever.”

Whereas section 10 guarantees protection of financial obligations by providing that:‑‑

“All financial obligations incurred including those under any instrument, or any financial and contractual commitment made by or on behalf of the Government shall continue to remain in force, and shall not be altered to the disadvantage of the beneficiaries.

The other provisions of the Act dealing with foreign exchange acounts etc. need not be dealt with for the purpose of the above controversy. The above provisions of the Act indicate that the Parliament affirmed the privatization transactions, which had taken place up to 23‑7‑1993. In other words, privatization has the backing of law. There is no doubt that it should have been done through CCI. The WAPDA, Sui Gas and Telecommunication units, referred to by the Chief Minister, N.‑W.F.P. in his above letters, have not yet been privatized. The item of the Government Privatization Policy was included in the Pre‑Council of Common Interests meeting notified on 27‑3‑1993 for 11‑4‑1993 by the above‑quoted letter of the Joint Secretary to the Cabinet. referred to above. In view of the above factual background, it cannot be said that the above lapse on the part of the Federal Government was of the nature, which had jeopardized the very existence and subsistence of the Federation as was held in Ahmed Tariq Rahim’s case warranting to press into service Article 58(2)(b) of the Constitution.

45. 1 may refer to ground ‘d’ of the impugned order, which reads as follows:‑‑

“(d)     Maladministration, corruption and nepotism have reached such proportions in the Federal Government, its various bodies, authorities and other corporations including banks supervised and controlled by the Federal Government, the lack of transparency in the process of privatisation and in the disposal of public/Government properties, that they violate the requirements of the Oath(s) of the public representatives together with the Prime Minister, the Ministers and Ministers of State prescribed in the Constitution and prevent the Government from functioning in accordance with the provisions of the Constitution.”

It may be observed that ground ‘d’ is more or less identical to ground cc’ and ground T(iii) and T(v) to that of ground ‘e’(ii) and ‘c’(iii) of the grounds in the case of Ahmed Tariq Rahim (supra), wherein it has been held that the above grounds themselves are not sufficient independently to warrant taking of action under Article 58(2)(b) of the Constitution but they can however be invoked, referred to and made use of alongwith grounds more relevant like grounds ‘a’ and ‘b’ which corresponded to grounds ‘a’ and ‘c’ in the present case (reference may be made to para. marked M at page 666 PLD 1992 SC in the above case).

Mr. Khalid Anwar has pointed out that there is no concrete material on record to support the above ground. I asked the learned Attorney‑General to pin‑point the transactions of privatization in which irregularities/ mismanagement had taken place. Thereupon he submitted that in the case of Muslim Commercial Bank the highest bid of Tawwakal Group was not accepted but the third lowest bidder, namely Mansha Group, who is very close, to the petitioner was asked to match the above highest bid and upon **such**matching their bid was accepted. However, he conceded that there was no monetary loss to the public exchequer. The second incident which he pointed out was that eight cement factories were sold to above Mansha Group.

            On the other hand, Mr. Khalid Anwar has invited our attention to the fact that as many as 29 legal proceedings inter alia in the form of Constitutional petitions were riled against the privatization transactions but in none of the above proceedings the respondents could establish any irregularity .or illegality warranting interference by the Court. According to him, Mansha Group’s bid for M.C.B. was accepted on account of their financial  standing

vis‑a‑vis to that of Tawwakal Group. He further pointed out that the latter had riled a Constitutional petition in the Sindh High Court but withdrew the same without getting the matter adjudicated upon.

As regards the cement factories, his submission was that the petitioner had riled samples of biddings alongwith their rejoinder and it is open to the federation to point out any irregularity. He has also pointed out that the, World Bank in its report of 23‑3‑1993 had praised the privatization and the economic performance of the petitioner’s Government in ‑the’ following terms:‑‑

‘(ii)       Main Achievements.‑‑ ‑As noted above, progress has been very strong  in the private sector agenda, in particular since the current Government came to power in late 1990. An ambitious privatization             programme was launched with the aim to reduce the role of the public sector in manufacturing and services, thereby alleviating the Government’s financial and administrative burden and creating new opportunities for the private sector. So far about 67 industrial sector units and two of the four nationalized commercial banks have been privatized. Successful measures were taken to deregulate the economy. Investment sanctioning was virtually abolished, and the exchange system was substantially liberalized. Areas of investment previously reserved for the public sector were opened to the private sector. The ‘ financial sector was drastically reformed. In particular, an    auction system for Government securities was instituted in early 1991, which ‘will make the cost of public borrowing more transparent and deepen and widen the securities market. as a preclude to open market operations; it has already reduced financial dis intermediation. Trade policy measures were also taken to promote efficiency and strengthen the export sector. Since FY 88, the maximum tariff has been reduced from 225% to 90%, the import licensing generally abolished, lists of banned and restricted imports pruned, and the import surcharge integrated into the trariff schedule. The authorities have complemented these structural reforms with a flexible exchange rate policy, allowing the real effective exchange rate to depreciate by 14.3% between FY88 and FY92. In n)any respects,, these **reforms went**significantly beyond what was originally envisaged. (ifi) Encouraged, by these wide‑ranging reforms, private sector activity has strengthened, as evidenced by strong GDP and export growth and rising private savings and investment. Since FY88, GDP growth (at factor cost) has averaged some 5.5% p.a. and real per capita GDP has risen by over 10%. Exports have expanded by an average of 14% p.a. in volume terms (12’% in US dollars), facilitating the liberalization of the trade and payments system. Private gross fixed capital formation and gross domestic savings have gown from 7.7% to 9.4% of GDP and from 10.5% to 12.2% of GDP between FY88 and FY92, respectively. Foreign investment, both direct and portfolio, has also responded very favourably. These are encouraging trends, indicating a gradual strengthening of the underlying productive and savings base of the economy.”

                        Indeed there are certain newspaper clippings riled by the Federation      and six letters from the President’s Secretariat addressed to the Cabinet     Secretary, Finance Minister, referred to: in Annexure ‘E‑3’ at page 411 of the           documents rile of the Federation 11 to point out certain irregularities/anomalies in the privatization but there is no reliable material on the basis of which the above ground can be sustained, nor the learned            Attorney‑General was able to demonstrate the same before us though we           invited him to do so. Additionally, the above irregularities are not of the nature      .which can have nexus to the reasons mentioned in sub‑clause (b) of clause (2) of Article 58 of the Constitution.

The questions of maladministration, corruption, nepotism referred to’ in the above ground are also the subject‑matter of ground f(iii) and have been dealt with herein below.

46. 1 may now take up ground ‘c’ which reads as follows:‑‑

The functionaries, authorities and agencies of the Government under the direction, control, collaboration and patronage of the Prime Minister and Ministers have unleashed a reign of terror against the opponents of the Government including political and personal rivals/relatives, and mediamen, thus creating a situation wherein the Government cannot be carried on in accordance with the provisions of the Constitution and the law.”

            In support of the above ground, certain documents have been riled which are contained in the federation’s documents rile 111, which include photostat copies of telegrams addressed to the President (at pages 5 to 7 of the above file) from Mr. Naveed Malik, alleging therein that at the behest of Messrs Nawaz Sharif and Shahbaz Sharif, he was harassed/victimised; whereas at pages 8 to 11 there is a letter from one Mian Bashir’ Ahmad, dated 5‑5‑1992 addressed to the President on the letter head of Brothers Sugar Mills limited, **alleging therein**that they were denied their due share in the joint business by manoeuvring and by misusing the official position by the petitioner’s family. Then we have at page 18 a newspaper clipping of daily “Dawn” of March, 1993, containing the statement of Mr. lqbal Haider, the Information Secretary of the P.D.A., accusing the petitioner violating the Constitution by ordering withdrawal of the cases. Then we have a complaint from Mr. Ahmed Saeed Awan dated 11‑4‑1993 addressed to Mr. Fazalur Rahman Khan, Secretary to the President, alleging victimisation by the Federal and Provincial Governments. There is also a complaint from Mr. Rohail Asghar at page 52, Senior Political Correspondent, ‘Jang’, Lahore, alleging harassment by the Government. There is yet another photostat copy of a letter of one Rao Rashid of Lahore, dated 3‑11‑1991 at pages 55 to 57, which is not legible but it seems that it contains allegation as to involvement in the financial and other scandals of the Federal Government.

The above allegations/complaints have not been investigated into by any competent agency/forum in order to determine the truthfulness of the allegations contained therein. If we were to accept such allegations and accusations without ascertainment of truthfulness thereof for the purpose of dissolving the National Assembly and dismissing the Cabinet, no Assembly or Government will be able to stay in power for more than few months as the. making of such allegations for mala fide reasons are not uncommon. These documents were not even referred to by Mr. Aziz A. Munshi. I am, therefore of the view that the above ground besides being not founded on any material worth consideration has also no nexus with the reason mentioned in sub‑clause (b) of clause (2) of Article 58 of the Constitution.

47. 1 may now refer to para. ‘17 of the impugned order which has rive grounds, which read as follows:‑‑

In violation of the provisions of the Constitution:

(i)The Cabinet has not been taken into confidence or decided upon numerous Ordinances and matters of policy.

(ii)        Federal Ministers have for a period even been called upon not to see

            the President.

(iii)       Resources and agencies of the Government of the Federation, including statutory corporations, authorities and banks, have been misused for political ends and purposes and for personal gain.

(iv)       There has been massive wastage and dissipation of public funds and assets at the cost of the national exchequer without legal or valid justification resulting in increased deficit financing and indebtedness, both domestic and international, and adversely affecting the national interest including defence.

 (V)                  Articles 240 and 242 have been disregarded in respect of the Civil

            Services of Pakistan.

            48. As regards ground f(i), it may be stated that the above ground does not contain the particulars of the Ordinances and matters of policy about which the Cabinet was not taken into confidence. The President in his address of 22‑12‑1992 to the joint session of the Parliament was satisfied with the legislative work of the Parliament. The relevant portion of the English

translation reads as follows:‑‑                       I

“Take the Parliament for example. The facts show that during the last twelve months, each of the two Houses has discharged its legislative and other responsibilities reasonably well. During this period, 95 Bills were presented of which 35 were passed and the rest are at various stages of consideration. Parliamentary Committees have been set up and are functioning satisfactorily.”

However, Annexure ‘R’ at page 628 of the Federation’s Documents File II contains the list of Ordinances issued more than once (i.e. 2 to 8 times each) which are 20 in number and were issued in 1991‑92. The Supreme Court has recently in the case of Government of Punjab through Secretary, Home Department v. Zia Ullah Khan and 2 others 1992 S C M R 602 has clarified the legal position to the effect that an Ordinance cannot be repeated. Though an Ordinance is to be issued on the advice of the Prime Minister but the President could have sent back the same to the Prime Minister inter alia in exercise of his power contained under Article 46 of the Constitution. Photostat copies of the letters of resignations of the Federal Ministers/Ministers of State, Advisors and Parliamentary Secretaries in the Federation Documents File 11 at pages 101 to 123 do not contain any allegation that the Cabinet had not taken them into confidence about certain Ordinances and matters of policy but from the newspapers clippings, it appears that one or two Ministers who had resigned, had raised a grievance to the effect that there was a kitchen Cabinet for attending the important matters and they were not consulted. It may be stated that in a parliamentary form of Government even in England, there is a team of few Ministers, who are more close to the Prime Ministers than the other Ministers and who are consulted more in the discharge of day to day functions. Even if the above allegation of the above Ministers is true, they may have individual grievance but the same cannot be made a ground for the purpose of sub‑clause ~b) of clause (2) of Article 58 of the Constitution as it has no nexus with the reason mentioned therein.

49. As regards para. f(ii), it may be mentioned that Sardar Asif Ahmed Ali, ex‑Minister of State for Economic Affairs, in his resignation letter undated addressed to the President, has alleged at page 140 of the above File 11 that “Both Mr. Shahbaz Sharif and Mr. Chaudhry Nisar made it abundantly clear to me that they had made it a matter of their pride to confront the President, The other Minsters were once again instructed not to call on the President”. This allegation has been denied in the pleadings by the petitioner and his counsel before the Court during the arguments. There were heated at arguments on the’ question, whether the President can seek any information directly from a

Minister instead of obtaining the same from the Prime Minister in terms of Article 46 of the Constitution. The submission of Mr. Khalid Anwar was that under clause (1) of Article 48 of the Constitution the President is to act in accordance With the advice, of the Cabinet or the Prime Minister and, therefore, a Minister has no Constitutional basis to furnish any advice/information to the President. On the other hand, Mr. Aziz A. Munshi, learned Attorney General has contended that under Article 91(l) of the Constitution, a Cabinet of Ministers with the Prime Minister at its head is

constituted to aid and advise the President in exercise of his functions as the executive authority of the Federation and, therefore, he is entitled to seek information from a Minister without asking the Prime Minister. To reinforce the above submission, he has invited our attention to clause (4) of Article 48 6f the Constitution, which reads as follows:‑‑

“(4)      The question whether any, and if so what, advice was tendered to the President by the Cabinet, the Prime Minister, a Minister or Minister of State shall not be inquired into in, or by, any Court, tribunal or other authority.”

It is true that in the above‑quoted clause (4) it has been provided that the question, whether any, and if so what, advice was tendered to the President by the Cabinet, the Prime Minister, a Minister or Minister of State shall not be inquired into in, or by, any Court,. Tribunal or other authority and, therefore, one can urge that the’ advice’ can also be tendered by a Minister. However, the Constitutional advice referred to in clause (1) of Article 48 can only be tendered by the Cabinet or the Prime Minister: But, there is nothing wrong if a Minister calls on the President socially or with the object to furnish certain information to him which the President may need in connection with some official matter. It is for the Minister concerned to bring this fact to the notice of the Prime Minister, who being the Head of the Cabinet, is entitled to be taken into confidence by Ministers while discussing or talking about any official matter with the Head of the State.

I am of the view that the above ground mentioned in the above sub ­para. has no nexus to the reason mentioned in sub‑clause (b) of clause (2) of Article 58 of the Constitution.

50. Adverting to the ground mentioned in sub‑para. (iii) of para. ‘f’ it may be observed that this was not highlighted by the learned Attorney‑General during the arguments but except the factum that Rupees thirty crores were taken as a loan by the companies in which the petitioner’s family has interest from Messrs. M.C.B. after its privatization. ,This fact has been averred by Mr. Farooq Leghari, Deputy Leader of the Opposition, in his reference, dated ~11‑1‑1992 addressed to the Speaker (Federation’s documents File No.II at page 497 relevant at page 498), in which he **alleged that two Sugar Mills**belonging to Ittefaq Group obtained in an illegal manner a sum of Rupees 300 million as loan on 20‑8‑1991 from the above bank through Cheques Nos.0306126 afid 0306151 in violation of the order passed by a Division Bench of the Lahore High Court in Constitution Petition No. 1121 of 1991. The charge‑sheet submitted by the combined Opposition against the petitioner and the IJI Government referred to herein below at page 310 of, the Federation’s documents File III contains allegation that the petitioner’s family’s borrowing from the Financial Institutions was Rupees 2.5 billion and that during two years of his incumbency, this has shot up 1000%. We have also on record another reference (at pages 490 to 496) addressed to the Speaker of the National Assembly by Mr. Salman Taaseer, Central Information Secretary, P. P  P. containing allegations that the bid of the lowest. bidder for the construction of Motorway between Lahore‑Islamabad was not accepted but the higher bid of Messrs. Daewoo of South Korea has been accepted besides making payment of some, additional’ amounts for designing etc. There is yet another reference addressed  to the Speaker by Mr. Abdul Rashid Qureshi, Advocate, dated 11‑1‑1992 at pages 521 to 523 alleging therein that two members of Ittefaq Group of Companies, namely, Mian Tariq Shari and Mian Rashid Rahirn obtained a sum of Dirharn 4 million each from B.C.C.I., Dera Branch, Dubai, on 21‑2‑1989 when the petitioner was the Chief Minister of Punjab, who allegedly allotted 343 Kanals forestry land at Bhoorban at a given away price to’Mr. Zafar Iqbal, who was running affairs of B.C.C.I. We have also a copy of the aforesaid charge‑sheet submitted by the combined Opposition against the petitioner and IN Government (at pages 304 to 442.of Federation’s documents File III) under the captions:

“Section (a) Fraud and corruption.

Section (b)                   Incompetence of Nawaz Sharif Government.

Section (c)                   Disruption of National Fabric.

Section (d)                  Failure of foreign policy.

There are,‑ a, number’ of newspaper clippings in the Federation documents File No.IV containing news items about irregular grant of contracts, exorbitant expenses 0n foreign trips etc. There are also photostat copies of documents on the Federation’s Documents File No.111 (at pages 254 to 284) relating to the construction of road in’ Raiwind area. The allegation, is that the above road was not constructed as claimed for the benefit of persons coming to Raiwind for attending congregations for religious purposes but in fact it was intended to provide benefit to Ittqfaq., Grqpp, who have their factories near; Raiwind. It may further be observed that there are photostat copies of documents at pages 443 to 472 of the above Federation, documents File No.111 allegedly indicating that with mala fide object. to facilitate profit making by Ittefaq Group, the rates of customs duty etc. were reduced on the import of re‑rollable scrap.

Mr. Aziz A. Munshi, learned Attorney‑General, while arguing on the question of submission of 88 resignations by the M.N.As. to the President instead of to the Speaker had invited our attention to documents marked N‑1 and N‑2 at pages 504 to 517 of the Federation’s documents File II. N‑1 indicates that in the year 1991‑92 Mr. Gohar Ayub, Speaker as M.N.A. for Constituency NA‑13, for electrification of villages was given additional quota of 46 villages from the Prime Minister quota and of others besides his normal quota of 5 villages and in the year 1992‑93, additional quota of 11 villages. Whereas N‑2 shows that the Prime Minister in his discretionary fund of Tameer‑e‑Watan out of total amount allocated for N.‑W‑.F.P. Rs.14 million allowed Rs.10 million for Mr. Gohar Ayub’s, schemes.

However, the basic question remains, whether mere allegations in the form of complaints or news items without ascertainment of their truthfulness are sufficient or above alleged special favours to Mr. Gohar Ayub to furnish a ground in the order under Article 58(2)(b) of the Constitution. In other words, the precise question for consideration is,. whether such irregularities can have nexus to the reason mentioned in the above provision of the Constitution or can they be subject‑matter of investigation in appropriate proceedings under the relevant laws. In my view, the alleged irregularities/favours may be subject ­matters of appropriate legal proceedings under the relevant laws, if they constitute breach of such laws and are true, but such individual instances cannot have nexus with the ground mentioned in the above provision of the Constitution. However, if the corruption, nepotism and favouritism are on such a large scale, that it resulted in the breakdown of Constitutional machinery completely it may have nexus with the above provision.

51. As regards sub‑para. (iv) of ground ‘f, it may be stated that the learned Attorney‑General has not specifically pointed out any particular item except upon query from the Court, he submitted that’ donations were made in crores of rupees by the petitioner for various project’s outside the budgeted amounts though he was authorised to make grant out of his discretionary amount of Rs.8,00,000 under the Privileges Act, 1975. This does not seem to be the correct position. The above Act relates to the Prime Minister’s Personal Privileges and has nothing to do with the Government’s’ schemes/projects. There are photostat copies of documents on record at pages 545 to 575 of the Federation’s documents File 11, indicating that a programme of socio‑economic development under the name of “Tameer‑e‑Watan Programme” was initiated. The Prime Minister’s discretionary fund to. the extent of 10% out of the total budgeted amount was created which .is .evident from the photostat copy of Joint Secretary (TWP)’s memorandum dated 12‑11‑1992 addressed to Mr. Mukhtar Ahmed, Financial Advisor (LG and RD), whereby advice was sought for regularisation of the excess amount of Rs.6.724 million spent under the discretionary grant of the Prime Minister, the total of which at 10% was Rs.29.6 million of the budgeted amount of Rs.2916 million. There are newspaper clippings already referred to hereinabove containing news items about the expensive trips of the Prime Minister and the expenses incurred’ in holding Seminars in the capitals of the foreign ‑countries for attracting foreign investment.

it may be pertinent to refer to the President’s Secretary’s letter dated 22‑3‑1993 addressed to Mr. Sartaj Aziz, Minister for Finance, Islamabad, alongwith a confidential note, in which it has been alleged that the Federation is defrauded and denied billions of rupees by smuggling racket run under the patronage of. senior officials of the Central Board of Revenue and Intelligence Bureau ‘.through the cover of Afghan transit trade (at pages 408, 409, 410 of the Federation documents File No.11).

There are also certain photostat copies of the articles appeared in daily newspapers like an article under the caption “Adverse developments on Economic front raised threat of hyperinflation” appeared in daily “Dawn” of 30‑1‑1993 contributed by one Mr. M. Ziauddin from Islamabad (at page .620 of Federation documents File No.11). Then we have another article contributed by the, same author in the daily “Dawn” of 17‑4‑1993 under the caption “Deficit fears abound; gap estimated at 9.33 p.c. of GDR” (at pages 622 and 623 of the above file). There is yet another article contributed by Dr. Ishfaq Oadri published in the daily “The News”, Islamabad of 10‑4‑1993 under the caption “Persistent . negative trend in trade and payment balance raises serious economic implication” (at pages 624 and 625 of the above rile). There is another photostat copy of a news item published in daily “Dawn” of 5‑4‑15K)3 on the basis of Bureau Report from Lahore under the caption “Punjab may face deficit by next year, warns Minister” (at page 626 of the above file). Then we have a photostat copy of daily “Dawn” of 29‑1‑1993 containing a news item relating to the statement of Mt. Sartaj Aziz under the caption “Budget deficit being trimmed, says Sartaj” (at page 627 of the above files. There are some ,other newspaper clippings in other files.

It may be stated that if the petitioner bad made grants from his discretionary quota of Tameer‑e‑Watan Programme, it does not in any way show that he has, wasted the above money in the absence of any finding by any competent forum to the effect that the grants made, by him were not in fact utilized for the public purposes, for which they were made. The allegations about. the extravagant expenses incurred on foreign trips and in organising seminars. in foreign countries for attracting foreign investments are no mote than Allegations contained in the newspapers without any facts and figures as to the excess amount wasted and, therefore, not worth reliable. Besides as stated’ above, while. dealing with ground (iii) of para. T hereinabove in para. 50 that such irregularities may form the basis for. some other appropriate proceedings **under the**appropriate laws, if they constitute breach of such laws and are true, but they cannot furnish foundation for passing the impugned order. ,

Adverting to the deficit financing and indebtedness both domestic and international, it may be stated that the articles or the news items referred to hereinabove are the personal opinions of the authors. The Additional Secretary, President Secretariat’s letter dated 27‑11‑1992 (Annexure ‘A‑10 at page 192 of the Federation’s documents File 11) indicates that a summary was put up before the President in respect of the meeting of the Economic Coordination Committee of the Cabinet held on 20th October, 1992, about corporate restructuring, he recorded following minutes:‑‑,

“Monetary expansion arid inflation are the real problems. They must be addressed urgently before they ‑‑ and, they are facets of the same ,coin ‑‑ get out of hand.”

It may again be observed that the World Bank in its report of 23‑3‑1993 appreciated the performance of Pakistan in the economic field, which is inter alia reflected in the above quoted sub‑paras. on the World Bank’s report. The petitioner has also filed Schedules with the petition containing comparative figures for the Exports, Aggregate Market Capitalization, Aggregate Market Capitalization of Stock Market Investment, Unemployment/ Under’ Employment, Direct Foreign Investment, Private Investment for a number of years (at pages 80 and 81 of the petition File, Part 1). This has not been specifically denied by the Federation in their written statement or in any other document. I pointedly asked Mr. Aziz A. Munshi, learned, ‘Attorney‑ General, to point out mistakes or incorrect assertions contained in the above comparative figures but he was unable to do so, on the plea that it was a highly technical matter. According to the above comparative figures, the economic performance of the Federal Government has not been bad keeping in view the prevalent recession throughout the World including in the developed countries like U.S.A. etc.

In the above factual background, the ground under discussion could not have been pressed into service. Besides that I am of the view that the above ground has no nexus with the. reason mentioned in above sub‑clause (b) of ,clause (2) of Article 58.

52. Refefrin to the . ground contained in para. f(vi), it may be observed that Article 240 of the Constitution provides the method of appointments in the service of Pakistan b’ providing that subject to the Constitution the appointments to and the conditions of service of persons I in the service of Pakistan shall be determined‑‑

(a)in the case of the services of the Federation, posts in connection with the affairs of the Federation and All‑Pakistan Services, by or under Act of Majlis‑e‑Shoora (Parliament); and

(b)                    in the case of the services of a Province and posts. in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Whereas Article 241 lays down that until Legislature makes a law under Article 240, all rules and orders in force immediately before the commencing day shall, so far as consistent with the provisions of the Constitution, continue in force and may be amended from time to time by the Federal Government or as the case may be by the Provincial Government.

The law relating to the method of selection ‘has been provided for inter alia through the Federal Public Service Commission Ordinance (XLV of 1977), whereas for regulating the terms of service, Civil Servants Act, 1973 has ,been enacted. Under the former statute, a procedure of $election through competitive examination has been evolved. However, there are certain rules providing lateral induction into the civil service inter alia from the Armed Forces.

The Federation’s documents File ,V contains photostat copies of a number of newspaper clippings, wherein the reporters referred to the various irregularities in the service matters. It may be stated that at page 9 ‘is a clipping of “The News”, Islamabad of 2‑3‑1993 under the caption “Junior VIP in civil service”, published the following news item:‑‑

“The civil bureaucracy has been enriched by four prominent sons of the military and political leaders.

Though their induction in the district management group and the foreign service was more or less carried out according to the rules. It is the privileged background of these newly‑recruited officers that has raised many eyebrows in the capital.

The first is the induction of Capt. Ali Nasir’, the son of Director­ General, Inter‑Services Intelligence Directorate, Lt.‑Gen. Javid Nasir. Capt. Nasir was inducted in the foreign service With a back date of two months and hence he joined the foreign service academy when his batch‑mates had finished two‑month training.

The other entrant is Capt. Murad Ashraf, the son of Corps Commander, Lahore, Lt.‑Gen. Muhammad Ashraf.

The Corps Commander was one of the nominees of the Prime Minister for the post of COAS when the post fell vacant early this year.

Of the two who have been inducted into the District Management Group one is the, son of a retired Corps Commander of Lahore, Lt.­Gen. (Retd.) Alam Jan Masud for whom the former Prime Minister Benzazir Bhutto had recommended an extension but that was not acceptable to Gen. (Retd.) Aslam Beg.

The fourth prominent gentleman to be. inducted into the DMG is Capt. Safdar, formerly the ADC t( Prime Minister Nawaz Sharif and now his son‑in‑law.

Sources indicate that there appears to be a slight delay as Capt. Safdar ,is yet to join the services though he is no longer the Prime Minister’s ADC. His is another case of joining the services with back date.”

The above news item appeared repeatedly in the other newspapers under different headings i.e. “The Muslim”, Islamabad of 20‑2‑1~03 (at page 10) and the daily “The News”, Islamabad of 16‑2‑1993 (at page 71). News clipping of the “Nation”, Islamabad of 10‑8‑1992 relates to news item under the caption “Yousuf Gul case P.M.’s order causes resentment”. (The above documents are in Federation’s documents File IV).

Besides the above newspaper clippings the official record relating to the induction of the above, incumbents into the superior service including the orders of the competent authorities are contained in the Federation’s documents File 11 at pages 194 to 226 (excluding the document at page 211).

The above Federation’s documents File 11 also contains a number of photostat copies of other newspaper clippings, for example, at page 17 there is a news item which appeared in “The News”, Islamabad of 18‑3‑1993 under the caption “Confusion over removal of 37 Taxation Officers by P.M.” Then there is a news item appearing in the “Frontier Post”, Lahore of 20‑3‑1993 under the caption “C.B.R. Officers were probing Ittefaq Tax evasion”. The latter news item was attributed to the Secretary‑ General of Pakistan People’s Party (at     In support of the above ground, the Federation has filed photostat copies of page 37), Mr. Salman Taaseer. Then there is a clipping of “The Nation”,  certain newspapers clippings and certain correspondence between the Islamabad of 19‑3‑1993 which carried a news item under the banner “Nawaz orders suspension, arrest of 16 GCP officers” (at page 18). The news item I gives the names and the reason to the effect that the above order was passed on account of their involvement in the misappropriation of about Rupees 116 million.

There are other newspaper clippings carrying various news items about the service matters like at page 27 relating to plum post, at page 30 under the caption “CBR OSDs questions Chairman’s credibility’, at page 31 under the caption “Connections outweigh merit in services”, at pages 51, 54 and 55 about the transfer of the Director‑General, Health, Ministry of Health, at page 94 about ‘ 18 D.I.Gs. promotion for favouring some one, at page 94 “expenses incurred on civil servants on foreign medical treatment”, at page 118 **under**the caption “PQA Chairman quits in disgust, over corruption in organisation”, then at page 150 about increasing posts in foreign Services, at     page 179 “The News”, Lahore of **4‑3‑1991 carried the news under the caption “P.M.**orders probe in the alleged nepotism in PNSC”.

Barring the induction of the above rive incumbents in the civil service to some extent in deviation and relaxation of the normal recruitment rules/practices which allegation is supported by the official documents referred to hereinabove, the other news items about the other alleged irregularities, are not supported by any official record. Two of the. above items indicate that the petitioner had ordered taking of action against corrupt officers. In the case of Khalid Malik relating to the Dissolution Order of 1990, the High Court of Sindh P L D 1991 Kar. I at p.48 found that as many as 26,000 persons were inducted in service through the Placement Bureau in deviation of the recruitment law/rules. The above deviation in respect of the five incumbents cannot be equated with the above induction of 26,000 incumbents. Such deviation may not be desirable for running an efficient civil service, but it **cannot cause breakdown**Of the Constitutional machinery and, therefore, it has no nexus with sub‑clause (b) of clause (2) of Article 58 of the Constitution.

            ,53.      I           may now refer to ground ‘g’ of the impugned order, which reads as follows,

“(g) The serious allegations made by Beguni Nuzhat Asif Nawaz as to the high‑handed treatment meted out to her husband, the late Army Chief of Staff, and the further allegations as to the circumstances culminating in his death indicate that the highest functionaries of the Federal Government have been subverting the authority of the Armed Forces and the machinery of the Government and the Constitution itself.”

In support of the above ground the federation has filed photostat copies of certain newspaper clipping and certain correspondence between the Secretary to the President and the Secretary to the Prime Minister, which are contained at pages 227 to 229 and at pages 614, 617 and 618 in the Federation’s 16 documents File II. It may be observed that at page 227 there is a clipping of the daily “News” of 12‑4‑1993 (marked as Annexure “A‑12”) which contains the reporting of Mrs. Asif Nawaz, widow of the late General’s Press Conference held on Sunday on 11‑4‑1993 at the Pearl Continental, Rawalpindi, in which she alleged that her husband was poisoned and had not died natural death. She also alleged that her late husband was threatened by Chaudhry Nisar and Brig. lintiaz, ISPR Chief. She had also referred to certain incidents which had taken place during the lifetime of the late General. Then at page 228 there is a news item under the caption “No comments, says ISPR’s chief’. Then at page 229 there is a clipping of “The Muslim”, Islamabad of 28‑3‑1993 under the caption “Asif Nawaz did not die natural death.

It may be stated that at page 614 there is a photostat copy of Mr Fazalur Rehman Khan, Secretary to the President’s letter dated 12‑4‑1993 addressed to Prime Minister’s Secretariat (Qazi M. Alimullah, Principal Secretary) stating therein that he was directed by the President to request the Prime Minister to appoint a high level Judicial Commission consisting of the Judges of the Supreme Court and High Court to inquire into the allegations at priority basis and  submit a report alongwith their recommendations. Enclosed with the above letter is a photostat copy of the clipping of “The News” of 12‑4‑1993. The above letter was responded to by Mr. Qazi M. Alimullah, Principal Secretary to the Prime Minister through his letter dated 13‑4‑1993, in

which it has been stated that the Prime Minister had taken immediate suo motu cognizance of the allegations and appointed the Commission of Enquiry promptly. This letter was responded to by Mr. Fazalur Rehman Khan, Secretary to the President by his letter, dated 15‑4‑1993. It is a matter of public knowledge that the Commission comprising three Judges of the Supreme Court headed by Shaflur Rahman, J. was constituted, which has already submitted its report. The contents of the above report have not been made public. However, the statements of the Army Medical Personnel recorded by the Commission and reported in the Press in verbatim indicate that as per their version the late General died his natural death (God may bestow His choicest

blessing on the departed soul! Amin).

There appears to be no lapse on the part of the Federal Government in this regard, as the Commission was constituted on 12‑4‑1993 on the publication of the news in the press about the above Press Conference of the widow of late Asif Nawaz and receipt of Mr. Fazalur Rehman Khan, Secretary to the President, above letter without any delay. The above ground has no basis nor it has any nexus with Article 58(2)(b) of the Constitution.

54. This leads us to the last ground contained in para. h which reads as follows:‑‑

(h)The Government of the Federation for the above reasons, inter alia, is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic situation confronting the country, necessitating the requirement of a fresh mandate from the people of Pakistan.”

It may be observed that while dealing with ground V, I have pointed out hereinabove in para. 35 that Mr. Sharifuddin Pirzada alongwith the Foreign Secretary, Mr. Shaheryar Khan, in presence of the learned Attorney‑General and the learned counsel for the petitioner had invited our attention to the sensitive informations which the Foreign Office had received inter alia from its

Embassies, which were allegedly not attended to by the petitioner as per impugned order. I have allready observed hereinabove that I am unable to subscribe to the view that there was any lapse on the part of the petitioner in this regard. The above ground’ h’ containing ‑averment that the Government of Federation for the reasons contained in the preceding paragraphs inter alia is

not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic situation confronting the country necessitating the requirement of fresh mandate from the people of Pakistan is not founded on any tangible material. The economic performance of the petitioner Government as pointed out hereinabove was not only complimented by the President in his above address of 22‑12‑1992 to the joint session of the Parliament but has been praised as late as on 23‑3‑1993 by the World Bank in its report, extract of which has already been quoted hereinabove.

55. Before concluding the above discussion, I may observe that the learned Advocates‑General, Punjab, N.‑W.F.P. and Balochistan, Messrs Malik Maqbool Elahi, Sardar Khan and Raja Muhammad Afsar and the learned Additional Advocate‑General of Sindh, Mr. Abdul Ghafoor Mangi, were also heard by the Court though the applications riled by the Provinces of Punjab, Sindh and N.‑W.F.P. to be impleaded as parties to the petition were declined.

Besides supporting the arguments of the learned Attorney‑General, their submission was that, it would not be‑possible for the Provincial Governments to get on with the petitioner on account of strained relations between the Federation and the Provinces, if the National Assembly and the Cabinet would be restored by the Court. The above contention seems to be untenable. In case of. any dispute between the Federation and a Provincial Government, the Constitution provides mechanism in the form of Articles 184(l), 154 and 155. It may be stated that under the‑ above Article 184(l) a suit can be filed in this Court in respect of any dispute between any two or more Governments, whereas under Articles 154 and 155 the disputes of the matters referred to therein can be brought before the Council of Common Interests.

If I were to accept the above contention of the learned Advocates ­General and Additional Advocate‑General of Sindh, it will lead to absurdity as it is not uncommon that in a general election a particular party may win most of the seats of the National Assembly and another political party having a different political philosophy may secure majority in the four Provincial Assemblies. Will it be. legal or fair and proper to say that the Political Party which succeeded in obtaining mandate of the people for forming the Federal Government should not be allowed to form the Government as the Political Party which secured majority in the four Provincial Assemblies cannot get on with the former.

56. This leads us to the last submission of Mr. Aziz A. Munshi, learned Attorney‑General that the grant of relief in exercise of Constitutional jurisdiction is a discretionary matter even ‘where infringement of any of the Fundamental Rights is involved and, therefore, this Court should not grant the same as the controversy is going. to be resolved by the political sovereign i.e. the people of Pakistan in the election of the National Assembly scheduled to be held ~h 14‑7‑1993. He has pointed out that in the case of Capt. Kanwaljit Singh v. Union of India A I R 1 , 991 Punjab and Haryana 54, the case, of S.R. Bommai and others v. Union of India and others A I R 1990 Karnataka 5 and in the case of State of Rajasthan A I R 1977 SC 1361 the Courts declined to restore the Provincial ~ Assemblies. The above cases are distinguishable as in none of the above cases the impugned order was, found to be without jurisdiction or not covered within the ambit of Article 356 of the Indian Constitution. Even in India, Madhya Pradesh High Court recently restored the dissolved Provincial Assembly and the dismissed Ministry, while rendering judgment on 2‑4‑1993 in the case of Sunderlal Patwa v. The Union of India and others) Misc. Petition No..237 of 1993).

As regards the question, whether the superior Courts have Any discretion to decline relief in exercise of Constitutional jurisdiction in case they rind infringement of a fundamental right, it may be observed that in the case of Nawab Syed Raunaq Ali etc. v. Chief Settlement Commissioner and others PLD 1973 SC 236, Hamoodur Rahman, CJ. made the following weighty observations:‑‑

“An order in the nature of a writ of certiorari or mandamus is a discretionary order. Its object is to foster justice and right a wrong. Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside has occasioned some injustice to the parties. If it does not work any injustice to any party, rather it cures a manifest illegality, then the extraordinary jurisdiction ought not to be allowed to be invoked.”

The above observations related to an order in the nature of a writ of certiorari or mandamus. The above principle that the object to grant discretionary relief of writ petition is to foster justice and right a wrong has been consistently followed by the superior Courts and above discretionary relief has been denied when the Courts found that the grant of the same would perpetuate injustice instead of advancing the cause of justice. The above principle has been pressed

into service by this Court in the case of Wali Muhammad and others v. Sakhi Muhammad and others P L D 1974 SC 106, the case of the Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and others PLD 1975 SC 331, the case of Syed Nazim Ali etc. v. Syed Mustafa Ali etc. 1981 SCMR 231, the case of Muhammad Umar v. Member, Board of Revenue and 9 others 1985 SCMR 1591, the case of Messrs Norwich Union Fire Insurance., Society

Limited v. Muhammad Javed lqbal and another 1986 SCMR 1071, the ‑case of Zameer Ahmad and another v. Bashir Ahmad and others 1988 SCMR 5 ‘ 16 and the case of Syed Ali Shah v. Abdul Saghir Khan Sherwani and others PLD 1990 SC 504.

. However, the question arises, whether the above principle which was originally enunciated in relation to an order in the nature of a writ of certiorari or mandamus can be pressed into service in a. case where infringement of any of the Fundamental Rights is involved.

57. Mr. Khalid Anwar has referred to the case of Inamur Rehinan v. Federation of Pakistan and others 1992 S C M R 563, the case of Daryao and others v. The State of U.P. and others AIR 1961 SC 1457, the case of the Government of East Pakistan v. Mrs. Rowshan Bijaya Shaukat Ali Khan PLD 1966 SC 286, and the case of Ram Singh and others v. The State of Delhi and another AIR 1951 SC 270, wherein the importance of the Fundamental Rights has been highlighted and it has been emphasized that relief should not be withheld.

On the other hand, Mr. Aziz A. Munshi, learned Attorney‑General, has cited the case of Messrs Tilokchand Motichand and others v. H.B. Munshi, Commissioner of Sales Tax, Bombay and another A I R 1970 SC 898 and the case of Amrit Lal Berry and others v. Collector of Central Excise, Central Revenue and others AIR 1975 SC 538.

The ratio of the above Indian Supreme Court cases seems to be that a writ under Article 32 of the Indian Constitution is issued as a matter of course if a breach of any fundamental right is established and that the Courts would overlook technicalities, which are the hallmark of civil proceedings. But at the same time the Court must not ignore and trample under foot all laws, and, therefore, principles of res judicata and laches would be applicable and, hence, inequality in the equitable balance brought into being by a petitioner’s own laches and acquiescence cannot be overlooked. So also when the petitioner is guilty of making misleading and inaccurate statement in ,the memo. of petition, relief is to be denied.

58. 1 am inclined to hold that if a petitioner succeeds in establishing breach of a fundamental right, he ~s entitled to the relief in exercise of Constitutional jurisdiction as a matter ‘of course. However, the Court may decline relief if the grant of the same, instead of advancing/fostering the cause of justice, would perpetuate injustice’ or where the Court feels that it would not be just and proper, for example, if the President dissolves the National Assembly under Article 58(2)(b) of the Constitution and before the Court decides the legality of such an order, elections take place which may show that 70% voters have cast their votes against the political party which was commanding the majority in the House before its dissolution and that it could secure 2% or 3% only of the total votes cast, In such an event, it will not be just and proper on the par(of the Court to defeat the will of the political sovereign by reinstating the dissolved Assembly in spite of the above verdict of the political sovereign against it overwhelmingly. I am prompted to take the above view for the reason that the Courts are established for dispensing justice. So if the grant of a relief for the enforcement of a fundamental right or any other legal right instead fostering/ advancing cause of justice, will perpetuate injustice, the Court will decline the same, In this regard, there seems to be no distinction between the enforcement of a fundamental right and a legal, right under a general law.

In the present case, I have found that the impugned order does not fall within the ambit of Article 58(2)(b) of the Constitution. There is no justifiable reason to deny the restoration of the National Assembly and the Cabinet with thc Prime Minister. I would, accordingly, allow the above petition in terms of the short order announced on 26‑5‑1993.

MUHAMMAD AFZAL LONE, J. ‑‑‑The last few months have been a period of great political turmoil in the country. An atmosphere changed with intrigue and confusion prevailed which led to speculations that the elected Government headed by Mian Muhammad Nawaz Sharif would be dismissed and the National Assembly dissolved. These speculations materialised when the speech made by the Prime Minister addressing the nation on 17th April, 1993, on electronic news media was on the following day, late in the evening followed by the Presidential address and in a short span of 5 years, for the third time Article 58(2)(b) of the Constitution was put into operation, the National Assembly dissolved with immediate effect, the Prime Minister dismissed and a direction given that the Cabinet would cease to hold office forthwith. Simultaneously in exercise of the powers vesting in him under clause (5)(b) of Article 58 of the Constitution the President appointed a Care­taker Cabinet headed by Mir Balakh Sher Mazari.

2. In this petition, under Article 183(3) read with Articles 187 and 190 of the Constitution of the Islamic Republic of Pakistan, riled by Mian Muhammad Nawaz Sharif, to which the President, the Federal Government, and Mir Balakh Shcr Mazari have been impleaded as respondents, the dissolution order is brought under challenge and the steps taken in implementation thereof including the appointment of Care‑taker Cabinet are sought to be declared as null void and of no legal effect. Two major issues falling for determination in the petition are:‑‑‑

(1)        Whether a question of public importance with reference to enforcement of Fundamental Right No.17 has arisen; and consequently the instant petition is maintainable?

(2)        Whether the dissolution order conforms to the requirements of Article 58(2)(b) which empowers the President to dissolve the National Assembly in his discretion, where in his opinion:‑‑‑

I

..a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.”

Both the questions have been very ably examined in depth and answered in favour of the petitioner, in the main judgment proposed to be delivered by my brother Shaflur Rahman, J. I have availed of the benefit to go through it and entirely agree with him. However, in view of the importance of the Constitution and legal issues raised in this case; without much dilating upon the facts, I deem it appropriate, to add my own note thereto.

3. Article 184(3) pertains to original jurisdiction of the Supreme Court and its object is to ensure the enforcement of fundamental rights referred to therein. This provision is an edifice of democratic way of life and manifestation of responsibility casts on this Court as a protector and guardian of the Constitution. The jurisdiction conferred by it is fairly wide and the Court can make an order of the nature envisaged by Article 199, in a case where a question of public importance, with reference to enforcement of any fundamental right conferred by Chapter 1 of Part II of the Constitution is involved. Article 184(3) is remedial in character and is conditioned by there pre‑requisites, namely:‑‑‑

(i)         There is a question of public importance.

(ii)        Such a question involves enforcement of fundamental right, and

(iii)       The fundamental right sought to be enforced is conferred by        Chapter 1, Part 11 of the Constitution.

The petitioner’s case is that under the impugned order fundamental right guaranteed by Article 17 of the Constitution has been infringed. Besides being violative of Fundamental Right No.17, the impugned order has also been dubbed as mala fide, arbitrary, against the provision of natural justice and Constitution. It is not disputed that the petition presents a very substantial element of public importance and that Article 17 is listed among the fundamental rights included in Chapter 1, Part Il of the Constitution. This Article which bears the heading “Freedom of Association” is reproduced below:‑‑‑

“Freedom of association.‑(1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

(2)                    Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable     restrictions imposed by law in the interest of sovereignty or integrity of         Pakistan and such law shall provide that where the Federal Government declares that any Political Party has been formed or is             operating in a manner prejudicial to the sovereignty or integrity of          Pakistan, the Federal Government shall, within fifteen days of such             declaration refer the matter to the Supreme Court whose decision on

            such reference shall be final.

(3)        Every political party shall account for the source of its funds in    accordance with law.”

            4.                     Mr. Khalid Anwar argued that the right t9 form an association form a political party under Article 17 includes the right to continue its activity, propagate its programme and take part in the election. In his submissions the political process does not stop with the end of the election; in case a political party enjoys the support of the majority in the House, it can form the Government and if it continues to maintain majority, it has the riot to rule for full term of 5 years provided by the Constitution and implement the mandate given to it by the electorate. It was argued that formation of the Government is not the climax of the political process started with the participation in the election, but the political party succeeding at the polls has to carry out its policies put in its manifesto, endorsed by the voters resulting in achieving majority in the House. Mr. Khalid Anwar further relied on the Objectives Resolution made substantive part of the Constitution and submitted that it guaranteed fundamental rights including “political justice”.

            5. On the other hand the learned Attorney‑General endeavoured to canvass that dissolution of the Assembly was not violative of the fundamental rights guaranteed by Article 17. He contended that the petitioner’s right to form a political party and to continue to remain its member was not affected by the dissolution order and reiterated that the petitioner could not claim the right to form Government or to remain member of the National Assembly as a fundamental right. He further urged that right to run Government for a period of 5 years in accordance with the duration of the National Assembly fixed under Article 52 is merely a Constitutional right, which cannot in any manner, be characterized as a fundamental right. Mr. S.M. Zafar endorsed the argument that the duration of the Assembly does not involve the fundamental right guaranteed by Article 17 which he pointed out, can be curtailed on the recommendation of the Prime Minister and also by the President on dissolving an Assembly, under Article 58. If any such right is violated, according to Mr. S’ \* M. Zafar, the remedy lies in invoking the jurisdiction of the High Court under Article 199 of the Constitution. To explain the concept of “Political Justice” Mr. Zafar invited our attention to “A Theory of Justice” by John Rawals and equated Ws doctrine with “equal liberty”, discussed at page 223, photostat whereof has been provided to us and invited our attention to the following passage:‑‑‑

“Three points concerning the equal liberty defined by the principle of participation call for discussion: its meaning, its extent, and the measures that enhance its worth. Starting with the question of meaning, the precept of one elector one vote implies, when strictly adhered to, that each vote has approximately the same weight in determining the outcome of elections. And this in turn requires assuming single member territorial constituencies, that members of the legislature (with one vote each) represent the same number of electors.”

6. While construing Article 17 which guarantees fundamental right, ‑our .approach should not be narrow and pedantic but elastic enough to march with the changing times and guided by the **object for which it was embodied in the Constitution**as a fundamental right. Its full import and meaning must be gathered from other provisions such as preamble of the Constitution,, principles of policy and the Objectives Resolution, which shed luster on the whole Constitution. Reference in this connection may be made to the observations made by Muhammad Haleem, C.J. (as he then was) in Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416 at 489:‑‑‑

..while construing Article 184(3), the interpretative approach should not be ceremonious observance of the rules or usages of interpretation, but regard should be had to the object and the purpose for which this Article is enacted, that is, this interpretative approach must receive inspiration from the triad of provisions which saturate and invigorate the entire Constitution, namely, the Objectives Resolution (Article 2A), the Fundamental Rights and the directive principles of State policy so as to achieve democracy, tolerance; equality and social justice according to Islam.”

            7. In every democratic set‑up, in the world, the political parties compete for the right to form a Government. It is the basic assumption of Parliamentary democracy that the party winning a majority of seats in the House ~ should have complete control of Government. Fl or democracy gives the majority the right to rule. Constitutionally, this power, admits of no impediment. in British politics the “doctrine of mandate” signifies that the party which wins the general election has the right to implement its programme. In fact it is true of every country following Parliamentary democracy. If a party attaining power fails to give effect to its manifesto it may be accused of deluding the electorate in catching the votes. It may be observed that for an effective, functioning of a political system, the dominant institutions catered thereby though geared by the idea of contemporary I social attitudes must not be oblivious of moral and historical aspirations of the nation. The reasons being that neither Constitutional principles nor political attitudes can properly be appreciated without understanding their roots in the historical experiences of the society. In this behalf the Objectives Resolution (Art. 2A) represents such attitudes, ethos, and values behind our Constitution, which in so far as relevant for the purposes of this case is reproduced below:‑‑‑

“Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.”

it may be observed that the term “political justice” is flanked by other rights enumerated in this clause. These are all fundamental rights, analysed below:‑‑‑

Equality of citizens -----------------------------Articles 14 and 25

Equality of opportunity ------------------------Article 18

Equality before law -----------------------------Article 4

Social justice -------------------------------------Articles 11 and 14

economic justice ---------------------------------Article 18

Political justice-----------------------------------Article 17

freedom of thought ,freedom of speech-------Article 19

Freedom of liberty, faith and worship--------Article 20

freedom of Association--------------------------Article 17

In construing this clause Zafar Hussain Mirza, J. in Benazir Bhutto’s case at page 616 of the report took the view, with which I respectfully agree:‑‑‑

“The expression ‘political justice’ is very significant and it has been placed in the category of fundamental rights. Political parties have become a subject‑matter of a fundamental right in consonance with the said provision in the Objectives Resolution. Even otherwise, speaking broadly our Constitution is a Federal Constitution based on the model of Parliamentary form of representative Government prevalent in United Kingdom. It is also clear from the Objectives Resolution that principles of democracy as enunciated by Islam are to be fully observed. True and fair elections and the existence of political parties, is an essential adjunct of a functional democratic system of Government.”

            8.         In the Black’s Law Dictionary (1979 Edn.)the expression ‘political  rights’ is defined as under:‑‑‑ ‘

“Those which may be exercised in the formation or administration of the Government. Rights of citizens established or recognized by constitutions which give them the power to participate directly or indirectly in the establishment or administration of Government.”

We may add that the concept of political justice will also include the right to participate in political decision‑making. Thus illegal and unconstitutional denial to the petitioner to run the Government as long as he enjoyed the support of the majority in the House ‑, will be the denial of political justice guaranteed by Article 17.

9. Mr S‑M Zafar’ reliance on John Rawals political philosophy concerning the concept of political justice  the necessary corollary that “cash vote has approximately the same weight in determining the outcome of elections” seems to have been overworked. Justice as fairness is the key note of the political philosophy of American Professor John Rawals, who in no small measures was influenced by the work of the German thinker Immanull Kant and himself maintained that his concept of justice had historical roots. For grasping the criterion of justice offered by Rawals, the Political ideology prevailing in Europe during middle ages nay, till early 20th century needs to be kept in view:‑‑‑

“In a, medieval barony, for instance, the lord and his knights, the yeomen, and the serfs belonged to a single political system, but had very different rights and duties. The knights and yeomen owned obedience to the lord and were pledged to fight for him‑the knights on horseback, the yeomen on foot. The serfs, who performed manual labour, were bound to the soil and forbidden to bear arms ... .... ... ... ... ... ... ... In England and Germany, universal manhood suffrage was not achieved until the second half of the nineteenth century. The Prussian Landtag retained its three‑class voting system until 1918. Voters were ranked by amounts of tax paid, and divided into three groups, each paying one‑third of the taxes. The first group consisted of a few large landholders and industrial proprietors, the second embraced the relatively small upper middle class, and the third included the majority of petty bourgeois, small farmers and workers. (Article 71 of Prussian Constitution of 1850 Dennewitz, 1948, p. 81). This device assured a permanent majority representing the landlords and the upper middle class.” (See Victims of Politics by Kurt Glaser Stefan T. Possony, page 349, 1979 Edn., published by Columbia University Press, New York).

Philip Pattit, Professor of Philosophy in University of Bradford, in his work ‘Judging Justice’ on detailed analysis of the charter given by Rawals for organising the society, did not endorse the same and termed it as somewhat sketchy. The theory propounded by Rawals has also been criticised by David Lyons in his work “Ethics and the Rule of Law”. It is, therefore, difficult to agree with the concept of political justice advocated by Mr. S.M. Zafar. Such being the position in law, there is no valid basis to sustain the objection to the maintainability of the instant petition which on account of infringement of  Fundamental Right No.17 lies before the Court.

            10. We may now move to the second issue. The First ground reflected by            the dissolution order is that m inisters , Members of the Opposition as well as the treasury bench           red their resignations in mass scale    demonstrating their desire to            A fresh mandate from the people. That this            dissension as well nullified the mandate

11. Under article 64 of the constitution, a Member may by writing under his hand addressed to the speaker or as the case may be, the Chairman resigns his seat, and thereupon his seat shall become vacant. Rule 25 of the Rules of Procedure and Conduct of Business in the National Assembly, 1992, provides that such a letter of resignation is to be handed over by the Member to the Speaker personally and also to convey him that the resignation is voluntary and genuine and the Speaker has no knowledge and information to the contrary. If the letter of resignation is received by the Speaker by any other means, he after such inquiry as deemed fit that the resignation is voluntary and genuine, is bound to inform the Assembly of the resignation. Thereupon the Secretary ‑General shall get it to be published in the Official Gazette in the Notification to the effect that the Member has resigned the seat and forward a copy thereof to the Chief Election Commissioner. Rule 25 further enjoins that date of resignation shall be the date specified in such writing and if no date is specified therein, the date of its receipt by the Speaker.

12. We have noticed that the resignations are 88 in number, all addressed to the Speaker of the National Assembly, but were handed over to the President. The reason for delivering the resignations to the President, instead of the Speaker, as spelt out from para. 3(iii) of the written statement, is that the Members wanted to register their protest with the Head of the State, as there was lack of confidence in the National Assembly, the Speaker and the Federal Government. That the Speaker did not, in the past, take action upon any motion directed’ against the Prime Minister or Minister or Member of the National Assembly, supporting the Government. According to the general perception he was in collusion with the Prime Minister, was not acting independently and had ceased to be impartial.

13. According I to . para. 3(1) of the written statement, the President received total number of 88 resignations from the Members of the National Assembly; that there were 12 existing vacancies caused by previous resignations and another by the death of a member; the total number thus arose to 101, leaving 106 members out of the House of 217. From this, in the written statement, an inference was drawn that the Members had lost confidence in the Federal Government headed by the petitioner. It is discernible from the record before us that out of 88 resignations, 73 are undated and only 15 bear the dates. The resignation of Mir Altaf Khan Bhayo, M.N.A. from Shikarpur (Sr.No.21) is dated 3rd November, 1990. It has not been refuted before us that despite sending a letter of resignation, this Member has been attending the Sessions of the National Assembly over a period of 2‑1/4 years. These 73 letters of resignations do not give any indication as to when the Members concerned put their signatures thereon.

            14. In the course of his submissions, Mr. Khalid Awnar pointed out that the resignations appearing at pages 76 to 83 of the file pertain to the Members from FATA administered by the President. He asserted that all these resignations are in the same hand and scribed by the same pen and expressed curiosity that all the Membem of FATA tendered their resignations en bloc on the same date. In the submission of Mr. Khalid Anwar, Mrs. Benazir Bhutto called on the President on 18‑4‑1993; in the course of meeting she wrote her resignation on a plain paper and passed on the same to the President alongwith that of other Members of the Assembly belonging to PPP. On perusal of the letters of resignations at Serial Nos. 2, 4, 5, 9, 16 and 18 we have noticed that these are couched in the same language and scribed by the same person. There are some other letters of resignations which bear the same attributes. The learned counsel expressed the grievance that the respondent is a symbol of unity of the Federation and supposed to be above party politics, but the manner in which he collected the resignations, is indicative of his collaboration with the leader of the opposition and other dissentient groups in the National Assembly; and that such exercise of power is highly unconstitutional. In order  to establish that a conspiracy was hatched against the Federal Government and the respondent’s blessings were extensively extended to the disgruntled elements both inside and outside the House, the learned counsel drew our attention to several Press clippings contained in Part II of the Paper Book,

forming part of the petition. Some of these clippings are: The Daily News dated 14‑4‑1993 (page 98), The Daily News, dated 7‑4‑1993 (page 101), The Frontier Post, dated 7‑4‑1993 (page 106), The Daily News dated 8‑4‑1993 (page 115), The Dawn dated 6‑4‑1993 (page 139), The Nation, dated 3‑4‑1993 (page 145), The Times dated 16‑2‑1993 (page 163), The News dated 16‑2‑1993 (page 165), The Nation, dated 6‑3‑1993 (pp. 194 and 195), The Nation, dated 7‑3‑1993 (page 197), The Dawn dated 25‑3‑19913 (page 205), The News, dated 25‑3‑1993 (page 206), The Nation, dated 29‑3‑1993 (page 210), The Nation, dated 30‑3‑1993 (page 213), The News dated 31‑3‑1993 (page 214). From these Press clippings an inference was justifiably sought to be drawn the learned counsel that the respondent did not act impartially and  extended an active cooperation to the opposition and other dissatisfied, t. elements, which was highly objectionable and against the spirit of the Constitution. It was specifically urged that the Pakistan Muslim Legal Parliamentary Party, which has majority in the House, passed a Resolution to do away with certain parts of the Constitutional Eighth Amendment. The moment this decision was taken, the President thought of. the device of collecting resignations to muster political power and even indulged in horse­ trading to act as a counter blast.

15. The learned Attorney‑General was confronted with Article 64 and the Rule 25 under which resignation in writing under the hand of the Member concerned addressed and delivered to the Speaker, if genuine and tendered[ voluntarily, is sine qua non for its effectiveness. It was pointed out to him that, these letters of resignations were addressed to the Speaker, but never passed on to him and, thus, the Constitutional requirements were not fulfilled. The learned Attorney‑General in his submissions made on 15th May, 1993, categorically asserted that these resignations were given to the President by the Members concerned, to record their protest and not beyond that and thus their seats **did not fall**vacant. It was argued that upon these letters of resignations, the President could well formulate ‑his **opinion for the purpose of Article**58(2)(b). He, however, conceded that in the normal course these resignations should have been handed over to the Speaker, but the President had no control over the Members, and when the resignations **were placed before him he kept the**same with him. It was put to the learned Attorney‑General that by handing over the letters of resignation to the President, without losing their seats the Members of the opposition and other Members intended to blackmail the Government, to which no plausible reply forth came from him. In a reply to the question, as to why the resignations were not handed over to the Speaker, the Attorney‑General submitted that the Speaker had lost the confidence of the Members and became partisan and pointed out that at least three petitions for a reference against the Prime Minister were not forwarded by him to the Chief Election Commissioner in pursuance of Article 63(2) of the Constitution. On 23‑5‑1993, when the case was taken up for hearing the learned Attorney ­General carne forth with an altogether different stand that the resignations were tendered by the Members not merely as a protest, but even to vacate the seats held by them. The attention of the learned Attorney‑General was drawn to para. 15(3)(iii) of the written statement, which clearly depicted that the resignations were submitted to the President merely as a mark of protest. These resignations speak volumes about. the public representatives’ conduct shorn of political morality. It is our misfortune that after the expiry of vanguard of the freedom movement, politics became a means of somehow or other entering into power and retaining the same by fair or foul means. The desire of sharing fruit of the power keeps people together in the party but disappoint and disgust may result in change of party affiliation.. Floor‑crossing, repeated marches and counter ‑marches for political gains to which our attention was drawn by the learned counsel for the petitioner, have become the order of the day. It seems to us that motivational force behind these defections and redefections is the prospects of political power, promise of the award of the office and other official patronage. These factors have directly led to political corruption and indiscipline in the political parties. It is unfortunate that there is a wide gap between the practical politics and the model of democratic processes, which the chosen representatives of the people required to exercise authority within the limits prescribed by Almighty Allah, need to project.

16. Upon evaluation of the respective arguments of the parties, we feel that the contentions of the learned Attorney‑General seemingly, do not outweigh the arguments advanced on behalf of the petitioner. As already observed, the letters of resignations were addressed to the Speaker, except those tendered by the Ministers, which is the essential requirement of Article 64. Conceivably, there was no legal or Constitutional justification for receipt and then retention thereof by the respondent. If at all these were presented to the respondent in all fairness in adherence to the provision of the Constitution and the law laid down by this Court in Mirza Tabir Beg v. Syed Kausar Ali Shah (PLD 1976 SC 504) he should have forwarded the same to the Speaker. Such a mode of tendering the resignations and then retention there or by the President is a sheer perversion of the Constitution and no concomitant of the legitimate “pressure politics” known to the Parliamentary system of Government. Encouraging of such tactics may become an effective vehicle of blackmailing the party in power, resulting in subversion of the Parliamentary democracy in the country. We hold that within the ambit of Article 58(2)(b) this ground was not at all available.

17. On 14‑4‑1993 the Prime Minister met the President. The meeting lasted for about two hours. However, what transpired in the meeting, the version given by the two is not identical. The President’s House issued a Press Release on the same date to the effect:‑‑

“The President urged the Prime Minister to undertake positive steps as early as possible to address effectively these problems to the satisfaction of the public representatives and the people. The Prime Minister undertook to do so on an urgent basis and to revert to the President with precise measures in this behalf.”

The draft of the minutes of the meeting prepared by the Prime Minister’s House, but not issued as the President’s House did not approve it, is reproduced below:‑‑

“During the two‑hour meeting the President and the Prime Minister went into the causes of the prevalent political situation in the country and it was agreed that necessary measures would be taken to defuse it.

Referring to speculations, discussions and debate on the 8th Amendment, the Prime Minister informed the President that the issue was well behind us. He said the recent statement of three Federal Ministers in his behalf fully reflected his own views.

Discussing the various policies and programmes of the Government, the Prime Minister said he valued the President’s guidance and counsel and looked forward to his continued advice at various stages of their formulation and implementation. It was agreed to bring about improvements in the functioning of the Government, wherever necessary.

It was also agreed that such meetings and consultations will be held more frequently to ward off speculations and avoid misunderstandings,

The two agreed that efforts should be made to win back friends and colleagues who have left the Cabinet as a result of misunderstandings and differences. They hoped that most of them will be bark before long,”

Three days later on 17‑4‑1993, as already observed, the Prime Minister addressed the nation on the television. His speech was simultaneously relayed on Radio. The relevant portions of the speech are quoted in the proposed judgment of my learned brother Shafiur Rahman, J. The second ground of the dissolution order is founded on this speech and runs as under:‑‑

“... the Prime Minister in his speech on 17th April, 1993, chose to divert the people’s attention by making false and malicious allegations against the President of Pakistan who is Head of State and represents the unity of the Republic. The tenor of the speech was that the Government could not be carried on in accordance with the provisions of the Constitution and he advanced his own reasons and theory for the same which reasons and theory, in fact, are unwarranted and misleading. The Prime Minister tried to cover up the failures and defaults of the Government although he was repeatedly apprised of the real reasons in this behalf, which he even .accepted and agreed to rectify by specific measures on urgent basis. Further, the Prime Minister’s speech is tantamount to a call for agitation and in any case the speech and his conduct amounts to subversion of the Constitution.

It appears, that all was not well in the meeting of 14th April, 1993. This is substantiated by the divergence in the Press Note released by the President’s House and minutes of the meeting prepared on behalf of the Prime Minister. The matter was simmering and culminated in the speech dated 17‑4‑1993., Mr. Khalid Anwar read out to us several portions of the speech and urged that it made reference to disgruntled elements which gathered around the President,

conspired against the Prime Minister, indulged in horse‑trading and even acclaimed replacement of the Prime Minister. In his endeavour to analyse the speech, he emphasised that its object was to enlighten public opinion and not the vengeance against those who changed party affiliation or otherwise joined hands against the petitioner. In the estimation of Mr. Khalid Anwar, the

speech demonstrated a reconciliatory tone though reflective of a determination when the Prime Minister uttered that “I shall not resign, I shall not dissolve the Assembly, I shall not take dictation”, and then asked the nation that Konsa Rasta lkhtiar Karna Hey”. He remarked that the Prime Minister’s position was like that of a person forced to fight with his back to the wall. The learned counsel regretted that tile Prime Minister of the Country was accused of subversion of the Constitution amounting to high treason under Article 6 of the Constitution, for which there was absolutely no warrant. When asked that the Prime Minister himself having adopted the reconciliatory attitude, what was the need for delivering the speech which generated lot of controversy, the learned counsel stated that the Muslim League Parliamentary Party passed a

vote of confidence, in favour of the Prime Minister authorising him to take steps for repeal of the Constitution 8th Amendment, which annoyed the President and ignited the whole trouble. He further submitted that under the Press Release of 14th April ‘ 1993 the Prime Minister was required to take positive steps to address the problems of the public representatives. In this respect the meeting of the National Assembly, in pursuance of Article 54(3), was requisitioned for 19th April, 1§93, to which wide publicity was given on the public media, but the President designedly frustrated the meeting and dissolved the Assembly on 18th April. The learned counsel contended that the President had a wrong perception that the steps were being initiated‑ before the house for his impeachment.

18. The learned Attorney‑General took a strong exception to the contents of the Prime Minister’s speech and termed it as highly provocative and insulting to the President, who was also accused of hatching conspiracy, and indulging in blackmailing and horse‑trading. According to the learned Attorney‑General the President was virtually impeached; that the right course for the Prime Minister was to have addressed the National Assembly as in that case, the scandalous remarks could have been expunged by the Speaker. He submitted that the things were not in such a bad shape and in fact on the Prime Minister’s move to call a meeting of the’ National Assembly, the President signed the order for requisitioning the meeting for 22nd April, 1993 (but not issued). That in the evening on the 17th April the Prime Minister delivered the speech levelling all sorts of wild allegations against the President, leaving no option for him, but to dissolve the Assembly. The learned Attorney‑General then highlighted the relationship between the President and the Prime Minister and read out Articles 41, 46, 48 and also made a passing reference to Articles 177 and 193, to state that if for any reason the processes of advice and consultation, between the Prime Minister and the President were rendered impossible, the national affairs would not be carried on, in accordance with the provisions of the Constitution. In his opinion, the cordial relationship, so essential for smooth running of the Country, between the two pillars of the State power was clearly missing, resulting in a deadlock, for the resolution whereof resort to Article 58(2)(b) became inevitable.

19. The learned Attorney‑General made a good deal of effort to persuade us that the grounds mentioned in the dissolution order subsisted which necessitated invocation of Article 58(2)(b) by the President. But his lengthy arguments conveyed an unequivocal impression that the Prime Minister’s speech if not the sole at least was the major cause’ of dissolution of the Assembly. In fact at one stage, as noticed earlier, he himself attributed the dissolution order wholly to the firy nature of the speech of 17th April, 1993. question arises was there any justification for such a speech? Our answer is in the affirmative. The reason being that an atmosphere of mistrust, confusion and political uncertainty loomed larger in the Country which not only jeopardized the democratic processes, destabilized the economic activities but also tended to make the country a laughing stock at the international level. It was not only necessary but obligatory for the Prime Minister to have taken the nation into confidence and kept it abreast of the regrettable developments taking place on the political scene which in his estimation were destructive of democratic processes in the Country. Even otherwise, the Government is the major source of information, which in the democratic set‑up, it is duty bound to dissiminate, for public awareness, to enable them to adjudge the conduct of those who are in office and the wisdom and folly of their policies. Reference at this stage be made to the remarks made by Churchill, in 1932 reproduced at page 17 of “Party Politics” (Vol.11) by Sir Ivon Jennings:‑‑

“... tell the truth to the British people. They are a tough people and a robust people. They may be a bit offended at the moment, but if you have told them exactly what is going on, you have insured yourself against complaints and reproaches which are very unpleasant when they come home on the morrow of some disillusionment.”

The right of the citizenry to receive information can well be spelt out even from the “freedom of expression” guaranteed by Article 19 of the Constitution, of course, subject to inhibitions specified therein. Such right must be preserved. Thus, as head of the Government it was the essential responsibility of the Prime Minister to cultivate knowledge in the populace and to enlighten them about the burning issues. We may start here with advantage the words of Whig leader, Lord Hartington quoted at page 6 of the book “The People and the Party System” by Vernon Bogadanor on the subject of electoral reforms in British policies. During the debate on first Home Rule Bill in 1886, he insisted that the electorate must be consulted in the matters involving Constitutional changes and complained of the Glandstone’s failure to do so:‑‑

            “Although no principle of a ‘mandate’ may exist, I maintain that there are certain limits which Parliament is morally bound to observe, and beyond which Parliament has morally not the right to go in its relations with the constituents. The constituencies of Great Britain are the source of the power, at all events, of this branch of Parliament and I maintain that in the absence of an emergency that could not be foreseen, the House of Commons has no more right to initiate legislation ‑‑ of which the constituencies were not informed, and,, as to till  which if they had been so informed, there is, at all events, the very greatest doubt as to what their decision might be.”

20. The learned Attorney‑General’s argument that the Prime Minister could have delivered the speech in the House is much off the tangent. The speech was meant for the polity and carried a message for the nation. It, therefore, could not have been confined to the four walls of the Parliament House. This issue may also be examined from another angle. Supposing a President is to be removed from office or impeached on a charge of violating the Constitution or gross misconduct, in contemplation of Article 47 of the Constitution. Under clause 5 of this Article the Speaker is bound to summon the two Houses to meet in a joint session not earlier than seven days and later than fourteen days after the receipt of the notice of removal or impeachment,

as the case may be. Such an issue being of great importance, the Members of the Parliament may have to visit their constituencies in far flung areas to consult the electorates. Evidently this exercise cannot be accomplished within the lime limit specified in this Article. The campaign shall have to be started both inside and outside the Parliament, much earlier than the delivery of such notice to the Speaker.

21. Much has been said before us by the learned Attorney‑General, on the lack of working relationship and consequential deadlock between the President and the Prime Minister. We may observe that this deadlock is not due to any Constitutional inadequacy. Our Constitution is a comprehensive document and the remedy for this so‑called deadlock is not to be looked elsewhere but in the Constitution itself. It cannot be said that the Constitutional prescription does not measure up to the political reality in the country. The Constitution is not at all at fault. Perhaps the fault lies with those who are entrusted with its faithful implementation and have taken the oath to protect, defend and preserve the Constitution. The Prime Minister claimed majority in the House and he said so even in his speech. Conversely, the President held in hand 88 resignations which in his opinion sufficiently suggested that the National Assembly ceased to reflect the will of the electorate. In such a situation the catastrophe would have been avoided by resort to Article 91(5) and the Prime Minister asked to establish his majority and obtain a vote of confidence from the Assembly but L the President was ill‑advised to dissolve it. The speech could not be made a

lawful basis for dissolution of the Assembly.

22. If politics is indispensable, the politicians too are unavoidable. If they do not talk to one another, someone else must talk to all of them. In fact reconciliation and articulation of differences is not uncommon in politics. Those who in the past publicly expressed animosity against the President, are now, as argued at the Bar, frequent visitors to the President’s House. Not only this, even those against whom the President had himself chosen to file References in the Courts on a variety of charges, were inducted by him in the Care‑taker Cabinet. In his public address of 18th April, 1993, the President himself gave out that he was above his personal criticism. Before us Mr. Khalid Anwar clearly affirmed that the Prime Minister did not nourish grudge against the President and in the interest of the country the two would work together. We entertain no doubt that inculcation of working relationship between them is not an impossibility. Suppose fresh election is held and the petitioner again comes into power, what will then happen to the relations between the two? Will the President again dissolve the Assembly, for the reason that the Prime Minister cannot pull on with him? Evidently, this is not the solution of the problem. Its solution lies in exercising tolerance and operating faith fully within the parameter of the Constitution. We can do no more here than to refer to Lord Hailsham’s unabashed advice to the conservatives to readily adopt the policies of opponents when this is tactically desirable:‑

“There is nothing immoral or even eccentric in catching the Whigs bathing and walking away with their clothes. **There is no copyright in**truth, and what is controversial politics at one moment may after experience and reflection easily become common ground.” (See “Do Parties Make a Difference” by Richard Rose ‑ page 13).

It is sad that the Prime Minister of the country was accused of subversion of the Constitution. In this respect I respectfully agree with the view expressed by my borther Shariur Rahman, J. in his proposed judgment. Under Article 5, obedience to Constitution and the law is the inviolable duty of every citizen. Article 2A enjoins full observance of principles of democracy and tolerance as enunciated‑ by Islam. It is lamentable that there is much to be desired in adhering to these provisions, even at high level, which are so essential for growth of democratic values and our national, solidarity.

23. The President in his speech dated 18th April, 1993 has given the reasons supplementing the grounds on which the dissolution order is rested, adversely commented upon the speech of the Prime Minister, bitterly criticised the economic and foreign policies of the Federal Government and the manner in which ‘privatization’ has been conducted; referred to the lack of social justice and the problems of dearness facing the sections of the society financially not well off and the Government’s failure to comply with the requirements of Articles 154 and 160 6f the Constitution relating to the Council of Common Interests and National Finance Commission. Mr. Khalid Anwar drew a comparison between the speech and the two earlier addresses of the President dated 22nd December, 1992 and 19th December, 1991 delivered in the joint session of the two Houses of the Parliament. He submitted that the speech lacks generosity and vision and is diametrically opposed to the assessments previously made by the President, of the achievements of the Government. Analysing the speech he further urged that it is not\* at all symbolic of the unity of the Federation and rather demonstrates President’s animosity and ill‑will against the elected Prime Minister of the country. The portions of the speech and of the two Presidential addresses are juxtaposition placed below:‑‑

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It is noteworthy that the time‑lag between the President’s speech and his address dated 22nd December, 1993 is about four months only. In the address it has been maintained that despite internal and external differences with which the Federal Government was confronted, its performance in the economic field was praiseworthy but conversely in the speech the President depricated the economic and financial policies of the Government. It is difficult to reconcile the views expressed in the speech with those embodied in the address dated 22nd December, 1993.

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Seemingly, there is a lack of harmony in the appreciation of the foreign policy made under the address dated 22nd December, 1992 and its assessment demonstrated by the speech of 18th April, 1993.

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The privatization policy was discussed on both the occasions; on 22nd December, 1992 its operation was considered as encouraging but after four months it has been subjected to criticism.

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Previously the dearness was found to be a worldwide phenomena with which not only Pakistan but various other countries of the world were faced. it was observed that solid steps would be required, to resolve the problem. in this respect introduction of the Food Stamp Scheme was regarded as laudable and the need for making the monetary policy more effective, for achieving long time results, was emphasised. However, in the subsequent speech the dearness is considered as an outcome of unwise policy of the Government.

We feel, that there is a marked difference in the previous and present appraisal of the approach of the Government towards Council of Common Interests and National Economic Commission. In defending the fiscal, foreign and other policies of the outgoing Government, Mr. Khalid Anwar categorically asserted that the Care-taker Government made a clear cut public announcement that the policies of Mian Muhammad Nawaz Sharif’s Government would continue to be followed. We may observe, that this contention has remained unrefuted by the learned Attorney-General and Mr. S.M. Zafar. It being so, according to Mr. Khalid Anwar, the hollowness of the criticism launched against the policies of the former Government was fully exposed. It is clear ground to us, that the 3rd is also not established.

24. In the course of hearing of this petition, the nature of the Constitution and the provisions relating to the powers and duties of the President and Prime Minister were extensively debated before us. Mr. S.M. Zafar argued that before the Constitution (Eighth Amendment) Act, 1985, the Constitution presented a Parliamentary form of Government but after the amendment, the balance of power is heavily shifted in favour of the President and referred to Articles 48(5), 48(6), 58(2), 213(l), 242(1‑A), 243(2‑C) empowering the President to act in his discretion. When the National Assembly is dissolved by the President, under Article 48(5) he is vested with the discretionary power to fix a date for the holding of general election to the Assembly, not later than 90 days from the date of the dissolution and also appoint a Care‑taker Cabinet. Under Sub‑Article (6) of Article 48 he can on his discretion or on the advice of the Prime Minister, cause any matter of national importance, referred to a referendum. Article 58(2) contemplates two situations for dissolution of’ National Assembly at the discretion of the President; firstly when a vote of no­confidence has been passed against the Prime Minister and no other member of the National Assembly is likely to command majority of its members and secondly when the Government of the Federation cannot be carried on in accordance with provisions of the Constitution and an appeal to the electorate is necessary. Under Article 213(l) the appointment of the Chief Election Commissioner is within his discretionary powers. Similarly, Chairman of the Public Service Commission is appointed by the President in his discretion. It is so stated in Article 242(1‑A). We may observe that Article 243(2‑C) deals with the appointments of the Chairman, Joint Chiefs of Staff Committee, the Chief of the Army Staff, the Chief of the Naval Staff and the Chief of the Air Staff. In the President’s speech of 19th April, 1993, the appointment of the Chief of Army Staff is mentioned as one of the controversial issues between him and the Prime Minister. The expression “in his discretion the Chairman, Joint Chiefs of Staff Committee” appearing in this clause was inserted by Presidential Order No.14 of 1985. According to Mr. Yahya Bakhtiar, under this amendment only the appointment of Chairman, Joint Chiefs of Staff Committee was brought under the discretion of the. President and the appointments of other Chiefs i.e. the Chief of Army Staff, the Chief of the Naval Staff, the Chief of the Air Staff did were not rendered within his discretion. He referred to Articles 213 and 218 to urge that though under P.O. 14 the appointment of the Chief Election Commissioner was made to fall within the discretion of the President, yet such discretion was not extended to the appointment of the members of the Election Commission. In this behalf, I am inclined to agree with the conclusion reached by my brother Shaflur Rahman, J. in his proposed judgment.

25. With reference to other category of powers of the President, Mr. S.M Zafar dilated upon provisions under which the President acts in consultation with other Constitutional functionaries. Such provisions listed by him are Articles 72(l), 101, 177,.181, 193(l) and 218(l)(b). Article 72(l) relates to the making of the rules by the President in consultation with the Speaker of the National Assembly, concerning the joint sitting, and communication between two Houses of the Parliament. The other Articles relate to appointments Of Judges of the Superior Court except Article 218(l)(b) which covers the appointment of the members of the Election Commission. In the submission of Mr. Yahya Bakhtiar ‘consultation’ does not exclude applicability of Article 48(l) under which the President has to act on the advice of the Cabinet or the Prime Minister, as the case may be. While in the High Court in M.D. Tahir v. Federal Government 1988 CLC 1369 in hearing a writ petition dismissed in limine, I had the occasion to construe Article. 193(l) and did not consider the Prime Minister’s advice as sine qua non for the validity Of appointment of Judges of the High Court. After hearing Mr. Yahya Bakhtiar, I feel that what he asserts can be another way of looking at Article 193(1) andl this matter requires serious research.

26. On the rectitude of these Articles, particularly those conferring discretionary powers on the President to dissolve the National Assembly and make appointments of dignatories holding high Constitutional offices, Mr. S.M. Zafar strenuously argued that the amended provisions of the Constitution are an exhibition of a departure from the parliamentary system of Government, as the President is obliged to keep an eye on the working of Federal Government, to ascertain as **to whether or not it is being carried on in accordance with**the provisions of the Constitution. The learned counsel went on to contend that the power to make the’ appointments in question, made a tremendous difference and lended an upper hand to the President, he is not merely a figure head but rested with sufficient authority. It is discernible from the record before us, that from time to time directives have been issued by the President’s House to the Prime Minister’s Secretariat, which fully march with the idea of Presidential supremacy. ‑In his speech dated 8‑4‑1993 as well the President has claimed:‑‑‑

27. After carefully examining the relevant provisions of the Constitution, we do not feel persuaded to denude it of its basic character of presenting a parliamentary form of Government, which originated in the United Kingdom and developed through an evolutionary process, extending over centuries, based on conventions and precedents, and is the outcome of political struggle as a result whereof the absolute powers of the King were substituted by the supremacy of the Parliament. The salient features of the Parliamentary form Of Government are that real executive power is exercised by the Cabinet of the p Ministers, with the Prime Minister at its head. The Crown acts on the advice of the Cabinet, which is collectively responsible to the elected popular House‑ In the words of Dr. Herman Finer:‑‑‑

“Ministers are Ministers of ‘the Crown, that is they are formally appointed and dismissable by the Crown. But this action is hardly   more than formal and symbolic The Crown appoints, but it does not choose; it dismisses, but it does not control; nor does it determine the occasion for dismissal.

.......     It is the authority of the people to which Government has been made responsible. The people exhaust their authority in the choice of Parliament, and this body to which a large sphere of sovereignty is still ascribed by Constitutional lawyers, appries the test of responsibility to Ministers”. (Theory and Practice of Modern Government, pp.953‑954).

28. Our Constitution ordains a Parliamentary system of Government with collective ministerial responsibility to the Parliament. Article 91(1) provides:‑‑‑

1191. The Cabinet.‑‑‑‑(1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions.”

Under Article 91(4) the Cabinet ‘ together with the Ministers Of State is collectively responsible to the National Assembly. On behalf of the petitioner R reference has been made to.Article 91(2) which apparently confers discretion on the President to appoint from amongst the Members of the National Assembly, a Prime Minister, who in his opinion is most likely to command the confidence of the majority of the Members of the National Assembly. It is submitted, that the President has no substantial say in the matter of appointment of the Prime Minister; whosoever amongst the members commands the confidence of the majority, has got to be invited by him to form the Government. Under Article 91(5) the Prime Minister holds office during the pleasure of the President, but it is submitted that his pleasure is not unqualified. The Constitution directs that such discretion shall not be exercised as long as the Prime Minister commands the confidence of the majority of the members of the National Assembly. If the Prime Minister ceases to enjoy the confidence of the majority, the President has to summon the National Assembly and require him to obtain vote of confidence from the Assembly. These submissions of the learned counsel for the petitioner are not without merit. In the context of the controversy before us Article 48(l) occupies the pivotal position. It provides‑‑

“48. President to act on advice, etc.‑‑‑(I) In the exercise of his functions, tlw President shall act in accordance with the advice of the Cabinet, or the Prime Minister:

Provided that the President may require the Cabinet or as the case may be, the Prime Minister to reconsider, such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.”

The compulsory nature of the principle of advice is quite obviously. The President is bound to act on the advice of Prime Minister/Cabinet, commanding majority in the House, except where he has discretion or exercises prerogative such as under Article 94 and his satisfaction is secured (Articles 232, 234, 235); if such satisfaction is borne out from the advice tendered to him by the Prime Minister or. the Cabinet. Compliance with Article 48(l) by the President is ensured by Articles 42 and 47. Under Article 42 he takes the oath to perform his functions faithfully in accordance with the Constitution and further to preserve, protect and defend the same. If he misconducts or refuses to accept the advice, he can be impeached under Article 47 for violation of the Constitution.

29. The concept of responsible Government visualises that the Head of State himself can do no wrong; he acts on the advice of his Ministers on whom the resporisibility for such act lies; they arc answerable to the House. Under our Constitution the executive authority of the Federation, like other democratic Constitutions vests in the Head of the State. This principle has received recognition in Article 90, ‑which requires that the executive authority vesting in the President “shall be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution”. Since constitutionally the President is bound to follow\* die advice of the Prime Minister and Cabinet, the result is that practically the executive authority is placed in the hands of the Cabinet headed by the Prime Minister. The President is thus not responsible to any one for the acts done in his name. The responsibility lies on the Cabinet alone. In this respect we may usefully quote here a passage from page 308 of the “Constitution and Administrative Law” by 0. Hood Phillips (4th Edn.):‑‑‑

“Since the Sovereign acts on the advice of **the Cabinet, tendered**through the Prime Minister, and the Government is carried on in the name of the Sovereign, the Cabinet is expected to keep the Sovereign informed of any departures in policy, of the general march of political events, and in particular of the deliberations of the Cabinet.”

This principle is embodied in Article 46, which casts an obligation on the Prime Minister to communicate to the President all decisions of the Cabinet relating to the affairs of the State, including proposals of legislation. The President is also empowered to call for such information. Since the Cabinet is collectively responsible to the National Assembly, where a decision is taken by the Prime Minister or a Minister, but which has not been considered by the Cabinet, under Article 46(c) if the President so requires, it is the duty of the Prime Minister to submit such matter to the Cabinet for its consideration. In England there is unitary form of Government. Our Constitution is federal in structure but the aforesaid provisions fairly indicate that it is fundamentally modelled on the pattern of British Parliamentary system.

30. In order to signify the effectiveness of the role of the President under our Constitution, the learned Attorney‑General. has placed before us the Constitution of India (Vol. 1) by Kagzi, at its page 182, **the President of India**is described as a popular uniting symbol; has the privilege to be consulted and the right to encourage and warn the Prime Minister and Members of the Council of Ministers. It may be pointed **out that Article 74 of the Indian Constitution**originally did not provide that the advice of the Council of Ministers was binding on the President. This Article was amended by the Constitution (Forty­Second) Amendment Act, 1976 to ensure that the advice was accepted by the President without question. Thus, on what the learned Attorney‑General relied upon, related to the position obtaining prior to the amendment of Article 74.

31. In earlier part of this note we have referred to the observation made by the President in his speech dated 18‑4‑1993 that tendering of advice to the Government was his Constitutional obligation. Such a claim is not countenanced by the Constitution or the law‑, rather the dictates of the Constitution or otherwise. As already noticed the Constitution confcri such a right on the Prime Minister and the Cabinet; the advice tendered by them is imperativc and binding on the President. In view of the over‑reaching claim of the President, the learned Attorney ­General helplessly endeavoured to whittle down the asperity.of the expression and urged that by the word ‘advice’ the President intended to convey .counseling” and not as the term “advice” with its compulsive feature, is understood in the Constitutional parlance. But, the President has quite unambiguously founded his claim on the Constitution and not on anything else. We may cite here the remarks of Sri K. Santhanam, who was an eminent member of the Constituent Assembly of India:‑‑‑

“I have often wondered what would have happened if Jawahar Lal Nehru had become President and Dr. Rajcndra Prasad the Prime Minister., I have no doubt that the words ‘aid and advice’ would have .been interpreted, at least to mean that ‘the Council of Ministers’ would have to accommodate themselves to the views of the President in matters in which he felt strongly.”

(K. Santhanam, the President of India, 1969, JCP (July), p‑1).

To be fair to the Dissolution Order, it may be stated that it has been issued by the President under Article 58(2)(b) and all other enabling powers. But our Constitution is a written one. The powers and duties of the President are to be gathered from the Constitution itself. There is no question of enjoyment of any enabling or implied power. It may be pointed out that Article 58(2)(b) was X introduced in the Constitution in preventing a wrong rather than securing a right for the President. This provision exists for wise and careful employment  in grave situation within the parameter specified by this Court in Federation of

Pakistan v. Haji Muhammad Saifullah Khan PLD 1989 SC 166, but thely impugned order does not withstand the test laid down therein.

32. In the context of the powers and Constitutional position of the President, Article 41 also came under discussion, which represents the President as a symbol of unity of Pakistan. He is elected by the Provincial Assemblies as well as the National Assembly and is a binding force between’ the Federation and the federating units. In a plurist society rent with political polarization, ethnic, racial, provincialism and other diversities, for strengthening the process of social harmony, democracy and creative national enthusiasm, the role of the President becomes all the more important. These objects can meaningfully be achieved if the President shuns politics and remains a non‑controversial figure. Deplorably, the record before us creates a I different impression. Article 33 included in Chapter 2 of the Constitution’

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under the “Principles of Policy” casts an obligation on the State to discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens. Under Article 29 it is the responsibility of each organ and authority of the State to act in accordance with these principles. Regulation of relations between the President and the Prime Minister is a paramount national requirement. Both’ are expected to exercise tolerance, exhibit endurance and act within the limits;, of Constitutional propriety. The President is Constitutionally required to act on the advice of the Prime Minister/Cabinet, but such advice ought’not to be loadcd with a perception of dominance and veto power. If the President counsels the Prime Minister or the Cabinet, his counseling is entitled to weight. These are some of the norms of Constitutional jurisprudence for successful operation of the Constitutional prescription.

33. Having availed of the privilege of going !through the proposed judgment of the learned Chief Justice and those bf my other learned brother Judges, including the one proposed to be handed down by my brother Shaflur Rahman, J. comprising the majority view, with which respectfully I do not differ. I feet that the expressions employed, the views expressed and inferences’ drawn therein, sufficiently indicate that the President not only acted against the spirit of the Constitution but also violated it and there were no reasonable basis either in law or on facts to act in the manner as the President chose to proceed. Further, technical expressions well known to the. judicial parlance have been avoided and rightly so, because of the high esteem, that the office of the President demands. If it had been the case of the holder of lesser office, may be the caution in not using the words like “mala ride” would not have been taken. In the light of the aforesaid analysis, the dissolution order being unconstitutional and otherwise than bona fide is unsustainable. Only some of the reasons given in the dissolution order have been dealt with in detail in this note; for these as well as the other grounds of the impugned order, I have relied upon the supporting findings recorded by my brother Shaflur Rahman, J. **and other brother Judges.**The question arising would be, that if such finding has annulled one or more reasons specified in the dissolution order, can the rest of the reasons mentioned therein, stand independently, despite the fact that the person giving the reasons remains the same. Our answer is in the negative. Such finding goes much deeper than it looks at the surface, as the taint thus found attached to the person and his acts would continue.

The aforesaid are the reasons for the short order passed by the Court

SAJJAD ALI SHAH, J.‑‑‑I have gone through very carefully, elaborate leading judgment proposed to be delivered by my learned brother Shafiur Rahman, J. for whom I have great regard and whose’ profound learning I always keenly admire but with optimum respect I say that I rind myself unable to agree with his views and resultantly I venture to write dissenting judgment. Facts in great detail arc described in the main judgment but for the purpose of brief recapitulation it is necessary and proper to state that on account of differences, which arose between petitioner as Prime Minister and respondent No.1 as President of Pakistan, erosion crept in the working relationship of the two and in that context and on that subject, in order to avert complete break­down, meeting took place between the two at Presidency on 14‑4‑1993, which later turned out to be the last meeting. For the sake of brevity petitioner and respondent No.1 would be referred hereafter as the Prime Minister and the President respectively.

2. It is stated in paragraph 8 of the petition that the Prime Minister met the President to once again clear the atmosphere of distrust and allay the hostilities which could jeopardize the democratic process in the country. There is some controversy on the point as to what transpired in the abovementioned meeting and what was agreed upon between the President and the Prime Minister. According to,the press release from the Presidency, copy of which is on the record at page 124 of Volume 11 of Annexurcs in which it is stated that meeting lasted for about two hours in which grave and pressing national and international problems facing country were reviewed. The President urged the Prime Minister to undertake positive steps as early as possible to address effectively the problems to the satisfaction of the public representatives and the people. The Prime Minister undertook to do so on an urgent basis and to revert to the President with precise measures in that behalf. This press release is challenged on behalf the Prime Minister to the extent that it does not depict correct factual position. On the other hand it is stated on behalf of the Prime Minister that in the said meeting causes of prevalent political situation in the country were considered, and it was agreed that necessary measures would be taken to diffuse it. The Prime Minister assured the President that issue of 8th Amendment was well behind them. The Prime Minister acknowledged that he valued the President’s guidance and counsel and looked forward to his continued advice at various stages of formulation and implementation of policies. Both agreed that efforts should be made to win back friends and colleagues, who have left the Cabinet as a result of misunderstandings and differences. According to this version at a later stage, two Federal Ministers Lt.‑General (Rtd.) Abdul Majeed Malik and Mr. Ellahi Bakhsh Soomro joined the President and the Prime Minister in the meeting. Copy of the minutes of the meeting prepared by the Prime Minister’s Secretariat is produced and is on the record at page 125 of Volume II containing annexures. Questions as to which version is correct and who is right are questions of facts which cannot be answered in Constitutional petition without recording of evidence. In any case it can be deduced from the abovcmentioned documents and the pleadings of the parties that effort was made in the meeting to reduce the tension and remove irritants in the way of working relationship between two pillars of the Government of Federation.

3. Two days later i.e. 17‑4‑i‑993, the Prime Minister addressed the nation on television and the need for doing so is described in the memorandum of petition in paragraph 9 which is reproduced as under:‑‑‑

“In the circumstances it became necessary for the petitioner to take the nation into confidence about the factors which had led to the tense political atmosphere which had brought the national activities to a standstill.”

4. The Prime Minister addressed the nation on television in Urdu and copy of the speech in Urdu is available in Part 11 of rejoinder to the written statement. At this stage it is not necessary to reproduce the whole speech but tenor and purport of the speech depicts criticism of person and office of the President, alleging that he allowed the Presidency to be used for conspiracies to destabilise the Government. It was asserted in the speech that Presidency was being frequented by persons who talked of entering Pakistan on the tanks of enemies and were determined to destabilise the Government and in that connection steps were taken for blackmailing the Assembly, horse‑trading and doing dirty politics and with the intention of dislodging the Prime Minister. After enumerating the reforms introduced for the good of the people speech ended with declaration by the Prime Minister as under:‑‑‑

“I shall not resign, shall not dismiss Assembly and I shall not take the dictation.”

5. On the following day of the speech of the Prime Minister, Speaker o the National Assembly summoned the session for the next day as requisitioned by the required number of members of the National Assembly. On the same day i.e. 18‑4‑1993 leader of the Opposition in the National Assembly Ms Benazir Bhutto met the President in the Presidency and handed over to him resignations of the members of the Opposition in the National Assembly..On that day in the late evening the President addressed the nation on television and dissolved the National Assembly and in consequence dismissed the Prime Miniser and the Cabinet as contemplated under Article 58(2)(b) of the Constitution. In the same speech the President announced that he had appointed Mr. Balkh Sher Mazari as Caretaker Prime Minister and two other Federal Ministers as members of the Caretaker Cabinet which was expanded later to give it shape of National Government. The text of speech of President in Urdu is available at page 56 of paper book Part 1.

6. Grounds mentioned in support of order of dissolution briefly stated are; mass resignations of members of National Assembly, speech of the Prime Minister on television making false and malicious allegations against the President, failure of the Government to protect autonomy of Provinces by bypassing Council of Common Interests and National Economic Council, mal­administration, corruption and nepotism in bodies, authorities and banks and lack of transparency in the process of privatisation and disposal of properties, unleashing reign of terror against opponents, violation of Constitution, not responding to the complaint of Begum Nuzhat Asif Nawaz about death of her husband and finally threat to the security and integrity of the country and grave economic situation necessitating fresh mandate from the people.

7. During the hearing preliminary objection was raised on behalf: of respondents that Constitution petition directly filed in the Supreme Court is not maintainable and competent as contemplated under Article 184(3) of the Constitution. Both Mr. Aziz A. Munshi, learned Attorney‑General of Pakistan for the President as respondent No.1 and Mr. S.M. Zafar learned counsel for Care‑taker Prime Minister as respondent No.3, stoutly contended against the maintainability of the petition on the ground that order of dissolution did not violate Fundamental Right contained in Article 17 of the Constitution pertaining to the freedom of association. According to them Article 17 gives right to form and to be a member of political party but does not give Fundamental Right to continue the Government which is covered and governed by other provisions of the Constitution. In this connection claim raised on behalf of the petitioner is denied and seriously disputed. Article 199 of the Constitution confers upon High Court writ jurisdiction. Article 184(3) of the Constitution empowers the Supreme Court to exercise the same jurisdiction as conferred upon High Court under Article 1W, when Supreme Court considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part Il is involved. It is submitted on behalf of the petitioner that his political party has fundamental right to continue the Government till its tenure comes to an end.

8. Perusal of the Constitution shows that there are several other provisions which govern the continuation of the Government. Article 91(2A) envisages that the President shall invite the member of the National Assembly to be the Prime Minister who commands the confidence of the majority of the members and such person is to be given oath as is provided in clause (3) of the same Article. Clause (5) of Article 91 provides that the Prime Minister, who does not command confidence of the majority shall be required to obtain, vote of confidence from the Assembly. Article 58(l) of the Constitution provides

that the President shall dissolve the National Assembly if so advised by the Prime Minister. Clause (2) of this Article empowers the President to dissolve the National Assembly in his discretion. If provisions of the Constitution mentioned above, are read conjointly, it would appear that Article 17 gives right to form or be a member of political party subject to any reasonable restrictions imposed by law but does not give any further Fundamental Right to that political party to continue the Government till its tenure has come to an end. In the case of Ms. Benazir Bhutto v. Federation of Pakistan and another PLD 1988 SC 416 amendments in the Political Parties Act, 1962 were challenged as inconsistent with Article 17(2) of the Constitution providing automatic penalty of political extermination in case, of ‑non‑registration of political party with Election Commission of Pakistan. With regard to concept of political party it has been held at page 520 of the report as under:‑‑‑

“Thus while the right to form political party is guaranteed under sub­Article (2) of Article 17, the right of the members to meet is guaranteed by Article 16, the right to move from place to place is guaranteed by Article 15, the right to freedom of speech and expression is guaranteed by Article 19 and so on. This is so because the Fundamental Rights are guaranteed to the citizens as such and the’ association can lay claim to the Fundamental Rights guaranteed by the different Articles solely on the basis of their‑being an aggregate of citizens composing the party. However, by forming a political party its members do not acquire any higher footing as regards other Fundamental Rights which as individuals they could not claim. Further the political party while exercising its freedom under different Articles is subject to reasonable restrictions imposed thereunder.”

9. It was further held in that case that provisions of sections 3(l), 3‑A, 3‑B, 3‑C and 6 of the Political Parties Act, 1962 on account of being inconsistent with Fundamental Right were declared to be void to that extent. ‑

10. In the case of Ms. Benazir Bhutto and another v. federation of Pakistan and another PLD 1989 SC 66, after examination of section 21 of Representation of the People Act, 1976 in the light of Article 17(2) of the Constitution it was held that section 21 of the said Act was violative of the fundamental right contained in Article 17(2) of the Constitution in so far as it fails to recognize the existence and participation of political parties in the process of elections particularly in the matter of allocation of symbols and was for’ that reason void‑to that extent. Every political party is eligible to participate in the Elections to every seat in th; National and the Provincial Assemblies.. The political parties shall be entitled to avail of the provisions of sub‑rule (2) of Rule 9 of the Rules to seek allotment of any of the prescribed symbols.

11. During the hearing on the question of, maintainability I felt greatly inclined in favour of maintainability of the petition for two seemingly convincing reasons. Firstly, prompted by modern trend of judicial activism  was inclined to give liberal interpretation to Article 184(3) of the Constitution to carve out and assert jurisdiction in respect of public interest litigation. After giving this case benefit of analogy as stated above, I kept in view two precedent cases in which Constitutional petitions were entertained directly by the Supreme Court. After making deep and ver~ careful study of Article 184(3) and Article 17 alongwith other provisions of the Constitution and’the two decided cases to be mentioned later and a host of other authorities in aid of the subject I am now inclined to the opinion that in the instant case a petition under Article 184(3) of the Constitution directly filed in the Supreme Court is not maintainable and for that purpose resort should have been made to the

High Court.

12. In the case of Begum Nusrat Bhutto v. Chief of Army Staff etc. PLD 1977 SC 657, Constitutional petition was filed directly in the Supreme Court without going to the High Court. First objection taken was that petition was directed against Chief of the Army Staff whereas the orders of detention had been passed by the Chief Martial Law Administrator. This objection was disposed of summarily on the ground that Chief of the Army Staff was also Chief Martial Law Administrator and the objection was technical in nature and could be met by adding words of Chief Martial Law Administrator to the description of the respondent. Second objection taken was that petitioner Begum Nusrat Bhutto was not an aggrieved person in terms of Article 184(3) read with Article 199 of the Constitution as she did not allege any violation of her own Fundamental Right but only those of the detenus. It was held that clause (3) of Article 184 gives concurrent power to the Supreme Court to make order for the enforcement of Fundamental Rights in the same terms as could be made by the High Court under the provisions of Article 199. Clause (1) (c) of Article 199 contemplated that an application for enforcement of fundamental rights should be made by an aggrieved person but in that case petitioner had filed petition in two capacities, namely; as wife of one of the detenus and secondly, as Acting Chairperson of Pakistan People’s Party to which all the detenus belonged. For such reasons objection that petitioner had no locus standi was rejected.

13. In the second case of Ms. Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416, which is mentioned above, in slightly different context it is held that exercise of power of Supreme Court under Article 184(3) is not dependent ofily at the instance of the “aggrieved party’ in the context of adversary proceedings and traditional rule of locus standi can be dispensed with and procedure available in public interest litigation can be made use of, if it is brought to the Court by the person acting bona ride. The provisions of Article 184(3), therefore, have provided abundant scope for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction and it would be for the Supreme Court to lay down the contours generally in order to regulate the proceedings of group or class actions from case to case. It is only when the element of “public importance” is involved that the Supreme Court can exercise its power to issue the writ while sub‑Article (1)(c) of Article 199 has a wider scope as there is no such limitation therein.

14. In the instant case Article 184(3) cannot be invoked for the reason that impugned action of dissolution of the Assembly is not in conflict with Article 17(2) as there is no Fundamental Right available to the petitioner to continue the Government till the tenure comes to an end because that subject is covered by other provisions of the Constitution which are mentioned above. Article 17(2) which guarantees Fundamental Right mentions such right to the extent of being a member of political party subject to any reasonable restrictions imposed by law and nothing more than that. To continue in power for five years till the end of tenure is a political wish and to be able to participate in political process, is governed by other Articles of the Constitution and not by Article 17(2). Article 17(2) mentions political party,: which has bundle of rights including political rights which are different from Fundamental Rights which are enumerated in the Constitution.

15. Mr. Khalid Anwar learned counsel for the petitioner has pointed out that in Article 2A of the Constitution in the Objectives Resolution “political justice” is mentioned giving it same status as that of Fundamental Right which is reproduced as under:‑‑‑

“2A. The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly.”

16. On this premise second argument is built that before entry in the National Assembly, a political party has Fundamental Right and after entry to continue Government for five years is a political right arising from “political justice” as enshrined in Article 2A which is also as good as implied fundamental right. Learned counsel further stated that in the case of Benazir Bhutto v. Federation of Pakistan and another PLD 1988 SC 419 Zafar Hussain Mirza, J. (as he then was) has touched upon this aspect of “political justice” favourably at page 460 of the report. I am not inclined to accept the contention of the learned counsel for the following reasons. Fundamental rights are specifically mentioned in the Constitution and no such fundamental right can be deemed to be there by implication if not mentioned specifically. If legislature wants to add any fundamental right it can do so expressly. There is E no dispute about the fact that Article 2A containing Objectives Resolution now is substantial part of the Constitution and this Article is now as good as any other Article of the Constitution and at par with it. In the case of Benazir Bhutto, mentioned above, Article 17(2) of the Constitution was examined in the light of right to form or be a member of political party subject to any restrictions imposed by law and in that context several provisions which were added in the Political Parties Act were considered and found to be inconsistent with fundamental right to form or be a member of political party. Exactly in that context of right to form or be ‑a member of political party and in connection with fair i elections and existence of political parties, Zafar Hussain Mirza, J. observed at page 460 of the report as under:‑‑‑

“The expression ‘political justice’ is very significant and it has been placed in the category of Fundamental Rights. Political parties have become a subject‑matter of a Fundamental Right in consonance with the said provisions in the Objectives Resolution. Even otherwise, speaking broadly, our Constitution is a Federal Constitution based on the model of Parliamentary form of representative Government prevalent in United Kingdom. It is also clear from the Objectives Resolution that principles of democracy as enunciated by Islam are to be fully observed. True and fair elections and the existence of political parties, is an essential adjunct of a functional democratic system of Government.”

17. It is quite obvious from the above quote that reference to “political justice” is academic in nature because Fundamental Right is already mentioned G in Article 17(2) which is right to form or be a member of political party. Since some provisions of Political Parties Act offended against the fundamental right mentioned above, they were struck down. In my opinion contention does not advance the case of Mr. Khalid Anwar to the effect that after entry into National Assembly continuation in the Government for rive years is based upon political right which is akin to and related with Fundamental Right.

‑18. For the facts and reasons mentioned above, I am of the view, that petition cannot be filed straightaway in the Supreme Court as Article 184(3) can be invoked only when question of public importance is involved with reference to the enforcement of any of Fundamental Rights and in the instant case petitioner cannot claim Fundamental Right under Article 17(2) to continue Government till its tenure, comes to an end. Proper remedy for the petitioner was to rile the petition before the High Court under Article 199 of the Constitution and seek relief as contemplated therein challenging the validity of order of dissolution passed by the President.

19. Coming back to the merits I would like to say that order impugned in this petition is passed by the President under Article 58(2)(b) of the Constitution. In order to appreciate the purpose and scope of this provision in proper perspective it would be necessary to recall very briefly historical back­ground. We ‘got independence in 1947 and produced Constitution for the first time in 1956, which contemplated Parliamentary form of Government. In 1958 Martial Law was imposed in the country and the Constitution was abrogated. Chief Martial Law Administrator, who became the President, gave to the country Constitution in 1962 which contemplated Presidential form of Government. Towards the end, of the role of President Ayub Khan people became disenchanted and as protest came out in the streets. There was no other alternative for President Ayub Khan but to resign and while doing so instead of handing over the powers to the Speaker of the National Assembly, he invited Commander‑in‑Chief of Army to take over the country and perform his Constitutional role. Commander‑in‑Chief of Army proclaimed Martial Law and held General Elections. There were some other political developments as well in the wake of which there was war between India and Pakistan and in consequence East Pakistan proclaimed independence and became Bangladesh.

20. In West Pakistan result of elections was accepted and in consequence Government was formed and a new Constitution was produced which is called Constitution of 1973. This Constitution also contemplates Parliamentary form of Government with concentration of powers in favour of the Prime Minister. In 1977 again Martial Law Was proclaimed and Constitution was held in abeyance. This country has seen several Martial Laws and whenever there is Martial Law, Military rulers for that Parliamentary form of Government does not suit the people of the country and they feel inclined in favour of Presidential form of Government to ensure stability and long duration of the Government. With same view in mind Gen. Ziaul Haq, who was C.M.LA. and President of Pakistan endeavoured hard to evolve a system in which the President had more powers than Prime Minister in the system of the Government. He did not mind retaining Parliamentary form of Government because Presidential form of Government introduced by late Ayub Khan was rejected by the people, who had come out in the streets‑He wanted to retain Parliamentary form of Government with more powers to the President who should be ‑able to have a last say in the matter and dismiss the Government of the Prime Minister if such situation arose. He also thought on the line of Turkish Constitution with supervisory role to the army to be made in the Constitution.

1 21. It is noteworthy that C.M.LA. and President Gen. Ziaul Haq did, not abrogate 1973 Constitution but held some of its provisions in abeyance. When time came for removal of Martial Law and revival of Constitution of 1973, Order, 1985 (President’s) 14 of 1985 was promulgated on 2nd March, 1985, reviving the Constitution after making substantial amendments therein as wanted by the President to suit his needs. In this context Article 58 of the Constitution is worthmentioning for the reason that clause (2) was added in Article 58 empowering the President to dissolve National Assembly in his discretion where, in his opinion, an appeal to the electorate is necessary. Before this amendment, Article 58 provided that President shall dissolve National Assembly if so advised by the Prime Minister. It so appeared that clause (2) gave President unbridled authority to dissolve the National Assembly in his discretion whenever he thought that appeal to the electorate was necessary. This opened controversy with regard to the unlimited powers of the President and changing the shape of the Constitution from Parliamentary to Presidential which ultimately resulted into Constitution (8th Amendment) Act, 1985 by which clause (2) of Article 58 was suitably amended and power of the President to dissolve the National Assembly in his discretion was qualified.

22. The Constitution (8th Amendment) Act, 1985 was in fact compromise for striking balance between the powers of the President and Prime Minister as desired by the President and forces demanding lifting of Martial Law and revival of the Constitution in the shape of Parliamentary form of Government. The President agreed to lift the Martial Law and revive the Constitution on condition that his points of view were accommodated including more powers to the President so that situation did not arise necessitating imposition of Martial Law. In such circumstances efforts were made to arrive at a compromise in order to break the deadlock and give Constitution a chance to prove to be workable. Interpretation and scope of authority and powers contemplated under Article 58(2)(b) came up for detailed examination in the case of Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others PLD 1989 SC 166. The question presented two view points as to whether the said discretion is uncontrolled and cannot be called in question on any ground whatsoever as provided for in clause ~(2) of Article 48 or is it a discretionary power which must be exercised reasonably and fairly and can be scrutinised through judicial review. In that context this Court referred to the debates in the National Assembly on Constitution (8th Amendment) Act, 1985 and came to the following conclusion:‑‑‑

“Thus the intention of the law‑makers, as evidenced from their speeches and the terms in which the law was enacted, shows that an order of dissolution by the President can be passed and an appeal to the electorate made only when the machinery of the Government has broken down completely, its authority eroded and the Government, cannot be carried on in accordance with the provisions of the Constitution.

It is within the discretion of the President to determine whether these conditions are met or not but this discretion has to be exercised in terms of the words and spirit of the Constitutional provision.

The discretion conferred by Article 58(2)(b) of the Constitution on the President cannot, therefore, be regarded to be an absolute one, but is to be deemed to be a qualified one, in the sense that it is circumscribed by the object of the law that confers it.

Reading of the provisions of Article 48(2) shows that the President has to first form his opinion, objectively and then, it is open to him to exercise his discretion one way or the other, i.e. either to dissolve the Assembly or to decline to dissolve it. Even if some immunity envisaged by Article 48(2) is available to the action taken under Article 58(2) that can possibly be only in relation to the exercise of his ‘discretion’ but not in relation to his ‘opinion’. An obligation is cast on the President by the aforesaid Constitutional provision that before exercising his discretion he has to form his ‘opinion’ that a situation of the kind envisaged in Article 58(2)(b) has arisen which necessitates the grave step of dissolving the National Assembly.

Thus, though the President can make his own assessment of the situation as to the course of action to be followed but his opinion must be founded on some material.”

23. The salient feature of Saifullah’s case is that President Ziaul Haq passed order of dissolution containing three grounds to the effect that firstly law and order in the country had broken down resulting in tragic loss of innumerable valuable lives and secondly that life, property, honour and security of citizens of Pakistan had been rendered totally unsafe and thirdly, that situation had arisen in which Government of Federation could not be carried on in accordance with provisions of the Constitution. Judgment was announced by the High Court after the death of President Ziaul Haq. This Court held that order df dissolution was invalid on three grounds; firsty that there was no **material in**support of grounds, secondly, Care‑taker Prime Minister was not appointed and thirdly, oath of Ministers was altered. Relief claimed in the petition of restoration of Assembly and Government was not granted for the following reasons. Firstly Mr. Muhammad Khan Junejo (deposed Prime Minister hailing from Sindh) decided to seek mandate of people. Secondly, Pakistan Muslim League (Ruling Party in the Assembly) broke into two parts **and the**other part was headed by Mr. Fida Muhammad Khan. Thirdly, whole administrative machinery was geared up for election. Fourthly, after lifting of ban all political parties could participate in the election. Fifthly, writ jurisdiction being discretionary relief was rightly refused as greater harm could have been caused if relief of restoration had been granted. In that context it was held that concept of national interest had to take precedence over rights of **individual.**On the question of exercise of discretion vis‑a‑vis right of appeal to political sovereign, pertinent paragraph from the said judgment is reproduced as **under:**

“it should not be overlooked that dissolution does not in any way adversely affect the rights of the members of the Assembly. If their claim that they are in the Assembly by the consent of the people and as their representatives and not merely because of a statutory provision, is good, they can seek re‑election to the new Constituent Assembly, there being no disqualification attaching to them from being chosen as members of that Assembly. If they receive a fresh electoral mandate, they can return to the Assembly with greater popular acclamation and thus disprove the allegation that they represent nobody except themselves.”

24. For the second time order of dissolution of National Assembly under Article 58(2)(b) of the Constitution was passed by the President and Federal Government of Ms. Benazir Bhutto (hailing from Sindh) was dismissed and the Constitution Petition was riled by a Federal Minister in that Government in Lahore High Court which was dismissed. Scope and authority under Article 58(2)(b) was again re‑examined by this Court in the case of Khawaja Ahmad Tariq Rahim. v. The Federation of Pakistan and another PLD 1992 SC 646. In support of order of dissolution President had assigned five main grounds and produced material in support of the grounds. Those five grounds were; firstly, that there was scandalous ‘horse‑trading’ for political gain and thereby mandate of National Assembly was defeated. Secondly, the Federal Government undermined and impaired the working of the Constitutional arrangements and bypassed Council of Common Interests and National Finance Commission. Thirdly, there was corruption and nepotism in the Federal Government, its functionaries, authorities and other corporations including banks. Fourthly, the Federal Government failed to protect Province of Sindh from internal disturbances. Fifthly, the Government of Federation violated provisions of the Constitution by ridiculing superior judiciary, misusing resources and agencies of Government like statutory corporations, authorities and banks for political ends and personal gains and undermined Civil Service of Pakistan. Full Bench of 12 Judges of this Court heard this case and by majority opinion 10 to 2 upheld the order of dissolution after consideration of material produced in support of the order. In respect of Article 58(2)(b) it was held as under:‑‑‑

“President of Pakistan has the power to dissolve National Assembly at his discretion and specific power and the judicial requirement have been provided in the Constitution. Once the evil is identified, remedial and corrective measures within the Constitutional framework must follow. Public functionaries, holding public power in trust, under oath to discharge the’same impartially and to the best of their ability must react as they cannot remain silent spectators. Legal and moral basis for reserving or reposing such a power and the occasional exercise of its illustratively described.”

25. On the question of defection of elected members, although the same was not caught by the mischief of relevant law, it was held that defection amounts to a clear breach of confidence reposed in such members in the electorate and dissolution on this ground was justified on moral reasons. It was also held that President was justified in dissolving the National Assembly on the ground that Constitutional institutions like Council of Common Interests and National Finance Commission were not allowed to function, hence Constitutional obligations were not discharged. In short whatever material was produced in support of the grounds of dissolution was accepted by this Court to be adequate and order of dissolution passed by the President was upheld to be valid and justified. I would like to make comparison between the case of Khawaja Ahmed Tariq Rahim and the present case in order to show that material produced in the present case is more quantity as well as qualitywise than material produced in Khawaja Ahmad Tariq Rahim’s case and same yard­stick for evaluation of material and interpretation of Article 58(2)(b) should be followed and no departure should ‑be made from following the guidelines laid down in the cases of Haji Saifullah Khan and Tariq Rahim by this Court.

26. In the present case the order of dissolution is supported by eight grounds, two I of which are further sub‑divide7d into other grounds as well. In Tariq Rahim’s case there were rive grounds enumerated in support of order of dissolution and from them two were further sub‑divided into other grounds as well. In the present case first ground is mass resignations of members of Opposition and some members of Treasury Bench including Ministers, showing their desire to seek fresh mandate from the people on account of which National Assembly had lost confidence of the people. During the hearing in this Court much time was consumed on the question of competence and validity of resignations which were handed over to the President instead of Speaker, who was supposed to accept them or not. The question here is not of intrinsic value of resignations in the hands of the President, which are in transit and have not reached the Speaker, but these resignations are to be considered as material in support of the ground that members of the National Assembly had lost confidence in the Federal Government headed by the petitioner as Prime Minister and in such circumstances need was felt with justification by the President for exercise of his power and discretion under Article 58(2)(b) to dissolve the Assembly after objective assessment of the situation.

27. In the written statement it is mentioned that the President had received total of 88 resignations apart from which there were already 12 vacancies of previous resignations plus vacancy of one member who had died. in such circumstances out of total membership of 217 there could be 101 vacancies. Without going’ into the question as to when in point of time the

resignations would be deemed as valid causing vacancies stricto senso it can be said that this material as such in the hands of the President could be considered by him to form an opinion that 88 members who resigned could turn the scales in conjunction with other concomitant circumstances stated above, showing that Federal Government headed by the Prime Minister and National Assembly had lost its mandate in the sense that its representative character was not same as it was before when people voted for it. The fact cannot be lost sight of that I.J.1. as amalgam of several parties jointly contested elections and people voted for it. In the result 111. formed Government but afterwards several other parties disassociated from LJX. Even Muslim League (Junejo Group) was split into two parts, the second part is Nawaz Sharif group. Hence at the time of dissolution Ul. was not same group of political parties which were voted into power.

28. It is explained on behalf of respondents in the written statement that the resignations were not sent to the Speaker for the reason that he was partisan and had not acted in the past upon motions directed against the Prime

Minister and other Ministers of the Federal Government. Speaker was getting preferential treatment in special allocation of funds for his constituency. In such circumstances resignations were handed over to the President as mark of protest. As said earlier I am of the view that resignations with the President can be considered as material in support of the ground of dissolution that K National Assembly has lost representative character and mandate. In the majority judgment in this case view is taken that President could not entertain the resignations, hence it was not a good ground for dissolution. I beg to differ with the view of majority on this point for the reasons firstly, that in Tariq Rahim’s case by analogy horse‑trading was considered as ground for dissolution in spite of the fact that it was not caught within the mischief of relevant law and secondly, horse‑trading took place on both sides in the House but horse‑trading in favour of Opposition was officially ignored. Thirdly, defection of elected members was accepted on moral grounds. In this context I reproduce relevant paragraph from the majority judgment of Tariq Rahim’s case:‑‑‑

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“In the first place, if the member has’ been elected on the basis of a manifesto, or on account of his affiliation with 4 political party, or on account of his particular stand on a question of public importance, his defection amounts to a clear breach of confidence reposed in him by the electorate. If his conscience dictates to him so, or he considers it expedient, the only course open to him is to resign to shed off his representative character which he no longer represents and to fight a re‑election. This will make him honourable, politics clean, and emergence of principled leadership possible. The second and more important, the political. sovereign is rendered helpless by such betrayal of its own representative. In the normal course, the elector has to wait for years, till new elections take place, to repudiate such a person. In the meantime, the defector flourishes and continues to enjoy all the wordly gains. The third is that it destroys the normative moorings of the Constitution of an Islamic State. The normative moorings of the Constitution prescribe that “sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised‑by the people of Pakistan within the limits prescribed by Him is a sacred trust and the State is enjoined to ‘exercise its powers and authority through the chosen representatives of the people’. An elected representative‑who defects his professed cause, his electorate, his party, his mandate, destroys his own representative character. He cannot on the mandated Constitutional prescription participate in the exercise of State power and authority. Even by purely secular standards carrying on of the Government in the face. of such defections, and on the. basis of such defections, is considered to be nothing but ‘mockery of the democratic Constitutional process’.”

29. Why such incisive reasoning on moral grounds in respect of defections’ as mentioned in the quote, is not being made applicable to mass resignations in the, instant case without objection of validity.

30. The second ground marked in the order of dissolution as (b) is that in the meetings between the President and the Prime Minister and particularly in the last such meeting which took place on 14‑4‑1993, the President urged upon Prime Minister to take positive steps to resolve grave internal and international problems but instead of doing that on 17‑4‑1993 the Prime Minister made a speech on television and made false and malicious allegations against the President of Pakistan who is Head of the State and represents the unity of the Republic. The tenor of the speech was that the Government could not be carried on in accordance with the provisions of the Constitution and the Prime Minister advanced his own reasons and theory for the same, which was done to cover up the failures qnd defaults of the Government and in such circumstances speech of the Prime Minister was tantamount to a call for agitation and in any case the speech and his conduct amounted to subversion of the Constitution. The speech as such is neither denied nor disputed.

31. In the petition which is filed in this Court from paragraph 4 onwards achievements of the Federal Government are enumerated and the background. is explained. According to the petitioner IJ.l. Government brought about a negotiated scttlement/peace Agreement in Afghanistan. Massive progress was made in the new Highway Project which widely increased the prospects for new foreign and internal investment. The petitioner as Prime Minister visited several foreign countries for investment. In Sindh Katcha lands were allotted to landless Haris. According to the petitioner all such progress was made without participation of the President in policy‑making and decision‑making, which displeased him and he started interfering in ordinary. and routine matters. This was calculated to undermine the authority and credibility of the Federal Government And to give the impression that what actually matters in the national affairs is the will of the President and not the people and their elected Government. It is also stated in the petition that the ruling party considered advisability of amending some Articles of 8th Amendment of the Constitution and this further displeased the President.

32. It is also stated in the petition that the ruling party did not want the President to be removed, hence declared openly to back him up for a second term. In order to totally re‑assure him, the ruling party also dropped the question of 8th Amendment. In spite of such steps having been taken by the ruling party, the President misconstrued the attitude of the petitioner as total surrender and he openly started entertaining and supporting persons hostile to the Government, who were scheming and working to destablise the elected Government. It is fruther stated in the petition that persons opposed to the elected Government kept on meeting the President and making public statements that the President would shortly announce the dismissal of the Government and the President did not deny such statements. Ultimately on 14‑4‑1993 the Prime Minister met the President and after the meeting Presidency issued Press Release which did not correctly depict minutes of the meeting and in such Circumstances on 17‑4‑1993 the petitioner felt compe1led to take the nation into confidence and made that speech. It is mentioned in the, petition that on 18‑4‑1993 meeting was requisitioned by members of the National Assembly to consider whether I.J.1. Government has lost its mandate or not, the speech of the Prime Minister on 17‑4‑1993 and the press statement issued by the Presidency on 14‑4‑1993. Both President and the Prime Minister were planned to be invited. In a mala fide manner the move was prevented by order of dissolution. How far this assertion is believable remains to be seen.

33. In the written statement stand is taken by ,the President that the Prime Minister was acting in important policy matters in total disregard of the Constitutional provisions and had placed himself in the hands of few individuals who did not guide him properly and this action was disapproved by some important members of the Cabinet. Such lapses were pointed out to him in the meetings between them in the months of March and April 1993 and the Prime Minister considered the weaknesses and irregularities and agreed to take remedial measures. The last such meeting took place on 14th April, 199.3, at the end of which the Prime Minister recognized an urgent need for rectification and promised to return to the President after initiating certain corrective measures. Instead of doing that on 14‑4‑1993, the Prime Minister made a speech on electronic media which was described as ‘unprecedented’ by people of all walks of life. In that speech the Prime Minister chose the most unusual course to demonstrate that the Government of Federation could not be carried on in accordance with the Constitution. At the end of the speech the Prime Minister defiantly declared that he would not resign, would not dismiss the Assembly and would not take the dictation.

34. It is mentioned in the written statement that after the speech of Prime Minister on electronic media on 17‑4‑1993, on the following day session of National Assembly was summoned by the Speaker for 19‑4‑1993 on the requisition of members and for that purpose the Speaker of the National Assembly hurried his return from New Delhi prematurely which demonstrated collusion. During the hearing before us several arguments were put forward on behalf of the Prime Minister in support of his speech and summoning of the session of the National Assembly for 19‑4‑1993. It was submitted that in our Constitution which contemplates Parliamentary form of Government the Prime Minister is to advise the President and not vice versa. After the last meeting on 14‑4‑1993, although the Prime Minister undertook to take remedial measures but the time was too short and he felt constrained to take public into confidence and for that reason he made speech on television on 17‑4‑1993. No material has been produced nor any assertion was made to show that any request was made for extension of time which was refused by the President.

35. Another argument is that if there was misunderstanding with regard to the minutes of the meeting about which the Presidency issued Press Release which was considered by the Prime Minister as not correctly depicting factual ~ position, then this was such a trivial matter that it could have been sorted out between the President and the Prime Minister in another meeting. What really appears from the annexures produced by both the parties in this case and newspaper clippings which covered the events of that time that the President suggested to the Prime Minister to get rid of some Ministers and some important functionaries of the Government and the Prime Minister took time to do the needful but then changed his mind and adopted tone and tenor of defiance. After making the speech on T.V. on 17‑4‑1993 in which person and office of the President was criticised with uncalled for imputations in a state of frustration, steps were taken to summon the session of the National Assembly on requisition of members for the following day, which did not appear to be a bona fide move for obvious reason that there was already a request for summoning the session of National Assembly and such summary was signed and approved by the President, as the Court was informed by the learned Attorney‑General.

36. This move of suddenly summoning the session of the National Assembly for the following day is open to many presumptions in the back‑ground of strained relations between the President and the Prime Minister and the speech of the Prime Minister on T.V.,in which he had addressed the nation. It could be presumed that it was to take action of impeachment against the President or to create a ground disabling the President from passing the order of dissolution under Article 58(2)(b) on the assumption that session summoned under the provision of the Constitution could be terminated only when prorogued by the Speaker. On the other hand it was argued on behalf of the respondents that power under Article 58(2)(b) is independent and under it order of dissolution can be made by the President even if the Assembly was in session. It was contended very forcefully by Mr. Khalid Anwar that the speech of the Prime Minister, in any case did not amount to subversion of the Constitution because as Prime Minister he could always address the nation and take people into confidence on very important matters. Another argument was raised on behalf of the Prime Minister that in the order of dissolution in the last paragraph it is mentioned that the Prime Minister is dismissed and the word ‘dismissal’ should not have been used and by doing so Article 14 of the Constitution is contravened which provides that dignity of man and subject to law the privacy of home shall be inviolable.

37. In my humble opinion in this regard the most important and pivotal point is the making of speech by the Prime Minister and its tenor and purport which is not disputed but on the contrary is being defended vociferously on the ground that the Prime Minister acted within his powers in the Constitution and the President had no business to advise the Prime Minister in the Parliamentary form of Government. The tenor of the speech of the Prime Minister shows clearly that he endeavoured to take into confidence the nation on the point that the situation had arisen in which the Government of Federation could not be carried on in accordance with the provisions of the Constitution and for such situation he was not to be blamed and the blame in its entirety lay on the door of the Presidency and the person of the President who colluded with elements inside the ruling party and outside, who were hell­bent to destabilise the Government.

38. In my opinion the question of apportionment of blame for creating! such a situation is relegated in the background and the fact that such a situation is created bringing about deadlock and stalemate in the working relationship of two pillars of the Government of Federation has become a fait! accompli *which enables*the President to exercise his discretionary power under Article 58(2)(b). There is no dispute about the fact that after the speech of the Prime Minister to the nation on T.V. on *17‑4‑1993*tone of defiance and confrontation was set by the Prime Minister and not reconciliation and this in fact is more than sufficient to say that situation is created spelling out in clear and unambiguous terms breakdown of working relationship between the President and the Prime Minister, hence Government of Federation could not be carried on in accordance with the provisions of the Constitution and appeal to the electorate was necessary. There is no gainsaying that problem would be solved by the unilateral offer made by the Court to the Prime Minister for assurance that if the Government was restored he would work hand in hand with ‘the President. Such offer was not made to the President. Action and reaction are equal and opposite. By the tenor of the speech the President could feel hurt and humiliated. No such compromise took place between the two to say that they had patched up the differences and were reconciled with all sincerity considering bygones as bygones.

39. Scheme of the Constitution is such that both Prime Minister and the President are King‑pins in the machinery of Government of Federation and have to work hand in hand in atmosphere of congeniality to carry out day to day government and executive acts which are to be taken in the name of the President on the advice of the Prime’ Minister and in that connection the summaries have to go for approval of the President. What would happen if the President does not cooperate.

            40. 1 would like to point out here that in the case of Tariq Rahim the situation was not so bad and Prime Minister Ms. Benazir Bhutto had not made any speech to the nation criticising openly and in public the person and office of the President. In the absence of such speech apparently situation of open confrontation had not arisen as in the present case, which means that grounds for dissolution in that case were to be considered on their merits. Although the grounds were fewer in number than grounds in the present case and material in support of grounds quantity and qualitywise was far inferior but even then order of dissolution passed in that case was upheld and not in the present case.

            41. In this case ground *(3)*in the order of dissolution marked as (c) is that institutions set up under the Constitution have been bypassed and in that context Government of Federation failed to protect autonomy granted to the Provinces. In that connection examples quoted are Council of Common Interests and National Economic Council and its Executive Committee having been bypassed in the formulation of plans in respect of financial, commercial and economic policies. It is stated that In the context of privatisation of industries in relation to Item No.3 of Part 11 of the Federal Legislative List and Item No.34 of Concurrent Legislative List, session of Council of Common Interests was not called to discharge its Constitutional functions as required by Articles 153 and 154 of the Constitution. Article 153 describes composition of Council of Common Interests which includes Chief Ministers of the Provinces and equal number of members from the Federal Government to be nominated by the Prime Minister. It is provided in clause (3) of this Article that if Prime Minister is a member of the Council, he shall be the Chairman of the Council but if at any time he is not a member, the President may nominate a Federal Minister, who is a member of the Council to be its Chairman. It is stated that in the instant case the Prime Minister is the Chairman of the Council and failed to summon the session of the.Council to formulate and regulate policies in respect of priviitisation of industries‑which is a matter of great importance to the Provinces.

42. It was stated by the learned Attorney‑General that according to Article 154, it is mandatory that Council shall formulate and regulate policies but this was not done and therefore the Provinces felt aggrieved because they were not taken into confidence. Had such meeting been called, the Provinces would have voiced their grievances. In the petition there *is*a general denial *of*this allegation and assertion is made that Rs. 6,000 million were paid to N.‑W.F.P. Government in 1991‑92 from net profit earned by the Federal Government from a hydro‑electric station located in that Province. This assertion is disputed by the Federal Government in the written.statement and claim was made that full share of Government of Balochistan for 1991‑92 and 1992‑93 was not paid about which the 5aid Provincial Government had also complained. Respondents have filed Annexures in support of the claim. In the petition stand is taken that only two specific examples of lack of consultation with Constitutional bodies like C.C.I. and N.E.C. and its Executive Committee have been given. This issue was examined in depth by the Minister concerned in response to comments received from the President. A comprehensive report was sent to the President by the Cabinet Secretary on 15‑4‑1993.

43. About’. privatisation policy it is stated in the petition that it ‑was effectively implemented for the first time. Some units were privatised between 1977 and 1985 and a disinvestment committee was set up. In 1989 the then Government had identified 14 specific units for privatisation. Many new laws were enacted to implement the disinvestment policy since 1978 and none of the successive Governments had consulted the C.C.I. Claim is made on behalf of the petitioner that under Article 70 legislative procedure is given for introduction and passing of Bills and in that connection relevant laws were passed by the Parliament which were assented by the President without any objection. Our attention is also drawn to Article 97 which relates to the extent of executive authority of Federation in respect of making laws to be made applicable in the Provinces. In this context it is submitted by the learned Attorney‑General that Articles 70 and 97 as well as 154 and 173 have been misconstrued on behalf of the petitioner. The question of executive authority of Federation could be invoked only after preconditions of Articles 160 and 161 were satisfied. From all what is stated above, it is clear that mandatory requirement of Article 154 was not followed and C.C.I. was not called for to formulate and regulate policy giving opportunity to the Provinces to participate in the proceedings at such important stage.

            44. Next ground in the order of dissolution is (d) which relates to mal­ administration, corruption and nepotism by the Federal Government showing lack of transparency in the process of privatisation. It is asserted by the . respondents that process of privatisation lacked transparency and was vitiated by various illegalities and irregularities. Units were transferred to favourites without following proper procedure and methodology for fixation of net worth of units were not consistent. Recovery of sale price was not made in specified time‑frame and manner which resulted in wastage of public assets at the cost of national exchequer. The mode of sale/transfer enabled the transferees to manipulate prices of products of sold units and made fortunes overnight to the detriment of the consumer. Eight Cement factories were sold to one group of Industrialists and the manner in which the Muslim Commercial Bank was sold to the favourites of the petitioner namely Mansha Group is well‑known. Sale of properties owned by the Federal Government including Corporations was  unconstitutional and in doing so Articles 153, 154 and 156 read with Article 161 were violated by the petitioner and his Government.

45. In relation to Pakistan Telecommunication Corporation, the petitioner and his Government went to the extent of hiring services of foreign consultants and got legislation prepared abroad in advance for privatisation in such a manner that only foreign investors could buy it. In this connection. Ministry of Law and Justice. was not consulted. The foreign investor was to purchase only 26% of the share holding in the proposed Corporation while Government of Pakistan though holding 74% were not given any right of vote. Tax‑Holiday was proposed to be given to foreign purchaser. Buyer was to be a Government within a Government. There was reason to believe that. petitioner and his Government had similarly decided to sell WAPDA, the Railways, PNSC, the Ports to foreign investors thus allowing foreign intervention in vital sectors of Pakistan and endangering and exposing the Federating Units and the people of Pakistan to the control of foreign companies. The Government of Federation was not authorised under the Constitution or law to sell in the aforesaid manner.

 46. It is claimed by the respondents that important decisions were taken by the petitioner and his nominees bypassing and in total disregard of Constitutuional requirements and rules of business. Proposed privatisation of **WAPDA, PTC, portion of Pakistan Railways**or other Corporations owned by the Federal Government, PIA and nationalised banks whether sold and/or under consideration of being sold were never brought by the petitioner before CCI and NEC. What is stated above clearly shows that in respect of policy of privatisation, Constitutional requirements of provisions regarding CCI and NEC were not followed and Provinces were not given opportunity to participate in the formulation of such policies. It also appears that on the ground of maladministration, corruption and nepotism of the Federal Government there was sufficient material before the President which has been produced in the Court as Annexures ‘A’ to ‘A‑12’ and ‘B’ to ‘R’ which were considered in support of the ground of dissolution.

47. Ground (e) in the order of dissolution is that a reign of terror was unleashed by the functionaries and agencies under the control of Government of the Prime Minister against the opponents of the Government including political and personal rivals/relatives and mediamen. In the petition it is stated that allegation is not supported by any concrete facts. In the written statement filed on behalf of respondents it is stated that some documents/information is supplied and additional documents would be produced later. It appears that alongwith written statement no annexures were produced. In the rejoinder allegation is denied and it appears that no specific instances are quoted and no documents have been supplied in support of this ground of dissolution, hence this ground has failed.

48. Next ground in the order of dissolution is (f) which is divided further into five parts. (f)(i) is that the Cabinet has not been taken into confidence or decided upon numerous Ordinances and matters of policy. In the petition it is stated that the first two parts of ground (f) in the order of dissolution refer to internal management of the Cabinet. The third, fourth and fifth sub‑grounds are vague and no particular facts have been referred to. Service laws have been in existence for almost two decades and also Public Service Commission under the Constitution of 1973. Respondents claim that in matters of legislation and policy the Cabinet was not taken into confidence and a number of draft Ordinances were not placed before the ‑Ciaf~inct for approval. Such complaint was made by Mr. Hamid Nasir Chatha in public statement which had been annexed. His main grievance was that Cabinet was composed of 48 Ministers and yet decisions were made by the kitchen Cabinet consisting of only five persons including the petitioner and other Ministers were ignored. In the rejoinder to the written statement, denial of allegation was reiterated with assertion that all decisions have been taken by the Cabinet including Ordinances and matters of policy. In support of assertion no proof is produced to show that Ordinances and other matters of policy were approved by the full Cabinet. In the circumstances it can be said that there is weight in the statement of Mr. Hamid Nasir Chatha who was at the relevant time Member of the Cabinet. If he had participated in the Cabinet meetings in the approval of Ordinances and other policy matters, he would not have raised this objection and subsequently tendered his resignation.

49. Ground taken is that petitioner as Prime Minister prohibited the Federal Ministers from calling upon the President. About this ground in the petition stand is taken that it was incorrect that Federal Ministers were called upon not to see the President although it was not at all necessary for them to do so. **Learned Attorney‑General has drawn our attention to Article 46 under***which*it is the duty of the Prime Minister to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation. Under this provision the President can require to submit for consideration of Cabinet matter on which decision had been taken by the Prime Minister or a Minister but which had not been considered by the Cabinet. Under Article 48 the President is to act on the advice of the Cabinet or the Prime Minister. Clause (4) of this Article provides that the question whether any, and if so what, advice was tendered to the President by the Cabinet, the Prime Minister, a Minister or Minister of State shall not be inquired into in, or by, any Court, Tribunal or other Authority. This shows that the President can see the Ministers as permitted by the Constitution.

50. Ground f(iii) covers allegation that resources and agencies of the Government of Federation including statutory Corporations, authorities and banks were misused for political ends and purposes and for personal gain. No specific instances have been ‑quoted in the written statement. Likewise ground f(iv) also contains vague allegations of massive wastage and dissipation of public funds and assets at the cost of national exchequer. No specific instances have been quoted. Allegations are vague and not supported by documents. Ground f(v) is that Articles 240 and 242 have been disregarded in respect of Civil Services of Pakistan. No proof is produced in support of this ground.

51.. Ground (g) in the order of dissolution is that serious allegations were made by Begum Nuzhat Asif Nawaz as to the highhanded treatment meted out to her husband, the late Army Chief of Staff and further allegations as to the circumstances culminating in his death indicated that the highest functionaries of the Federal Government had been subverting the authority of the Armed Forces and the machinery of the Government and the Constitution itself an the petition allegation is denied as factually incorrect. It is admitted that Begum Nuzhat Asif Nawaz made a statement to the Press without filing F.I.R. On coming to know of the allegation, the Federal Government promptly appointed a high‑powered Commission of three Judges of the Supreme Court to look into the case even before such request was received from the Presidency. In the written statement assertion is made that the Commission of Enquiry was appointed at the instance of the President. Copy of letter from the President was received in’ the Secretariat of Prime Minister at 5‑50 p.m. and not at 10 p.m. as claimed by the petitioner. Copy of the receipt Exh.P/3 has been produced. No further comment on this point is called for as it is understood that the, Commission of Enquiry has submitted the report to the Government. The learned Attorney‑General submitted that on such important matter no action was taken by the Prime Minister and Enquiry Commission was appointed after the President intervened.

52. The last ground in the order of dissolution is (h) which is to the effect that the Government of the Federation was not in a position to meet properly and positively the threat to the security and integrity of Pakistan and grave economic situation confronting the country, necessitating the requirement of a fresh mandate from the people of Pakistan. In the petition allegittion contained in this ground is denied relating to grave economic situation as factually incorrect. On the contrary reliance was placed on the statement of Finance Minister in the Care‑taker Cabinet, who made a public statement that reforms of the petitioner’s Government would continue. It would be pertinent to state here that Foreign Minister in the Care‑taker Cabinet alongwith Foreign Secretary brought some confidential documents for perusal of the Court. Proceedings were held in camera in presence of learned counsel for both sides. Documents were of sensitive nature and I do not propose to make any comment on them. All what I feel inclined to say right now is that such lapses on the part of the Federal Government could have caused very strained relations between our country and the, neighbouring country.

54. In the case of Tariq Rahim (PLD 1992 SC 646) the Federal Government of Ms. Benazir Bhutto was dismissed and National Assembly dissolved under Article 58(2)(b), which again became subject‑matter of very detailed analysis and the concluding paragraph is as under:‑‑‑

“This much for the background of the Constitutional power, its scope and meaning in the past and in the contemporary decisions outside Pakistan. In Haji Muhammad Saifullah Khan’s case PLD 1989 SC 166 our Constitutional provision has received full attention and its meaning and scope authoritatively explained and determined. It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra‑Constitutional.”

55. In that reported case in all rive grounds were mentioned in support of order of dissolution. The first ground was that utility and efficacy of National Assembly as a representative institution and its mandate were defeated by internal dissensions, scandalous ‘horse‑trading’ and failure to discharge substantive legislative functions by the National Assembly. Comment has been made already in the above paragraphs of this judgment about the main charge of horse‑trading, which was accepted as carrying the day in spite of the fact that no offence under the relevant law was made out but it was accepted on moral grounds ignoring its existence when it was being practised by the Opposition against the Government of the day. Reasons given in respect of defection in that case by this Court could be adopted by way of analogy in respect of mass resignations of the members of the National Assembly, but this has not been done. In any case this ground was sustained in favour of **dissolution for the reason that**material was produced and was available with the President in support of the ground.

56. In the reported case of Tariq Rahim, the second ground was that sessions of Council of Common Interests and National Finance Commission were not summoned and in that connection observation was made by this Court in the judgment that there was sufficient correspondence on the record to indicate that persistent requests were made by the Provinces for sessions of these Constitutional institutions and instead of intercession of the President no heed was paid and Constitutional obligations were not discharged. In the instant case there is voluminous material on the record in support of similar allegation to the effect that privatisation policy has been taken in hand by the Federal Government without formulation and regulation of policies in the meeting of Council of Common Interests and thereby Provinces have been deprived of participation and voicing their grievances but material on this ground is rejected. Even applications of the Provinces to join the proceedings as necessary and affected parties in this case have been rejected.

57. In Tariq Rahim’s case grounds of corruption and nepotism in the Federal Government and misuse of authorities, resources and agencies of the Government including Corporations and Banks and undermining of Civil Services of Pakistan, were held to be independently insufficient to warrant action of dissolution but coupled with other grounds of horse‑trading and not allowing functioning of Council of Common Interests and National Finance Commission, were declared to be sufficient to justify action of dissolution. As against rive grounds enumerated in the case of Tariq Rahim in the instant case, there are eight grounds and heavy load of material produced in support of such grounds including speech of the Prime Minister on 17‑4‑1993 on television in which confrontation and deadlock with the President is admitted for which the President is held liable with allegations of partisanship and helping conspirators to destabilise the Govcrnment.

58. In my humble opinion when Constitutional petition was entertained in this case in this Court straightaway without allowing it to be heard in the High Court and since there is no other forum of appeal after this Court, it was the bounden duty of this Court to have scrutinised the material produced in  support of grounds of dissolution with more care and caution in conformity with guidelines laid down in the cases of Haji Saifullah Khan and Khawaja Ahmed Tariq Rahim decided by this Court earlier in point of time.

59. In Haji Saifullah Khan’s case PLD 1989 SC 116 order of dissolution was held to be invalid and even then importance was attached to the appeal to the political sovereign. It has been held in that case that right of dissolution is the right of appeal to the people and all the Constitutional conventions are intended to produce harmony between the legal and political sovereign. In a democratic system the dissolution of a representative body like the National Assembly has always been taken in Parliamentary form of Government to be in essence an appeal from legal to the political sovereign. It is ultimately the verdict of the political sovereign which determines the rights or the power of a Cabinet to retain office. All what has been said above are the observations of this Court in connection with interpretation of Article 58(2)(b).

60. in my humble opinion Article 58(2)(b) of the Constitution has come to stay in the Constitution whether it is liked or abhorred. Constitutions of two countries are not alike because Constitution of each country is framed keeping in view the objective conditions, historical and cultural background with pronounced customs and religious ethos. If Article 58(2)(b) has come into existence and forms part of the Constitution on account of some compromise and it is disapproved now it can be removed or diluted or amended in the manner prescribed in the Constitution. It is the function of the legislature to legislate and of the Court to interpret the law. The Court cannot and should not take upon itself the duty of entering into the field of legislature but should confine itself to its original function of interpreting the provisions of the Constitution as they are and other laws. While interpreting the provisions of the Constitution, it becomes the duty of the Court to see that interpretation is done in such a manner which advances the noble object of workability of the Constitution. The provisions of the Constitution cannot be interpreted by the Court in such narrow form to make that provision almost redundant and meaningless.

61. By rejecting the material in support of grounds of dissolution in the instant case, interpretation of Article 58(2)(b) is rendered by this Court narrowing down its scope to almost zero point which amounts to declaring that no President would be able to ever dissolve the National Assembly and dismiss **the Government of the Prime Minister in**spite of the fact that he has substantial material in his possession, because the Court is not satisfied with intrinsic value of the material. In other words Article 58(2)(b) is rendered almost redundant which can be done by the legislature only.

62. 1 see no reason to justify departure from the guidelines laid down in the cases ‘of Haji Saifullah Khan and Khawaja Ahmad Tariq Rahim for consideration of material in support of grounds of dissolution. I see no difference in the material produced in support of grounds of dissolution in the case of Tariq Rahim and in the, present cast. The present fine of reasoning in the majority judgment can be accepted only when positive assertion is made  that case of Khawaja Ahmed Tariq Rahim was wrongly decided.

63. In so far legal aspect is concerned, there is no dispute about the fact that the Court can examine the reasons and material in support of grounds of T dissolution in order to find out whether it has any rational nexus with the .satisfaction of the President. It is so held in the case of S.R. Bommai and others v. The Union of India and others (AIR 1990 Karnataka 5). In the reported case under Article 356 of the Indian Constitution the President can issue proclamation if he is satisfied from the report of the Governor that a situation has arisen in which Government of State cannot be carried on in accordance with the provisions of the Constitution.

64. In the case of Mrs. Sajida Begum and others v. Union of India and others AIR 1977 SC 1361, it is held that the Court has power to question the satisfaction of President under Article 356 and such satisfaction can be based on material other than the Governor’s report. In the case of A.K. Roy v. Union of India and another AIR 1982 SC 710, it is held that satisfaction of the President mentioned in Articles 123 and 356 of the Constitution of India is under justiciability and observation in AIR 1977 SC 1361 was no longer good law in view of the 44th Constitutional amendment.

65. In the case of Capt. Kanwaijit Singh v. Union of India (AIR 1991 Punjab and Haryana 54), on Governor’s report on facts disclosing failure of Constitutional governance in State of Punjab President’s Rule was imposed. It was held that Governor’s report was to be read as a whole and on such reading it appeared that satisfaction of the President was neither arbitrary nor for any extraneous consideration. In view of the case‑law from Indian jurisdiction it appears that in the Indian Constitution satisfaction of the President mentioned in Articles 123 and 356 has been made justiciable but these provisions are somewhat different from Article 58(2)(b) in our Constitution which gives higher status to the President to exercise his discretion. In any case the scope of the power under Article 58(2)(b) has been examined by this Court in great detail.

66. In the case of The State v. Zia‑ur‑Rahman and others PLD 1973 SC 49, question of trichotomy of powers between different organs under the Constitution came up for detailed consideration and it was held that Supreme Court has never claimed to be above the Constitution nor to have the right to strike down any provision of the Constitution. It has accepted the position that it is a creature of the Constitution that it derives its powers and jurisdiction from the Constitution and that it will even confine itself within the limits set by the Constitution which it had taken oath to protect and preserve but it does claim and has always claimed that it has the right to interpret the Constitution and to say as to what a particular provision of the Constitution means or does not mean, even if that particular provision is a provision ‘seeking to oust the jurisdictionof this Court.

67. In the case of Fauji Foundation and another v. Shamimur Rehman PtD 1983 SC 457 it is held that in the Constitutional system of Pakistan though there is trichotomy of powers between executive, legislative and judiciary yet each organ or branch of it operates in defined field of course with inherent limitations that one organ or sub‑organ may not encroach upon legitimate field of other.

68. it is held in the case of Dilip Kumar Sharma and others v. State of Madhya Pradesh AIR 1976 SC 133 that if two constructions are possible upon the language of the statute,.the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewUdering uncertainty and practical inconvenience in the working of the statute.

                        69. 1 am of the opinion that in view of the relevant case‑law mentioned above, this Court as highest Court of the country has to act within the limitations prescribed by the law while in the process of interpretation of the Constitution and the law. This Court can interpret but not legislate and while             interpreting can narrow down the scope but not so much that the provision under the comment is rendered almost redundant. So far Article 58(2)(b) of the Constitution is concerned, it is already interpreted and construed very ably  in the cases of Haji Saifullah Khan and Khawaja Ahmed Tariq Rahim as mentioned above. Power under Article 58(2)(b) can be exercised by the         President when there is actually an imminent breakdown of the Constitutional      machinery and there is failure of not one but many provisions of the Constitution giving impression that country is being run by methods extra­         Constitutional. The President must form his opinion on the basis of material        before him. From the FuIl Bench of 11 Judges, which has heard the present case, 7 Judges are same, who heard the previous case of Ahmad Tariq Rahim          in the Full Bench of 12 Judges of this Court. From those 7 Judges, six upheld

            the order of . dissolution passed by the same President dismissing Government of the Prime Minister Ms. Benazir Bhutto dissolving National Assembly. Three          more Judges of the present Bench maintained order of dismissal of the           Government and dissolution of the National Assembly while hearing      Constitutional petitions in the High Courts at Lahore and Karachi. So from the present Bench of 11 Judges, 9 Judges having upheld order of dissolution in the     previous case of Tariq Rahim are now of the view that in the present case             material in support of grounds of dissolution is not sufficient and order of dissolution is without lawful authority and of no legal effect.

70. With respect I say that I do not feel inclined to agree with the majority view. I am of the opinion that Article 17(2) of the Constitution does not give Fundamental Right to the political party to conclude its tenure of office.

Further I do not agree that by mentioning subversion of the Constitution in the ,order of dissolution, Fundamental Right of the Prime Minister under Article 14 of the Constitution is violated nor there is any justification to conclude that the Prime Minister was being prevented by the President forn V, extending political activity of the executive Government of Federation to the Federally Administered Tribal areas.

71. Somehow or the other I regret to say that I have not been able to reconcile myself to agree with the reasoning advanced for taking the different view now in ‑this case than from the view previously taken in the case of Khawaja Ahmed Tariq Rahim when in both the cases the allegations were more or less the same and material produced in support of grounds of dissolution is much more in the present case than in the previous case. One extraordinary feature ‑ of the present case is that the Prime Minister made public address on television criticising the President openly declaring confrontation resulting in situation in which Government of Federation cannot be carried on in accordance with the provisions of the Constitution justifying fully well appeal to the electorate. It could have been left to the political sovereign to decide the matter. I am also of the view that Article 58(2)(b) it an independent provision under which the President is empowered to dissolve the National Assembly in his discretion if he is satisfied that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. Opinion of the President cannot be substituted by the Court. If he has formed such opinion and the grounds of dissolution are supported by material which was available before him at the time of formation of such opinion, the Court should allow order to stand and political sovereign to give final decision.

            72. It is understandable that in the case of Haji Saifullah Khan even if order of dissolution was found to be invalid, restoration of the National Assembly and the Government was not allowed for the reasons that administrative machinery was fully geared up for election which could provide opportunity to all political parties to participate as previous elections were held on non‑party basis. Another reason was that writ jurisdiction was discretionary and that discretion could be validly refused because greater harm could have been caused, if relief had been allowed and national interest had to be given precedence over right of individuals. In Tariq Rahim’s case the Federal Government of Ms. Benazir Bhutto was dismissed  and National Assembly was dissolved. There was material in support of grounds of dissolution and the same was considered to be \* sufficient to justify action of dissolution. In the instant case there is complete ‘ deviation from the guidelines laid down in the case of Tariq Rahim. So far consideration and availability of material in support of grounds of dissolution is concerned although more grounds exist in the present case as alleged in the order of dissolution for which voluminous material is produced but the ‑same is rejected for reasons, which to me, appear to be insufficient.

73. May be I am wrong and am imagining the things unnecessarily and I hope that I am wrong but from what it appears to me that there is no difference in the case of Khawaja Ahmed Tariq Rahim and in the present case, so far allegations, grounds for dissolution and material produced in support thereof are concerned. In the present case departure is made and same yardstick of evaluation of material is not applied. Seemingly it so appears that two Prime Ministers from Sindh were sacrificed at the altar of Article 58(2)(b) of the Constitution but when turn of Prime Minister from Punjab came the tables were turned. Indisputably right at the very outset of the proceedings indications were given that decision of the Court would be such which would please the nation. It remains to be seen whether what would please the nation, would be strictly according to law or not. In, my humble opinion decision of the Court. should be strictly in accordance with law and not to please the nation.

What may please the nation may turn out to be against the letter and spirit of the law and the Constitution.

74. In my opinion for the present crisis in the country the solution is not restoration of the Government and the National Assembly but appeal to the

political sovereign which is a Constitutional remedy. At the time when order of dissolution was passed, two pillars of the Government of Federation had already reached point of no return and reconciliation between them does not

appear to be likely. In such circumstances it would be futile to hope that chapter of bitterness in the past would be forgotten and, they would work hand in hand for smooth sailing and success. In such circumstances restoration would do more harm than good and political situation would deteriorate

further giving open licence to horse‑trading to both sides for winning support ‑of the members of the Assemblies by fair means or foul, which would most certainly be inconsistent with running of the Government and flourishing of the democratic institution in accordance with the provisions of the Constitution. I have written this dissenting judgment just to keep the record straight and to say that in my humble .opinion it was a fit case in which same result should have been announced as in the previous case of Tariq Rahim. I would, therefore, dismiss this petition.

**MUHAMMAD RAFIQ TARAR, J.‑I**have carefully gone through the very learned judgments of the Honourable. Chief Justice and my illustrious brothers Shariur Rahman, Ajmal Mian, Saleem Akhtar and Saeeduzzaman Siddiqui, JJ. They have exhaustively dealt with all the issues arising in the case. However in view of the importance,of the questions involved I consider it appropriate to apend a note of my own so as to highlight certain features arising in the, case.,

            2. Brie‑fly stated, the facts of the case, are that President ~Ghulam Ishaq Khan, vide his order, dated 18th April, 1993, dissolved the National Assembly of ‘Pakistan, in exercise of Wis power, under causc (2)(b) of Article 58 of the Constitution of Pakistan, 1973, with immediate effect and dismissed the Prime Minister and the Cabinet, who ceased to hold office forthwith. Mr. Nawaz Sharif, the dismissed Prime Minister has challenged, directly in this Court, the order, ‑through these proceedings, for various reasons, alleging that they have no nexus or connection with the ground mentioned in Article 58(2)(b) and therefore, the order of dissolution merits to be set aside.

3. The respondents objected to the maintainability of the petition on the ground that there being no enforceability of the fundamental rights involved, the petitioners ought to have initiated their proceedings, in the High Court, under Article 199, and not directly in this Court. 1, however, do not agree and adopt the reasoning of the learned Chief Justice and my brother Shafiur Rahman, J., in this regard and hold that the petition is maintainable.

4. The Article 58(2)(b), under which the above action had been taken, was inducted for the first time, in the 1973 Constitution, by P.O. 14 of A85, with effect from 2nd March, 1985. It was a part of the package by which General Zia‑ul‑Haq wanted to change a figurehead President into a potent one. Earlier, under Article 48, the performance of his functions by the President were couched in the phrases like ‘the President may’ (Art.54), ‘the President shall’ (Arts. 99r and 100), ‘the President may direct’ (Arts. 104, 145), ‘the President shall have power’ (Art. 45), ‘the President after consultation with’ (Arts. 72, 177, 193), ‘the President is satisfied’ (Arts. 232, 234), ‘the President may by Order’ (Art. 268(3)), (the list is indicative but not exhaustive) but in all those matters he was bound by the advice of the Prime Minister.

,5. Not only that the clause (3) of Article 48 further provided that:

“Save as otherwise provided in any rules made under Article 99, the orders of the President shall require for their validity the counter­signature of the Prime Minister.”

The Articles 48 was substituted by the P.O. 14 of 1985. It was then amended in the present form by the 8th Amendment, to divide the functions of the President into two air‑tight compartments. The President was to be bound by the advice of the Cabinet or the Prime Minister in all the matters except those in respect of which he was empowered by the Constitution to act ‘in his discretion’.

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6. The Article 58(2) when amended by P.O. 14 of 1985 had also a similar new phrase added, which reads as follows:

“The President may also dissolve the National Assembly in his discretion, where in his opinion, an appeal to the electorate is necessary.”

However, when Article 58(2) was further amended by the 8th Amendment, it  started with the prefix notwithstanding anything contained in’ clause (2) of         Article 48 1. This clause came up for interpretation in Haji Saifullah case (infra) where the Supreme Court held as under:

“Thus, notwithstanding the addition of words ‘and the validity of anything done by the President in his discretion shall not be called in question on any ‑ground whatsoever’ after the words “Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution, to do so” in clause (2) of Article 48 of the Constitution, the provisions of Article 58(2), as finally adopted by the Parliament in the Constitution (Eighth Amendment) Act, 1985, had the effect of placing some limits on the otherwise absolute powers of the President. Article 48(3) which made the President the sole judge of the validity of his discretion, was omitted....”

7. The result was that though the President had made an inroad, in the all supremacy of the Prime Minister, under Article 48, with the phrase, ‘in his discretion’ and avoided in certain matters his binding advice, yet he did not succeed in his attempt in respect of Article 58(2). Thus notwithstanding the words ‘in his discretion’, an action by the President, even under Article 58(2), lost exclusiveness and immunity and became justiciable.

8. General Muhammad Zia‑ul‑Haq, its architect, made the first use of clause (2)(b) of Article 58, on 29th May, 1988, when he dissolved the National Assembly and the Cabinet of Mr. Muhammad Khan Junejo. The order of General Muhammad Zia‑ul‑Haq was challenged in the Lahore High Court, where it was held that the impugned ordir bore no nexus or connection with the Constitutional power and was, therefore, unconstitutional. The High Court, however, refused to restore the National Assembly for the reason that:

“The entire administrative machinery of the Federation and the Provinces is geared up to hold the general elections on the 16th November, 1988, and the people, who were previously not in a position to vote for the candidates belonging to certain political parties which had been banned, are now ready and impatient to exercise their vote freely and voluntarily without any restriction”. (See Khawaja Muhammad Sharif v. Federation of Pakistan PLD 1988 Lah. 725).

9. An appeal was taken to the Supreme Court and it may be useful to reproduce the rule laid down by it, in that case reported as Federation of Pakistan v. Saifullah Khan PLD 1989 SC 166:

“The expression ‘cannot be carried on’ sandwiched, as it is, between ‘Federal Government’ and ‘in accordance with the provisions of the Constitution’, acquires a very potent, a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of the progress, the shade of quality or the degree of performance or the quantum of achievement. It concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance of the Constitution.”

10. The Court also quoted with approval, the following observation of the I Law Minister, made in the Parliament, at the time of introducing the a amendment to the Constitution, in order to explain its object. He stated that it v was meant to place a check on the President and to meet with the conditions as developed in 1977, attracting suspension of the Constitution and imposition of P Martial Law. He said:

“In that case, when the machinery of the Federation is totally blocked and it becomes absolutely impossible for the Federal Government to function in that case, the President will dissolve the Assembly.”

11. Thereafter, the Court scrutinised each ground of the Order separately t to see if it had any nexus or connection with the object of clause (2)(b) of the 4 Article 58 and found that none existed. It, however, refused the relief, after I holding the impugned order as unconstitutional, on the ground that‑‑‑

“the whole nation is geared up for elections and we do not propose to do anything which makes confusion worse confounded and create a greater state of chaos which would be the result if the vital process of elections is interrupted at this juncture.”

it may be mentioned here that the proceedings in that case had been taken up after about three months of the passing of the impugned order and when the election process bad reached the crucial stages.

12. /On 6th August, 1990, Mr. Ghulam Ishaq Khan, the present President of Pakistan, under the same provision of the Constitution and by,a reasoned’ order, dissolved the National Assembly and the Cabinet of Mohtarama Benazir Bhutto as the Prime Minister of Pakistan. The order was challenged in various High Courts. Five of the petitions came up before the Lahore High Court for consideration. In reply to the allegations made therein, the federation of Pakistan riled a written statement controverting the allegations to the following effect and annexed therewith several documents:

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“Reference was made in detail to the existence of facts, like corruption and horse‑trading among the members of the National Assembly, misuse of D.I.B. Secrets Service Funds and PAY. and P.I.A. aircraft during No‑confidence Motion against the former Prime Minister, non­convening of meetings of Council of Common Interests and National Finance Commission, ridiculing the Senate and Judiciary, undermining the Civil Service structure and service of statutory corporations tapping <31 telephones of dignitaries and political personalities, non‑giving of powers under Article 245of the Constitution to the Army already deployed to control internal disturbances in Sindh and existence of unabating confrontation between the Federal Government and two of the Provincial Governments to show that the President had rightly exercised his jurisdiction to dissolve the National  Assembly, to appoint Care‑taker Cabinet and fix the 24th of October for fresh elections.‑

13. The High Court, following the case of Saifullah Khan (supra), unanimously held that “The grounds which weighed with the President for passing the impugned order had direct nexus with the preconditions prescribed by Article 58(2)(b) of the Constitution” and so the Government of the Federation could not be carried on in accordance with the provisions of the Constitution, and an appeal to the electorate was necessary. See Ahmad Tariq Rahim v. Federation of Pakistan PLD 1991 Lah. 78.

In appeal, the Supreme Court, by majority, in the case reported as **Ahmad Tariq Rahim**v. Federation of Pakistan PLD 1992 SC 646 at 664‑5, laid down the following rule:‑‑‑

“It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional m achinery, as distinguished from a failure to observe a particular provision of the Constitution There may be an occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is **governed not so much**by the Constitution but by methods extra‑Constitutional.”

14. Rustam S. Sidhwa, J. expressed his view at pages 687‑8 of the above report as under:‑‑‑

“The word ‘cannot’ (in Articles 58(2)(b) and 112(2)(b)) presupposes a Constitutional inability in the nature of a breakdown or dislocation .... The words ‘and an appeal to the electorate is necessary’ highlight the breakdown to be of such a magnitude that an appeal to the electorate is perhaps the only remedy to the situation .... The wording of the two provisions are sufficient to admit of a flexible approach either way and, without being dogmatic in interpreting these provisions, the facts of the case, in the background of overall situation and political climate then prevailing and the reasons leading to the breakdown, would, all taken together, determine what the correct approach should be.”

Then referring to an Indian case from Rajasthan AIR 1977 SC 1361, para. 40 the learned Judge further observed as under:‑‑‑

..The **same position, obtains for these two provisions in our jonstitution. Preventive,**so as to prevent failure of the Constitutional machinery taking place by nipping in the bud a breakdown that is imminent. Curative, so as to mend the ill‑effects of a breakdown that            has occurred   The words ‘cannot be carried on in accordance with the provisions of the Constitution’, could also cover non‑compliance of almost every provision of the Constitution            with this background one

would have to act carefully when appraising a case under Article 58(2)(b) which relates to dissolution of Assembly .....

.... these provisions, i.e. Articles 58(2)(b) and 112(2)(b), in keeping with the spirit of balance and restraint, would have to be construed in their circumscribed sense to cover only cases of failure or breakdown of Constitutional machinery, or else it would lead to Constitutional dictatorship. To hold that a particular provision of the Constitution was not complied with, the National Assembly could be dissolved under Article 58(2)(b) of the\* Constitution, would amount to an abuse of power. Unless such a violation independently was so grave that a Court could come to no other conclusion but that it alone directly led to the breakdown of the functional working of the Government, it would not constitute a valid ground.”

15. According to A.S. Salam, J., the power of the dissolution of the National Assembly had vested exclusively in General Muhammad Zia‑ul‑Haq by virtue of Article 41(7) and it died with him in the air crash. So, in his view, it was not available to his successor. No other member of the Court shared his views. Even Sajjad Ali Shah, J, who concurred with him in the following observation expressly disagreed with the above. The view shared by **the two learned**Judges is as follows:‑‑‑

“Further, the provision is that the Government of the Federation cannot be carried on ‘in accordance with the Constitution’. Where was the breakdown of the Constitution? The provision may come into play only when the Constitutional machinery has completely broken down. Where had it broken down or come to standstill? All Constitutional authorities were there and functioning.”

            16. The net result arrived at after the entire discussion, in the above two cases is, that the Court accepted the proposition that the President can dissolve the National Assembly for the acts of commission and omission of the Prime Minister or the Cabinet, and that it has to test each and every ground of the President for dissolving the National Assembly, on the following touchstones,

and see that they satisfy the prescribed requirements, in order to condone the action taken:

(a)        Was there an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution?

(b)        Has there taken place any extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much ‑by the Constitution but by methods extra‑Constitutional?

(c)        is there an imminent danger of breakdown of the Constitutional machinery so as to take an immediate action for nipping it in the bud?

(d)       Is it imperative to mend the ill‑effects of a breakdown that has occurred                         ?

17. It is pertinent to note that in both the cases discussed above, the Article 58(2)(b) was looked at from a different perspective, resulting in the observations reproduced above. There, the acts of omission and commission of the Cabinet and the Prime Minister were made the basis for dissolution though they are responsible not to the President but to the National i Assembly. However, in my humble view the right direction to appreciate its real and intrinsic worth and to perceive its natural and correct import is different and, therefore, a different view of the matter may emerge, if it is beheld from that angle. Article 58(2)(b) mentions in its text, three organs of the State:

(i)         The President;

(ii)        The National Assembly; and

(iii)       The Government of the Federation

All those three organs are very important constituents of the State and the Constitution makes independent and distinct provisions for their creation and demise. It may be pertinent to note that the Cabinet and the Prime Minister do not figure there as such.

18. The National Assembly consists of the chosen representatives of the people, as mentioned in the Objectives Resolution. They are elected through adult franchise and they form/create the National Assembly under Article 51. Its normal term of office is 5 years. The members can individually resign under Article 44, so that if all the members resign, it will result in the dissolution of the entire National Assembly. However, Article 58 \* also empowers both the President and the Prime Minister, separately, to dissolve the National Assembly, only for the specific reasons given there.

19. Article 41 provides for the election of the President by the members of the National Assembly, alongwith others. Vide Article 90 of the Constitution, the executive authority of the Federation vests in him, to be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution. Article 99 further provides that all executive actions of Federal Government shall be expressed to be taken in the name of the President and the manner of doing that is to be provided by rules. His tenure of office is given in Article 44. The normal period is 5 years. The President can, however, be removed from office even earlier than five years, on account of physical or mental incapacity or by impeachment on a charge of violating the Constitution or gross misconduct, by a two‑third majority of the members, in a joint sitting of the Senate and National Assembly, after investigation and giving the President an opportunity of defence. His removal for subverting the Constitution is not there and has to be located somewhere else, as discussed later in para. 30.

20. The Government of the Federation comprises of the President and the Cabinet. The President has already been discussed above. The Cabinet of Ministers comes into being under Article 91 and its duty under Article 91(l) is to aid and advise the President in the exercise of his functions. It is constituted of a Prime Minister and Ministers to be appointed by the president, on the advice of the Prime Minister, under Article 92. The Prime Minister must command the confidence of majority of the Members of the National Assembly. Under clause (4) of Article 91, the Cabinet together with Ministers and‑the Ministers of State is collectively responsible to the National Assembly.

21. The Prime Minister is also obliged under Article 46 to communicate to the President all decisions of the administration of the affairs of the Federation and proposals for legislation and to supply such information as may be called for by the President. Again under clause (c) of Article 46 the President may require the Prime Minister to submit for consideration of the Cabinet any matter on which a decision has been taken by the Prime Minister or a Minister but which has not been considered by the Cabinet. Under the proviso to Article 48(l) the President may require the Cabinet or the Prime Minister to reconsider the advice sent to him either generally or otherwise before he is obliged to act on it. The President thus is part of the administration and has the power to influence the decisions of the Cabinet, the Prime Minister and the Ministers, which are to be made and enforced in his name.

22. Thus, the President is the ‘ executive head of the Federation (Government of the Federation) and all actions are taken in his name. He also participates to some extent in the executive decision‑making. Being a part of the Government of the Federation, he cannot blame the Prime Minister and the Cabinet alone for any unwise, illegal or even unconstitutional acts, what to speak of punishing them. If the President thinks that the Cabinet was aiding and advising him illegally, unconstitutionally or against public interest, despite his caution and warning, the only way open to him, under the Constitution, is to inform the National Assembly under Article 56 to which the ‑Prime Minister/Cabinet is responsible or dissociate himself by resigning his office under Article 44(3) of the Constitution informing the ‘nation about his doing SO. However, he cannot blame the Prime Minister or the Cabinet in case the National Assembly raises no objection or endorses the objected to action or policy decision.

 23. Again the President has no power to dismiss the Cabinet of his own­The sub‑Article (5) of Article 91 provides that the Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his power unless he is satisfied that the Prime Minister does not command the confidence of the majority of the 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. Thus, the President has no power to remove the Prime Minister or dismiss the Cabinet as long as the National Assembly offers its confidence to him and protects him.

24. it is a well‑established principle of law that what is not permitted to be .in done directly cannot be done I directly. It has been noticed above that the Prime Minister who enjoys the confidence of the National Assembly cannot be removed or dismissed by the President. The reason may be that only the chosen representatives of the people are the repository of the sovereign power. they, therefore, know best that is good for the people and what is not. So if they approve the policies and the actions of the Government,. the President has no power of his own of interference, in any way.. Be that as it may, the President could not get rid of the Prime Minister or the Cabinet indirectly, for the alleged faults of theirs, by dissolving the National Assembly.

                        25. The National Assembly is not subordinate to the President. T*he*President is, in fact, a part of the Parliament (National ~ Assembly and the         Senate) but he can neither participate in the discussion nor vote. He can         address them (Article 56), and is only to grant his assent to a Bill passed by the             ‘Mailis‑e‑Shoora (Article 75). When a Bill is presented to the President for his     assent, he can only once return it to the Majlis‑e‑Shoora, for reconsideration, in case he has any objection to it. However, if it is presented to him again after      reconsideration, he cannot refuse to give his assent, even if he personally            dislikes, or besides every word of it. Further, as regards a money Bill, he cannot even require it, howsoever obnoxious it may be in his opinion. The reason is that             an assembly of the chosen representatives of the people is considered much wiser and is supposed to know more than ‑any single individual, howsoever prudent and intelligent he might think and claim he is.

26. It is thus quite clear from the above discussion that the President has neither a power to dismiss the Cabinet nor is he a controller or a supervisor of the National Assembly. Rather, he is compelled to accept and give his assent to whatever is done by the Cabinet on the one hand and the National Assembly alongwith the Senate on the other. He, according to the various provisions of the Constitution discussed above can, at the most, participate, individually, as a counsel or a warner. Like any other member of the Cabinet, he can influence but cannot veto. Rather he has an edge over others as he can once veto the decision of the Prime Minister, the Cabinet or a Minister. However, if his counsel or warning is not heeded ‑to, he has, like any other member of the Cabinet, either to accept the things as presented to him, by the majority decision or quit if he so desires.

27. With the above backdrop, I would revert to the question in hand. The President is empowered to dissolve the National Assembly but only in the  situation mentioned in Article 58. 1 may, therefore, reproduce Article 58(2)(b), for consideration. It says‑‑

“Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion:‑‑

(b)        a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the ‘provisions of the Constitution and an appeal to the electorate is necessary.”

            28. It must be appreciated that the Government of the Federation comprises the President as the head of the executive (Article 90), and the Cabinet of Ministers, with the Prime Minister at its head (Article 91). They collectively are responsible for running the Government of the Federation, in accordance with the provisions of the Constitution. The Cabinet is collectively

responsible to the National Assembly under Article 91(4), while the President is under the control of the Parliament, i.e. the National Assembly and the Senate, under. Article 47. The term ‘collective responsibility’ has been ably discussed by my learned brother Shafiur Rahman, J., in his luminous judgment with which I respectfully agree. Therefore, after a decision is made, no

constituent of that decision‑making body can absolve himself of it, whether he participated in the decision‑making or not; whether he opposed the motion or proposed any amendment; or was even absent at that time. In that view of the matter, the scrutiny of the governmental actions would then lie with the Parliament, though even they cannot annul them as such, without formally legislating against them, or by passing a resolution disapproving a particular act of commission or omission of the Prime Minister or the Cabinet.

29. It has also been noticed in Article 91(5) that the President cannot, straightaway, dissolve the National Assembly even if the Prime Minister fails to get a vote of confidence from the National Assembly. He. h ‘ as to first ascertain practically, under Art. 58(2)(a), that no other member enjoys the confidence of. the National Assembly, before he acts to dissolve. Thus the President has neither any control over the Cabinet nor has the National Assembly been placed at his mercy, in his discretion or at his bald pleasure. It is thus only the National Assembly which can decide the removal of one Prime Minister and his Cabinet, by withdrawing its support and electing another Prime Minister before the President may act under Article 58,. for Constitutional reasons, justiciable before the superior Courts of Pakistan.

30. The upshot of the whole discussion is that the President has no power to dismiss a Prime ‑ Minister, directly or indirectly, howsoever illegal unconstitutional or against public interest his actions might look to him. But if the person holding the office of the President pleases to remove a Prime Minister, who enjoys the confidence of the National Assembly, under the cloak of the powers contained in Article 58(2)(b) by dissolving the National Assembly, he may be accused of subverting the Constitution within, the meaning of Article 6 of the Constitution. It is pertinent to note that the protection provided in Article 248 from accountability and the remedy provided in Article 47 of impeachment, do not cover the acts of subversion or abrogation of the Constitution or even attempting or conspiring to do so. The dissolution of the National Assembly, therefore, must be strictly covered by Article 58(2)(b), in order to be condoned by the Courts and to avoid an ‘action under Article 6 of the Constitution.

31. Article 58(2)(b) foresees one and only one situation, for dissolution of the National Assembly and that is where in the opinion of the President, the ‘Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. It is thus not a mere omission to act, on or in violation of, one or more Articles of the Constitution but a state of checkmake or a deadlock, which may be brought about by violation of one or more provisions of the Constitution separately or collectively,, as extracted from the two previous judgments of the Supreme Court and’‑given in para. 16 above.

Further, the words “cannot be carried on” show the helplessness of the Cabinet, in a situation, unchecked or brought about by the National Assembly or some outside force against which even the National Assembly cannot afford a protection or cure, so that the Cabinet cannot be helped to carry on the Government of the Federation and it will have to go, with the National Assembly.

32. It must be appreciated that premature dissolution of an Assembly is a very severe punishment to members and moreso. to the people and the national exchequer. The members lose their remaining term of office, provided by the Constitution and they have to spend millions on fresh elections, with no guarantee of success. The nation is deprived of the continuance of the policies and projects, is exposed to instability and uncertainty, loses the confidence of the Governments and investors at home and abroad, faces economic and administrative chaos and is required to spend crores of rupees on the new election. So, in the case of dissolution of Assembly, for the misdeeds of the Cabinet, the punishment is awarded; not only to those few members who are in the Cabinet but also to the other majority of the members of the National Assembly whether they are in the opposition, the Independents or with the. Treasury and also the people, for no fault of theirs.

33. A further question to be answered is, does the Constitution permit P to pnnish N for the offence of G? The answer is an emphatic no. The import of the Fundamental Rights 9. 10 and 12 to 15 supports the view. No system of law anywhere in the world permits that. The Holy Qur’an announces emphatically that “Each man shall reap the fruits of his own deeds: no soul shall bear another’s burden.” (Q.6:165). In that view of the matter it will be wrong to say that the President has the power, to dissolve the National Assembly, for the reason that the Government of the Federation, in his view, is acting in illegal or unconstitutional manner or it cannot be run in accordance with the Constitution, because of its acts of commission or omission.

34. The fault has thus to be found, not in the working of the Prime Minister or the Cabinet but in the working of the National Assembly. Again, it is not every fault but only that fault which has rendered the working of the Government of the Federation impossible and has also made in appeal to the electorate necessary. What such faults can be? As the form of Government being practised in Pakistan is derived from the parliamentary form of the United Kingdom, one may wc~ help from where this system is prevalent, Dicey, In his illustrious work (The, Law of the Constitution), 1%0 Edition, 4t page 420, quotes from Freeman to say as follows:

“A Ministry which is outvoted in the House of Commons is in many cases bound to retire from office.

A Cabinet when outvoted on any vital question, may appeal once to the country by means of a dissolution.

The, party who for the time being command majority in the House of Commons, have (in general) right to have their leaders placed in office.”

35. Dicey‑himself at pages 426‑427 says: ‘Thus, to say that a Cabinet when outvoted on any vital question are in general bound to retire from office, is equivalent to the assertion, that the prerogative of the Crown to dismiss its

servants at the will of the Queen must be exercised in accordance with the, wish of the Houses of Parliament ........

36. Wade in his Constitutional Law, 7th Edition, at page i18 says that “A Prime Minister, whose Government is defeated in the House of Commons on a major issue, is expected either to resign or to request a dissolution”. At page 82, he states: “There can never be any justification for the dismissal against the advice of. the Primp Minister of a Ministry which commands a majority in the House of Common’s Only if a break in the main political parties took place could the personal discretion of the Sovereign become the paramount consideration .... If the Sovereign ‘can be satisfied that (1) that an existing Parliament is still vital and capable of doing its job, (2) a general election would be detrimental to the national economy, more particularly if it is followed closely on the ‑last election, and (3) he could rely on finding another Prime Minister who was willing to carry on his Government for a reasonable

 (Muhammad Rafla Tarar Period with a working majority, the Sovereign could refuse to grant a dissolution to the Prime Minister in office”.

37. Mr. Strong in his ‘Modern Political Constitutions’ at Page 241 states that: “The Cabinet in Britain is, therefore, dependent on the good opinion of Parliament, which, under modern conditions, means the confidence of the House of Commons. This implies that the ultimate the electorate. As Walter Bagehot acutely pointed out, the Cabinet is a creature, but unlike all other creatures, it has the power of destroying the creator, i.e., the House of Commons. For if the Cabinet is defeated in the Commons it can, instead of resigning, advise the Queen to dissolve the Assembly upon which it depends.

38. It will be seen that the deadlocks emerge from the working of the legislative bodies and jam the wheel of the Government. So, no action in the nature of dissolution of the National Assembly or dismissal of the Cabinet by the President will be justified where the Prime Minister enjoys the Confidence of the House and no deadlock has appeared because of the working of the National Assembly. The result is that if the National Assembly is working smoothly and there, exists no deadlock for the Government to **carry on**its functions; the President neither has the power to dismiss the Prime Minister and his Cabinet nor can he dissolve the National Assembly.

39. Another important consideration to be closely looked at is about the phrase and an appeal to the electorate is necessary, as stipulated in

Article 58(2)(b). The circumstances relied on by the President should not only show the situation in which ‘the Government of the Federation cannot be carried an in accordance with the provisions of the Constitution’ but that nothing else in the Constitution can provide a remedy and therefore, ‘an appeal to the elebtorate is necessary., It means that the extreme measure of dissolution must not be resorted to if another alternative is available. An illustration of this is found in Article 58(2)(b). It provided that:

“....the President may dissolve the where, in his opinion‑‑‑

National Assembly in his discretion

(a) a vote of no‑confidence having been passed against the Prime Minister, no other member of the National Assembly is likely to command the confidence of the majority of the members of the National Assembly, ‑ in accordance with the provisions of the

Constitution, as ascertained in a session of the National Assembly summoned, for the purpose ......

40. It will be seen that unlike the order of dissolution of the former National Assembly in 1990 (Khawaia Tariq Rahim’s, case) the grounds whereof, on judicial scrutiny, were held to have a direct nexus with ‑the conditions prescribed by Article 58(2)(b) of the Constitution and the material forming basis of the President’s opinion found sufficient, the facts and circumstances of this case as given in the judgments of the learned Chief Justice and my brother Shafiur Rahman, J. and which persuaded the President to form his opinion to dissolve the National Assembly and dismiss the Cabinet go to show, without any doubt that they had no nexus or connection with the constitutional power and so the President was punishing the National Assembly for not withdrawing their support to an ‘insolent’ and ‘rude’ Prime Minister and the Cabinet.

It appears from the satisfaction, ‘as expressed by the President, with regard to the previous conduct of the Prime Minister and his Cabinet, in governance of the country, in his annual address to the joint session of the Parliament, and the other material on the record of the case, from December, 1992, till the speech, dated 17th April, 1993 of the Prime Minister, that the President had no.other grievance and by his impugned action wanted to punish the Prime Minister, for his insolent speech made on the television on the 17th April. Further, the contents of the impugned order neither answer the requirements laid down by the Supreme Court, in its Iwo previous orders, referred to above, as also by the learned Chief Justice and my learned brothers in their judgments referred to in the opening para. nor the view that I have taken’above. The view that the order was passed in a fit of anger and vengeance is confirmed even by the address and the arguments of the learned R Attorney‑General before us in the Court, the tenor whereof was that but for the speech of 17th April the President may not. have dissolved the National Assembly on the next day. The impugned order thus reflects the mind of a person.

41. it is further clear that the President, unfortunately assumed to himself the position of a Judge sitting on the performance of the Government and thought that he had the power to punish the Cabinet for the acts of omission and commission as ascertained by him. He, therefore, taking himself as the Authority and the Cabinet 4s civil servants, inflicted on them the major penalty, as under the Efficiency and Discipline Rules. He. was, however, totally mistaken that the Constitution conferred any such power on him. As said above, the exclusive power in respect of all the charges levelled by him vested in the National Assembly, to whom the Prime Minister and the Cabinet were accountable. The National Assembly, however, did not find any fault with the performance of the Cabinet and consequently took no action. Obviously, the National Assembly seems to have been punished by the President for that omission. His order, therefore, cannot be condoned.

42. The order of the President is not maintainable yet on another ground also. The provisions and the principles as contained in the objectives Resolution are now the substantive and effective part of the Constitution, view of its Article 2A. According to the opening part of the Objectives Resolution the sovereignty over the entire Universe belongs to Allah Almighty alone. The law of Allah is thus supreme, immutable,, unsurmountable and unalterable and every other man‑made law repugnant to it must be removed by Parliament or Courts or by other organs of the State ‑in the mode contemplatedin the Constitution. Almighty Allah has delegated His authority to be exercised  by the people of Pakistan, within the limits prescribed by Him, as a sacred trust. Acting against it will thus be breach of trust also.

43. The impugned order is, therefore, declared to be unconstitutional and void and shall be, deemed to have never been passed and promulgated. Therefore, the National Assembly and the Cabinet shall be placed in the same position in which they were before the impugned order of the President was promulgated.

SALEEM AKHTAR,. J.‑‑l have had the privilege and benefit of reading the exhaustive judgment proposed by my learned brother Shaflur Rahman, J., but considering the obivious importance of the Constitutional and the legal questions involved in this case without giving detailed facts which are so copiously narrated in the judgment of my learned borthcr, I feel it appropriate to express my opinion on those issues separately.

2. The petitioner, the former Prime Minister of Pakistan, was elected as a member of the National Assembly in the year 1WO and being the leader of the IJI party commanding majority became the Prime Minister. The National Assembly by an order of the President dated 18‑4‑1993 was dissolved and the Prime Minister was “dismissed”. The order reads as follows:‑‑

“The President having considered the situation in the country, the events that have taken place and the circumstances, the contents and consequences of the Prime Minister’s speech on 17th April, 1993 and among others for the reasons mentioned below is of the opinion that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary:‑‑

(a)        The mass resignation of the members of the Opposition and of considerable numbers from the Treasury Benches, including several Ministers, inter alia, showing their desire to seek fresh mandate from the people have resulted in the Government of the Federation and the National Assembly losing the confidence of the people, and that the dissension therein, has nullificd its mandate.

(b),       The Prime Minister held meetings with the President in March and April and the last on 14th April, 1993 when the President urged him to take positive steps to resolve the grave internal and international problems confronting the country and the nation was anxiously looking forward to the announcement of concrete measures by the Government to improve the situation. Instead, the Prime Minister in his speech on 17th April, 1993 chose to divert the people’s attention by making false and malicious allegations against the President of Pakistan who is Head of State and represents the unity of the Republic. The **tenor of the speech**was that the Government could not be carried on in accordance with the provisions of the Constitution and he advanced his own reasons and theory for the same which reasons and theory, in fact, are unwarranted and miileading. The Prime Minister tried to cover up the failures and defaults of the Government although he was repeatedly apprised of the real reasons in this behalf, which he even accepted and agreed to rectify by specific measures on urgent basis. Further, the Prime Minister’s speech is tantamount to a call for agitation and in any case the speech and his conduct amounts to subversion of the Constitution.

(c)        Under the Constitution the Federation and the Provinces are required to exercise their executive and legislative authority as demaracated and defined and the re are specific provisions and institutions to ensure its working in the interests of the integrity, sovereignty, solidarity and well‑being of the Federation and to protect the autonomy granted to the Provincqs by creating specific Constitutional institutions consisting of Federal and Provincial representatives, but the Government of the Federation has failed to uphold and protect these, as required, in that, inter alia:

(i)         The Council of Common Interests under Article 153 which is       responsible only to Parliament has not discharged its Constitutional            functions to exercise its powers as required by Articles 153 and 154, and in relation to Article 161, and particularly in the context of privatisatio       n of industries in relation to item 5 of Part II of the Federal Legislative List and item 34 ‘of the Concurrent Legislative List.

The National Economic Council under Article 156,and its Executive Committee, has been largely bypassed, inter alia, in the formulation of plans in respect of financial, commercial, social and economic policies.

(iii)       Constitutional powers, rights and functions of the Provinces have been usurped, frustrated and interfered with in violation of inter alia Article 97.

(d)       Maladministration, corruption and nepotism have reached such proportions in the Federal Government, its various bodies, authorities and other corporations including banks supervised and controlled by the Federal Government, the lack of transparency ‘in the process of privatisation and in the disposal of public/Government properties, that they violate the requirements of the Oath(s) of the public representatives together with the Prime Minister, the Ministers and

Ministers of State prescribed in the Constitution and prevent the Government from functioning in accordance with the provisions of the Constitution.

(e)        The functionaries, authorities and agencies of the Government under the direction, control, collaboration and patronage of the Prime Minister and Ministers have unleashed a reign of terror against the opponents of the Government including political and personal rivals/relatives, and mediamen, thus creating a situation wherein the Government cannot be carried on in accordance with the provisions of the Constitution and the law.

(f)        In violation of the provisions of the Constitution:‑‑‑

(i)         The Cabinet has not been taken into confidence or decided upon             numerous Ordinances and matters of policy.

(ii)        Federal Ministers have for a period even been called upon not to see       the President.

(iii)       Resources and agencies of the Government of the Federation, including statutory corporations, authorities and banks, have been misused for political ends and purposes and for personal gain.

(iv)       T here has been massive wastage and dissipation of public funds and assets at the cost of the national exchequer without legal or valid justification resulting in increased deficit financing and indebtedness, both domestic and international, and adversely affecting the national interest including defence.

v)        Articles 240 and 242 have been disregarded in respect of the Civil Services of Pakistan. ‑

(g)        The Government of the Federation for the above reasons, inter alia, is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic situation confronting the country, necessitating the requirement of a fresh mandate from the people of Pakistan.

Now therefore 1, Ghulam Ishaq Khan, President of the Islamic Republic of Pakistan in exercise of the powers conferred on me by clause (2)(b) of Article 58 of the Constitution of the Islamic Republic of Pakistan and all other powers enabling me, hereby dissolve the National Assembly with immediate effect; and dismiss the Prime Minister and the Cabinet who shall cease to hold office forthwith.”

The petitioner challenged this order by filing Constitution petition under Article 184(3) of the Constitution directly in this Court. The petitioner has claimed that fundamental right enshrined in Article 17 of the Constitution has been violated. It has also been alleged that the impugned ‑order is mala fide in law and fact, unlawful, arbitrary, mechanical, violative of **the rules of natural**justice and the provisions of the Constitution. A large number of press, clippings have been filed with the petition to justify the grievance, and the grounds stated in the petition to challenge the validity **of the, order of**dissolution. The respondents have also filed their counter‑alffidavit and produced files containing more than a thousand pages to show that the material for each and every ground stated in the order of dissolution was available to the President, who had honestly, properly and in legal manner bona fide formed an opinion that the Government cannot be run in accordance with the Constitution and therefore the order of dissolution passed by the President is valid and legal and cannot be questioned in this Court. The respondents also raised a preliminary objection that the petition is not maintainable mainly on the ground that no fundamental right of the petitioner has been violated. As the petitioner has relied on Article 17 of the Constitution, it is reproduced as follows:‑‑‑

“17.‑‑‑(l) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

(2) Every citizen, not being in the service of Pakistan, shall have the right to. form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or, integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3)        Every political party shall account for , the source of its funds in

            accordance with law.”

It will however be also convenient to reproduce below Article 184 by ‑virtue of which the Supreme Court has been conferred jurisdiction to entertain petitions directly involving enforcement of Fundamcntal:Rights:‑‑

184.‑‑‑(1) The Supreme Court shall, to the exclusion of every other Court, have original jurisdiction in any dispute between any two or more Governments.

EVIanation.‑In this clause, “Governments” means the Federal Government and the Provincial Governments.

(2)        In the exercise of the jurisdiction conferred on it by clause (1), the            Supreme Court shall pronounce declaratoty judgments only.

(3)        Without prejudice’to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11 is involved, have the power to make an order of the nature mentioned in the said Article.

3. First, we may understand the nature of Article 184(3). This provision confers power on the Supreme Court to consider questions of public importance which are referable to the enforcement of any Fundamental Rights guaranteed by the Constitution and enumerated in Chapter 1 of Part 11. This power is without prejudice to the provisions of Article 199 which confer similar power with certain restrictions on the High Court. The power conferred depends upon two questions; one, that the case sought to be heard involves question of public importance and two, the question of public importance relates to the enforcement of Fundamental Rights. It is not every question of public importance which can be entertained by this Court, but such question should relate to the enforcement of Fundamental Rights. This provision confers a further safety and security to the fundamental rights conferred and guaranteed by the Constitution. This shows the importance which Fundamental Rights have in the scheme of the Constitution. They cannot be curtailed or abridged and any provision of law or action taken which violates Fundamental Rights conferred by the Constitution shall be void. The nature of jurisdiction and the relief which can ‑be granted under this Article is much wider than Article 199. It confers a power to make an order of the nature mentioned in Article 199. The word ‘nature’ is not ‘ restrictive in meaning but extends the 1A jurisdiction to pass an order which may not be strictly in conformity with Article 199 but it may have the same colour and the same scheme without any restrictions imposed under it. Article 184 is an effective weapon provided to secure and guarantee the fundamental rights. It can be exercised where the Fundamental Right exists and a breach has been committed or is threatened. The attributes of Article 199 of being an aggrieved person or of having an alternate remedy and depending upon the facts and circumstances even laches cannot restrain the power or non‑suit a petitioner from filing a petition under Article 184 and seeking relief under it. The. relief being in the nature mentioned in Article 199 can be modified and also consequential reliefs can be I granted which may ensure effective protection and implementation o t e! ,Fundamental Rights. Even disputed questions of facts which do not require voluminous evidence can be looked into where Fundamental Right has been breached. However, in case where intricate disputed questions of facts involving voluminous evidence are involved the Court will desist from entering into such controversies. Primarily, the questions involved are decided on admitted or prima facie established facts which can be determined by filing affidavits. Evidence in support of allegations can be taken orally in very exceptional cases where the breach is of a very serious nature affecting large section of the country and is of great general importance.

4. Mr. Aziz A. MunsK learned Attorney‑General, has contended that a political party has no Fundamental Right to form a Government and further that after the elections, if a person is elected to the assembly, all other rights are governed by provisions of the Constitution and law framed to regulate them. According to the learned Attorney‑General Fundamental Right exists only to the extent a person or a political party participates in the election and the following steps for formation of a with that ends Fundamental Right 17 an Government are to be governed by Articles 52, 91, 92 and other provisions of law. Mr. S.M. Zafar, learned counsel for respondent No.3 further contended that there is no Fundamental Right in the duration for which an Assembly may function and no one has a right to continue and function in the Government for a period of five years. According to the learned counsel life of the National Assembly is not relatable to the Fundamental Rights. A person is entitled to participate in the political process but prohibition of participation in political process violates Fundamental Rights. According to him life of National Assembly is a Constitutional mechanism. National Assembly exists under the Constitution, not by virtue of Fundamental Rights. According to him dissolution of National Assembly does not involve Fundamental Right of any member, and it is not relatable to Fundamental Rights. He further contended that the political activity with a view to get power is not for exercising such a Fundamental Right. According to him political parties have bundle of rights including political rights, fundamental rights, conventional rights and the present case falls under the category of political rights and not the fundamental rights. According to him whatever a political party has to do before entering the National Assembly is called Fundamental Right, but the moment election is over and it enters the Assembly, Fundamental Right ceases and whatever is done in the Assembly is in exercise of political rights. Mr. Khalid Anwar, learned counsel‑ for the petitioner contended that Article 17(2) recognises existence and operation of political parties. The Objectives Resolution, paragraph 8, guarantees political justice which is missing in all other Constitutions. According to the learned counsel it is a Fundamental Right of every citizen or a political party to enter into political activity, form, organise and operate in the Assembly and exercise its power according to law. If any infringement of such rights occurs, it will amount to violation of fundamental rights. In this regard all the, learned counsel have referred to the judgments in Sycd Abul A’ala Moudoodi’s case P L D 1964 SC 673, Benazir Bhutto’s case PLD 1988 SC 416 and Haji Saifullah’s case P L D 1989 SC 166. In the first case it was observed that if a political party has been formed, it has the right to exist subject to restrictions imposed by law. However, in the judgment rendered in Benazir Bhutto’s case Article 17 with reference to the parliamentary form of government has been extensively dilated and discussed upon. It lays down that the right to form or to be a member of a political party is not an absolute right, but is subject to reasonable restrictions imposed by law ‘ in the interest of sovereignty or integrity of Pakistan. Article 17 is a declaration of the right and the restriction in its exercise as authorised by the Constitution. Thus, it is not an absolute or uncontrolled liberty and is accordingly limited in order to be effectively processed. It was observed that the restrictive clause is exhaustive and has to be strictly construed. The significant observations which are directly attracted in the case are: “The words ‘right to form’ in this sub‑Article are not only confined to the commencement of association, but the right includes the right of continuation of the association as well.” A fuller discussion is found at page 531 which reads as follows:‑‑

“Reading Article 17(2) of the Constitution as a whole it not only guarantees the right to form or be a member of a political party but also to operate as a political party. As earlier held, the words ‘right to form’ are not only confined to its formation but also to its function as a political party. The political party, according to its texture, of being an aggregate of citizens composing the party can exercise the other rights guaranteed under the Constitution like an individual citizen. Again the forming of a political party necessarily implies the carrying on of ‑all its activities as otherwise the formation itself would be of no consequence. In other words the functioning is implicit in the formation of the party. (See the opinions of B.Z. Kaikaus, J. and Cornelius, C.H., in Abul A’la Maudoodi’s case). This being so, the Political Parties Act not being a higher law than the Fundamental Right itself, cannot override or prevail over or be superimposed to make the right operational. The functioning is also explicit from the limitation itself which makes prejudicial activities against sovereignty and integrity of Pakistan actionable. This being so, I fail to  comprehend as to how the Political Parties Act which not being a higher law than the Fundamental Right itself can override or prevail upon or be superimposed to make the right operational. It is the guarantee of the right itself which gives it the authority to exercise it. In formulating this argument the learned Attorney‑General omitted to notice that the Political Parties Act was enacted on 16th July, 1962, under Article 173 of the 1962 Constitution before the insertion of the Chapter relating to the Fundamental Rights and there was no such  provision like Article 17(2) even when these Fundamental Rights were incorporated in that Constitution. It was, therefore, that this Act provided for the definition of political party, the constraints, the remedial provision and the scope of the activities of a political party. Article 17(2) was . inserted for the first time in the 1973 Constitution and came in its present form by the Constitution (First Amendment)

Act, 1974. This sub‑Article now authorises the formation of a political party , or any person to be its member and provides constraints to control its activities. In this context, it cannot be argued that it is the ‑Political Parties Act which makes the exercise of this right operational.”

The same view has been reiterated again in Haji Saifullah’s cast The law is thus well‑settled that’Article 17(2) guarantees the right to form, or to be a member of a political party and to operate as the formation and operation of a political party are two such spheres which by a process of legal path as provided. by the Constitution and law the party attains its goal inside and outside the Assembly. The political functioning and activities of a political party do not end once its members are elected to any Assembly. It has multifarious activities within the Assembly and outside the Assembly. Election is merely a process to choose its representatives bythe political sovereign, i.e., the electorate to authorise them to continue their political activity inside the Assembly. Election is merely a road leading a successful member to enter the Assembly but it does not end there. The process continues transforming into formation of the Ministry or becoming a Minister or to be a leader of the Opposition or member of the Opposition Party, to participate in the debates and discharge all such Constitutional and legal duties which are enshrined in the Constitution, responsibility of which is cast on the members. The elected members have far more responsibility than the members of the political parties working outside the Assembly as an unelected representative. The Minister is not only collectively responsible to the National Assembly, but he is also accountable to the people. Thus, if the political right as conferred by Article 17 is violated in breach of the provisions of the Constitution, Article 184(3) can be invoked for violation of Fundamental Rights.

5. The infringement of Fundamental Rights can be in many ways. At times even a law made by the legislature may offend a Fundamental Right and to that extent it may be void, but in certain cases the law may not be void, but the machinery adopted and the orders passed under it may be such which violate the Fundamental Rights, they are thus challengeable. The same principle will apply where the Constitution imposes any restriction on exercise of a Fundamental Right and provides parameters and conditions for exercise of such power. Any authority or person exceeding that jurisdiction passes an order which is not within the framework of the restrictions imposed, then such order violates the Fundamental Rights and can be scrutinised by this Court as provided by the Constitution. Therefore, I do not agree with the learned Attorney‑General that the order passed does not affect the right conferred under Article 17(2). It is only to be seen that although the President of Pakistan is empowered to pass an order for dissolution of National Assembly in certain given circumstances, have they been observed without infringing the, Fundamental Right.’ Because Fundamental Right can be restricted or controlled in terms of the provisions of the Constitution and no authority can’ derive. power from any other source to restrict, abridge, offend or violate Fundamental Right.

6. The question whether political justice as enshrined in the Objectives Resolution after its being made a substantive part of the Constitution can C provide rights equivalent to Fundamental Rights. In view of the observations

made in Hakim Khan’s case PLD 1992 SC 595 Article 2A is not a supra‑  .Constitutional provision but it is a part of **the Constitution and, does not override any other provision**of the Constitution. The Objectives Resolution inter alia provides as follows:‑

“Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice and freedom of thought, expression, belief, faith, worship ana association subject to law and public morality.”

The Constitution recognises political justice and guarantees it. In order to see that political justice is done, we have to examine the Fundamental Rights 1C. which guarantee rights based on political justice. Mr. S.M. Zafar, learned counsel has referred to Articles 9, 10 and 24 of the Constitution. Article 24 relates to economic justice. According to John Rawls’ book “A Theory of Justice” relied upon by Mr. S.M. Zafar, political justice is the justice of the Constitution.... “First, the Constitution is to be just a procedure satisfying the requirement of equal liberty, and second, it is to be framed so that all the just arrangements which are feasible, it is more likely than any other to result in a just and effective system of legislation.” It was further observed:‑‑

“The principle of equal liberty, when applied to the political procedure defined by the Constitution, I shall refer it to as the principle of (equal participation).”

“It requires that all the citizens are to have an equal right to take part and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply.” The learned author thus concludes that “a Constitution democracy can be arranged so as to satisfy the principle of participation”.. He further observes that “thus the most extensive political liberty is established by a Constitution that uses the procedure so called bare majority rule. (The procedure in which a minority can neither override nor check a majority) for all significant political decisions unimpeded by any Constitutional constraints”. Mr. S.M. Zafar also referred to “The Foundations of Freedom” by Durward v. Sandifer and L. Ronald Scheman in which the purpose and the object of democracy has been illustrated in the following manner:‑‑

“Democracy, as we have defined it, is a complex interaction of forces, all of which must be enabled to operate with reasonable freedom from arbitrary restraint. To secure that freedom we consider that the citizens of a State must be fully confident that the following rights will be operative: the right to life, liberty, and security, under which are included freedom of movement, the right to due process of law, freedom from arbitrary arrest, and the right, to privacy‑, equal protection of the laws; the right to free assembly and association; the right to peaceful petition; freedom of thought and expression; the right to the protection of impartial Courts, which includes the right to a fair trial, and freedom from ex post facto laws; and, finally, the right to an education. Many might **want to add to this list;**it is virtually impossible to subtract from it and leave any meaning to the word democracy.

Life, liberty, and security need no explanation. They are the fundamental precepts of any system of human rights. It is to secure them that ‘Governments are instituted among men’. All universal declarations of human rights incorporate them; all the American States recognize their essential nature and guarantee their protection. The reports of the United Nations characterize life as the ‘minimum human right” which ‘no Government has the right to deny arbitrarily’. Immanuel Kant described liberty as the ‘one sole original inborn right belonging to every man in virtue of his humanity. Security is not an

abstract concept, but refers directly to the principles of life and liberty, and to the atmosphere of the society which engenders confidence in their safe enjoyment. As Montesquieu affirmed, ‘Political liberty consists in security, or at least in the opinion that we enjoy security.”

Article 21 of the Universal Declaration of Human Rights provides: “everyone has the right to take part in the Government of his country directly or through freely chosen representatives. From these observations it is clear that democracy is a method of life which provides and paves way for achieving political, economic and social rights which a human being is entitlted to and almost all of them have been guaranteed‑ by the Constitution as Fundamental Rights. The political right or political justice does not end with the election to the Assemblies. It is an on‑going process which starts with the formation of the political parties, participation in the elections and thereafter to operate and participate in governance of the country by the majority rule. How can in these circumstances be it contended successfully that immediately after the election the political rights cease to exist. It is true that such Fundamental Rights which emanate from Article 17(2) travel to the Assemblies with the process of election and may be regulated by other provisions of the Constitution, namely, Articles 50, 51, 52, 91 and 92, but it will be a far cry to state that these provisions of the Constitution put an end to the fundamental Rights which had started with the formation of political parties. The learned Attorney‑General and Mr. S.M. Zafar have both referred to Kh. Ahmad Tariq Rahim V. Federation of Pakistan PID 1991 Lah. 78 at page 116 and relied on the observation that no vested right is conferred to remain in office for three years and similar observation made in the Reference by His Excellency the Governor‑General PLD 1955 Federal Court 435. This observation of the Federal Court has been quoted in Haji Saifullah’s case at page 290. However, it is to be noted that those observations of the Federal.Court were made at a time when Fundamental Rights were not Conferred and the Constitutional provisions as today did not exist. After the conferment of Fundamental Rights as provided by Article 17(2) and also as envisaged in the Objectives Resolution as quoted above, which gives a supporting foundation to its interpretation and elucidation, it cannot be contended that the political rights end on the doorsteps of the Assemblies.

7. In a democratic just order every citizen has right to equal participation in the political process as required by the Constitution. Every citizen without any discrimination within the frontiers of the Constitution can profev% practise. exercise and operate his right to participate in the governance of the country. He is entitled to form or join a ‑political party, contest for an elective position and to hold and exercise authority of politically elected office which by virtue oi such political process he is entitled under the Constitution. If the objects of democracy have to be achieved, if economic, social and political justice as enshrined in the Constitution and proclaimed by a political democratic Government have to be attained, then the parties and the members of the Assemblies have to play their role inside the Assembly as well for governance of the country. So long they are not disqualified by Constitution or by law to remain as a member of the National Assemblytheir political right to operate in the Assembly cannot be curtailed, abridged or violated. I am, therefore, of the confirmed view that the petition under Article 184(3) is maintainable provided the petitioner is able to show that the impugned order has transgressed, impinged and infracted the Fundamental Rights of the petitioner or members of the Assembly or citizens at large. .

8. This aspect brings us to the merits of the case. Before entering into merits of the case it would be proper to first clearly understand the import and meaning of Article 58(2)(b) under which power has been exercised to strike down the National Assembly. This is not for the fist time that Article 58(2)(b) has come up for interpretation and application on the given facts and circumstances. Earlier also it has found dw attention by the Supreme, Court in many cases. Therefore, the meaning and import of Article 58(2)(b) is not obscure; it is now crystal clear and the principles governing the exercise of power under it are also well‑settled. The President is empowered to dissolve I the National Assembly if he forms an opinion that the Government cannot be run in accordance with the\* Constitution. This power is not absolute or unfettered. The President has first to form an opinion, an objective opinion on the basis of the material before him to come to the conclusion that the Government cannot be carried on in accordance with the Constitution. The formation of opinion being objective in nature can be judicially examined and reviewed by the Courts. While interpreting the Constitution one has to keep in mind the nature of this seared document which is the supreme lax and the law of the laws. While dealing with this aspect of the case in Khalid Malik’s case PLD 1991 Karachi 1, 1 had observed as follows:‑‑

“The Constitution is a living organism and has to be interpreted to keep alive the traditions of the past blended in the happening of the present and keeping an eye on the future. Constitution is the symbol of statehood keeping united people of different races, diverse cultural, social, economic and historical traditions. It provides a method of legitimacy to the Government. It is the power behind the organs and institutions created by it. Constitution must be interpreted keeping in view the entire canvass of national fabric be it political, social, economic or religious.”

Herein I reproduce certain observations from the judgments of this Court to illustrate the meaning of Article 58(2)(b):‑‑

Federation of Pakistan v. Haii Muhammad Saifullah Khan P L D 1989 SC 166:

“Thus, notwithstanding the addition of the words ‘and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever’ after the words ‘Notwithstanding anything contained in clause (1), the President shall ‘act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so’ in clause (2) of Article 48 of the Constitution, the provisions of Article 58(2), as finally adopted by the Parliament in the Constitution (Eighth Amendment) Act, 1985, had the effect of placing some limits on the otherwise absolute powers of the President. Article 48(3), which made the President the sole judge of the validity of his discretion, was omitted. Article 58 was simultaneously altered and besides providing for the non obstante clause, the substantive part of clause (2) of Article 58 was also modified and the substituted clause now provided that the National Assembly could be dissolved only when a situation arose in which the Government of the Federation could not be carried on in accordance with the Constitution and an appeal to the electorate was necessary.

While explaining these changes on the floor of the National Assembly the Prime Minister and the Justice Minister, as already noted, stated in categorical terms that these changes, were intended to curtail the powers of the President. He (the President), they explained, would still be vested with the powers to diss9lve the National Assembly but this would be a limited power exercisable only when the conditions set out in the amended clause were met.

Thus, the intention of the law‑makers, as evidenced from their speeches and the terms in which the law was enacted, shows that any order of dissolution by the President can be passed and an appeal to the electorate made only when the machinery of the Government has broken down completely, its authority eroded and the Government cannot be carried on in accordance with the provisions of the Constitution:

True enough, it is within the discretion of the President to determine whether these conditions are met or not but this discretion has to be   exercised in terms of the words and spirit of the Constitutional    provision. ‘According to his discretion’, as explained, relying on        Maxwell, in M. Abdul Majid v. The West Pakistan Province and 2           other’s PLD 1956 Lah. 615, means:

‘According to the rules of reason and justice, not private opinion ,according to law and not humour, it is to be not arbitrary, vague and fanciful, but legal and regular, to be and for substantial reasons and must be exercised within the limits to which an honest man competent in the discharge of his office ought to confine himself i.e. within the limits and for the objects intended by the Legislature.’

The discretion conferred by Article 58(2)(b) of the Constitution on the President cannot, therefore, be regarded to be an absolute one,, but is to be ‑deemed to be a qualified one, in the sense that it is circumscribed by the object of the law that confers it.

It must further be noted that the reading of the provisions of Articles 48(2) and 58(2) shows that the President has to first form his opinion, objectively and then, it is open to him to exercise his discretion one way or the other, i.e. either to dissolve the Assembly or to decline to dissolve it . Even if some immunity envisaged by Article 48( 2) is available to the action taken under Article 58(2) that can possibly be only in relation to the exercise of his ‘discretion’ but not in relation to his ‘opinion’. An obligation is cast on the President by the aforesaid Constitutional provision that before exercising his discretion he has to form his ‘opinion’ that a situation of the kind envisaged in Article 58(2)(b) has arisen which necessitates the grave step of dissolving the National Assembly!

Thus, though the President can make his own assessment of the situation as to the course of action to be followed but his opinion must be founded on some material. In the present case the President himself chose to state the grounds on which he was basing his action As the grounds have been disclosed their validity can be examined.”

While referring to Article 58(2)(b) Shafiur Rahman, J. observed:‑‑

“There is no express ouster clause in the Constitution with regard to the exercise of this power by the President. Whatever ouster could be implied by the use of the expression ‘in his discretion’ and ‘in his opinion’ stands removed by the use of non obstante clause ‘notwithstanding’, thereby excluding the application of ouster clause contained in Article 48(2) excluding Courts’ jurisdiction generally where the powers reserved for the President to be exercised in his discretion are concerned. Additionally the existence of jurisdictional facts capable of judicial ascertainment and adjudication was made a precondition for the exercise of this power. Not to test the exercise of this power by reference to these constitutionally prescribed jurisdictional facts namely‑

(i)         a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution; and

(ii)        an appeal to the electorate is necessary,

would in fact amount to a failure to discharge a I duty ordained by the

Constitution itself.

The expression ‘cannot be carried on’ sandwiched as it is between ‘Federal Government’ and ‘in accordance with the provisions of the Constitution’, acquires a very potent, a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of the progress, the shade of the quality or the degree of the performance or the quantum of the achievement, It concerns itself with the breakdown of the Constitutional mechanism,.a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution. The historical perspective in which such a provision found a place in our Constitution reinforces this interpretation.”

In Khawaja Ahmad Tariq Rahim’s case P L D 1992 SC 646 Shafiur Rahman, i., after recounting historical background and referring to the dissolution of the House of Commons by the King, the dismissal of the Ministry by the Governor‑General of Australia and power of the President of India to dismiss the Prime Minister even if he commanded the majority, observed as follows:‑‑

“The specific power,. the jurisdictional requirement all being provided in our Constitution, it is not necessary to either go back deep into history or to infer a residual but necessary power of the President in the matter.

In Haji Muhammad Saifullah Khan’s case P L D 1989 SC 166 our Constitutional provision has received full attention and its meaning and scope authoritatively explained and determined. It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra‑Constitutional.”

9. In interpreting Article 58(2)(b) the Constitutional background is to be taken into, consideration. **The Constitution envisages parliamentary form**Of Government. Therefore, if any provision has been inserted in the Constitution afterwards infringing, or impinging on the democratic and parliamentary system, it is to be construed in a manner that spirit and form of parliamentary system is not distorted. The sum and substance of the authorities is **that the**conditions as laid down in Article 58(2)(b) should be strictly construed. Article 58(2)(b) conferring a power to dissolve the National Assembly in certain circumstances cannot be given a liberal or wide meaning. It has to be given a restricted meaning in the facts and circumstances of the case. At this stage I may also refer to the arguments of the learned counsel for the respondents whereby they have sought to support and justify the dissolution by referring to the conventions and the prerogatives of the King in the United Kingdom and also certain judgments of the Indian Supreme Court and High Courts where the State Ministries and Houses were dissolved and dismissed. I agree with the observation of my learned brother Shaflur Rahman, J. that in the presence of clear and specific provisions in our Constitution, conventions and prerogatives of the United Kingdom can be of no avail and cannot be applied in this country. So far the Indian judgments are concerned, they have been dealt with by my learned brother and I need not again repeat the same. The observations of this Court in several cases and also the observations of the High Court as confirmed by this Court are large and many in number to give guidance, support and to solve the controversy between the parties. The observations have been so exhaustive, so complete in all sense that we perhaps need not look beyond our frontiers.

10. The dissolution order is based on several reasons, amongst which the first it the mass resignation of the members of **the Opposition and of a**considerable number from the Treasury Benches including Ministers, inter alia, showing a desire to seek fresh mandate from the people have resulted in the Government of the Federation and  the National Assembly losing confidence of the people and that the dissension therein has nullified its mandate. It seems that the resignations given by several members of the National Assembly belonging to Opposition and Treasury Benches and also the Ministers led the President to form an opinion that due to dissensions and resignations the National Assembly has **lost the confidence of the people and has nullified**its mandate. The learned counsel **for the petitioner**has contended that the resignations relied upon which have been filed alongwith written statement of respondent No.1, are not a resignation in law. This brings us to consider the nature of the resignation ‑letters. The striking feature is that none of the resignation has been submitt to the Speaker. They are mostly addressed to the Speaker, but were delivered directly or through some other members to the President. According to Mr. Khalid Anwar unless the procedure and law governing and regulating the resignation are complied with it shall not be treated as a resignation. According to the learned Attorney­General the resignations were relied upon for the purpose of forming an opinion by the President, but the reasons given for resigning should be explained by its author. Accordi ng to the learned Attorney‑Genera resignations were voluntary act of the members and were delivered not for the purpose of causing vacancy, but to protest against the Prime Minister and the Cabinet and also to show lack of confidence. Mr. S.M. War, however, put it that the resignations were in protest. According to the Attorney‑General 88 resignations were delivered to the President out of which 41 resignations delivered by Mrs. Benazir Bhutto were from the members of PDA while 47 resignations belonged to members of the Government party. Twelve resignations were tendered earlier in June, 1992 by the Members of MOM and one seat was declared vacant due to death of Muhammad Khan Junejo. Thus, in all there was a vacancy of only 101 members out of which only 88 had resigned according to the respondents in protest and to show their lack of confidence in the Prime Minister. The stand taken by respondent No.1 is that the resignations were submitted by the members showing their protest and lack of confidence in the petitioner’s Government, National Asgembly and the Speaker. The reason for submitting the resignations to the President though addressed to the Speaker was that they had no confidence in the Speaker who according to the general perception was in collusion with the former Prime Minister and was not acting independently. It was alleged that the Speakei was getting preferential and special treatment in allocation of funds for his constituency. As the‑ Speaker’s conduct was objectionable and open to question, the concerned M.N.As. sent their resignations to the President so that their protest and expression of lack of confidence be properly registered. It was further stated that on the basis of these resignations the President could form his opinion in that behalf. However, this stand seems to have been modified by the learned Attorney‑General when in the midst of arguments he submitted a. written explanation. The stand now taken is that “the resignations were meant to be resignations as well as the protests”. The tender and acceptance of resignation, the mode in which it is to be given and accepted have been provided by Article 64 of the Constitution and Rule 25 of the Rules of Procedure and Conduct of Business in the National Assembly which read as follows:‑‑

“Article 64.‑‑‑(l) A member of Majlis‑e‑Shoora (Parliament) may, by writing under his hand addressed to the Speaker or, as the case may be, the Chairman resign his seat’, and thereupon his seat shall become vacant.

(2)        A House may declare the seat of a member vacant if, without leave of    the House, he remains absent for forty consecutive days of its sittings.

Rule 25. Resignation of seat.‑‑‑ (1) A member may, by writing under his hand addressed to the Speaker, resign his seat.

(2)                    If, ‑‑

(a) a member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary; or

(b)        the Speaker receives the letter of resignation by any other means and he, after such inquiry as he thinks fit, either himself or through the National Assembly Secretariat or through any other agency, is satisfied that the resignation is voluntary and genuine, the Speaker shall inform the Assembly of the resignation:

Provided that if a member resigns his seat, when the Assembly is not in session, the Speaker shall direct that intimation of his resignation specifying the date of resignation be given to every member immediately.

The Secretary‑General shall, after the Speaker statisfies himself that the letter of resignation is voluntary and genuine, cause to be published in the Gazette a notification to the effect that the member has resigned his seat and forward a copy of the notification to the Chief Election Commissioner for taking steps to fill the vacancy thus caused.

(4)        The date of resignation of a member shall be the date specified in writing by which he has resigned or if no date is specified therein the date of receipt of such writing by the Speaker.

(iii)       If the letter of resignation is delivered personally, then the Member should inform the Speaker that the resignation is voluntary and genuine.

(iv)       If the resignation is delivered by any other means, then the Speaker shall make inquiry into the genuineness of the resignation and ascertain whether it is voluntary or not.

11. From these provisions the procedure for submitting a resignation by a member of the National Assembly emerges as follows:‑‑

(i)                     The resignation should be in writing under his hand and should be         addressed to the Speaker.

(ii)                    The resignation may be delivered by the member personally or     through any other means.

I(v)                  The Speaker after satisfaction that the resignation is genuine and voluntary, shall inform the National Assembly and then the seat shall be declared vacant.

(vi)       The date of resignation of a member shall be the same as specified the letter of resignation or if no date has been ‘given, then the date of receipt by the Speaker.

It is an admitted fact that majority of the resignations were obtained by some persons of authority and power in political life and delivered to the President. Some may have been directly delivered to the President. The resignations mostly do not carry any date. They give different reasons, most of them give their own personal reasons. Some of them have shown and expressed their dissatisfaction with the Government policy. Mr. Khalid Anwar has pointed out that few hours before the order of dissolution was passed by the President Mrs. Benazir Bhutto had met him and delivered resignation letters of 41 members belonging to PDA. According to the learned counsel, they were collected by the leaders of the parties beforehand, some of them much earlier for the purpose of keeping control over them and to utilise them whenever required by such leaders. It has come to light that there is an on‑going practice among the political parties to obtain resignation of the members. In the absence of any effective and proper law for controlling horse‑trading and floor‑crossing, the political parties have adopted a method of controlling them by obtaining resignation from each member which may be utilised at their own convenience. It may be a step to bring discipline among the members but in most cases it may be 4 tool of blackmailing and also to punish such members who differ or revolt against the policies and discipline of the party. To that extent there may be some disciplinary justification for obtaining and holding such resignation, but in order to make it valid and effective besides complying with the procedure laid down, it should be voluntary, genuine and should be intended to vacate the seat. Resignation is a voluntary act of a member or person submitted with the intention to relinquish, relieve or quit that particular post or position and to vacate the same. It cannot be a two‑way traffic or an act to use it for any purpose liked by any third person. The resignations obtained by any person politically or officially in authority or not from the members and delivery to a third party other than the person authorised to receive them, with the intention to achieve political gains and create a ground for dissolution of the Assembly can neither form basis for such action nor be justified by any principle of law, morality and ethics.

I

12. The learned counsel for the petitioner has referred to various press clippings filed with the petition to show that there was an organised campaign to obtain resignations with the intention to destabilise the Government. At the moment we are not considering the press clippings, which in certain circumstances sometimes exaggerate the situation or describe it according to their own assumptions and inferences. However, the admitted position in this regard is that the resignations were obtained and hardly any resignation was submitted to the Speaker by the members. Those who personally submitted to the President are few in number. In this regard reference can be made to A.K. Fazlul Quader Chaudhry v. Syed Shah Nawaz and 2 othes P L D 1966 SC 105 where it was held that the resignations should not only be addressed to the Speaker, but they should be intended to be delivered to the Speaker. In Mirza Tahir Beg v. Syed Kausar Ali Shah P L D 1976 SC 504 while describing the high office of distinction a Speaker holds in the Assembly, it was held that the Constitution has ordained that the resignation by a member.is effective onlvl when it is “addressed” to the Speaker: it was not intended to be an idle

formality. To relinquish the parliamentary seat by resignation is a grave and a N solemn act”. The letter of resignation should be signed by the member voluntarily and submitted personally to the Speaker or transmitted through duly authorised person for delivery to the Speaker. In A.K. Fazlul Quader Chaudhry’s case the resignation of Shah Nawaz was rendered ineffective as it was transmitted by the President to the Speaker without any authority from him (Shah Nawaz). The Constitution has thus cast onerous duty on the, Speaker to make inquiry into the genuineness and voluntary nature of the” resignation and also that it has come through an authorised person, if not submitted personally. The Speaker can neither refuse to discharge this duty nor can any authority bypass him. The solemnity and sanctity attached to the resignation by a member of the National Assembly shall be eroded if it is made in contravention of the provisions of the Constitution and the rules and furthermore if they are intended not to vacate the seat, but for any other purpose, ulterior, oblivious or clandestine. Such letters of resignation which do not have any validity or sanction under law can hardly be accepted muchless by a person of high position like the President to assess the confidence the members have in the Assembly and also to assess a situation whether the Government can be run in accordance with the Constitution. Even after tendering resignations of 88 persons the majority members were still in the Assembly. Reference has been made to a decision of the Privy Council in Adegbenro v. Akintola and another (1963) a All ER 544. It has some similarity on facts, but is completely distinguishable. In this case the Governor received a letter dated 21‑5‑1962 signed by 66 members of the House of Assembly in which it was stated that they no longer supported the Premier. There were 124 members in the Assembly and the Governor on the receipt of this letter removed the Premier as he did not command the support of the majority of the members of the House of Assembly. The respondent challenged the action of the Governor but with the consent of the parties the Chief Justice of Western Region referred the following two issues to the Federal Supreme Court:‑‑

“(I)      Can the Governor validly exercise power to remove the Premier from office under section 33(10) of the Constitution of Western Nigeria without prior decision or resolution on the floor of the House of Assembly showing that the Premier no longer commands the support of a majority of the House?

Can the Governor validly exercise power to remove the Premier from officer under section 33’10) of the Constitution of Western Nigeria on the basis of any materials or information extraneous to the proceedings of the House of Assembly?”

The Court answered the first question in favour of the respondent and did not find it necessary to answer the second question. The appellant with the leave of the Supreme Court ‑filed appeal before the **Privy Council which set aside the impugned**judgment. The controversy revolved round the interpretation of section 33(10) which provided that the Ministers of the Government of the Region shall “hold office during the Governor’s pleasure: Provided that the Governor shall not remove the Premier from office unless it appears to him that the Premier no longer commands the support of majority of the members of the House of Assembly.” (Emphasis supplied). The respondent’s contention \*was that ‘the Governor cannot Constitutionally take account of anything in matter of ‘support’ except the record of votes actually given at the floor of the House’. Repelling this contention it was observed:‑‑

“The difficulty of limiting the statutory power of the Governor in this way is that the limitation is not to be found in the words in which the makers of the Constitution have decided. to record their description of his powers. By the words they have employed in their formulae, ‘it appears to him’, the judgment as to the support enjoyed by a Premier is left to the Governor’s own assessment, and there is no limitation as to the material on which he is to base his judgment or the contacts to which he may resort for the purpose. There would have been no difficulty at all in so limiting him, if it had been intended to do so. For instance, he might have been given power to act only after the passing of a resolution, of the House ‘that it has no confidence in the Government of the Region’, the very phrase employed in an adjoining section of the Constitution (see ‘section 31(4), proviso (b)) to delimit the Governor’s power of dissolving the House even without the Premier’s advice. According to any ordinary rule of construction weight must be given to the fact that the Governor’s power of removal is not limited in such precise terms as would confine his judgment to the actual proceedings of the House, unless there are compulsive reasons, to be found in the context of the Constitution or to be deduced from obvious general principles, that would impose the more limited meaning for which the respondent contends.

To sum up, there are many good arguments to discourage a Governor from exercising his power of removal except on indisputable evidence of actual voting in the House, but it is nonetheless impossible to say that situations cannot arise in which these arguments are outweighed by considerations which afford to the Governor the evidence he is to look for, even without the testimony of recorded votes.”

13. The Constitutional dispensation did not limit the power of the Governor to remove the Premier only after ascertaining the opinion of the majority on the floor of the House. The decision has turned on the interpretation of section 33(10), but the Constitutional Principles enunciated support the petitioner’s contention. In our Constitution Article 91(5) governs such a situation which reads as follows:‑‑

,,91.\_‑‑(5) The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of the 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.”

The exercise of pleasure by the President is conditional and not absolute. An embargo has been imposed on its exercise and the President is precluded from forming his opinion and satisfaction on the basis of anything but the votes given on the floor of the House. As our Constitution contains specific provisions for governing such a situation, and provides a procedure and manner for ascertaining the fact whether the Prime Minister has lost confidence of the House, no other mode of ascertainment can be adopted. It is a well‑settled principle that if a statute provides anything to be done in a particular manner, no deviation from the given course is permissible. Any ascertainment of such fact in an unconstitutional manner or extraneous consideration cannot be made basis for removing the Prime Minister. It is thus clear that most of the resignations collected and delivered to the President could not be made basis for reaching the conclusion or satisfying himself that the petitioner did not command confidence of the majority of the. National Assembly. The only course open for the President is to summon the National Assembly and require the Prime Minister to obtain the vote of confidence from the Assembly. The determination of such fact is not left to the President or any authority except the National Assembly. Such resignations could hardly be made a ground for dissolving the National Assembly.

14. It would be appropriate to mention that respondent No.1 has pleaded that the resignations were not delivered to the Speaker as he was not impartial and had obtained favour from the petitioner inasmuch as funds many times higher than given to any other member were allocated for development of his constituency and further that the reference riled by Salman Taaseeer against the petitioner has not been forwarded to the Chief Election Commissioner. The members submitting their resignations had never intended to vacate the seats therefore they could have hardly thought of  approaching the Speaker. As resignations were not intended to be resignation in law by the members, it is  not necessary to dilate on the excuse offered by them. It may however be pointed out that Speaker enjoys a unique position in the Constitutional structure of the country. He has to preside over the House and is required to maintain decorum and discipline. He should be impartial, just and disinterested and discharge his duties without fear or favour, ill‑will or affection. His most important duty is to maintain discipline amongst the members of the Assembly in the House and also control their conduct and utterances even outside the House made in violation of the Constitution. In this regard reference can be made to Article 63 of the Constitution which provides disqualification for membership of the Majlis‑e‑Shoora. It enumerates several conditions when a person shall be disqualified from being elected or chosen and from being a member of the Parliament. It not only specifies the  disqualifications attaching before the elections, but even the disqualifications i which may occur or may be carried unnoticed after the election to the House. Once such disqualifications or misconduct as enumerated therein are noticed and a question arises whether he has become disqualified from being a member, the Speaker shall refer the question to the Chief Election Commissioner and if he declares him to be disqualified, he shall cease to be a member and his seat shall become vacant. Therefore, heavy responsibility has been cast on the Speaker to be watchful and to maintain discipline with strict observance of the provisions of the Constitution. Pointed reference can be made to Article 63(i)(g) which though in existence has never found its importance by any authority or the Speaker concerned. Under sub‑clause (2) of Article 63 the Speaker should not wait for the question to be raised, but once it is brought to his notice or he suo motu notices any breach of anyl’ provision of Article 63, it is his duty to refer the matter to the Chief Election Commissioner. The word ‘shall’ in Article 63(5) indicates that a mandatory duty has been cast on the Speaker to refer the question to the Election Commissioner. If any breach has been brought to his notice, it is not for him to decide it, but he is merely to refer it to the Chief Election Commissioner. Any unreasonable delay in sending such matter to the Chief Election Commissioner is bound to cloud the high status of the Speaker.

15. The next ground for dissolution of the National Assembly is the speech of the Prime Minister Nawaz Sharif made on 17‑4‑1993 on TV and Radio. It has been stated in the order that during March and April and lastly on 14‑4‑1993 when the President urged the Prime Minister Nawaz Sharif to take positive steps to resolve the grave internal and international problems confronting the country and the nation was looking anxiously forward to the announcement of concrete measures by the Government to meet the situation, the Prime Minister made a speech on 17‑4‑1993 to divert the people’s attention by making false and fictitious allegations against the President. The tenor of speech was such that the Government could not be carried on in accordance with the provisions of the Constitution. According to the order, the Prime Minister tried to divert the attention of the public and made false accusations and allegations against the President which amounted to “calling for agitation” and that in any case the speech and his conduct amounted to “subversion of the Constitution”. According to the learned counsel for the petitioner the speech was made in an explosive background created by the President and the politicians who were visiting the President House in an attempt to destabilise the Government. According to the learned counsel till 14‑4‑1993 there was no complaint and grievance and no ground existed for dissolution but after the meeting held on 14‑4‑1993 a press‑note was issued by the President House, which was not the agreed one and the draft provided by the petitioner was not accepted. The period of three days could not be sufficient to take remedial steps or to satisfy the public as alleged by the dissolution order and before taking any step, the National Assembly was to be taken into confidence, which was summoned on a requisition dated 18‑4‑19,93 for 19‑4‑1993, but the Assembly was dissolved. According to the learned counsel the speech was an expression of regret and frustration and the petitioner had adopted a policy of silence and patience which was taken as cowardice and, therefore, the speech was made. It was a speech for conciliation between the two pillars of the State and not a rebellion or subversion of the Constitution. According to the learned Attorney‑General the salient point of the speech was that the very office which should have been the custodian of the Constitution was being used for disintergration. The high office which is supposed to be the symbol of Pakistan’s integrity is used by those who are out on the loose to destroy its institution. Mr. Nawaz Sharif stated that he was always taught to respect elders, but unfortunately it was considered his weakness. They have tried to impose compromises on him though he was an elected Prime Minister. There was worst kind of horse‑trading ever since in the history of this country in order to throw him out of the office. He was asked from the office of that supposedly respected place not to put in trouble Sardar Asif Ahmad Ali as he had ordered for his arrest himself. It was stated in the speech that his brother Shahbaz Sharif was attempted to be bribed by offering the Premiership and, therefore, he had decided to come to the people of the country. It was also stated that Governor of a Province was also involved in the conspiracy against the mandated Constitutional Government while sitting in Islamabad in the corridors of Aiwan‑e‑Sadar. The uncer tainty which has been triggered by the political orphans and their patrons from Aiwan‑e‑Sadar has taken the whole of the economy in its grip and caused heavy loss to the national economy. These parts of the speech of the Prime Minister were particularly referred by the learned Attorney‑General to show that in the existing circumstances the suspicion and the strained relations which have been expressed by the petitioner, there cannot be any reconciliation between them and they cannot work in harmony and thus the Government cannot be run in accordance with the provisions of the Constitution. The learned Attorney‑General by referring to these portions of the speech contended that the tone, tenor and conduct of **the**speech amounts to violation of oath of office by the Prime Minister inasmuch as the office of President was publicly attacked and ridiculed. The institution of protector and defender of the Constitution was reduced to a nullity in violation of law by the Prime Minister; and defamation\* and subsequent repeated statement of physical intimidation and threat were also in contravention of law. It was further contended that the speech not only amounted to destroy the institution of Presidency and Prime Minister because it contained charges of conspiracy, intimidation and blackmailing by the President but rendered the State machinery to a standstill. There was a structural breakdown of the two pillars of the State and, therefore, these facts have direct nexus with the dissolution of the National Assembly.

            16. Both the parties ‘ have filed a large number of press clippings and respondent No.1 has also riled voluminous files containing documents relating to these charges and also the letters which the President had been writing to the Prime Minister from time to time. The speech of the Prime Minister has a background. In fact the entire episode has a background which started early from the month of March. It seems correct that after the address of the President in the Parliament in December, 1992 there seemed to be no doubt that the relationship of both the parties was cordial. The President had praised

the policies of the Prime Minister. The legislative, economic and other progress in the field were shown to be satisfactory. Although some scepticism was shown in the field of privatisation, yet it was not an offensive one, but in the line of giving guidance or counsel which a President is entitled to give to the Prime Minister and the Cabinet. The month of March had become a hot b.A of rumo6rs and as the learned counsel for the petitioner has put it, of conspiracies, horse‑trading and blackmailing. The persons visiting the President had been making speeches and statements giving the impression that they were making all atttempts under the umbrella of the President House to destabilise the Government of the petitioner. The collection of resignations from the members of the National Assembly by few persons and presenting the same to the President was a link in the entire episode. It seems that the Prime Minister had met the President and had offered for conciliation and thereafter a meeting was held on 14‑4‑1993 in respect of which the following press note was issued by the President House:‑‑

“The Prime Minister called on the President and they reviewed the grave and pressing national and international problems facing the country. The meeting lasted for about two hours.

The President urged the Prime Minister to undertake positive steps as early as possible to address effectively these problems to the satisfaction of the public representatives and the people. The Prime Minister undertook to do so on an urgent basis and to revert to the President with precise measures in this behalf.”

According to the petitioner, this press note did not reflect consensus nor the agreement which had been reached in the meeting between the President and the Prime Minister. In that regard reference has been made to a draft memorandum prepared by Prime Minister Secretariat and taken by Mr. Illahi Bakhsh‑Soomro and Lt.‑Gen. **(Rtd.) Abdul Majeed Malik to the President,**which reads as follows:‑‑

“The Prime Minister, Mr. **Muhammad Nawaz Sharif today called on**the President, Mr. Ghulam **Ishaq Khan at the Aiwan‑e‑Sadar.**During the two‑hour meeting, the President and the **Prime Minister went into**the causes of the prevalent political situation in **the country and it was**agreed that necessary measures would be taken to defuse it.

Referring to speculations, discussions and debate **on the 8th Amendment,**the Prime Minister informed the President that the issue was well behind us. He said the recent statement of three Federal Ministers in this behalf fully reflected his own views.

Discussing the various policies and programmes of the Government, the Prime Minister said he valued the President’s guidance and counsel and looked forward to his continued advice at various stages of their formulation and implementation. It was agreed to bring about improvements in the functioning of the Government, wherever necessary.

It was also agreed that such meetings and consultations will be held more frequently to ward off speculations and avoid misunderstandings.

The two agreed that efforts should be made to win back friends and colleagues who have left the Cabinet as a result of misunderstandings and differences. They hoped that most of them will be back before long.

Federal Ministers, Lt.‑Gen. (Rtd.) Abdul Majid Malik and Mr. Illahi Bakhsh Soomro joined the President and the Prime Minister at a later stage of the meeting.”

This document has been riled by the learned Attorney‑General who has relied on it. In this connection, there are two more letters which require attention to understand the purpose and meaning behind the press note and the draft proposed by the Prime Minister. On 12‑4‑1993 the President’s Secretariat issued a letter to the Prime Minister’s Secretariat referrip.g to the press clippings of the same date regarding serious allegations levelled by Begum Nuzhat Nawaz widow of late General Asif Nawa7\_ While requiring the Prime Minister to appoint a judicial commission it was further stated that “in the meantime immediate necessary measures may have to be taken in respect of the two persons named by the lady as regards the functions of their office”. This letter is at page 614 of file 3‑A. This letter was replied by the Prime Minister’s Secretariat on 13‑4‑1993 informing that before the receipt of the letter the inquiry commission had been appointed. It further stated that the Government will take **prompt**action against the persons if so named by the commission in accordance with law. A reply was sent from the President’s Secretariat on 15‑4‑1993, which reads as follows:‑‑

“Subject: Appointmert of judicial commission

Kindly refer to P.M. Seat. u.o. No.8ffl/JS(LAW)/93, dated 13th April, 1993.

(2)        Our communication of 12th April was in fact delivered on a most immediate basis by a special messenger and received at 17‑50 hours as per attachment. In any case, the matter was mentioned that morning by the President to Mr. Shahbaz Sharif, MNA.

(3)        Important, however, is what is stated in para. 2 of your letter. We are indeed surprised that you should say’it is not clear as to what action is envisaged’when this should be routine at the time of any investigation let alone when grave and serious allegations are made by the widow of a very respected COAS against a senior officer controlling the facts. The President repeated this to the Prime Minister yesterday.”

These letters indicate that on 14‑4‑1993 the President and Prime Minister did meet. It can be inferred that in the meeting between the President and the Prime Minister besides other problems action to be taken against two persons named by the widow of Gen. Asif Nawaz must have been subject‑matter of the discussion. According to the learned Attorney‑General as the press note shows the Prime Minister had undertaken to take positive steps to the satisfaction of public representatives and the people and then revert to the President with precise measures, but instead of taking such steps as promised by him, he straightaway went to the electronic media and rendered speech derogatory, defamatory and hostile to the President. According to Mr. Khalid Anwar the press release was without the consensus of the Prime Minister and in fact the proposed press release prepared by the Prime Minister’s Scretariat which was not issued reflected true consensus and was intended to ward off speculation and avoid misunderstanding. According to the learned counsel even on the basis of the press release issued, the Prime Minister was required to satisfy the public representatives i.e. the members of the National Assembly and the people and accordingly he made a speech to address the people and on requisition a meeting of the National Assembly was summoned by the Speaker for 19‑5‑1993, but the said meeting in which the Prime Minister would have satisfied the public representatives about the problems facing the country was not allowed to be convened. Be that as it may, the fact remains that the Prime Minister was required to do some act and take some action against the two persons mentioned in the letter referred to above. Obviously. it seems that as desired by the President’s Secretariat, those two persons were to be transferred, removed, sacked or suspended. Perhaps the Prime Minister did not see eye to eye on that issue as is obvious from the letter issued in reply to the President’s Secretariat’s letter. This became the culminating point and the immediate cause for rushing to the electronic media and also summoning the National Assembly on requisition of the partymen of the Prime Minister. These acts seem to accelerate the explosive situation already simmering in the political arena of the country. The speech and summoning of the National Assembly, bona ride of which was doubted, became an immediate cause for issuing the dissolution order.

17. In this background and the scenario one is led to think whether it is normal and usual that press release is issued by the President’s Secretariat in respect of meetings held with the Prime Minister. If it is a practice, then in the past no such press release had been issued and included in the paper book which runs into more than thousand pages. But if this was not the practice to issue the press release which has not been clarified by anyone, then it becomes enigmatic why the press release had been issued? Was it intended to warn the Prime Minister, or to just inform the public that tension between the two high officials is sought to be reconciled? During this period the news media was rife with speculations, analysis of the news and some of them had indulged in sensationalism as well. However, the events following these incidents proved that their speculation was not incorrect. It is true that in his speech the Prime Minister had used strong language against the President and made certain allegations which he endeavoured to justify with reference to the events, incidents and the news published in the press media. Likewise the speech made by **the President after the dissolution**of the National Assembly also reflects the sentiments and the harsh language used though in a guarded manner against the petitioner. The speech, its tenor, language and the conduct in making it is relevant only from Constitutional point of view to determine, whether after making such a speech there may be a complete stalemate and deadlock in the relationship between the Prime Minister and the President and **due to this deadlock**the Government cannot be run in accordance with the provisions of the Constitution. The learned Attorney‑General has vehemently stressed that in the face of this speech and derogatory words used against the President which amount to calling for agitation and subvesion of the Constitution leaves no room for cooperation between the two and the stalemate and deadlock will be so great that the Constitutional machinery will break down. In fact, according to him, it has broken down. The speech was more on a personal level and political in nature to save himself from ‘an impending danger of which the petitioner was apprehensive and in respect of which big rumours were in the air. Rumours were so great and coherent that they had assumed the proportion of truth. The misunderstanding was so great and the tension between the parties was so high that they looked at each other with jaundiced eye and coloured glasses. But this atmosphere of suspicion was not of such a nature that it could not be ironed out and was not humanly possible to clear the differences. The high offices require high standards, high status, high morality and large heartedness as well. Mere speech in which innuendos have been R made, person at the highest office has been attacked, does not necessarily mean that the relationship has completely broken down and both ends cannot meet together. The high office demands a sagacious, thoughtful, gracious and benevolent attitude from the people at the high position and status. They should have the depth of the sea and the vastness of the horizon to absorb all sorts of follies, mistakes and even indecent conduct and attitude. There are instances in history that people at such high elected offices have been at variance, even belonging to different views and different parties, but in spite of that they have run the Government well and according to the Constitution. The best policy to run smoothly is to be above personalities and personal pride and I

prejudice. In my view the tenor of the speech, in the background which would have subsided with the passage of time, though offensive in nature prima facie had some basis, but did not amount to subversion of the Constitution nor could it create a  complete deadlock or stalemate resulting in collapse of the Constitutional machinery. Subversion of the Constitution is high treason punishable with death. It cannot be determined by referring to the speech alone and by an authority not competent to decide it.

18. Our Constitution maintains the foundation and spirit of the democratic principles enshrined in it. Although it may have a different look than Westminster democratic principles, the spirit and the form is democratic. The Constitution provides for specific powers of the President and the duties of the Prime Minister with a view to keep them within their own boundaries and the limits provided by it. In this regard I would refer to the relevant provisions of the Constitution to illustrate what is the power and position of the President and how the provisions govern the relations between the President and the Prime Minister. The President is the Head of State and represents the unity of the republic ‑‑‑ Article 41. Article 46 enumerates duties of the Prime Minister in relation to the President. Under Article 48 the President is to act on advice of the Prime Minister and the Cabinet. The President is authorised to send back the opinion for reconsideration, but after reconsideration if the opinion is rendered, the President shall act according to it. Article 48(2) provides that notwithstanding anything contained in clause (1) the President, shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so. The President in his discretion or on the advice of the Prime Minister can refer any matter of national importance to the referendum. The President may summon or prorogue either House or both the Houses or the Majlis‑e‑Shoora ‑‑‑ Article 54. Under Article 56 the President may address either House or both the Houses assembled together and for that purpose require the members to attend. The President is empowered to send messages to either House whether with respect to a Bill pending in Majlis‑e‑Shoora (Parliament) or otherwise and a House to which any message is sent, shall at convenient despatch consider any matter required by the message to be taken into consideration. The President shall also address the first session after each general election to the National Assembly and on the commencement of the first session of each year of the Parliament. Under Article 58 the President is empowered to dissolve the National Assembly in the

manner provided therein. The President may make rules in consultation with the Speaker of the National Assembly and the Chairman of the Senate as to the procedure with respect to the joint sitting of and communication between **the two Houses ‑‑‑ Article**72. If a Bill is presented to the President for assent, he may within 30 days give the assent or return it with his own recommendation and advice for amendment. If after reconsideration the joint sitting of the Majlis‑e‑Shoora passes the Bill in original form or in amended form, then the President shall not withhold his assent. The President is also, empowered to promulgate Ordinances when the National Assembly is not in, session ‑‑‑ Article 89. The executive authority of the Federation vests in the President and he exercises the power either directly or through officers subordinate to him in accordance with the Constitution ‑‑‑ Article 90. There shall be a Cabinet of Ministers with the Prime Minister at its head to aid and advise the President in exercise of his functions. The President in his discretion shall appoint from amongst the members of the National Assembly a Prime Minister, who in his opinion is most likely to command the majority of the

House. The Prime Minister shall hold office during the pleasure of the President, but this power will not be exercised by the President unless he is satisfied that the Prime Minister does not command the majority of the House which should be ascertained by the National Assembly in respect of which the President may call its session and ask the Prime Minister to obtain vote of confidence. The Cabinet together with Ministers of State shall be collectively responsible to the National Assembly. The Federal Ministers and the Ministers of State are appointed by the President on the advice of the Prime Minister‑‑­Article 91. Under Article 99 all executive actions of the Federal Government shall be expressed to be taken in the name of the President. Under Article 46 it shall be the duty of the Prime Minister to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation, to furnish such information relating to the administration of the affairs of the Federation and proposals as the President may call for and if the President so requires to submit for the consideration of the Cabinet any matter on which a decision has been taken by the Prime Minister or the Ministers, but which has not been considered by the Cabinet. Thus, it is clear that the President in his functions and duties as provided by the Constitution has to act on the advice of the Prime Minister, the Cabinet and the Ministers. The President is empowered to advise the Cabinet and send messages to the Prime Minister, the Cabinet as well as to the Houses. These basic structures of the Constitution govern the relations between the President and the Prime Minister. They have to work in cooperation with each other irrespective of personal prejudices and difference of opinion. No doubt difference of opinion is a part of democratic set‑up which if exercised in a healthy manner improves and develops the constitutional functioning of the Government and to the benefit of the country. The relationship between the two is so sacred and so intimate in nature that it should not be allowed to be disrupted, collapsed or obstructed by anyone of them on personal grounds. The supreme interest is the governance of the country and also the progress and prosperity of the nation. With this aim the Constitution has provided for a working relationship between the President and the Prime Minister and Cabinet and all functionaries and institutions provided in the Constitution. The basic concept introduced is based on trichotomy of power ‑‑‑ the executive, legislature and the judiciary. The moment the Constitutional authorities transgress from these three pillars and seek aid of outside agencies which are merely to help the executive, the legislature and the judiciary whenever called upon, the trouble starts. None of the functionaries constitutionally vested with power and defined functions should be allowed to take help in their functioning and operation of such organisations and institutions which have no say in the working of the three pillars and institutions under the Constitution. So long these three pillars are made basis for governing the country, I do not think that there can be any defect, any remorse, remonstrance or trouble in the working relationship. The personal likes and dislikes have no place in the Constitution. and the governance of the country. The Constitution does not say that if the President does not like or hates a particular Minister or Prime Minister he must quit or vice versa. Personal likes and dislikes, must give way to the Constitutional provisions. The power under the Constitution cannot be exercised on the basis of prejudice, pride, hatred or friendship. It has to be straight, clean and honest obedience and performance of the duties provided by the Constitution. The relationship between the President and the Prime Minister is subtle and sensitive. It is tender and firm. It should be gentle and strong. The observations of Sidhwa, J., in Khawaja Ahmad Tariq Rahim’s case PLD 1992 Supreme Court 646, particularly paragraphs 10 and 11 fully illustrate the duties and relationship of the.President and Prime Minister as provided by the Constitution.

19. The learned Attorney‑General made great stress on the fact that the speech rendered was of such a nature that there could be no possibility of cooperation between the two. The learned counsel for the petitioner referred to the speech of the President after the dissolution which, according to him, is in no less harsh tone than that of Nawaz Sharif. He further filed a rile containing press reports on the speeches rendered by Mrs. Benazir Bhutto and SardaT Farooq Leghari and other leaders of the People’s Party containing and making harsh remarks against the President. The object of presenting this file was that in the past the leaders of the People’s Party and of opposition have lashed, abused and even used harsher words than Nawaz Sharif. Two wrongs cannot make a thing right. If one has committed a mistake, the others should not repeat the same. He should correct it. Therefore, I am not inclined to look into those documents to come to the conclusion that even after such harsh speeches if the President can cooperate with Mrs. Benazir Bhutto and PDA, why he cannot work alongwith Nawaz Sharif. This factual aspect will not interfere in our decision at this stage because we are more concerned with the Constitutional rather than the personal aspect of the leaders. Mr. S.M. Zafar as referred to Constitutional Law and Administrative Law, Text and Material by David Pollard and David Hugles in which the principles and conventions regarding exercise of monarchical power by the Queen vis‑a‑vis the advice rendered by the Prime Minister has been set out in the following manner:-­

“Rodney Brazier Constitutional Practice ((1988), pp. 145‑58):‑­

The Queen’s usual powers.‑‑‑The Queen normally exercises her formal legal powers on ministerial advice. Asquith admirably summarized matters in a minute to George V in December, 1910

The part to be played by the Crown has happily been settled by the accumulated traditions and the unbroken practice of more than seventy years. It is to act upon the advice of the Ministers who for the time being possess the confidence of the House of Commons, whether that advice does or does not conform to the private and personal judgment of the Sovereign. Ministers will always pay the utmost deference, and give the most serious consideration to any criticism or objection that the Monarch may offer to their policy, but the ultimate decision rests with them, for they, and not the Crown, are responsible to Parliament.” (Quoted originally in Turpin British Government and the Constitution Text Cases and Materials ((1985), pp.76‑77)

A Constitutional monarch will remember, before voicing either advice or warning, that however long may be her experience she does not have to preside over what may be a far from complainant Cabinet, she does not have to defend herself to the public through the media, she does not have to manage the House of Commons, or eventually face the electorate. What may be seen as an ideal policy from Buckingham Palace may simply not be practical politics in the view from Downing Street. The Sovereign will understand, too, that some of the obligations owed to her may also be minor irritants or inconveniences from time to time a hard‑pressed Prime Minister may wish that ideally his weekly thirty‑minute or hour long audience could be **missed deference to other pressures on him (but it is nevertheless rare for that audience not to take place while Parliament**is sitting).

The existence of the rights to advise and to warn must mean that the Queen will have personal views about some political issues which will not coincide with those of the Prime Minister and the Cabinet. Indeed, the opinions of the Queen and of her Government could not always be the same unless she were to undergo a very odd change of heart and mind on the main issues of the day with every change of party Government. The Sovereign may urge her view on the Prime Minister especially at the weekly audience (at which the two are alone and no formal record is kept) ‑‑‑ but in strict confidence, and in the end normally deferring to any contrary view presisted in by the Prime Minister. Any public revelation of disagreement could be damaging to the existing and future relationship between Head of Government and Head of State, for obviously if it became known that the Queen\*has criticized Government policy, she might be taken to be biased against that Government and to be in favour of another.‑

This passage gives an enlightened description of the conventions in the British Parliament. We in our Constitution have provided basic principles in writing  Although conventions cannot play a governing part in exercising the power by the President and Prime Minister, yet in the light and experience which has transformed into conventions we can seek their aid in interpreting the provisions of the Constitution. It confirms that personal pleasure, dislike and hatred have no place in the Constitutional set‑up. The monarch has to respect the advice of the Prime Minister and the Prime Minister and Cabinet have likewise to show their respect and regard. One striking feature pointed out is that a regular meeting between the Queen and Prime Minister is held. The President has a right to counsel, advise and send messages and in exercise of that right he can even ask the Prime Minister and the Ministers to consult him. The Constitution provides basic structure, but the edifice is built by practices and conventions. We do not seem to have developed any such conventions for practising and making the Constitutional provisions workable. The provisions regarding consultation are very important and far‑reaching. If regular consultations between the President and the Prime Minister be made a continuing feature of their working relationship, much of the misunderstanding, differences and difficulties can be sorted out. From the passage quoted above it seems that in UK there is a convention of regular meetings between the Queen and the Prime Minister. We do not know how many meetings the President and Prime Minister have held in a regular manner except whenever they desire to meet each other according to the needs and exigencies. The letters written by the President’s Secretariat show that there have been various queries on many subjects and in many ways, but if the President and the Prime Minister would have developed the convention of meeting each other regularly, perhaps this exercise could have been avoided. It is a healthy tradition and convention which not only has Constitutional backing but creates a working relationship ironing out differences and personal animosities. Frequent meetings do create grounds for  harmony and understanding. In future it should be made a practice that the President and the Prime Minister should regularly meet at fixed intervals which if not rigidly be properly observed. If this procedure would have been adopted perhaps the country would not have seen this crisis.

20. Right of expression and speech is conferred by the Constitution an regulated by law. Every restriction on free speech must pass the test of reasonableness and overriding public interest. Restriction can be imposed and freedom of expression may be curtailed provided it is justified by the “clear and present danger” test enunciated in Saia v. N.Y. (1948) 334 U.S. 558 that the substantive evil must be extremely seirous and the degree of imminence extremely high. The danger should “imminently threaten immediate interference with the lawful and pressing purposes of the law’ requiring immediate step to ensure security of the country. Speech would be unlawful if it is directed to inciting or producing imminent lawless action and is likely to produce such action. Speech and conduct are two different concepts. Speech relates to expression and conduct to action. Speech ends where conduct begins but if both are combined the Court has to draw the dividing line. As held in American Communications Association v. Douds (1950) 339 US 382 the freedom of expression of views is curtailed or restricted when they “threaten clearly and imminently to ripen into conduct against which the public has a right to protect itself’. The concept of “clear and present danger” in USA was liberalised by making “imminence” as a basic test. The following observation made in Whitney v. California 274 US 357 (1927) as quoted in Freedom and the Court by Henry, J. Abraham at page 204 will illustrate the point:‑‑

“Fear of serious injury cannot alone justify suppression of free speech and assembly ... there must be reasonable ground to fear that serious evil will result if free speech is practised. There must be reasonable ground to believe that the danger apprehended is imminent. Therej must be reasonable ground to believe that the evil to be prevented is a serious one ... In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.

Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self‑reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular Government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”

The effect, weight and impact of speech is to be judged from an overall appreciation by looking to its background, the truthful statement made in it and object with which it has been made. If such a speech makes allegation or defames anyone without any justification, but does not create lawlessness, disorder, or threat to security or disruption, it will hardly amount to subversion of the Constitution. In my view the contention that the speech had created the gulf between the parties and had ignited the situation to a point of no return creating deadlock and stalemate does not have any force.

21. The Council of Common Interests is an important Constitutional institution which irons out differences, problems and irritants between the Provinces inter se and the Provinces and the Federation in respect of matters specified in Article 154. The Council is responsible to Majlis‑e‑Shoora, which in joint sitting may from time to time by resolution issue directions through the, Federal Government generally or in particular matters to take action as the Parliament may deem just and proper and such directions shall be binding on the Council. Ground C(i) of the dissolution order specifies that the Council of Common Interests has not discharged its Constitutional functions to exercise its powers particularly in the context of privatisation of industries in relation to the subject‑matter mentioned in Article 154. The petitioner has stated that the Council of Common Interests which had remained a dormant organisation since its creation was activated and three meetings were held on 12‑1‑1991, 21‑3‑1991 and 16‑9‑1991. The Council reached decisions on the apportionment of Indus water at its meeting held on 31‑3‑1991 and approved setting up of Indus Water Authority. It also approved for the first time its rules of procedure. It also prepared for the next meeting of the Council in May, 1993 and pre‑CCI meeting was held with the Chief Ministers. Under this ground reference has been made to privatisation which relates to WAPDA, Electricity and Railways. It was pointed out that WAPDA has not so far been privatised and only an exercise is being carried on to see the feasibility of privatisation. So, is the case with electricity and so far Railways is concerned, there has been no scheme for pirvatisation except that ticketing in certain areas has been privatised. From the correspondence filed by both the parties and the documents brought on record it seems that the Chief Minister of Sindh as late as March, 1993, made a grievance‑‑about the privatisation of **WAPDA.**Such a complaint was also made by the Chief Minister of N.‑W.F.P. The grievances set out do not relate to any other items of conflict in that area. The objections raised were in respect of matters which were yet to be considered and could have been sorted out in future. However, the working, the performance, the actions taken by the Council of Common Interests during the past two years was not commented upon or objected to. In these circumstances, the allegation that the performance was not in accordance with the Constitution or it was not perfect and proper cannot be made a ground for dissolution of the National Assembly. The learned Attorney‑General referring to the observations in Khalid Malik’s case P L D 1991 Kar. I and Khawaja Ahmad Tariq Rahim’s case P L D 1992 SC 646 made in respect of the Council of Common Interests, contended that similar ground mentioned in the Dissolution Order made in 1990 was held to form a basis for dissolution of the Assembly. It may be pointed out that the grounds regarding CCI in the case of 1990 and in the case of 1993 were completely different. While dismissing the National Assembly in 1990 it was stated that the Federal Government had not allowed to convene or to hold the meeting of CCI. There had been protests by three Provinces, but no heed was paid. In fact two Provinces had even filed petitions in Court for convening the meeting of the CCI. In this way the charge was that the Federal Government intentionally obstructed the working of the institution created by the Constitution. In this regard Shaflur Rahman, J. in Khawaja Ahmad Tariq Rahim’s case at page 666 observed as follows:‑‑

“As regards the second ground, we find sufficient correspondence on record to indicate that persistent requests were made by the Provinces for making functional the Constitutional institutions like Council of Common Interests, National Finance Commission with a view to sort out disputes over claims and policy matters concerning the Federation and the Federating Units as such. In spite of the intercession of the President, no heed was paid, Constitutional obligations were not discharged thereby jeopardizing the very existence and sustenance of the Federation.”

In Khalid Malik’s case while dealing with this ground it was observed as follows:‑‑

“The aforesaid correspondence and statements clearly demonstrate that the former Federal Government was not prepared to hold meeting of the CCI although if not all some demands made by the provinces fell within its ambit. This attitude led to confrontation between two provinces and the Federation and there seemed no way out to settle the outstanding demands and issues.”

on the same point Sidhwa, J. in Khawaja Ahmad Tariq Rahim’s case at page 701 observed as follows:‑‑

“Nevertheless, \* the extreme polarisation and political confronation existing between both the parties on almost every issue, could not totally. relieve the Coalition Government from complying with the provisions of the Constitution. In this background, I would hold that there were strong compulsions on the Coalition Government to call the meetings. The failure of the Coalition Government, therefore, to allow the Council of Common Interests to discharge its functions and exercise its powers and to call a meeting of the National Finance Commission, created extreme bitterness and political deadlock between the Federation and the Provinces, contributing to a breakdown in the functional working of the Federal Government. In these circumstances, I would hold that the said matters did constitute proper grounds which the President could have taken into consideration when forming his opinion and that they had a nexus with the breakdown of the Constitutional machinery.”

22 Grounds c(ii) and c(iii) are sufficiently vague. However, so far the working of the National Economic Council and its executive committee is concerned, the petitioner has brought material on record to show that meetings were regularly held and problems were sorted out. The National Economic Council which is an advisory body met regularly every year (20‑5‑1991 and 5‑5‑1SK)2) in accordance with the practice in vogue since 1973 to approve the next year development plan and policies on the basis of comprehensive papers prepared by the Planning Commission and other Ministries concerned. The next meeting was scheduled to be held in May, 1993. Similarly the executive committee of the National Economic Council held meetings regularly at least four times a year with the participation of Provincial Finance and Planning Ministers and other officials. The last three meetings were held on 17‑10‑1992, 11‑2‑1993 and 6‑3‑1993 to approve a large number of projects in all sectors. These grounds, however, do not satisfy the test laid down by this Court for passing an order of dissolution of the National Assembly. Under ground c(iii) of the dissolution order it was stated that the Constitutional powers, rights and functions of the Provinces have been usurped, frustrated and interfered with in violation o! inter alia Article 97. This has been denied by the petitioner and in fact the description is so vast, wide and vague that it can hardly justify the order of dissolution.

23. Clause (d) of the order speaks of maladministration, corruption and nepotism which according to it had reached such proportions in the Federal Government, its various bodies, authorities and other corporations including banks supervised and controlled by the Federal Government, the lack of transparency in the process of privatisation and in the disposal of public/Government properties, that they violate the requirements of the oath(s) of the public representatives together with the Prime Minister, the Ministers and Ministers of State prescribed in the Constitution and prevent the Government from functioning in accordance with the provisions of the Constitution. In the petition while referring to these grounds it has been stated that it does not refer to any fact whatsoever which is a requirement of law for exercise of power under Article 58(2)(b). It was further pleaded that the wholesale condemnation of entire Cabinet indicates that the alleged facts have not been individually considered at all. In the written statement riled by respondent No.1 these allegations were denied and it was stated that the instances of maladministration, corruption, nepotism and various other allegations contained in that para. are numerous and well‑known and based on facts, records, documents and informations which were before the President before passing the order and some of which have been annexed with the written statement as Annexures ‘A’‑A‑12 and B‑R’. The learned Attorney­ General contended that the corruption, nepotism, lack of transparency in the process of privatisation, the sale of Muslim Commercial Bank and cement factories, grant of permission to various banks and misuse of resources of the Government have direct nexus with the order of dissolution. The learned Attorney‑General has referred to these documents which have been annexed to establish the contention raised by him.

24. The word ‘corruption’ has not been defined by any law, but it has diverse meaning and far‑reaching effects on society, Government and the. people. It covers a wide field and can apply to any colour of influence, to any office, any institution, any forum or public. A person working corruptly acts inconsistent with the official duty, the rights of others and the law governing it with intention to obtain an improbable advantage for himself or someone else. Dealing with corruption in Khalid Malik’s case I had observed as follows:‑‑

“This bribe culture has plagued the society to this extent that it has become a way of life. In Anatulay VIII (1988) 2 SCC 602 where Abdul Rehman Antulay, Chief Minister of Maharashtra was prosecuted for corruption Sabyasachi Mukharji, J. laments as follows:‑‑

‘Values in public life and perspective of values in public life, have undergone serious changes and erosion during the last few decades. What was unheard before is common place today. A new value Prientation is being undergone in our life and culture. We are at threshold of the cross‑roads of values. It is, for the sovereign people of this country to settle these conflicts yet the Courts have a vital role to play in these matters.’

The degeneration in all walks of life emanates, from corruption of power and corruption of liberty. Corruption breeds corruption. ‘Corruption of liberty’ leads to ‘liberty of corruption’.”

Corruption and bribery adversely affect the social, moral and political life of the nation. In society rampant with corruption peoples lose faith in the integrity of public administration. In India in 1964 Committee on the Prevention of Corruption known as Sanathanam Committee observed as follows:‑

‘It was represented to us corruption has increased to such an extent that people have started losing faith in the integrity of public administration. We had heard from all sides that corruption, in recent years, spread even to those levels of administration from which it was conspicuously absent in the past. We wish we could confindently and without reservation assert that at the political level Ministers, legislators, party officials were free from the malady. The gcnQral impressions arc unfair and exaggerated. But the very fact that such impressions are there causes damage to social fabric.’

The Committee also observed that there is a popular belief of corruption among all classes and strata which ‘testifies not merely to the fact of corruption but its spread’. Such belief has a social impact causing damage to social fabric.’

The anti‑corruption and penal laws have remained ineffective due to their inherent defect in adequately meeting the fast multitudinous growth of corruption and bribery. Corruption in high places has remained unearthed leading to a popular belief that immunity is attached to them. To combat corruption the whole process and procedure will have to be made effective and institutionalised.”

However, the Supreme Court in Ahmad Tariq Rahim’s case at page 6 observed that the grounds like corruption, nepotism, misuse of banks and violation of Articles 240 and 242 relating to the services may **not**be independently insufficient to warrant such an action (order of dissolution). They can, however, be invoked, referred to and made use of with grounds more relevant like ground (a) (failure of legislative functions of the National Assembly) and (b) ‑‑‑ wilful undermining and impairing the working of the C Constitutional arrangements and usurping the authority of the Provinces and  such institutions resulting in discord, confrontation and deadlock adversely affecting the integrity, solidarity and well‑being of Pakistan. This view is binding on me. In the present case the learned Attorney‑General has pointed! out about the corruption, nepotism and lack of transparency in the process of privatisation of Muslim Commercial Bank and sale of cement factories, but on examination of those documents and the explanation offered by the petitioner the same cannot form an independent ground for dissolution. They, however, i may be taken into consideration provided some substantial, effective and well­recognised grounds as set out in the judgments of this Court are proved and made out against the petitioner.

25. Ground (c) refers to unleashing a reign of terror against the opponents of the Government including political and personal rivals/relatives and mediamen , under the direction, control, collaboration and patronage Of D the petitioner and Ministers leading to a situation where the Government cannot be carried on in accordance with the provisions of the Constitution and law. This charge is too vague to be taken into consideration.

26. Ground (f) is likewise sufficiently vague and cannot give an independent cause for dissolution of the Assembly. In ground (f)(i) it has been stated that the Cabinet has not been taken into confidence or decided upon numerous Ordinances and matters of policy and ground (f)(ii) states that the Federal Ministers have even been called upon not to see the President. In a democratic pattern of Constitution the theory of collective responsibility will be applicable to the working of the Cabinet and the Government. In a parliamentary form of Government the leader of the majority party becomes the Prime Minister and forms the Government. The Cabinet Ministers are appointed by the President on the advice of the Prime Minister. The principle of collective responsibility applies to the Ministers. They may differ inside on an issue, but if the Cabinet has taken a decision, the dissenting Minister in all propriety avoids expressing disagreement in public. The Cabinet decision is binding on all the Ministers whether they agreed or ‘not and whether they were E1\_ present or not\* in the meeting. In Parliament, Functions, Practice and, Procedures by JA.G. Griffith and Michael Ryle at page 23 the principle of I collective responsibility has been explained as follows:‑‑

“The principle of collective responsibility, as applied to Cabinet Ministers, means that each Minister accepts responsibility for the decisions of the whole Cabinet. Inside the Cabinet, a Minister may argue for a different course of action but he is expected not to express, public disagreement with the course decided on though dispensation

may be given to a Minister on ‘ a matter particularly affecting his constituency. If he feels very strongly on a matter he may resign in which case he will have an opportunity to make a statement in  Parliament. This version of the doctrine applies in the simplest case where Ministers are present at the Cabinet meeting where the decision is taken. But it also applies to Cabinet Ministers who are not present and so could not be said to participate in the making of the) decision; and to those decisions of Cabinet Committees which are not required to be endorsed by the full Cabinet and the existence of which, some Ministers may be unaware. The Chairman of each Cabinet Committee decides, after consultation with the Prime Minister (where? the Chairman is not the Prime Minister), whether decisions of the committee may be taken by a dissident Minister to the full Cabinet.”

27. The question that Cabinet has not been taken into confidence seems to be based on certain complaints made by certain Ministers, but if the principle of collective responsibility is applied, such complaints have no substance. The President can seek advice from the Cabinet, Prime Minister and the Ministers, but merely if a Prime Minister calls upon his Ministers not to see the President, a Minister is not bound to obey that desire or order. More instructions, orders or desire of the Prime Minister asking the Ministers not to see the President can hardly be a ground for dissolution of the Assembly. It becomes more of personal in nature than Constitutional. Nobody can stop meeting any person legally, constitutionally or socially unless the law provides for such prohibition. But if any person indulges in such activity, it cannot affect the functioning of the Government. From the documents riled it seems that in spite of the asking of the Prime Minister, the Ministers have frequently been visiting the President and had not cared for such a direction.

28. Grounds (f)(iii) and (iv) relate to financial discipline of the Cabinet and the Government. In this regard several documents have **been**referred to by the learned Attorney‑General, but the learned counsel for the petitioner has referred to the address of the President in December, 1991 and December, 1992, and the report of the World Bank in which financial discipline has not received any adverse comments. In fact it has been appreciated and praised. It was pointed out that the President’s address to the National Assembly is based on the information received by the President’s Secretariat from the Prime Minister’s Secretariat. It is true that it has been a practice or convention in England that the Prime Minster’s office prepares the speech of the Queen. But this convention does not seem to have been followed in Pakistan as the address of the President is prepared in the President’s Secretariat perhaps based on the information received from the Government and the Cabinet. The comments and the suggestions mentioned in the address justify this view. In this regard Mr. Yahya Bakhtiar has riled and referred to the address of the President prior to 1991 from which it is clear that comments and cirticism have been made by the President on the policies of the Government, and surely the same would not have been provided by the Government or the Prime Minister. Considering the practice adopted in our country the President’s address assumes greater importance in the facts and circumstances of this case and that is why the learned counsel for the petitioner has laid great emphasis and placed reliance on this address. Having considered all these 1H aspects of the case, in my view, the financial irregularities could not be an 1H independent ground for dissolving the Assembly.

29. Ground (g) relates to the allegations made by the Begum Nuzhat Asif Nawaz, widow of late Army Chief of Staff. According to it, highlianded treatment was meted out to her husband and the circumstances culminating in his death indicate that the highest functionaries of the Federal Government have been subverting the authority of the Armed Forces and the machinery of the Government and the Constitution itself. The allegations made in it are highly sensitive and security‑orictited. On the face of it they seem to be merely based on suspicion and imaginations. The petitioner while challenging this ground has termed it as a concocted one. The allegation is based on press statement of Begum Nuzhat Asif Nawaz in which she had alleged that her husband was killed by a conspiracy and was poisoned. According to the petitioner the statement was arranged by respondent No.1 in order to discredit the petitioner. A high powered Inquiry Commission consisting of three Judges of the Supreme Court was appointed immediately and although there is quite a lot of dispute between the parties, as to who and at what time it was appointed, but without going into that controversy the fact remains that the Inquiry Commission was appointed and it has submitted its report as well. From para.6 of the written statement dealing with this ground and averment of the petitioner it seems that entire reliance has been placed on the statement of Begum Nuzhat Asif Nawaz and it has been reiterated that the order refers inter alia to the highhanded treatment meted out to the late Chief of Army Staff. This allegation is based merely on the statement of Begum Nuzhat Asif Nawaz which was made three months after the death of her husband. One wonders how this particular ground can have any nexus with the order of dissolution. From the press clippings and statements which have been referred to by both the learned counsel and for that reason I am referring them, it seems that two persons, one a Cabinet Minister and the other a high‑ranking Government official in the Secret Service were accused of planning and committing murder. From the letters exchanged between the petitioner and the President’s Secretariat it seems that those two persons were asked to be removed by the President, but no positive reply was received from the petitioner and instead he made the speech of 17‑4‑1993. The statement and allegation made by Begum Nuzhat Asif Nawaz should not have been given that much importance or even made a ground for dissolution, and it seems that everything which was found on the ground was picked up to justify the action. on query made, the learned Attorney‑General explained that the **statement had created a lot of agitation**and dissatisfaction amongst the Army and it was therefore, necessary that serious notice of the fact may have been taken. True

that the statement was unfortunately published and publicised and there must have been some reaction or whispering in the Armed Forces as would have been in general public because the allegation itself was very sensational, but to say that this had created dissatisfaction and uneasiness among the Army is without any justification. Not a single instance of such dissatisfaction, agitation or apprehension that if immediate step is not taken some unconstitutional incident may happen or the security of the State will be jeopardised has been brought on the record. Undue importance has been given and undue

exploitation has been made of the situation which has only spoiled the atmosphere at the political and governmental level. Such matters are not to be brought to the public and exhibited in the manner it has been done. The immediate action taken by constituting a Commission was sufficient to subside this uneasiness which had disturbed the mind of respondent No.1 Many important issues and crises do arise and even more serious allegations are made and once a Commission is appointed, it comes under control or cools down. In such circumstances, in my view, this was completely irrelevant ground i and seems to have been made merely to overcharge an already charged atmospere by introducing Army interference arid dissatisfaction.

30. Ground (g) is merely a summing up and residuary ground depending upon the aforesaid grounds which have been dealt with. It also alleges that due to aforestated grounds the Government of the Federation is not in a position to meet properly and positively the threat to security and integrity of Pakistan and further due to economic crisis fresh mandate from the people of Pakistan is required. Two questions arise whether in the situation enumerated above the Government cannot be carried on in accordance with the provisions of the Constitution and secondly, does this situation require a fresh public mandate, These are the requirements of Article 58(2)(b). The learned counsel for the petitioner has argued that these are two independent conditions and unless both are satisfied no order of dissolution can be passed. In my humble view both the conditions are inter‑related and inter‑dependent. They are inseparable and indivisible. The second condition viz., “an appeal to the electorate is necessary” limits and circumscribes the dimension and scope of the first condition. The facts attracting the first condition should be so dangerous and explosive that they call for a fresh mandate. The opinion to be formed whether fresh mandate is required will be subjective in nature which can be judicially reviewed. In the present case as the first condition was not satisfied, the second condition could not be invoked.

31. The learned Attorney‑General has contended that the order of dissolution is similar to the order of dissolution passed in 1990 and, therefore, it should be upheld in the light of the observations made in Khawaja Ahmad Tariq Rahim’s case. This contention is misconceived. Some of the grounds may have similarity in description but the grounds on which the order of dissolution of 1990 was upheld are not available in the present case. In Khawaja Ahmad Tariq Rahim’s case this Court had observed that “grounds like “C” (Corruption and nepotism), “e(ii)” (misuse of authority, resources of Government including statutory corporations and banks for ‘political end and personal gains) and “e(iii)” (undermining civil services and disregarding Articles 240 and 242) may not. have been independently sufficient to warrant such action. They can, however, be invoked, referred to and made use alongwith grounds more relevant like “a” (scandalous horse‑trading for political gains and furtherance of personal interest and failure to discharge legislative business othei than Finance Bill) and “b”. (Council of Common Interests and National Finance Commission was not allowed to function) “which by themselves are sufficient to justify the action taken”. Ground “a” reproduced above is not available in the present case. The difference in charge “b” relating to CCI in both the orders has been explained earlier.

32. Dr. Farooq Hasan, the learned counsel for the petitioner in Petition No. 12 of 1993 contended that as the Speaker had summoned the requisitioned K meeting of the Assembly under Article 54(3), the President could not have dissolved it. Under this provision Speaker can summon the meeting of the National Assembly and prorogue it. Article 54(3) does not limit the power of the President to dissolve the Assembly.

33. ‘For the aforesaid reasons as the case does not fall within the ambit of Article 58(2)(b) and there being no valid reason to refuse restoration of the Assembly, the petition is allowed in terms of the short order, dated 26‑5‑1993. The impugned order is declared to have been passed without lawful authority and of no legal effect. As a consequence, the National Assembly, Prime Minister and the Cabinet shall stand restored and entitled to function as immediately before the impugned order was passed. All steps taken pursuant to the order, dated 18‑4‑1993 passed under Article 58(2)(b) of the Constitution such as the appointment of the Care‑taker Cabinet etc. will, therefore, be of no legal effect. However, all orders passed, acts done and measures taken in the meanwhile by the Care‑taker Government, which have been done, taken and given effect to in accordance with the terms of the Constitution and were required to be done or taken for the ordinary orderly running of the State shall all be deemed to have been validly and legally done.

SAEEDUZZAMAN SIDDIQUI, J.‑‑‑The abovementioned petitions **under Article**184(3) of the Constitution of Islamic Republic of Pakistan (hereinafter to be referred as “the Constitution” only) are filed by the petitioners to challenge the dissolution of National Assembly of Pakistan, by the President, in exercise of his powers under Article 58(2)(b) of the Constitution on 18‑4‑1993. The first mentioned petition is filed by the deposed Prime Minister, the second and third by two former members of dissolved National Assembly and the last one by an advocate.

The learned Attorney‑General and Mr. S.M. War, the learned counsel for the Care‑taker Prime Minister have jointly challenged the maintainability of these petitions under Article 184(3) of the Constitution. The learned Attorney‑General contended that by dismissal of the Federal Cabinet and dissolution of National Assembly no fundamental right of any of the petitioners guaranteed under Chapter 1 of Part 11 of the Constitution has been violated, so as to attract the jurisdiction of this Court under Article 184(3) of the Constitution. It is also contended by the learned Attorney‑General that the freedom of Association guaranteed under Article 17 of the Constitution is restricted in its application to the formation of a political party and its membership which does not include the right to get elected to Parliament or to continue as member thereof. It is, accordingly, contended by the learned Attorney‑General that dismissal of the Federal Cabinet and the dissolution of the National Assembly did not give rise to the infringement of any of the fundamental rights of the petitioners so as to entitle them to invoke the jurisdiction of this Court under Article 184(3) of the Constitution. Supplementing the above contentions of learned Attorney‑General Mr. S. M. War, the learned counsel for Care‑taker Prime Minister, argued that in order to attract the jurisdiction of this Court under Article 184(3) of the Constitution, two essential conditions must be shown to exist in the case. Firstly, that the case involves a question of public importance and, secondly, the impugned order/action has violated any of the Fundamental Rights guaranteed under Chapter I of Part 11 of the Constitution. Mr. S.M. Zafar while conceding that the questions involved in the present petitions, may fall in the category of issues of public importance, very vehemently contended that this fact alone would not make these petitions maintainable under Article 184(3) of the Constitution, as the second important jurisdictional requirement of the case, namely, the infringement of the Fundamental Rights guaranteed in Chapter I of Part II of the Constitution is non‑existent in the case. The learned counsel went on to argue that under the stress of issue of public importance, this Court would not get involved in a case which did not relate to the enforcement of any of the Fundamental Rights. According to Mr. S.M. War, the order of dissolution of National Assembly passed by the President is’,‑bot referable to any of the Fundamental Rights mentioned in Chapter 1, Part 11 of the Constitution so as **to make out**a case of infringement of Fundamental Rights. The learned counsel relied on the provisions of the Constitution relating to the dissolution of National Assembly on the advice of Prime Minister, and contended that it could not be disputed that in the event of dissolution of National Assembly on the advice of Prime Minister, no petition either under Article 199 or 184(3) of the Constitution could be filed to challenge such dissolution. This fact, according to Mr. S.M. Zafar, supports the contention of respondents that no vested right could be claimed by the members of the National Assembly in respect of the tenure of National Assembly prescribed under the Constitution. With reference to rights guaranteed under Article, 17 of the Constitution to form a Political Party and to be a member thereof, Mr. S.M. Zafar, contended that so long a Political Party is not obstructed in taking part in the political process, which, according to learned counsel, terminates with the holding of election and induction of elected persons into Assemblies as members thereof, there cannot conceivably be any complaint regarding violation of the right of freedom of Association guaranteed under Article 17 of the Constitution. The learned counsel further contended that if the Court finds that the impugned action of President violated some provisions of the Constitution other than those relating to Fundamental Rights then the proper course for the petitioner will be to challenge the same in a properly constituted proceeding before the High Court under Article 199 of the Constitution and not under Article 184(3), before this Court.

Replying to the above preliminary objections of the respondents, Mr. Khalid Anwar, the learned counsel for former Prime Minister contended that sub‑clause (2) of Article 17 of the Constitution which guarantees the right to form and to become a member of a Political Party is a peculiarity of our Constitution, as no other Constitution of the world guaranteed such a right specifically under the Fundamental Right of freedom of Association. The learned counsel contended that specific mention of the right to form and to become a member of a Political Party in Article 17 of the Constitution, therefore, has to be given a special treatment in the scheme of our Constitution. , On the above premises, Mr. Khalid Anwar contended that it would not be correct to equate this specific right with the ordinary right of freedom of Association guaranteed under Article 17 (supra). The learned counsel further contended that in addition to the right to form and become a member of a Political Party, our Constitution also guaranteed Political Justice as a fundamental right, as would appear from the Objectives Resolution, which, now forms part of our Constitution in the shape of Article 2A. According to learned counsel the political activity of a Political Party does not terminate with the election of its members to the Assembly as election to Assembly is only a means and not the end for the objects of a Political Party. The learned counsel in support of his above contentions relied on the two decisions of this Court reported as Miss Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416 and Miss Benazir Bhutto v. Federation of Pakistan PLD 1989 SC

66. The contentions of the learned counsel for the petitioners are not without force.

The right to form a Political Party and to become its member has been specifically conferred by Article 17 of our Constitution. Our attention has not been drawn to any other contemporary Constitutional document in which a right to form a ‘Political Party’ and to become its member has been specifically guaranteed as a fundamental right under the concept of freedom of Association. It is a well‑established principle of interpretation that no surplusage or redundancy is to be attributed to the legislature, muchless to the framers of the Constitution. The Constitution is the basic and an organic document and therefore, every word used therein has to be assigned some meaning. Again the Courts while interperting a provision of the Constitution relating to enforcement of Fundamental Right, will lean towards its more liberal and beneficial construction. Since the right to form a Political Party and to become its member has been specifically guaranteed under Article 17 of the Constitution, it has to be given specific meaning apart from the general right of freedom of Association mentioned in Article 17 (supra). The expression ‘Political Party’ is not defined in the Constitution. However, this expression has been defined in section 2(c) of the Political Parties Act of 1962, as follows:‑‑

(c         “Political Party’ includes a group or combination of persons who are operating for the purpose of propagating any political opinion or indulging in any other political activity.”

The word ‘Political’ is defined in Concise Oxford Dictionary, as follows:

“(1)      of or affecting the State or its Government; of public affairs; of     politics;

(2)        (of person) engaged in civil administration;

(3)        having an organized form of society or Government;

(4)        belonging to, or taking, a side in politics; relating to person’s or    organization’s status or influence (a political decision).

(5) …………………..

The words ‘Political’ and ‘Political Party’ are terms of Political Science. Therefore, it will be advantageous to ascertain as to how these terms are understood by a student of Political Science. In Corpus Juris Secundum Volume 72, page 222, the word ‘Political’ is explained as follows:‑‑

“POLITICAL.‑‑‑A word of broad meaning, said to have many shades of meaning. In its higher and true sense ‘Political’ means that which pertains to the Government of a nation. So used, ‘political’ is defined to mean belonging to the science of Government; treating of polity or politics; as political theories; of or pertaining to the conduct of Government; of or pertaining to, or incidental to the exercise of, functions vested in those charged with the conduct of the Government; pertaining to policy or the administration of Government; relating to the management of affairs of State.

‘Politican is also defined to mean having or conforming to, a polity, or settled system of administration, as a political body or Government; having an organized system of Government, administering a polity, as a fully developed political community.

In a generic sense, ‘political’ means of or pertaining to the exercise of the rights and privileges or the influence by which individuals of a State seek to determine or control its public policy‑, having to do with the organization or action of individuals, parties, or interests which seek to control the appointment or action of those who manage the affairs of a State.

The term ‘political’ in its broadest sense includes the entire system of laws, Constitutional and statutory, of a Government, and should not be narrowed so as to be exclusively applied to groups and parties advocating political views or policies.

In its ordinary meaning the term is not limited to something pertaining merely to the actual management of a Government by individuals for the time holding office thereunder, but the essential significance in proper and ordinary use of the word includes anything pertaining to the establishment of a form of Government.”

Similarly, the expression “Political Party” is defined in Corpus **Juris Secundum,**in Volume 29 at page 107 as follows:‑‑

“in ascertaining the meaning of the words ‘political party, in the absence of a statutory definition, resort must be had to the generally accepted meaning of the term, which has been defined as an unincorporated vpluntary association of persons sponsoring certain ideas of Government; a body of individuals banded together for the propagation of the political principles or beliefs that they desire to have incorporated into the public policies of the Government; a body of people contending for antagonistic or rival opinions or policies in a community or society, especially one of the opposing political organisations striving for supremacy in a State; a company or number of persons ranged on one side or united in opinion or des gn in opposition to others in the community‑, a number of persons united in opinion or action, as distinguished from, or opposite to, the rest of a community or association, especially one of the parts into which a people is divided on questions of public policy‑, those who favour, or           are united to promote certain views or opinions. A political party has  also been defined as an association of voters believing in certain principles of Government, formed to urge the adoption and execution of such principles in Governmental affairs through officers of like belief‑, a body of men associated for the purpose of furnishing and

maintaining the prevalence of certain political principles or beliefs in the public policies of the Government; a body of men united for          promoting, by their joint endeavour, a national interest on some particular principle in which they are all agreed; a voluntary             association for political purposes; a voluntary association of electors,           having an organization and committee, and having distinctive opinions             on some or all of the leading political questions of controversy in the State, and attempting through its organization to elect officers of its own party faith, and make its political principles the policy of the Government.”

            This Court in the case of Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416 while considering the scope of the expression “Political Party” in the context of rights guaranteed under Article 17(2) of the Constitution and the restriction imposed by the Political Parties Act, observed as follows:‑‑

“Reading Article 17(2) of the Constitution as a whole it not only guarantees the right to form or be a member, of a political party but also to operate as a political party. As earlier held, the words “right to form” is not only confined to its formation but to its function as a political party. The political party, according to its texture, of being an aggregate of citizens composing the party can exercise the other rights guaranteed under the Constitution like an individual citizen. Again the forming of a political party necessarily implies the carrying on of all its activities as otherwise the formation itself would be of no consequence. In other words the functioning is implicit in the formation of the party.”

In a later case reported as Benazir Bhutto v. Federation of Pakistan PLD 1989 SC 66, this Court while examining the effect of amended section 21 of the Political Parties Act, 1962 on the rights of a Political Party guaranteed under Article 17(2) of the Constitution, held as follows:‑‑

“Our conclusion therefore, is that section 21 of the Act as amended by Ordinances Nos. 11 and VIII of 1985, is violative of Fundamental Right ‘contained in Article 17(2) of the Constitution in so far it fails to recognize the existence and participation of the Political Parties in the process of elections, particularly in the matter of allocation of symbols and is for that reason void to that extent. Every Political Party is eligible to participate in the Elections to every seat in the National and the Provincial Assemblies scheduled to be held on the 16th of November, 1988. The Political Parties shall be entitled to avail of the provisions of sub‑rule (2) of rule 9 of the Rules to seek allotment of any of the prescribed symbols.”

From the preceding discussion, it clearly emerges that a Political Party is a voluntary association of persons, formed with the object of propagating a definite political opinion/view on a matter of public importance, having an ultimate aim to get into the power seat of a Government, through the process of election, in order to give effect to its programme. At this stage it will be beneficial to reproduce here the provisions of Article 17(2) of the Constitution which is as follows:‑

“(2)      Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.”

From the language of Article 17(2) (supra) it is quite clear that not only the formation and membership of a Political Party is within the contemplation of this Article but its operation and functioning is also within its purview. This is quite evident from the latter part of Article 17(2) which provides that when the Federal Government declares that a Political Party has been formed or is operating in a manner prejudicial to the soveriegnty or integrity of Pakistan, it shall refer the matter to this Court for decision. The word “operation” is defined in Concise Oxford Dictionary as follows:‑‑

.operate;

(1)        be in action, produce an effect, exercise influence....

(2)        perform surgical or other operation (on); (try to) execute purpose; (Mil) carry on strategic movements; (of stockbroker etc.) buy and sell esp. with a view to influencing prices.

(3)        bring about, accomplish; manage, work, conduct ........

In Black’s Law Dictionary, the word “operation” is defined as under:‑‑

.operate. To perform a function, or operation, or produce an effect.

Operation.

Exertion of power; the process of operating or mode of action; an effect brought about in accordance with a definite plan; action; activity.”

There is nothing in the language of Article 17(2) (supra) to suggest F that the word “‘operation” is to be given any restricted meaning. I am, therefore, of the View that the operation of a political party in its ambit includes the entire political process beginning from the formation of the party, propagation of its views on matters of public importance, taking part in elections and when voted to power by a popular vote to form the Government of its choice and to complete its terms in the office in accordance with the provisions of the Constitution. It needs no mention here that a long, vigorous and sustained effort is needed by a Political Party to win public support to its programme and sometimes it may require a lifetime effort by a Political Party to educate public opinion on issues of public importance propagated by it. Therefore, to get elected to Assemblies and to form the Government of its choice, in the even of success, is not only the paramount and cherished goal of every Political Q. Party but it is inherent in its operation and functioning.

Considering in the above context, the right to form a Political Party guaranteed under Article 17(2) of the Constitution necessarily includes in it, the right to continue in power, if directly elected by the people, for the full tenure, subject to other provisions of the Constitution. It, therefore, necessarily follows that a duly elected political Government if ousted or interrupted from continuing in power through unconstitutional means, can legitimately make a grievance that its Fundamental Right under Article 17(2) of the Constitution has been violated. If the contention of learned Attorney‑General and the counsel for respondent No.3 is accepted, the role of Political Parties will be reduced to a mere debating societies engaged in academic discussions on political issues of public importance, which in my humble opinion was not in the contemplation of the framers of the Constitution while specifically guaranteeing the right to form a Political Party under Article 17(2) of the Constitution.

Mr. S.M. War also contended that the fact that Assembly could be dissolved, at any time during its tenure at the advice of Prime Minister, shows that the members of National Assembly cannot claim any vested right in respect of rive years’ tenure of the Assembly prescribed under the Constitution. The argument of the learned counsel is not of much relevance. The right to continue as member of National Assembly for a period of five years is subject to other provisions of the Constitution including those relating to its dissolution. Therefore, if the Assembly is dissolved validly in accordance with the provisions of the Constitution, no vested right could be claimed against such an action. The right to continue as member of the Assembly would only arise when the dissolution takes place contrary to the provisions of the constitution. The dissolution of Assembly on the advice of Prime Minister is specifically provided for in the Constitution, and as such no question of Fundamental Right of any member of the Assembly being infringed by such dissolution arises. Secondly, the Prime Minister as leader of the House and as head of the Government, represents the will of the majority of the members of

the National Assembly. When the Prime Minister advises dissolution of Assembly, he in fact reflects the will of the majority of the members of the H Assembly. Therefore, in such a situation the minority cannot prevent dissolution on the ground of violation of their rights as the National Assembly without majority of its members will otherwise become unrepresentative.

Mr. Khalid Anwar, the learned counsel for the petitioner has also contended that the ‘political justice’ as enshrined in Article 2A of the Constitution is declared as a fundamental right, therefore, on this score too the petitioner, whose political rights have been infringed by the impugned action, is entitled to maintain the petition under Article 184(3) of the Constitution. It is not necessary to decide here this contention of Mr. Khalid Anwar, in view of my above findings that the right to form a Political Party mentioned under  Article 17(2) of the Constitution necessarily implies the right of a I it Party duly voted to power in an election, to continue as such, in accordance with the provisions of the Constitution.

. I am, therefore, of the view that if the petitioner, who was heading the Government of the Federation, formed by a Political Party, on the. basis of its majority in the National Assembly, succeeds in showing that his right to continue in the Government was disrupted or discontinued illegally and  through unconstitutional means, he can legitimately make a grievance about violation of his fundamental rights guaranteed under Article 17(2) (supra) and can also maintain the petition under Article 184(3) of the Constitution before this Court to challenge the impugned action. It may be stated here that both, the learned Attorney‑General and the counsel for respondent No .3, conceded before us that the issues involved in the above petition are certainly of great public importance. The petitioner has specifically alleged, in his petition, that his majority Government was dismissed and the National Assembly was dissolved by the President on 18‑4‑1993 illegally and unconstitutionally. If these allegations are established, the petition will be maintainable under Article 184(3) of the Constitution in view of the preceding discussion.

I now proceed to examine the validity of the Order of the President, dated 18‑4‑1993, dissolving the National Assembly and dismissing the Prime Minister and the Federal Cabinet. It reads as follows:‑‑‑

“The President having considered the situation in the country, the events that have taken place and the circumstances, the contents and consequences of the Prime Minister’s speech on 17th April, 1993 and among others for the reasons mentioned below is of the opinion that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary:‑‑‑

(a)        The mass resignation of the members of the Opposition and of     considerable numbers from the Treasury Benches, including several             Ministers, inter alia, showing their desire to seek fresh mandate from             the people have resulted in the Government of the Federation and the National Assembly losing the confidence of the people, and that the         dissension therein, has nullified its mandate.

(b)                    The Prime Minister held meetings with the President in March and April and the last on 14th April, 1993 when the President urged him to take positive steps to resolve the grave internal and international problems confronting the country and the nation was anxiously looking forward to the announcement of concrete measures by the Government to improve the situation. Instead, the Prime Minister in his speech on 17th April, 1993 chose to divert the people’s attention by making false \* and malicious allegations against the President of Pakistan who is Head of State and represents the unity of the Republic. The tenor of the speech was that the Government could not be carried on in accordance with the provisions of the Constitution and he advanced his own reasons and theory for the same which reasons and theory, in fact, are unwarranted and misleading. The Prime Minister tried to cover up the failures and defaults of the Government *although he*was repeatedly apprised of the real reasons in this behalf, which he even accepted and agreed to rectify by specific measures on urgent basis. Further, the Prime Minister’s speech is tantamount to a call for agitation and in any case the speech and his conduct amounts to subversion of the Constitution.

(c)        Under the Constitution the Federation and the Provinces are required to exercise their executive and legislative authority as demarcated and defined and there are specific provisions and institutions to ensure its working in the interests of the integrity, sovereignty, solidarity and well‑being of the Federation and to protect the autonomy granted to the Provinces by creating specific Constitutional institutions consisting of Federal and Provincial representatives, but the Government of the Federation has failed to uphold and protect these, as required, in that, inter alia:

(i)         The Council of Common Interests under Article 153 ‘which is responsible only to Parliament has not discharged its Constitutional functions to exercise its powers as required by Articles 153 and 154, and in relation to Article 161, and particularly in the context of privatisation of industries in relation to item 3 of Part 11 of the Federal Legislative List and item 34,of the Concurrent Legislative List.

(ii)        The National Economic Council under Article 156, and its Executive Committee, has been largely bypassed, inter alia, in the formulation of plans in respect of financial, commercial, social and economic policies.

(iii)       Constitutional powers, rights and functions of the Provinces have been usurped, frustrated and interfered with in violation of inter alia Article 97.,

(d)       Mal-administration, corruption and nepotism have reached such proportions in the Federal Government, its various bodies, authorities and other corporations including banks supervised and controlled by the Federal Government, the lack of transparency in the process of privatisation and in the disposal of public/Government properties, that they violate the requirements of the Oath(s) of the public representatives together with the Prime Minister, the Ministers and Ministers of State prescribed in the Constitution and prevent the Government from functioning in accordance with the provisions of the Constitution.

(e)        The functionaries, authorities and agencies of the Government under the direction, control, collaboration and patronage of the Prime Minister and Ministers have unleashed a reign of terror against the opponents of the Government including political and personal rivals/relatives, and media men, thus creating a situation wherein the Government cannot be carried on in accordance with the provisions of the Constitution and the law.

(f) In violation of the provisions of‑the Constitution:‑‑‑

(i)         The Cabinet has not been taken into confidence or decided upon

            numerous Ordinances and matters of policy.

(ii)        Federal Ministers have for a period even been called upon not to see

            the President.

(iii)       Resources and agencies of the Government of the Federation, including statutory corporations, authorities and banks, have been misused for political ends and purposes and for personal gain.

(iv)       There has been massive wastage and dissipation of public funds and assets at the cost of the national exchequer without legal or valid justification resulting in increased deficit financing and indebtedness, both domestic and international, and adversely affecting the national interest including defence.

(v)        Articles 240 and 242 have been disregarded in respect of the Civil           Services of Pakistan.

(g)        The serious allegations made by Beguin Nuzhat Asif Nawaz as to the highhanded treatment meted out to her husband, the late Army Chief of Staff, and the further allegations as to the circumstances culminating in his death indicate that the highest functionaries of the Federal Government have been subverting the authority of the Armed Forces and the machinery of the Government and the Constitution itself.

(h)       The Government of the Federation for the above reasons, inter alia, is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic situation confronting the country, necessitating the requirement of a fresh mandate from the people of Pakistan.

2.         Now therefore 1, Ghulam Ishaq Khan, President of Islamic Republic of Pakistan in exercise of the powers conferred on me by clause (2)(b) of Article 58 of the Constitution of the Islamic Republic of Pakistan and all other powers enabling me, hereby dissolve the National Assembly with immediate effect; and dismiss the Prime Minister and the Cabinet who shall cease to hold office forthwith.”

Mr. Khalid Anwar, the learned counsel for the petitioner, contended before us that none of the grounds mentioned in the above order of the President bears any nexus to the preconditions mentioned in Article 58(2)(b) of the Constitution, for exercise of the power by the President to dissolve the National Assembly. The learned counsel argued that the petitioner throughout the tenure of the office of Prime Minister enjoyed full confidence and support of the majority of the members of the National Assembly, and the conditions prevailing on 18‑4‑1993 when the Assembly was dissolved by the President, were not such that it could be said by any process of reasoning that the Government of Federation could not be carried on in accordance with the Constitution and an appeal to the electorate was necessary. Mr. Khalid Anwar contended that the two objective conditions mentioned in Article 58(2)(b) of the Constitution which were sine qua non for exercise of power by the President under Article 58(2)(b) (supra), were totally wanting in the present case and as such the dissolution order cannot be justified on Constitutional plane. The learned counsel further contended that the Constitution envisages a system of Government based on the concept of Parliamentary democracy in which the Prime Minister is answerable to the Parliament alone, and as such, the President while exercising his powers under Article 58(2)(b) of the Constitution could not rely on any shortcomings in the working of the Government of the petitioner, as a ground for dissolving the National Assembly. Mr. Khalid Anwar contended that in discharge of all his executive functions under the Constitution, except those in respect whereof the Constitution specifically authorises him to act in his discretion, the President’ is bound to act on the advice of Prime Minister or the Cabinet. This fact according to Mr. Khalid Anwar, fully demonstrates that in matters of policy­making and day to day administration of the Government, the Prime Minister is neither answerable to President nor he acts as a subordinate of the President. Mr. Khalid Anwar further contended that the order passed by the President, on 18‑4‑1993, is unconstitutional and mala ride on its face, as the President had no power to dissolve the Assembly when its session was summoned by the. Speaker. Relying on Article 54(3) of the Constitution, the learned counsel contended that when a session of National Assembly is summoned by the Speaker on the requisition of 1/4th of its members, he alone **under**the Constitution is competent to prorogue such a session of the Assembly. The learned counsel, accordingly, contended that the President by its pre‑emptive order of dissolution of National Assembly in fact usurped the exclusive power of Speaker under Article 54(3) (supra). According to Mr. Khalid Anwar, the power to dissolve the National Assembly under Article 58(2)(b) (supra) became dormant as soon as the Session of the National Assembly was summoned by the Speaker and this power could only be exercised by the President after the requisitioned session of the Assembly was prorogued by the Speaker. Mr. Khalid Anwar further contended that even otherwise the grounds mentioned in the order of dissolution were untenable and an afterthought as the President as late as 22‑12‑1992, in his speech delivered on the occasion of the first session of the year of the Parliament had praised the performance of the Government of the petitioner in all the fields. Mr. Khalid Anwar referred in detail to the events and development in the country during the three months period prior to the dissolution of Assembly both with the help of Newspaper reports and other material on record before us, and contended that in the back drop of these events when the petitioner met with the President on 14‑4‑1993, the irritants were removed. In this connection the learned counsel referred to the Press Release issued by the President’s Secretariat on the same day as well as the draft communique prepared by the Prime Minister’s ‘Secretariat, produced in Court by respondents, and contended that there is no indication in these documents that any deadlock or stalemate had arisen which rendered the working of the Federal Government in accordance with the Constitution impossible. On the contrary, according to Mr. Khalid Anwar, these documents clearly show that the outstanding issues were satisfactorily resolved and the petitioner had assured the President to implement the decision taken in the meeting held on 14‑4‑1993 in due course of time. Mr. Khalid Anwar further contended that even otherwise, the extreme action of dissolution of Assembly was totally uncalled for, As the shortcomings pointed out in the dissolution order could be remedied by resort to various Constitutional options available to President under the Scheme of the Constitution. On the above premises, Mr. Khalid Anwar contended that the order of dissolution of ‑Assembly was wholly uncalled for, unconstitutional, arbitrary and based on extraneous reasons.

Mr. Yahya Bakhtiar, the senior counsel of the petitioner, supporting the arguments of Mr. Khalid Anwar, contended that the President of Pakistan, not being a directly elected person, is neither answerable to the Parliament nor to the people, under the Constitution. Such a Constitutional figure head, according to him, cannot claim supremacy over the Prime Minister, who is directly elected by the people and is answerable to Parliament for all his acts. The learned counsel also made a collateral attack on the constitutionality of 8th Amendment in the Constitution as well as the appointment of the President, who according to learned counsel, having been elected as President for the un expired period of the term of the office of President mentioned in clause 7 of Article 41 of the Constitution, has ceased to be the President on the expiry of that period.

Dr. Farooq Hassan, another learned counsel for one of the petitioners in the above cases, contended that President of Pakistan under the Constitution has a very limited role to play. According to Dr. Hassan, the President, in the scheme of Constitution, cannot impose his will on the Prime Minister, in so far the working of the Government is concerned. By reference to various provisions of the Constitution, the learned counsel contended that in all matters of administration of State, the President is bound by the advice of the Prime Minister and not the vice versa. The learned counsel also referred to the grounds of dissolution mentioned in the order dated 18‑4‑1993, and contended that there is nothing in the above order to indicate that the Assembly had lost its mandate or that the working of the National Assembly was such that it no more represented the will of the electorate.

            In reply to the above contentions of the petitioners, Mr. Aziz A. Munshi, the learned Attorney‑General, contended that President dissolved the National Assembly on 18‑4‑1993, in exercise of his discretion under Article 58(2)(b) of the Constitution and this discretion vesting in the President under the Constitution is not subject to any supervisory control of the Courts.

The Courts, according to the learned Attorney‑General in exercise of their power of judicial review, as laid down in the cases of Federation of Pakistan v. Haji Saifullah PLD 1989 SC 166 which was reiterated, with approval, in the case of Khawaja Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646, are only entitled to examine that the grounds of dissolution mentioned by the President in his order bear some nexus to the conditions prescribed under Article 58(2)(b) (supra) and that there was some material available before the President in support of the grounds mentioned in the dissolution order. The learned Attorney‑General went on to argue that when once the President had formed the opinion on the basis‑ of the material before him, that a situation had arisen, in which the Federal Government could not be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary, he entered the domain of his discretion under Article 58(2)(b) (supra) which could not be controlled or circumscribed by the existence of any other alternative course or remedy under the Constitution. The learned Attorney‑General referred to the voluminous file ‘ s produced before us, containing mostly the press reports and some letters and correspondence exchanged between the President’s Secretariat and Prime Minister’s Secretariat, in an attempt to show that the grounds mentioned in the dissolution order not only bore nexus to the conditions prescribed under Article 58(2)(b) (supra) but that there was enough material before the President in support of the grounds mentioned in the dissolution order. Replying to the contention of the petitioner that in every case where the President exercises his power under Article 58(2)(b) of the Constitution, the existence of two distinct and separate conditions, namely, (i) that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution, and that (a) an appeal to electorate is necessary, are sine qua non for exercise of such power by the President, the learned Attorney‑General contended, that both these conditions in effect are one and the same and in other words one is the corollary of the other. In the alternative, the learned Attorney‑General contended that even if the Court considers that both these conditions must be satisfied as distinct and separate jurisdictional requirement, before power was exercised by the President under Article 58(2)(b) of the Constitution, they were fully complied with in the present case, as besides the deadlock and stalemate created in the functioning of the Government on account of acts of commission and omission of the petitioner, the Assembly had also lost its representative character as an elected body on account of mass resignations of members of the National Assembly. The learned Attorney‑General very vehemently argued that apart from the facts stated in the dissolution order, the speech of Prime Minister delivered on the electronic media on 17‑4‑1993, itself amounted to a complete deadlock and a stalemate, as after the above speech in which the petitioner described the President as a conspirator and a person responsible for destabilising his Government, it could not be expected that the President would be able to discharge his Constitutional role qua the Government of the petitioner. This fact alone, according to learned Attorney‑General, was sufficient for the President to conclude that a situation has arisen is which the Federal Government could not be carried on in accordance with the provisions of the Constitution. Elaborating his above submission, the learned Attorney­ General contended that the President, in his capacity as the Head of the State and representing the unity of Federation, has the Constitutional right to advise, warn and be consulted in the running and management of the affairs of the Federal Government. According to learned Attorney‑General, this advisory and consultative role of the President under the Constitution could not be performed effectively after the speech of Prime Minister, dated 17‑4‑1993. The learned Attorney‑General repeatedly argued that the speech of Prime Minister on 17‑4‑1993, amounted to an act of defamation against the President, which besides being actionable under ordinary law amounted to subversion of the Constitution. These circumstances, according to learned Attorney‑General, presented a state of Constitutional impasse leading to a complete deadlock and stalemate in the working of the Government of Federation, leaving no other option with the President except to dissolve the National Assembly and make a fresh appeal to the electorate in accordance with Article 58(2)(b) (supra).

Mr. S.M. Zafar, the learned counsel for the Care‑taker Prime Minister while supporting the above stand of learned Attorney‑General in the case, **contended that the dissolution of an**elected Assembly is. part of a democratic process in a parliamentary system of Government. The learned counsel quoted from the Book ‘The Theory of Practice of Dissolution of Parliament” by B.S. ‘Markesinis, a Cambridge University Publication (1972. Edition), a tabulated statement showing dissolution of Assemblies during the past over 100 years in the United Kingdom and other countries of the Continent, in a bid to demonstrate that frequent dissolution of elected Assemblies is **not an unusual**phenomena but a normal feature and a part of Parliamentary democratic polity. Referring to the contention of the petitioner that once a session of the National Assembly was called by the Speaker on the requisition of its members, the power of President became dormant and could not be exercised until the session was prorogued by the Speaker, Mr. S.M. Zafar contended that no such limitation could be read on the power of President under Article 58(2)(b) of the Constitution on account of summoning of the session of National Assembly by the Speaker under Article 54(3) of the Constitution. The learned counsel contended that the power to summon and prorogue the Assembly is distinct and separate from the power of the President to dissolve the Assembly and the latter power is not controlled by the former. Dealing with the concept of power of President and Prime Minister, in a strict parliamentary democracy, Mr. S.M. Zafar contended that though the concept of Government in our Constitutional scheme may be nearer in spirit to the West minister’s Parliamentary form but in a stricter sense it is not a parliamentary democracy out and out, as in a parliamentary democracy, the President is only a ceremonial head and all powers of the Government are exercised by the Prime Minister who is answerable to Parliament alone. The learned counsel contended that the President, under our Constitutional scheme is authorised to exercise power over a substantially large executive domain. According to learned counsel the powers exercised by the President under the Constitution in executive field can be divided in four categories, namely:‑‑ (i) President acting on the advice of Prime Minister; ‘(ii) President acting in his discretion; (iii) President acting in consultation with Prime Minister and (iv) President acting as a head of State in his representative capacity. According to the learned counsel the exercise of such large number of powers by the President in executive riled, makes him a potent force under the Constitution in contradistinction to a mere ceremonial Head of State in a parliamentary system of Government. Taking further this argument, Mr. S.M. Zafar contended that in a Constitutional arrangement where the President is entitled to exercise power in such a large executive domain alongside the Prime Minister, it is necessary. that the holders of these two top offices in the Federation must work in harmony and cohesion. Otherwise, a deadlock or a stalemate in the working of the Government would be inevitable. In the above context of division of power between President and Prime Minister under the Constitution the learn counsel contended that the speech of Prime Minister on television on 17‑4‑1993 did create a climate of deadlock and stalemate justifying dissolution of National Assembly. Referring to various grounds of dissolution mentioned in the order of President, dated 18‑4‑1993, Mr. S.M. Zafar contended that the fact that the entire Opposition alongwith some members of the ruling party, had tendered their resignations en bloc from the membership of the Assembly did support the conclusion that the Assembly had lost its representative character and as such the dissolution of National Assembly by the President was fully justified under Article 58(2)(b)’of the Constitution.

            The learned Advocates‑ ‘ General of Punjab, Sindh, Frontier and Balochistan adopted the arguments of learned Attorney‑General and further contended that the Federal Government under the petitioner continued to ignore the rights of the Provincial Governments which led to a sense of

deprivation amongst the Federating Units. In this connection, they referred to the protests lodged by respective Provincial Governments, from time to time, with the Prime Minister and the President in order to show that the Federal Government bypassed the Constitutional provisions in dealing with the rights of the Provinces.

Before I take up each ground of the Dissolution Order, dated 18th April, 1993, separately for consideration, it will be appropriate to first answer some of the Constitutional issues raised at the Bar in the above petitions. The first and the most vital question argued in these cases relates to the parameters within which power to dissolve the National Assembly can be exercised by the President under Article 58(2)(b) of the Constitution. This question has been. directly answered in two reported decisions of this Court in the cases of Federation of Pakistan v. Haji Saifullah Khan P L D 1989 SC 166 and Khawaja Ahmed Tariq Rahim v. Federation of Pakistan PLD 1992 SC 646. The broad I principles laid down in the above two cases governing exercise of power by the President under Article 58(2)(b) of the Constitution, may be summed up as follows:‑‑‑

(I)        The President, before exercising the power under Article 58 (2)(b) of the Constitution must form an opinion objectively that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to! the electorate is necessary;

(ii)        that although the exercise of discretion vesting in the President under Article 58 (2)(b) of the Constitution is not subject to control by the Courts, the opinion of the President must satisfy an objective test as’ nothing has been left to surmises, likes or ‑dislikes in the process of opinion forming;

 (iii)      that the grounds of dissolution must bear nexus to the preconditions       mentioned in Article 58(2)(b) of the Constitution;

(iv)       that the opinion formed by the President must be based on some             material;,

 (v)       that sufficiency or otherwise of the material before the President cannot be adjudicated upon by the Court while considering the validity of dissolution order passed under Article 58(2)(b) of the Constitution;

(vi)                   That the Courts while commenting upon the Dissolution Order cannot substitute their own opinion for that of the President; and

(vii) That the President having once validly formed the opinion that conditions prescribed in Article 58(2)(b) of the Constitution exist, is free to exercise the discretion one way or the other and existence of other alternate remedy in the Constitution could not control exercise of such discretion by the President.

On the scope of Article 58(2)(b) of the Constitution, Mr. Khalid Anwar, however, contended that the President can exercise power under this Article, only when he forms the opinion objectively that the two distinct and separate conditions mentioned in Article 58(2)(b) (supra), namely, (i) that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and that; (ii) an appeal to the electorate is necessary, exist side by side. The learned counsel argued that the existence of circumstances in a case, justifying an inference that, a situation has arisen in which the Government of Federation cannot be run in accordance with the Constitution does not necessarily lead to the conclusion that the second condition mentioned in Article 58(2)(b) (supra), that an appeal to the electorate is necessary, also stands satisfied in the case. The learned counsel argued that existence of different facts and circumstances may be necessary to establish these two distinct and separate conditions. The learned counsel further contended that apart from it, an appeal to electorate may not always provide an effective solution to the situation which gives rise to an inference that the Government of Federation cannot be carried on in accordance with the provisions of the Constitution. The learned counsel specifically referred to the contention of learned Attorney‑General in the present case and argued that according to learned Attorney‑General the alleged deadlock and stalemate in running the Government of Federation has arisen on account of the speech of Prime Minister delivered on 17th April, 1993 and posed a question whether an appeal to electorate (fresh election to National Assembly) will provide a solution to this stalemate when admittedly the contest in the election will be confined between the political parties taking part in the election and there being no possibility of this alleged stalemate between the petitioner and the President forming part of the election issue before the electorate?

Mr. Aziz A. Munshi, the learned Attorney‑General, in reply to the above arguments of Mr. Khalid Anwar contended that the second condition mentioned in Article 58(2)(b) (supra), that an appeal to the electorate is necessary, is merely a corollary of the first condition, that a situation has arisen in which the Government of Federation cannot be run in accordance with the provisions of the Constitution. According to learned Attorney‑General as soon as it is shown that the first condition mentioned in Article 58(2)(b) has arisen, the second will automatically follow. Alternatively, the learned Attorney ­General contended that in so far the present case is concerned this argument does not arise as both the conditions mentioned in Article 5b(2)(b) (supra) were fully satisfied. According to learned Attorney‑General, the inference by the President that the Government of Federation could not be carried on in accordance with the provisions of the Constitution was based on various acts of commission and omission of the petitioner mentioned in the Dissolution Order and the National Assembly having lost its representative character on account of mass resignations of its members, an appeal to electorate was necessary. I may mention here that the argument regarding the scope of Article 58(2)(b) (supra) was not presented in this manner before this Court in the cases of Haji Saifullah and Khawaja Tariq Raheem (supra) and, therefore, the decision in those cases may not provide a complete answer to the contentions raised above at the Bar in the present case. I, therefore, feel it necessary to deal with the above contention in the manner it is raised before us in this case. Article 58(2)(b) of the Constitution reads as under:‑‑‑

“58 ......

(2)        Notwithstanding anything ‘contained ,in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion,‑‑

(a)        a vote of no‑confidence having been passed against the Prime Minister, no other member of the National Assembly is likely t6~ command the confidence of the majority of the members of the National Assembly in accordance with the provisions of the Constitution. ascertained in a session of the National Assembly summoned for the purpose; or

(b)        a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.”

The use of conjunction “and” in between the expressions “a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution” and “an appeal to electorate is necessary” in. Article 58(2)(b) of the Constitution, clearly indicates that the latter condition is to be added to or taken alongwith the first condition. It has not been argued before us in the case that ‘and’ is to be read as ‘or’ in Article 58(2) (b) or that ‘and’ is used iii any other sense. To me it appears that land’ is used in Article 58(2) (b) (supra) in its ordinary grammatical meaning. I am, therefore, of the view that the above‑referred two conditions in Article 58(2)(b) of the Constitution are distinct and separate conditions and their existence as such in a case is a sine qua non for exercise of power by the President to dissolve the National Assembly. What are those facts and circumstances which justify an inference that these two objective conditions mentioned in Article 58(2)(b) (supra) have been satisfied, must be answered with reference to the facts and circumstances of each case, and no hard and fast rule in this regard can be laid down by the Courts? This Court in the case of Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 166 interpreted the expression, “the Government of Federation cannot be run in accordance with the provisions of the Constitution”, as follows:‑‑‑

“The expression ‘cannot be carried on’ sandwiched as it is between ‘Federal Government’ and “in accordance with the provisions of the Constitution H , acquires, a very potent, ‘a very positive and a very concrete content. Nothing has been left to surmises, likes or dislikes, opinion or view. It does not concern itself with the pace of the progress, the shade of the quality or the degree of the performance or the quantum of the achievement. It concerns itself with the breakdown of the Constitutional mechanism, a stalemate, a deadlock in ensuring the observance ‑of the provisions of the Constitution. The historical perspective in which such a provision found a place in our Constitution reinforces this interpretation.”

In the case of Khawaja Ahmed Tariq Rahim, v. Federation of Pakistan PLD 1992 SC 646, this Court while re‑affirming the view expressed in Haji Saifullah’s case, observed as follows:‑‑‑

“This much for the background of the Constitutional power, its scope and meaning in the past and in the contemporary decisions outside Pakistan. In Haji Muhammad Saifullah Khan’s case PLD 1989 SC 166 our Constitutional provision has received full attention and its meaning and scope authoritatively explained and determined. It is an extreme power to be exercised where there is an actual or imminent breakdown of the Constitutional machinery, as distinguished from a failure to observe a particular provision of the Constitution. There may be occasion for the exercise of this power where there takes place extensive, continued and pervasive failure to observe not one but numerous provisions of the Constitution, creating the impression that the country is governed not so much by the Constitution but by methods extra‑Constitutional.”

From the above discussion it would appear that the expression, “the Government of Federation cannot be carried on in accordance with the provisions of the Constitution” in Article 58(2)(b) (supra) contemplates a situation where the affairs of the Government are not capable of being run in accordance with the provisions of the Constitution either on account oil persistent, deliberate and continued violation of various provisions of the Constitution by the Government in power, or on account of some defect in the structure of the Government, its functioning in accordance with the provisions of the Constitution is ‑rendered impossible. The use of expression “Cannot be carried on” necessarily imports an element of impossibility and disability and refers to a irretrievable and irreversible situation. An unintentional and bona fide omission to follow a particular provision of the Constitution, not resulting in the breakdown of Government machine‑y or creating a situation of a stalemate or deadlock in the working of the Government, will not be covered in the situations contemplated under Article 58(2)(b) of the Constitution.

Similarly, the use of expression in Article 58(2)(b) (supra) that “an appeal to electorate is necessary’, implies that the Assembly has lost its representative character. This may happen where either majority of its members have resigned or where floor‑crossing and ‘horse‑trading’ by the members of the Assembly has become the order of the day, or there are other very strong circumstances suggesting that the electorate no more reposed confidence in the policies of the Government. The examples, referred by me above are, however, by no means exhaustive and there may be other facts and circumstances which may justify inference ‘that a situation has arisen in which the Government of Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

 1, therefore, do not agree with the contention of learned Attorney­ General that the two objective conditions mentioned in Article 58(2)(b) of the Constitution are in effect one and the same, and where it is shown that the first N condition, that a situation has arisen in which the Government of Federation’ cannot be run in accordance with the provisions of the Constitution, exists in a case, the second condition, that an appeal to the electorate is necessary, will follow as a corollary of the first condition.

The second Constitutional argument raised in the case by Mr. Khalid Anwar is, that once the session of National Assembly is summoned by the Speaker on the requisition of its members then such a session could only be prorogued by the Speaker. The learned counsel further contended that the pre­emptive dissolution of National Assembly by the President to prevent the holding of such a session of the Assembly was illegal and unconstitutional as the power to dissolve the Assembly under Article 58(2)(b) (supra) by the President could not be exercised unless the Speaker prorogued the session of National Assembly summoned by him. The contention of the learned counsel for the petitioner does not appear to be correct. Mr. S.M. Zafar, the learned counsel for the Care‑taker Prime Minister rightly pointed out that the power to prorogue the session of Assembly is distinct from the power to dissolve the Assembly. The power to summon and prorogue the session of the Assembly and power to dissolve the Assembly are conferred by Articles 54 and 58 of the Constitution, respectively. Articles 54 and 58 of the Constitution read as follows:‑‑‑

“54.‑‑(1) The President may, from time to time, summon either House or both Houses of Majlis‑e‑Shoora (Parliament) in joint sitting to meet at such time and place as he thinks fit and may also prorogue the same.

(2) There shall be at least. (three) sessions of the National Assembly every year, and not more than one hundred and twenty days shall intervene between the last sitting of the Assembly in one session and the date appointed for its first sitting in the next session:

Provided that the National Assembly shall meet for not less than one hundred and (thirty) working days in each year.

Explanation. ‑‑‑In this clause, ‘working days’ includes any day on which there is a joint sitting and any period, not exceeding two days for which the National Assembly is adjourned.)

            A

(3)        On a requisition signed by not less than one‑fourth of the total membership of the National Assembly, the Speaker shall summon the National Assembly to meet, at such time and place as he thinks fit, within fourteen days of the receipt of the requisition; and when the Speaker has summoned the Assembly only he may prorogue it.”

58.‑‑(l) The President shall dissolve the National Assembly if so advised by the Prime Minister; and the National Assembly shall, unless sooner dissolved, stand dissolved at the expiration of forty‑eight hours after the Prime Minister has so advised.

Explanation. ‑‑‑Reference in this Article to ‘Prime Minister’ shall not be construed to include reference to a Prime Minister against whom a (notice of a resolution for a vote of no‑confidence has been given) in the National Assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or after the dissolution of the National Assembly .................

(2)        Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion,‑‑‑

(a) a vote of no‑confidence having been passed against the Prime Minister, no other member of the National Assembly is likely to command the confidence of the majority of the members of the National Assembly in accordance with the provisions of the Constitution ascertained in a session of the National Assembly summoned for the purpose; or

‘(b)                   a situation has arisen in which the Government of the Federation cannot be carried on in accordance with **the provisions of the Constitution**and an appeal to. the electorate is necessary.”

            From the language of the above mentioned Articles of Constitution, it is quite clear that they operate in different fields and cater for different and distinct situations. Article 54 pro ‘ vides for summoning of the sessions of National Assembly and power to prorogue its session. Under clause (1) of Article 54, the President is vested with the power to summon the session of National Assembly from time to time and to prorogue the same, on the advice of Prime Minister. The Speaker is’ also distinctly conferred the power under clause (3) of Article 54 to call for the session of National Assembly when requested through a requisition signed by one‑fourth of the total number of the members of National Assembly. The session summoned by the Speaker under

Article 54(3) cannot be prorogued by any person other than the Speaker. Article 58(l) on the other hand provides for dissolution. of Assembly by the President, on the advice of Prime Minister. The President under Article 58(2)(a) can also dissolve the National Assembly in his discretion, if a vote of no‑confidence is passed against the Prime Minister and President ascertains in the session of National ‘ Assembly called for that purpose, that no other member of the National Assembly is likely to command the confidence of the majority of the members of National Assembly. The President is also empowered to dissolve the National Assembly in his discretion, under Article 58(2)(b) (supra) if he objectively forms the opinion, that a situation has arisen in which the Government of Federation cannot be run in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. The scope of power enjoyed by the Speaker of National Assembly to prorogue the session of National Assembly summoned by him under Article 54(3) of the Constitution is, therefore, to be examined and understood in the context of powers enjoyed by the President and the Speaker respectively, to prorogue the sessions of National Assembly under Article 54 of the Constitution, and nothing beyond that. The exclusive power enjoyed by the Speaker to prorogue the session of National Assembly summoned by him under Article 54 (3) is not at all determinative of the power of the President to dissolve the Assembly under Article 58 of the Constitution. The power to dissolve the National Assembly under Article 58(2)(b) is undoubtedly a distinct and separate Constitutional power which is neither subordinate to nor controlled by the provisions of Article 54 of the Constitution. There is nothing in the language of Article 54 or Article 58 or in any other provision of the Constitution to suggest or indicate that when a session of the National Assembly in summoned either by the President himself.(Article 54(1)) or by the Speaker (Article 54(3)), the power to dissolve the National Assembly will not be exercised by the President under Article 58 of the Constitution or that the power of President to dissolve the National Assembly will remain suspended or dormant until the session of the National Assembly summoned under Article 54 is prorogued. The power to dissolve the Assembly under Article 58 of the Constitution is an independent and distinct power which can be exercised at any time after the Assembly is formally opened. The fact that Assembly I is in session or that its session has been called or that it is not in session has no bearing on the exercise of the power of dissolution under Article S8 of the Constitution.

I have dealt with various Constitutional issues raised at the Bar in the above case and now revert to the Presidential Order, dated 18‑4‑1993, to consider on merit, the grounds mentioned therein individually. The first ground in the Dissolution Order relates to the alleged mass resignation of the members of Opposition. in National Assembly and some members of the Treasury Benches. Copies of these resignations have been filed before. us by the respondents. The contention of the petitioner with regard to these resignations is that these resignations have no value in the eye of law as they were not tendered as required by the Constitution. It is further contended by the petitioner that these so‑called resignations were obtained by the President in an attempt to destabilise the Government of petitioner by encouraging and supporting’ the elements hostile to’ the petitioner’s Government. The respondents in their written statement riled in the case **have taken the**following stand with regard to these resignations:‑‑‑

“3(iii) Contents of para. 3 (iii are misleading and incorrect.

it is submitted that it is for the members of the National Assembly to select the mode of showing their protest and lack of confidence in the petitioner’s Government, National Assembly and the Speaker whether in or outside the House. In the instant case they have addressed their resignations (Annex. \*A‑1) to the Speaker of the National Assembly, but sent them to the President to register with the Head of the State their protest and as an expression of lack of confidence in the National Assembly, the Speaker and the Federal Government. The further reason was that the Speaker had not in the past acted upon any motion directed against the Prime Minister/or any other Minister or member of the National Assembly supporting the Government or the Government itself and,. as widely known, the concerned members had shown lack of confidence in the Speaker, who according to the general perception was in collusion with **the former Prime Minister and was not**acting independently.

The resignations produced before us are to be considered in the wake of events which preceded the dissolution of National Assembly on 18‑4‑1993. Both sides have filed large number of press cuttings and relied on them to show the prevailing political climate in the country during pre‑dissolution period. It is true that press reports are not to be accepted as proof of facts stated therein but where such reports were not contradicted by the concerned authority or person at the relevant time and are subsequently relied by either side in a case, these may be taken into consideration for forming an opinion generally as to‑the prevailing state of affairs at the relevant time. The pr reports for the period immediately preceding the dissolution of National Assembly do show, that elements hostile to petitioner’s Government were being entertained regularly at the President’s House and after their meeting at the Presidency these elements gave the impression that the petitioner’s Government was going to be dissolved very soon. In this background, receipt of these resignations, addressed to the Speaker of National Assembly, by the President and not forwarding them to the Speaker, even after passage of considerable time appears not only an unusual course but also lends support to the contentions of the petitioner that these resignations were not given to the President by the members of National Assembly with a genuine desire to vacate their seats in the National Assembly but only to provide a leverage for bargaining with the petitioner and for destabilising; the Government of petitioner. This conclusion is further supported by the above‑quoted passage from the written statement of respondents in the case and the fact that a good number out of these persons ‑.who allegedly handed over their so‑called resignations to the President, found their way in the Care‑taker Cabinet appointed by the President immediately after the dissolution of National Assembly. Apart from it, the value of these resignations has to be examined first under the Constitution. Article 64 of the Constitution provides that a member of Parliament may by writing under his hand addressed to the Speaker or as the case may be, to the Chairman ,resign his seat and thereupon his seat shall become vacant. Article 64 of the Constitution is to be read with Rule 25 of the Rules of Procedure and Conduct of Business in the National Assembly,       11

1.992 which is as follows:‑‑‑

“25.     Resignation of seat.‑‑(1) A member may, by writing under his hand        addressed to the Speaker, resign his seat.

(2)  If,----

(a)        a member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary‑, or

(b)        the Speaker receives the letter of designation by any other means and he, after such inquiry as he thinks fit, either himself or through the National Assembly Secretariat or through any other agency, is satisfied that the resignation is voluntary and genuine, the Speaker shall inform the Assembly of the resignation:

Provided that if a member resigns his seat, when the Assembly is not in session, the Speaker shall direct that intimation of his resignation specifying the date of resignation be given to every member immediately.

(3)        The Secretary‑ General shall, after the Speaker satisfies himself that the letter of resignation is voluntary and genuine, cause to be published in the Gazette a notification for the effect that the member has resigned his seat and forward a copy of. the notification to the Chief Election Commissioner for taking steps to fill the vacancy thus caused.

(4)        The date of resignation of a member shall be the date specified in writing by which he has resigned or if no date is specified therein the date of receipt of such writing by the Speaker.”

                        The resignation of‑member of National Assembly, according. To above provisions, must be addressed to the Speaker and written under the hand of the member concerned. The resignation may be handed over     personally by the member concerned to the Speaker and at that time he. May    inform the Speaker that it is voluntary and genuine and if the Speaker has no           information or knowledge to the contrary, his seat becomes vacant          immediately. In case, the Speaker receives the letter of resignation by any           other means he may either hold enquiry himself. or through the National         Assembly Secretariat or through any other agency regarding‑ genuineness and   voluntary nature of the resignation and as soon as the  Speaker is satisfied that   the resignation is genuine and voluntary, it becomes effective. According to       sub‑rule (4) of Rule 25, the date of resignation shall be the date mentioned in     the resignation letter and if no date is. specified therein, the date of resignation         will be the date on which the resignation is received by the Speaker. As soon as         the resignation becomes effective a notification is ‑ to be issued by the     Secretariat of the Speaker in the Gazette and a copy thereof is to be sent to the        Chief Election Commissioner for taking steps to fill up the vacancy. Therefore,. for a resignation to be Constitution valid, the above procedure has to be             followed. In the present case, majority of the resignations produced before us         do not bear any date. These resignations, though addressed to the Speaker of   National Assembly were received by the President. who had no authority under    the Constitution to receive them. These resignations received by the President    in spite of passage of considerable time were not forwarded to the Speaker of         National Assembly. The categorical stand taken by the learned Attorney­            General on the first date of hearing of the above case before us was, that these        resignations were not meant for creating vacancies in the National Assembly     but were only to register their protest and express their no‑confidence, against       the Government of petitioner. The learned Attorney‑General no doubt   modified his above stand by stating. in Court before us at a later stage of this     case that these resignations were also resignations as such but in view of the statement contained in the written statement of respondents and the Constitutional position of these resignations discussed above, I am inclined to             hold that these resignations have no Constitutional validity or value and as such           it was not possible on the basis of these documents to arrive at the conclusion           that the National Assembly had lost its representative character. Even  otherwise, out of these resignations, 12 were tendered about a year ago, in the wake of operation clean up in Sindh Aid were thus irrelevant for the purposes of present Dissolution Order while the rest did not represent the majority of the members of the National Assembly. Mr. S.M. War, the learned counsel for the Care‑taker Prime Minister, however, contended before us that the existence of an opposition party in the. Assembly, in a parliamentary form of Government is a necessary part of the system and if the entire Opposition elects to resign from the Assembly, it would render the Assembly unrepresentative. The contention of learned counsel has not impressed me at all.\* The argument, if accepted, is not only likely to give rise to unhealthy parliamentary practices but would also negate the very spirit of a parliamentary. system. In a parliamentary democracy, the right to form a Government Is always of the party which is in majority in the Assembly and the party in minority sits in the Opposition. If it is once accepted that the opposition party in the Assembly (which is always a minority) by reason of its on bloc resignations can bring about a dissolution of Assembly, and consequently an end to the majority rule, it will virtually make the majority party in the Assembly a hostage at the hands of minority. It will also open new avenues of political blackmail by the minority in the Assembly of the majority, as the Opposition party in the Assembly, however, small in number it may be, can always threaten the existence of the Assembly by resorting to en bloc resignations of its members and thus imposing its will on the majority, against the very concept of parliamentary democracy. I  also not oblivious of the

record of our parliamentary history which is ‘in no way a very commendable one. It is a hard fact of our parliamentary history that the main aim of a party in opposition in the Assembly, has always been touring down the Government in power. By accepting the principle that once the opposition party in the Assembly resigns en bloc the Assembly loses its representatives character and thus has to be dissolved, we will be adding new dimensions to the already prevailing unhealthy parliamentary practices in our polity, as the Opposition party in the Assembly though may be in absolute minority can always set at naught the majority rule in the Assembly by resorting to en bloc resignations of its members. This will be a total negation of a parliamentary system of Government. Mr. S.M. Zafar relied on the case of Adegbenro v. Akintola 1963 AC 614 in support of his contention that on account of resignations of 102 members out of the House of 217, the National Assembly became unrepresentative, and therefore, it was rightly dissolved by the President. The case is hardly of any assistance to the learned counsel. In the above‑cited Privy Council’s case, the Governor of Western Nigeria removed the respondent from the office of Premier and appointed the petitioner in his place, acting upon a letter, dated 21‑5‑1962, addressed to Governor signed by 66 members of the House of ‘Assembly out of 124 members, in which it was stated that they no more supported the respondent. A writ petition was filed in the concerned Nigerian High Court to challenge the decision of the Governor. As the question involved in the petition was a substantial question of, law and interpretation of Constitution, the Nigerian High Court referred the case to the Federal Supreme Court of Nigeria in accordance with section 108 of the Constitution of Federation of Nigeria for opinion on the following two questions‑.‑‑‑

“(I) Can the Governor validly exercise power to remove the Premier from office under section 33, subsection (1), of the Constitution of Western Nigeria without prior decision or resolution on the fl(;or of the House of Assembly showing that the Premier no longer commands the support of a majority of the House?

(2)        Can the Governor validly exercise power to remove the Premier from office under section 33(10) ... on the basis of any materials or information extraneous to the proceedings of the House of Assembly?\*

The Federal Supreme Court of Nigeria answered the first question in the negative, thus holding that respondent had not been validly removed from office and found it unnecessary to answer the second question in view of its answer on the first question. On appeal by the petitioner; the House of Lords in Privy Council reversed the decision of Nigerian Federal Supreme Court. Their Lordships of Privy Council while interpreting section 33(10) of Nigerian ‑Constitution which reads as:

“(10) Subject to the provisions of subsections (8) and (9) of this section, the Ministers of the Government of the Region shall hold office during the Governor’s pleasure:

Provided that ‑‑‑ (a) the Governor shall not remove the’ Premier from office unless it appears to him that the Premier no longer commands the support of a majority of the members of the House of Assembly‑, and (b) the Governor shall not remove a Minister other than the Premier from office except in accordance with the advice of the Premier.”

made the following two observations in the above case

“The question to which an answer has to be found is of obvious importance, but it lies, nevertheless, within a very s mall compass. Its decision turns upon the meaning to be attached to the wording of section 33(10) of the Constitution of Western Nigeria, read, as it should be, in the context of any other provisions of the Constitution that may legitimately influence its meaning.

It is clear, to begin with, that the Governor is invested with some power to dismiss the Premier. Logically, that power is a consequence of the enactment that Ministers shall hold office during the Governor’s pleasure, for, subject to the saving conditions of provisions (a) and (b) that follow, the Governor has only to withdraw‑ his pleasure for a Minister’s tenure of office to be brought to an end. ‑Where the Premier’s office is concerned it is proviso (a) that limits the’ Governor’s power to, ,withdraw his pleasure Constitutionally, for by that proviso he is precluded from removing the Premier from office ,unless it appears to him that the. Premier no longer commands the support of a majority of the members of the House of Assembly! By these words, therefore, the power of removal is at once recognised and conditioned: and, since the condition of Constitutional action has been reduced to the formula of these words for the purpose of the written Constitution, it is their construction and nothing else that must determine the issue       . : .       ...         ...         ...         ...         ...         ...         ...         ...            ...         ...         ...         ...         ...         ...         ...         ...         ...         ...

... ... .. ... ... ... .. : ... ... .. I . ... ... ... ... ... ... .... The second observation is perhaps only another way of making the same point. It is true that in the Western Nigerian Constitution, allowance made for the federal structure, does embody much of the Constitutional practice and   principle of the United Kingdom. That appears from a study of its terms. There are identifiable differences of scheme to be found in    certain sections, but no one, it seems, questions the general similarity,        or the origin of many of its provisions. But, accepting that, it must be             remembered that, as Lord Bryce once said, the British Constitution          works by a body of understandings which no writer can formulate’;    whereas the Constitution of Western Nigeria is now contained in a            written instrument in which it has been sought to formulate with            precision the powers and duties of the various agencies that it holds in

            balance. That instrument now stands in its own right; and, while it may well be useful on occasions to draw on British practice or doctrine in        interpreting a doubtful phrase whose origin can be traced or to study             decisions on the Constitution of Australia or the. United States where     federal issues are involved, it is in the end of wording of the Constitution itself that is to be interpreted. and applied, and this wording can never be overridden by the extraneous principles of other             Constitutions which are not explicitly incorporated in the formulae that have been chosen as the frame of this Constitution.”

            The principle deducible from the above observations, of their Lordships of the Privy Council is, that while interpreting a written Constitution, the Court will go by the wording of the document and will not allow it to be overridden by the extraneous principles of other Constitutions which are not explicit incorporated in the scheme chosen by the framers of the Constitution. The above‑cited case has distinguishable features both on facts and on law. In the cited case out of 124 members of the House of Assembly, 66 had signed the letter addressed to the Governor expressing their no‑confidence in the Premier, which accounted for more than half of the total membership of the

House. In the present case 12 members of the National Assembly had already resigned from their office about a year age and no by‑elections were held to these seats in spite of passage of a long period. These resignations were, therefore, wholly irrelevant for the present controversy. The so‑called remaining resignations sent to President which under the Constitution had no value or .validity, accounted for .only about 40% of the total membership of the House and as such it could not be concluded on these facts that the Assembly had lost its representative character or the petitioner no longer enjoyed the confidence of \* the House. Secondly; section 33(10) of the Nigerian Constitution is not comparable with Article 91 (5) of our Constitution, which lays down a specific procedure for ascertaining whether the Prime Minister enjoys the confidence of the National Assembly or not. I, therefore, do not find the above‑cited’ case of any assistance to the respondents in the present case.

I will take up the next ground (b) of the Dissolution Order in the end for consideration as this appears to be the main ground in the case and a sheet­ anchor of the arguments of learned Attorney‑‑ General. This ground, which is a new one, otherwise needs a detailed examination as it did not ‘come up for consideration in the two earlier cases of dissolution Of National Assembly, Federation of Pakistan v. Muhammad Saifullah Khan and Ahmed Tariq Rahim v. Federation of Pakistan (supra) decided by this Court.

The third ground (c) of the Dissolution Order, besides its main clause is divided in 3 sub‑heads. These relate to non‑functioning of the Council Of Common Interests and bypassing of the National Economic Council, by the Federal Government, in formulation of plans . in respect of financial, commercial, social and economic policies and specially the process of privatisation of Industries in relation to item 3 of Part 11 of the Federal Legislative List, and transgression by the Federal Government in the affairs ‘of Provincial Government in violation of Article 97 of the Constitution.. The contention of\* learned Attorney‑General before us is that ground (c) and its three sub‑clauses are similar to grounds Nos. (iii), . (iv) and (v) of the Dissolution Order in Khawaja Ahmed Tariq Rahim’s case, and this Court ‑having upheld these grounds as valid reasons\* for dissolution of National Assembly in that case cannot now take a different view in the present case. The argument of learned Attorney‑General appears to be very attractive and formidable on its face but it cannot stand the test of an objective scrutiny. No doubt there appears to be a similarity in the phraseology used in the grounds ,of Dissolution Orders in ‘the case of Khawaja Ahmed Tariq Rahim and in the present case but mere –similarity ,in the words or phraseology can neither be T determinative factor nor a test for identity of the substance of the grounds in the two cases. In Khawaja Ahmed Tariq Rahim’s case the Court found that the Federal Government had refused to convene the meeting of Council of Common Interests and National Finance Commission, the two most important Constitutional institutions for safeguarding the interest of federating units and securing and providing an equitable distribution of resources of the country between the Federal and Provincial Governments, in spite of persistent demands by the Provinces and a unanimous resolution of the Senate, with the result the two Federating units, namely, Punjab ‘and Balochistan approached this Court. for issuing a direction to the Federal Government to convene the meeting of these Constitutional Institutions. No such situation existed in the present case on 18‑4‑1993 when the National Assembly was dissolved. The situation obtaining at the time of dissolution of National Assembly in Ahmed Tariq Rahim’s case (supra), therefore, is in no Way comparable with the situation in the present case. The Council of Common Interests and the National Finance ‘ Commission, in the present case, were very much functioning. The petitioner has listed in his petition in paragraph (d/1) under the heading ‘Relation with Provinces’ the following facts:‑‑‑

“(d/1) Relation with Provinces.

The Constitutional provision governing the relations between the Federal Government and the Provinces have been observed and strengthened to greater extent in the period since November 1990, than in the preceding 17 years: This is evident from the following facts‑

(i)         The Council of Common Interests *which*had remained a dormant organization since its creation was activated and three meetings were held on 12th January, 1991, 21st March, 1991, and 16th September, ‑1991. The Council reached decisions on the apportionment of Indus Waters at its meeting held on 21st March and approved the setting up of the Indus Waters Authority. It also approved for first time its Rules of Procedures. In preparation for the next meeting of the Council in May 1993 a pre‑CCI meeting was held with the Chief Ministers.

(ii)        The National Finance Commission, which under Article 160(l) of the Constitution, is to be constituted every 5 years, had not given its award since 1975. A new Commission was constituted in January 1991, and submitted a unanimous award in April 1991. This, has provided additional resources of Rs. 25/30 billion each year to the Provinces and thus met one of the essential prerequisites for enabling the provinces to discharge the functions entrusted to them under the Constitution.

(iii)       A separate Ministry of Inter-Provincial Coordination was set up. An Inter‑Provincial Coordination Council was created consisting of several Ministers and the four Chief Ministers and Prime Minister of AJK Government. The Council has met twice in a very cordial atmosphere and resolved many Inter .;Provincial issues. The first meeting ‑ was held on 13th January, 1993‑ and the second on 11th April, 1993.

(iv)       While totally ignoring these positive steps towards strengthening the Federal System only two instances of lack of consultation with the Constitutional bodies like CCI, NEC and its Executive Committees have been given. One is that the Council of Common Interests was not allowed to discharge its Constitutional function with regard to privatisation of industries and power units. This issue was examined in depth by the Ministers concerned in response to comments received from the President and a comprehensive report was sent to the President by the Cabinet Secretary on 15th April, 1993. Contents of this report have been summarized earlier.”

The substance of the above averments by the petitioner could not be controverted by the respondents. The President in his annual address to the joint session of Parliament on 19‑12‑1991 also commented upon the functioning and performance of these Constitutional Bodies, as follows:‑‑‑

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Once again the President had the opportunity of reviewing the performance of petitioner’s Government in his second annual address to the joint sitting of Majlis‑e‑Shoora (Parliament) on 23‑12‑1992, when he commended as follows:

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Did these admitted facts paint a picture of dismal performance by these Constitutional Bodies under the Government of petitioner or presented a state of deadlock, stalemate or transgression of the limits set forth in the Constitution, by the Government of petitioner? Answer to these questions can only be the negative. The learned Attorney‑General, however, made a some­what novel argument in the case to nullify the effects of the two annual addresses of the Parliament to the joint sessions of Parliament in 1991 and 1992, with regard to the performance of the Government of petitioner. The learned Attorney‑General contended that the contents of the above speeches did not represent the views of President on the working of the Government of petitioner as these speeches were based mainly on the information supplied by the petitioner’s Secretariat and reflected the policies of petitioner’s Government. In paragraph 3 of the petition, the petitioner referred to the address of the Parliament to the joint session of the Parliament on 23‑12‑1992, as follows:‑‑‑

“3.       That in ‘ his yearly address to the joint session of Parliament, boycotted as usual by PPP, on 23‑12‑1992, the President of Pakistan praised the performance of the Government of Pakistan under the leadership of Mian Nawaz Sharif and had nothing adverse to say. He, in fact, praised the legislative of the legislature, working parliamentary norms, and handling of damages caused by the unprecedented floods in the country. He praised the performance of the Government in the economic field and particularly         in regard to privatization (copy of the Presidential

            Address is annexed as Annexure  A).”

The above statement of petitioner was replied to in the written statement filed on behalf of respondents in the case, as under:‑‑‑

“Averments made in para. 3 relate to the President’s Address to Joint Session of the Parliament and have been misconstrued by the petitioner as set out in the para. under reply. It has been the President’s endeavour to support the Government to give the Nation a sense of security and stability within the country and abroad. In any event the order of the Dissolution speaks for itself.”

The respondents never took the plea in the written statement that the addresses by the President to the joint sessions of Parliament did not represent his views on the subject and reflected only the policies of the petitioner’s Government. If the address of the President to the joint session of Parliament on 23‑12‑1992, was only a prototype of the policies of the petitioner’s Government, the following observations of the President in his above address could not be justified:‑‑‑‑

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Surveys

In the earlier case of dissolution of National Assembly by the President in 1990 reported as Khalid Malik v. Federation of Pakistan PLD 1991 Karachi 1 the following passages from the speech of the President delivered in the joint session of Parliament on 2nd December, 1989, were relied by the learned Attorney‑General as the objective assessment of the working of the then National Assembly and the Government in power:‑‑‑

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                        Trading

If the annual address of the President to the joint session of Parliament in 1990 represented his views on the policies and working of the then Government in power, on what basis it could be argued now that the annual addresses of President to joint session of Parliament in 1991 and 1992 was a prototype of the policies and views of the Government in power? There is nothing either in Article 56 of the Constitution or in Rules 40 to 47 of the Rules of Procedure and Conduct of Business in National Assembly, 1992, to suggest, that address of the President to the joint session of the two Houses at the commencement of the first session after each general election to the National Assembly and at. the commencement of the first session year, would reflect the policies of the Government and not the views of the President. I am. therefore, of the view that the address of the President to the joint session of Parliament on the occasion of first session of each year, is his Constitutional duty under Article 56(3) of the Constitution and in his address the President is not bound by the policy or views of the Government in power. The President is free to express his own views and assessment in respect of any matter concerning the functioning of the Government in power in his said address to the joint session of Parliament. 1, therefore, find no merit in the contention of learned Attorney‑General that the address of the President to the joint session of Parliament in 1991 and .1992 did not reflect his views on the working of the Government of the petitioner. ‑

The learned Attorney‑General also contended that privatisation of WAPDA and Electricity, item 3 of Part II of Federal Legislative List and item 34 of the Concurrent Legislative List respectively, by the Government of petitioner, without approval of a policy in that behalf by the Council of, Common Interests amounted to a flagrant violation of the Constitutional

requirement. The petitioner specifically denied privatisation of WAPDA and,­ generation of Electricity. The learned Attorney‑General was unable to place any material on record before us to substantiate his contention that these two services were privatised by the petitioner’s Government. Similarly, the petitioner also denied privatisation of Railways and contended that the sale of

landed properties by Railways authorities were not at all connected with the process of privatisation but it was part of their routine process under the normal rules. The learned ‘Attorney‑General was also unable to contradict this contention.

The learned Attorney‑General also made a separate and detailed submission on the entire policy of the Government of petitioner and contended that the whole process besides lacking transparency was carried on in utter disregard of the Constitution and the protest by the Federating Units.‑ The learned Attorney‑General specially referred to the case of sale of shares of Muslim Commercial Bank and contended that the shares of Muslim Commercial Bank were sold by petitioner’s Government ignoring the highest bid in the case. The learned Attorney‑General admitted before us that the sale of the shares of Muslim Commercial Bank was challenged in a Constitution petition before the Sindh High Court by the highest bidder but the matter finally ended in a compromise. The learned Attorney‑General also admitted that the shares of Muslim Commercial Bank were sold to the successful bidder only after he had matched his bid with the highest bid in the case. It is also an admitted fact that the learned attorney‑General, who appeared on Court notice in Muslim Commercial Bank’s case defended the action of Government before the Court. In any case, according to the admitted facts, the shares were sold at the highest bid received in the case. Similarly, the learned Attorney ­General was unable to contradict the contention of the petitioner in the case that large number of Constitutional petitions filed in the High Courts challenging the sales of Industries and other undertakings under the privatisation scheme, were decided in favour of the Government on merit, ‘as all these sales were effected under laws passed by the Senate to implement the privatisation scheme of the petitioner’s Government. The President had also commented on the privatisation policy of the petitioner’s Government in his address to the joint session of Parliament on 19‑12‑1991, as follows:‑

The comments of the President with regard to the privatisation and economic policies of the petitioner’s Government contained in his address to the first annual joint session of Parliament on 22‑12‑1992, have already been reproduced by me earlier in this judgment. The above‑referred comments by the President, in 1991 and 1992 do show that the process of privatisation and the economic policies initiated by the petitioner’s Government had gone well for two years and yielded positive results.

The learned Attorney‑General, however, contended that the whole process of privatisation was conducted by the petitioner’s Government contrary to the provisions of the Constitution and bypassing the protests of the Provinces of Sindh, N.‑W.F.P. and Balochistan. The learned Attorney‑General invited our attention to the letters written by the three Chief Ministers of the Provinces of Sindh, N.‑W. F. P. and Balochistan to the President and the Prime Minister as well as the observations of the President’s Secretariat conveyed to Prime Minister’s Secretariat in this behalf.

The letter addressed to President by the Sindh Chief Minister is dated 21st March, 1993. In his above letter to the President, the Chief Minister of Sindh has complained about the action of Federal Government, taking away the schemes pertaining to sectors like Highways, Energy and Tele­communication out of the purview of the CDWD/ECNEC. He also complained about non‑formulation of policies relating to Development of Industries, WAPDA and Railways through CCI. Similarly, the Chief Minister of N.‑W.F.P. in his letter, dated 9th January, 1993, addressed to Prime Minister while complaining about the inadequate implemantation of the decision of CCI in respect of net profit payable to N.‑W.F.P.’on hydel generation had opposed the proposal for privatisation of WAPDA. The letter dated 6th December, 1992, addressed by the Chief Minister of Balochistan to the Prime Minister, also complained about less Budgetary provision for 1992‑93, in terms of NFC Awards of 1990 with the request to increase the share of Balochistan Province to sustain the pace of development program in the province.

The petitioner has denied privatisation of WAPDA, Railways and Energy sectors and nothing has been brought before us to contradict this stand of petitioner. The other matters referred to in the letters of the three Chief Ministers of the Provinces of Sindh, N.‑W.F.P. and Balochistan are not Constitutional issues but relate to implementation of decision already taken in the Constitutional Bodies like CCI and NFC. The learned Attorney‑General has referred to the legal opinion forwarded to the Cabinet Division through President’s Secretariat letter, dated 28‑12‑1992, in an attempt to show that the entire process of privatisation initiated by the petitioner’s Government was contrary to the provisions of the Constitution. The petitioner from the very beginning had taken the stand that the process of privatisation initiated by his Government was not subject to approval of the policies by the CCI. It was also the contention of the petitioner that the privatisation policy was implemented by the Government strictly in accordance with the laws passed by the Senate in this regard. The present case is no appropriate occasion for an in depth examination of the constitutionality of the process of privatisation initiated by the petitioner’s Government. The main concern of the Court in the present case is to discover whether there was such deliberate, pervasive and continued violation of various provisions of the Constitution by the petitioner’s Government that it led to the impression that the Government of Federation was not run in accordance with the provisions of the Constitution but by extra Constitutional methods. It is an admitted position that process of privatisation commenced by the Government of petitioner was going on for over two years. The Constitutional validity of this process was not questioned either on the floor of Parliament or in the Provincial Assemblies, or by any other method.

The President during this two years’ period had the occasion to comment upon the privatisation policies of the petitioner’s Government on 19‑12‑1991 and 23‑12‑1992, in his addresses to the joint sessions of the Parliament and he not only found this process initiated by the petitioner’s Government satisfactory, but praised the positive results yielded by it. In these circumstances, it was not possible to draw an inference that the petitioner’s Government carried on the process of privatisation by violating ‑the Constitutional provisions in a deliberate, persistent and pervasive manner.

            Grounds (d) and (f) (iii), (iv) and (v) of the Dissolution **Order, dated 18‑4‑1993,**are similar to grounds (c) and (e) (ii) & (iii) of the Dissolution Order of National Assembly in the case of Ahmed Tariq Rahim v. Federation of Pakistan (supra). This Court while commenting on the validity of these grounds qua the Order of Dissolution of National Assembly in Ahmed Tariq Rahim’s case observed that these grounds by themselves are not sufficient to warrant dissolution of National Assembly by the President, but these may be taken into consideration alongwith other relevant grounds for dissolution of Assembly. Therefore, unless the dissolution order is found to be based on some relevant grounds, these grounds will be of no relevance.

Ground (e) is totally vague and unsupported by any material. The learned Attorney‑General is unable to satisfy us, that this ground bears nexus  to the preconditions of Article 58(2)(b) of the Constitution.

In ground (0 (i) of the Dissolution Order, it is stated that Cabinet was not taken into consideration in respect of numerous Ordinances and matters of policy. Firstly, the learned Attorney‑General did not specify those matters which under the Constitution are required to be submitted to the decision of Cabinet but were not so submitted. Secondly, Article 46(3) of the Constitution clearly provides that if the President so requires, the Prime Minister shall submit for the consideration. of the Cabinet any matter on which a decision has been taken by the Prime Minister or a Minister but which has not been considered by the Cabinet. We have not been pointed out by the learned Attorney‑General any such direction by the President which was not complied with by the Prime Minister. A statement riled by the learned Attorney‑General during the course of hearing of the petition on the contrary shows that out of 78 Ordinances 50 were approved by the Cabinet.

Ground (f) (ii) relates to alleged prevention of federal Ministers from ,calling on the President. The petitioner has categorically denied this assertion and there is no material before us to arrive at the conclusion that any direction was issued . by the Prime Minister to the Ministers, not to see or call on the President. On the contrary, the press reports filed by both the sides in the case do show that quite a few Federal Ministers visited Presidency frequently and made statements after meeting the President. The fact that several federal Ministers tendered their resignations personally to the President also shows that there was no physical restraint on the Ministers to meet the President. On the Constitutional plane, Article 91 provides that there shall be a Cabinet of Ministers with Prime Minister at its head, to aid and advise the President in the exercise of his functions. Clause (4) of Article 91 (supra) provides that the Cabinet together with Ministers of State shall be collectively responsible to the National Assembly. These provisions in the Constitution make it abundantly clear that the Cabinet including the Ministers of State are collectively responsible to the National Assembly  in aiding and advising the President in discharge of his functions, the Cabinet can act only through the Prime Minister. The concept of collective responsibility of Cabinet has made the role of Ministers individually of no consequence under the Constitution. In these circumstances, nothing substantial turns out from grounds ‘f (i) and (ii).

Ground (g) of the Dissolution Order relates to the complaint of Begum Nuzhat Asif Nawaz regarding the alleged highhanded treatment meted out to the late General by the highest functionaries of the Federal Government and the circumstances resulting in the death of the !ate General. The record produced before us by the respondents shows that on 124‑1993, the Secretary to the President addressed a letter to Prime Minister’s Secretariat, enclosing Press clippings regarding serious allegations levelled by Begum Nuzhat Nawaz widow of late General Asif Nawaz and requested for appointment of a High Level Commission, consisting of Judges of Supreme Court and High Court to enquire into the allegations on priority basis and submit a report alongwith their recommendations. It was also requested in that letter that immediate interim measures, in the meantime, may be taken in respect of the two persons named by the lady. The letter from the Principal Secretary to the Prime Minister, dated 12‑4‑1993, addressed to Mr. Fazalur Rehman Khan, Secretary to President shows that the Prime Minister had already announced appointment of a Commission consisting of 3 Judges of the Supreme Court before receipt of the letter from President Secretariat. However, with regard to the interim action suggested against the two persons named by Mrs. Nuzhat Asif Nawaz, in the letter of the President’s Secretariat dated 12‑4‑1993, a query was raised as to what action could be taken against these persons when the matter was being enquired into by the Tribunal appointed b3 the Government. This letter was replied by the President’s Secretariat on 15‑4‑1993, as follows:‑‑‑

“Subject: APPOINTMENT OF A JUDICIAL COMMISSION

Kindly refer to P.M. Sectt. u.o. No.800/JS(Law)/93, dated 13th April 1993.

2-Our communication of 12th April was in fact delivered on a most immediate basis by a special messenger and received at 17‑50r hours as per attachment. In any case, the matter was mentioned that morning by the President to Mr. Shahbaz Sharif, M.N.A.

3-Important, however, is what is stated in para. 2 of your letter. We are indeed surprised that you should say ‘it is not clear as to what action is envisaged’ when this should be routine at the time of any investigation let alone when grave and serious allegations are made by the widow of a very respected COAS against a senior officer controlling the facts. The President repeated this to the Prime Minister yesterday.

I (Sd/.)

(Fazalur Rahman Khan),

Secretary to the President.”

From the above‑stated facts, it is quite clear that there was no delay on the part of petitioner in appointing the Judicial Commission to enquire into the allegation of Mrs. Nuzhat Nawaz as desired by the President. It is admitted by the learned Attorney‑General that the Commission constituted by the Government has since submitted his report. In these circumstances, there remains no significance of this ground.

I now revert to ground (b) of the Dissolution Order, dated 18‑4‑1993, which I had left for consideration in the ‘end. The learned Attorney‑General as well as Mr. S.M. Zafar, the learned counsel for Care‑taker Prime Minister, jointly contended that on account of the speech of Prime Minister on Television on 17‑4‑1993, a situation of complete deadlock and stalemate developed which left no alternative with the President except to dissolve the National Assembly and make a fresh appeal to the electorate in accordance with Article M(2)(b) of the Constitution. According to respondents, the Prime Minister in his speech had described the President as a person who was involved in conspiracy to destabilise the petitioner’s Government and after these serious allegations by the petitioner, it could not be expected that the President would be able to discharge his Constitutional duties in relation to the Government of petitioner. In order to appreciate the thrust of this ground it is necessary to first determine the positions of the President and the Prime Minister in the Constitutional scheme.

The President is elected under‑Article 41 of the Constitution through an electoral college, consisting of members of the two Houses of Parliament and four Provincial Assemblies. Articles 48, 90 and 91 of the Constitution spell out the extent of power to be exercised by the President , under the Constitution. These Articles are as follows:‑‑‑

“48.     In the exercise of his functions, the President shall act in accordance       with. the advice of the Cabinet (or the Prime Minister):

(Provided that the President may require the Cabinet or as the case may be, the Prime Minister to consider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration).

Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so (and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever)

(4)        The question whether any, and if so what, advice was tendered to the President by the Cabinet, the Prime Minister, a Minister or Minister of State shall not be inquired into in, or by, any Court, Tribunal or other authority.

(5)        Where the President dissolves the National Assembly, he shall, in his discretion‑‑‑

(a)        appoint a date, not later than 90 (ninety) days from the date of the         dissolution, for the holding of a general election to the Assembly; and

(b)        appoint a Care‑taker Cabinet.

(6)        If, at any time, the President, in his discretion, or on the advice of the      Prime Minister, considers that it is desirable that any matter of national importance should be referred to a referendum, the President may cause the matter to be referred to a referendum in the form of a question that is capable of being answered either by ‘Yes, or ‘No’.

(7)        An act of Majlis‑e‑Shoora (Parliament) **may lay down the procedure for**the holding of a referendum and the compiling’ and consolidation of the result of a referendum.)

90.       (1) The executive authority of the Federation shall vest. in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution.

(2)        Nothing contained in clause (1) shall‑‑

(a)                    be deemed to transfer to the President any functions conferred by and    existing law on the Government of any Province or other authority; or

(b)                    prevent the Majlis‑e‑Shoora (Parliament) from conferring by law             functions on authorities other than the President.

91        (1) There shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions.

(2)        The President shall in his discretion appoint from amongst the members of the National Assembly a Prime Minister who in his opinion, is most likely to command the confidence of the majority of the members of the National Assembly.

(2A)                 Notwithstanding anything contained in clause (2), after the twentieth day of March, one thousand nine hundred and ninety, the President shall invite the members of the National Assembly to be the Prime Minister who commands the confidence of the majority of the members of the National Assembly, as ascertained in a session of the           Assembly, summoned for the purpose in accordance with the provisions of the Constitution.

(3)        The Person appointed under clause (2) (or as the case may be), invited under clause (2A) shall, before entering upon the office, make before the President oath in the form set out in the Third Schedule and shall within a period of sixty days thereof obtain a vote of confidence from the National Assembly.

(4)        The Cabinet, together with the Ministers of State, shall be collectively responsible to the National Assembly.

(5)        The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of the majority of the 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.

(6)        The Prime Minister may, by writing under his hand addressed to the President, resign his office.

(7)        A Minister who for any period of six consecutive months is not a member of the National Assembly shall, at the expiration of that period cease to be a Minister and shall not before the dissolution of that Assembly be again appointed a Minister unless he is elected a member of that Assembly:

Provided that nothing contained in this clause shall apply to a Minister who is a member of the Senate.

(8)        Nothing contained in this Article shall be construed as disqualifying the Prime Minister or any other Minister or a Minister of State for continuing in office during any period during which the National Assembly stands dissolved, or as preventing the appointment of any person as Prime Minister or other Minister or as Minister of State during any such period.”

On a careful examination of the above Articles of the Constitution it is quite clear that the President in discharge of his functions under ‑ the Constitution has to act on the advice of Prime Minister or the Cabinet, except in those cases where he is specifically authorised by the Constitution to act in his discretion. The discretionary powers of the President under the Constitution are limited to the extent of making a few appointments to the high Constitutional offices, besides his power to dissolve the National Assembly (Article 58(2)(a) and (b)), to refer a matter of National importance to referendum (Article 48(6)) and to fix a date for election within 90 days on dissolution of National Assembly and to appoint a Care‑taker Cabinet (Article 48(5)). Besides, the above discretionary powers of the President under the Constitution, the Prime Minister is constitutionally bound to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of Federation and proposal for legislation (Article 46(a)). The President may also call for from the Prime Minister any information relating to the administration of the affairs of the Federation and may also require for submission to the Cabinet for consideration any matter on which a decision has been taken by the Prime Minister or a Minister but not considered by the Cabinet (Article 46(b) and (c)). The President also has the right to address either House or both the Houses of Parliament (Article 56(l)) besides his right! to send messages to either House and the matter contained in such messages I to be considered by the House (Article 56(2)). At the commencement of first session of National Assembly after general elections and at the commencement of first session of each year, the President has the right to address the joint session of the two Houses of Majlis‑e‑Shoora (Parliament) Article 56(3)). It is quite significant that under Article 91(4) of the Constitution, the Cabinet together with Ministers of State is collectively responsible to the National Assembly alone. It is also very important to note that although the Prime Minister holds the office at the pleasure of the President but this pleasure cannot be exercised by the President so long as the Prime Minister commands the confidence of the majority of the members of the National Assembly and in order to ascertain whether the Prime Minister has lost the confidence of the majority of the members of the National Assembly, the President is obliged to summon a session of National Assembly and ask the Prime Minister to seek a vote of confidence from the Assembly (Article 91(5)). From the above‑stated Constitutional position, there remains no room for any doubt that the Prime Minister in running the affairs of the Government is neither answerable to President nor in that capacity he is subordinate to the President. In formulating the policies of his Government and running its affairs the Prime Minister under the Constitution is answerable only to the National Assembly and the President has no Constitutional role in this behalf. The President in all such matters is bound by the advice of Prime Minister or the Cabinet. No doubt, President may require the Cabinet or the Prime Minister, as the case may be, to reconsider any **advice tendered to him but the President is bound**to act on the advice tendered after re‑consideration.

The President and the Prime Minister have defined roles under the’ Constitution which do not overlap. They exercise powers in their respective Constitutional domain unhindered and uninterrupted by each other. No doubt. Constitutionally it would be an ideal situation where both the President and the Prime Minister have identity of views on matters concerning the affairs of the Federation but ideals do not exist in reality as they are outcome of imagination. I Therefore, difference in perception on the part of holders of these two top offices on any issue should not cause any stirring or alarm as in spite of different perceptions, personal likes or dislikes the two can co‑exist Constitutionally. It is important to note that while addressing an issue in discharge of their Constitutional obligation, both the President and Prime Minister are bound to act within the limitations imposed on them by the Constitution and their personal feelings, likes or dislikes cannot override the Constitutional mandate. We should also bear in mind that the method of election provided under the Constitution for these two top offices, also foresees a possibility that the holders of these two top posts may not belong to the same political party. Therefore, possibility of a play in the relationship between the holders of these two top posts cannot be ruled out.

No doubt, the President as the symbol of the unity of Federation occupies a neutral position in the Constitution, and in that capacity he is entitled to highest respect and regard by all the functionaries of the State. But it is equally important that in order to protect and preserve the dignity of this high office and this neutral image under the Constitution the President must keep aloof from all political imbroglio. If the President is unable to ward off the temptation to keep away from political game or he starts siding with one or the other political element in the Assembly, he is likely to lose his image as the neutral arbiter in national affairs and as a symbol of unity of Federation under the Constitution. In the latter event, his conduct may also come under criticism from those who may feel betrayed.

The speech delivered by the Prime Minister on Television on 17‑4‑1993, therefore, has to be examined in the light of preceding discussion and the prevailing political situation at the relevant time. From the material placed on record before us it appears that the petitioner after the annual speech of the President before the joint session of Parliament on 23‑12‑1992, started a political campaign for repeal of the controversial 8th Amendment in the Constitution. The press report of the post‑December 1992 period indicated that some sort of consensus had developed between the Government and the opposition party in ‑the National Assembly on this issue which created uneasiness in the relation between the President and the Prime Minister. However, some political elements in the Assembly opposed this move of the Government and there was also a split within the Ruling Party on this issue. The Press also blew up out of proportion the uneasy relation between President and the Prime Minister. This situation was further aggravated when some Ministers of Federal Cabinet who did not go alongwith the policies of petitioner called on the President and after their meeting with the President gave the impression to the press that dissolution of Federal Cabinet and the National Assembly was imminent. This was followed by spate of press statements by different political elements hostile to petitioner’s Government hinting at the action by the President to dismiss the Government of petitioner very soon. In this charged atmosphere of political despondency the petitioner met with the President on 14‑4‑1993 at the Presidency at Islamabad. This meeting, however, did not produce any positive results as the draft communique of the meeting prepared by the Prime Minister’s Secretariat, produced before us by the respondent, when sent to the Presidency through two Federal Ministers did not meet the approval of President, and the short press release issued by the President’s Secretariat about the meeting of Prime Minister with President reflected the strains in the situation. The bitterness of relations between the two was also reflected in the letter addressed by Elm **President’s Secretariat to the Prime Minister’s Secretariat on the next day of the meeting between the President and Prime Minister, in connection with the** allegation of Mrs. Nuzhat Nawaz against two high functionar Government, which criticised the inaction of Prime Minister to process the persons named. by the lady in spite of mention of this fact by the President to the Prime ‑Minister in the meeting of 14th April, 1993. There were also continued press reports about the imminent dismissal of Petitioner’s Government and dissolution of National Assembly by the President. The petitioner reacted in this scenario by going over to electronic media to address the nation on 17‑4‑1993. The petitioner in his speech first listed the achievements of his Government, then, referred to, the conspiracies to  hostile to him by using the destabilise his Government by high office of Presidency and finally he expressed his determination and resolve not to give in to those. pressures. No doubt, the language used by the petitioner was very strong and at times ‑intemperate but we cannot overlook and ignore the stress of events which had driven the petitioner to launch a counter‑attack. The unabated press statements of political elements hostile to . petitioner issued after their frequent visits to Presidency, attributing assurances  by the President, to dismiss the Government of petitioner so on were never A contradicted by the concerned quarters. Even the name of Mr. Balakh Sher Mazari was mentioned as the future Care‑taker Prime Minister by one of the politicians who is said to be hostile to petitioner,, after his meeting with the President, and the later events proved. it to be true when Mr Mazari was appointed as Care‑taker Prime’ Minister by the President on dissolution of Assembly. These events possibly led the petitioner to believe that the high office of President was being used by the elements hostile to him to destabilise his Government. The reaction of petitioner in these circumstances was neither unnatural nor was justified. The learned Attorney‑General contended that the. petitioner by publicly criticising or humiliating the President has contravened the Constitution and oath of his office. It is also contended by the learned Attorney‑General that if the petitioner had any grievance against the President the issue could be debated before the National Assembly where it would have been under the control of Speaker and uncalled for remarks against the President would not have appeared in public. I have not been able to discover any provision in the Constitution which debarred the Prime Minister to address the nation on Radio and Television. The right of freedom of speech guaranteed under the Constitution to every citizen was available to the Prime Minister as well in equal degree. I have already pointed out earlier that in order to maintain the dignity of the office of President it is imperative that the President must keep aloof from political imbroglio. Unfortunately, the facts brought on record before us in the case, do support the contention of petitioner that the President in this political imbroglio failed to maintain his neutrality. In these circumstances, the criticism on his conduct could not be avoided. The address of the petitioner on television on 17‑4‑1993 was no doubt a hard hitting one and also contained political overtones but it cannot be judged divorced from the chain of, events preceding his speech. The speech of the petitioner considered as a whole reflected the sentiments of a person who was pushed against the wall and felt betrayed by those whom he trusted. The speech in the circumstances could not be termed as wholly unjustified.

It is true that on account of criticism of President’s conduct by the petitioner in his speech a climate of mistrust may have developed between the two, but as pointed out earlier these two top functionaries of Federation have definite and defined roles under the Constitution which they could continue to discharge in accordance with their Constitutional obligations irrespective of their personal aversions to each other. I am, therefore, of the view that the speech of the petitioner delivered on 17‑4‑1993, did not have the effect of creating any deadlock or stalemate in the working of the Government of Federation.

As a result of above discussion, I have reached the conclusion that grounds mentioned in Dissolution Order dated 18‑4‑1993, neither Collectively ‘y e nor individually justified the inference that a situation had arisen in which the e Government of Federation could not be carried on in accordance with the provisions of the Constitution and an appeal to electorate was necessary. I may dissolution once again state here that the Court in considering the grounds of dissolution of Assembly under Article 58 (2)(b) (supra) “is not concerned with these pace progress, the shade of the quality or the degree of performance or quantum  achievement. It is only concerned with the breakdown of the Constitution mechanism, a stalemate, a deadlock in ensuring the observance of the provisions of the Constitution”.

1, accordingly, allow the petition, declare the impugned order dissolution of National Assembly and dismissal of Federal Cabinet as without lawful authority and of no legal effect. As a consequence of above declaration, the National Assembly, Prime Minister and the Cabinet stand restored and shall be entitled to function as immediately before the impugned order was passed. All steps taken pursuant to the order, dated 18‑4‑1993, under Article 58(2)(b) of the Constitution including the appointment of Care‑taker Cabinet and Care‑taker Prime Minister are also declared of no legal effect. However, all orders passed, acts done and measures taken in the meanwhile by the Care‑taker Government, which have been done, taken and given effect to in accordance with the terms of the Constitution and were required to be done or taken for the ordinary and orderly running of the State shall be deemed to have been validly and legally done. There will be no order as to costs.

M.BA./M‑1777/S                                                                              Petition accepted

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