

Punjab Assembly
Decisions

1947 - 1999



PUNJAB
ASSEMBLY
DECISIONS
1947 — 1999

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DECISIONS
1947 — 1999**

**GOLDEN
JUBILEE
MONOGRAM**

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(1947 to 1999)***

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CONTENTS

<i>Introduction</i>	<i>xi</i>
<i>Provincial Assemblies and Functionaries</i>	<i>xxxiii</i>
1. ADJOURNMENT	1
2. ADJOURNMENT MOTIONS	5
3. ADMINISTRATION	43
4. AGENDA	55
5. AMENDMENT	59
6. ARMY	63
7. ARREST	67
8. ASSURANCE	71
9. ASSEMBLY	75
10. BILLS	89
11. BUDGET	123
12. CHIEF MINISTER	141
13. COMMITTEES	145
14. CONSTITUTION	151
15. COURTS	155
16. CUT MOTIONS	159
17. DEBATE	163
18. DEMANDS	171
19. DEPUTY SPEAKER	175
20. DETENTION	179
21. DISQUALIFICATION	183
22. DOCUMENTS	189

23. ELECTION	193
24. FUNDAMENTAL RIGHTS	197
25. GALLERIES	201
26. GENERAL DISCUSSION	205
27. GOVERNMENT	209
28. IMMUNITY	213
29. INTRODUCTION	217
30. LAW AND ORDER	221
31. LAYING IN ASSEMBLY	225
32. LAPSE	229
33. MARTIAL LAW	233
34. MEMBERS	237
35. MINISTERS	257
36. MOTION	263
37. NOTICE	267
38. OATH	271
39. ORDINANCE	275
40. PARLIAMENTARY SECRETARY	291
41. PARLIAMENTARY YEAR	295
42. PREAMBLE	295
43. POINT OF ORDER	299
44. PRIVATE MEMBERS	305
45. POLICE	309
46. PRESS	313
47. PRIVILEGES	317
48. PROCEDURE	379
49. PUBLIC INTEREST	383

50. PUBLIC OPINION	387
51. PUBLICATION	391
52. PUNISHMENT	397
53. QUESTIONS	401
54. QUORUM	413
55. REFERENCE	419
56. REPORT	451
57. REQUISITION	455
58. RULES	459
59. SEATING PLAN	463
60. SECURITY	467
61. SERGEANT-AT-ARMS	471
62. SESSION	475
63. SITTING	479
64. SPEAKER	483
65. SPEECHES	497
66. SUMMONING	501
67. SUPPLEMENTARY BUDGET	505
68. SUB-JUDICE MATTERS	509
69. TAXATION	513
70. TEMPORARY ACT	517
71. VISITORS	521
72. VOTING	525
73. WEAPON	529
Index	533

INTRODUCTION

by

Dr Syed Abul Hassan Najmee

Secretary

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Fifty-three years of Pakistan

(a) ***Preliminary.*** The constitutional and parliamentary history of Pakistan over a period of fifty-three years is unconventional rather dismal and thought-provoking. For multifarious reasons too well known to the nation, we are still far off the goal of instituting genuine democracy within the framework of Islam. The objectives in the wake of democracy, *albeit* cherished and pledged to satisfy the nation, have so far remained almost an illusion.

The patient and unrelenting struggle, steered by the competent and dedicated leadership of the Founder of the Nation – Quaid-i-Azam Mohammad Ali Jinnah – consummated in the emergence of the Islamic Republic of Pakistan on 14 August 1947. The Pakistan Movement was inspired by the precepts and goals later incorporated in the Objectives Resolution (1949).¹ The objectives *inter alia* provide that the new Islamic State shall–

- (a) enable the Muslims “to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and the Sunnah”;
- (b) “exercise its powers and authority through the chosen representatives of the people” in accordance with “the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam”;
- (c) guarantee fundamental rights including equality of status, equality of opportunity and equality “before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association”;
- (d) make adequate provisions “for the minorities to profess and practice their religions and develop their cultures”; and, “to safeguard the legitimate interests of minorities and backward and depressed classes”; and
- (e) secure “the independent of judiciary”.

¹The Constituent Assembly passed the Resolution on 12 March 1949 – see the Constituent Assembly of Pakistan Debates, 1949, Vol.V, pp.94-98; and, the Constitution of the Islamic Republic of Pakistan (1973), Article 2A.

(b) **Democracy** which is the rule of the majority, involves the concept of the 'rightness' of the majority. The essential attributes of a liberal democracy include that toleration and endurance are exercised by all; the government is limited and accountable and its rules are in the common interest of all; it remains representative and is responsive to the changing public opinion; the elementary rights and liberties are guaranteed and are made inviolable; and, the political groups in minority are given a chance to try, within the design of the Constitution, to become a majority. Freedom of speech and association and free elections *inter alia* constitute the basis of a responsible government but these rights become meaningless if the people do not have the ability to exercise them. Free elections presuppose "the existence of, and free competition between, political parties"¹ and they mean that neither the government in power nor anyone else may illegally determine the electoral result. "Fraud, intimidation and bribery are thus incompatible with responsible government."²

A society or a state to be democratic should not only vouch for certain basic rights against the Executive but it must also afford opportunity to the individuals to exercise those rights freely. Want and deprivation lead to frustration, defeat and resignation. Instead of being cognizant of their rights, the dispirited and discontented souls, tend to fall a facile prey to the malevolent factors and are beguiled by the overstated prospects. Unless, therefore, the 'freedom from want' is actually realized, the other cherished rights may be destroyed or diluted. Equally important is the protection of the under-privileged in the society against the ruthless competition. The need is to strike a balance "between the 'haves' and 'have nots'."³

A community to be amicably arrayed must have a popular network of rights and obligations and an operative mechanism for the prompt and affable settlement of the dissension that does arise from the act of being together. The approbation of such rights and duties first produced the customary law which was, later, complemented, and in many cases, replaced by the laws of State organization.⁴ Law is public or private. The former, which *inter alia* relates to the structure, powers, rights and activities of the State, is either constitutional law or administrative law.

¹Lively, J., *Democracy*, 1975, p.44.

²*Ibid.*

³Subbarao, S.K., *Freedoms in Free India*, AIR 1986 Journal 21, at pp.22-23.

⁴Sen, S.D.K., *A Comparative Study of the Indian Constitution*, Vol. I, Calcutta, 1960, p.2.

(c) **Constitution and Constitutionalism.** Constitutional law is the legal framework of a nation¹ and a scheme whereby the country is governed.² It conceives a system or principles according to which the nation, state or body politic is constituted;³ it “contains the basic rules of conduct for the governance of a country”;⁴ it sets out the framework and the principal functions of the organs of the government of a state and declares the principles governing the operation of these organs;⁵ it provides “devices for the limitation and control of political power;”⁶ and, embodies the rights of the individuals as against the authorities of the State.⁷

Generally speaking, a constitution is the *grund norm* and, being at the acme of legal scheme, it “lays down the fundamental, constituent and organic law.”⁸ It is “the common denominator with reference to which all statutes, legislation and every action in the country have to be tested.”⁹ All public authorities¹⁰ derive their powers; all laws, their validity;¹¹ and all subjects, their rights from the constitution. Thus, “no power can be claimed by any functionary which is not to be found within the four-corners of the

¹McIlwain, C.H., *Constitutionalism, Ancient and Modern*, New York, 1947, p.24.

²*Encyclopedia of Britannica*, Vol.6, p.396 and *Halsbury's Laws of England*, Vol.8, para 801.

³Swarup, J., *Constitution of India*, Allahabad, p.84.

⁴Nasim Hasan, *Constitution, Law and Pakistan Affairs*, Lahore, 1986, p.3. A Constitution serves three purposes; viz., “to establish different organs of government”; “to assign to them their respective functions”; and “to make provisions for the general welfare of the people.” Also see Sardar Muhammad Iqbal, *The Constitution of Pakistan*, PLD 1975 Journal, p.77.

⁵Phillips, O.H., *Constitutional and Administrative Law*, London, 1973 (5th ed), p.5.

⁶Loewenstein, K., *Political Power and the Government Process*, 1957, p.123.

⁷In its broader sense, a constitution “comprehends the normative attitudes held by the people towards government, their conception of how power ought to be regulated, of what it is proper to do and not to do. There are, as it were, pre-constitutional norms regulating government, and it is upon these that the health and viability of democratic systems will depend” — see Bogdanor, V. (ed), *Introduction to Constitutions in Democratic Politics*, Dartmouth Publishers, 1988, p.7. Also see M. Allen, B. Thompson and B. Walsh in *Cases and Materials on Constitutional and Administrative Law*, London, 1990, pp.11-12.

⁸*Kesavananda Bharati v State of Kerala*, AIR 1973 SC 1461.

⁹“It is the supreme verdict of the people and all other organs must subserve to it” — Mukharji, P.B., *The Aspirations of the Indian Constitution*, AIR 1955 Journal 101.

¹⁰Where, legislature is not supreme, it imposes restriction “on the power of legislature itself by prohibiting it from making certain laws” — M. Munir, *Constitution of the Islamic Republic of Pakistan*, Lahore, 1965, p.5.

¹¹Kagzi, M.C.J., *The Constitution of India*, Vol. I, Delhi, 1984, p.3.

constitution nor can any one transgress the limits therein specified.”¹ By cramping power, it secures a government by law² *i.e.* a government which is carried on in accordance with the principles and objectives of the constitution³ and with due regard to the confines imposed by it.⁴

“A constitution is indeed the resultant of a parallelogram of forces – political, economic and social – which operate at the time of its adoption.”⁵ To be acceptable to the people and to extract obedience from them, it must mirror their needs and aspirations; embody the ideologies of the nation; realize the objectives envisioned by its founders; make provisions and pave way for the extensive welfare of the people;⁶ and, ensconce the rule of law through a responsible and representative government. If, in practice, it nullifies its goal or else it is “destructive of the values it was intended to promote”,⁷ it cannot stay tenable with the populace.

The expression ‘constitutional government’ is closely affiliated with the concept of constitutionalism in its actual undertone. Constitutionalism, which is a global phenomenon and which originates from a belief and practice in limited government, must “be set in contradistinction to

¹Fazlul Quader Chowdhury v Muhammad Abdul Haque, PLD 1963 SC 486, at p 535, *per* Hamoodur Rehman J.

²A constitution, no doubt, allocates functions; but, “to allocate functions, powers and duties is also *ipso facto* to limit power.” For details, see Bogdanor, V. (ed), *Introduction to Constitutions in Democratic Politics*, Dartmouth Publishers, 1988, pp.3-7. “A constitution is not the act of a government, but of a people constituting a government, and a government without a constitution is power without right” — see K.C. Wheare, *Modern Constitutions*, OUP, 1966. In Chapter 2, he classifies constitutions as — written and unwritten; rigid and flexible; supreme and subordinate; federal and unitary; separated powers and fused powers; and, republican and monarchial. “A constitution is a thing antecedent to a government, and a government is only the creature of a constitution” — see Paine, T., *Rights of Man in The Complete Works of Thomas Paine*, pp.302-03, quoted by M. Allen, B. Thompson and B. Walsh in *Cases and Materials on Constitutional and Administrative Law*, England, 1990, p.1.

³Bolingbroke, *A Dissertation Upon Parties (1733-34) in The Works of Lord Bolingbroke*, 1841, Vol. II, p.88: extracts reproduced by M. Allen, B. Thompson and B. Walsh in *Cases and Materials on Constitutional and Administrative Law*, England, 1990, p.3.

⁴A constitution, in fact, “springs from a belief in limited government.” For details, see K.C. Wheare, *Modern Constitutions*, OUP, 1966, pp.4-8.

⁵*Ibid*, p.98. “Examined in isolation from the political, cultural and socio-economic forces at work in the society, a constitution seems drab and lifeless” — E. Michael Joye and Kingsley Igweike, *Introduction to the 1979 Nigerian Constitution*, Nigeria, p.3.

⁶Munir, M., *Constitution of the Islamic Republic of Pakistan*, Lahore, 1965, p.5.

⁷Vile, M.J.C., *Constitutionalism and the Separation of Powers*, OUP, 1967, p.1.

arbitrary power.”¹ By apportioning power and limiting it, constitutionalism provides “effective restraints upon governmental action.”² It is a style and tendency which comes only if the rules of government are followed over a long period of time; it is the name given to a willingness to live according to rules; and, it is an environment which capacitates private interests to bring their views to bear on governments. To cap it all, it is the quintessence of a modern democracy.

(d) *Brief Constitutional History of Pakistan*

Provisional Constitution Order 1947

The Constituent Assembly and the political Leaders of the new State of Pakistan had the demanding obligation to take pertinent administrative as well as legislative steps so as to constitute the nation and fabricate the society in accordance with those objectives. The framing of a new constitution, which fully reflected the aspirations and ambitions of the nation, was obviously inevitable. Pending promulgation of a Constitution, the Government of India Act 1935, with necessary alterations and modifications through the Pakistan (Provisional Constitution) Order 1947, was adopted as the provisional Constitution.³

First Constitution (1956)

The today is invariably forged on the yesterday and there can be no present which can be brazen enough to discard all the heritage of the past. The formation of a constitution is massively influenced by the constitutional conventions and former practices and is directed by the exigencies involving a society and its aspirations. In fact, “all constitutions are the heirs of the past as well as the testators of the future.”⁴ It can thus be more appropriately comprehended in its socio-historical setting.

Under the Establishment of West Pakistan Act 1955, the provinces of the Punjab, NWFP, Sind and Balochistan and the States of Bahawalpur,

¹Vile, M.J.C., *Constitutionalism and the Separation of Powers*, OUP, 1967, p.1.

²Friedrich, C.J., *Limited Government: A Comparison*, Prentice-Hall, N.J., 1974, p.13.

³For details, see p.xxxiii All the ninety sitting members of the Punjab Legislative Assembly elected from the constituencies which formed part of the Province of West Punjab, automatically became members of the West Punjab Legislative Assembly under the aforesaid Order.

⁴Jennings, *Some Characteristics of the Indian Constitution*, 1953, p.56.

Khairpur, Amb, Chitral, Dir and Swat and Tribal areas of Balochistan, Sind and NWFP were incorporated into one province; viz., West Pakistan.

For sundry reasons, the Constituent Assembly remained seized of the matter for about nine years; and, the first Constitution of the Islamic Republic of Pakistan came into force on 23 March 1956.¹ At the time of framing the 1956 Constitution for the Republic, the Constituent Assembly had the benefit of the 1935 Act which served as the cornerstone and many of its provisions were retained, with or without modification; and, experiences in federalism in the USA, Canada and Australia.

The 1956 Constitution persisted with a parliamentary form of government in a federal setup, consisting of East Pakistan and West Pakistan but a unicameral legislature.² Although, the executive authority vested in the President,³ except in cases where he was empowered by the Constitution to act in his discretion,⁴ he acted on the advice of the Prime Minister⁵ or the Cabinet.⁶ The legislative authority was divided between the Federation and the Provinces.⁷ The executive authority nearly corresponded to the distribution of legislative powers.⁸ Among other things, Fundamental rights⁹ and Directive Principles of State Policy¹⁰ as also the provisions relating to Islam,¹¹ National Economic Council¹² and the Finance Commission¹³ were new additions.¹⁴

¹Passed by the second Constituent Assembly on 29 February 1956; and, received the assent of the Governor General on 2 March 1956. The Constitution re-named the 'West Pakistan Legislative Assembly' as 'the West Pakistan Provincial Assembly, with the same powers and functions. It comprised 300 members, while for a period of ten years 10 additional seats were reserved for women.

²The Constitution of the Islamic Republic of Pakistan (1956), Article 43.

³For qualifications, method of election and other allied matters, *see ibid*, Articles 32 to 36.

⁴For instance, the appointment of the Prime Minister — *ibid*, Article 37, clause (3).

⁵He had to be a person who, in the opinion of the President, was likely to command the confidence of the majority of the members of the National Assembly, *see ibid*, Article 37, clause (3).

⁶*Ibid*, Article 37, clause (7) read with Article 39.

⁷This was done by means of the three legislative lists; viz., the Federal List, the Provincial List and the Concurrent List. Matters not enumerated in any of those lists rested with the Provinces — *ibid*, Article 106.

⁸*Ibid*, Article 39 read with Article 73.

⁹*Ibid*, Articles 4-22.

¹⁰*Ibid*, Articles 23-31.

¹¹*Ibid*, Articles 197 & 198.

¹²*Ibid*, Article 199.

¹³*Ibid*, Article 118.

¹⁴For details, *see* M. Munir, *Constitution of the Islamic Republic of Pakistan*, Lahore, 1965, pp.1 to 53 and Nasim Hasan, *Constitution, Law and Pakistan Affairs*, Lahore, 1986, especially pp.17-18.

Abrogation of the 1956 Constitution (1958)

During the period (1947-58), the country encountered ominous happenings resulting *inter alia* from political instability, oft changing governments, helpless legislatures, and opportunistic propensities. Little efforts had been made to consolidate the nation, to energize and reinforce the people, to give them an honest drift and to resolve or alleviate their multiple problems. The people of Pakistan were obviously perplexed and frustrated with the system.

On the night of 7 October 1958, Iskander Mirza, President of Pakistan, proclaimed martial law throughout the country, abrogated the 1956 Constitution, dissolved the National and Provincial Assemblies as also the Cabinets, outlawed the political parties, and appointed General Muhammad Ayub Khan as Chief Martial Law Administrator. Later, on October 27 1958, Muhammad Ayub Khan dethroned the President and assumed the sovereign command of the country.¹ The democracy remained sheathed from 7 October 1958 to 7 June 1962.

Second Constitution (1962)

On 14 February 1960, seventy five thousand two hundred eighty three members of the Basic Democracy² declared confidence in President Field Martial Muhammad Ayub Khan,³ and authorised him to promulgate a Constitution. He promulgated the Constitution of Pakistan (1962) on 1 March 1962.⁴ Martial law was lifted with effect from 8 June 1962: the day on which the Constitution came into force⁵ with the first meeting of the National Assembly.⁶ Through a referendum under the new Constitution,

¹For details, see *State v Dosso* (PLD 1958 SC 353); Muhammad Ahmad, *My Chief*, Lahore, 1960, pp.102-03; Fazal Muqueem Khan, *The Story of the Pakistan Army*, Karachi, 1963, p.190; *idem*, *Pakistan Crisis in Leadership*, Rawalpindi, 1973; the daily *Dawn*, 5 October 1958; and, *The Pakistan Times*, 5 and 7 October 1958.

²The concept of Basic Democracy was announced in May 1959, and the first B.D. Elections were held in December 1959 to elect forty thousand members each from the East Pakistan and the West Pakistan. The system of Basic Democracy primarily aimed at the constitution of the local bodies; however, later the members of the Basic Democracy also served as electoral college for the election of the President and National and Provincial Assemblies.

³For procedure, see the Presidential Order (Election and Constitution) 1960.

⁴For the purpose, a Constitution Commission was constituted on 17 February 1960. The Commission submitted its report on 29 April 1961.

⁵See Article 224(1) of the Constitution of the Islamic Republic of Pakistan (1962), and National Assembly of Pakistan Debates, 8 June 1962, Vol.I, p.1.

⁶General election to the West Pakistan Provincial Assembly was held on 6 May 1962.

General Muhammad Ayub Khan was elected as the President of the Pakistan till the end of the first term.¹ The next elections of the National and the Provincial Assemblies were held on 21 March and 16 May 1965 respectively.

Since “the philosophy underlying the new Constitution was that the country must not again fall into the throes of instability, the bane of the old system,”² a presidential form of government with a commanding Center was contemplated to be more germane to the conditions. The President was given extensive executive as well as legislative authority. Notwithstanding the division of powers,³ if the national interest in relation to the security of Pakistan,⁴ its economic and financial stability, planning and coordination and the achievement of uniformity so required, the National Assembly⁵ could legislate even with respect to the provincial matters.⁶ In case of conflict, the federal law always triumphed and the provincial law, to the extent of inconsistency, was invalid.⁷ The National Assembly was “the judge of its own jurisdiction” and a law made by it could not be questioned for want of authority.⁸ Initially, the Constitution contained a list of non-justiciable principles of law-making and of policy; but, later those were converted into justiciable Fundamental Rights.⁹

Abrogation of the 1962 Constitution (1969)

For diverse reasons,¹⁰ Ayub’s grasp over the masses steadily loosened and they were imperceptibly alienated from him. His efforts at nipping the

¹There was no contestant, and the election of the President was held simply on the basis of “Yes” or “No”.

²Nasim Hasan, *Constitution, Law and Pakistan Affairs*, Lahore, 1986, p.32.

³The legislative powers of the Federation were enumerated in the Third Schedule and the residuary was allotted to the Provinces — The Constitution of the Islamic Republic of Pakistan (1962), Articles 131 and 132.

⁴The term included the safety, welfare, stability and integrity of Pakistan and each part of Pakistan but did not extend to public safety as such — *see ibid*, Article 244.

⁵The 1965 general elections led to the reconstitution of the National and the Provincial Assemblies. The members elect of the West Pakistan Assembly made oath on 9 June 1965.

⁶The Constitution of the Islamic Republic of Pakistan (1962), Article 132, clause (2).

⁷*Ibid*, Article 134.

⁸Chittagong Mercantile Employees Association v Chairman Industrial Court of East Pakistan (PLD 1963 Dacca 856).

⁹The Constitution (First Amendment) Act 1963 (I of 1964).

¹⁰For details, *see* Hasan-Askari, *The Military and Politics in Pakistan 1947-86*, Lahore, 1986, pp.146-51.

opposition further aggravated the counteraction against him.¹ The agitation under the leadership of the Democratic Action Committee, composed of eight political parties, steadily gained momentum and Ayub's efforts to stop the popular storm slowly but ominously surging against him further inflamed the situation. Having been rendered utterly defenceless, Ayub handed over the power to General Yahya Khan, the Commander-in-Chief of the Army on 25 March 1969. Recounting the causes thereof, Ayub accentuated that —

*“The situation in the country is fast deteriorating. The Administrative institutions are being paralysed. Self-aggrandizement is the order of the day. The mobs are resorting to gheraos at will, and get their demands accepted under duress. And no one has the courage to proclaim the truth. Every principle, restraint and way of civilized existence has been abandoned. Every problem of the country is being decided in the streets. Except the Armed Forces, there is no constitutional and effective way to meet the situation.”*²

Justifying the action, General Yahya Khan pointed out that —

*“the Armed Forces could not remain idle spectators to this state of near anarchy (administrative laxity, strikes and violence). They have to do their duty and save the country from disaster ... It is my firm belief that sound, clean and honest administration is a pre-requisite for sane and constructive political life and for a smooth transfer of power to the representatives of the people elected freely and impartially on the basis of adult franchise.”*³

The 1958 track was closely retraced. The 1962 Constitution was abrogated, political institutions were dissolved and martial law was imposed throughout the country. It was given out that the martial law

¹For details, see Yusuf, H., *In Search of Democracy 1947-77*, Lahore, 1980, pp.62-67. Also see the *Dawn*, 13 December 1967 and *The Pakistan Times*, 21 December 1967. Also see Zafar, S.M., *Through the Crisis*, Lahore, 1970, p.128.

²A day earlier, he wrote a detailed letter to General Yahya Khan, requesting him to take over. For the full Text of his letter and the speech, see Hasan-Askari, *The Military and Politics in Pakistan 1947-86*, Lahore, 1986, Appendix D & Appendix E respectively.

³For the full text of the Address, see *ibid*, Appendix F.

administration would resolve the problems involving various sections of society including students, labour and peasants.¹

On 26 July 1969, the Chief Martial Law Administrator assigned the Election Commission the duty of making necessary preparations for the next election.² The province of West Pakistan was abolished with effect from 1 July 1970, and the Provinces of Punjab, Sind, Balochistan and NWFP stood restored. The Chief Martial Law Administrator promulgated the Legal Framework Order 1970, providing for setting up of a National Assembly and Provincial Assemblies of East Pakistan, Punjab, Sind, NWFP and Balochistan. Pakistan People's Party in the West Pakistan and Awami League in the East Pakistan returned with formidable majority in the elections for the National and Provincial Assemblies respectively held on 7 and 17 December 1970, under the 1970 Order.³

The postponement of the session of the National Assembly piloted the civil disobedience movement in East Pakistan. The writ of the Central Government almost failed and Mujibur Rehman, having set up a parallel government in the Province, issued a number of decrees in his capacity as a *de facto* ruler. The military operation to put down the armed rebellion, the banning of the Awami League and the arrest of political leaders including Mujibur Rehman merely precipitated an open civil war between the Awami League and the military. The Indian armed attack on 21 November 1971 culminated in the surrender of the Pakistan army to India on 16 December 1971 and the declaration of East Pakistan as a sovereign State.

After the tragic secession of East Pakistan, President General Muhammad Yahya Khan decided to hand over the state authority to the leader of the majority party in Pakistan.⁴ Consequently, Mr Zulfikar Ali Bhutto assumed office of the President of Pakistan and first ever civilian Chief Martial Law Administrator on 20 December 1971.⁵

¹The assumption of powers by General Yahya Khan was later declared by the Supreme Court of Pakistan as an "act of usurpation" and, therefore, "illegal and unconstitutional" — see *Asma Jilani v The Government of the Punjab and others* (PLD 1972 SC 139).

²In particular, the Election Commission was required to organize the election machinery, prepare new voters' lists and make new constituencies.

³For details, see *Report on General Elections of Pakistan 1970-71*, Vol. I, Election Commission of Pakistan, Karachi, 1972.

⁴By that time, Pakistan had been reduced to the Provinces of Punjab, Sind, NWFP and Balochistan.

⁵For details, see *White Paper on the Crisis in East Pakistan*, Islamabad, 1971, pp.37-46.

Third (Interim) Constitution (1972)

Martial Law was lifted with effect from 20 April 1972 and the Interim Constitution came in force on 21 April 1972.¹ Z.A. Bhutto, pursuant to the vote of confidence in him passed by the National Assembly, assumed office of the President.

The Interim Constitution *inter alia* enshrined the principle of the rule of law² and guaranteed Fundamental rights.³ In the Presidential setup, the authority of the State was divided between the Federation and the Provinces. The executive authority nearly matched with the legislative powers.⁴ The Federal Legislature and Provincial Legislatures were commissioned to exercise authority with respect to the subjects respectively cited in the Federal Legislative List and the Provincial Legislative List. Whereas, the topics included in the Concurrent Legislative List were open to both of them, the residuary matters could be entrusted by the President either to the Federal Legislature or a Provincial Legislature.⁵ In case of conflict between a provincial law and a federal law which the Federal Legislature was competent to enact, or with any provision of an existing law with respect to any topic on the Concurrent Legislative List, the latter prevailed and the former, to the extent of repugnancy, was void; however, if a provincial law about such a matter, having been reserved for the consideration of the President, had received his assent, the provincial law, notwithstanding the inconsistency with a federal law, prevailed.⁶

Fourth Constitution (1973)

The Constitution of the Islamic Republic of Pakistan (1973) came into force on 14 August 1973.⁷ It classifies powers territorially and functionally.

¹Adapted by the National Assembly on 17 April 1972; and, under Article 1(2) it came into force with effect from 21 April 1972.

²The Interim Constitution of the Islamic Republic of Pakistan (1972), Article 3, which *inter alia* conceived that no action detrimental to the life, liberty, body, reputation or property of any person would be taken except in accordance with law.

³*Ibid*, Article 7 read with Articles 8 to 26.

⁴*Ibid*, Articles 61 and 102.

⁵*Ibid*, Article 138 read with the Fourth Schedule and Article 141.

⁶*Ibid*, Article 143. The Federal Legislature could, however, make law with respect to the same matter.

⁷The foremost duty of the National Assembly was to frame a permanent Constitution before 14 August 1973 — The Interim Constitution of Islamic Republic of Pakistan (1972), Article 93. The Constitution Bill was passed by the National Assembly on 10 April 1973; and, it received the assent of the President on 11 April 1973.

The former, which is based on the acceptance of the federal structure, has been achieved by distributing the legislative and executive powers between the Federation and the Provinces.¹ The functional separation has been obtained by dividing the State authority amongst the Executive, the Legislature and the Judiciary. To make certain basic rights and freedoms inviolable by ordinary legislation and to make them independent of the vagaries of party legislation, fundamental rights have been affirmed and made justiciable.²

Some of the significant objectives of the Constitution are: (i) establishment of a welfare State as conceived by Islam; (ii) liberty of thought, expression, belief, faith and worship; (iii) equality of status and opportunity; (iv) dignity of the individual and the unity of the Nation; (v) promotion of Islamic values and reconstruction of society thereon; and (vi) independence of Judiciary.

The Constitution has persisted with a parliamentary form of government, with a bicameral legislature.³ Although, the executive authority vests in the President, or as the case may be in the Governor,⁴ except in cases where he has been empowered by the Constitution to act in his discretion, he acts on the advice of the Prime Minister/Chief Minister or the Cabinet.⁵ It also makes provisions for Directive Principles of State Policy,⁶ Islamic provisions,⁷ National Economic Council,⁸ National Finance Commission,⁹ and Council of Common Interests.¹⁰

¹Parliament can legislate with respect to the matters on the Federal Legislative List and Parliament as well as a Provincial Legislature is competent to make laws about matters enumerated in the Concurrent Legislative List. Matters not mentioned in either of the two lists fall within the exclusive ambit of the Provinces — see the Constitution of the Islamic Republic of Pakistan (1973), Articles 70, clause (6), 141 & 142 read with the Fourth Schedule. The executive authority of both the Federation and the Provinces is, by and large, coextensive with that of the legislative jurisdiction — see *ibid*, Articles 97 and 137.

²As absolute freedoms lead to anarchy, the fundamental rights have been granted subject to reasonable restrictions which can be imposed by law. The Supreme Court and the High Courts are the guardians of the said rights. Except during the emergency-rule under Article 232, they cannot be suspended or abridged — see *ibid*, Articles 8 to 28 read with Article 184, clause (3) and Article 199.

³*Ibid*, Article 50.

⁴*Ibid*, Articles 90 and 129.

⁵*Ibid*, Articles 48 and 105.

⁶*Ibid*, Articles 29-40.

⁷*Ibid*, Articles 227 to 231 & 203A to 203J.

⁸*Ibid*, Article 156.

⁹*Ibid*, Article 160.

¹⁰*Ibid*, Articles 153-54.

First Suspension of the 1973 Constitution (1977)

The Government announced that the election for National Assembly would be held on 7 March 1977 and that of the Provincial Assemblies, on 10 March 1977. On 15 January 1977, nine Opposition Parties formed a united election front named as 'Pakistan National Alliance' (PNA).¹ Pakistan Peoples Party secured a formidable majority in the National Assembly.² Objecting to the sanctity and fairness of the election, the PNA boycotted the election of the Provincial Assemblies scheduled for 10 March 1977.³ The PNA launched a vigorous movement against the Government, demanded resignation of the Prime Minister and the Chief Election Commissioner, and insisted on fresh elections under the aegis of Judiciary and the Army. The Government had initially been adamant; however, as the movement gained momentum, it showed slight flexibility.⁴

On 5 July 1977, the third martial law intruded on the sway of the present Constitution,⁵ and the democratic process was once again discontinued. General Muhammad Zia-ul-Haq, Chief of the Army Staff, imposed Martial Law, suspended the Constitution, dismissed the Federal and the Provincial Cabinets, and, dissolved Parliament and Provincial Assemblies. He assumed office of the Chief Martial Law Administrator; but, later, when President Chaudhry Fazal Elahi resigned, he also assumed that office.

Revival of the 1973 Constitution (1985)

With a view to restoring the democratic institutions, the President promulgated the Houses of Parliament and Provincial Assemblies

¹The election alliance comprised Muslim League, Tehrik-e-Istaqlal, Jamat Islami, Jamiat Ulma-e-Islam, Jamiat Ulma-e-Pakistan, Pakistan Democratic Party, Khaksar Tehrik and Muslim Conference of Azad Kashmir, respectively headed by Pir Pagara, Air Marshal (Retd) Asghar Khan, Mian Tufail Muhammad, Maulana Mufti Mehmood, Maulana Shah Ahmed Noorani, Nawabzada Nasrullah Khan, Sardar Sherbaz Khan Mazari, Khan Muhammad Ashraf Khan and Sardar Abdul Qayyum Khan.

²Whereas the PNA could get only 38 seats, Pakistan Peoples Party pocketed 154 out of 200 seats.

³The election was held; however, the turn-over of voters remained quite low. Although, the Election Commission published the facts and figures about National Assembly Election, it did not issue any such data about the election of the Provincial Assemblies.

⁴Some Negotiations took place; but, no consensus was reached.

⁵Gazette of Pakistan, Extraordinary, Part I, dated 5 July 1977 (PLD 1977 Central Statutes 326). Whereas, the 1956 and the 1962 Constitutions were abrogated, the 1973 Constitution was held in abeyance and the Supreme Court preferred to tag the action as the period of 'constitutional deviation'. For the judicial exposition of the causes, effects and the legal status of the 1977 Martial Law, *see* Begum Nusrat Bhutto v Chief of the Army Staff, (PLD 1977 SC 657).

(Elections) Order 1977, which *inter alia* provided for separate electorate for Muslims and non-Muslims. The general elections were held¹ on non-party basis² on 25 February 1985 for the National Assembly and on 28 February 1985 for the Provincial Assemblies 1985.³ The 1973 Constitution, after having been substantially amended by the Chief Martial Law Administrator and President of Pakistan, was reactivated in 1985⁴ and with that the parliamentary system of government within a federal layout stood resuscitated. After the Parliament had passed the Constitution (Eighth Amendment) Act 1985,⁵ the Chief Martial Law Administrator revoked the Proclamation of 5 July 1977 on 30 December 1985.⁶

Second Suspension of the 1973 Constitution (1999)

Although the democratic system stayed between 1985 and 1999, it could not inspire a feeling of political stability, and could not give a sense of direction to the nation. Neither did the legislatures nor did the governments complete their constitutional life. Elections for National and Provincial Assemblies were held at regular intervals, almost every three year. The problems and distress involving the people intensified with time, and the misgivings upset the national fabric.

For reasons known to the nation, the democratic setup was again rolled back by the military action on 12 October 1999. General Pervez Musharraf,

¹Boycotting the 1985 election was declared as cognizable offence; and, the code of conduct for the contesting candidates was formulated under Martial Law Order No.102 dated 12 January 1985.

²In the Punjab Assembly, majority of the members later joined the Pakistan Muslim League. 10 members formed the Opposition group with Makhdoomzada Syed Hasan Mahmood as the Leader. On his death in October 1986, Mian Muhammad Afzal Hayat took over as Leader of Opposition.

³For details, see *Report on the General Elections 1985*, Vol.I, Election Commission of Pakistan, Islamabad.

⁴The Revival of the Constitution of 1973 Order 1985 (P.O. 14 of 1985). The President appointed 10 March 1985 to be the day on which the provisions of the Constitution, as amended by the said Order, except Articles 6, 8 to 28, clauses 2 and 2(A) of Article 101, Articles 199, 213 to 216 and 270A, would come into force — Notification No. S.R.O.212(1)/85, dated 10 March 1985, published the same day in the Gazette of Pakistan (Extraordinary) Part II (PLD 1985 Central Statutes 713). With the lifting of martial law on 30 December 1985, the Constitution was wholly restored (PLD 1986 Central Statutes 13). The amendments chiefly pertained to the making of the position of the President indubitably productive and invulnerable.

⁵It had the effect of extending constitutional protection to the Proclamation of Martial Law and the actions thereunder, as well as to the majority of the provisions of the Revival of the Constitution of 1973 Order 1985 (P.O. 14 of 1985).

⁶The Proclamation of Withdrawal of Martial Law Order 1985, published in the Gazette of Pakistan (Extraordinary) dated 30 December 1985.

Chairman of the Joint Chiefs of Staff Committee and Chief of Army Staff assumed the office of the Chief Executive and proclaimed Emergency throughout Pakistan.¹ The Proclamation of Emergency, which was given effect from 12 October 1999 *inter alia* provides —

- “(a) *The Constitution of the Islamic Republic of Pakistan shall remain in abeyance;*
(b) *The President of Pakistan shall continue in office;*
(c) *The National Assembly, the Provincial Assemblies and the Senate shall stand suspended;*
(d) *The Chairman and Deputy Chairman of the Senate, the Speaker and Deputy Speaker of the National Assembly and the Provincial Assemblies shall stand suspended;*
(e) *The Prime Minister, the Federal Ministers, Ministers of State, Advisors to the Prime Minister, Parliamentary Secretaries, the Provincial Governors, the Provincial Chief Ministers, the Provincial Ministers and the Advisors to the Chief Ministers shall cease to hold office;*
(f) *The whole of Pakistan will come under the control of the Armed Forces of Pakistan.*”²

Legislatures in the Punjab

(a) ***Provincial Assemblies.*** The Punjab can rightly boast of a rich democratic heritage. Not only that it played an active role during the Pakistan Movement, it has also been contending hard for the advancement of the cause of democracy. Various legislatures in the Punjab, by whatever name called, always raised a meaningful voice for strengthening democracy even against massive and unwieldy odds. Needless to mention that under the impact of the national politics, the Punjab also encountered constant fluctuations and changes of the governments, and continual cessation or suspension of the democratic and parliamentary setup.

¹The Supreme Court of Pakistan later upheld the military action subject to certain conditions and stipulations — Syed Zafar Ali Shah and others v General Pervez Musharraf, Chief Executive of Pakistan and others (PLD 2000 SC 869).

²The Proclamation of Emergency was flanked by the Provisional Constitution Order 1999 (I of 1999) — Cabinet Division Notifications No.2-10/99-Min.I, dated 14 October 1999, published the same day in the Gazette of Pakistan (Extraordinary), pp.1265-68. For details, *see ibid.*

The following thirteen Provincial Assemblies have so far been constituted —

- (a) West Punjab Legislative Assembly (15 August 1947 to 25 January 1949);¹
- (b) Punjab Legislative Assembly (7 May 1951 to 14 October 1955);²
- (c) Interim Provincial Assembly of West Pakistan (14 October 1955 to 22 March 1956);³
- (d) Provincial Assembly of West Pakistan (19 May 1956 to 7 October 1958);⁴
- (e) Provincial Assembly of West Pakistan (9 June 1962 to 8 June 1965);⁵
- (f) Provincial Assembly of West Pakistan (9 June 1965 to 25 March 1969);⁶
- (g) Provincial Assembly of the Punjab (2 May 1972 to 13 January 1977);⁷
- (h) Provincial Assembly of the Punjab (9 April 1977 to 5 July 1977);⁸
- (i) Provincial Assembly of the Punjab (12 March 1985 to 30 May 1988);⁹
- (j) Provincial Assembly of the Punjab (30 November 1988 to 6 August 1990);¹⁰

¹Remained on ground for 1 year 5 months and 11 days, and Governor of the Punjab dissolved it. For details, *see* p.xxxiv.

²Stayed for 4 years 5 months and 8 days; and, ceased to exist on the formation of the Province of West Pakistan. For details, *see* p.xxxiv.

³Continued for 7 months and 8 days; and was replaced by the new Assembly. For details, *see* p.xxxiv.

⁴Had a life of 2 years 4 months and 19 days; and, was dissolved under the Proclamation of Martial Law. For details, *see* p.xl.

⁵Ceased to exist on the completion of three-year term prescribed under the Constitution. For details, *see* p.xliv.

⁶Remained on ground for 3 years 9 months and 17 days; and, was dissolved under the Proclamation of Martial Law (1969). For details, *see* p.xliv.

⁷Stayed for 4 years 8 months and 12 days; and, the Governor dissolved the same. For details, *see* p.l.

⁸Remained on ground for 2 months and 27 days; and, was dissolved under the Proclamation of Martial Law (1977). For details, *see* p.l.

⁹Stayed for 3 years 2 months and 19 days; and, the Governor dissolved the same. For details, *see* p.l.

¹⁰Had a life of 1 year 8 months and 8 days; and, the Governor dissolved the Assembly. For details, *see* p.l.

- (k) Provincial Assembly of the Punjab (5 November 1990 to 28 June 1993);¹
- (l) Provincial Assembly of the Punjab (18 October 1993 to 17 November 1996);²
- (m) Provincial Assembly of the Punjab (18 February 1997 to 11 October 1999);³

Thus, in slightly above fifty-three years, the Provincial Assemblies in the Punjab operated, with intervals, for less than thirty-four years. They had been dissolved or suspended either under the Proclamation of Martial Law or the Proclamation of Emergency or by the Governor, at times in his discretion and at others on the advice of the Chief Minister.

(b) *The Rules of Procedure.* Legislatures, all over the world, necessarily formulate a framework and procedural guidelines so as to direct and monitor their indoor working, and steer the proceedings and business in the House in a democratic and productive manner. The conduct of business in the Provincial Assembly of the Punjab, by whatever name called, has throughout been regulated and governed by the relevant provisions of the Constitution and the rules of procedure framed, from time to time, either by the Governor or the Assembly itself. During the period, the following rules regulated the procedure and conduct of business in the Provincial Assemblies —

- (a) The West Punjab Legislative Assembly Rules of Procedure (1948);⁴
- (b) The Rules of Procedure of the Legislative Assembly of West Pakistan (1955);⁵
- (c) The Provincial Assembly of West Pakistan Rules of Procedure (1956);⁶

¹Stayed for 2 years 7 months and 24 days. On the advice of the Chief Minister, the Governor first dissolved the Assembly on 29 May 1993; but, the Lahore High Court, Lahore held the dissolution of the Assembly as illegal and restored the same. The Governor, on the advice of the Chief Minister, again dissolved the Assembly on 28 June 1993. For details, *see* p.l.

²The Governor dissolved the Assembly which remained in tact for 3 years and 1 month. For details, *see* 'p.l

³It has since been placed under suspension with effect from 12 October 1999 under the Proclamation of Emergency, and had an active life of 2 years 7 months and 23 days. For details, *see* p.l

⁴For details, *see* p.xxxiv.

⁵*Ibid.*

⁶*Ibid.*, p.xl.

- (d) The Rules of Procedure of the Provincial Assembly of West Pakistan (1962);¹
- (e) The Rules of Procedure of the Provincial Assembly of West Pakistan (1968);²
- (f) The Rules of Procedure of the Provincial Assembly of the Punjab 1972;³
- (g) The Rules of Procedure of the Provincial Assembly of the Punjab 1973;⁴ and
- (h) The Rules of Procedure of the Provincial Assembly of the Punjab 1997.⁵

Decisions of the Chair

Sheikh Faiz Muhammad⁶, Dr Khalifa Shuja-ud-Din⁷, Chaudhry Fazal Elahi⁸, Mr Mubin-ul-Haq Siddiqui⁹, Chaudhry Muhammad Anwar Bhinder¹⁰, Mr Rafiq Ahmad Sheikh¹¹, Mian Manzoor Ahmad Wattoo¹², Mr Saeed Ahmad Khan Manais¹³, Mr Muhammad Hanif Ramay¹⁴, and Chaudhry Parvez Elahi¹⁵ had the honour of being the Speakers of the Provincial Legislatures in the Punjab.¹⁶

The Speaker holds an important position *vis-à-vis* a legislature. One of the significant functions of the Speaker is to interpret the rules of

¹For details, *see* p.xliv.

²*Ibid.*

³*Ibid.*, p.li.

⁴*Ibid.*

⁵*Ibid.*

⁶*Ibid.*, p.xxxvii.

⁷*Ibid.*

⁸*Ibid.*, p.xlii.

⁹*Ibid.*, *see* p.xlvi.

¹⁰*Ibid.*

¹¹*Ibid.*, p.lix.

¹²*Ibid.*, *see* p.lx.

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵*Ibid.*

¹⁶Some of them held offices for more than one term. For details, *see* pp.xlvi and lx.

procedure, the relevant provisions of the Constitution and to dispose of the points of order. In his absence, the Deputy Speaker or the Presiding Officer performs the same functions. While performing his duties, a Speaker or a Presiding Officer may come across an intricate legal question which may require his deliberations and detailed decision.

Between 1947 and 1999, the Presiding Officers have had announced many decisions which in the common parlance are known as 'Rulings of the Chair'. Quite a number of those decisions have the effect of resolving complicated legal, constitutional and procedural issues, and may serve as a beacon light for the existing and the future parliamentarians and others.

These decisions lay buried in the huge volumes of the Assembly Debates; and, little attention had been paid to collect and edit the same. In 1996, a small Cell started collecting and editing the "Decisions of the Chair from 1985 to 1997. Luckily, the Assembly Secretariat was able to publish the same in October 1997. The publication was greatly appreciated by the public representatives, researchers, scholars and many others, including government departments. The need for editing and publishing decisions from 1947 to 1999 thus was obvious.

The Assembly Secretariat undertook the gigantic work of collecting, compiling and editing important decisions of the Chair from 1947 to 1999. The work has been difficult and painstaking. The onerous task of sifting grain from the chaff was, however, resolutely kept up with a bold foot ahead.

During research, it transpired that an authentic list of the Parliamentary Functionaries such as Governor, Chief Minister, Speaker, Deputy Speaker, Leader of the House and Leader of the Opposition was not available, especially with appropriate citations. Since the preparation of an authentic list involved a lot of time and research, the printing of the 'Punjab Assembly Decisions' was temporarily deferred for a few months.

The 'Punjab Assembly Decision (1947-1999)' is a collection of decisions on seventy-three different topics of public importance and common interest. Each decision begins with a compendium containing a concise statement of issues involved, and the decision given. The Presiding Officers who gave their rulings upon different issues include Sh Faiz Muhammad, Dr Khalifa Shuja-ud-Din, Ch Fazal Elahi, Mr Mobin-ul-Haq Siddiqui, Ch Muhammad Anwar Bhinder, Mr Umar Jan Khan, Mr Ahmed Mian Soomro, Syed Yousaf Ali Shah, Mr Rafiq Ahmad Sheikh, Mian Manzoor Ahmad Wattoo, Mr Muhammad Haneef Ramay and Ch Parvez Elahi.

There have been many instances in which a particular decision was found relevant to more than one point or subject. In such a case, although

the text of the decision has been reproduced only under one head, the same has been indicated under all relevant subject-heads through short comments/captions. To facilitate the readers, a comprehensive index has also been appended at the end of the book.

It is hoped that the publication would be a beacon light and valuable reference book for public representatives, lawyers, courts, research scholars, students, government departments, and citizens alike.¹

¹The work involved arduous efforts of the Editorial Board and other staff engaged with the Project. All such efforts are acknowledged with thanks.

ASSEMBLIES

West Punjab Legislative Assembly

15 August 1947¹ to 25 January 1949²

Punjab Legislative Assembly

7 May 1951³ to 14 October 1955⁴

Interim Provincial Assembly of West Pakistan

14 October 1955 to 22 March 1956⁵

Provincial Assembly of West Pakistan

19 May 1956⁶ to 7 October 1958⁷

Provincial Assembly of West Pakistan

9 June 1962⁸ to 8 June 1965⁹

9 June 1965¹⁰ to 25 March 1969¹¹

¹Constituted under section 5(1) of the Pakistan (Provincial Legislatures) Order 1947 (GGO 19 of 1947), published in the Gazette of Pakistan (Extraordinary), dated 13 September 1947, pp.85-86.

²The Governor of the Punjab dissolved the Assembly *vide* West Punjab Legislative Assembly Notification No.G-1(3), dated 25 January 1949, published the same day in the West Punjab Gazette (Extraordinary), p.15.

³Punjab Legislative Assembly Debates, 7 May 1951, Vol.1, p.1.

⁴Ceased to exist on the formation of the Province of West Pakistan with effect from 14 October 1955 under the Establishment of West Pakistan Act 1955 (PLD 1955 Central Statues 277).

⁵Provision was made for the constitution of an Interim Provincial Assembly of West Pakistan comprising 310 Members, under Section 11 read with Second Schedule of the Establishment of West Pakistan Act, 1955. The elections of the Assembly were held on 19 January 1956 — *see* Ministry of Law Notification No.F.4(6)/55-Con(I), dated 20 December 1955, published the same day in Gazette of Pakistan (Extraordinary), pp.2059-65. The results of the elections were notified on 29 January 1956 — *see* West Pakistan (Extraordinary), dated 24 January 1956, pp.63-71. The Constitution of the Islamic Republic of Pakistan (1956) declared it as 'Provincial Assembly of West Pakistan', with effect from 23 March 1956; the day on which the Constitution came into force. The said Assembly had its first meeting on 19 May 1956. Also *see* footnote No.1, p.xl.

⁶West Pakistan Legislative Assembly Debates, 19 May 1956, Vol.1, p.109. The Assembly constituted under the Establishment of West Pakistan Act 1955 (published in the Gazette of Pakistan (Extraordinary) dated 3 October 1955, pp.1663-1689), was declared to be the Provincial Legislature under the Constitution (1956) – Article 225(2).

⁷Dissolved under the Proclamation of Martial Law, dated 7 October 1958 (PLD 1958 Central Statues 577).

⁸Provincial Assembly of West Pakistan Debates, 9 June 1962, Vol.1, No.1, pp.1-13.

⁹Ceased to exist on the completion of three-year term prescribed under Article 230(2) of the Constitution (1962).

¹⁰Provincial Assembly of West Pakistan Debates, 9 June 1965, Vol.1, No.1, pp.1-6.

¹¹Dissolved under the Proclamation of Martial Law, dated 25 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), pp.185-86.

Provincial Assembly of the Punjab

2 May 1972¹² to 13 January 1977¹³

9 April 1977¹⁴ to 5 July 1977¹⁵

12 March 1985¹⁶ to 30 May 1988¹⁷

30 November 1988¹⁸ to 6 August 1990¹⁹

5 November 1990²⁰ to 28 June 1993²¹

18 October 1993²² to 17 November 1996²³

18 February 1997²⁴ to 11 October 1999²⁵

¹²Provincial Assembly of the Punjab Debates, 2 May 1972, Vol.1, No.1, pp.1-33.

¹³Under Article 273(1) of the 1973 Constitution, the Assembly had to complete its life on 14 August 1977; however, the Governor dissolved it with effect from 13 January 1977 — Provincial Assembly of the Punjab Notification No.PAP/Legis-1(1)/77/1, dated 11 January 1977, published the same day in the Punjab Gazette (Extraordinary), p.27.

¹⁴Provincial Assembly of the Punjab Debates, 9 April 1977, Vol.1, No.1, pp.1-14.

¹⁵Dissolved under the Proclamation of Martial Law dated 5 July 1977, published the same day in the Punjab Gazette (Extraordinary), p.411.

¹⁶Provincial Assembly of the Punjab Debates, 12 March 1985, Vol.1, No.1, p.1.

¹⁷The Governor dissolved the Assembly *vide* SG&I Department Notification No.CAB-II/2-5/86, dated 30 May 1988, published in the Punjab Gazette (Extraordinary) dated 31 May 1988, p.1559.

¹⁸Provincial Assembly of the Punjab Debates, 30 November 1988, Vol.1, No.1, p.1.

¹⁹The Governor dissolved the Assembly *vide* SG&I Department Notification No.CAB-II/2-13/88, dated 7 August 1990, published the same day in the Punjab Gazette (Extraordinary), p.1559-A.

²⁰Provincial Assembly of the Punjab Debates, 5 November 1990, Vol.1, No.1, p.3.

²¹On the advice of the Chief Minister, the Governor initially dissolved the Assembly on 29 May 1993; but, the Lahore High Court, Lahore *vide* order dated 28 June 1993, held the dissolution of the Assembly as illegal and restored the same. The Governor, on the advice of the Chief Minister, again dissolved the Assembly on 28 June 1993, within minutes of its restoration by the Lahore High Court. For details, *see* Ch Parvez Elahi v Province of the Punjab (PLD 1993 Lahore 595).

²²Provincial Assembly of the Punjab Debates, 18 October 1993, Vol.1, No.1, p.1.

²³The Governor dissolved the Assembly *vide* Provincial Assembly of the Punjab Notification No.Legis-1(111)/93/122, dated 17 November 1996, published in the Punjab Gazette (Extraordinary) dated 18 November 1996, pp.617-19.

²⁴Provincial Assembly of the Punjab Debates, 18 February 1997, Vol.1, No.1, p.1.

²⁵Placed under suspension with effect from 12 October 1999 under Proclamation of Emergency dated 14 October 1999, issued *vide* Cabinet Division Notification No.2-10/99-Min.I, dated 14 October 1999, published the same day in the Gazette of Pakistan (Extraordinary), pp.1265-66.

GOVERNORS

Sir Robert Francis Mudie

15 August 1947¹ to 2 August 1949²

Sardar Abdur Rab Nishtar

2 August 1949³ to 26 November 1951⁴

Ismail Ibrahim Chundrigar

26 November 1951⁵ to 2 May 1953⁶

Mian Aminuddin

2 May 1953⁷ to 24 June 1954⁸

Habib Ibrahim Rahimtoola

24 June 1954⁹ to 26 November 1954¹⁰

Nawab Mushtaq Ahmad Gurmani

27 November 1954¹¹ to 14 October 1955¹²

¹For appointment/oath, *see* Home Department (General) Notification No.4949-PP-47/50002 and Notification No.4949-PP-47/50001, dated 15 August 1947, published the same day in the West Punjab Gazette (Extraordinary), pp.1-2.

²Relinquished office on eight months leave preparatory to retirement, from 2 August 1949 to 31 October 1950 — Cabinet Secretariat Notification No.3(1)-Cord/49-I, dated 21 July 1949, published the same day in the Gazette of Pakistan (Extraordinary), p.445, read with Home Department (General) Notification No.7198-PP-49/48290, dated 2 August 1949, published the same day in the West Punjab Gazette (Extraordinary), pp.155-56.

³For appointment/oath, *see* Cabinet Secretariat Notification No.3(I)-Cord/49-II, dated 21 July 1949 and Home Department (General) Notification No.7198-PP-49/48291, read with No.7198-PP-49/48290, dated 2 August 1949, published the same day in the West Punjab Gazette, p.155-56.

⁴Assumed office of Central Minister Industries on 26 November 1951 – Cabinet Secretariat Notification No.4(1)-Cord/51-X, dated 26 November 1951, published the same day in the Gazette of Pakistan (Extraordinary), p.792.

⁵For appointment/oath, *see* Cabinet Secretariat Notification No.3(33)-Cord/51, dated 24 November 1951, published the same day in the Gazette of Pakistan (Extraordinary), p.787, read with Home Department (General) Notification No.10410-51/189-PP, and No.10410-51/188/PP, dated 26 November 1951, published the same day in the Punjab Gazette (Extraordinary), p.1779.

⁶Resigned — Cabinet Secretariat Notification No.2(26)-53/Cord-I and No. 2(26)-53/Cord-II, dated 8 May 1953, published in the Gazette of Pakistan (Extraordinary), dated 9 May 1953, pp.657-58.

⁷For appointment/oath, *see* Cabinet Secretariat Notification No.2(26)-53/Cord.III and 2(26)-53/Cord.IV, dated 8 May 1953, published in the Gazette of Pakistan (Extraordinary), dated 9 May 1953, pp.657-58.

⁸Relinquished office on appointment of his successor — Cabinet Secretariat Notification No.2(19)54-Cord, dated 26 June 1954, published in the Gazette of Pakistan (Extraordinary), dated 28 June 1954, p.1243.

⁹For appointment/oath, *see* Cabinet Secretariat Notification No.2(19)54-Cord, dated 26 June 1954, published in the Gazette of Pakistan (Extraordinary), dated 28 June 1954, p.1243.

¹⁰Assumed office of Central Minister — Cabinet Secretariat Notification No.4(16)54-Cord, dated 26 November 1954, published in the Gazette of Pakistan (Extraordinary), dated 27 November 1954, p.2109.

¹¹For appointment/oath, *see* Cabinet Secretariat Notification No.2(47)54-Cord, dated 29 November 1954, published in the Gazette of Pakistan (Extraordinary), dated 30 November 1954, p.2123.

¹²Ceased to hold office on the formation of the Province of West Pakistan with effect from 14 October 1955 under the Establishment of West Pakistan Act 1955, published in the Gazette of Pakistan (Extraordinary), dated 3 October 1955, pp.1663-71. Also *see* PLD 1955 Central Statutes 273, and Cabinet Secretariat Notification No.F.4(2)/55.Con, dated 5 October 1955 (PLD 1955 Central Statutes 295).

Nawab Mushtaq Ahmad Gurmani
14 October 1955¹ to 2 September 1957²

Akhtar Hussain
2 September 1957³ to 1 June 1960⁴

Malik Amir Muhammad Khan
1 June 1960⁵ to 18 September 1966⁶

General Muhammad Musa
18 September 1966⁷ to 20 March 1969⁸

Yousaf A. Haroon
20 March 1969⁹ to 25 March 1969¹⁰

Air Marshal M. Nur Khan
1 September 1969¹¹ to 1 February 1970¹²

¹For appointment/oath, *see* Cabinet Secretariat Notification No.2(9)55-Cord, dated 6 October 1955, published the same day in the Gazette of Pakistan (Extraordinary), p.1705, and No.2(9)55-Cord, dated 14 October 1955, published the same day in the Gazette of Pakistan (Extraordinary), p.1747.

²Resigned — Cabinet Secretariat Notification No.Cord.(I)-2/1/57-I and No.Cord.(I)-2/1/57-II, dated 2 September 1956, published the same day in the Gazette of Pakistan (Extraordinary), p.1885.

³For appointment/oath, *see* Cabinet Secretariat Notification No.Cord.(I)-2/1/57-III and No.Cord.(I)-2/1/57-IV, dated 2 September 1957, published the same day in the Gazette of Pakistan (Extraordinary), p.1885.

⁴Relinquished charge and assumed office of Federal Minister on 1 June 1960 — President Secretariat (Cabinet Division) Notification No.Cord(1)-109/2/60-I and No.Cord(I)-103(2)/60, dated 1 June 1960, published the same day in the Gazette of Pakistan (Extraordinary), p.657a.

⁵For appointment/oath, *see* President Secretariat (Cabinet Division) Notification No.Cord.(1)-109/2/60-II, dated 1 June 1960, published the same day in the Gazette of Pakistan (Extraordinary), p.657a. He continued to hold that office after the commencement of the Constitution (1962) in terms of Article 227.

⁶Resigned — Cabinet Secretariat Notification No.103/6/66-Min.(I), read with No.103/6/66-Min.(III), dated 18 September 1966, published the same day in the Gazette of Pakistan (Extraordinary), p.857.

⁷For appointment/oath, *see* Cabinet Secretariat Notification No.103/6/66-Min.(II), and No.103/6/66-Min.(IV), dated 18 September 1966, published the same day in the Gazette of Pakistan (Extraordinary), p.857.

⁸Proceeded on two months leave on the conclusion of his term as Governor — Cabinet Secretariat Notification No.103/2/69-Min.(I), dated 19 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), p.177.

⁹For appointment/oath, *see* Cabinet Secretariat Notification No.103/2/69-Min.(II), dated 19 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), p.177 and No.103/2/69-Min, dated 20 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), p.179.

¹⁰Ceased to hold office under the Proclamation of Martial Law, dated 25 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), pp.185-87. Lt General Mohammad Attiqur Rehman, Administrator Martial Law Zone 'A', performed functions and duties of the Governor up to 1 September 1969 *vide* Cabinet Secretariat Notification No.120/15/69-Min, dated 8 April 1969, published the same day in the Gazette of Pakistan (Extraordinary), p.245, read with No.120/15/69-Min, dated 1 September 1969, published the same day in the Gazette of Pakistan (Extraordinary), dated 2 September 1969, p.695.

¹¹For appointment/oath, *see* Cabinet Secretariat Notification No.103/10/69-Min.I, and No.103/10/69-Min.II, dated 1 September 1969, published in the Gazette of Pakistan (Extraordinary), dated 2 September 1969, p.695.

¹²Resigned — Cabinet Secretariat Notification No.103/4/70-Min.I, dated 1 February 1970, published in the Gazette of Pakistan (Extraordinary), dated 2 February 1970, p.93.

Lt General Mohammad Attiqur Rehman¹

1 February 1970² to 30 June 1970³

1 July 1970⁴ to 23 December 1971⁵

Ghulam Mustafa Khar

23 December 1971⁶ to 12 November 1973⁷

14 March 1975⁸ to 31 July 1975⁹

Nawab Sadiq Hussain Qureshi

12 November 1973¹⁰ to 14 March 1975¹¹

Muhammad Abbas Abbasi

31 July 1975¹² to 5 July 1977¹³

Justice Aslam Riaz Hussain

6 July 1977¹⁴ to 18 September 1978¹⁵

¹Appointed as Administrator Martial Zone 'A' *vide* Martial Regulation No.1 and assigned powers and functions of the Governor with effect from 25 March 1969 *vide* Cabinet Secretariat Notification No.120/15/69-Min., dated 8 April 1969, published the same day in the Gazette of Pakistan (Extraordinary), p.245. Ceased to perform functions as Governor on 1 September 1969 – Cabinet Secretariat Notification No.120/15/69-Min., dated 1 September 1969, published in the Gazette of Pakistan (Extraordinary), dated 2 September 1969, p.695.

²For appointment/oath, *see* Cabinet Secretariat Notification No.103/4/70-Min.II and No.103/4/70-Min.III, dated 1 February 1970, published in the Gazette of Pakistan (Extraordinary), dated 2 February 1970, p.93.

³Ceased to be Governor of West Pakistan on the dissolution of the Province of West Pakistan and formation of the Province of the Punjab, Sind, NWFP and Balochistan, with effect from 15 July 1970, under the Province of West Pakistan (Dissolution) Order 1970 (P.O.1 of 1970) (PLD 1970 Central Statutes 218), read with Notification No.SRO.104(1)/70, dated 16 June 1970 (PLD 1971 Central Statutes 48), and Cabinet Secretariat Notification No.103/16/70-Min(I), dated 1 July 1970, published the same day the Gazette of Pakistan (Extraordinary), p.881.

⁴For appointment/oath, *see* Cabinet Secretariat Notification No.103/6/70-Min.I, and No.103/16/70-Min.II, dated 1 July 1970, published the same day in the Gazette of Pakistan (Extraordinary), pp.881-82.

⁵Relinquished charge on assumption of office by his successor — Cabinet Secretariat Notification No.103/43/71-Min, dated 22 December 1971, published the same day in the Gazette of Pakistan (Extraordinary), p.1907, and No.103/43/71-Min, dated 24 December 1971, published the same day in the Gazette of Pakistan (Extraordinary), p.1917.

⁶For appointment/oath, *see* Cabinet Secretariat Notification No.103/43/71-Min., dated 22 December 1971, published the same day in the Gazette of Pakistan (Extraordinary), p.1907, and No.103/43/71-Min, dated 24 December 1971, published the same day in the Gazette of Pakistan (Extraordinary), p.1917. Designated as Martial Administrator Zone 'C' *vide* Martial Regulation No.99, dated 22 December 1971, published the same day in the Gazette of Pakistan (Extraordinary), dated 23 December 1971, p.1911.

⁷Provincial Assembly of the Punjab elected him as Chief Minister Punjab on 12 November 1973; and, he assumed that office the same day – Provincial Assembly of the Punjab Debates, 12 November 1973, Vol.6, No.6, p.384, read with the Pakistan Times, Lahore dated 12 and 13 November 1973.

⁸For appointment/oath, *see* Cabinet Secretariat Notification No.103/13/75-Min.II, dated 14 March 1975, published the same day in the Gazette of Pakistan (Extraordinary), p.125.

⁹Relinquished office *vide* Cabinet Secretariat Notification No.103/32/75-Min., dated 31 July 1975, published the same day in the Gazette of Pakistan (Extraordinary), p.739.

¹⁰For appointment/oath, *see* Cabinet Secretariat Notification No. 103/39/73-Min.I, dated 12 November 1973, published in the Gazette of Pakistan (Extraordinary), dated 14 November 1973, p.1706.

¹¹Resigned — Cabinet Secretariat Notification No.103/13/75-Min.I, dated 14 March 1975, published the same day in the Gazette of Pakistan (Extraordinary), p.125.

¹²For appointment/oath, *see* Cabinet Secretariat Notification No.103/32/75-Min., dated 31 July 1975, published the same day in the Gazette of Pakistan (Extraordinary), p.739.

¹³Ceased to hold office under the Proclamation of Martial Law dated 5 July 1977, published the same day in the Gazette of Pakistan, p.411. Also *see* Cabinet Secretariat Notification No.103/21/77-Min.II, dated 6 July 1977, published the same day in the Gazette of Pakistan (Extraordinary) (Part-III), p.3738.

¹⁴Appointed and assumed office as Acting Governor *vide* Cabinet Secretariat Notification No.103/21/77-Min., dated 6 July 1977, published in the Gazette of Pakistan (Extraordinary), dated 7 July 1977, p.3742.

¹⁵Relinquished charge on assumption of office by his successor — Cabinet Secretariat Notification No.103/29/78-Min(i), dated 18 September 1978, published the same day in the Gazette of Pakistan (Extraordinary), p.265.

Lt General Sawar Khan

18 September 1978¹ to 1 May 1980²

Lt General Ghulam Jillani Khan

1 May 1980³ to 30 December 1985⁴

Makhdoom Muhammad Sajjad Hussain Qureshi

30 December 1985⁵ to 9 December 1988⁶

General (Retd) Tikka Khan

9 December 1988⁷ to 6 August 1990⁸

Mian Muhammad Azhar

6 August 1990⁹ to 18 April 1993¹⁰

Chaudhry Muhammad Altaf Hussain

25 April 1993¹¹ to 19 July 1993¹²

26 March 1994¹³ to 21 May 1995¹⁴

Lt General (Retd) Muhammad Iqbal

19 July 1993¹⁵ to 26 March 1994¹⁶

¹For appointment/oath, *see* Cabinet Secretariat Notification No.103/29/78-Min.(ii) and No.103/29/78-Min.(iii), dated 18 September 1978, published the same day in the Gazette of Pakistan (Extraordinary), p.365-66. Before that he held office of Martial law Administrator Zone 'A'.

²Relinquished office *vide* Cabinet Secretariat Notification No.2/13/80-Min(II), dated 3 May 1980, published the same day in the Gazette of Pakistan (Extraordinary), p.129.

³For appointment/oath, *see* Cabinet Secretariat Notification No.2/13/80-Min(II) dated 3 May 1980, published the same day in the Gazette of Pakistan (Extraordinary), p.129.

⁴Relinquished office *vide* Cabinet Secretariat Notification No.2/28/85--Min.II, dated 12 January 1986, published the same day in the Gazette of Pakistan (Extraordinary), p.15.

⁵For appointment/oath, *see ibid*.

⁶Relinquished office *vide* Cabinet Secretariat Notification No.2/34/88-Min-II, dated 15 December 1988, published in the Gazette of Pakistan (Extraordinary), dated 17 December 1988, p.3325.

⁷For appointment/oath, *see* Cabinet Secretariat Notification No.2/34/88-Min-II, dated 15 December 1988, published in the Gazette of Pakistan (Extraordinary), dated 17 December 1988, p.3325.

⁸Relinquished office *vide* Cabinet Secretariat Notification No.2/14/90-Min.II, dated 11 August 1990, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 13 August 1990, p.712.

⁹For appointment/oath, *see ibid*.

¹⁰Resigned *vide* Cabinet Secretariat Notification No.2-7/93-Min.II, dated 19 April 1993, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 20 April 1993, p.401.

¹¹For appointment/oath, *see* Cabinet Secretariat Notification No.2-7/93-Min.II, dated 29 April 1993, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 2 May 1993, p.426.

¹²Replaced by Lt General (Retd) Muhammad Iqbal who assumed office as Acting Governor *vide* Cabinet Secretariat Notification No.2-19/93-Min.II, dated 21 July 1993, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 24 July 1993, p.900.

¹³For appointment/oath, *see* Cabinet Secretariat Notification No.2-9/94-Min.II, dated 30 March 1994, published in the Gazette of Pakistan (Extraordinary), dated 2 April 1994, p.207.

¹⁴Died — Cabinet Secretariat Notification No.2-12/95-Min.II, dated 22 May 1995, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 22 May 1995, p.343.

¹⁵Appointed and assumed office as Acting Governor *vide* Cabinet Secretariat Notification No.2-19/93-Min.II, dated 21 July 1993, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 24 July 1993, p.900.

¹⁶Ceased to act as Governor on assumption of office by his successor — Cabinet Secretariat Notification No.2-9/94-Min.II, dated 30 March 1994, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 2 April 1994, p.207.

Justice Mohammad Ilyas
22 May 1995¹ to 19 June 1995²

Lt General (Retd) Raja Saroop Khan
19 June 1995³ to 6 November 1996⁴

Mr Justice Khalil-ur-Rehman
6 November 1996⁵ to 11 November 1996⁶

Khawaja Ahmed Tariq Rahim
11 November 1996⁷ to 10 March 1997⁸

Shahid Hamid
11 March 1997⁹ to 17 August 1999¹⁰

Sardar Zulfiqar Ali Khan Khosa
18 August 1999¹¹ to 11 October 1999¹²

Lt General (Retd) Muhammad Safdar
25 October 1999¹³ —

¹Appointed and assumed office as Acting Governor *vide* Cabinet Secretariat Notification No.2-12/95-Min.II, dated 23 May 1995, published the same day in the Gazette of Pakistan (Extraordinary) (Part-III), p.345.

²Ceased to hold office as Acting Governor on assumption of office by his successor — Cabinet Secretariat Notification No.2-14/95.Min.II, dated 20 June 1995, published that same day in the Gazette of Pakistan (Extraordinary) (Part-III), p.539.

³For appointment/oath, *see* Cabinet Secretariat Notification No.2-14/95.Min.II, dated 20 June 1995, published that same day in the Gazette of Pakistan (Extraordinary) (Part-III), p.539.

⁴Resigned and relinquished office on assumption of charge by the Acting Governor *vide* Cabinet Secretariat Notification No.2-19/96-Min.II, dated 6 November 1996, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 7 November 1996, p.1872. Also *see* the Dawn Karachi, dated 6 November 1996.

⁵Appointed and assumed office as Acting Governor *vide ibid*.

⁶Ceased to act as Governor on assumption of office by his successor *vide* Cabinet Secretariat Notification No.2-23/96-Min.II, dated 14 November 1996, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 17 November 1996, p.896.

⁷For appointment/oath, *see ibid*.

⁸Resigned — Cabinet Secretariat Notification No.2-3/97-Min.II, dated 12 March 1997, published the same day in the Gazette of Pakistan (Extraordinary) (Part-III), p.575.

⁹For appointment/oath, *see ibid*.

¹⁰Resigned and relinquished charge on assumption of office by his successor – Cabinet Secretariat Notification No.2-11/99-Min.II, dated 19 August 1999, published the same day in the Gazette of Pakistan (Extraordinary) (Part-III), p.1479.

¹¹For appointment/oath, *see ibid*.

¹²Ceased to hold office under the Proclamation of Emergency, dated 14 October 1999, *vide* Cabinet Secretariat Notification No.2-19/99-Min.II, dated 16 October 1999, published in the Gazette of Pakistan (Extraordinary) (Part-III), dated 18 October 1999, p.1683.

¹³For appointment/oath, *see* Cabinet Secretariat Notification No.2-20/99-Min.II, dated 26 October 1999, published the same day in the Gazette of Pakistan (Extraordinary) (Part-III), p.1735.

CHIEF MINISTERS

Nawab Iftikhar Hussain Khan Mamdot

15 August 1947¹ to 25 January 1949²

Mian Mumtaz Muhammad Khan Daultana

5 April 1951³ to 3 April 1953⁴

Malik Feroz Khan Noon

3 April 1953⁵ to 21 May 1955⁶

Sardar Abdul Hamid Khan Dasti

21 May 1955⁷ to 14 October 1955⁸

Dr Khan Sahib

14 October 1955⁹ to 16 July 1957¹⁰

Sardar Abdur Rashid Khan

16 July 1957¹¹ to 18 March 1958¹²

Nawab Muzaffar Ali Khan Qazilbash

18 March 1958¹³ to 7 October 1958¹⁴

¹Political Department (General) Notifications No.4952-PP-47/50004 and No.4952-PP-47/50005, dated 15 August 1947, published the same day in the West Punjab Gazette (Extraordinary), p.3.

²Resigned — Political Department Notifications No.564-PP-49-3089, dated 25 January 1949, published in the West Punjab Gazette (Extraordinary), dated 28 January 1949, p.19.

³Political Department (General) Notifications No.2931-PP-51/20239 and No.2975-PP-51/20247, dated 5 April 1951, published the same day in the Punjab Gazette (Extraordinary), p.253.

⁴Resigned along with his Cabinet — Political Department (General) Notification No.2743/53/PP, dated 3 April 1953, published in the Punjab Gazette (Extraordinary), dated 6 April 1953, p.123.

⁵Political Department (General) Notification No.GS-860 and No.GS-861, dated 3 April 1953, published the same day in the Punjab Gazette (Extraordinary), p.119.

⁶Mr Mushtaq Ahmad Gurmani dismissed the Cabinet and appointed a new seven-member Cabinet headed by Sardar Abdul Hameed Khan Dasti, Minister of Agriculture in the Noon Ministry — *The Pakistan Times*, Lahore, dated 22 May 1955.

⁷Mr Mushtaq Ahmad Gurmani dismissed the Cabinet and appointed a new seven-member Cabinet headed by Sardar Abdul Hameed Khan Dasti, Minister of Agriculture in the Noon Ministry — *The Pakistan Times*, Lahore, dated 22 May 1955

⁸Ceased to hold office on the formation of the Province of West Pakistan on 14 October 1955 under the Establishment of West Pakistan Act 1955 (PLD 1955 Central Statutes 277).

⁹Mr Mushtaq Ahmad Gurmani, Governor of West Pakistan, appointed a seven member Cabinet with Dr Khan as the Chief Minister — *The Pakistan Times*, Lahore, dated 15 October 1955.

¹⁰Resigned — SG&I Department Notification No.SOVII-1-18/57, dated 16 July 1957, published the same day in the Gazette of West Pakistan (Extraordinary), p.639. Also see *The Pakistan Times*, Lahore, dated 17 July 1957.

¹¹Mr Mushtaq Ahmad Gurmani, Governor of West Pakistan, appointed him as Chief Minister of the Province of West Pakistan under clause 3 of Article 71 of the Constitution of the Islamic Republic of Pakistan (1956) — Notification *ibid*. Also see *The Pakistan Times*, Lahore dated 17 July 1957.

¹²Resigned — SG&I Department Notification No.SOVII-II-1/58, dated 18 March 1958, published in the Gazette of West Pakistan (Extraordinary), dated 19 March 1958, p.225. Also see *The Pakistan Times*, Lahore, dated 19 March 1958.

¹³Appointed under clause (3) of Article 71 of the Constitution (1956) — SG&I Department Notification No.SOVII-II-1/58, dated 18 March 1958, published in the Gazette of West Pakistan (Extraordinary), dated 19 March 1958, p.225. Also see *The Pakistan Times*, Lahore, dated 19 March 1958.

¹⁴Ceased to hold office under the Proclamation of Martial Law, dated 7 October 1958 (PLD Central Statutes 577).

Malik Miraj Khalid

2 May 1972¹ to 12 November 1973²

Ghulam Mustafa Khar

12 November 1973³ to 15 March 1974⁴

Muhammad Hanif Ramay

15 March 1974⁵ to 15 July 1975⁶

Nawab Sadiq Hussain Qureshi

15 July 1975⁷ to 11 April 1977⁸

11 April 1977⁹ to 5 July 1977¹⁰

Muhammad Nawaz Sharif

9 April 1985¹¹ to 30 May 1988¹²

31 May 1988¹³ to 2 December 1988¹⁴

2 December 1988¹⁵ to 6 August 1990¹⁶

¹SG&I Department Notification No.S.O.G.II-2-10/72, dated 6 May 1972, published in the Punjab Gazette (Extraordinary) dated 10 May 1972, p.843.

²Resigned on 6 November 1973; but, continued to hold that office, under Article 133(1) of the Constitution (1973), until his successor assumed that office *vide* SG&I Department Notification No.S.O.G.II-2-12/72, dated 22 November 1973, published in the Punjab Gazette (Extraordinary), dated 26 November 1973, p.1689 read with the *Dawn*, Karachi, dated 7 November 1973.

³Assumed office *vide* Notification *ibid*.

⁴Resigned on 7 March 1974; however, he continued to hold that office, under Article 133(1) of the Constitution (1973), until his successor assumed that office on 15 March 1974 — Provincial Assembly of the Punjab Notification No.PAP/Legis-1(10)/74/22, dated 15 March 1974, published the same day in the Punjab Gazette (Extraordinary), p.364 — Also *see* the *Dawn*, Karachi dated 11 and 16 March 1974.

⁵Assumed office *vide ibid*.

⁶Resigned on 11 July 1974; but, continued to hold office, under Article 133(1) of the Constitution (1973), until his successor assumed that office on 15 July 1975 — SG&I Department Notification No.S.O.Cabinet-II-2-5/75, dated 16 July 1975, published the same day in the Punjab Gazette (Extraordinary), p.995 and the *Dawn*, Karachi dated 12 July 1975.

⁷Assumed office *vide ibid*.

⁸Held office even after the dissolution of the Assembly on 13 January 1977 in terms of Article 133(1) of the Constitution (1973) until he was re-elected as such — Provincial Assembly of the Punjab Notification No.PAP/Legis-1(11)/77/8, dated 11 April 1977, published the same day in the Punjab Gazette (Extraordinary), p.561-B, and Provincial Assembly of the Punjab Debates, 11 April 1977, Vol.1, No.2, p.30.

⁹Re-elected — *ibid*.

¹⁰Ceased to hold office under the Proclamation of Martial Law dated 5 July 1977, published the same day in the Gazette of Pakistan (Extraordinary), p.411.

¹¹SG&I Department Notification No.CAB-II-2-8/85, dated 9 April 1985.

¹²Ceased to hold office as such on the dissolution of the Assembly on 30 May 1988 — SG&I Department Notification No.CAB-II-2-5/86, dated 30 May 1988, published in the Punjab Gazette (Extraordinary), dated 31 May 1988, p.1559.

¹³The Governor appointed him as Caretaker Chief Minister under clause (3) of Article 105 of the Constitution (1973) — SG&I Department Notification No.CAB-II-2-3/88 dated 31 May 1988, published in the Punjab Gazette (Extraordinary) dated 1 June 1988, pp.1567-68.

¹⁴Served as Caretaker Chief Minister until his appointment as Chief Minister on 2 December 1988. That day the Caretaker Cabinet ceased to function — SG&I Department Notification No.CAB-II-2-3/88, dated 3 December 1988, published in the Punjab Gazette (Extraordinary), dated 6 December 1988, p.3799, read with Notification No.CAB-II-2-13/88, 2 December 1988.

¹⁵Assumed office *vide ibid*.

¹⁶Ceased to hold office on the dissolution of the Assembly — SG&I Department Notification No.CAB-II-2-13-88, dated 7 August 1990, published the same day in the Punjab Gazette (Extraordinary), dated 7 August 1990, p.1599-A.

Ghulam Haider Wyne

13 August 1990¹ to 8 November 1990²
8 November 1990³ to 25 April 1993⁴

Mian Manzoor Ahmad Wattoo

25 April 1993⁵ to 28 June 1993⁶
28 June 1993 to 18 July 1993⁷
20 October 1993⁸ to 12 September 1995⁹
3 November 1996¹⁰ to 17 November 1996¹¹

Sheikh Manzoor Elahi

19 July 1993 to 20 October 1993¹²

Sardar Muhammad Arif Nakai

13 September 1995¹³ to 3 November 1996¹⁴

¹The Governor appointed him as Caretaker Chief Minister — SG&I Department Notification No.CAB-II/2-12/90, dated 13 August 1990, published the same day in the Punjab Gazette (Extraordinary), p.1621.

²Ceased to hold office of Caretaker Chief Minister on assuming office of the Chief Minister — SG&I Department Notification No.CAB-II/2-20/90, dated 8 November 1990.

³Assumed office *vide ibid.*

⁴Removed from office as a result of the resolution of no confidence passed against him under Article 136 of the Constitution (1973) — *See* SG&I Department Notification No.CAB-II/2-2/93, dated 25 April 1993 read with Provincial Assembly of the Punjab letter No.Legis-1(62)/93/8, dated 25 April 1993, and Provincial Assembly of the Punjab Debates, 25 April 1993, Vol.12, No.2, pp.1-21.

⁵Assumed office *vide* SG&I Department Notification No.CAB-II/2-2/93, dated 25 April 1993, read with Provincial Assembly of the Punjab letter No.Legis-1(62)/93/8, dated 25 April 1993, and Provincial Assembly of the Punjab Debates, 25 April 1993, Vol.12, No.2, pp.1-21

⁶Continued to hold office as such on the dissolution of the Assembly on 29 May 1993; however, the Lahore High Court, by order dated 28 June 1993 passed in *Ch Parvez Elahi v Province of Punjab* (PLD 1993 Lahore 595), held the dissolution of the Assembly as illegal and restored the same. The Assembly was, however, again dissolved the same day.

⁷Continued as Caretaker Chief Minister on the initial dissolution of the Assembly on 29 May 1993 and after its subsequent dissolution on 28 June 1993; however, as a consequence of settlement to resolve the nation-wide political crises, he abandoned office — SG&I Department Notification No.CAB-II/2-2/93, dated 29 May 1993, published in the Punjab Gazette, dated 16 June 1993, p.583. For details, *see The Pakistan Times*, Lahore dated 18 and 19 July 1993.

⁸Assumed office *vide* SG&I Department Notification No.CAB-II/2-35/93, dated 20 October 1993.

⁹Removed from office as a consequence of his failure to have the vote of confidence in terms of clause (5) of Article 130 of the Constitution (1973) — SG&I Department Notification No.CAB-II/2-35/93, dated 12 September 1995, published the same day in the Punjab Gazette (Extraordinary), p.137.

¹⁰Mian Manzoor Ahmad Wattoo challenged his removal from office in the Lahore High Court. That Court, by order dated 3 November 1996 *inter alia* restored him to the office of the Chief Minister as on 5 September 1995. For details, *see* *Mian Manzoor Ahmad Wattoo v Federation of Pakistan* (PLD 1997 Lahore 38). Thus, although he did not, in fact, serve as Chief Minister during the period from 13 September 1995 to 2 November 1996 and Sardar Muhammad Arif Nakai held that office, legally speaking he would be deemed to have been the Chief Minister during the said period. Also *see* SG&I Department Notification No.CAB-II/2-4/95, dated 13 September 1995.

¹¹Resigned — SG&I Department Notification No.CAB-II/2-35/93, dated 16 November 1996, published in the Punjab Gazette (Extraordinary) dated 17 November 1996, p.613.

¹²Served as Caretaker Chief Minister until Mian Manzoor Ahmad Wattoo again assumed office of the Chief Minister on 20 October 1993. For details, *see The Pakistan Times*, Lahore dated 18 and 19 July 1993.

¹³Assumed office *vide* SG&I Department Notification No.CAB-II/2-4/95, dated 13 September 1995.

¹⁴Ceased to hold office as a consequence of the order of the Lahore High Court, Lahore dated 3 November 1996 whereby his predecessor Mian Manzoor Ahmad Wattoo was restored to the office of the Chief Minister as on 5 September 1995. For details, *see* *Mian Manzoor Ahmad Wattoo v Federation of Pakistan* (PLD 1997 Lahore 38).

Mian Muhammad Afzal Hayat
17 November 1996¹ to 20 February 1997²

Mian Muhammad Shehbaz Sharif
20 February 1997³ to 11 October 1999⁴

¹Assumed office of Caretaker Chief Minister *vide* SG&I Department Notification No.CAB-II/2-6/96, dated 17 November 1996, published in the Punjab Gazette, p.1133 read with the *Dawn* Karachi, dated 18 November 1996.

²Ceased to hold office on the assumption of the office of Chief Minister by Mian Muhammad Shehbaz Sharif *vide* SG&I Department Notification No.CAB-II/2-1/97, dated 20 February 1997.

³Assumed office *vide* SG&I Department Notification No.CAB-II/2-1/97, dated 20 February 1997.

⁴Ceased to hold office under the Proclamation of Emergency dated 14 October 1999, issued *vide* Cabinet Secretariat Notification No.2-10/99-Min.1, dated 14 October, published the same day in the Punjab Gazette (Extraordinary), Part-I, pp.1265-66.

SPEAKERS

Sheikh Faiz Muhammad

5 January 1948¹ to 7 May 1951²

Dr Khalifa Shuja-ud-Din

7 May 1951³ to 14 October 1955⁴

Chaudhry Fazal Elahi

20 May 1956⁵ to 7 October 1958⁶

Mubin-ul-Haq Siddiqui

12 June 1962⁷ to 4 July 1963⁸

Chaudhry Muhammad Anwar Bhinder

16 July 1963⁹ to 12 June 1965¹⁰

12 June 1965¹¹ to 25 March 1969¹²

Rafiq Ahmad Sheikh

3 May 1972¹³ to 11 April 1977¹⁴

Chaudhry Muhammad Anwar Bhinder

11 April 1977¹⁵ to 5 July 1977¹⁶

¹Elected unopposed — Punjab Legislative Assembly Debates, 5 January 1948, Vol.1, pp.3-4.

²Held office after the dissolution of the Assembly until immediately before the first meeting of the next Assembly on 7 May 1951, in terms of Proviso to subsection (2) of section 65 of the Government of India Act 1935 — Punjab Legislative Assembly Debates, 7 May 1951, Vol.1, p.1.

³Elected unopposed — Punjab Legislative Assembly Debates, 7 May 1951, Vol.1, p. 11.

⁴Ceased to hold office on the formation of the Province of West Pakistan on 14 October 1955 in terms of section 11(7) of the Establishment of West Pakistan Act 1955 (PLD 1955 Central Statutes 277).

⁵Elected by majority of 149 to 148 votes. In fact he was elected on the basis of the casting vote of the Acting Speaker in his favour — West Pakistan Legislative Assembly Debates, 20 May 1956, Vol.1, pp.15-32.

⁶Ceased to hold office under the Proclamation of Martial Law, dated 7 October 1958 (PLD 1958 Central Statutes 577).

⁷Elected unopposed — Provincial Assembly of West Pakistan Debates, 12 June 1962, Vol.1, No.2, pp.21-22.

⁸Removed from office through a vote of no confidence. For details, *see* Provincial Assembly of West Pakistan Debates, 4 July 1963, Vol.4, No.22, pp.1-17.

⁹Elected by a majority of 86 votes. For details, *see* Provincial Assembly of West Pakistan Debates, 16 July 1963, Vol.4, No.32, pp.9-14.

¹⁰Held office even after the dissolution of the Assembly in terms of Article 108(9) of the Constitution (1962), and was re-elected to the same office. For details, *see* Provincial Assembly of West Pakistan Debates, 12 June 1965, Vol.1, No.2, p.10.

¹¹Re-elected unopposed — *see ibid.*

¹²Ceased to hold office under the Proclamation of Martial Law, dated 25 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), pp.185-86.

¹³Elected unopposed — Provincial Assembly of the Punjab Debates, 3 May 1972, Vol.1, No.2, pp.56-57.

¹⁴Held office even after the dissolution of the Assembly in terms of Article 53(8) read with Article 127 of the Constitution (1973), until his successor entered upon that office — Provincial Assembly of the Punjab Debates, 11 April 1977, Vol.1, No.2, p.16.

¹⁵Elected unopposed — *see ibid.*

¹⁶Ceased to hold office under the Proclamation of Martial Law, dated 5 July 1977, published the same day in the Punjab Gazette (Extraordinary), p.411.

Mian Manzoor Ahmad Wattoo
10 April 1985¹ to 2 December 1988²
2 December 1988³ to 7 November 1990⁴
7 November 1990⁵ to 25 April 1993⁶

Saeed Ahmad Khan Manais
4 May 1993⁷ to 19 October 1993⁸

Muhammad Hanif Ramay
19 October 1993⁹ to 19 February 1997¹⁰

Chaudhry Parvez Elahi
19 February 1997¹¹ to 12 October 1999¹²

¹Provincial Assembly of the Punjab Debates, 10 April 1985, Vol.2, No.2, p.8, read with Provincial Assembly of the Punjab Notification No.PAP/Legis-1(19)/85/8, dated 10 April 1985, published in the Punjab Gazette (Extraordinary), dated 11 April 1985, p.1311.

²Held office even after the dissolution of the Assembly under Article 58(3) read with Article 127 of the Constitution (1973), until his re-election to that office — Provincial Assembly of the Punjab Debates, 2 December 1988, Vol.1, No.2, p.36.

³Elected by the majority of 155 votes — *see ibid.*

⁴Held office even after the dissolution of the Assembly in terms of Article 58(3) read with Article 127 of the Constitution (1973), until his re-election to that office — Provincial Assembly of the Punjab Debates, 7 November 1990, Vol.1, No.2, p.18 read with Provincial Assembly of the Punjab Notification No.Legis-1(24)/90/156, dated 7 November 1990, published the same day in the Punjab Gazette (Extraordinary), p.2361.

⁵Elected unopposed — *ibid.*

⁶Resigned. Mian Manazir Ali Ranjha, Deputy Speaker assumed charge of that office — Provincial Assembly of the Punjab Notification No.PAP/Legis-1(24)/90/104, dated 2 May 1993.

⁷Elected by the majority of 162 votes — Provincial Assembly of the Punjab Debates, 4 May 1993, Vol.15, No.2, p.14.

⁸Held office after the dissolution of the Assembly in terms of Article 58(3) read with Article 127 of the Constitution (1973), until his successor entered upon that office — Provincial Assembly of the Punjab Debates, 19 October 1993, Vol.1, No.2, pp.27-30.

⁹Elected by majority of 130 votes — *ibid.*

¹⁰Held office after the dissolution of the Assembly in terms of Article 58(3) read with Article 127 of the Constitution (1973), until his successor assumed that office — Provincial Assembly of the Punjab Debates, 19 February 1997, Vol.2, No.1, pp.18-19.

¹¹Elected unopposed — *ibid.*

¹²Placed under suspension with effect from 12 October 1999 under Proclamation of Emergency dated 14 October 1999, issued *vide* Cabinet Secretariat Notification No.2-10/99-Min.I, dated 14 October 1999, published the same day in the Gazette of Pakistan (Extraordinary), pp.1265-66.

DEPUTY SPEAKERS

Fazal Elahi

9 January 1948¹ to 25 January 1949²

Chaudhry C.L. Sundar Das

18 December 1951³ to 14 October 1955⁴

Haji Syed Mehr Ali Shah Bukhari

21 September 1957⁵ to 7 October 1958⁶

SENIOR DEPUTY SPEAKERS

Muhammad Ishaq Khan Kundi

12 June 1962⁷ to 12 June 1965⁸

Umar Jan Khan

12 June 1965⁹ to 5 February 1966¹⁰

Ahmad Mian Somro

5 February 1966¹¹ to 23 May 1966¹²

Syed Yousaf Ali Shah

26 May 1966¹³ to 25 March 1969¹⁴

¹Elected unopposed — West Punjab Legislative Assembly Debates, 9 January 1948, Vol.1, pp.80-81.

²Ceased to hold office on the dissolution of the Assembly *vide* West Punjab Legislative Assembly Notification No.G-1(3), dated 25 January 1949, published the same day in the West Punjab Gazette (Extraordinary), p.15.

³Elected unopposed — Punjab Legislative Assembly Debates, 18 December 1951, Vol.2, p.130.

⁴Ceased to hold office on the formation of the Province of West Pakistan on 14 October 1955 in terms of section 11(7) of the Establishment of West Pakistan Act 1955 (PLD 1955 Central Statutes 277).

⁵Elected unopposed — West Pakistan Legislative Assembly Debates, 21 September 1957, Vol.4, No.8, p.483.

⁶Ceased to hold office under the Proclamation of Martial Law, dated 7 October 1958 (PLD 1958 Central Statutes 577).

⁷Elected unopposed — Provincial Assembly of West Pakistan Debates, 12 June 1962, Vol.1, No.2, p.50.

⁸Held office even after the dissolution of the Assembly in terms of Article 108(9) of the Constitution (1962) until his successor, entered upon that office — Provincial Assembly of West Pakistan Debates, 12 June 1965, Vol.1, No.2, p.32.

⁹Elected unopposed — *see* Provincial Assembly of West Pakistan Debates, 12 June 1965, Vol.1, No.2, p.32.

¹⁰Ceased to hold office on having been de-seated on 5 February 1966 — Election Commission, Pakistan Notification No.FII(36)/65-ELS(W), dated 5 February 1965, published the same day in the Gazette of Pakistan (Extraordinary), p.78.

¹¹Assumed office, vacated by Mr Umar Jan Khan, in terms of Article 108(3) of the Constitution (1962). The said Article provided that “when office of the senior of the Deputy Speakers becomes vacant, the other Deputy Speaker shall become the senior of the Deputy Speakers.”

¹²Resigned — Provincial Assembly of West Pakistan Debates, 23 May 1966, Vol.3, No.1, pp.229-30.

¹³Elected by the majority of 105 votes. For details, *see* Provincial Assembly of West Pakistan Debates, 26 May 1966, Vol.3, No.4, pp.849-51.

¹⁴Ceased to hold office under the Proclamation of Martial Law, dated 25 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), pp.185-86.

Syed Zafar Ali Shah

12 June 1962¹ to 12 June 1965²

Ahmad Mian Somro

12 June 1965³ to 5 February 1966⁴

26 May 1966⁵ to 25 March 1969⁶

Shamim Ahmad Khan

3 May 1972⁷ to 13 January 1977⁸

11 April 1977⁹ to 5 July 1977¹⁰

Mian Manazir Ali Ranjha

10 April 1985¹¹ to 30 May 1988¹²

7 November 1990¹³ to 4 May 1993¹⁴

¹Elected unopposed — Provincial Assembly of West Pakistan Debates, 12 June 1962, Vol.1, No.2, p.50.

²Held office even after the dissolution of the Assembly in terms of Article 108(9) of the Constitution (1962) until his successor entered upon that office — Provincial Assembly of West Pakistan Debates, 12 June 1965, Vol.1, No.2, p.33.

³Elected unopposed — *see* Provincial Assembly of West Pakistan Debates, 12 June 1965, Vol.1, No.2, p.33

⁴Ceased to hold office on having assumed office of Senior Deputy Speaker, vacated by Mr Umar Jan Khan, in terms of Article 108(3) of the Constitution of the Islamic Republic of Pakistan (1962). Also *see* Election Commission of Pakistan Notification No.F.II(36)/65-ELS(W), dated 5 February 1966, published the same day in the Gazette of Pakistan (Extraordinary), p.78.

⁵Resigned as Senior Deputy Speaker on 23 May 1966 and was again elected as Deputy Speaker by majority of 107 votes. For details, *see* Provincial Assembly of West Pakistan Debates, 26 May 1966, Vol.3, No.4, p.855; and, dated 23 May 1966, Vol.3, No.1, pp.229-30.

⁶Ceased to hold office under the Proclamation of Martial Law dated 25 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), pp.185-86.

⁷Elected unopposed — Provincial Assembly of the Punjab Debates 3 May 1972, Vol.1, No.2, p.89.

⁸Ceased to hold office on the dissolution of the Assembly, *vide* Provincial Assembly of the Punjab Notification No.PAP/Legis-1(1)/77/1, dated 11 January 1977, published the same day in the Punjab Gazette (Extraordinary), p.27.

⁹Elected unopposed — Provincial Assembly of the Punjab Debates, 11 April 1977, Vol.1, No.2, p.27.

¹⁰Ceased to hold office under the Proclamation of Martial Law, dated 5 July 1977, published the same day in the Punjab Gazette (Extraordinary), p.411.

¹¹Elected unopposed — Provincial Assembly of the Punjab Debates, 10 April 1985, Vo1.2, No.2, p.8, read with Provincial Assembly of the Punjab Notification No.PAP/Legis-1(19)/85/9, dated 10 April 1985, published in the Punjab Gazette (Extraordinary), dated 11 April 1985, p.1307.

¹²Ceased to hold office on the dissolution of the Assembly — SG&I Department Notification No.CAB-II/2-5/86, dated 30 May 1988, published in the Punjab Gazette (Extraordinary), dated 31 May 1988, p.1559.

¹³Elected by the majority of 194 votes — Provincial Assembly of the Punjab Debates, 7 November 1990, Vol.1, No.2, p.31, read with Provincial Assembly of the Punjab Notification No.Legis-1(24)/90/156, dated 7 November 1990, published the same day in the Punjab Gazette (Extraordinary), p.2363.

¹⁴Resigned — Provincial Assembly of the Punjab Notification No.Legis-1(65)/93/109, dated 4 May 1993, read with Provincial Assembly of the Punjab Debates, 4 May 1993, Vol.15, No.1, p.15.

Sardar Hassan Akhtar Mokal
2 December 1988¹ to 6 August 1990²
19 February 1997³ to 12 October 1999⁴

Sahibzada Muhammad Usman Khan Abbasi
5 May 1993⁵ to 28 June 1993⁶

Mian Manzoor Ahmad Mohal
19 October 1993⁷ to 17 November 1996⁸

¹Elected by the majority of 151 votes — Provincial Assembly of the Punjab Debates, 2 December 1988, Vol.2, No.1, p.40, read with Provincial Assembly of the Punjab Notification No.Legis-1(16)/88/114, dated 2 December 1988.

²Ceased to hold office on the dissolution of the Assembly — SG&I Department Notification No.CAB-II/2-13/88, dated 7 August 1990, published the same day in the Punjab Gazette (Extraordinary), p.1559-A.

³Elected unopposed — Provincial Assembly of the Punjab Debates, 19 February 1997, Vol.2, No.1, pp.22-23, read with Provincial Assembly of the Punjab Notification No.PAP/Legis-1(1)/97/26, dated 19 February 1997.

⁴Placed under suspension with effect from 12 October 1999 under the Proclamation of Emergency, dated 14 October 1999, issued *vide* Cabinet Secretariat Notification No.2-10/99-Min.I, dated 14 October 1999, published the same day in the Gazette of Pakistan (Extraordinary), pp.1265-66.

⁵Elected by the majority of 152 votes — Provincial Assembly of the Punjab Debates, 5 May 1993, Vol.15, No.3, p.32.

⁶Ceased to hold office on the dissolution of the Assembly on 29 May 1993. The Lahore High Court, Lahore, however, by order dated 28 June 1993, held the dissolution of the Assembly as illegal and restored the Assembly. The Governor, on the advice of the Chief Minister, again dissolved the Assembly the same day. Thus, although, the Deputy Speaker functioned as such up to 29 May 1993, legally speaking he would be deemed to have ceased to hold office on 28 June 1993. For details, *see* Ch Parvez Elahi v Province of the Punjab (PLD 1993 Lahore 595).

⁷Elected by the majority of 131 votes — Provincial Assembly of the Punjab Debates 19 October 1993, Vol.1, No.2, pp.32-33, read with Provincial Assembly of the Punjab Notification No.Legis-1(80)/93/144, dated 19 October 1993.

⁸Ceased to hold office on the dissolution of the Assembly — Provincial Assembly of the Punjab Notification No.Legis-1(111)/93/122, dated 17 November 1996, published in the Punjab Gazette (Extraordinary), dated 18 November 1996, pp.617-19.

LEADERS OF THE OPPOSITION

Nawab Iftikhar Hussain Khan Mamdot

*1951 to 1955*¹

Sardar Bahadur Khan

*1956 to 1958*²

Sheikh Masood Sadiq

*6 December 1962 to 8 June 1965*³

Khan Habib Ullah Khan

*9 June 1965*⁴ to *25 September 1966*⁵

Malik Khuda Bakhsh Bucha

*25 September 1966 to 25 March 1969*⁶

Khawaja Muhammad Safdar

1962 to 1965

*1965 to 1969*⁷

Allama Rehmatullah Arshad

*1972 to 1975*⁸

Chaudhry Talib Hussain

*1975 to 1977*⁹

¹Assumed office in the first session of the Assembly which commenced on 7 May 1951; and held that position until the Assembly ceased to exist on the formation of the Province of West Pakistan on 14 October 1955, in terms of section 11(7) of the Establishment of West Pakistan Act 1955. For details, *see* PLD 1955 Central Statutes 277; Punjab Legislative Assembly Debates, 7 May 1951, Vol.1, p.12; and, 31 March 1955, Vol.10, p.1255.

²Assumed office on 20 May 1956; and, held the same until the Assembly was dissolved under the Proclamation of Martial Law, dated 7 October 1958 (PLD 1958 Central Statutes 577). Also *see* West Pakistan Legislative Assembly Debates, 20 May 1956, Vol.1, p.12; and, 25 August 1958, Vol.6, No.4, p.386.

³Ceased to hold office on the completion of three-years term of the Provincial Assembly of West Pakistan in terms of Article 230(2) of the Constitution (1962). Election were held on non-party basis under the National and Provincial Assemblies (First Elections) Order 1962 (P.O. 4 of 1962). Also *see* Provincial Assembly of West Pakistan Debates, 6 December 1962, Vol.2, No.5, pp.493-94; and, 31 January 1965, Vol.7, No.19, pp.10-11 and 24-25.

⁴The *Dawn* Karachi, dated 10 June 1965. Also *see* Provincial Assembly of West Pakistan Debates, 12 June 1965, Vol.1, No.2, p.10.

⁵Ceased to hold office with the induction of the new Cabinet, of which he was not member — SG&I Department Notification No.S.O.VII-2-23/66, dated 25 September 1966, published the same day in the Gazette of West Pakistan (Extraordinary), p.2677, and the *Dawn*, Karachi, dated 26 September 1966. Also *see* Provincial Assembly of West Pakistan Debates, 12 July 1966, Vol.3, No.40.

⁶Replaced Khan Habib Ullah Khan and held office until the dissolution of the Assembly under the Proclamation of Martial Law, dated 25 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), pp.185-87. Also *see* Provincial Assembly of West Pakistan Debates, 21 November 1966, Vol.4, No.1, pp.179-80; and, 20 February 1969, Vol.8, No.35, pp.6590-92.

⁷Held that office during the three years' tenure of the first Assembly under the Constitution (1962) and the second Assembly until it was dissolved under the Proclamation of Martial Law dated 25 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), pp.185-86. Also *see* Provincial Assembly of West Pakistan Debates, 9 June 1962, Vol.1, No.1, pp.1-13; 13 June 1963, Vol.4, No.4, p.407; 31 January 1965, Vol.7, No.19, pp.9-86; 9 June 1965, Vol.1, No.1, pp.1-6; 12 June 1965, Vol.1, No.2, p.8; 20 July 1965, Vol.1, No.28, pp.3455-57; dated 20 February 1969, Vol.8, No.35, pp.6539-6640.

⁸Assumed office on 3 May 1972 and resigned on 17 November 1975 — Provincial Assembly of the Punjab Debates, 3 May 1972, Vol.1, No.2, pp.60; and, dated 17 November 1975, Vol.16, No.2, pp.66-67.

⁹Assumed office on the resignation of his predecessor on 17 November 1975, and continued to serve as such until the Assembly was dissolved on 13 January 1977, *vide* Provincial Assembly of the Punjab Notification No.PAP/Legis-1(1)/77/1, dated 11 January 1977, published the same day in the Punjab Gazette (Extraordinary), p.27. Also *see* Provincial Assembly of the Punjab Debates, 17 November 1975, Vol.16, No.2, pp.67-68; 22 November 1976, Vol.19, No.15, p.1178; and, 26 November 1976, Vol.19, No.19, pp.1411-60.

Sardarzada Zafar Abbass Syed
1977¹

Makhdoomzada Syed Hasan Mahmood
1985 to 1986²

Mian Muhammad Afzal Hayat
1986 to 1988³

Sardar Farooq Ahmad Khan Leghari
1988⁴

Rana Shaukat Mehmood
1988 to 1990⁵

Rana Ikram Rabbani
1990 to 1993⁶

Muhammad Shehbaz Sharif
1993 to 1996⁷

Saeed Ahmad Khan Manais
1997 to 1999⁸

¹Assumed office on 6 June 1977 and held the same up to the dissolution of the Assembly on 5 July 1977 under the Proclamation of Martial Law, dated 5 July 1977, published the same day in the Punjab Gazette (Extraordinary), p.411. Also *see* Provincial Assembly of the Punjab Debates, 9 April 1977, Vol.1, No.1, pp.1-15; 6 June 1977, Vol.2, No.1, pp.41-42; and, 27 June 1977, Vol.2, No.19, pp.948-1041.

²Held office from February 1986 until his death on 26 August 1986 — Provincial Assembly of the Punjab Debates, 25 February 1986, Vol.5, No.7, p.607, read with *The Pakistan Times* dated 27 August 1986.

³Assumed office on the death of his predecessor in August 1986 and held that position until the Assembly was dissolved on 30 May 1988, *vide* SG&I Department Notification No.CAB-II/2-5/86, dated 30 May 1988, published in the Punjab Gazette (Extraordinary) dated 31 May 1988, p.1559. Also *see* Provincial Assembly of the Punjab Debates, 5 October 1986, Vol.7, No.3, p.82; and, 14 February 1988, Vol.12, No.17, p.1516.

⁴The new Assembly met on 30 November 1988. He functioned as such up to 26 December 1988 when he vacated his seat in the Provincial Assembly. For details, *see* the *Nawa-i-Waqt*, Lahore, dated 27 December 1988; Provincial Assembly of the Punjab Debates, 30 November 1988, Vol.1, No.1, p.1; and, 11 December 1988, Vol.3, No.3, p.75.

⁵Succeeded Sardar Farooq Ahmad Khan Leghari and remained in office up to the dissolution of the Assembly on 6 August 1990, *vide* SG&I Department Notification No.CAB-II/2-13-88, dated 7 August 1990, published the same day in the Punjab Gazette (Extraordinary), p.1559-A. Also *see* Provincial Assembly of the Punjab Debates, 23 February 1989, Vol.4, No.1, p.6; and, 28 June 1990 Vol.11, No.16, p.35.

⁶Held that position from 8 November 1990 to 28 June 1993 when the Assembly was finally dissolved — Provincial Assembly of the Punjab Debates, 8 November 1990, Vol.2, No.1, p.8; and, 5 May 1993, Vol.15, No.3, p.38, read with *Ch Parvez Elahi v Province of the Punjab* (PLD 1993 Lahore 595).

⁷Held that office from October 1993 until the dissolution of the Assembly on 17 November 1996. During his absence on account of being abroad and in jail, Ch Parvez Elahi acted as Leader of Opposition for about two years — Provincial Assembly of the Punjab Notification No.Legis-1(111)/93/122, dated 17 November 1996, published in the Punjab Gazette (Extraordinary), dated 18 November 1996, pp.617-19; Provincial Assembly of the Punjab Debates, 18 October 1993, Vol.1, No.1, p.1; 20 October 1993, Vol.2, No.1, p.73; 17 June 1996, Vol.35, No.2, p.17; and, 16 November 1996, Vol.40, No.2, p.6.

⁸Held that office from 30 June 1997 to 12 October 1999 when the Assembly was placed under suspension with effect from 12 October 1999 under the Proclamation of Emergency, dated 14 October 1999, issued *vide* Cabinet Secretariat Notification No.2-10/99-Min.I, dated 14 October 1999, published the same day in the Punjab Gazette (Extraordinary), pp.1265-66. Also *see* Provincial Assembly of the Punjab Notification No.PAP/Legis-1(50)/97/89, dated 30 June 1997.

SECRETARIES

Hakim Ahmad Shuja

15 August 1947 to 15 October 1958¹

Hakim Ahmad Shuja

15 August 1947 to 15 October 1958²

Chaudhry Muhammad Iqbal

7 May 1962³ to 9 April 1969⁴

Sheikh Muhammad Asadullah

3 April 1972⁵ to 22 August 1977⁶

Muhammad Anwar Shariq

22 August 1977⁷ to 22 July 1978⁸

Muhammad Iqbal Khan Sumbal

1 August 1978⁹ to 11 October 1979¹⁰

¹Re-employed as Secretary Assembly from 30 March 1958 to 16 October 1958 *vide* Law Department Notification No.Gen.5-1/58, dated 28 August 1958, published in the Gazette of West Pakistan (Part-I), dated 12 September 1958, p.445. However, he assumed charge of the post of whole-time Secretary, Official Language Committee on 15 October 1958 (afternoon) *vide* SG&I Department Notification No.Pol.(S.O.VI)/6-2-58, dated 20 October 1958, published in the Punjab Gazette (Part-I), dated 31 October 1958, p.510.

²Re-employed as Secretary Assembly from 30 March 1958 to 16 October 1958 *vide* Law Department Notification No.Gen.5-1/58, dated 28 August 1958, published in the Gazette of West Pakistan (Part-I), dated 12 September 1958, p.445. However, he assumed charge of the post of whole-time Secretary, Official Language Committee on 15 October 1958 (afternoon) *vide* SG&I Department Notification No.Pol.(S.O.VI)/6-2-58, dated 20 October 1958, published in the Punjab Gazette (Part-I), dated 31 October 1958, p.510.

³Law Department Notification No.Gen.5-2/62/2516, dated 11 May 1962, published in the Punjab Gazette (Part-I), dated 25 May 1965, p.327.

⁴Transferred to officiate as Officer on Special Duty, SG&I Department *vide* that Department Notification No.SC.2/2/69(CSP), dated 7 April 1969, published in the Gazette of West Pakistan (Part-I), dated 9 May 1969, p.615. Later, however, the Assembly Secretariat was abolished with effect from 1 May 1969, as a consequence of Proclamation of Martial Law dated 25 March 1969, published the same day in the Gazette of Pakistan (Extraordinary), pp.185-86.

⁵SG&I Department Notification No.SC-2-14/72(CSP), dated 28 March 1972 and Notification of Even Number, dated 10 January 1973, read with Provincial Assembly letter No.PAP-Admn-(E-26)-72/623, dated 4 April 1972.

⁶Transferred *vide* SG&I Department Notification No.CI-2-2/77, dated 20 August 1977 read with Provincial Assembly letter No.E-II/E-1/5646, dated 22 August 1977.

⁷Posted *vide* Notification *ibid.*, read with Government of the Punjab, Law Department Notification No.Gen:9-12/77, dated 28 August 1977.

⁸On his transfer, Sheikh Abdul Wahid, Law Secretary, held additional charge of the post of Secretary Assembly from 22-31 July 1978. He was relieved of that charge *vide* SG&I Department Notification No.SI.2-2/78, dated 9 August 1978. Also *see* Government of the Punjab Law Department Notification No.Gen: 9-17/70/1021, dated 4 March 1981.

⁹Posted *vide* SG&I Department Notification No.SI.2-2/78, dated 9 August 1978, read with Government of the Punjab, Law Department Order No.Gen: 9-59/78/2873, dated 20 August 1978 and Provincial Assembly of the Punjab letter No.E-II/E-220/2922, dated 13 August 1978.

¹⁰Posted as Member Punjab Administrative Vigilance Commission *vide* SG&I Department Notification No.SI-2-2/79, dated 13 May 1979 and assumed charge of the said post on 13 May 1979 *vide* Provincial Assembly of the Punjab letter No.E-II/E-220/78/1574, dated 16 May 1979. However, *vide* SG&I Department Notification No.SI-2-2/79, dated 11 August 1979, he was allowed to hold additional charge of the post of Secretary Assembly. Later he was relieved of the additional charge *vide* SG&I Department Notification No.SI.2-2/79, dated 4 October 1979.

Qazi Muhammad Hafeezullah
11 October 1979¹ to 3 December 1979²

Ghulam Muhammad Durrani
3 December 1979³ to 3 September 1981⁴

Muhammad Mahbub Abbasi
26 September 1981⁵ to 12 June 1985⁶

Saleem Akhtar Rana
12 June 1985⁷ to 31 August 1987⁸

Safdar Ali Shah
1 September 1987⁹ to 31 March 1989¹⁰

Chaudhry Habib Ullah
1 April 1989¹¹ to 29 May 1993¹²

Dr Syed Abul Hassan Najmee
16 December 1993¹³ —

¹Posted *vide* SG&I Department Notification No.SI.2-2/79, dated 4 October 1979, and assumed charge *vide* Provincial Assembly of the Punjab letter No.E-II/E-228/79/3534, dated 13 October 1979.

²Transferred *vide* SG&I Department Notification No.SI.2-2/79(A), dated 29 November 1979 and relinquished charge *vide* Provincial Assembly of the Punjab letter No.PAP/E-II/E-230/79/4069, dated 4 December 1979.

³Posted *vide* Notification *ibid.*, and assumed charge *vide* letter *ibid.*

⁴Ceased to hold office on superannuation — SG&I Department Notification No.SI.2-2/81, dated 30 August 1981 read with Provincial Assembly of the Punjab letter No.Estb/E-230/79/3389, dated 7 September 1981.

⁵Posted *vide* SG&I Department Notification No.SI.2-2/81, dated 30 August 1981. Also *see* Provincial Assembly of the Punjab letter No.Estb/E-257/81/3658, dated 28 September 1981.

⁶Relinquished office on superannuation — SG&I Department Notification No.SI.PF.B/45, dated 10 February 1985.

⁷Posted *vide* SG&I Department Notification No.SI.PF.B/75, dated 9 June 1985 and assumed office *vide* Provincial Assembly of the Punjab letter No.Estb/P-319/85/2684, dated 15 June 1985.

⁸Transferred *vide* SG&I Department Notification No.SI.PF.B/75, dated 24 August 1987, read with Provincial Assembly of the Punjab Notification No.E-319/87/45, dated 1 October 1987.

⁹Promoted as such with effect from 1 September 1987: the day from which he had been officiating as Secretary. *See* Provincial Assembly of the Punjab Notification No.Estb/P-8/55, dated 15 October 1987, read with letter No.Estb/E-8/56, dated 18 October 1987.

¹⁰Relinquished charge on superannuation — Provincial Assembly of the Punjab Notification No.Estb/E-8/62/84, dated 5 April 1988.

¹¹Promoted as such — Provincial Assembly of the Punjab Notification No.Estb/E-8/17, dated 1 April 1989, and Notification No.Estb/E-8/19, dated 2 April 1989.

¹²Retired on 22 January 1992 — Provincial Assembly of the Punjab Order No.E-II/P-34/5081, dated 30 October 1991 read with No.P-34/8, dated 23 January 1992. However, he was re-appointed for two years from 23 January 1992 to 22 January 1994, *vide* Provincial Assembly of the Punjab Notification No.P-34/9, dated 23 January 1992. During his absence, with effect from 29 May 1993, Mr Saeed Ahmad, Deputy Secretary, held additional charge of the post of the Secretary from 5 June to 15 December 1993 — Provincial Assembly of the Punjab Order No.E-92/1670, dated 5 June 1993.

¹³Provincial Assembly of the Punjab Notification No.E-8/158, dated 16 December 1993, read with SG&I Department letter No.SO(E-II)23-6/85, dated 16 December 1993 and Provincial Assembly of the Punjab Notification No.PAP-E-8/129, dated 15 December 1996.

RULES OF PROCEDURE

The West Punjab Legislative Assembly Rules of Procedure (1948)

5 January 1948 to 13 October 1955¹

The Rules of Procedure of the Legislative Assembly of West Pakistan (1955)

14 October 1955 to 23 April 1956²

The Provincial Assembly of West Pakistan Rules of Procedure (1956)

24 April 1956 to 7 June 1962³

The Rules of Procedure of the Provincial Assembly of West Pakistan (1962)

8 June 1962 to 14 July 1968⁴

The Rules of Procedure of the Provincial Assembly of West Pakistan (1968)

15 July 1968 to 26 April 1972⁵

¹To regulate the procedure of the West Punjab Legislative Assembly, which had its first sitting on 5 January 1948, the Speaker, in terms of subsection (3) of section 84 of the Government of India Act 1935, adapted, with modifications, the Punjab Legislative Assembly Rules of Procedure 1938 as supplemented by the Punjab Legislative Assembly (Special Procedure) Rules 1939. Subsequently under the Indian Independence (Amendment) Act 1950, the Province of West Punjab was re-named as Province of the Punjab; and, as a result thereof, the word 'West' in the Rules of Procedure was omitted. Later the Rules of Procedure of the Legislative Assembly West Pakistan (1955) replaced the said rules with effect from 14 October 1955.

²To regulate the procedure and conduct of business of the Assembly, constituted as a result of the formation of the West Pakistan on 14 October 1955 under the Establishment of West Pakistan Act 1955 (PLD 1955 Central Statutes 227), the Rules of Procedure immediately existing on 14 October 1955 were deemed to be the Rules of Procedure for the Assembly of West Pakistan under Section 4 of the Act *ibid*.

³The Governor adapted, with modifications and amendments, the West Pakistan Legislative Assembly Rules of Procedure (1955) under para 10 of the Fourth Schedule of the Constitution of the Islamic Republic of Pakistan (1956) *vide* Government of West Pakistan, Law Department Notification No.Gen-5-16/56, dated 23 April 1956, published in the Gazette of West Pakistan (Extraordinary), dated 24 April 1956, pp.335-48. These rules were later replaced by the Rules of Procedure of the Provincial Assembly of West Pakistan (1962) with effect from 8 June 1962.

⁴Pursuant to Article 110 of the Constitution (1962), the Governor of West Pakistan adapted, with amendments, the Rules of Procedure of the National Assembly of Pakistan as the Rules of Procedure for the Provincial Assembly of West Pakistan. For details, *see* Government of West Pakistan, Law Department Notification No.Gen-5-4/62/3167, dated 8 June 1962, published the same day in the Gazette of West Pakistan (Extraordinary), pp.2343-46. These rules were replaced, with effect from 15 July 1968, by the Provincial Assembly of West Pakistan Rules of Procedure 1968.

⁵The Provincial Assembly of West Pakistan finally approved the rules on 5 June 1968 in terms of Article 110(1) (a) of the Constitution (1962). The same came into force with effect from 15 July 1968. For details, *see* Provincial Assembly of West Pakistan Debates, 22 May 1967, Vol.5, No.1, pp.113-15; 1 May 1968, Vol.7, No.1, p.101; 20 May 1968, Vol.7, No.14, pp. 3837-41; 4 June 1968, Vol.7, No.21, pp.6690-6771; and, 5 June 1968, Vol.7, No.26, pp. 6962-7054. These rules were later substituted by the Rules of Procedure of the Provincial Assembly of the Punjab 1972 with effect from 27 April 1972.

The Rules of Procedure of the Provincial Assembly of the Punjab 1972⁶

The Rules of Procedure of the Provincial Assembly of the Punjab 1973⁷

The Rules of Procedure of the Provincial Assembly of the Punjab 1997⁸

⁶Made by the Governor under Article 132 of the Interim Constitution (1972). For details, *see* Provincial Assembly of the Punjab Notification No.PAP/Legis-(7)/72/7, dated 27 April 1972, published the same day in the Punjab Gazette (Extraordinary), pp.719-93. These rules were, later, replaced by the Rules of Procedure of the Provincial Assembly of the Punjab 1973 with effect from 10 September 1973.

⁷Promulgated by the Governor under Article 67 read with Article 127 of the Constitution (1973). For details, *see* Provincial Assembly of the Punjab Notification No.PAP/Legis-1(87)/73/165, dated 10 September 1973, published the same day in the Punjab Gazette (Extraordinary), pp.1315-D to 1315-OOOO. These rules were substituted by the Rules of Procedure of the Provincial Assembly of the Punjab 1997 with effect from 29 January 1997.

⁸Initially made by the Governor under Article 67 read with Article 127 of the Constitution (1973); however, the Assembly adapted the same on 25 June 1997. For details, *see* Provincial Assembly of the Punjab Notification No.PAP/Legis-1(94)/96/11, dated 29 January 1997, published the same day in the Punjab Gazette (Extraordinary), pp.73-128 and No.Legis-1(94)/96/82, dated 25 June 1997.

ADJOURNMENT

(1)

ADJOURNMENT

ASSEMBLY — NO CONFIDENCE: the action of the Speaker adjourning the sitting to avoid consideration of the resolution for his removal is illegal and void: the House may, under the rules, re-assemble to take up the resolution and decide its fate.¹

(2)

ADJOURNMENT

ASSEMBLY: adjournment includes ‘adjournment *sine die*,’²

(3)

ADJOURNMENT

ASSEMBLY: notwithstanding pending Government business, the Speaker, on a request from the Government, may adjourn the Assembly *sine die*.

On 20 July 1963, Sheikh Masood Sadiq, Finance Minister, stated that the majority of the members of the Assembly desired to return to their homes as they had been away for quite a long time. In deference to their wishes, although the Government business brought before the Assembly had not been completed, the Government did not wish to continue the session till the whole of the business was finished. Accordingly, he suggested that the Speaker may adjourn the Assembly *sine die* at the conclusion of the sitting on that day.

On a point of order, Mr Iftikhar Ahmed Khan objected to the proposal of the Finance Minister on the grounds that (a) the relevant rule requires that ‘*the Assembly shall sit on such days as the Speaker, having regard to the state of business of the Assembly may, from time to time, direct,*’ As such so long as there was business pending with the Assembly, the Speaker could not

¹For details, see Decision No.418, pp. 494-96.

²For details, see Decision No.69, p. 77.

adjourn it *sine die*. Moreover, the session had been summoned by the Governor and he alone could prorogue the same.

The Speaker, Ch Muhammad Anwar Bhinder, ruled out the said point of order with the observation that —

“The Assembly meets to transact business. For every five days of Government business, one day is given under the Rules for transaction of private members business. Private members have been given full number of days laid down in the Rules. When the Government says that they do not want to take up any other business, the Chair has no option but to adjourn the House *sine die*. The House now stands adjourned *sine die*.”¹

(4)

ADJOURNMENT

ASSEMBLY — TIMINGS: the timings prescribed in the rules for a sitting of the Assembly are subject to any other direction of the Speaker, who may, in his discretion, adjourn a sitting to any other time.²

¹West Pakistan Assembly Debates, 20 July 1963, Vol-IV, No.36, p. 104.

²For details, see Decision No.72, pp. 78-79.

ADJOURNMENT MOTION

(5)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — ADMINISTRATION OF LAW: a matter of ordinary administration of law cannot be made the basis of an adjournment motion. **MEANINGS OF THE TERM ALSO EXPLAINED:** Since no hard and fast rule can be laid down as to what is meant by ‘*an action in ordinary administration of law*’, each case has to be decided in the backdrop of the peculiar circumstances involving it. Without being exhaustive, some of the instances may be — (a) the action has been taken by a court of law or a competent judicial authority; (b) there is a right of appeal provided for in a statute against the said order or the action; (c) the order or the action pertains to a matter of ordinary day-to-day administration; (d) *prima facie* there is no excessive use of the executive power; (e) a judicial trial or remedy is open to a party; or (f) the matter involved is not more than ordinary administration of law.¹

(6)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — ADMINISTRATION OF LAW: may not be raised through an adjournment motion as the redress of grievance is available under the law.

Mr Riaz Hashmat Janjua, in his adjournment motion, wanted to discuss the arrest of four MRD (Movement for Revival of Democracy) workers who, according to him had been falsely implicated in a criminal case for purposes of political victimisation. Mian Manzoor Ahmed Wattoo, Speaker disposed of the matter in terms of the following —

“To my mind the matter raised seeking adjournment of the House was not *sub-judice* at the time the Adjournment Motion was given notice of. The Government has not raised any objection of its being *sub-judice*. The matter appears to be a case of ordinary administration and the redress of the grievance is available under the existing law. It cannot, therefore, be a subject of an Adjournment Motion. Besides, the case reported in the Adjournment

¹For details, see Decision No.55, pp. 47-54

Motion, is about two months old. I, therefore, cannot safely hold that it is a matter of such recent occurrence on which the Adjournment Motion can be successfully moved. I, therefore, hold this motion out of order.”¹

(7)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — ADMINISTRATION OF LAW: a matter of ordinary administration of law cannot be made the basis of an adjournment motion — calling in the army to assist the District Administration in the maintenance of law and order, being an act of ordinary administration of law, was not allowed to be discussed through an adjournment motion.²

(8)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — ADMINISTRATIVE MATTERS: may not be allowed if the matter relates to ordinary administration — the motion regarding imposition of section 144 was ruled out with the observation that the matter pertained to the ordinary administration.

On 1 December 1953, Ch Muhammad Afzal Cheema sought permission of the House for moving an adjournment motion regarding imposition of section 144 in the province resulting in denial to the people of their fundamental rights. The Speaker, Dr Khalifa Shuja-ud-Din, gave the following ruling —

“I want to invite the attention of the honourable member to the fact that no adjournment motion can be brought in regard to a matter which does not involve anything more than the ordinary administration. Promulgation of Section 144 is entirely a matter within the discretion of the Government and the fact that they have found it necessary to impose section 144 for administrative reasons cannot be made the subject-matter of an adjournment motion. It must involve something more than the ordinary administration.”³

(9)

¹Punjab Assembly Debates, 15 October 1986, Vol-VII, No.8, pp. 855-56.

²For details, see Decision No.54, pp. 46-47.

³Punjab Legislative Assembly Debates, 1 December 1953, p. 95.

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — ALTERNATIVE REMEDY: may not be allowed where alternative remedy is available under the rules.

Mr C.E. Gibbon, Member, gave notice of an adjournment motion as under —

“I beg to ask for leave to make a motion for the adjournment of the business of the House to discuss a definite matter of urgent public importance, namely, the grave situation arising out of the policy of the Government in respect of the wholesale eviction of Christian Sepis Athirst and tenants from their home holdings and lands without providing any alternative means of shelter and livelihood, thus rendering nearly 3 lakhs of Christians homeless and on the verge of starvation, the consequences of which are too horrible to imagine.”

Dr Khalifa Shauja-ud-Din, Speaker, ruled as under

“The honourable member will remember that during the Budget Session, Mr C.E. Gibbon discussed this question at great length and the question was also replied to by the honourable Minister for Rehabilitation and Colonies in his speech. This matter is obviously not of recent occurrence. Since in the Budget Session, the honourable member had plenty of opportunity to invite the attention of the Government to this matter and again, if he wishes to do so, he can do it by means of a resolution or a question on the subject. Since an alternative remedy is available, I must hold this motion out of order.”¹

(10)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — ALTERNATIVE REMEDY: may not be allowed if the remedy is available under the normal law.

On 3 August 1956, Mian Muhammad Shafi moved an adjournment motion regarding failure of the Government to bring to book those police officials of Raiwind Police Station who allegedly taking the law into their own hands beat some kisan-participants in the Kisan March Rally. The Speaker, Ch Fazal Elahi gave the following ruling

¹Punjab Legislative Assembly Debates, 30 April 1952, Vol-IV, p. 132.

“This is an ordinary process of law. If a person is beaten by the Police, he can file a complaint in a Court. He can move the High Court if Lower Courts do not take action. In this specific matter the ordinary process of law is open to the complainants. The adjournment motion is, therefore, ruled out of order”¹

(11)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — ALTERNATIVE REMEDY: may be disallowed where alternative remedy is available.²

(12)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — ARGUMENTS: a motion may be disallowed if the matter raised involves arguments, or it may also be disallowed if it raises more than one issue, or it does not relate to a matter of recent occurrence.³

(13)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — CONSENT: the Speaker must decide the fate of an adjournment motion according to the rules as they exist unless the same are suspended by the House.

On 28 May 1956, Dr Khan Sahib, Chief Minister moved that: “I propose the time 6.30 today to discuss for two hours the situation created by the statement of the Prime Minister of India that Chitral which is a part of West Pakistan and is represented by a member in this Assembly, is an integral part of Kashmir.” Ch Fazal Elahi, Speaker made the following preliminary observations —

“As the motion of the Chief Minister relates to a matter connected with the relations between the President and a foreign State, the matter cannot be discussed by the House save with the consent of the Governor under Rule

¹West Pakistan Legislative Assembly Debates, 3 August 1956, Vol-II, p. 170.

²For details, see Decision No.24, p. 19

³For details, see Decision No.45, pp. 37-38.

4-A read with Rule 144-A of the West Pakistan Legislative Assembly Rules of Procedure. As required by sub-rule (3) of Rule 114-A read with Rule 41-A of the Rules of Procedure a reference is being made to the Governor for his decision, whether he gives his consent to the matter being discussed by the House or not. Until the Governor gives his consent the matter cannot be allowed to be discussed by the House.”

However, a dozen of members from the Treasury Benches and the Opposition Benches expressed their anxiety and eagerness to discuss this issue of national importance, irrespective of the restrictions of the rules. Sensing the consensus of the House the Speaker observed that

“I want to remove the misunderstanding created in this matter. Perhaps some members have taken an impression that I intend to obstruct discussion on the matter. In fact when this rule was brought to my notice, I immediately arranged to have contact with the Governor on telephone and I was sure that his permission will be received today before the conclusion of the business and this important matter will be brought under discussion today. So far as my role as Speaker is concerned, I am bound by the restriction imposed by the rules even if these may be harsh and unpleasant. So far as the question of removing of these restrictions is concerned the Leader of the House, the Leader of the Opposition and all members of the House are of the unanimous opinion that the said rules may be suspended. In that case I would have no objection to the consideration of the matter by the House.”¹

¹West Pakistan Legislative Assembly Debates, 28 May 1956, Vol-I, p.496-551. On a question put by the Speaker the rules were suspended; the matter was discussed; and, on conclusion of the debate the following resolution moved by the Chief Minister was passed —

“Resolved that this House strongly condemns the recent statement of the Indian Prime Minister about Chitral and declares that Chitral is an integral part of Pakistan and that Hansa and other parts referred to by Pundit Nehru form part of Azad Kashmir. Pakistanis will not tolerate any encroachment of Pakistan territory by India or any other country. This House strongly urges upon the Central Government of Pakistan to lodge a very strong and forceful protest with the Indian Government against the statement of the Indian Prime Minister, and also urges them to take immediate and effective steps to solve the Kashmir question.”

(14)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — DEFINITE MATTER: must relate to a definite matter and should not be vague or expressed in general terms — the adjournment motion regarding the alleged threats given to the journalists by the Minister for Information, being vague, was ruled out.

On 17 March 1957, Mian Muhammad Shafi, MPA asked leave to move an adjournment motion to discuss the matter involving the alleged coercion, intimidation and threats offered to Mr Ahmad Bashir of A.P.P., and Mr Khurshid of the Dawn by Minister for Information, Syed Hasan Mahmood. The Minister for Law, Abdus Sattar Pirzada emphasised that the facts stated in the adjournment motion were not correct. The Speaker, Ch Fazal Elahi, gave the following ruling —

“The point is that the allegations made in this adjournment motion have been denied by the Government, and the manner in which the member has made these allegations shows that the matter is not definite. He has put his adjournment motion in general terms without mentioning the date and time when the incident happened; therefore, the adjournment motion being very vague, is ruled out of order.”¹

(15)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — DISCUSSED EARLIER: an adjournment motion cannot revive discussion on a matter which has been discussed in the same session — the adjournment motions regarding the alleged threat of strike by student-doctors were not allowed as the matter had already been discussed in the House.

Disposing of various adjournment motions on the ground that the matter had adequately been discussed in the same session, Mian Manzoor Ahmed Wattoo, Speaker observed as under —

“Rana Phool Muhammad Khan, MPA moved an Adjournment Motion on 12th October, 1985, on the basis of a news item appearing in the daily ‘JANG’ dated 11th October, 1985 regarding threat by the doctors that in

¹West Pakistan Legislative Assembly Debates, 17 March 1957, Vol-III, p. 205.

case the written examination prescribed for doctors is not done away with, they would go on strike.

The motion was first taken up on 14th October, 1985, but its discussion could not conclude on several occasions for want of time. It was a matter which was based on an event which had to happen in future and was *prima facie* not admissible.

Its admissibility was yet under consideration, when on 20th October, 1985, the law and order situation worsened and a procession was taken out by the student doctors, who were then allegedly *lathi-charged* by Police. Thereafter some other members also moved Adjournment Motions on the same subject involving Government's failure in maintaining law and order. It was, therefore, decided that Rule 67(a) be suspended and all Adjournment Motions taken up together.

Incidentally the discussion on law and order situation was already fixed for three days with effect from 16th October, 1985, and the matter involved could be discussed on those days. The discussion on this Adjournment Motion, however, continued for five days *i.e.* 14th, 16th, 20th, 22nd and 23rd October, 1985.

On 23 October, 1985 the time fixed under Rule 70 of the Rules of Procedure expired and the Minister for Law moved on behalf of the Government that the time for discussion be extended, so that, the Government could submit its view point on this sensitive issue and the matter may be decided the same day.

I had shown my inclination for allowing one hour discussion if the motions were admitted and made after vote of the House. After the time for Adjournment Motions had expired, the Chief Minister made a policy statement on the subject which covered all the aspects contained in the Adjournment Motions.

According to the May's Parliamentary Practice, 19th Ed., page 363, under the head 'General Restrictions on Motions for the Adjournment of the House', it has been laid down that 'matters which have already been discussed on the same day in the debate may not be raised on the motion for adjournment after the hour of interruption'.

Besides the above point, if a motion is already fixed for discussion, fresh motions on the same subject given notice of by other Members on subsequent dates were not admissible. I find support from the Decision of the Chair No.8 of the National Assembly taken during the year 1976-77.

Although I had indicated that in case the House admitted the motion on 1/6th of its strength, I shall be prepared to allocate not more than one hour for the debate on these motions, but in view of the subject having been discussed continuously for five days, for four and a half hours, both during the time allocated for Adjournment Motions and the time reserved for general discussion on law and order, of which the matter involved in the present motions was a material part, and especially in view of the address of the Leader of the House after I had reserved my ruling. I find that the matter has been adequately, properly and diligently debated. I find that these motions are hit by Rule 67(d) of the Rules of Procedure of the Provincial Assembly of the Punjab that the motion shall not revive discussion on a matter which has been discussed in the same session.

The motions having become infructuous and out-lived their utility, I rule them out of order.”¹

(16)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — DISCUSSED EARLIER: may not be allowed to be moved if the matter raised therein has been adequately discussed in the previous session.²

(17)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — FRIVOLOUS MATTER: the Speaker may withhold consent in the Chamber if the motion is frivolous or is apparently out of order.³

¹Punjab Assembly Debates, 24 October 1985, Vol-IV, No.11, pp. 883-84.

²For details, see Decision No.9, p. 9.

³For details, see Decision No.46, pp. 38-41.

(18)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS)—NOTICE: may be disallowed if the notice is not given in triplicate.¹

(19)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — POLICY MATTER: a matter of policy and of continuing process cannot be made the subject matter of an adjournment motion — the adjournment motion seeking to discuss the policy of replacing Government transport service by private transport service was held to be out of order.

The text of the ruling of Mian Manzoor Ahmed Wattoo, Speaker on the subject, is as under —

“Mr Riaz Hashmat Janjua, MPA gave notice to move an Adjournment Motion No.24 on 27-9-1986. The motion was moved on 15-10-1986.

It has been alleged that the Government Transport Service is being replaced gradually by Private Transport instead of replacing the old and unserviceable buses by new ones. The Government Transport workers have become victim of economic insecurity.

The Minister for Industries technically objected to the admissibility of the motion stating that the matter was neither specific nor of recent occurrence.

I have given careful consideration to the issue and am of the opinion that it is a policy matter for which Government is to take a decision. Besides, it is a continuing process and has been under consideration of the Government for some time back. It is, therefore, not a matter of recent occurrence. No Adjournment Motion lies on matters of policy and continuing process. Hence it is ruled out of order.”²

(20)

¹For details, see Decision No.34, pp. 26-29.

²Punjab Assembly Debates, 20 October 1986, Vol-VII, No.11, pp. 1225-26.

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — PROVINCIAL CONCERN: it must relate to a matter within the competence of the Provincial Government.

Emphasising that an adjournment motion must relate to a matter within the competence of the Provincial Government and that an adjournment motion cannot be moved during the Budget Session, the Speaker, Dr Khalifa Shujaud-Din advanced the following arguments

“Notices have been given to me of no less than 18 adjournment motions sought to be moved in this House this afternoon. As I ruled last year on a similar occasion, no adjournment motion can be allowed during the budget session. In the ruling that I gave on the 1st March 1952, I explained that the reason for not allowing such motions was that several days had been fixed for the general discussion on the budget and that all those matters could be discussed during the general discussion of the budget. I also cited precedents in support of my view. Consequently I must disallow the moving of any adjournment motion today.

I am further fortified in this view by Rule 128-A which says:-

‘On the day fixed no business shall take place except the presentation of the Budget and the asking of questions and the giving of replies thereto.’

It may be added further that two of these motions would have been inadmissible, any how, because they seek to discuss the causes which led to the imposition of Martial Law, a subject which is not within the competence of the Provincial Government.”¹

(21)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — PROVINCIAL CONCERN: the matter must concern the Provincial Government.

On 1 June 1956, Mr G Allana asked leave to make a motion of adjournment to discuss the discriminatory treatment meted out to the West Pakistan Legislative Assembly by the Central Government. He explained that whereas the by-election to a seat in the National Assembly from East Pakistan had to be through the vote of East Pakistan Legislative Assembly, the same right had been denied to the Provincial Assembly in the case of a

¹Punjab Legislative Assembly Debates, 16 March 1953, Vol-VI, p. 48.

seat from West Pakistan. Rana Gul Muhammad Noon, Khan Sardar Bahadur Khan, Mian Mumtaz Muhammad Khan Daultana, Mr M A Khubra, Pir Elahi Bakhsh Nawaz Ali Shah, Agha Ghulam Nabi Phathan, Mian Muhammad Shafi and a few others also spoke in favour of the motion.

The Minister for Law, Mr Abdul Sattar Pirzada, objected to the moving of the motion; *firstly*, because the notice of the motion had not been given at the earliest possible opportunity as the impugned notification was issued on 17th May and the House had been in session since 19th May; and, *secondly* the matter was not the concern of the Provincial Government as the President had the power to prescribe the method of election to the casual vacancies in the National Assembly.

Chaudhry Fazal Elahi, Speaker observed that as the House had been engaged in general discussion on the Budget and voting on Demands, the adjournment motion could not be moved earlier. He further ruled that although the House felt strongly against the impugned notification, he could not allow the matter to be discussed in the Provincial Assembly, as the matter was primarily the concern of the President and not of the Provincial Government. So much so that even a resolution could not be moved without the consent of the Governor as required under Article 223(2) of the Constitution and rules 46 and 114 of the Rules of Procedure. The adjournment motion was ruled out.

Mian Mumtaz Muhammad Khan Daultana moved that as the privilege of this House had been very rudely dealt with by the decision of the Central Government, this House, on a privilege motion, had to express its complete disagreement with the system of election prescribed by the Central Government and had to urge the Central Government that election to the National Assembly from West Pakistan be held through the members of the Provincial Assembly. The law Minister opposed the motion on technical grounds.

The Speaker ruled that it was not a question of privilege as the power of prescribing the method of election to fill the casual vacancies in the National Assembly vested in the President under the Constitution.

Later on, the same day, Khan Sardar Bahadur Khan moved the following motion under rule 142 of the West Pakistan Legislative Assembly rules of Procedure —

“the following formal address be communicated to the Governor of West Pakistan through the Speaker of the Assembly for onward transmission to the Central Government for necessary action

- (a) This House considers that it has been discriminated against in the matter of filling casual vacancies to the National Assembly. The East Pakistan Legislature has been declared an Electoral college whereas in the case of West Pakistan the same right has been denied to the West Pakistan Legislature.
- (b) This House further resolves that the West Pakistan Legislature should be declared an Electoral College for the purposes of filling casual vacancies of members elected from the former Provinces and States in West Pakistan to the National Assembly.
- (c) This House requests the Governor to request the Central Government to stop election to the National Assembly and hold the election after necessary amendment in the Rules as suggested above is made.”

Dr Khan Sahib, Chief Minister supported the motion which was carried.¹

(22)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — PUBLIC INTEREST: may not be allowed if the moving of an adjournment motion is likely to jeopardize the larger interest of the State.²

¹West Pakistan Legislative Assembly Debates, 1 June 1956, Vol-I, pp. 814-29.

²For details, see Decision No.46, pp. 38-41.

(23)**ADJOURNMENT MOTION**

ADMISSIBILITY (CONDITIONS) — PUBLIC INTEREST: may not be allowed if the discussion is likely to aggravate the situation that is already strained, tense and excitable, notwithstanding that the matter is urgent, definite and of public importance.¹

(24)**ADJOURNMENT MOTION**

ADMISSIBILITY (CONDITIONS) — RECENT OCCURRENCE: must relate to a matter of recent occurrence.

On 29 April 1952, Ch Muhammad Shafiq moved an adjournment motion complaining about the indifference and failure of the Punjab Government to take immediate steps to save the cotton and wool traders in the Province from the crisis that had befallen them. He emphasised that on account of the neglect of the Government, the cotton and wool markets had gone so low that the traders of those most important exportable commodities of the Province were likely to have a serious set-back. The Speaker, Dr Khalifa Shauja-ud-Din, ruled as under

“I am afraid I will have to rule this motion out of order for the reason that an adjournment motion can be moved only with regard to matters of urgent recent public importance. According to the motion itself it is evident that this is not a matter of recent occurrence. It was open to the honourable member to have invited the attention of the Government to this matter, if he wanted to do so, by means of a resolution or a question on the subject. An adjournment motion cannot be allowed where this alternative remedy is available.”²

(25)**ADJOURNMENT MOTION**

¹For details, see Decision No.34, pp. 26-29.

²Punjab Legislative Assembly Debates, 29 April 1952. Vol-I, p. 68.

ADMISSIBILITY (CONDITIONS) — RECENT OCCURRENCE: must relate to a matter of recent occurrence.¹

(26)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — RECENT OCCURRENCE: must relate to a matter of recent occurrence — the adjournment motion seeking to discuss the policy of replacing Government transport service by private transport service was held to be out of order as the matter had been under consideration for quite sometimes.²

(27)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — RECENT OCCURRENCE: the matter must be raised at the earliest possible occasion.³

(28)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — SPECIFIC MATTER: must relate to a single specific matter of recent occurrence — the adjournment motion raising various issues pertaining to maladministration and irregularities in the Punjab University was ruled out as it did not fulfill the said requirement.

On 1 December 1953, Ch Muhammad Afzal Cheema intended to move an adjournment motion to discuss maladministration in the Punjab University, leakage of results, under valuation of answer-books etc. The Speaker, Dr Khalifa Shuja-ud-Din, ruled the motion out of order for the following reasons —

“This motion is clearly open to several objections. In the first place according to the rules the motion must relate to a single specific matter of recent occurrence. This motion talks of several matters; there is leakage of

¹For details, see Decision No.6, pp. 7-8.

²For details, see Decision No.19, p. 15.

³For details, see Decision No.21, pp. 16-18.

results, under-valuation of answer-books in general, and the deliberate under-marking of the answer books of a particular student and so on. Secondly, this is a matter which relates to the internal administration of the Punjab University which is an autonomous body. On these grounds I rule it out of order.”¹

(29)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — *SUB JUDICE* MATTER cannot be made the basis thereof — the adjournment motion regarding the action of Home Secretary withholding a petition sent by Sardar Shaukat Hayat Khan to Supreme Court of Pakistan was ruled out on that score.

Enunciating that the matter which is *sub judice* cannot be made the subject matter of an adjournment motion, the Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

“I had reserved my ruling about adjournment motion No.34, which was sought to be moved by Khawaja Muhammad Safdar on 25th November wherein he had asked for leave to make a motion for the adjournment of the business of the Assembly to discuss a definite matter of recent occurrence and public importance, namely, the action of the Home Secretary of the Government of West Pakistan, so far as he with-held the petition to the Supreme Court of Pakistan sent by Sardar Shaukat Hayat Khan. I have made enquiries and have come to know that a petition for contempt of Court on the similar subject is pending before the Supreme Court. The matter is *sub judice*. The motion is, therefore, ruled out of order.”²

(30)

ADJOURNMENT MOTION

ADMISSIBILITY (CONDITIONS) — *SUB JUDICE* MATTER cannot be made the basis thereof — the adjournment motions regarding the alleged maltreatment meted out to Mian Tufail Muhammad were ruled out of order.

¹Punjab Legislative Assembly Debates, 1 December 1953, Vol-VII, pp. 91-92.

²West Pakistan Assembly Debates, 8 December 1966, Vol-IV, No.14, p. 3101.

The Minister for Law opposed the moving of certain adjournment motions raising the issue of alleged maltreatment meted to Mian Tufail Muhammad during his confinement in jail. His contention was that in view of rule 65(j) of the Rules of Procedure, an adjournment motion could not be moved in respect of a matter which was *sub judice*, as was the case in hand. The Speaker, Mr Rafiq Ahmed Sheikh gave the following ruling —

“An objection was raised by the learned Law Minister that the matter of the alleged maltreatment of Mian Tufail Muhammad during his confinement in jail was *sub-judice* and I promised to dispose of the objection after consulting the High Court. I have accordingly made inquiries and have been told that Mian Tufail Muhammad made a request in the High Court on 23.2.1973 that his statement be recorded by the High Court on the point of maltreatment meted out to him in jail. An affidavit was also filed in the High Court by Mr Jilani, in support of Mian Tufail Muhammad. The Advocate-General assured the Court that the Government contemplated an inquiry in that respect, but the Advocate appearing on behalf of Mian Tufail Muhammad submitted in the court that he was not satisfied with an inquiry at Government level and that an inquiry be held by a Sessions Judge or an Additional Sessions Judge. The Court ordered that the matter would be attended to in due course.

As the matter is *sub-judice* in the High Court, all the adjournment motions on the question of alleged maltreatment meted out to Mian Tufail Muhammad are ruled out of order.”¹

(31)

ADJOURNMENT MOTION

BUDGET SESSION: may not be allowed to be moved during the budget session *inter alia* because members have adequate opportunity to discuss any matter, including the matter they intend to raise through adjournment motions, during general discussion on the budget.²

(32)

ADJOURNMENT MOTION

¹Punjab Assembly Debates, 26 February 1973, Vol-III, No.24, p. 3414.

²For details, see Decision No.20, p. 16.

BUDGET SESSION: may not be allowed during the budget session *inter alia* because members have adequate opportunity to discuss any matter, including the matter they intend to raise through adjournment motions, during general discussion on the Budget; however, after the budget has been passed and the session continues, members are at liberty to move adjournment motions in respect of the matters arising subsequently.

On 22 February 1954, Mr C.E. Gibbon, on a point of order, indicated that if the record of the last budget session was called for it would be found that in those days which were not fixed by the Governor for presentation of the budget, for the discussion and for the voting of demands, adjournment motions were allowed. He further explained his point of view that according to the law and according to the Act, the budget session commenced on the day fixed by the Governor for the presentation of the budget and ended on the day when the last demand was voted. Any days preceding that or following that were not part of the budget session and on such days, members had the right to move adjournment motions

The Speaker, Dr Khalifa Shuja-ud-Din, gave the following ruling —

“I have heard honourable Leader of the Opposition as well as Mr Gibbon and have given very careful thought to what they have said. So far as the objection raised by Mian Abdul Bari is concerned, I am afraid the scope of the Rule quoted by Mr Gibbon in support of his arguments has been misunderstood. Rule 128-A simply says that on the day fixed for the presentation of the budget, no doubt, by His Excellency the Governor, as pointed out by Mr Gibbon, no other business can be done. But it seems that both the honourable members have not appreciated the reasons which I gave in the two previous sessions for holding the adjournment motions out of order. The reason underlying this refusal was the fact that the budget session provided three whole days for general discussion in the course of which honourable members were at perfect liberty to raise all relevant points connected with the administration of the Government.

So far as the point raised by Mr Gibbon in his second speech is concerned that in the previous session adjournment motions had been allowed after the demands had been disposed of, the reason for that also is obvious. Such adjournment motions were held by me in order after the budget session was over as were not covered by the general discussion on the budget. Since the

general discussion is due next week, I do not see any point in forestalling the adjournment motions at this time and, therefore, I rule them out of order.”¹

(33)

ADJOURNMENT MOTION

BUDGET SESSION: may not be allowed during the budget session, at least until the general discussion on the budget is over.

On the point whether or not an adjournment motion may be move during the Budget Session, Mr Rafique Ahmad Sheikh, Speaker, decided as under —

“The purpose of an Adjournment Motion is to discuss a definite matter of recent and urgent public importance. The Assembly adjourns for the said purpose only because no other mode of discussing such matters can be available during an ordinary session of the Assembly because if the session relates to legislative business, the Assembly can devote the time to that particular legislation and to no other. However, the position is different so far as the Budget Session is concerned. In such a session, at least four days are devoted to the general discussion on Budget. The Budget always relates to all the departments of Government and anything and every thing relating to every department can be discussed at the time of the general discussion. Therefore, during such a discussion, the matters which can be made the subject of Adjournment Motions can also be discussed therein. From the long past, it has been deemed proper that instead of earmarking specific time for Adjournment Motions, the matters sought to be discussed through the same, may be discussed during the general discussion on the Budget.

Apart from that, the Budget and the discussion thereon are so important that the various Assemblies had never thought it proper to take away any time out of the period allotted for general discussion for any purpose other than the general discussion itself. If for Adjournment Motions, time is taken out of the time allotted for the general discussion, that will defeat the purpose for which the time is allocated for general discussion on the Budget as a whole. In fact, it has been the practice of this very House that even the question Hour is suspended not only during the general discussion on the

¹Punjab Legislative Assembly Debates, 22 February 1954, Vol-VIII, p. 86.

Budget but also on the days allocated for the stages subsequent to the same so that maximum time is available for discussing all matters relating to all departments including the matters of recent and urgent public importance. Therefore, in the interest of the Honourable Members and the various parties to which they belong, it has always been felt that Adjournment Motions should not be allowed to be moved at least till the general discussion is over during a Budget Session.

I need hardly add that the privilege of moving and discussing Adjournment Motions is neither based on any constitutional right nor is conferred by any Statute. It is based purely on practice and precedents and the Rules of Procedure are intended to regulate the said practice and precedents. Therefore, the past practice and the precedents are the best criteria for deciding matters relating to the Adjournment Motions.

Hon'ble Muhammad Anwar Bhinder, one of my learned predecessors, gave a ruling on 7th June 1963 on this point which is published at pages 74-76 of the Debates (West Pakistan, Volume IV, Part I). He had cited various precedents in the said ruling and I have no hesitation in following the same because the ruling of Mr. Muhammad Anwar Bhinder is based on an established practice and on recognized precedents. I need not repeat the precedents cited therein. However, I may point out that the ruling of Honourable Dr. Khalifa Shuja-ud-Din delivered in 1952 is on all fours with the circumstances under which I disallowed the moving of Adjournment Motion on 19th June 1972. The Adjournment Motion in that case was moved two days before the day fixed for the commencement of the general discussion and Dr Khalifa Shuja-ud-Din observed that general discussion is beginning day-after-tomorrow and all these matters can be discussed at great length according to the wishes of the Members. For this reason, I disallow the moving of the Adjournment Motions.

The position on 19th June 1972 was just the same as the general discussion on the Budget was to commence 'day-after-tomorrow' *i.e.* to-day. Therefore, I was and I am of the considered opinion that no Adjournment Motions can be moved during the Budget Session, at least till the general discussion is over."¹

¹Punjab Assembly Debates, 21 June 1972, Vol-II, No. 5, pp. 269-70.

(34)

ADJOURNMENT MOTION

BUDGET SESSION — EXCEPTIONS: as a general rule, adjournment motions may not be allowed to be moved during the budget session; however, as an exception, the chair may admit adjournment motions — (a) during the discussion of the demands for grants because the discussion of the demands for grants has to be carried on subject to the rule of relevancy and a matter which is not related to the demand under consideration cannot be discussed during these days; and (b) if the matter is of such over-riding urgency that the very object of raising discussion on it would be defeated if it is postponed till the general discussion on the budget.

Withholding his consent to the moving of the adjournment motions during the ensuing Budget session, Mr Mobinul Haq Siddiqui, Speaker gave the following ruling —

“I have received notices of 24 adjournment motions seeking to raise discussion on a variety of subjects. Each motion purports to discuss a definite matter of urgent public importance. I have given my earnest consideration to the question of allowing leave to be asked for adjournment motions during the ensuing Budget Session and have gone through the records of the former Punjab Legislative Assembly and, later, the Provincial Assembly of West Pakistan and the old Indian Central Assembly.

Before I go into the precedents set up by my illustrious predecessors I would like to make clear certain aspects of parliamentary traditions on the subject of the moving of adjournment motions. The object of moving an adjournment motion is to call attention of the House to a definite matter of urgent public importance. In the words of Mr Speaker Peel of the British House of Commons what was contemplated when the institution of adjournment motions was devised was that the occurrence of some sudden emergency either in Home or Foreign Affairs should be brought before the House and discussed without delay. There have been a series of rulings on the interpretation of the relevant standing order of the British House of Commons and it has been held that an adjournment motion should not be allowed when an ordinary parliamentary opportunity will occur shortly or in time. This means that when a matter could be discussed during the Budget

discussions, an adjournment motion should not be allowed (*Page 371 of May's Parliamentary Practice, 16th Edition*).

This is the view which has consistently been held by my illustrious predecessors, the Hon'ble Chaudhry Sir Shahab-ud-Din and Dr Khalifa Shuja-ud-Din. In 1944, when adjournment motions were sought to be brought forward during the Budget session, the then Speaker, the Hon'ble Chaudhry Sir Shahab-ud-Din, ruled as follows:-

'I have received notices for about 30 adjournment motions. Following the past practice, I do not consider them to be in order because the General Discussion of the Budget begins today and the discussion and voting of various demands for grants will take place on six days. All matters which are sought to be raised by these adjournment motions can be discussed in the Budget Session. Therefore, I cannot allow discussion of any adjournment motion.'

Again, in 1945, a similar question arose and the Hon'ble Speaker made the following remarks:-

'This has been our practice and it was followed last year and the year before and rightly or wrongly a convention has been established that no adjournment motions are taken up during the Budget Session. I propose, following the same procedure this year too, that the subject matter of these motions will either be discussed during the general discussion of the Budget or when demands for grants are considered.'

In 1952, the then Speaker, the Hon'ble Dr Khalifa Shuja-ud-Din, ruled as follows:-

'The prayer for leave to move adjournment motion must be ruled out of order for the reason that they have been brought forward in the Budget Session and no motion for adjournment can be allowed during the Budget Session. The reason for this is that three days have been fixed for general discussion, and our general discussion is beginning day after tomorrow and all these matters can be discussed at great length according to the wishes of the members. For this reason I disallow the moving of the adjournment motions.'

These being the precedents and the conventions, it seems the most rational course to adopt in this matter would be that where an adjournment motion is postponable until an opportunity is provided by supply (Budget) it should

not be allowed. I, therefore, do not propose to give my consent to the moving of any adjournment motion till the 20th of June, 1963, when the general discussion of the Budget concludes. The Members can discuss any matter relating to the Railways during the general discussion of the Railway Budget and other fields of Administration during the discussion of the General Budget as a whole. It will be open to the Chair to admit adjournment motions during the discussion of the demands for grants because the discussion of the demands for grants has to be carried on subject to the rule of relevancy and a matter which is not related to the demand under consideration cannot be discussed during these days. In addition to the above, I shall see that if a matter is of such over riding urgency that the very object of raising discussion on it would be defeated if it is postponed till the general discussion on the Budget, I would consider making an exception and allow discussion on such an adjournment motion.

There is an added reason why I am with-holding my consent to the moving of motions seeking to discuss the failure of administration resulting in riots in different places on the occasion of Ashura and it is that although the motions are within the four corners of the rules and are admissible, in my opinion discussion of these motions at this stage when tempers are high and the situation is inflammable, would be likely to aggravate the situation. I would, therefore, not permit any discussion on this subject at this stage and accordingly withhold my consent to all the adjournment motions received so far under rule 47.

In the course that I am adopting with regard to adjournment motions on the subject of recent Ashura riots I am fortified by a classical ruling given by President Patel in the old Indian Central Assembly on 4th September, 1928. He stated:-

‘I have no doubt whatever that the matter proposed to be discussed is a definite matter; I have also no doubt that the matter is urgent, and it is quite clear that the matter is of public importance. But that is not all. Because the matter proposed to be discussed is a definite matter of urgent public importance, the President is not bound as a matter of course to rule the motion in order. Honourable Members will find that the Standing Order 11 gives wide discretionary power to the President to admit or disallow a motion for adjournment. The matter may be urgent, it may be definite, it may be of public importance and yet the President may in a proper case disallow such a motion.’

Furthermore the Members are reminded that under rule 48 of the Rules of Procedure notice of an adjournment motion has to be given in triplicate and 18 out of total of 24 motions received so far do not fulfill this requirement. I would advise the Members that the rules should be strictly followed.”¹

(35)

ADJOURNMENT MOTION

BUDGET SESSION — EXCEPTIONS: although the matter must be raised at the earliest possible occasion, yet if the House has been engaged in general discussion on the budget and voting on demands, an adjournment motion may be moved as soon as the opportunity is available.²

(36)

ADJOURNMENT MOTION

BUDGET SESSION — EXCEPTIONS: may not be moved during the budget session; however, if the session continues after the budget has been passed, adjournment motions in respect of matters arising thereafter may be allowed to be moved and discussed.

On 30 January 1957, Chaudhry Fazal Elahi, Speaker, informed the House that he had received a large number of notices of adjournment motions during the last few days, but according to the convention of the House, supported by a series of rulings of his illustrious predecessors since 1939, no adjournment motions had been admitted during the budget session as members had full opportunity to debate anything during the general discussion spanning over a number of days.

Khan Abdul Qayyum Khan, however, pointed out that —

- (a) the rules did not bar the moving of adjournment motions in the budget session, and conventions to the contrary, if any, could not operate against the rules;
- (b) the budget session could not be construed to have commenced in January; rather, it would, in fact, start from 1st March;

¹West Pakistan Assembly Debates, 7 June 1963, Vol-IV, No.1, pp. 74-76.

²For details, see Decision No.21, pp. 16-18.

Supporting him, Mr G. Allana explained that there was no general bar on the moving or giving notice of an adjournment motion in a budget session, although such motions could not be moved on the days allotted for the presentation of the budget, general discussion on the budget and voting on demands for grants. The entire session, commencing on 20th January, would not technically, legally or constitutionally be deemed as budget session, especially when the budget was scheduled to be introduced on first of March.

Mr G.M. Syed, Pir Elahi Bukhsh Nawazish Ali Shah, Mian Mumtaz Muhammad Khan Daultana, Chaudhry Muhammad Altaf Hussain, Mr Shahnawaz Jamal-ud-Din Pirzada, Mr M.H. Gazdar, Mr Ghulam Mustafa Shah Gilani and Syed Shamim Hussain Qadri, on the basis of the rule laying down that “a motion or amendment must not anticipate a matter already appointed for consideration of the Assembly” and “in determining whether a motion is out of order on the ground of anticipation, the Speaker must have regard to the probability of the matter anticipated being brought before the Assembly within a reasonable time”, supplemented the reasoning advanced by Khan Abdul Qayyum Khan.

Mr Abdul Sattar Pirzada, Minister for Law, however, urged that the opposition members had completely missed the point. The budget session aside, the previous rulings were based on the principle that if a matter was fixed for discussion during the course of a session, it could not be anticipated by an adjournment motion. Since the days for the presentation of the budget, general discussion on the budget and voting on demands for grants had been notified, and all those items on which the adjournment motions had been moved would be coming up for discussion on those days, adjournment motions could not be taken up.

Ruling out of order all the thirty three adjournment motions, the Speaker, Chaudhry Fazal Elahi, observed that —

- (a) any session during which the budget is presented is called a Budget session ... the Budget session is not defined as the period during which the Budget is actually under discussion;
- (b) the point at issue stands settled by a “long list of rulings of my predecessors, and the idea underlying this convention was that when a matter is to be discussed or can be discussed during the general

discussion on a Budget it should not be discussed on an adjournment motion”; and

- (c) if the session continues after the budget has been passed, adjournment motions in respect of matters arising thereafter may be moved and discussed.¹

(37)

ADJOURNMENT MOTION

CONSENT: an adjournment motion may be moved with the consent of the Speaker: his decision cannot be questioned in the House either with regard to the subject matter of the notice or the reasons for withholding consent.

The text of the ruling announced by Mian Manzoor Ahmed Mohal, Deputy Speaker, is given below —

“On March 10, 1996, Syed Zafar Ali Shah, MPA gave a notice of Adjournment Motion seeking to discuss the factors involving the defeat of the Pakistan Cricket Team in the Quarter Final of the 6th World Cup at Bangalore, India. The notice was placed before the Speaker who was pleased to withhold his consent for the moving of the Adjournment Motion *inter alia* for the reason that the matter raised in the notice did not concern the Government of the Punjab and was, thus, inadmissible under rule 67(c) of the Rules of Procedure of the Provincial Assembly of the Punjab 1973. Syed Zafar Ali Shah was accordingly informed by the Secretariat.

On March 12, 1996, Syed Zafar Ali Shah, on a point of order, wanted to question the decision of the Speaker withholding consent, on the plea that he could establish that the Government of the Punjab had financial interest in the matter and, therefore, the Adjournment Motion fulfilled the requirement of the rule 67(c) of the Rules *ibid*. Mr. Muhammad Afzal Sindhu, Minister for Finance and Mr. Muhammad Afzal Hayat, Minister for Law, objected to the raising of the point of order on the ground that the said matter was not, at that time, before the Assembly.

The point of order raised by Syed Zafar Ali Shah involves the determination of two questions —

¹West Pakistan Legislative Assembly Debates, 30 January 1957, Vol-III, No.3, pp. 209-20.

- (a) whether a member can, on a point of order, question the decision of the Speaker in his Chamber withholding his consent to the moving of an Adjournment Motion; and
- (b) whether the point of order raised by Syed Zafar Ali Shah was in order and according to the rules.

I have given thought to the arguments on both sides and have also considered established parliamentary practices on the subject, and accordingly, the following observations are made —

- (i) Under rule 65 of the Rules *ibid*, an Adjournment Motion can only be moved with the consent of the Speaker. The Speaker's decision, withholding his consent, cannot, directly or indirectly, be raised in the House. On the basis of a number of rulings, Kaul in Practice and Procedure of Parliament (4th Edition) pp.461-462, has viewed as under —

‘When the Speaker withholds his consent to the moving of an adjournment motion in his Chamber, it is neither obligatory to read out the motion to the House nor to give the reasons for refusing the consent. After a member is informed of the Speaker's decision withholding his consent, no question is permitted to be raised in the House either on the subject-matter of the notice or the reasons for disallowance thereof. If, however, a member would like to make a submission to the Speaker to reconsider his decision, he can do so either in person to the Speaker in his Chamber later during the day or by submitting a written representation to the Speaker in that behalf.,

- (ii) A point of order can be raised strictly in accordance with the requirements of rule 184 of the Rules of Procedure. Precisely to say, a point of order must relate to the interpretation or enforcement of these rules or such Articles of Constitution as regulate the business of the Assembly and must relate to the business or matter before the Assembly at the time when the point of order is raised. When Syed Zafar Ali Shah, MPA raised his point of order questioning the decision of the Speaker, the matter relating to the defeat of Pakistan Cricket Team was not before the Assembly at that time. In the circumstances I am of the view that —
 - (a) an Adjournment Motion can only be raised with the consent of the Speaker and after the member is informed of the Speaker's decision

withholding his consent, no question about that can be raised in the House either on the subject-matter of the notice or the reasons for withholding consent by him, and

- (b) a point of order can be raised only in respect of the matter which is before the Assembly at the relevant time and it must relate to the interpretation or enforcement of the rules or the relevant Articles of the Constitution.

With these observations, the point of order is disposed of.”¹

(38)

ADJOURNMENT MOTION

GENERAL DISCUSSION: a motion for general discussion may be moved by the Government after the completion of the Question Hour but before adjournment motions are taken up, notwithstanding that certain adjournment motions on the same subject are pending consideration.

On 5 December 1952, immediately after the completion of the ‘Question Hour’, Mian Mumtaz Muhammad Khan Daultana, the then Chief Minister, with the consent of the Speaker, moved a motion under rule 12 of the Punjab Legislative Assembly Rules of Procedure that “*after Friday, the 12th December 1952, the Assembly do meet on Saturday the 13th December 1952 to discuss the food situation in the Province*”. Contesting the motion, Chaudhry Muhammad Shafiq MLA raised the following points for decision of the Speaker —

- (a) that the motion moved by the Chief Minister was not in order as after the conclusion of the Question Hour but before entering on the list of business for the day, no other motion except adjournment motions could be moved under rule 43 of the rules *ibid*; and
- (b) in the face of the two adjournment motions relating to the food situation in the Province, the Chief Minister’s motion which had the effect of deferring that discussion to the next day, could not be taken up in preference to the said adjournment motions.

¹Punjab Assembly Debates, No.1, 21 March 1996, Vol-XXXII, pp. 7-9.

Certain other Opposition members including Khan Abdul Sattar Khan Niazi, Mr C.E. Gibbon, Chaudhry Muhammad Afzal Cheema, Mian Abdul Bari, Malik Ghulam Nabi and Syed Shamim Hussain Qadri also supported him.

Replying to the objections, the Chief Minister maintained that —

- (a) when the House was to take up the Government business, the Chief Minister's motion would have priority over other motions;
- (b) the time immediately after the Question Hour and before entering upon the business of the day was the precise time to move the motion under rule 12;
- (c) in the past, too, he had been moving immediately after the Questions Hour the resolutions for the change in the timings of the House; and
- (d) the purpose of moving the motion was not to defeat the adjournment motions pertaining to the food situation in the province; rather, the motion aimed at providing opportunity for discussion spanning over the whole day instead of only two hours reserved for discussion of an adjournment motion.

Khalifa Shauja-ud-Din, Speaker, ruled that the motion moved by the Chief Minister did not violate the provisions of rule 43. The reason was that although the said rule provided that '*leave to make a motion for an adjournment must be asked for after questions and before the list of business for the day is entered upon*', the motion moved by the Chief Minister was not hit by the same *inter alia* because it did not appear on the list of the business for the day.

The objection that the motion of the Chief Minister could not have been taken up in preference to the adjournment motions seeking discussion on the flood situation, the Speaker held that —

“As a matter of fact ... the question of priority between a Government motion and a motion for adjournment was a matter to be decided by the Speaker under the rule. That rule does not say that adjournment motions should come immediately after questions. Therefore, I say again that the motion moved by the Leader of the House is perfectly in order and I decide to give it priority.”¹

(39)

¹Punjab Legislative Assembly Debates, 5 December 1952, Vol-V, p. 29.

ADJOURNMENT MOTION

MOVING OF: if different members have given notices of adjournment motions on the same subject, all of them may be allowed to read or move the same in the House.¹

(40)**ADJOURNMENT MOTION**

NOTICE: may be disallowed if the notice is not given in triplicate.²

(41)**ADJOURNMENT MOTION**

NOTICE: if different members have given notices of adjournment motions on the same subject, all of them may be allowed to read or move the same in the House.

Rana Phool Muhammad Khan and Sardar Amjad Hameed Khan Dasti, MPAs pointed out that adjournment motions on a similar subject given notice of by several Members could be read out by one of them and not by all of them.

The Speaker, Mian Manzoor Ahmed Wattoo, quoted the following ruling of the Speaker National Assembly given on 7 February 1974 —

“On 7th February, 1974, Maulana Shah Ahmed Noorani sought leave to move an Adjournment Motion relating to strike by the Workers of Tarbela Joint Venture. Ch Zahoor Elahi and Sahibzada Ahmed Raza Khan Qasoori had also tabled Adjournment Motions on the same subject. The Speaker allowed all the three Members to read out their Adjournment Motions for the determination of their admissibility.”

On the basis of the principle laid down in the said ruling, the Speaker disposed of the point of order.³

(42)**ADJOURNMENT MOTION**

¹For details, see Decision No.41, p. 35.

²For details, see Decision No.34, pp. 26-29.

³Punjab Assembly Debates, 23 October 1985, Vol-IV, No.10, pp. 748-52.

PROCEDURE: the procedural basics for moving an adjournment motion explained.

Laying down the procedural essentials of moving an adjournment motion, the Speaker, Ch Fazal Elahi explained as under —

“I have studied all the Rules and previous rulings on the subject and the procedure that I am now going to propose will be in the interest of the members because they will be given an opportunity to read their adjournment motions in the House. Previously, the Speaker used to read these adjournment motions himself and, as I pointed out, that was not strictly in accordance with the rules.

The procedure that I am going to lay down is that every adjournment motion which is tabled will be given to me before 7.30 a.m. on each day and as soon as the question hour is over, I will call upon the member concerned to read his adjournment motion. If in my view the adjournment motion is clearly out of order, it will be disallowed at that stage and no honourable member will be permitted to make a speech or discuss it any further. But if I am in doubt or I want some elucidation, I will put some questions to the honourable member and, may be, I will have to refer the matter to the Government to explain any points with regard to the adjournment motion. If after the consideration of all these points, I come to the conclusion that the adjournment motion is in order, the leave of the House will be sought. If 63 members support the motion, it will be fixed for discussion at the proper time; but if the leave is refused, the matter will be dropped. In future, therefore, this will be the procedure.

I hope the honourable members will use some discrimination in bringing their adjournment motions, because if the adjournment motions are not framed in accordance with the rules, I will have to summarily declare them out of order, and that would be mere waste of time of the House”.¹

¹West Pakistan Legislative Assembly Debates, 2 August 1956, Vol-II, pp. 90-91

(43)

ADJOURNMENT MOTION

PROCEDURE, CONDITIONS AND POWERS of the SPEAKER explained.¹

(44)

ADJOURNMENT MOTION

PURPOSE: to call attention of the House to a definite matter of urgent public importance.²

(45)

ADJOURNMENT MOTION

SPEAKER'S CONSENT: cannot be read in the House unless the Speaker decides its admissibility.

Malik Ghulam Nabi, Member, gave notice for leave to make a motion for the adjournment of the business of the House for the purpose of discussing defective food policy of the Government, and insisted that he may be allowed to read out his motion in the House under rule 43 of the Rules of Procedure, even, before the Speaker decides its admissibility. Referring to rule 42 of the Rules of Procedure, Dr Khalifa Shauja-ud-Din, Speaker decided that "the honourable member will be allowed to ask for leave only if the motion is held in order. That can be done after, and not before." As the honourable member was not satisfied, the Speaker clarified his decision as under —

"I cannot do it under the rules and I will not allow it. I can allow the honourable member to say something about the motion only if it is held in order and leave is given. So long as the question whether the motion is in order or not has not been decided nothing can be done. I will read it out myself. The leave to make a motion asked for by the honourable member for the adjournment of the business of the Assembly is for the purpose of discussing a definite matter of urgent public importance; viz., the wrong policy of the Government resulting in the near famine conditions in the

¹For details, see Decision No.46, pp. 38-41.

²For details, see Decision No.34, pp. 26-29.

Province and unbearably high prices of wheat at a moment of the season when the new crop has come in.

This adjournment motion is defective for more reasons than one. I do not propose to give all the reasons now; it is sufficient to dispose of it by saying that it is neither definite nor urgent in the sense contemplated by the rules of this Assembly. For one thing it refers to at least two matters — the policy or the wrong policy of Government and then that wrong policy is alleged to result in near famine conditions and unbearably high prices of wheat at a moment of the season when the crop has come in. Secondly, this is a matter which imports an argument as to whether a policy is right or wrong. It has been held that matters involving arguments cannot be made the subject matter of adjournment motions. They are not definite in the sense provided for by the rules. Thirdly, the policy of the Government, whatever it is, is not ‘a single specific matter of recent occurrence’ within the meaning of the terms as used in the rule and, therefore, the adjournment motion is defective on that score also. For all these reasons I hold that it is out of order.”¹

(46)

ADJOURNMENT MOTION

SPEAKER’S CONSENT: an adjournment motion cannot be read in the House unless the Speaker decides its admissibility: the Speaker may withhold consent in the Chamber if the motion is frivolous or is apparently out of order. Even if it is technically in order, consent may be withheld if the moving thereof is likely to jeopardize the larger interest of the state

On 29 November 1963, a point was raised whether the Speaker could disallow an adjournment motion in his Chamber if it did not fulfill the requirements of the rules; or, whether it was necessary for him to decide the admissibility of an adjournment motion in the House after hearing the point of view of the members. Following a reasonable debate, Ch Muhammad Anwar Bhinder, Speaker, gave the following ruling —

“The Minister for Law and Parliamentary Affairs had raised a Point of Order that it is not obligatory for the Speaker that he should decide the question of admissibility of the Adjournment Motions after discussion in the

¹Punjab Legislative Assembly Debates, 10 May 1952, Vol-IV, p. 567.

House, but that it is within his discretion to withhold his consent to any Adjournment Motion he likes. He suggested that in view of a large number of Adjournment Motions (82 received so far); considerable time would be saved if the issue of admissibility is decided by me in my chamber after hearing the mover, the Government spokesman and the Leader of the Opposition, if need be.

Some of the Members, including the Leader of the Opposition, have opposed this legal interpretation and suggestion of the Law Minister and reiterated that the question of the admissibility of the Adjournment Motions should be discussed and decided in the House. Mr Ahmad Saeed Kirmani was of the view that it was possible that some points which might be quite weighty, might not occur to those who discuss the issue of admissibility in the chamber of the Speaker, while Khawaja Muhammad Safdar, Leader of the Opposition, agreed that under Rule 47 of the Rules of Procedure, the Speaker had full power to withhold his consent, but he disagreed with the Law Minister's contention that the question of admissibility of an Adjournment Motion could be decided by the Speaker in his chamber. He was of the view that the question of admissibility of an Adjournment Motion could not be taken up outside the Assembly because it was in the Assembly where the Speaker could elicit the opinion of the Members. Nawabzada Iftikhar Ahmad, Allama Rehmat Ullah Arshad, Mr Hamza, Mian Abdul Latif and Begum Shah Nawaz also opposed the suggestion of and the position taken up by the Law Minister.

The first question for determination is whether the Speaker, under the Rules of Procedure, can withhold his consent to an Adjournment Motion outside the House and in his chamber. Rule 47 of the National Assembly of Pakistan Rules of Procedure, as adopted for regulating the procedure of the Provincial Assembly of West Pakistan, provides that a motion for an adjournment of the business of the Assembly for the purpose of discussing a definite matter of recent and urgent public importance may be made 'with the consent of the Speaker'. Rule 48 deals with the mode of giving notice and Rule 49 places restrictions on power to make adjournment motions. Rule 50 deals with the time for asking leave for motion of adjournment and Rule 51 lays down the procedure to be followed after the motion is held to be in order. An adjournment motion, therefore, passes through five stages before it is finally disposed of:

- (1) obtaining the consent of Speaker under Rule 47;

- (2) asking leave for motion under Rule 50;
- (3) holding the matter proposed to be discussed in order or out of order by the Speaker under Rule 51;
- (4) grant or refusal of the leave by the Assembly under Rule 51 if the matter proposed to be discussed is held in order; and
- (5) the discussion of the Adjournment Motion under Rule 52.

It is very clear that an Adjournment Motion can pass through stages Nos.2 to 5 only in the House, but so far as the first stage is concerned, that only deals with consent of the Speaker to the making of a Motion. 'Obtaining the consent of the Speaker' is definitely something different from 'asking leave of the Assembly to make a Motion for Adjournment' which is the first stage of an Adjournment Motion inside the House. Rule 48 relates to the method of giving notice of such motions and Rule 49 places restrictions on power to make adjournment motions. Rules 47 and 48 thus deal with the first stage through which an Adjournment Motion passes outside the House and under Rule 47 the Speaker is competent to withhold his consent to the making of a motion. It is, therefore, clear that the Speaker can withhold his consent to an adjournment motion even outside the House and in his chamber. In a recent ruling given on an Adjournment Motion tabled by Mr Qamar-ul-Ahsan in the National Assembly of Pakistan regarding the situation arising out of the promulgation of the Presidential Order enabling the Governors to assist and canvass for the election of the members of their Party, Mr Muhammad Afzal Cheema, Acting Speaker, has remarked that 'Rule 47 only deals with or actually defines a motion and gives an unfettered discretion to the chair to give or withhold its consent even if it comes to the conclusion that the motion otherwise is in order.' It is, therefore, evident that the consent to the making of an Adjournment Motion under Rule 47 can be withheld by the Speaker even in his chamber and outside the House.

The next question for determination is the desirability or the propriety of deciding the question of admissibility of the Adjournment Motions by the Speaker in his chamber. I do not agree with the learned Law Minister that the question of admissibility of every Adjournment Motion should be discussed in my chamber. If that course is adopted, then the chair would certainly be deprived of valuable assistance by the other Members of the House. There might be adjournment motions, the question of the admissibility of which is a complicated and ticklish one and it would not be fair to the mover as well as the chair to deprive them of the valuable

assistance of the other learned Members of the House. On the other hand, there may be some Adjournment Motions which are palpably out of order and the Chair may not be requiring further assistance for holding them out of order. In such cases it would only be waste of time if the question of the admissibility of such Adjournment Motions is debated in the House. I think that in such cases, the chair would be within its rights to withhold consent even outside the House in the chamber.

I have also consulted Chaudhry Muhammad Afzal Cheema, Senior Deputy Speaker, National Assembly of Pakistan, who was the Acting Speaker on the day this issue was raised in this Assembly, and have come to know that even in the National Assembly, the late Maulvi Tamizuddin Khan as well as Chaudhry Muhammad Afzal Cheema have been withholding their consent to the Adjournment Motions which were palpably out of order even in their chambers. I have been informed that even in the current session of the National Assembly, Mr Cheema has withheld his consent to more than ten Adjournment Motions in his chamber after hearing the movers or even without hearing them. I am, therefore, fortified in my views by the procedure being adopted in the National Assembly of Pakistan. I, therefore, rule that:-

- (a) the Chair can withhold consent in its chamber to Adjournment Motions which are frivolous or are palpably out of order or even if they are in order, the moving of which would jeopardize the larger interests of the state; and
- (b) Adjournment Motions, the admissibility of which, in the opinion of the Chair should be discussed in the House, should be taken up in the House.

I shall, therefore, deal with the Adjournment Motions received by me accordingly.”¹

(47)

ADJOURNMENT MOTION

SPEAKER’S CONSENT: an adjournment motion may be moved with the consent of the Speaker: his decision in this behalf cannot be questioned in the House either with regard to the subject-matter of the notice or the reasons for withholding consent.²

¹West Pakistan Assembly Debates, 2 December 1963, Vol-V, No. 4, pp. 79-81.

²For details, see Decision No.37, pp. 31-32.

ADMINISTRATION

(48)

ADMINISTRATION

ADJOURNMENT MOTION — RESTRICTIONS: may not be allowed if the matter relates to ordinary administration — the motion regarding imposition of section 144 was ruled out on that account.¹

(49)

ADMINISTRATION

ADJOURNMENT MOTION — RESTRICTIONS: a matter of ordinary administration cannot be raised through an adjournment motion *inter alia* because the redress of grievance is available under the law.²

(50)

ADMINISTRATION

MEMBERS — PRIVILEGES: Government has the right to constitute Administrative Committees comprising such members as may be nominated by it: the members do not have any vested right to be included in such Committees — the inclusion of members from treasury benches and non-inclusion of members from opposition in Anti-corruption Committees constituted by the Government was held not to have involved a breach of privilege.³

(51)

ADMINISTRATION

PRIVILEGES — RESTRICTIONS: the question must relate to a privilege granted by the Constitution, law or rules and the matter must require the intervention of the Assembly — held that the appointment of a non-elected person as Political Counsellor by the Chief Minister, being an administrative matter, did not involve a breach of privilege.⁴

(52)

¹For details, see Decision No.8, p. 8.

²For details, see Decision No.6, pp. 7-8.

³For details, see Decision No.306, pp. 336-37.

⁴For details, see Decision No.295, pp. 323-25.

ADMINISTRATION

PRIVILEGES — RESTRICTIONS: no breach of privilege of members is involved if an authority exercises its administrative powers — pending passage of the law by the Assembly, the establishment of the Murree Kahuta Development Authority by an executive order was held to be in order, giving rise to no breach of privilege.¹

(53)

ADMINISTRATION

PRIVILEGES — RESTRICTIONS: an order passed by the competent authority to run day to day affairs of the Province does not give rise to a breach of privilege.²

(54)

ADMINISTRATION OF LAW

ADJOURNMENT MOTION: a matter of ordinary administration of law cannot be made the basis of an adjournment motion — calling in the army to assist the District Administration in the maintenance of law and order, being an act of ordinary administration of law, was not allowed to be discussed through an adjournment motion.

On 2 January 1969, Khawaja Muhammad Safdar moved an adjournment motion for discussing a matter arising from the request of the local civil administration of Rawalpindi for calling the Army to help the Civil Administration to control the situation on the 8 November 1968. After hearing the Minister of Home, the Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

“Now I will give my ruling in respect of adjournment motion No.3 which was moved by Khawaja Muhammad Safdar and on the same subject Motion No.99 was given notice of by Malik Muhammad Akhtar and another motion was No.284 by Major Muhammad Aslam Jan and the last motion was No.394 from Haji Sardar Atta Muhammad. I had reserved my Ruling in respect of the motion which was moved by Khawaja Muhammad Safdar. The District Magistrate being the Magistrate of the highest rank was the

¹For details, see Decision No.289, pp. 319-20.

²For details, see Decision No.290, pp. 322-22.

head of the civil administration under section 129 of the Code of Criminal Procedure. It is the duty of civil administration to maintain law and order, and for that purpose calling in of the army was in the ordinary administration of law, and as such, can't form the subject matter of the motion. I, therefore, rule the motion out of order.

This disposes of adjournment motion No.99 of Malik Muhammad Akhtar, No.284 of Major Muhammad Aslam Jan and No.394 of Haji Sardar Atta Muhammad.”¹

(55)

ADMINISTRATION OF LAW

MEANINGS EXPLAINED: a matter of ordinary administration of law cannot be made the basis of an adjournment motion. Since no hard and fast rule can be laid down as to what is meant by ‘*an action in ordinary administration of law*’, each case has to be decided in the backdrop of the peculiar circumstances involving it. Without being exhaustive, some of the instances may be - (a) the action has been taken by a court of law or a competent judicial authority; (b) there is a right of appeal provided for in a statute against the said order or the action; (c) the order or the action pertains to a matter of ordinary day-to-day administration; (d) *prima facie* there is no excessive use of the executive power; (e) a judicial trial or remedy is open to a party; or (f) the matter involved is not more than ordinary administration of law.

On 12 March, 1964 Mr Hamza moved an adjournment motion raising the issue of the exemption of M/s Kaiser Engineers (Contractors of the Trimu-Sidhnai Link Project) from the purview of the Factories Act. After hearing the mover, Khawaja Muhammad Safdar, Leader of the Opposition, and the Minister for Labour and Social Welfare, the Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

“On 12th of March, Mr Hamza had given notice to ask for leave to make a motion for the adjournment of the business of the Assembly to discuss a definite matter of recent and urgent public importance, namely, the resentment caused among the labourers in particular and the public in general due to an order issued by the Government on 13th February, 1964,

¹West Pakistan Assembly Debates, 7 January 1969, Vol-VIII, No.5, p. 509.

exempting Messrs Kaiser Engineers (Pakistan) incorporated, Shorkot Road, District Jhang, Contractors of the Trimu-Sidhnai Link Project, from the provisions of the Factories Act. The adjournment motion was opposed by the Minister for Labour and Social Welfare on the ground that it did not relate to a matter of recent occurrence and moreover the action had been taken in the ordinary administration of law and as such the motion was out of order.

Khawaja Muhammad Safdar, Leader of the Opposition, while supporting the mover of the motion on the question of admissibility argued that the action of the Government proposed to be discussed was not a matter of ordinary administration of law. He desired that a ruling about the interpretation of the term 'Ordinary Administration of Law' should be given as this was a matter which arose very frequently during the discussion on the admissibility of adjournment motions. Khawaja Muhammad Safdar referred to various rulings given by the Speakers in the various Assemblies which I will mention presently.

He referred to Legislative Assembly Debates, dated 12th February, 1942, page 100 wherein the arrest and detention of Mr Sarat Chandra Rose under the Defence of India Rules was proposed to be discussed. The phrase "Ordinary administration of law" was explained to the House by Mr President in the following words:-

'It refers to cases where a person is arrested or detained under an ordinary process of law, for instance, by a Magistrate or any other similar authority. Here what is complained of is an act of the Government of India itself. No doubt, the Government of India are acting under a certain law. All acts of the Government of India are under particular laws, for instance, the Act of 1935 from which they derive all their powers. But that is not an answer to a motion like this.' The motion was held in order.

Another ruling, namely, L.A.D. 1943 Volume I page 1277 was referred to wherein an adjournment motion relating to sentence to death and confiscation of movable and immovable property of Syed Sibghat Ullah Pir of Pagaru passed by a Martial Law Court in the former Sind was allowed to be discussed. It was held by Mr President that the judgement of an ordinary court could not be the subject matter of an adjournment motion but this principle did not apply to the sentence of a Martial Law Court and the motion was therefore, held in order.

Another ruling, namely, L.A.D. 1941 Volume XXIII page 1136 was quoted wherein the inhuman treatment meted out to 'C' class political prisoners convicted of non-violent offences and of placing them in fetters and handcuffs on their transfer from Delhi Jail was proposed to be discussed and the motion was held in order although the leave was refused by the Assembly.

Khawaja Muhammad Safdar referred to another ruling, namely, P.L.A.D. Volume XVIII, page 558 wherein Sardar Kapoor Singh gave notice of an adjournment motion to discuss the indiscriminate '*lathi charge*' made on peaceful citizens on the Mall on 22nd of February, 1942 at Lahore. The motion was held in order and as no objection was taken, the motion was held in order.

Similarly, in P.L.A.D Volume XVIII, page 583 Pundit Bhagat Ram Sharma gave notice of an adjournment motion to discuss the arrest of Diwan Chaman Lall, Lala Bhim Sen Sachar and other members of the Assembly on 22nd February, 1942 at Lahore. The motion was held in order and as no objection was taken, it was discussed in the House.

On 30th of November, 1939, Chaudhri Krishan Gopal Dutt, a Member of the Punjab Legislative Assembly, gave notice of an adjournment motion to discuss the abuse of the Defence of India Ordinance on the part of the Punjab Government in the form of indiscriminate arrests of a large number of respectable political workers in the Province. The Speaker held, 'whether the Defence of India Act was passed by the Government of India or by the Government of England, if it is in force in the Punjab or if any action has been taken under it and if that action is prejudicial to the interests, sanitation or health of the people of the Province, the responsibility of the Punjab Government is there.' The motion was admitted and discussed in the House.

In another ruling, namely, P.L.A.D. Volume X, page 722 referred to by Khawaja Muhammad Safdar, leave was asked for to discuss the abuse of the Press Emergency Powers Act of 1931 by the Government in demanding securities from a large number of newspapers and the motion was admitted and discussed in the House.

The Leader of the Opposition also referred to P.L.A.D. 1938 Volume III page 31 wherein an order served by the Punjab Government on professor Ranga, a Member of the Central Assembly, prohibiting his entry without permission into the Punjab for one year was sought to be discussed. The admissibility of this adjournment motion was objected to by Mir Maqbool

Mahmood, Parliamentary Secretary, on the ground that there had been no departure from the ordinary administration of law, but the mover replied that the action had been taken under an emergency law and the motion was, therefore, held in order by Chaudhari Shahab-ud-Din, the then Speaker of the Punjab Assembly.

Again in P.L.A.D. Volume V, page 110 a Member of Punjab Assembly wanted to discuss the nominations to the Lyallpur Municipal Committee by Government. It was held by the Speaker that the Government was responsible for the action of the Commissioner and the motion was held in Order.

Lastly, Khawaja Muhammad Safdar referred to P.L.A.D. 1939 page 145 wherein the ban on the entry of Mr Acharia Narendra Dev under the Defence of India Rules was proposed to be discussed and the motion was held in order.

On this point I have also consulted various references. In P.L.A.D. Volume XIII, page 781, Sardar Sohan Singh Josh, M.L.A., gave notice of an adjournment motion to discuss the action of the Police in arresting Sardar Tehl Singh, a prominent Kisan leader under the Defence of India Rules in Lahore. Mr Speaker enquired whether the persons arrested under the Defence of India Rules were tried by the courts of law or were they detained in jail without any trial and the Leader of the House replied that they were arrested under Rule 129(2) and thereafter they reported the matter to Government and then the Government considered whether a regular trial should be held or they should be detained under some other Rules. Sardar Sohan Singh Josh alleged that those persons particularly had been the victims of excesses by the Police, but Mr Speaker remarked that he had been arrested under the law in force. It was also remarked that the matter on which the motion was based must involve official action beyond the ordinary administration of law and the rule did not say 'beyond the administration of the ordinary law'. A distinction was, therefore, drawn between the words 'ordinary administration of law' and 'administration of ordinary law' and it was held that whatever had been done, had been done under the law in force and the motion was ruled out of order.

Again, in Legislative Assembly Debates 1944, Volume I page 51, a Member wished to discuss through an adjournment motion the issue of a notice to the Hindustan Times and National Call by the Chief Commissioner, Delhi not to

publish any statement made by or attributed to Mahatma Gandhi or any other member of any Congress Committee which had been declared an unlawful association unless such statement had been passed by the Social Press Adviser. Mr. President enquired from the Government whether that was in accordance with any law that had been passed and the Home Member replied that the order had been passed under Rule 41 of the Defence of India Rules. Mr. President remarked that the order was covered by that rule and he saw no reason how that could be a matter for an adjournment motion, and the motion was disallowed.

In another ruling (L.A.D. 1943 Volume III page 82-83), the forfeiture of the security of the Hindustan Times, a Hindu daily, for writing an editorial was sought to be discussed and Mr President remarked that the editor or the manager had a right of appeal and that the matter would have to take the ordinary course of law. The motion was, therefore, disallowed.

In another ruling (L.A.D. 1941 Volume IV page 521) an adjournment motion was moved to discuss the grave situation leading to the closing down of markets to protest against the method of assessing income tax and racial discrimination in application thereof. The motion was held out of order on the ground that if there had been anything wrong in the assessment, there were remedies provided for in the Income Tax Act itself.

Again, in L.A.D. Volume XXIII Part I of 1941 at page 539, Mr Kazmi gave notice of an adjournment motion to discuss the failure of the Government of India in stopping repression and interference caused by the arrest of Mr Khedan Lall, a Congress candidate in by-election, under the Defence of India Rules. It was held that the Assembly was not a tribunal for trying those cases. It was the Magistrates and Judges who had got to try such cases and it had been repeatedly laid down that with regard to any act done by any authority in the due course of the administration of the law, whatever the law was, the matter could not be discussed on an adjournment motion. Therefore, the motion was disallowed.

In another ruling, namely, L.A.D. 1941, Volume XXIII Part I at page 57, notice of an adjournment motion was given to discuss the refusal of the Telegraph authorities at Sargodha to transmit telegrams of complaints against the high-handed action of the Deputy Commissioner. It was held that the Telegraph authorities in question acted according to the rules laid down for their guidance. As they apparently entertained a doubt as to whether the

telegrams which were referred to in the notice were of an objectionable character or not, they referred the matter to the Chief Civil authority *i.e.* the District Magistrate of the place. In the circumstances, the motion was held to be out of order as had been ruled by the Chair in similar cases on more than one occasion.

In P.L.A.D. Volume V of 1952 at page 327, a notice of an adjournment motion was given to discuss the wave of indignation on the disclosure of the Minister for Agriculture that Rai Cold Storage, Sialkot, had been leased out by Government on nominal terms to an M.L.A. It was held that no matter relating to the ordinary administration of law could be made the subject of an adjournment motion and the motion was held out of order.

In the Punjab Legislative Assembly (P.L.A.D. Volume IV, page 891), a Member wanted to discuss the orders issued by the Punjab Government confiscating the security deposited by the Diwan Printing Press, Lahore, and demanding a fresh security. It was held that the aggrieved party had a right of appeal under Section 23 of the Press Act and the motion was ruled out of order.

In P.L.A.D. Volume IX, Page 335, a notice of an adjournment motion was given to discuss the failure of the Government to take necessary steps to ease the situation arising out of the Kisan Morcha at Lahore in connection with the new settlement of the Lahore District. It was held that the District Magistrate had issued order under Section 144 of the Criminal Procedure Code and a petition for revision lay to the High Court against the said order. The motion was, therefore, held out of order.

In P.L.A.D. Volume XXIII, page 79, it was held that an order passed under Section 144 Cr.P.C. could not form the subject matter of an adjournment motion.

In the House of Commons, (House of Commons Debates 1952-53 512-c. 1129) a notice of an adjournment motion was given under Standing Order No.9 to discuss the arrest without charge and detention of a Member of Legislative Council of Kenya. The Member giving notice of that adjournment motion contended that the other Member had been detained without any charge and without any prospect of trial, but Mr. Speaker ruled that the matter did not fall within the Standing Order as it had been done by due process of law and the Member had been detained under powers

possessed by the Governor to deal with the emergency. The motion was, therefore, ruled out of order.

During the course of the arguments on some adjournment motions, Khawaja Muhammad Safdar laid much emphasis on the argument that the 'Ordinary administration of law' meant the administration of justice *i.e.* trial and punishment, but in the rulings cited above we have seen that even the executive orders of the Government have in some cases, been held to have been taken in the ordinary administration of law and the motions on that ground have been held to be out of order.

Again, it was argued by Khawaja Muhammad Safdar that the action taken under the 'repressive laws' could form the subject matter of adjournment motions but we have noted in the rulings cited above that action taken under the Defence of India Rules or even under other laws under which no judicial or regular trial was required to be held, the action was held to have been taken under the law of the land and the motions were disallowed.

In the cases of alleged breach of rules or violation of departmental procedure and practice, the matters have been held to be in the ordinary administration of law and the motions on that score have been ruled out of order.

In view of the authorities referred to above, it is clear that action taken by the Government on some occasions has been held to be in order to form the subject matter of adjournment motions while in other cases the action taken has been held to be in the ordinary administration of law. Therefore, no hard and fast rule can be laid down in this regard and every matter has to be judged keeping in view the circumstances of each particular case.

In the light of the trend of the rulings and the parliamentary practice, in my opinion, the action taken by the Government or any other authority should be held to have been taken in the ordinary administration of law if:-

- (a) the action has been taken by a court of law or a competent judicial authority; or
- (b) there is a right of appeal provided for in a statute against the said order or the action; or
- (c) the order or the action pertains to a matter of ordinary day-to-day administration; or

- (d) *prima facie* there is no excessive use of the executive power; or
- (e) a judicial trial or remedy is open to a party; or
- (f) the matter involved is not more than ordinary administration of law.

I will again repeat that the above principles are only the guide lines and not the conclusive test for determining whether a particular action can be said to have been taken in the ordinary administration of law or not and the decision can only be taken keeping in view the facts of each particular case.

In the present case before us, the actin has been taken under the Factories Act under which the Government is competent to exempt a particular concern from the provisions of this Act. The Government, in so many cases, exempts different concerns from the operation of the Factories Act and the action taken by the Government cannot, therefore, be held not to have been taken in the ordinary administration of law and the motion is, therefore, ruled out of order.”¹

(56)

ADMINISTRATION OF LAW

PRIVILEGES — RESTRICTIONS: raids on the houses and offices of Opposition members cannot be agitated through a privilege motion as the remedy is available under the law of the land.²

¹West Pakistan Assembly Debates, 25 March 1964, Vol-V, No.54, pp.72-77.

²For details, see Decision No.296, pp. 325-26.

AGENDA

(57)

AGENDA

PRIVATE MEMBERS' DAY: if a private members' day, for which agenda has already been issued, is utilised by the House for transacting official business, the agenda for the next private members' day is required to be determined afresh under the rules.¹

¹For details, *see* Decision No.278, pp. 307-8.

AMENDMENT

(58)

AMENDMENT

BILL — EXPIRED LAW: an amendment in an expired law cannot be moved without taking steps for its revival or re-enactment.¹

(59)

AMENDMENT

BILL — GOVERNMENT: a Minister may move an amendment in a Government bill.²

(60)

AMENDMENT

BILL — NOTICE: ordinarily, an amendment to a bill must satisfy the condition of two-clear days notice before the day on which the bill, the relevant clause or the schedule is to be considered unless the Speaker allows the amendment to be moved in special circumstances.³

(61)

AMENDMENT

BILL — NOTICE AND SUMMONING: the period of notice envisaged for amendment to a bill has no nexus with the date of the notification whereby the Assembly is summoned *inter alia* for the reason that a notice of amendment in respect of a pending bill may be given even during the interval between the two sessions.⁴

(62)

AMENDMENT

BILL — RELEVANT: must be relevant to, and within the scope of, the bill under consideration. While considering the continuance bill, the discussion of the original act or the ordinance is in order; however, the

¹For details, see Decision No.97, pp. 91-92.

²For details, see Decision No.98, p. 93.

³For details, see Decision No.99, pp. 93-96.

⁴For details, see *ibid.*

amendments in provisions of the original Act or the ordinance which have not been touched by the continuance bill would be out of order as they would be beyond the scope of the bill. Moreover, an amendment in the provisions of a temporary Act which tantamount to making it permanent is out of order.¹

(63)

AMENDMENT

NOTICES — ALTERNATIVE AMENDMENTS: notices of alternative amendments seeking circulation for eliciting opinion and reference to a Select Committee, may be given by the same members; however, the member who moves or speaks in favour of the motion for eliciting public opinion cannot move or speak in respect of the second motion concerning reference to the Select Committee and *vice versa*.²

(64)

AMENDMENT

MOVING THEREOF: if an amendment or a motion is not moved, it shall be deemed to have been withdrawn.³

(65)

AMENDMENT

NOTICE — JOINT: where an amendment stands jointly in the names of more than one member and has been moved by one of them, the others cannot move it again, but may be permitted to speak in support of it.⁴

¹For details, see Decision No.101, pp. 97-103.

²For details, see Decision No.102, pp. 104-6.

³For details, see *ibid*.

⁴For details, see *ibid*.

ARMY

(66)

ARMY

ASSEMBLY — PRESENCE: their presence, with the consent of the Speaker, in the galleries, boxes or anywhere else in the Assembly building in connection with security and safety of the building and the members does not involve any breach of privilege.¹

¹For details, *see* Decision No.301, pp. 329-31.

ARREST

(67)

ARREST

PRIVILEGES: members are not immune from arrest on a criminal charge.¹

¹For details, *see* Decision No.311, p. 342.

ASSURANCE

(68)

PRIVILEGES: the non-implementation of an assurance does not constitute a breach of privilege.¹

¹For details, *see* Decision No.303, pp. 332-34.

ASSEMBLY

(69)

ASSEMBLY

ADJOURNMENT: adjournment includes ‘adjournment *sine die*’.

Clarifying that adjournment of the Assembly includes ‘adjournment *sine die*’, Mr Muhammad Haneef Ramay, Speaker ruled as under —

“A question has arisen whether the Speaker is competent to adjourn a sitting *sine-die*.

According to rule 21 of the Rules of Procedure of the Provincial Assembly of the Punjab, the Speaker may adjourn a sitting of the Assembly. The power to adjourn includes the power to adjourn from day-to-day or *sine-die*. ‘Adjournment *sine-die*’ means the termination of a sitting of the House without any definite date being fixed for its next sitting. Adjournment *sine-die* is not a synonym for prorogation under the Constitution because the latter power vests in the Governor under Article 109 of the Constitution while the former is exercised by the Speaker.

The point that adjournment includes adjournment *sine-die* is manifest from sub-rule (2) of Rule 182 which clearly provides that the Assembly may be adjourned till the next working day or *sine die* by the Speaker.

My view is supported by the precedents as well. The Rules of Procedure and Conduct of Business in National Assembly 1973 contains exactly the same provisions about adjournment as in our existing rules. The National Assembly was adjourned *sine die* several times, for example on 12th December, 1975, 12th May 1976, 26th November, 1976 and 22nd December, 1976. The Punjab Assembly had also been adjourned *sine die* on a few occasions in the past *i.e.*, on 30th October, 1974 and 3rd July 1989.

In view of the above discussion I hold that the term ‘adjournment’ used in rule 21 *ibid* includes ‘adjournment *sine die*’.¹

(70)

ASSEMBLY

ADJOURNMENT: notwithstanding pending Government business, the Speaker, on a request from the Government, may adjourn the Assembly *sine die*.²

¹Punjab Assembly Debates, 1 November 1994, Vol-XII, No.4, p. 132.

²For details, *see* Decision No.3, pp. 3-4.

(71)

ASSEMBLY

ADJOURNMENT — NO CONFIDENCE: the action of the Speaker adjourning the sitting to avoid consideration of the resolution for his removal is illegal and void: the House may, under the rules, re-assemble to take up the resolution and decide its fate.¹

(72)

ASSEMBLY

ADJOURNMENT — TIMINGS: the timings prescribed in the rules for a sitting of the Assembly are subject to any other direction of the Speaker, who may, in his discretion, adjourn a sitting to any other time.

Mian Manzoor Ahmed Mohal, Deputy Speaker presiding the sitting, ruled as under —

“With regard to the proceedings held in the last moments of the sitting of the Assembly on 8th January 1995, Syed Zafar Ali Shah, on 9th January 1995, raised a point of order to the effect that —

- (i) the observations made by the Speaker at the time when the Assembly was not in quorum could not be deemed to be part of the proceedings of the Assembly; and
- (ii) the decision of the Speaker to adjourn the sitting till 3.00 p.m., on 9th January 1995 was not according to the law because under rule 182 he was bound to have adjourned the proceedings to 9.00 a.m.

So far as the first point is concerned, Mr Speaker, vide his order dated 10.1.1995 has since directed that the observations made by him at the time when the Assembly was not in quorum would not be part of the record. This being so, no further ruling on the point is required.

With regard to the second point, the worthy Member has emphasised that under rule 182(2) of the Rules of Procedure of Provincial Assembly of the Punjab 1973, the Speaker could adjourn the Assembly till at 9.00 a.m. on the next working day.

Rule 182(2) simply indicates about adjourning the Assembly till the next working day or *sine die*. This rule itself does not prescribe the time at which

¹For details, see Decision No.418, pp. 494-96.

the adjourned sitting must be held. Thus, rule 20 of the said rules does apply to the matter in hand. Under that rule, during winter the Assembly shall meet from 9.00 a.m. to 2.00 p.m.; however, this provision is controlled by the opening words of rule 20; viz, — ‘unless the Speaker otherwise directs’. It means that ordinarily the sitting must be held at 9.00 a.m. but, the Speaker may fix any other time. Pursuant to the powers vesting in him, the Speaker validly adjourned the Assembly to meet on 9th January 1995 at 3.00 p.m. There has been no breach of any rule. The point of order is accordingly answered.”¹

(73)**ASSEMBLY**

ARMY — PRIVILEGES: the presence of army personnel, with the consent of the Speaker, in the galleries, boxes or anywhere else in the Assembly building in connection with security and safety of the building and the members does not involve a breach of privilege.²

(74)**ASSEMBLY**

GALLERIES — VISITORS: Speaker has the power to ban admission of members of public into galleries of the House in any particular session. Such an order does not constitute the indignity of the House or breach of privilege.³

(75)**ASSEMBLY**

MEMBERS — QUORUM: it is the duty of the members to attend the session on time; still, under the rules, the Assembly Secretariat is not required to release a list of absentees to the press.⁴

(76)**ASSEMBLY**

¹Punjab Assembly Debates, 11 January 1995, Vol-XVI, No.4, pp. 5-6.

²For details, see Decision No.301, pp. 329-31.

³For details, see Decision No.338, pp. 376-77.

⁴For details, see Decision No.375, p. 417.

MEMBERS — REFLECTIONS on the conduct of the Speaker by a member tantamount to the breach of privilege of the House.¹

(77)

ASSEMBLY

PARLIAMENTARY YEAR: for purposes of calculating total number of meetings of the Assembly in a year, the year shall be reckoned from the day the Assembly has its first sitting after general election.

Mian Manzoor Ahmad Mohal, MPA sought ruling of the Speaker on the point whether for purposes of completing 70 days in a year by the Assembly under Article 54 read with Article 127 of the Constitution, the year would be taken to have started from 1st January, or from the first sitting of the Assembly.

The Speaker, Mian Manzoor Ahmad Wattoo, announced his ruling as under:-

“Under Article 54 read with Article 127 of the Constitution, the Provincial Assembly has to meet for at least 70 days during a year. The question is as to what the term year as used in the said Article means. According to Article 262 of the Constitution, for the purposes of the Constitution, periods of time are to be reckoned according to the Gregorian Calendar. Keeping this Article in view, although the term ‘year’, generally means the year starting from the 1st of January and ending on the 31st of December; however, this meaning cannot be applied to the term ‘year’ as used in Article 54 because if the ‘year’ according to the Gregorian Calendar is made the basis for computation of time under this Article, the result will be anomalous as this interpretation will render the provision, which requires that the Assembly shall meet for at least 70 days during a year, nugatory in case where the first sitting of the Assembly takes place for example on the 30th of December. The National Assembly and the other Provincial Assemblies are also acting on this interpretation. This will also have the effect of creating uniformity in the matter all over the country.

Therefore, in supersession of my ruling dated 6.6.1985,¹ I hold that the term ‘year’ as used in Article 54 read with Article 127 does mean 365 days from the day of the first sitting of the Assembly after General Election.”²

¹For details, see Decision No.398, pp. 485-87.

(78)

ASSEMBLY

POLICE — PRIVILEGES: the presence of police personnel, with the consent of the Speaker, in the galleries, boxes or anywhere else in the Assembly building in connection with security and safety of the building and the members does not involve any breach of privilege.³

(79)

ASSEMBLY

PRESS — PROCEEDINGS: the duty of the Press to publish a correct and authentic report of parliamentary proceedings emphasised.⁴

(80)

ASSEMBLY

PROCEEDINGS — EXPUNCTION: the proceedings which are expunged by the Chair cannot be published in any manner whatsoever: the publication of such remarks not only involves a gross violation of the law as well as the rules of procedure but it also entails a breach of privilege.

(text on next page)

Emphasising that the proceedings expunged by the Chair cannot be published in any manner whatsoever, Mian Manzoor Ahmed Mohal, Deputy Speaker presiding the sitting, observed as under —

¹Rana Phool Muhammad Khan, on a point of order, sought clarification of the term 'each year' as used in Article 54 read with Article 127 of the Constitution. On invitation, the Advocate General, Punjab, addressed the House on 6 June 1985 and explained that Article 54(2) read with Article 127(g) of the Constitution provides that the Assembly shall meet for not less than seventy days in each year. Article 262 *ibid* envisages that for the purpose of the Constitution, the periods of time shall be reckoned according to the Gregorian Calendar. Therefore, the year would be reckoned from the first of January. As the first meeting of the present Assembly was held on 10 March 1985, the period prior to that would be excluded for the purpose of reckoning the period of seventy days during 1985. He elaborated that, according to that formula, the Assembly would meet in the year 1985 for 57 days. The remaining 13 days would be completed in the last year of the Assembly before its term of five years expired on 9 March 1990. The Minister for Law supported the views of the Advocate General, Punjab. The Speaker, Mian Manzoor Ahmed Wattoo, agreed with the Advocate General and ruled that the prescribed days as envisaged in Article 54 read with Article 127 of the Constitution would be calculated according to the calendar year — Punjab Assembly Debates, 6 June 1985, Vol-III, No.10, pp. 909-917.

²Punjab Assembly Debates, 12 December 1989, Vol-VIII, No.4, p. 233.

³For details, see Decision No.301, pp. 329-31.

⁴For details, see Decision No.346, pp. 393-94.

“On 24th April 1995, Mr. Riaz Hashmat Janjua, MPA/Advisor to the Chief Minister raised a Point of Order inquiring whether or not the proceedings in the Assembly directed to be expunged under Rule 195 of the Rules of Procedure of the Assembly of the Punjab 1973, could be published in the newspapers.

The background of the matter is that on 23 April 1995, certain disparaging and derogatory remarks made in the House against Mr. Muhammad Haneef Ramay, Speaker, by Mr. Inam-Ullah Khan Niazi, MPA during the debate on Law and Order, had been expunged under Rule 195 of the Rules of Procedure of the Provincial Assembly of the Punjab 1973 and the Press was directed not to publish the same. However, most of the newspapers, in clear defiance of the direction, published the expunged proceedings in explicit and well-defined terms. The same was repeated next day in the case of some remarks of Mr. Wasi Zafar, MPA, which were also expunged.

Syed Tabish Alwari, MPA proposed that the matter demanded earnest consideration and a comprehensive ruling by the Speaker. Syed Zafar Ali Shah was of the view that the Press had its own regulatory laws and the code of conduct and it was not bound by the order of the Speaker expunging certain remarks and could, at will, publish the same. That was a necessary check on the Members of the Assembly. The Law Minister opined that the proceedings of the House directed to be expunged should not be published in the interest of the august Assembly and that a clear verdict on the point was needed.

Rule 195 of the Rules of Procedure of the Provincial Assembly of the Punjab authorizes the Speaker to expunge from the proceedings of the Assembly, at any time, any words, used in debate, which, in his opinion, are defamatory, indecent, unparliamentary or undignified. Rule 196 envisages that the part of the proceedings of the Assembly directed to be expunged shall be denoted by asterisk and an explanatory footnote shall be inserted in the proceedings in terms ‘Expunged as ordered by the Speaker’.

A combined reading of Rules 195 and 196 would show that the matter expunged by the Speaker is wholly erased from the record of the Assembly and does in no way remain part of the proceedings. Such words and remarks would be deemed not to have been voiced at all. The publishing of a report of the proceedings of the Assembly is different from recounting any other event taking place outside the House inter alia because certain privileges are

attached to such proceedings, such as the power to expunge certain remarks and the right of the Assembly to a true and faithful account of its proceedings. There is no doubt that it is the duty of the Press to give an accurate version of the record of the Assembly proceedings, however, that which is not part of the proceedings, if published, cannot be deemed to be a true report of the proceedings of the Assembly. 'Anything which is not allowed to be published should not be published by the Press'. NA Debate dated 20th June, 1974 refers. Parliamentary traditions in many other countries point to the same conclusion.

Even otherwise, the matter stands clinched by Section 22 of the Registration of Printing Press and Publications Ordinance 1995. The said section provides that no publisher, printer or editor shall print or publish in any book or paper, any account of proceedings of the National Assembly or the Senate or a Provincial Assembly, if such account contains any matter which has been ordered to be expunged from the proceedings of such Assembly or the Senate. Under Section 43 of the 1995 Ordinance, any contravention of the prohibition contained in Section 22 is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding thirty thousand rupees, or with both. Similar provisions did exist in the Press and Publications Ordinance 1963 which has been repealed by the 1995 Ordinance.

Thus, there is left no doubt that according to the established parliamentary practice, and the clear mandate of Sections 22 and 43 of the Registration of Press and Publications Ordinance 1995 read with Rules 195 and 196 of the Rules of Procedure of the Provincial Assembly of the Punjab, the part of the proceedings of the Provincial Assembly of the Punjab, expunged by the Speaker cannot be printed, published or proclaimed by any one in any form whatsoever. Any contravention thereof is not only actionable by the Assembly in appropriate proceedings, it may also give rise to a criminal prosecution under the aforesaid law. I order accordingly and sincerely yearn for compliance by all concerned.

The Point of Order stands disposed of in these terms.”¹

(81)

ASSEMBLY

¹Punjab Assembly Debates, 3 May 1995, Vol-XVIII, No.9, pp. 47-50.

PROCEEDINGS — PUBLICATION: the duty of the Press to publish a correct and authentic report of parliamentary proceedings emphasised.¹

(82)

ASSEMBLY

PRIVILEGES — MEMBERS' ARREST OR CONVICTION: no breach of privilege is involved if intimation of the arrest or conviction of a member is furnished to the Assembly within reasonable time.²

(83)

ASSEMBLY

PRIVILEGES — PARTY DECISIONS: as the Drafting Committee constituted by a political party for its internal supervision and administration or management is not comparable with the Drafting Committee envisaged by the Rules of Procedure, no question of the breach of privilege of the House is involved.³

(84)

ASSEMBLY

PRIVILEGES — PRESS: derogatory and contemptuous remarks by the Press about the proceedings of the House tantamount to a breach of its privilege.⁴

(85)

ASSEMBLY

PRIVILEGES — QUESTION AND REPLY: to constitute a contempt of the House or a breach of privilege of the House, it must be proved that the Minister has deliberately or negligently furnished false information to the House.⁵

(86)

ASSEMBLY

¹For details, see Decision No.346, pp. 393-94.

²For details, see Decision No.312, pp. 342-43.

³For details, see Decision No.318, pp. 352-53.

⁴For details, see Decision No.322, pp. 355-57.

⁵For details, see Decision No.326, pp. 360-62.

QUORUM: may be pointed out at any time after the commencement of a sitting of the Assembly. Strictly speaking, the sitting commences with the starting of recitation of the Holy Qur'an; however, out of the highest regard and respect for the holy book, it is desirable that a point of order as to the quorum may be raised after the recitation and its translation.¹

(87)

ASSEMBLY

QUORUM — MEMBERS: it is the duty of the members to attend the session on time; still, under the rules, the Assembly Secretariat is not required to release a list of absentees to the press.²

(88)

ASSEMBLY

QUORUM — MEMBERS: all the members of the Assembly are equally responsible for representing their respective constituencies and maintaining the quorum. If, however, the members break the quorum, it would be deemed to be an act of the Assembly and such an act does not give rise to a breach of privilege.³

(89)

ASSEMBLY

SEATING PLAN — PRIVILEGES: providing the seating plan to distinguished visitors or others to facilitate them to follow the proceedings does not involve any breach of privilege.⁴

(90)

ASSEMBLY

SECURITY — PRIVILEGES: arrangements made, including the closure of doors and windows of the Assembly, do not *per se* constitute a breach

¹For details, see Decision No.374, pp. 415-17.

²For details, see Decision No.375, p. 417.

³For details, see Decision No.330, pp. 368-39.

⁴For details, see Decision No.301, pp. 329-31.

of privilege of the House, unless the same have the effect of impeding, in any way, the free ingress and egress of the members.¹

(91)

ASSEMBLY

SESSION — SUMMONING ORDER: notwithstanding that the summoning order is signed earlier, the Assembly is deemed to be in session from the first day of its sitting till it is prorogued or dissolved.²

(92)

ASSEMBLY

SITTING — COMMENCEMENT: a sitting of the Assembly commences with the recitation of the Holy Qur'an.³

(93)

ASSEMBLY

SUMMONING: the Provincial Assembly may be summoned simultaneously with the National Assembly.⁴

(94)

ASSEMBLY

SUMMONING: may be summoned to meet on any day including a holiday.

A question had been raised by the officiating Leader of the Opposition, Ch Parvez Elahi that a sitting of the Assembly could not be held on a Friday, being a holiday. The Speaker, Mr Muhammad Haneef Ramay ruled that 'under Article 109 of the Constitution, the Governor is empowered to summon the Provincial Assembly to meet at such time and place as he thinks fit. The term 'time' of course will include the date as well. It is clear that the powers of the Governor in this regard emanate from the Constitution and, therefore, are not controlled by any provision of the Rules of Procedure

¹For details, see Decision No.334, p. 372.

²For details, see Decision No.263, pp. 288-89.

³For details, see Decision No.374, pp. 415-17.

⁴For details, see Decision No.95, p. 87.

of the Provincial Assembly of the Punjab. Even otherwise, the Rules of Procedure of the Provincial Assembly of the Punjab 1973 do not prohibit the sitting of an Assembly on a Friday. This view is supported by the fact that rule 35(b) of the said Rules clearly provides that there will be no question hour if the sitting of the Assembly is held *inter alia* on a Friday or a holiday. Thus the session of the Assembly summoned by the Governor today *i.e.* Friday the 10th June 1994 is in order.”¹

(95)

ASSEMBLY

SUMMONING — REQUISITION BY MEMBERS: the Governor may summon a session of the Assembly even though a requisition from the members for the purpose is pending with the Speaker.

Notwithstanding that a requisition of members of the Assembly requesting the Speaker to summon the Assembly was pending decision, the Governor summoned the session. On 8 March 1963, Mr Iftikhar Ahmad Khan raised a point of order that the action of the Governor pre-empting the summoning of the session was not valid and legal. He further pointed out that a privilege motion in that regard had also been moved by Rao Khurshid Ali Khan challenging the validity of the session summoned by the Governor additionally on the ground that the session of the Provincial Assembly could not be summoned simultaneously with that of the National Assembly of Pakistan. The Speaker, Mr Mobinul Haq Siddiqui, after due debate, decided the issue as under —

“It is true that I received a requisition, signed by seventy-four Members of the Provincial Assembly in the third week of December, 1962, asking me to summon a session of the Provincial Assembly of West Pakistan sometime in March. Nothing had been stated in the requisition, which I received as to what business the Assembly was to transact during the requisitioned session. Till the middle of January no notice had been received of any kind of business for transaction in the session which the Members had asked me to summon. I was waiting for the receipt of notices of business which would warrant my summoning a session of the Assembly. In the meanwhile, on 26th of the January, 1963 an order was received from the Governor summoning the Assembly to meet on 8th March, 1963, under clause (1) of

¹Punjab Assembly Debates, 10 June 1994, Vol-X, No.1, p. 14.

Article 73 of the Constitution. As the Governor had already summoned the session there was no occasion for the Speaker to exercise his powers under clause (2) of Article 73 of the Constitution.

Regarding the question of privilege, I observe that as the Assembly is meeting in accordance with the wishes of the Members, who had given the requisition, I am of the opinion that privileges of the Assembly had in no way been violated. I, accordingly, rule the motion out of order.

So far as the point of order raised by Nawabzada Iftikhar Ahmad Khan is concerned, the position is that he has not been able to cite any rule or law that a session of the Provincial Assembly cannot be summoned simultaneously with a session of the National Assembly of Pakistan. I cannot see any force in his argument. So far as his point that as a requisition for summoning of a session had been put in by Members, and the summoning of this session by the Governor is illegal, the position is very clear that whatever the circumstances the right of the Governor to summon a session of the Assembly under clause (1) of the Article 73 is not taken away. Therefore, both the parts of his point of order are without any force. I accordingly rule them out.”¹

(96)

ASSEMBLY

SUMMONING — REQUISITION BY MEMBERS: may not be summoned until the business to be transacted at the requisitioned session is indicated.²

¹West Pakistan Assembly Debates, 9 March 1963, Vol-III, No.2, pp. 121-22.

²For details, see Decision No.95, pp. 87-88.

BILLS

(97)

BILL

AMENDMENT — EXPIRED LAW: an amendment in an expired law cannot be moved without taking steps for its revival or re-enactment.

On 5 July 1963, the Minister for Railways, Abdul Wahid Khan, introduced the Railway (Transport of Goods) (West Pakistan Amendment) Bill, 1963 and also moved a motion seeking the suspension of the relevant rules so that the Bill be taken into consideration at once. Khawaja Muhammad Safdar raised a point of order that as the Principal Act had expired on 24th March 1963, the Bill in hand purporting to amend the said Act could not be legally introduced or considered. Since the point required deeper consideration, Muhammad Ishaq Khan Kundi, Acting Speaker, postponed the consideration of the motion, and after hearing the Advocate General, Mr Khalid M. Ishaq, on 8th July 1963, decided the matter in terms of the following —

“The point raised by Khawaja Muhammad Safdar, when the motion for consideration of the Railways (Transport of Goods) (Amendment) Act, 1963, was proposed from the Chair, was that the original Act (Railways Transport of Goods) Act, 1947, to which the proposed Bill was an amendment, was already dead by expiry of its time limit. In his view an amendment means an improvement and change in a law which is already operative, an amendment to a dead law is not conceivable and hence out of order. He, however, agreed in his final submissions that a suitable recasting of the bill can have composed effect of both of reviving and amending the original Act. Taking this bill as introduced, his main contention was that as the original Act had ceased to exist on 24th March, 1963 by expiry of its time limit, the present amending bill was out of order at this time of the day.

I have heard the Learned Advocate General on this point and his contentions were two-fold. First, he submitted that although revival and re-enactment of the old expired Act was necessary for the validity of any amending legislation, and this can be so construed as also revive and re-enact the expiring Act. He relied upon P.L.D. 1958 Karachi 530, a full Bench judgement, which supports his contentions. Taking the bill as proposed before the House, this question is rather premature. Next he relied upon Article 225 of the Constitution of 1962 and urged that the original Act

(Railway Act) sought to be amended was still in force by virtue of this provision. That the Act in question was not a permanent Act, but had to expire automatically after certain period, did not matter, as the effect of Article 225 was comprehensive. He cited P.L.D. 1957 Supreme Court 43-44, in support of this submission.

Kh. Muhammad Safdar also relied upon certain statements in May's Parliamentary Practice on page 555, lines 32-35. I have gone through the original reports of the House of Commons debates and the precedent cited is not in point, there the question related to inclusion of certain statutes in a schedule to a special type of bill, known as Expiring Laws Continuance Bill. Such bills are meant to keep in force a large number of statutes, which are about to expire but are sought to be continued for one reason or another. The inclusion of a dead Act in such a schedule is obviously out of the scope of such bill and was ruled out on this ground.

The argument based on Article 225 of the Constitution needs careful consideration. A perusal of the Supreme Judgement (PLD 1957 Supreme Court Page 43/44) will show that the effect of Article 225 of the Constitution is not confined to permanent Acts alone but it also keeps alive temporary Acts, till they are altered, amended or repealed provided they were in force on the constitution day. The Supreme Court case cited above dealt with the case of such a law, and they held the ordinance in question remains operative and effective even after its original time limit under Government of India Act, 1935, had expired. The Court was then considering Article 224 of the Constitution of 1956, but the material of that Article corresponds to Art. 225 of our present Constitution of 1962. There has been no amendment, repeal or alteration of the original Railway Act since the Constitution Day (8th June, 1962) and the Act being still in force, by virtue of Article 225 of the Constitution it cannot be termed as a dead Act. Following view propounded by the Supreme Court of Pakistan, I consider the present bill (Railway Transport of Goods of Amendment) Bill 1963, as in order and rule out the objection of Kh. Muhammad Safdar Sahib. Discussion or the consideration motion will be continued.”¹

¹West Pakistan Assembly Debates, 9 July 1963, Vol-IV, No.26, pp. 108-09.

(98)

BILL

AMENDMENT — GOVERNMENT: a Minister may move an amendment in a Government bill.

Rana Phool Mohammad Khan, MPA raised a point that a Bill introduced by a Minister becomes the property of the House and the Minister cannot move an amendment therein. The Minister for Law, supporting that a Minister can move an amendment in a Government Bill, quoted rule 2(j) and 2(k) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973 which reads as under —

Rule 2(j): ‘A Member means a Member of the Assembly, and for the purpose of moving or opposing a Bill, an amendment, a Motion or a Resolution, includes a Minister.’

Rule 2(k): ‘A Member-in-Charge means, in the case of Government Bill, any Minister (or Parliamentary Secretary) acting on behalf of Government, and in the case of a Private Member’s Bill, the Member who has introduced it or any other Member authorised by him in writing to assume charge of the Bill in his absence.’

The Speaker, Mian Manzoor Ahmed Wattoo ruled ‘that according to the Rules of Procedure of the Provincial Assembly of the Punjab when a Motion that the Bill be taken into consideration has been carried, any Member may propose such amendment in the Bill as is within the scope of and relevant to the subject matter of the Bill. Moreover, a Member-in-Charge has been defined to mean, in case of Government Bill, any Minister or Parliamentary Secretary, acting on behalf of the Government, and in the case of Private Member’s Bill, the Member who has introduced it or any other Member authorised by him in writing to assume charge of the Bill in his absence. As such a Minister can also move an amendment in the Bill.¹

(99)

BILL

AMENDMENT — NOTICE: an amendment to a bill must satisfy the condition of two-clear days notice before the day on which the bill, the

¹Punjab Assembly Debates, 27 October 1985, Vol-IV, No.12, pp. 966-67.

relevant clause or the schedule is to be considered unless the Speaker allows the amendment to be moved in special circumstances.

Disposing of a point of order regarding the period of notice for an amendment to a Bill, Ch Parvez Elahi, Speaker observed as under —

“On 6th February 1998, when clause 2 of the Punjab Land Revenue (Abolition) Bill 1997 was under consideration, Mr Saeed Ahmad Khan Manais, Leader of Opposition sought to move an amendment in the said clause. Law Minister, on a point of order, objected to the moving of the amendment on the ground that as the notice of amendment was given on 5th February 1998, the Hon’ble Leader of the Opposition could not move the motion under rule 105(2) of the Rules of Procedure of the Provincial Assembly of the Punjab 1997.

On the other hand, the Leader of Opposition asserted that —

- (a) since the notification summoning the Assembly was issued by the Assembly Secretariat on February 3, 1998, the notice of amendment given by him on February 5, 1998 was within time as the period of two days mentioned in rule 105(2) of the rules *ibid* would reckon from the date of the notification of the summoning of the Assembly; and
- (b) as the session was summoned at short notice, the Speaker may, under rule 105(2) of the rules *ibid* may allow the moving of amendment.

After hearing the respective contentions, I did not allow the moving of the amendment; and, I promised that I would give a detailed ruling in respect of the contention of the Leader of the Opposition.

I have carefully considered the matter. Rule 105(2) provides that —

‘(2) If a notice of a proposed amendment has not been given two clear days before the day on which the bill, the relevant clause or the schedule is to be considered, any member may object to the moving of the amendment and such objection shall prevail unless the Speaker allows the amendment to be moved’.

The motion for taking the Punjab Land Revenue (Abolition) Bill 1997 into consideration had been carried on January 2, 1998, and further consideration of the Bill was fixed for January 5, 1998. On that day the Assembly could not transact any business for want of quorum and the session was prorogued. The

notices of amendments given by the Law Minister, Leader of Opposition and other members, thus, lapsed under rule 225 of the rules *ibid*.

The order of the Governor summoning the session of the Assembly on 6th February 1998 was notified on 3rd February 1998. The same day, the agenda for the first day was issued. Further consideration of the Punjab Land Revenue (Abolition) Bill 1997 was included in the Agenda. The Leader of Opposition, however, gave notice of amendments in the bill on 5th February 1998.

Judged in the backdrop of the fact given above, the following position does emerge —

- (a) the period of notice envisaged in rule 105(2) of the rules *ibid* has no nexus with the date of the notification whereby the Assembly is summoned *inter alia* for the reason that a notice of amendment in respect of a pending bill may be given even during the interval between the two sessions;
- (b) ordinarily, the proposed amendment must satisfy the condition of two-clear day notice before the day on which the bill, the relevant clause or the Schedule is to be considered;
- (c) in special circumstances, the Speaker has the power to waive the condition of the ‘two days notice’—
- (d) in the instant case, no special circumstances warranting the waiver of the period of notice did exist *inter alia* for the reasons —
 - i) the notice of amendments could be given at any time after the prorogation of the session on January 5, 1998;
 - ii) since, according to the notification dated 3rd February 1998, the Assembly had to meet on 6th February 1998, the notice of amendments could be given on 3rd February 1998, leaving a clear margin of two days; and
 - iii) the Leader of Opposition did not spell out any special reasons justifying the waiver of the period of notice.

The point of order is disposed of accordingly.”¹

¹Punjab Assembly Debates, 6 February 1998, Vol-VIII, No. 1, pp. 62-63, read with the detailed ruling given on 22 April 1998 — see File No.Legis/(39)/97.

FURTHER CLARIFICATION OF THE SAID RULING

On 18 November 1998, when clause 7 of the Punjab Medical and Health Institution Bill 1998 was under consideration, the Speaker invited the Law Minister to move his amendment in the said clause. Mr Saeed Ahmad Khan Manais, Leader of the Opposition objected to the moving of the amendment under rule 105(2) of the Rules of Procedure of the Provincial Assembly of the Punjab 1997. He contended that as the notice of the amendment was given on 15 November 1998 and the consideration of the bill started on 16 November 1998, the condition of the requisite two clear days notice was not fulfilled and the Law Minister could not be allowed to move the amendment, in view of the ruling of the Speaker given of 22 April 1998 (*reproduced above*).

The Law Minister emphasised that the condition of two clear days notice under the said rule had to be calculated from the date of the notice and the day on which the relevant clause is considered. Since he had given notice of the amendment in clause 7 on 15 November 1998, the requirement of two days notice was fulfilled on November 18, 1998 — the day on which the said clause 7 was being considered.

The Speaker, Ch Parvez Elahi, agreeing with the Law Minister, observed that the period of the notice under rule 105(2) of the Rules of Procedure of the Provincial Assembly of the Punjab 1997 had to be computed with reference to the date of the notice and the day on which the relevant clause was considered by the Assembly. Since, on 18 November 1998 when clause 7 was considered, the condition of the two clear days notice (given on 15 November 1998) stood satisfied, he allowed the Law Minister to move the amendment.¹

(100)**BILL**

AMENDMENT — NOTICE: the period of notice envisaged for amendment to a bill has no nexus with the date of the notification whereby the Assembly is summoned *inter alia* for the reason that a notice of amendment in respect of a pending bill may be given even during the interval between the two sessions.²

¹Provincial Assembly of the Punjab Debates, 18 November 1998, Vol-XII, No.3, pp. 175-79.

²For details, see Decision No.99, pp. 93-96.

(101)

BILL

AMENDMENT — RELEVANT: must be relevant to, and within the scope of, the bill under consideration. While considering the continuance bill, the discussion of the original Act or the Ordinance is in order; however, the amendments in the provisions of the original Act or the Ordinance which have not been touched by the continuance bill will be out of order as the same are beyond the scope of the bill. Moreover, an amendment in the provisions of a temporary Act which tantamount to making it permanent is out of order.

On 31 May 1967, the Minister for Law raised a point of order that the amendment seeking to insert a new section in the Principal Act, being out of order, could not be moved. The Speaker, Ch Muhammad Anwar Bhinder, after hearing the Minister for Law and certain Members decided the matter as under —

During the discussion on the Railways (Transport of Goods) (West Pakistan Amendment) Ordinance, 1967, the Minister for Law had raised a point of order that amendment No.4 given notice of by Malik Muhammad Akhtar in Section 2 of the said ordinance is out of order on the ground that by moving that amendment the member wants to insert new section in the original Act *i.e.* the Railways (Transport of Goods) Act, 1947, which has been extended for a further period of three years by the present ordinance.

The contention of the learned Law Minister is that the Railways (Transport of Goods) (West Pakistan Amendment) Ordinance, 1967, is a continuance ordinance extending the life of an expiring law. The Railways (Transport of Goods) Act, 1947, which has been extended from time to time was actually to expire on the 25th of March, 1967, and the present ordinance was promulgated to extend its life for a further period of three years ending on 25th March, 1970. In the case of a continuance of an expiring law, bill or ordinance, the learned Law Minister has contended that the amendments to the original Act or ordinance cannot be moved on the ground that such amendments would be outside the scope of the ordinance under discussion.

In support of his contention the learned Law Minister has referred to various authorities. He has referred to Hansard's Parliamentary Debates, 3rd Series, Volume 221, column 1018 wherein it has been remarked by the Chairman that —

‘he was of the opinion that it was beyond the province of the Committee on the relevant Bill to introduce into it any such amendment as the honourable and learned Member for Limerick proposed to make. As to amending the Acts contained in the Schedule, he should have thought there was no doubt, for this Bill was not to amend, but to continue the Acts. He was of opinion that none of the amendments of the honourable and learned Member were in order and, therefore, they could not be put.’

In the second authority quoted *i.e.* House of Commons Debates (1924-25), volume 188, columns 240-41, the Chairman remarked —

‘It proposes to allow the continuance of the Act, but that certain exemptions from it should lapse. On going into this matter, I have come to the conclusion that these exceptions are part of a provision that must be kept or left as a whole, and that it would not be in order to amend it. Therefore, I am bound to rule that it is not in order.’

The next authority quoted by the learned Law Minister is the Indian Legislative Assembly Debates, Volume III, Part III (1923), page 2005. It is not on all fours with the present case and, therefore, need not be discussed.

The last authority cited by the learned Law Minister is the Indian Legislative Assembly Debates 1934, Volume XVI, Part III, page 2902, wherein the President remarked:

‘It is now a well understood principle in this House that an amending Bill does not throw open for discussion or amendment the entire section of the original Act which the Bill seeks to amend. All amendments relating to an amending Bill must clearly be within the scope of the amending Bill. Ordinarily what the Legislative Secretary has pointed out would follow from this, that is, that the scope of an amending Bill is to be sought either in the new clauses that the amending Bill seeks to incorporate or in those sections of the original Act which the amending Bill seeks to amend. It is, however, conceivable that in certain exceptional cases the scope of an amending Bill might be covered by certain sections of the original Act which are not specifically referred to in the amending Bill. If such a contingency arises, it would be in order to move amendments for those relevant sections. In this particular case, applying these principles, we have to find out what exactly is the scope of the Bill that is before the House.’

Ultimately Mr. President allowed an amendment in section 3 of the original Act on the ground that a Member who sought to reduce import duty on salt

had necessarily to incorporate his amendment in section 3 of the Salt Import Duty Act. It was further remarked,

‘... it will be perfectly open to this House to say that they would agree to the extension of this Act for one year more provided the duty is reduced to two annas or one anna and six pies. Therefore all amendments which aim at reducing the amount of duty would be in order, in such circumstances.’

Malik Muhammad Akhtar and Khawaja Muhammad Safdar have opposed the contention of the Law Minister and have contended that in case of a continuance bill or an ordinance the amendment to the original Act or Ordinance which is proposed to be continued by the continuance bill, would not be in order.

Khawaja Muhammad Safdar has, in support of his contention, cited Legislative Assembly Debates, Volume V, Part III of 1925, wherein at page 2656 Mr. V.J. Patel objected that the Hon’ble Member wanted that the Special Laws Repeal Bill should be so amended as to restrict its operation to certain matters and also to extend its operation to the Province of Bengal and the Province of Madras to which it did not apply at that time. Mr. Patel objected that the amendments would extend the scope or limit the scope of the bill. Mr. President ruled as under:-

‘Certainly these amendments proposing to limit the scope of this repealing measure are in order.’

This authority does not pertain to a continuance bill, but on the other hand it relates to a repealing bill and is, therefore, not on all fours with the present case although it lays down the principle that amendments proposing to limit the scope of repealing bill would be in order.

The next authority cited by Khawaja Muhammad Safdar is Parliamentary Debates of the House of Commons Volume 146 of 1921, columns 1007-8 wherein an amendment in the Expiring Laws Bill was allowed by the Chairman. Since I have not before me the Expiring Laws Bill, it is very difficult to come to a conclusion as to how the amendment was within the scope of the bill.

The next authority cited by Khawaja Muhammad Safdar is the Parliamentary Debates (Fourth Series), Volume 167 of 1906, volume 489 wherein an amendment was sought to be moved to add an Act rejected by the Scottish Law Reunion Bill in the Expiring Laws Continuance Bill.

A perusal of all the authorities quoted above would show that the amendments in a continuance bill or ordinance can be allowed provided these are within the scope of the bill or the ordinance. The most relevant authority which has been relied upon by the Law Minister as well as by Khawaja Muhammad Safdar in support of their contentions is the Indian Legislative Assembly Debates, Volume XVI, Part III of 1934, page 2902 referred to above. It is clear in this authority that the Salt Additional Import Duty (Extending) Bill set out to amend section 1(3) which gave the life to the original Act, and also to section 5(4). A member tabled an amendment to section 3 of the original Act with a view to reduce the duty on one class of imported salt. Section 5(4) of the said Act dealt with the exemption of Indian salt from additional duties and laid down the price to be paid for it while section 3 related to the additional duty of customs on salt imported into India. Since the continuance bill was amending section 4 of the said Act, an amendment in section 3 was also held to be within the scope of the bill. This shows that the bill was a continuance as well as amending bill. It is, therefore, distinguishable from the ordinance which is now under discussion by us in as much as the Railways (Transport of Goods) (West Pakistan Amendment) Ordinance, 1967 is a simple continuance ordinance.

Khawaja Muhammad Safdar has further contended that the preamble of the ordinance under discussion runs as follows:-

‘whereas it is expedient further to amend the Railways (Transport of Goods) Act, 1947, in its application to the Province of West Pakistan, in the manner hereinafter appearing;’

And, therefore, the ordinance under discussion is an amending ordinance as such the amendments to the original Act should be held to be order.

I have carefully gone through the preamble as well as the contents of the ordinance. The ordinance contains only two clauses and in clause 2, the life of the original Act has been extended for a period of three years more. That is the only operative clause and, therefore, the ordinance is a simple continuance ordinance.

It has been held in P.L.D./1950/Peshawar/22 as under:-

‘Though the preamble may be considered to be a key to the Act itself, it cannot normally be applied to explain the Act, except where the provisions contained in its body are otherwise vague;’ and ‘where the language of the section is clear, the preamble cannot control its provisions.’

Again, in P.L.D./1952/Dacca/426 it has been held that the preamble cannot either restrict or extend the enacting part when the language and the object and scope of the Act are not open to doubt. A similar ruling was given in PLD/1952/Dacca/272.

In May's Parliamentary Practice (17th Edition) page 515 it has been laid down that a preamble is not often incorporated now in a public bill.

In view of the authorities cited above it is clear that in order to determine the scope of a bill or an ordinance we shall have to be guided by its actual provisions and not only by its preamble. Although the purpose of a preamble is to state the reasons and intended effects of the proposed legislation yet to determine the scope of a particular bill we shall have to keep in view the whole bill itself. In the present case the provisions of the ordinance clearly show that the intention of promulgating this ordinance was only to continue for a further period of three years the original Act of 1947 and as such it is not an amending ordinance.

I would, however, like to observe here that the present ordinance has not been carefully drafted by the Law Department. One can possibly justify some omissions in respect of a lengthy or complicated bill, but in an ordinance of two clauses where only one principle is involved and the only provision to be incorporated in the ordinance is in respect of continuing an Act it is not very desirable that the Draftsman should not have cared to see whether the preamble denotes the intention or the principle which is embodied in the ordinance itself. The bad drafting of a law does not only create difficulties for the Legislature but also creates complications at the time of interpretation of the law. The drafting should not be self-contradictory or ambiguous. I am sorry to remark that it is so in the present ordinance.

The learned Law Minister has tried to justify the inclusion of the words 'to amend the Railways (Transport of Goods) Act, 1947' by saying that on all previous occasions when Act of 1947 was extended for a further period, the words 'to amend the Railways (Transport of Goods) Act, 1947' were used in the preamble.

But in 1950, when the Hon'ble Khan Sardar Bahadur Khan the then Minister for Communications sought to move for the consideration of the bill, he moved that the bill to revive and continue for a limited period the Railways (Transport of Goods) Act, 1947, be taken into consideration, in this connection attention is invited to Constituent Assembly of Pakistan Debates

Volume I of 1950 page, 707. The preamble of the Railways (Transport of Goods) (Revival and Continuance) Act, 1950 was as follows:-

‘Whereas it is expedient to revive and continue for a limited period the Railways (Transport of Goods) Act, 1947:-’

Again in 1959 the preamble was as follows:-

‘Whereas it is expedient to continue for a limited period the Railways (Transport of Goods) Act, 1947;’.

Subsequently in the Acts of 1957, 1960 and 1963 the words used in the preamble were ‘to amend the Railways (Transport of Goods) Act, 1947’ because certain amendments were proposed in different sections of the basic Act of 1947.

It, therefore, clearly negatives the contention of the learned Law Minister.

Reverting now to the main question I would like to say that the amendment in a continuance ordinance can only be relevant if it is within the scope of that ordinance.

I have carefully examined this question and have in addition to the authorities already referred consulted the May’s Parliamentary Practice and other reference books.

At page 552 of the May’s Parliamentary Practice (17th Edition) it has been laid down that an amendment is outside the scope of the Bill if it seek to amend the provisions of the Acts proposed to be continued. It has been further remarked that an amendment may be moved to the operative clause of the bill to alter the date to which the Act (or Acts) in the schedule (or schedules) are to be continued.

In another authority, in the House of Commons during the discussion on the expiring Laws Continuance Bill in the Parliamentary Debates (1948-49) Volume 469, column 814, the Chairman remarked:

‘I have ruled the Hon’ble Member’s Amendment out of order on the ground that he was thereby proposing to amend the terms of one of the Acts included in the Bill. I appreciate that the Hon’ble Gentleman was last year fortunate in prevailing upon the Chair to permit him to move a similar amendment, because his intention was not then clear, but I am afraid that on this occasion I have had to rule his amendment out of order on the ground I have stated.’

In column 915, Mr. Chairman further remarked:-

‘As I have indicated, the ground of my Ruling is that the Hon’ble Member’s amendment is beyond the scope of the Bill because it seeks to vary or amend

the provisions of an Act which the Bill before us seeks to continue. I cannot say more than that”.

In addition to the May’s Parliamentary Practice and the authorities quoted above I have also consulted ‘Introduction to the Procedure of the House of Commons’ (1947 edition) by Champion wherein at page 217 it has been laid down that amendments proposing amendment of the Acts to be continued, or proposing to make them permanent, are out of order.

It is, therefore, clear that in case of an ordinance or a bill which seeks to extend the life of an expiring law only those amendments would be in order which seek to amend the provisions of the continuance bill or ordinance. Khawaja Muhammad Safdar has contended that we have been debating the entire principles of the basic Acts while discussing the continuance bills or ordinances in the past. I must remark that the discussion of an original Act or ordinance would be in order for the purpose of approving or disapproving the continuance bill or ordinance, but the amendments in the original Act or ordinance would be out of order as they would be beyond the scope of the continuance bill or ordinance. By discussing the principles of the basic law one can make out one’s case for the approval or disapproval of the continuance bill, but to allow an amendment in the sections of the original Act which have not been referred to in the continuance bill would be clearly outside the scope of the continuance bill or ordinance.

In view of the above discussion and the authorities cited above, I hold that an amendment sought to be moved in a continuance bill or ordinance in respect of the section of the original Act or the ordinance, which have not been touched by or referred to in the continuance ordinance would be beyond the scope of the continuance ordinance or the bill. I, therefore, uphold the point of order raised by the Law Minister and hold that the amendment given notice of by Malik Muhammad Akhtar printed at serial No.4, which seeks to introduce a new section in, and amend different sections of the original Act of 1947, is out of order.”¹

¹West Pakistan Assembly Debates, 2 June 1967, Vol-V, No.11, pp. 2995-3001.

(102)

BILL

CONSIDERATION — ALTERNATIVE MOTION: notices of alternative amendments, seeking circulation for eliciting opinion and reference to a Select Committee, may be given by the same members; however, the member who moves or speaks in favour of the motion for eliciting public opinion cannot move or speak in respect of the second motion concerning reference to the Select Committee and *vice versa*.

Disposing of a point of order relating to the amendments in the motion for consideration of a Bill, Ch Parvez Elahi, Speaker ruled as under —

“On 9th February 1998, the Minister for Law moved a motion that the Lahore Development Authority (Amendment) Bill 1997 be taken into consideration at once. The same ten Hon’ble Members had given notice of two separate amendments; *viz.*— (a) that the bill be circulated for eliciting opinion thereon; and (b) that it may be referred to the Select Committee for report.

The first amendment that the bill be circulated for eliciting public opinion was moved by Mr Saeed Ahmad Khan Manais, Leader of Opposition. Besides him, Syed Masood Alam Shah MPA also spoke in favour of the amendment. The amendment was, however, voted out. The second amendment that the Bill be referred to the Select Committee for report was proposed to be moved by Mr Saeed Akbar Khan MPA, when Law Minister, on a point of order, objected to the moving of the said motion *inter alia* on the following grounds —

- (a) that under rule 98(2)(a) of the Rules of Procedure of the Provincial Assembly of the Punjab 1997, a member could move only one of the two motions; *viz.* — for ‘circulation for public opinion’ or for ‘reference to the Select Committee’;
- (b) that the motion for ‘circulation of public opinion’, although moved by Mr Saeed Ahmad Khan Manais, would be deemed to have been moved by all the signatories of the notice; and, that being so, none of the signatories of that motion could move the alternative motion seeking reference to the Select Committee; and

- (c) since Mr Saeed Akbar Khan was a signatory of the notice of motion mentioned at (b), under the aforesaid rule, he was debarred from moving the motion for reference of the bill to the Select Committee.

The Leader of Opposition, contending against the position taken by the Law Minister, argued that a member who had neither moved nor had spoken in favour of the motion for '*eliciting public opinion*', regardless of his being a signatory of that motion, would have the right to move the motion for reference of the bill to the Select Committee.

I have given my anxious thoughts to the proposition in hand. Rule 98(2)(a) of the Rules of Procedure of the Provincial Assembly of the Punjab 1997 reads as under —

- '(a) if the Member-in-charge moves that the Bill be taken into consideration, any member may move an amendment that the Bill be referred to a Select Committee **or** be circulated for eliciting opinion thereon by a date to be specified in the motion.'

After hearing respective contentions, I allowed Mr Saeed Akbar Khan MPA to move his motion; however, I promised that I would give a detailed ruling on the subject.

There can hardly be any difference of opinion as to the position that —

- (a) under rule 189 of the Rules *ibid*, the requisite notice is a pre-condition for moving a motion, and a member, even after giving such a notice, may opt not to move the motion;
- (b) under rule 193(3) of the Rules *ibid*, if a motion or an amendment is not moved, it shall be deemed to have been withdrawn; and
- (c) there is a marked distinction between '*giving of a notice*' and '*moving of a motion*'.

The point for determination is whether, in case of a notice by more than one members, the moving of a motion by one member can be construed as having been moved by all such members, even though all of them do not opt to speak in favour of the motion.

On consideration of the matter in the light of the rules, I am of the view that —

- (a) a notice is only an intimation from a member that he would move a particular motion; however, such an intimation is not enough for treating it as moved; and
- (b) where an amendment stands jointly in the names of more than one member and has been moved by one of them, the others cannot move it again, but may be permitted to speak in support of it.

Under rule 98(2)(a) of rules *ibid*, a Member may either move '*that the bill be circulated for eliciting public opinion*', or he may move '*for reference of the bill to a Select Committee*'. That being so, ideally a Member should give notice of only one of the two motions. However, from strictly legal point of view —

- (a) in case a Member gives notices of both the motions and if he moves or speaks in favour of the motion for '*eliciting public opinion*', he will be debarred from moving or speaking in favour of the subsequent motion for '*reference of the bill to a Select Committee*'; and
- (b) if he does not move or speak in favour of the first motion seeking '*circulation for eliciting public opinion*', he may move or speak in favour of the subsequent motion '*for reference of the bill to a Select Committee*'.

The point of order stands disposed off accordingly.¹

(103)

BILL

CONTINUANCE BILL — AMENDMENT: must be relevant to, and within the scope of, the bill under consideration. While considering the continuance bill, the discussion of the original Act or the Ordinance is in order; however, the amendments in the provisions of the original Act or the Ordinance which have not been touched by the continuance bill will be out of order as the same are beyond the scope of the bill. Moreover, an amendment in the provisions of a temporary Act which tantamount to making it permanent is out of order.²

¹Punjab Assembly Debates, 9 February 1998, Vol-VIII, No.2, pp. 159-161, read with the detailed ruling given on 22 April 1998.

²For details, see Decision No.101, pp. 97-103

(104)**BILL**

FUNDAMENTAL RIGHTS — VIOLATION THEREOF: Members may raise the point that certain provisions of the bill are against the fundamental rights; speeches concerning fundamental rights may be made; emphasis may be given; and, members may be convinced not to pass the proposed law if it violates the fundamental rights; however, the consideration or passage of the bill cannot be obstructed or deferred solely on that ground. A law may be challenged on the ground of the infringement of the fundamental rights only in a court of law and not in the Assembly.¹

(105)**BILL**

GOVERNMENT — INTRODUCTION: whereas a private member's bill may be introduced with the leave of the House on a motion, no such motion is required for a Government bill which may be introduced as a matter of right — the objection that the Punjab Finance Bill 1972 had not been correctly introduced was ruled out.²

(106)**BILL**

GOVERNMENT — PENDENCY OF A PRIVATE MEMBER'S BILL: the introduction of a Government bill on the subject on which a Private Member's bill is pending consideration with the Assembly is not barred by rules; however, another Private Member's bill on the same subject is so barred.

On 26 May 1986, the Minister for Law introduced the Punjab Civil Courts (Amendment) Bill, 1986. Mian Muhammad Ishaque, MPA, raised an objection to the introduction of the Bill on the ground that a similar Bill had already been introduced by a Private Member, Ch Muhammad Azam Cheema, MPA, and the same had been referred to the concerned Standing Committee and was under its consideration. In support of his contention he

¹For details, see Decision No.124, pp. 120-21.

²For details, see Decision No.108, pp. 108-10.

referred to rule 74 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973 which provides that motion for leave to introduce a Private Member's Bill shall not be made if a similar bill of another Private Member has been introduced and is pending decision by the Assembly.

The Minister for Law contended that there was no bar provided in the Rules to the introduction of a Government Bill when a similar Private Member's Bill was pending decision by the Assembly. He pointed out that the restriction as envisaged in rule 74 *ibid* applies only to the Private Member's Bill.

The Speaker, Mian Manzoor Ahmed Wattoo, ruled out the point of order with the observation that rule 74(2) quoted by Mian Muhammad Ishaque, MPA applied only to a Private Member's Bill.¹

(107)

BILL

GOVERNOR'S SANCTION OR RECOMMENDATION: The objection that the Punjab Acquisition of Land (Housing) Bill 1973, being a 'money bill', could not be considered as it was not accompanied with the requisite previous sanction or recommendation of the Governor, was overruled on the ground that — (a) the bill was then being considered clause by clause and the stage for raising such an objection had passed; and (b) the Constitution provided that no Act of Provincial Legislature and no provision of any such Act would be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given by the Governor.²

(108)

BILL

INTRODUCTION: whereas a private member's bill may be introduced with the leave of the House on a motion, no such motion is required for a Government bill which may be introduced as a matter of right — the objection that the Punjab Finance Bill 1972 had not been correctly introduced was ruled out.

¹Punjab Assembly Debates, 26 May 1986, Vol-VI, No.9, pp. 669-76.

²For details, see Decision No.275, pp. 302-4.

On 28 June 1972, Haji Muhammad Saifullah Khan raised a point of order that the Finance Bill, 1972 had not been properly introduced. He explained that the agenda for 18th June 1972 contained two items: (1) Recitation and (2) Presentation of the Budget for the year 1972-73. After the Finance Minister had presented the Budget, he should have made the motion introducing the Finance Bill only upon having been so asked by the Speaker. During discussion, however, he admitted that at the close of the Budget Speech the Finance Minister did say that 'Now he introduces the Punjab Finance Bill'. The second objection raised by Haji Muhammad Saifullah was that the Finance Minister did not mention the year of the Finance Bill.

The Speaker, Mr Rafiq Ahmed Sheikh, ruling out the point of order, committed to give a detailed ruling. The said ruling announced on 7 July 1972 reads as under —

“The agenda for 18th June, 1972 had got only two items — firstly, the recitation from the Holy Qur’an and the other the presentation of the budget for the year 1972-73. The second item was divided into two sub items — the presentation of the budget and the introduction of the Punjab Finance Bill, 1972.

Haji Muhammad Saifullah Khan made reference to Rule 2(1)(m) and to Rule 163. However, the said rules have no application to the introduction of a Government Bill. While a Private Member’s Bill requires the leave of the House for its introduction under Rule 70, no such leave is required for introduction of Government Bill. Therefore, while a motion in respect of a Private Member’s Bill for its introduction is required, no such motion is required to be made for introduction of a Government Bill. This is why nowhere in Rule 72 it is provided that a Government bill will be introduced through a motion. Therefore, for introduction of the Punjab Finance Bill, 1972, no motion was required to be made.

The honourable member also raised an objection that while introducing the Bill, the Finance Minister did not say that the Punjab Finance Bill was of 1972. In fact, the year of the Bill was not required to be mentioned firstly, because the Bill itself was circulated to the members and secondly because the item relating to the presentation of the budget on the agenda was for the year 1972-73. The Punjab Finance Bill which had been circulated related to the Bill of 1972. As such the said year need not be

mentioned specifically at the time of the introduction of the Bill. The Punjab Finance Bill was, therefore, rightly introduced.”¹

(109)

BILL

INTRODUCTION — COPY (SUPPLY OF): non-supply of copies of a Government Bill in advance or immediately at the time of introduction does neither make the introduction of the bill invalid nor does it entail a breach of privilege; however, it is a desirable practice that copies of a bill are made available to the members latest at the time of its introduction.

The text of the ruling announced on the point on 8-7-1996 by the Speaker, Mr. Muhammad Haneef Ramay, is given below —

“On 7 July 1996, Mian Muhammad Shahbaz Sharif, Leader of the Opposition and 57 other MPAs, through Privilege Motion No.28 of 1996, raised a question of privilege. It has been asserted that the introduction of the Punjab Local Government Bill 1996 was on the List of Business for July 4, 1996. As a matter of fact, no such Bill was in existence and the Minister orally introduced the same. Neither did the Minister himself had a copy of the Bill nor were copies thereof supplied to the members. They emphasized that, as under the rules, the supply of the copies of the Bill to the members before the introduction thereof was mandatory, and the same was not done in violation of the rules, the privilege of the Movers as well as that of the House was breached.

On behalf of the Movers, Mian Muhammad Shahbaz Sharif, Leader of the Opposition, Syed Tabish Alwari and Syed Zafar Ali Shah MPAs argued that under rule 75, a Minister may introduce a Bill after giving to the Secretary a written notice which should be accompanied by a copy of the Bill together with a statement of objects and reasons. It was argued that the spirit of the aforesaid rule is that copies of a Bill to be introduced must invariably be provided to the members for their information and use. That view was further fortified by the provision of rule 77 which *inter alia* provides that in case the requirements of rule 78 are dispensed with, it will not be necessary to re-supply copies of such a Bill to the members. Since copies of the Punjab Local Government Bill 1996 were not supplied before or even at the time of introduction of the Bill, the introduction of the Bill was not according to the

¹Punjab Assembly Debates, 7 July 1972, Vol-II, No.13, pp. 1198-99.

rules and it would be deemed as if the Bill had not been introduced. Any further proceedings with regard thereto would be illegal.

The Minister for Law agreed that the practice had been to supply copies of a Bill to the Members at the time of its introduction or even in advance. He, however, pointed out that the non-supply of copies of a Bill in advance or immediately on its introduction was not a mandatory provision of the rules, and delayed supply of copies did not render the introduction of the Bill invalid. Giving the background of the reasons which delayed the supply of copies, he informed the House that the requisite notice along with a copy of the Bill signed by the Minister was handed over to the Assembly Secretariat much before its introduction in the House. The Bill was a lengthy document and required sufficient time for printing and compilation. At the time when the copies were being compiled and stitched, some Members of the Opposition entered the Print Shop and forcibly took away printed copies of several sets of about 12 pages of the Bill. That naturally obstructed the work of compilation, because the said pages of the Bill had to be printed afresh. To meet the situation, the Assembly Secretariat quickly prepared four sets of the Bill, partly through photo copy process for the use of the Senior Minister, the Leader of the Opposition and the Speaker and the Law Minister. He emphasized that had those pages not been forcibly taken away by the Opposition members, copies of the Bill could have been circulated at the time of its introduction.

I have carefully considered the arguments advanced on both sides. There is no denying the fact that the practice has been to supply copies of a Government Bill at the time of its introduction and even in advance. However, the legal issue involved is whether the supply of copies to the members before or at the time of the introduction of a Government Bill is a mandatory requirement of the rules and whether the non-supply of copies at the relevant time can render the introduction of a Bill invalid.

In this connection the relevant rule is rule 75 of the Rules of Procedure of the Provincial Assembly of the Punjab 1973. Although this rule provides that before a Bill is introduced in the House, a copy thereof has to be provided to the Secretary along with the notice for introduction of the Bill, strictly speaking it does neither require the advance supply of copies to the members for the introduction of a Government Bill nor does it prescribe any particular stage or time for the purpose. It has been contended that rule 77 of the said Rules provides that upon introduction, the Bill will be referred to the Standing Committee for report. Under the proviso to this rule a motion may

be made that the requirements of this rule may be dispensed with and if the motion is carried the Bill may be taken into consideration straight-away. The rule provides that in such an event, it shall not be necessary to re-supply copies of the Bill to the members. It is argued that the provision that re-supply of copies of the Bill shall not be necessary, leads to the presumption that supply of copies at the time of introduction of a Bill was mandatory. This argument has little force. It is true that the effect of the word 're-supply' used in rule 77 is that supply of copies on an early occasion should take place but this does not mean that the supply should have been made before or at the time of the introduction only and at no other occasion. The word 're-supply' used in rule 77, would cover even a supply which is made after the introduction of a Bill.

Moreover, there is a distinction between a Government Bill and a private member's Bill. Whereas, a private member's Bill can be introduced only with the leave of the House, a Government Bill has not been subjected to any such limitations. Since in the case of private member's Bill, every member has a legal right to oppose the leave asked for, they have to be supplied copies before hand so that they may be able to know the contents of the Bill effectively to exercise their legal right. In the case of a Government Bill, however, there is neither any time limit fixed for the notice, nor is the leave of the House required for its introduction. As such, although the supply of copies well in time would be a useful and desired practice, strictly speaking, the non-supply of copies in advance or immediately on its introduction, cannot make the introduction *per se* invalid and it does not involve the breach of any legal right or privilege of the members or of the House.

The Secretary Assembly confirmed that the notice along with a copy of the Bill was received in the Assembly Secretariat prior to the introduction of the Bill. The copies could not be supplied at the time of the introduction of the Bill for the unfortunate incident of forcibly taking away several sets of 12 pages by some members of the Opposition and it took another hour to reprint those pages. The record of the Assembly Secretariat and the candid admission of the Leader of the Opposition in the House shows that at the time of the introduction of the Bill, he had received a copy of the Bill, although with five or six missing pages, *ipso facto* negates the contention raised in the Privilege Motion that no such Bill was in existence at the time of its introduction.

I am, therefore, of the view that the Punjab Local Government Bill 1996 introduced in the House on July 4, 1996 at 6.40 p.m. was introduced in

accordance with the rules and no breach of privilege is involved. However, I would like to observe that the practice of supplying copies of a Bill in advance or at the time of its introduction must be followed as far as possible because it facilitates the members in the performance of their functions as legislators.

The Privilege Motion is ruled out of order.”¹

(110)

BILL

LAPSE THEREOF: if, pending consideration of an amending bill, the principal Act is repealed, the amending bill *ipso facto* becomes redundant and cannot be proceeded with any further.

The text of the ruling given by Mr Muhammad Haneef Ramay, Speaker is given below —

“Syed Zafar Ali Shah, MPA raised a point of order that the Punjab Local Government (Amendment) Bill, 1995 (Bill No.2 of 1995) after having been introduced and referred to the Standing Committee on Local Government & Rural Development was still with that Committee. Since the subject Bill was property of the House, the proper procedure to dispose of that Bill was to move a motion for its withdrawal under rule 88 of the Rules of Procedure, which had not been done by the Government.

The Minister for Law, while replying to the point of order, stated that the Punjab Local Government (Amendment) Bill, 1995 (Bill No.2 of 1995), upon its introduction in the House was entrusted to the Standing Committee on Local Government & Rural Development. The said Bill sought to amend the Punjab Local Government Ordinance, 1979, which was repealed by the Punjab Local Government (Repeal) Act, 1996. The Bill pending with the Committee which sought to amend the repealed Ordinance 1979 *ipso facto* became ineffective and could not be processed any further.

I agree with the Law Minister that where the principal Act has ceased to exist, the amending Bill moved thereunder cannot survive. The provisions of rule 88 of the Rules of Procedure do not apply to the instant case. Bill No.2 of 1995, having become redundant, cannot be processed any further. The point is disposed of accordingly.”²

¹Punjab Assembly Debates, 8 July 1996, Vol-XXXVI, No.3, pp. 82-86.

²Punjab Assembly Debates, 8 July 1996, Vol-XXXVI, No.3, p. 87.

(111)**BILL**

MONEY — GOVERNOR'S SANCTION OR RECOMMENDATION: The objection that the Punjab Acquisition of Land (Housing) Bill 1973, being a 'money bill', could not be considered as it was not accompanied with the requisite previous sanction or recommendation of the Governor, was overruled on the ground that — (a) the bill was then being considered clause by clause and the stage for raising such an objection had passed; and (b) the Constitution provided that no Act of Provincial Legislature and no provision of any such Act would be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given by the Governor.¹

(112)**BILL**

NOTICES — AMENDMENTS: notices of alternative amendments seeking circulation for eliciting opinion and reference to a Select Committee, may be given by the same members; however, the member who moves or speaks in favour of the motion for eliciting public opinion cannot move or speak in respect of the second motion concerning reference to the Select Committee and *vice versa*.²

(113)**BILL**

ORDINANCE: a bill withdrawn in an earlier session does not preclude the promulgation of an ordinance on the same subject and its presentation in a subsequent session.³

(114)**BILL**

PREAMBLE: a bill is in order even if it does not contain any preamble or the same has not been adequately worded.

¹For details, see Decision No.275, pp. 302-4.

²For details, see Decision No.102, pp. 104-6.

³For details, see Decision No.257, pp. 281-82.

On 11 January 1952, Chaudhry Muhammad Shafiq, with reference to the Punjab Minor Canals (Amendment) Bill 1952, contended that as the provisions of the bill went beyond the scope of the preamble thereof, the same was out of order. Explaining his point, the hon'ble member pointed out that the preamble of the Bill stated that it was to amend the Punjab Minor Canals Act; however, as a matter of fact, the amending bill had the effect of divesting the powers of the civil courts to determine the amount of compensation, and the powers of the High Court and the Federal Government to hear appeals thereto under the Land Acquisition Act and vesting the same in the Collector, Commissioner and Financial Commissioner.

The Speaker, Dr Khalifa Shuja-ud-Din, ruled as under:-

“The point of order that has been raised is that the Bill sought to be introduced before the House is out of order for the reasons that the preamble to the Bill and the short title of the Bill are not properly worded and in fact it has been alleged that the contents of the Bill go beyond the contents of the statement of objects and reasons. It is a well established principle of law that a statement of objects and reasons is not a part of a bill. In fact the courts, right upto the Privy Council, have refused to look at the statements of objects and reasons if counsels have sought to rely on them in particular cases. A preamble of a bill also, according to the latest authorities, in fact, is not a necessity. There are cases on record where bills have been passed by the Parliament without any preamble at all. In fact the two illustrations which can be cited in this behalf are those of the Government of India Act 1935 and the Indian Independence Act 1947, which do not contain any preamble at all. Moreover, the passage from *Campion* which has been relied on by the honourable member goes against him. It has been stated in the *Campion* at page 200 —

‘a public Bill now generally dispenses with a preamble, unless it resembles in character to a Private Bill ...’

The references which have been referred to by the honourable member in support of his contention are wholly beside the point. All of them relate to bills which were sought to be introduced in the Parliament on the basis of certain resolutions which had been passed before them by the House, and it was held, if I may say so with all respect to law that those bills could not go beyond the scope of the resolutions on which they were based. I do not

consider it necessary to elaborate the argument and, therefore, hold that the objections are out of order.”¹

(115)**BILL**

PREAMBLE: a preamble, no doubt, illustrates the reasons and intended effects of the proposed legislation yet the scope and import of a particular bill can be determined on the basis of the whole bill.²

(116)**BILL**

PRIVATE MEMBERS — INTRODUCTION: whereas a private member’s bill may be introduced with the leave of the House on a motion, no such motion is required for a Government bill which may be introduced as a matter of right — the objection that the Punjab Finance Bill 1972 had not been correctly introduced, was ruled out.³

(117)**BILL**

PRIVATE MEMBERS — INTRODUCTION: the introduction of a Government bill on the subject on which a Private Member’s bill is pending consideration with the Assembly is not barred by rules; however, another Private Member’s bill on the same subject is so barred.⁴

¹Punjab Legislative Assembly Debates, 11 January 1952, Vol-II, No.11, p. 799.

²For details, see Decision No.101, pp. 97-103.

³For details, see Decision No.108, pp. 108-10.

⁴For details, see Decision No.106, pp. 107-8.

(118)**BILL**

PUBLIC OPINION: in a motion that a bill be circulated for eliciting public opinion, the date by which such opinion may be sought is required to be mentioned therein.¹

(119)**BILL**

PUBLIC OPINION — ALTERNATIVE MOTION: notices of alternative amendments, seeking circulation for eliciting opinion and reference to a Select Committee, may be given by the same members; however, the member who moves or speaks in favour of the motion for eliciting public opinion cannot move or speak in respect of the second motion concerning reference to the Select Committee and *vice versa*.²

(120)**BILL**

PUBLICATION: the contents may not be released to the press or otherwise published until the Speaker has admitted the bill.³

(121)**BILL**

REPORT: a Bill reported upon by a Standing Committee may be included in the List of Business even before the report relating thereto is laid in the House, if the report had been sent to the members before its presentation in the House. The Speaker, under the rules, may allow the release of a report, more so, to the members before the same is laid on the Table.⁴

(122)**BILL**

SELECT COMMITTEE — ALTERNATIVE MOTIONS: notices of alternative amendments, seeking circulation for eliciting opinion and reference to a Select Committee, may be given by the same members;

¹For details, see Decision No.123, pp. 118-20.

²For details, see Decision No.102, pp. 104-6.

³For details, see Decision No.352, pp. 395-96.

⁴For details, see Decision No.150, pp. 149-50.

however, the member who moves or speaks in favour of the motion for eliciting public opinion cannot move or speak in respect of the second motion concerning reference to the Select Committee and *vice versa*.¹

(123)

BILL

SELECT COMMITTEE — DATE (REPORT): in a motion that a bill be referred to a Select Committee, the date by which the report is to be presented is not required to be mentioned therein.

On 25 July 1972, Mr Tabish Alwari raised an objection that the motion made by Mr Shaukat Mahmood for reference of the Punjab Dowry and Marriage Gifts (Restrictions) Bill, 1972, to a Select Committee without mentioning any specific date for report thereon was out of order. Mr Rafiq Ahmed Sheikh, Speaker, over-ruling the objection, observed —

“... Reference was made to clause (a) of sub-rule (2) of Rule 78 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1972 and it was argued that the words ‘by a date to be specified in the motion’ apply to both the parts of said clause (a). Sub-rule (2)(a) runs as under:-

‘(a) if the member-in-charge moves that his Bill be taken into consideration, any member may move an amendment that the Bill be referred to a Select Committee or be circulated for the purpose of eliciting opinion thereon by a date to be specified in the motion;’

As a matter of fact, a thorough reading of clause (a) of sub-rule (2) in itself makes it clear that the words ‘by a date to be specified in the motion’ are not applicable to both the propositions mentioned in clause (a) of sub-rule (2). Clause (a) has got two parts — one relating to the reference of a Bill to a Select Committee and the other relating to the circulation of a Bill for eliciting opinion thereon. The two parts are different in nature from each other and are separated by the word ‘or’ occurring between the words ‘Select Committee’ and ‘be circulated’. When the word ‘or’ occurs between two propositions, the one proposition mentioned before the word ‘or’ excludes the proposition mentioned after the word ‘or’ and *vice versa*. Anyhow, if the two parts of sub-rule (2) (a) are separated, the same will read as under:

¹For details, see Decision No.102, pp. 104-6.

- ‘(1) If the member-in-charge moves that his bill be taken into consideration, any member may move an amendment that the bill be referred to a Select Committee.’
- ‘(2) if the member-in-charge moves that his Bill be taken into consideration, any member may move an amendment that the Bill be circulated for the purpose of eliciting opinion thereon by a date to be specified in the motion.’

As such the words ‘by a date to be specified in the motion’ can only be linked with the second part of sub-rule (2)(a) and not with the first part of sub-rule(2)(a). To make it more clear, if these words are added to the first part, it will read as under —

‘If the member-in-charge moves that the Bill be taken into consideration, any member may move an amendment that the Bill be referred to a Select Committee by a date to be specified in the motion.’

Such linking of these words with the first part will make whole of part meaningless and absurd in as much as it will then mean, if at all any meanings can be made out of it, that the Bill be referred to a Select Committee by such and such date *i.e.* that the Bill should remain pending till such and such date and then should go to a Select Committee. It will never mean that the Select Committee should report back by such and such date. Therefore, it is quite clear that the words ‘by a date to be specified in the mention’ cannot be linked with the first part of sub-rule (2)(a).

The non-linking of the words ‘by a date to be specified in the motion’ with the first part of sub-rule (2)(a) is purposeful. Under Rule 158 read with Rule 137 and 74 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1972, time for putting in a report by a Committee can be fixed by the Speaker and can be extended by the Assembly while there is no such provisions except in Rule 78(2)(a), for fixing time for the submission of public opinion on a Bill referred for eliciting opinion thereon. As such fixation of time through a motion is necessary for the Bill sought to be circulated for opinion thereon while there is no such necessary for fixing time for a report of the Select Committee.

Rule 158 clearly lays down that the rules pertaining to Standing Committees shall *mutatis mutandis* apply to all Committees. Rule 137 says that a report of a Committee shall be presented within the time fixed by the Speaker under Rule 74 or within thirty days from the date of making the reference. What it

means is that the Speaker can fix time or presentation of the report of the Select Committee under rule 74 and the Assembly can extend the time under Rule 137. Therefore, under Rule 74 read with Rule 158, I direct that the Select Committee appointed in respect of the Punjab Dowry and Marriage Gifts (Restrictions) Bill, 1972 shall present its report by 31st October, 1972.

In view of the facts and law discussed in the foregoing paragraphs, I decide that it is not necessary to mention in a motion under Rule 78(2)(a) that the Select Committee shall present its report by such and such date. The motion made by Mr. Shaukat Mahmood, was, therefore, in order.”¹

(124)

BILL

SELECT COMMITTEE — REPORT: it is competent for the second Select Committee, to adapt the report, with or without modifications, of the first Select Committee.

On 2 June 1966, Mr Munawar Khan raised a point of order *inter alia* asserting that according to Article 15 of the Constitution, all citizen were equal before law and were entitled to equal protection of law. In sub-clause (3) of clause 1 of the West Pakistan Land Revenue Bill 1965, it has been mentioned that it shall come into operation in such area or areas and on such date or dates as Government may, by notification, appoint in this behalf. The said sub-clause was violative of the fundamental rights and could not be enacted. After hearing the Member and the Minister for Revenue, the Speaker, Ch. Muhammad Anwar Bhinder, ruled out the point of order with the following observations —

“Khan Munawar Khan has raised a two-pronged point of order. Firstly, the Land Revenue Bill was formerly referred to a select committee and the report of that select committee was laid in the House. Since the said committee was not legally constituted, this bill was referred to a new select committee. However, the reports of both the committees are identical except in respect of one section. Secondly, the membership of both the committees was the same except that in the second select committee, certain government servants who were included in the first committee did not find place in the second committee. That being so, the report of the present select committee cannot

¹Punjab Assembly Debates, 26 July 1972, Vol-II, No.16, pp. 1911-13.

be discussed. On consideration, I am of the view that the second select committee could adopt the recommendations of the former select committee, with or without modifications, or could suggest amendments therein or could make any proposal. It was not necessary for it to have made altogether new recommendations.

The other objection is that since the bill violates the fundamental rights, it cannot be discussed. There is no doubt that while the bill is under consideration, members may raise the point that certain provisions of the bill are against the fundamental rights; speeches concerning fundamental rights may be made; emphasis may be given; and, members may be convinced not to pass the proposed law if it violates the fundamental rights. However, the consideration or passage of the bill cannot be obstructed or deferred solely on that ground. It is for the courts to decide whether or not a law infringes fundamental rights; and, if so, the courts may enforce the fundamental rights by declaring the law to be void to that extent. The House is not the proper forum for the purpose.”¹

(125)

BILL

TEMPORARY ACT: if given continuity by the Constitution, such an Act shall not be deemed to have expired at the completion of its life indicated in the Act itself.²

¹West Pakistan Assembly Debates, 2 June 1966, Vol-III, No.9, pp. 1782-84.

²For details, see Decision No.97, pp. 91-92.

BUDGET

(126)

BUDGET

ADJOURNMENT MOTION: may not be allowed to be moved during the budget session *inter alia* because members have adequate opportunity to discuss any matter including the matter they intend to raise through adjournment motions, during general discussion on the Budget.¹

(127)

BUDGET

ADJOURNMENT MOTION: may not be allowed during the budget session *inter alia* because members have adequate opportunity to discuss any matter including the matter they intend to raise through adjournment motions, during general discussion on the Budget; however, after the budget has been passed and the session continues, members are at liberty to move adjournment motions in respect of the matters arising subsequently.²

(128)

BUDGET

ADJOURNMENT MOTION: may not be allowed during the Budget Session, at least until the general discussion on the Budget is over.³

(129)

BUDGET

ADJOURNMENT MOTION: may not be moved during the budget session; however, if the session continues after the budget has been passed, adjournment motions in respect of matters arising thereafter may be allowed to be moved and discussed.⁴

(130)

BUDGET

ADJOURNMENT MOTION — EXCEPTIONS: as a general rule, adjournment motions may not be allowed to be moved during the budget

¹For details, see Decision No.20, p. 16.

²For details, see Decision No.32, pp. 22-24.

³For details, see Decision No.33, pp. 24-25.

⁴For details, see Decision No.36, pp. 29-31.

session; however, as an exception, the chair may admit adjournment motions — (a) during the discussion of the demands for grants because the discussion of the demands for grants has to be carried on subject to the rule of relevancy and a matter which is not related to the demand under consideration cannot be discussed during these days; and (b) if the matter is of such over-riding urgency that the very object of raising discussion on it would be defeated if it is postponed till the general discussion on the budget.¹

(131)

BUDGET

ANNUAL BUDGET STATEMENT: contents and requirements explained — the objection that railways budget 1963-64 presented to the Assembly did not meet the constitutional and legal requirements was over-ruled with the observation that the budget completely fulfilled the said requirements.

Repelling the objection that the Railway Budget did not fulfill the legal and constitutional requirements, Mr Mobinul Haq Siddiqui, Speaker ruled as under —

“Mr Abdul Baqi Baluch has raised a point of order challenging the legality of the Railways Budget presented to the Assembly for the year 1963-64. His contention is that the Budget being illegal, the Assembly cannot consider it. He has relied upon Article 5(a) of the President’s Order No.33 of 1962, Paragraphs 409, 308, 311 and 414 of the State Railways General Code, Volume-I, and the Demands for Grants for Expenditure on Railways presented to the Central Legislature during the years 1953-54, 1954-55 and 1955-56. I have heard the arguments advanced in support of the point of order and against it, and, particularly the exposition of the legal implications involved given by the learned Advocate General.

The Constitution in Article 40, read with Article 89, lays down that in respect of every financial year a statement (to be called the Annual Budget Statement) of the estimated receipts into and the estimated expenditure from the Provincial Consolidated Fund shall be laid before the Provincial Assembly. The Constitution requires that the expenditure on Revenue Account shall be distinguished from other expenditure and the sums required

¹For details, see Decision No.34, pp. 26-29.

to meet expenditure charged upon the Provincial Consolidated Fund and the sums required to meet other expenditure shall be shown separately distinguishing recurring expenditure from the expenditure that is not recurring expenditure and also showing the extent, if any, to which that other expenditure is new expenditure. The Annual Budget Statement is also to indicate, under various headings the sources from which the estimated receipts will be derived. That is all what the Constitution lays down in regard to the preparation of the Annual Budget Statement. If an Annual Budget Statement does not meet the requirements of Article 40 of the Constitution, which have been mentioned above, it would have to be held illegal. The point, therefore, which requires determination is whether the Railways Budget for the year 1963-64, which has been presented to the Assembly, fulfills the requirements of Article 40 of the Constitution or not. It has not been contended by anybody that the Railways Budget presented to the Assembly falls short of fulfilling any of the requirements laid down by Article 40 of the Constitution. A glance at the Railways Budget will show that the Railways Budget has been prepared strictly in accordance with the requirements of Article 40 of the Constitution.

We next come to the form in which the Railways Budget has been presented to the Assembly. Sub-rule (2) of Rule 90 of the Assembly Rules of Procedure lays down that, subject to the Constitution, the Budget shall be presented to the Assembly in such form as the Finance Minister may consider suitable. This means that if the Budget fulfills the requirements of Article 40 of the Constitution the form in which it has been presented to the Assembly cannot be questioned.

Mr Abdul Baqi Baluch and some other members who have supported him have relied upon Article 5(a) of the President's Order No.33 of 1962. Article 5(a) of the President's Order No.33 of 1962 lays down certain principles which the Railways Board is to observe in discharging its functions. One of these principles is that the Board shall make proper provision for meeting, out of its receipts on Revenue Account, all such expenditure as is prescribed by the existing rules. This Article can in no way be interpreted to mean that the Budget in respect of the Railways shall be prepared in a particular way and what details are to be shown therein. All that it requires to be done is that the Board must make provision for meeting such expenditure as is prescribed by the existing rules out of its receipts on Revenue Account and must not meet such expenditure out of its capital receipts. This Article, therefore, has no bearing on the point at issue.

In the second place Mr Baluch has relied upon Paragraph 409 of the State Railways General Code which lays down the sub-heads and the detailed heads into which a Demand is to be divided. It has been contended by the Railways Minister that the departmental rules contained in the State Railways General Code have become obsolete in so far as they relate to the preparation of the Budget and no longer apply since the partition of the sub-continent into Pakistan and India. The rules relating to the preparation of the Budget contained in the Code pertained to conditions prevailing in the undivided India when Railways Budget, under the Separation Convention of 1924, was presented to the Central Legislature as a separate Budget. When Pakistan came into being, the Separation Convention came into disuse and the receipts and expenditure in respect of Railways came to be a part of the Pakistan Government's Budget and the same forms were observed in respect of the Demands on account of Railways as of other Departments of Pakistan Government. With effect from the financial year beginning 1st July, 1961, the Railways Finances were again separated from the General Finances and the Separation Convention was revived. The first separate Railways Budget, prepared under the Separation Convention revived in 1961, was that for the year 1961-62. The form in which the Railways Budget was to be prepared and the demands made for expenditure in respect of Railways was determined by the Central Finance Minister in consultation with the Auditor-General of Pakistan. The same form is being observed since then. It is obvious that Paragraph 409 of the State Railways General Code, upon which reliance has been placed, is no longer in force and, therefore, it cannot be said that the Budget must be presented to the Assembly in a form where the break-up of each Demand into the sub-heads and detailed heads, mentioned in this paragraph, is shown. The precedents of 1953-54, 1954-55 and 1955-56 do not apply because in those years there was no separate Railways Budget and the Demands for expenditure in respect of Railways had to follow the pattern of the Budget of the Pakistan Government.

So far as the contention that it was necessary to refer the Railways Budget to the Standing Committee on Railways is concerned, sub-rule (4) of Rule 90 of the Assembly Rules of Procedure is a specific bar to such a course as it lays down that the Budget shall not be referred to a Standing Committee or to a Select Committee and no other motion shall be made with reference to it except as provided in the rules contained in this Chapter. No departmental rules can over-ride the provisions of the statutory rules which regulate the

procedure of the Assembly and, therefore, there could have been no question of reference of the Railways Budget to the Standing Committee on Railways. That being the position, I have no doubt in my mind that the Railways Budget for year 1963-64 presented to the Assembly completely fulfills the requirements of Article 40, read with Article 89, of the Constitution and it is, therefore, not illegal in any way.

As regards the form in which the Budget has been prepared, I have already said earlier that it is a matter entirely for the Finance Minister to determine and legal objection cannot be taken to it.

For these reasons, I rule out the point of order raised by Mr Abdul Baqi Baluch.

The Railways Minister, however, would be well advised to take into consideration the wishes of the Members of the Assembly as regards the exhibition of the details of expenditure under various Demands in respect of the Railways in the Budget for the future years.”¹

(132)

BUDGET

COMMITTEE: not to be referred to a Standing or a Select Committee.²

(133)

BUDGET

CONTENTS — ESTIMATES: the Budget does not reflect exact figures of income or expenditure: it consists of an ‘*estimated*’ and not the ‘*actual*’ expenditure. The ‘*estimates*’ are computed in the backdrop of anticipated propositions, possibilities and prospects. By inclusion of an item for expenditure during the next year does not mean that such an expenditure must necessarily be incurred — the point that the Budget, providing for two Deputy Speakers as against the Constitutional provision of one Deputy speaker, if passed, would be invalid was ruled out on the ground that the ‘*estimate*’ was based on the likelihood of the provision of two Deputy Speakers in the permanent Constitution which was in the offing.

¹West Pakistan Assembly Debates, 17 June 1963, Vol-IV, No.7, pp. 2-3.

²For details, see Decision No.131, pp. 126-29.

On 23 June 1972, Haji Muhammad Saifullah Khan raised a point that although under Article 112 of the Interim Constitution, a Provincial Assembly had only one Deputy Speaker, in the Annual Budget statement for the year 1972-73, a provision for budget has been made for two Deputy Speakers. He contended that the Budget in this respect, if passed, would be invalid. The Minister for Finance stated that the budgetary provision for two Deputy Speakers had been made in anticipation of the permanent Constitution which might provide for two Deputy Speakers. The Speaker, Mr Rafiq Ahmed Sheikh, gave the following ruling —

“Budget, as defined in rule 2(c) of the Rules of Procedure, is the ‘annual budget statement of the estimated receipts into, and the estimated expenditure from, the Provincial Consolidated Fund’. The word ‘estimated’ occurring before the word receipt, and expenditure, in the said rule is very significant. It means that the budget is not an exact figure of either receipts or expenditure. It includes just the estimated receipts and the estimated expenditure. By inclusion of an item for expenditure during the next year it does not mean that such an expenditure must necessarily be incurred. On the other hand, if an item, is not included in the budget, expenditure thereon cannot be incurred even if necessity for the same arises. That is why, in the budget estimates, every expenditure which can be expected to be incurred is included, so that if necessity for incurring the same arises, no difficulty is felt at the time of making the actual expenditure. If an expected expenditure is not incurred or the necessity for incurring the same does not arise, adjustment about the same is made in the supplementary budget through statements of excesses and surrenders furnished by the department concerned. Moreover, the Constitution of 1962 provided for two Deputy Speakers for every Provincial Assembly. The present Constitution of the Islamic Republic of Pakistan is just interim, and permanent Constitution is yet to be framed. It is correct that in the Interim Constitution there is provision for only one Deputy Speaker. But, as explained by the Finance Minister, in the permanent Constitution the provision may not be the same. If the permanent Constitution provides for one Deputy Speaker the department concerned will of course surrender the amount allocated to it for the second post of Deputy Speaker and this surrendered item will be included in the supplementary budget. I need hardly add that by inclusion of expenditure for any post in the budget, such a post does not stand created if it has no sanction of the Constitution. Therefore, the Budget statement contains only a provision of funds for a post which may be

provided for in the permanent Constitution. As such, there is no substance in the point of order and it fails.”¹

(134)

BUDGET

CUT MOTION: the notice must indicate the particulars of the policy which are proposed to be discussed.

Sustaining the objection that the notice of a cut motion must indicate the particulars of the policy to be discussed, Mr Rafiq Ahmed Sheikh, Speaker ruled as under —

“A point has been raised by Member from Bahawalnagar (Mian Manzoor Ahmed Mohal) that the cut motion No.1 on Demand No.14 is not in order and that it should be ruled out. The motion is a ‘Disapproval of Policy Cut’. According to the Member raising the objection the motion does not indicate the particulars of the policy which are proposed to be discussed whereas Rule 116 requires the mover to indicate in precise terms the particulars of the policy which he proposes to discuss and the discussion is to be confined to the specific point or points mentioned in the notice, though it shall be open to members to advocate an alternative policy. It is quite evident that in the cut motion the imperative requirement of indicating in precise terms the particulars of policy proposed to be discussed is absent. There will be no method to require the mover to confine himself in his speech to any specific points and the apprehension that the discussion will be reduced to a general debate cannot be ignored.

I, therefore, uphold the objection.”²

¹Punjab Assembly Debates, 24 June 1972, Vol-II, No.8, pp. 564-65.

²Punjab Assembly Debates, 16 June 1976, Vol-XVIII, No.11, p. 780.

(135)**BUDGET**

CUT MOTION — TOKEN CUT: The notice must specify the particular grievance to be discussed — the cut motion for ‘token cut’ was held to be inadmissible as it did not contain the particular grievance to be discussed.

On 10 June 1985, Makhdoomzada Syed Hassan Mahmud, MPA moved a Cut Motion under rule 116(c) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973 to discuss bribery and corruption in the Revenue Department. The Minister for Law objected to the same on the ground that the Member had moved a Token Cut but he had not specified any particular grievance sought to be discussed. Since the Member proposed to give a general point of view, it would have been more appropriate if he had moved a Cut Motion under Rule 116(a) for disapproval of the policy of the Government. In that case, while discussing the general policy, he could also discuss bribery and corruption in the Department. The mover, however, emphasised that in the past he had moved a similar Cut Motion and the same was allowed by the then Speaker. A number of Members of the House took part in the debate and spoke for and against the moving of the Motion.

The Speaker, Mian Manzoor Ahmed Wattoo, ruled as under —

“There are three methods prescribed in Rule 116 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973, for moving Cut Motions. A Member can move a Cut Motion under rule 116 in the following manner —

- (a) that the amount of the demand be reduced to Re.1.00 representing disapproval of the policy underlying the demand. Such a motion shall be known as a Disapproval of Policy Cut. A Member giving notice of such a motion shall indicate in precise terms the particulars of the policy which he proposes to discuss. The discussion shall be confined to the specific point or points mentioned in the notice and it shall be open to members to advocate an alternative policy;
- (b) that the amount of the demand be reduced by a specified amount representing the economy that can be effected. Such specified amount may be either a lump sum reduction in the demand or omission or reduction of an item in the demand. The Motion shall be known as Economy Cut. The notice shall indicate briefly and precisely that

particular matter on which discussion is sought to be raised and speeches shall be confined to the discussion as to how economy can be effected;

- (c) that the amount of the demand be reduced by Rs.100.00 in order to ventilate a specific grievance which is within the sphere of the responsibility of the Government. Such a motion shall be known as a Token Cut and the discussion thereon shall be confined to the particular grievance specified in the Motion.

The Mover intends to discuss bribery and corruption prevalent in the Revenue Department. Since the Cut Motion has been moved under Rule 116(c), the same is inadmissible as it does not raise any particular grievance to be discussed. I do not allow the Cut Motion to be moved and the objection raised by the Minister for Law is sustained.”¹

(136)

BUDGET

DEMANDS: the items included in a grant can only be discussed with reference to the cut motion about that grant; however, a general discussion is not permissible.

On 7 March 1952, Ch Muhammad Afzal Cheema pointed out that the Chair had yesterday announced that the discussion on ‘General Administration’ had to be confined only to the items that were given under that head and a member while discussing ‘General Administration’ could not discuss all the various branches of administration other than those specifically mentioned in the Demand. Raising a point of order, the hon’ble member insisted that the said decision of the Speaker was against parliamentary practice as well as contrary to the several rulings on the subject.

The Speaker, Dr Khalifa Shauja-ud-Din, gave the following ruling:-

“I cannot allow any discussion on any ruling given by me. Since there is some misunderstanding about my ruling, I will make it further clear. In a discussion on the Demand and on the Cut proposed on the Demand, the

¹Punjab Assembly Debates, 10 June 1985, Vol-III, No.13, pp. 1379-92.

hon'ble members can discuss the questions of policy so far as they relate to the demand made. Other, general discussion will not be permitted".¹

(137)

BUDGET

DISCUSSION—SUPPLEMENTARY: scope of discussion explained.²

(138)

BUDGET

DISCUSSION — TIME LIMIT: the Speaker, in his discretion, may fix the same day for general discussion on the budget and voting on demands.³

On 11 June 1966, the Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling on the point of order raised by Malik Mohammad Akhtar that the Supplementary Budget (Railways) could not be validly discussed and passed by the Assembly on the same day as the procedure laid down in rule 93, which also regulated the Supplementary Budget had not been properly followed —

“Malik Akhtar has raised a point of order that the supplementary estimates which we are going to discuss today cannot be discussed on the ground that Rule 93 lays down six stages for passing the General Budget and a similar procedure applies to the passing of the supplementary Budget and, therefore, all the six stages should have been fixed before we could take up discussion or pass the Supplementary Budget.

I have gone through Rule 93 and in the said Rule the first stage is *(i)* discussion relevant to the Budget as a whole; stage *(ii)* is discussion on expenditure charged upon the Provincial Consolidated Fund. Obviously the question of stage *(ii)* does not arise, in case of a Supplementary Budget. Stage *(iii)* is the discussion on demands for grants in respect of expenditure other than the new expenditure and the voting of motions for reduction of demands for grants relating to such expenditure. This stage does not arise. Next is stage *(iv)* — the voting on demands for grants in respect of new

¹Punjab Legislative Assembly Debates, 7 March 1952, Vol-III, p. 436.

²For details, see Decision No.141, pp. 136-37.

³In view of rule 138 of the Rules of Procedure of the Provincial Assembly of the Punjab 1997, the decision no longer holds good because the Speaker is required to allocate separate days for the general discussion of the budget and for voting on demands for grants.

expenditure. That is of course a stage through which we have to pass today. Stages (v) & (vi) do not arise. Therefore, what has been done in this case is that stages (i) and (iv) have been combined and we are having these two stages today. So far as Rule 94 is concerned it lays down:

‘The Speaker shall allot days separately for each of the stages of the Budget referred to in Rule 93 in accordance with the requirements of the Constitution.’

But this Rule 94 is, in my opinion, subject to Rule 99 wherein it has been provided that:-

‘The Procedure for dealing with supplementary estimates of expenditure and excess demands shall as far as possible be the same as prescribed for the Budget ...’

Here in Rule 99, the authority has been given to the Speaker that he should fix stages ‘as far as possible’ for the discussion of the Budget.

The words ‘as far as possible’ clearly give the authority to the Speaker to fix the different stages of the Budget and in this case I think we could very well discuss the Supplementary Budget and we could also have voting on Supplementary Demands in one day. As the Railway Budget was to be presented on the 9th of June, and the General Budget was to be presented on the 13th of June, both the dates were fixed by the Governor, there was no alternative but to fix these two stages on this particular day, and exercising my powers under rule 99 I have fixed both the stages today. I, therefore, think that there was no other alternative for me to fix these both stages on this particular day.

In view of this clarification and in view of these clear provisions of the Rules of Procedure, I don’t think there is any material irregularity and, therefore, I rule out the point of order raised by Malik Muhammad Akhtar.”¹

(139)

BUDGET

PRIVILEGES: the leakage of the budget proposals before their presentation in the Assembly does not *per se* entail a breach of privilege; however, the Assembly has may inquire into the circumstances in which the leakage occurred.²

¹West Pakistan Assembly Debates, 11 June 1966, Vol-III, No.16, pp. 3211-13.

²For details, see Decision No.304, pp. 334-35.

(140)**BUDGET**

SESSION: means the period during which the budget is presented: it is not confined to the period during which the budget is actually under discussion.¹

(141)**BUDGET**

SUPPLEMENTARY BUDGET — scope of discussion explained.

On 21 March 1953, Dr Khalifa Shuja-ud-Din, Speaker, made the following observations about the scope of discussion on Supplementary Budget —

“I consider it necessary to say a few words in order to remind honourable members as to the restricted scope of discussion at this stage. According to Section 79 of the Government of India Act (as adapted for Pakistan) only so much of the estimates of expenditure as relate to expenditure charged upon the revenues of a province shall not be submitted to the vote of the Legislative Assembly, but estimates other than estimates relating to expenditure referred to in paragraph (a) of sub-section (3) of the last preceding section, that is, the salary and allowances of the Governor and other expenditure relating to his office for which provision is made by or under the Third Schedule to this Act, can be brought under discussion. Such estimates as relate to other expenditure shall be submitted to the vote of the Assembly. Any demands for supplementary grants or any particular item thereto other than the expenditure that I have just referred to can, no doubt, be discussed. Main estimates cannot be brought under discussion. As Campion says, in the case of supplementary estimates and excess demands the debate must be confined to the object of the demand under consideration. At page 121 he says —

‘Debate on the supplementary estimates is more strictly financial in character than on the main estimates owing to the narrow limits within which it is confined by the rule of relevancy, and often descends to the minutest detail.’

May also expresses the same point in the following words —

¹For details, see Decision No.36, pp. 29-31.

‘Debate on supplementary and excess grants is restricted to the particulars contained in the estimates on which those grants are sought, and to the application of the items which compose those grants; and the debate cannot touch the policy or the expenditure sanctioned, on other heads, by the estimates on which the original grant was obtained, except so far as such policy or expenditure is brought before the committee by the items contained in the supplementary or excess estimates.’

In the House of Commons, debate on a supplementary estimate is not allowed on a question of policy or even on the main estimate to which it is subsidiary. As I had occasion to point out last year, the same practice has been followed by this Assembly. I would, therefore, request honourable members to keep all this in view when discussing supplementary estimates.”¹

(142)

BUDGET

SUPPLEMENTARY BUDGET STATEMENT is required to be laid in the House in the same manner as is applicable to the Annual Budget Statement.

On 4 June 1973, during the Budget speech of the Finance Minister, Haji Muhammad Saifullah Khan, raised a point of order that the presentation of ‘Supplementary Budget Statement’ was void and illegal as the Constitution envisaged the presentation of only ‘Supplementary and Excess Statement of Expenditure’, whereas budget included statements of both incurred income and expenditure. The Speaker reserved his ruling and allowed the Finance Minister to continue with his Budget speech. On 6 June 1973, Mr Rafiq Ahmed Sheikh, Speaker, decided the point of order as under —

“Haji Muhammad Saifullah Khan raised a point of order on 4th June 1973 that the Constitution did not provide for presentation before the Assembly of a ‘Supplementary Budget Statement’ and, therefore, no lawful Supplementary Budget had been presented to the Assembly by the Minister for Finance. The objection would not have arisen if the honourable Member had also gone through the constitutional provisions contained in Article 125 to 127. The last portion of clause (1) of Article 128 provides that the

¹Punjab Legislative Assembly Debates, 21 March 1953, Vol-VI, p. 347.

provisions of the preceding Articles shall have effect in relation to the Supplementary Budget as they have effect in relation to the Annual Budget Statement. Clause (1) of Article 125 provides that a statement of the estimated receipts and expenditure shall be known as the Annual Budget Statement. A similar Supplementary Statement has to be laid before the House under clause (1) of Article 128 and when the latter Article is read with Article 125, it becomes clear that the 'Supplementary Statement' referred to in Article 128 can only be referred to as the 'Supplementary Budget Statement'. Rule 116 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1972 lends further support to my view. I may add that contents of the statement and not its nomenclature are significant and important. Therefore, the Supplementary Budget for a year has to be presented in the form of a Supplementary Budget Statement and in no other form. The Supplementary Budget for 1972-73 has rightly and lawfully been presented through such a statement. The point of order is over-ruled."¹

(143)

BUDGET

SUPPLEMENTARY BUDGET STATEMENT: expenditure not mentioned in the Annual Schedule of Authorised Expenditure for a financial year may be legally incurred in anticipation of the approval of the Assembly through supplementary grants. Authorisation of the Assembly may be obtained at the appropriate time through Supplementary Budget Statement. The expenditure is deemed to have been duly authorised if the same is mentioned in the Supplementary Schedule of Authorised Expenditure laid before the Assembly.

On 8 June 1973, when the House was about to proceed with the general discussion on the Supplementary Budget for the year 1972-73, Haji Muhammad Saifullah raised a point of order that the so-called Supplementary Budget statement could not be discussed in the House, *firstly*, because the Finance Minister had not mentioned in his speech that the requisite recommendation of the Governor had been obtained; *secondly*, no expenditure could be incurred under Article 127(3) unless it had been authenticated by the Governor; and, *thirdly*, such additional expenditure could be incurred only under Article 128(2).

¹Punjab Assembly Debates, 6 June 1973, Vol-IV, No.3, pp. 240-41.

The Speaker, Mr Rafiq Ahmed Sheikh, observed that in respect of the first objection, he would like to inform the House that the schedule had been signed by the Governor. He pended his decision in respect of the other two objections and decided to proceed with general discussion on the Supplementary Budget. On 11 June 1973, the Speaker gave his ruling as under —

“Haji Muhammad Saifullah Khan, Member from Rahimyar Khan raised an objection on 8.6.1973 that the Supplementary Budget Statement for 1972-73, which is before the House, is not a Supplementary Budget Statement within the meaning of Article 123 read with Article 127(3) of the Interim Constitution of the Islamic Republic of Pakistan. His objection is that the expenditure incurred before the passage of the Supplementary Budget particularly in respect of the items which were not included in the authenticated schedule of expenditure for 1972-73 could not be included in the Supplementary Budget Statement for 1972-73 as the said Supplementary Budget Statement for 1972-73 should contain the expenditure which had yet to be incurred. In this connection he has put forward the argument that under clause (3) of Article 127, no expenditure can be incurred unless it is specified in the authenticated Schedule. The construction placed by him on clause (3) of Article 127 is not tenable. Clause (3) of the said Article says that no expenditure from the Provincial Consolidated Fund shall be ‘deemed to be duly authorised’ unless it is specified in the Schedule so authenticated. The clause does not say that no expenditure ‘shall be incurred’ unless it is specified in the Schedule so authenticated. If it was meant that expenditure shall be incurred only if it was specified in an authenticated Schedule, the word ‘shall be incurred’ should have existed in clause (3) of Article 127 in place of the words ‘deemed to be duly authorised’. The existing words ‘deemed to be duly authorised’, in clause (3) of Article 127, mean that an expenditure can competently be incurred if it is included in Schedule of Expenditure, may be of Annual Budget or of the Supplementary Budget. In other words, an expenditure incurred in respect of an item which is not included either in the authenticated Schedule, based on the Annual Budget Statement or in the authenticated Schedule, based on the Supplementary Budget Statement is not lawful or authorized expenditure. But, if an expenditure, whether incurred before or after the passage of the Annual Budget or the Supplementary Budget is included in the Authenticated Schedule of Expenditure at any time it is a lawful and authorized expenditure. Therefore, Government may not stick to the authenticated

Schedule based on an Annual Budget Statement in respect of incurring expenditure which becomes necessary after the passage of the Annual Budget. It may incur expenditure in anticipation of passage of the Supplementary Budget but the expenditure so incurred will become authorized and lawful after the Supplementary Budget has been passed or when a Schedule in respect thereof is authenticated by the Governor. In Article 128 it has nowhere been provided that prior approval of the Assembly is required of every or any expenditure that becomes necessary after the passage of the Annual Budget. Necessities for incurring additional and unforeseen expenditure arise from time to time and Government has to incur expenditure on such necessary items as and when so required. It does not mean that every time such a necessity arises, a Supplementary Budget should be put forward for approval by the Assembly. Article 128 envisages that a Consolidated Supplementary Budget Statement in respect of demands for additional expenditure should be brought before the House in respect of the expenditure which has been incurred as also in respect of the expenditure which has yet to be incurred including the expenditure on items which are not already included in the Schedule authenticated on the basis of the Annual Budget Statement. Therefore, the Supplementary Budget Statement, which is now before the House, is lawful and there is no hindrance in considering and passing the Supplementary Budget. The objection is over-ruled.”¹

¹Punjab Assembly Debates, 11 June 1973, Vol-IV, No.6, pp. 485-87.

CHIEF MINISTER

(144)

CHIEF MINISTER

DISQUALIFICATION — REFERENCE: the question of disqualification of the member of the Assembly and former Chief Minister Punjab was referred to the Chief Election Commissioner as *prima facie* such a question had arisen in the backdrop that through the abuse official authority, LDA and Government had been subjected to substantial pecuniary loss.¹

(145)

CHIEF MINISTER

DISQUALIFICATION — REFERENCE: the question of disqualification of the member of the Assembly and former Chief Minister Punjab was referred to the Chief Election Commissioner as *prima facie* such a question had arisen on the ground that the member as Chief Minister had caused the public exchequer heavy financial loss in the surreptitious deal of the purchase of an aircraft.²

¹For details, see Decision No.381, pp. 446-47.

²For details, see Decision No.383, pp. 447-49.

COMMITTEES

(146)

COMMITTEES

ELECTION: Members of the Standing Committees or such other Bodies may be elected even though the Assembly is not in session, or it is not in quorum, or it has been adjourned *inter alia* because for such elections it is not necessary that the Assembly is in session — the election held for two members of the P.W.R. Local Advisory Committee, in the Conference Room, at a time when the House had been adjourned for want of quorum was held to be in order.

The Speaker, Mr Rafiq Ahmed Sheikh, disposed of the objection raised in respect of the election of the P.W.R. Local Advisory Committee, in terms of the following —

“Haji Muhammad Saifullah Khan, Member from Rahimyar Khan, has raised a point of order on 6th February, 1973 that election of the two Members on the P.W.R. Local Advisory Committee Lahore is void.

A motion that ‘the Provincial Assembly of the Punjab do elect two of its Members through simple majority vote to represent the House on the P.W.R. Advisory Committee, Lahore against seats reserved for the Members of the Provincial Assembly’, was adopted by the House on 23.1.1973

I fixed 5th February for the election to the above Committee. The polling hours were to be between 9.00 a.m. to 1.00 p.m. The nominations were received by 12 noon on 1.2.1973 and scrutiny was held thereafter at 12.30 p.m. The last date for the withdrawal was 2.2.1973, and as no withdrawal was effected and the number of candidates being twelve *i.e.*, more than two, the polling was to take place in accordance with the schedule given earlier.

The Members were informed that the ballot box had been placed in the Cabinet Room and that Ch Nasrullah Khan, Assistant Secretary who was in the Cabinet Room, was to serve as the Polling Officer. The Members were further informed that each Member, after obtaining ballot paper from the Polling Officer, could cast his vote.

As Mr Ahmad Bakhsh and Ch Muhammad Azam obtained the highest number of votes, their names were circulated among the Members as having been elected to the aforesaid Local Advisory Committee. Haji Muhammad Saifullah Khan has raised the point of order above mentioned. His contention

is that on 5th of February, the Assembly was adjourned at 10-40 a.m. due to lack of quorum and that according to Rule 25, all business fixed for any day and not disposed of before the termination of the sitting, stands over until the next day available for such class of business. He concludes that the election also stood over for the next day for lack of quorum.

Election to the said Advisory Committee is not a business contemplated in Rule 25. Election under Rule 120 to the various Standing Committees has never been treated as business within the meaning of Rule 25. Election to the Standing Committees as well as P.W.R. Local Advisory Committee may even be held when the Assembly is not in session. The adjournment of the House at 10-40 a.m. on 5th of February did not affect the polling which remained in progress till 1.00 p.m.

I hold that the election to the P.W.R. Local Advisory Committee, Lahore was in order and rule out the objection raised by the Member.”¹

(147)

COMMITTEES

MEMBERS — PRIVILEGES: Government has the right to constitute Administrative Committees comprising such members as may be nominated by it. The members do not have any vested right to be included in such Committees — it was observed that the inclusion of members from treasury benches and non-inclusion of members from opposition in Anti-corruption Committees constituted by the Government did not involve any breach of privilege.²

(148)

COMMITTEES

PRIVILEGES — MEMBERS: must relate to a privilege granted by the Constitution, law or rules — it was observed that the nomination of a non-elected person in preference to an elected member as Chairman District Allotment Committee under the Punjab Jinnah Abadies Act 1986 did not give rise to any breach of privilege.³

¹Punjab Assembly Debates, 20 February 1973, Vol-III, No.19, pp. 2617-18.

²For details, see Decision No.306, pp. 336-37.

³For details, see Decision No.291, pp. 322-23.

(149)**COMMITTEES**

REPORT: not confidential from the members and may be sent to them before its presentation in the House. The Speaker, under the rules, may allow the release of a report, more so, to the members before the same is laid on the Table.¹

(150)**COMMITTEES**

REPORT — PRESENTATION THEREOF — the item need not be included in the List of Business.

The Speaker, Mr Rafiq Ahmed Sheikh, on an objection raised by Haji Muhammad Saifullah Khan that advance distribution of the report of Standing Committee was against the rules, gave the following ruling —

“Certain objections relating to the presentation of reports of Standing Committees, the distribution of the reports before presentation and inclusion of reports upon Bills in the Agenda before presentation of the reports were raised by Haji Muhammad Saifullah Khan, MPA yesterday, the 21st May 1974. I have given my careful consideration to these points.

Under Rule 138(1) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973, a report of a Committee is to be presented within the time fixed under Rule 77 or within thirty days from the date on which a Bill was referred to the Committee. This means that time of presentation of a report by a Committee is fixed by Rules 77 and 138(1), and as such, it is the duty of the Committee itself to present a report within the prescribed time. For this purpose, no notice intimating that a report of a Committee will be presented on such and such date is essential and for that matter, the item of presentation of a report is not to be included in the List of Business. This also is in accordance with the practice and precedent of this House.

Reports of the various Standing Committees are supplied to the Members under Rule 139(2) read with Rule 78(2) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973. The reports are under no rule confidential from the Members and may be sent to the Members before

¹For details, see Decision No.150 (the Decision that follows p. 149).

presentation. Even otherwise under Rule 134(2), I can allow release of a report more so to Members before the same is laid on the Table. On a file of my Secretariat, I allowed on 23.11.1973 that copies of reports should be supplied to Members before the same are laid on the Table.

Under the circumstances stated and for the reasons given above, I am quite clear in my mind that Bills reported upon by the various Standing Committees can be included in the List of Business before the reports relating thereto are presented before the Assembly. The objections, therefore, are not tenable and are over-ruled accordingly.”¹

(151)

COMMITTEE (SELECT)

BILL: in a motion that a bill be referred to a Select Committee, the date by which the report is to be presented is not required to be mentioned therein.²

(152)

COMMITTEE (SELECT)

BILL: it is competent for the second select committee, to adapt the report, with or without modifications, of the first select committee.³

(153)

COMMITTEE (SELECT)

NOTICES — ALTERNATIVE AMENDMENTS, seeking circulation for eliciting opinion and reference to a Select Committee, may be given by the same members; however, the member who moves or speaks in favour of the motion for eliciting public opinion cannot move or speak in respect of the second motion concerning reference to the Select Committee and *vice versa*.⁴

¹Punjab Assembly Debates, 22 May 1974, Vol-XI, No.2, pp. 158-59.

²For details, *see* Decision No.123, pp. 118-20.

³For details, *see* Decision No.124, pp. 120-21.

⁴For details, *see* Decision No.102, pp. 104-6.

CONSTITUTION

(154)

CONSTITUTION

DISCRIMINATION: allowing more time to a Parliamentary Secretary enabling him to discharge some additional responsibilities cannot be treated an act of discrimination.¹

(155)

CONSTITUTION

PRIVILEGES: the non-implementation of any mandatory provision of the Constitution may give rise to a question of privilege; however, the privilege motion regarding failure of Government in adopting Urdu as official language within fifteen years as envisaged by Article 251 of Constitution was ruled out because the said period had not by that time exhausted.²

(156)

CONSTITUTION

RULES OF PROCEDURE merely regulate the procedure of the Assembly and, being subject to the Constitution, they cannot, in any manner, be interpreted to over-ride or modify the provisions of the Constitution.³

(157)

CONSTITUTION

SPEAKER: the validity of an appointment such as that of a Parliamentary Secretary cannot be determined by the Speaker.⁴

(158)

CONSTITUTION

SUPREME LAW: the Constitution is the supreme law, and all other laws are subordinate and subservient to it.⁵

¹For details, *see* Decision No.317, pp. 348-52.

²For details, *see* Decision No.309, pp. 339-40.

³For details, *see* Decision No.256, pp. 277-80.

⁴For details, *see* Decision No.317, pp. 348-52.

⁵For details, *see* Decision No.215, pp. 244-48.

COURTS

(159)

COURTS

MEMBERS — IMMUNITY: although Members are exempt from appearance before Election Tribunal or any other Civil or Revenue Court during a Session of the Assembly and for a period of fourteen days before and fourteen days after the session of the Assembly, they are not so immune from appearance in a court on criminal charges.¹

(160)

COURTS

PRIVILEGES: the violation of fundamental rights of ordinary citizens is justiciable in the courts and, as such, it does not entail a breach of privilege.²

(161)

COURTS

PRIVILEGES — *SUB JUDICE* MATTER: such a matter may not be raised through a privilege motion.³

¹For details, *see* Decision No.213, pp. 242-43.

²For details, *see* Decision No.310, pp. 340-41.

³For details, *see ibid.*

CUT MOTIONS

(162)

CUT MOTIONS

NOTICE: must indicate the particulars of the policy which are proposed to be discussed.¹

(163)

CUT MOTIONS

BUDGET: the items included in a grant can only be discussed with reference to the cut motion about that grant; however, a general discussion is not permissible.²

¹For details, *see* Decision No.134, p. 131.

²For details, *see* Decision No.136, pp. 133-34.

DEBATE

(164)

DEBATE

LIMITATION — PROVINCIAL SUBJECTS: must be relevant to the matter before the Assembly and must confine to the provincial subjects — it was observed that the discussion of martial law in the Provincial Assembly was not relevant notwithstanding that the Chief Secretary had been performing certain duties under directions of the martial law authorities.

On 19 March 1953, Ch Muhammad Shafiq raised a point of order that as the Chief Secretary was an employee of the Civil Department of the Punjab and his salary was noted in the Punjab Budget, his action as the Naib Nazim of Martial Law could be discussed in the House. The Speaker, Dr Khalifa Shuja-ud-Din, gave the following ruling —

“The point of order raised by Ch Muhammad Shafiq is over-ruled on the ground that the imposition of Martial Law is an act of the Central Government. As I explained yesterday the imposition of Martial Law means the suspension of the ordinary law and the Martial Law Administrator thereunder becomes the supreme authority in the part of the country in which the Martial Law is imposed. Therefore, he is competent to avail himself of the services of any official of the Punjab Government or even of any private citizen, whether that official is a C.S.P. or a P.C.S. man or that private citizen is a retired person or taking active part in life and as such he is bound under the Martial Law to render every such assistance to the Martial Law Administrator as he needs. From that point of view, the question of any official of the Punjab Government being used by the Martial Law Administrator for the purpose of his administration does not make that question relevant, and for that reason any reference to the Martial Law, would, as I said yesterday, be irrelevant and out of order.”¹

(165)

DEBATE

LIMITATION — PROVINCIAL SUBJECTS: must be confined to the provincial subjects — the imposition of martial law, being central subject, was not allowed to be discussed in the Provincial Assembly

¹Punjab Legislative Assembly Debates, 19 March 1953, Vol-VI, p.190.

notwithstanding that it was imposed to restore law and order which was a provincial subject.

On 20 March 1953, the Speaker, Dr Khalifa Shuja-ud-Din, gave the following detailed ruling on the subject:-

“I have received notice of two motions of privilege. First is from Chaudhri Muhammad Afzal Cheema, who gives notice of the following motion on a question of privilege, namely —

‘Seeking reconsideration of Your Honour’s ruling forbidding discussion of Martial Law in view of the clarification made by the Pakistan Premier in his speech as reported in columns Nos.3 and 4 on page 8 of the Pakistan Times issue dated the 20th March, 1953, wherein the responsibility of the imposition of Martial Law in Lahore has been thrown on the Provincial Government in most unequivocal terms.’

I will read out the passage which has been referred to by the honourable member because I do not agree with the interpretation put on it by him. The relevant passage of the Prime Minister’s speech made in the Constituent Assembly is as follows:-

‘The Prime Minister said that Government took action only when the challenge had been definitely thrown. In this connection he explained the exact responsibility of the Central Government so far as law and order is concerned, he said —

“I would like to clear the misconception regarding the Central Government’s responsibility in the field of law and order. Under our Constitution, law and order is the sole and exclusive responsibility of Provincial Governments. The Central Government is ultimately responsible for this subject only in respect of Centrally administered areas. The civil authorities in the provinces can requisition military assistance in aid of civil power to quell disturbances. The military called out in disturbances are usually under the directions of civil authorities though they must exercise their own judgement as to the force to be used. But where the situation has passed beyond the control of the civil authorities, the military are then in charge and are entitled to give directions and impose restrictions on civilians in order to deal with the situation. The test is always whether interference with civic life is necessary in order to discharge the duty of restoring order. When the civil authorities are unable to control a situation, the military authorities take over in order to restore order and to repel force by force. They fill in the void created by the inability of

the civil authorities to meet the situation. If the military did not do so, the result would be destruction of life and property and chaos resulting ultimately in the disintegration of the State itself. In brief, Martial Law is a state of affairs in which the military takes control of the situation. It is recognized, not created, by a proclamation.”

Mr Gibbon has also given notice of the following motion on a question of privilege, namely:-

‘Arising out of my Privilege Motion of 19th March 1953, and the rulings given by the Hon’ble Speaker, I reproduce below a statement made by the Hon’ble Prime Minister of Pakistan, in the Dominion Parliament, on March 19, 1953, and move that in the light of this statement the Martial Law in the City of Lahore Corporation is for the sole purpose of restoring law and order and does not uproot, supersede or supplant the civil Law and, therefore, the Members of this House are privileged to discuss the causes which led to the recognition of Martial Law in Lahore:-

‘I would like to clear the mis-conception regarding the Central Government’s responsibility in the field of law and order. Under our Constitution, law and order is the sole and exclusive responsibility of Provincial Governments. The Central Government is, ultimately responsible for this subject only in respect of Centrally administered areas. The civil authorities in the provinces can requisition military assistance in aid of civil power to quell disturbances. The military called out in disturbances are usually under the directions of the civil authorities though they must exercise their own judgment as to the force to be used. But where the situation has passed beyond the control of the civil authorities, the military are then in charge and are entitled to give directions and impose restrictions on civilians in order to deal with the situation. The test is always whether interference with civic life is necessary in order to discharge the duty of restoring order. When the civil authorities are unable to control a situation, the military authorities take over in order to restore order and to repel force by force. They fill in the void created by the inability of the civil authorities to meet the situation. If the military did not do so, the result would be destruction of life and property and chaos resulting ultimately in the disintegration of the State itself. In brief, martial law is a state of affairs in which the military takes control of the situation. It is recognised, not created, by a proclamation.’

Martial Law as defined in the Encyclopedia Britannica (14th edition) is a much misunderstood term, the use of which has given rise to a great deal of speculation. The Encyclopedia has the following on the subject:-

“The truth of the matter is that the term Martial Law is really an anachronism and legally means nothing at all. Martial Law is simply, as Fitzjames Stephen put it, “the assumption by the officers of the Crown of absolute power exercised by military force for the suppression of an insurrection and the restoration of order and lawful authority.” It should never be resorted to for punishment except in so far as immediate punishment is necessary for suppression of the disturbance. The moment the disturbance is over, the prisoners should be handed over to the civil power. The very fact that it means the assumption of “absolute power” renders it subject to the control of the courts *ab initio*.”

As suggested I take both these motions together. So far as the reference by the Honourable Prime Minister of Pakistan to law and order is concerned, there is no necessity for me to say anything about it, because, while giving my ruling prohibiting the discussion of the imposition or administration of the Martial Law, I made it quite clear that ordinary law and order could be discussed and in fact it has been discussed during the last 2 days. The question as to whether the Martial Law was imposed by the Central Government is really immaterial. I said it was imposed by the Central Government, on a very high authority. But the fact remains that $\frac{3}{4}$ and even according to the statement made by the Honourable Prime Minister of Pakistan the Martial Law is the rule of the Army and as the Honourable Prime Minister was careful to point out, the Army takes over the entire administration of the place where the Martial Law is imposed.

Army, as is well known to honourable members, is a Central subject and therefore, no action of the Army or any officer of the Army can be brought under discussion in this House.

..... So far as the question put by the honourable member is concerned I need not say anything. All that I am concerned with is the discussion that takes place in this House and which is permissible under the rules and procedure of this House. It is not for me to say anything regarding the ruling given by the Honourable the President of the Constituent Assembly, and, therefore, I cannot bring it under discussion. What I am quite clear about is that even according to the information given by the Honourable the Prime Minister of

Pakistan the imposition of Martial Law is an act of the Army and the Army, as I said before, being a Central subject, any of its acts cannot be brought under discussion in the provincial Legislature. I, therefore, rule both these motions out of order.”¹

(166)

DEBATE

LIMITATION — PROVINCIAL SUBJECTS: must be relevant to the matter before the Assembly and must confine to the provincial subjects — the act of the Speaker preventing the member from commenting on the imposition of martial law did not breach the privilege of freedom of speech in the House *inter alia* because martial law was a central subject and its discussion in the Provincial Assembly could not be allowed under the rules.²

(167)

DEBATE

BUDGET — SUPPLEMENTARY: scope of discussion explained.³

¹Punjab Legislative Assembly Debates, 20 March 1953. Vol-VI, pp. 270-71.

²For details, see Decision No.337, pp. 374-76.

³For details, see Decision No.141, pp. 136-37.

DEMANDS

(168)

DEMANDS

BUDGET: the items included in a grant can only be discussed with reference to the cut motion about that grant; however, a general discussion is not permissible.¹

¹For details, *see* Decision No.136, pp. 133-34.

DEPUTY SPEAKER

(169)

DEPUTY SPEAKER

REMOVAL: the Deputy Speaker cannot preside a sitting in which the resolution for his removal is under consideration: the same principle applies to the Speaker.¹

¹For details, *see* Decision No.418, pp. 494-96.

DETENTION

(170)

DETENTION

MEMBERS: the import of the term '*detention*' explained with reference to the case-law.¹

¹For details, *see* Decision No.327, pp. 362-65.

DISQUALIFICATION

(171)

DISQUALIFICATION

MEMBERS — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the reference on the basis of the alleged defection within the meaning of the Political Parties Act 1962 was withheld *inter alia* because the Constitution (1973) did not envisage any such disqualification in respect of the first Provincial Assembly.¹

(172)

DISQUALIFICATION

MEMBERS — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — it was observed that no question of disqualification of the three members had arisen on their joining a political party which was not registered with Election Commission at the time of elections but was registered subsequently.²

(173)

DISQUALIFICATION

MEMBERS — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Reference against certain members who had allegedly criticised the conduct of the Judges of the Lahore High Court was filed as *prima facie* no question of disqualification had arisen.³

(174)

DISQUALIFICATION

MEMBERS — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed a Reference against

¹For details, see Decision No.376, pp. 421-24.

²For details, see Decision No.377, pp. 424-32.

³For details, see Decision No.379, pp. 440-41.

himself on the ground that his assuming office of Acting Governor *prima facie* did not entail any disqualification from being member of the Assembly.¹

(175)

DISQUALIFICATION

MEMBERS — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed the Reference against the Chief Minister alleging that he stood disqualified from being the member of the Assembly on the score that he had been acting in a manner prejudicial to public morality as *prima facie* the facts mentioned in the Reference did not have even the remotest nexus with the grounds touching disqualification of the members.²

(176)

DISQUALIFICATION

MEMBERS — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the reference against minority member was filed *inter alia* because no such question had arisen.³

(177)

DISQUALIFICATION

MEMBERS — REFERENCE: a question of disqualification of the member of the Assembly may not be referred to the Chief election Commissioner if *prima facie* such a question has not arisen — the reference against the former Chief Minister Punjab on the ground that he had spent public money on the renovation of his private house was filed.⁴

(178)

¹For details, see Decision No.378, pp. 432-40.

²For details, see Decision No.380, pp. 441-46.

³For details, see Decision No.384, pp. 449-50.

⁴For details, see Decision No.382, p. 447.

DISQUALIFICATION

MEMBERS — REFERENCE: the question of disqualification of the member of the Assembly and former Chief Minister Punjab was referred to the Chief Election Commissioner as *prima facie* such a question had arisen in the backdrop that on account of the abuse of official authority, the Lahore Development Authority and the Government had been subjected to substantial pecuniary loss.¹

(179)**DISQUALIFICATION**

MEMBERS — REFERENCE: the question of disqualification of the member of the Assembly and former Chief Minister Punjab was referred to the Chief Election Commissioner as *prima facie* such a question had arisen on the ground that the member as Chief Minister had caused the public exchequer heavy financial loss in the surreptitious deal of the purchase of an aircraft.²

(180)**DISQUALIFICATION**

VOTING: a minister or a member has a right to sit in the House and to vote unless he is finally disqualified by the competent authority.³

¹For details, see Decision No.381, pp. 446-47.

²For details, see Decision No.383, pp. 447-49.

³For details, see Decision No.229, pp. 251-55.

DOCUMENTS

(181)

DOCUMENTS

LAYING: no formal permission or consent is required for laying documents in the Assembly — the contention that the notifications amending the Motor Vehicle Rules which were required to be laid fourteen days before the prorogation of the session be not allowed to be laid on a day shorter of the said fourteen days, was over-ruled.

On 27 January 1965, a Minister, under section 133(3) of the Motor Vehicles Act, 1939, moved to lay on the Table three notifications of 29th & 30th July and 17th August 1964, amending the Motor Vehicles Rules 1940. Khawaja Muhammad Safdar drew the attention of the Speaker to the said section providing that “all rules made under this Act by the Central Government or by any Provincial Government shall be laid not less than fourteen days before the Central or the Provincial Legislatures, as the case may be, as soon as possible after they are made and shall be subject to such modification as the legislature may make during the session in which they are so laid.” He requested the Speaker not to allow the notifications to be laid as the time left in the prorogation of the Assembly was less than fourteen days, and the members shall have almost no opportunity to effect any modifications therein. The Minister, however, contended that as it was difficult to predict as to when the Governor would prorogue the session, the point of order could not be entertained.

The Speaker, Ch Muhammad Anwar Bhinder, disposed of the point of order in terms of the following —

“Yesterday Malik Qadir Bakhsh, Minister for Food and Agriculture, moved to lay some documents on the Table, whereupon, Khawaja Muhammad Safdar, Leader of the Opposition, raised a point of order that as under sub-section (3) of section 133 of the Motor Vehicles Act 1939, these documents should have been laid in the House fourteen days prior to the prorogation of the session of the Assembly, the Minister may not be permitted to lay the same. In this connection, I have studied the Rules of Procedure and section 133(3) of the Motor Vehicles Act, 1939. So far as laying of the documents in the House is concerned, no formal permission is required. The violation of sub-section (3) of section 133 of Act *ibid*, if any, may constitute a cause of

action to approach a court of law; however, the laying of the Notifications in the House is in order. The point of order is over ruled.”¹

¹West Pakistan Assembly Debates, 28 January 1965, Vol-VII, No.17, pp. 60-61.

ELECTION

(182)

ELECTION

COMMITTEES: Members of the Standing Committees or such other Bodies may be elected even though the Assembly is not in session, or it is not in quorum, or it has been adjourned *inter alia* because for such elections it is not necessary that the Assembly is in session — the election held for two members of the P.W.R. Local Advisory Committee, in the Conference Room, at a time when the House had been adjourned for want of quorum was held to be in order.¹

¹For details, see Decision No.146, pp. 147-48.

FUNDAMENTAL RIGHTS

(183)

FUNDAMENTAL RIGHTS

BILL — VIOLATION THEREOF: Members may raise the point that certain provisions of the bill are against the fundamental rights; speeches concerning fundamental rights may be made; emphasis may be given; and, members may be convinced not to pass the proposed law if it violates the fundamental rights; however, the consideration or passage of the bill cannot be obstructed or deferred solely on that ground. A law may be challenged on the ground of the infringement of the fundamental rights only in a court of law and not in the Assembly.¹

(184)

FUNDAMENTAL RIGHTS

PRIVILEGES: the violation of fundamental rights of ordinary citizens is justiciable in the courts and, as such, it does not entail any breach of privilege.²

¹For details, *see* Decision No.124, pp. 120-21.

²For details, *see* Decision No.310, pp. 340-41.

GALLERIES

(185)

GALLERIES

ASSEMBLY — VISITORS: Speaker has the power to ban admission of members of public into galleries of the House in any particular session. Such an order does not constitute the indignity of the House or breach of privilege.¹

¹For details, *see* Decision No.338, pp. 376-77.

GENERAL DISCUSSION

(186)

GENERAL DISCUSSION

ADJOURNMENT MOTION: a motion for general discussion may be moved by the Government notwithstanding that certain adjournment motions on the same subject are pending consideration.¹

¹For details, *see* Decision No.38, pp. 33-34.

GOVERNMENT

(187)

GOVERNMENT

DEPARTMENTS — MEMBERS: Government Departments should not criticise the speeches made by members in the House.¹

(188)

GOVERNOR

ORDINANCE: Governor may promulgate an ordinance under Article 128 of the Constitution '*except when the Provincial Assembly is in session*'; the Assembly is in session from the first day of its sitting till it is prorogued or dissolved; the mere signing of the order summoning the Assembly prospectively does not denude the Governor of his powers under the said Article.²

(189)

GOVERNOR

ORDINANCE: the Governor is empowered to issue an ordinance under Article 128 of the Constitution, except when the Assembly is in session; however, the promulgation of ordinances may be resorted to sparingly in situations requiring immediate action when the Assembly is not expected to meet at an early date or cannot be summoned at short notice.³

(190)

GOVERNOR

MONEY BILL — SANCTION OR RECOMMENDATION: the objection that the Punjab Acquisition of Land (Housing) Bill 1973, being a 'money bill', could not be considered as it was not accompanied with the requisite previous sanction or recommendation of the Governor, was overruled on the ground that — (a) the bill was then being considered

¹For details, see Decision No.228, p. 251.

²For details, see Decision No.263, pp. 288-89.

³For details, see Decision No.259, pp. 283-84.

clause by clause and the stage for raising such an objection had passed; and (b) the Constitution provides that no Act of Provincial Legislature and no provision of any such Act shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given by the Governor.¹

(191)

GOVERNOR

RULES: the Rules of Procedure made by the Governor in 1973 shall remain in force and applicable to the successor Assemblies until the Assembly makes its own rules.²

(192)

GOVERNOR (ACTING)

SPEAKER — REFERENCE: the Speaker is not disqualified on his assuming office of Acting Governor during the absence of the Governor.³

¹For details, see Decision No.275, pp. 302-4.

²For details, see Decision No.341, pp. 381-82. The Provincial Assembly of the Punjab, in its meeting held on 25 June 1997, adopted the Rules of Procedure of the Provincial Assembly of the Punjab 1997, made by the Governor vide Notification No.PAP-Legis-1(94)/96/11, dated 29 January 1997, and these rules are now deemed to have been made by the Provincial Assembly of the Punjab in terms of clause (1) of Article 67 read with Article 127 of the Constitution of the Islamic Republic of Pakistan. The 1997 rules had earlier repealed the 1973 rules.

³For details, see Decision No.378, pp. 432-40.

IMMUNITY

(193)

IMMUNITY

MEMBERS — COURTS: although Members are exempt from appearance before Election Tribunal or any other Civil or Revenue Court during a session of the Assembly and for a period of fourteen days before and fourteen days after the session of the Assembly, they are not so immune from appearance in a court on criminal charges.¹

¹For details, see Decision No.213, pp. 242-43.

INTRODUCTIO N

(194)

INTRODUCTION

BILL: whereas a private member's bill may be introduced with the leave of the House on a motion, no such motion is required for a Government bill which may be introduced as a matter of right — the objection that the Punjab Finance Bill 1972 had not been correctly introduced, was ruled out.¹

¹For details, *see* Decision No.108, pp. 108-10.

LAW AND ORDER

(195)

LAW AND ORDER

DISCUSSION: the general discussion on law and order, being a provincial subject, is no doubt permissible in the Provincial Assembly; however, a federal subject cannot be so discussed — the martial law, *albeit* imposed to restore law and order in the Province, was not allowed to be discussed *inter alia* because ‘Army’ was the federal subject.¹

¹For details, *see* Decision No.165, pp. 165-69.

LAYING IN ASSEMBLY

(196)

LAYING IN ASSEMBLY

DOCUMENTS: no formal permission or consent is required for laying of documents in the Assembly — the contention that the notifications amending the Motor Vehicle Rules which were required to be laid fourteen days before the prorogation of the session be not allowed to be laid on a day shorter of the said fourteen days, was over-ruled.¹

¹For details, *see* Decision No.181, pp. 191-92.

LAPSE

(197)

LAPSE

BILL: if, pending consideration of an amending bill, the principal Act is repealed, the amending bill *ipso facto* becomes redundant and cannot be proceeded with any further.¹

¹For details, *see* Decision No.110, pp. 113-14.

MARTIAL LAW

(198)

MARTIAL LAW

IMPLICATIONS: powers and prerogatives indicated.¹

(199)

MARTIAL LAW

**IMPLICATIONS — IN AID OF CIVIL ADMINISTRATION: meanings,
powers and prerogatives illustrated.²**

¹For details, *see* Decision No.164, p. 165.

²For details, *see* Decision No.165, pp. 165-69.

MEMBERS

(200)

MEMBERS

ARREST — PRIVILEGES: members are not immune from arrest on a criminal charge.¹

(201)

MEMBERS

COMMITTEES — PRIVILEGES: must relate to a privilege granted by the Constitution, law or rules — it was observed that the nomination of a non-elected person in preference to an elected member as Chairman District Allotment Committee under the Punjab Jinnah Abadies Act 1986 did not give rise to any breach of privilege.²

(202)

MEMBERS

DETENTION: the import of the term '*detention*' explained with reference to the case-law.³

(203)

MEMBERS

DISQUALIFICATION — REFERENCE: a question of disqualification of the member of the Assembly may not be referred to the Chief Election Commissioner if *prima facie* such a question has not arisen — the reference against the former Chief Minister Punjab on the ground that he had spent public money on the renovation of his private house was filed.⁴

(204)

MEMBERS

DISQUALIFICATION — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the reference on

¹For details, see Decision No.311, p. 342.

²For details, see Decision No.291, pp. 322-23.

³For details, see Decision No.327, pp. 362-65.

⁴For details, see Decision No.382, p. 447.

the basis of the alleged defection within the meaning of the Political Parties Act 1962 was withheld *inter alia* because the Constitution (1973) did not envisage any such disqualification in respect of the first Provincial Assembly.¹

(205)

MEMBERS

DISQUALIFICATION — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — it was observed that no question of disqualification of the three members had arisen on their joining a political party which was not registered with Election Commission at the time of elections but was registered subsequently.²

(206)

MEMBERS

DISQUALIFICATION — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Reference against certain members who had allegedly criticised the conduct of the Judges of the Lahore High Court was filed as *prima facie* no question of disqualification had arisen.³

(207)

MEMBERS

DISQUALIFICATION — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed a Reference against himself on the ground that his assuming office of Acting Governor *prima facie* did not entail any disqualification from being the member of the Assembly.⁴

(208)

¹For details, see Decision No.376, pp. 421-24.

²For details, see Decision No.377, pp. 424-32.

³For details, see Decision No.379, pp. 440-41.

⁴For details, see Decision No.378, pp. 432-40.

MEMBERS

DISQUALIFICATION — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed the Reference against the Chief Minister alleging that he stood disqualified from being the member of the Assembly on the score that he had been acting in a manner prejudicial to public morality as *prima facie* the facts mentioned in the Reference did not have even the remotest nexus with the grounds touching disqualification of the members.¹

(209)**MEMBERS**

DISQUALIFICATION — REFERENCE: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the reference against minority member was filed *inter alia* because no such question had arisen.²

(210)**MEMBERS**

DISQUALIFICATION — REFERENCE: the question of disqualification of the member of the Assembly and former Chief Minister Punjab was referred to the Chief Election Commissioner as *prima facie* such a question had arisen in the backdrop that on account of the abuse of official authority, the Lahore Development Authority and the Government had been subjected to substantial pecuniary loss.³

(211)**MEMBERS**

DISQUALIFICATION — REFERENCE: the question of disqualification of the member of the Assembly and former Chief Minister Punjab was referred to the Chief Election Commissioner as *prima facie* such a question had arisen on the ground that the member as Chief Minister

¹For details, see Decision No.380, pp. 441-46.

²For details, see Decision No.384, pp. 449-50.

³For details, see Decision No.381, pp. 446-47.

had caused the public exchequer heavy financial loss in the surreptitious deal of the purchase of an aircraft.¹

(212)

MEMBERS

DUTY — QUORUM: all the members of the Assembly are equally responsible for representing their respective constituencies and maintaining the quorum. If, however, the members break the quorum, it would be deemed to be an act of the Assembly and such an act does not give rise to any breach of privilege.²

(213)

MEMBERS

IMMUNITY: although Members are exempt from appearance before Election Tribunal or any other Civil or Revenue Court during a Session of the Assembly and for a period of fourteen days before and fourteen days after the session of the Assembly, yet they are not so immune from appearance in a court on criminal charges.

On 2 June 1985, Mian Muhammad Ishaque sought clarification, on a point of order, as to whether the Members of the Assembly, if required by any Court to appear before it, were to attend that Court even if the Assembly was in Session. Mian Manzoor Ahmed Wattoo, Speaker ruled as under —

“A question has arisen whether a member can be required to appear in person in any Civil or Revenue Court, or before any Commission or Election Tribunal during a Session of the Assembly and for a period of 14 days before and 14 days after the Session of the Assembly. In the existing Provincial Assembly of the Punjab Privileges Act, 1972, it has been provided in section 4 that no member shall be detained under any Provincial Law relating to preventive detention or be required to appear in any Commission or Election Tribunal during a Session of the Assembly and for a period of 14 days before and 14 days after the Session of the Assembly and no member of a Committee shall be so detained or required to appear before such Committee, Commission or Tribunal during a sitting

¹For details, see Decision No.383, pp. 447-49.

²For details, see Decision No.330, pp. 368-39.

of the Committee and for a period of three days before and three days after the meeting of the Committee.

In view of the above referred provision of law, the members are exempt from appearance before Election Tribunal or any other Civil or Revenue Court during a Session of the Assembly and for a period of 14 days before and 14 days after the Session of the Assembly, but not from a Criminal Court.”¹

(214)

MEMBERS

NAME (PERSONAL): there is no rule against using personal name of a member during debates; still, the same may be avoided as far as possible.

On 23 May 1956, Mir Ali Mardan, Member raised a point of order that Pir Elahi Bakhsh Nawaz Ali Shah, in his speech, had referred to the Chief Minister by name which was unparliamentary. In support of his contention, he quoted May’s Parliamentary Practice from page 438 which reads: ‘In order to guard against all appearances of personality in debates, it was formerly the rule in both Houses that no member should refer to another by name.’

The Speaker, Ch Fazal Elahi, enunciated the point as under:-

“The point of order raised is that the member who is making the speech should not refer to members of this House by name. That is not a rule which is strictly adhered to in practice. But I would request honourable members that while making speeches they should avoid the use of personal names. I think when an honourable member is referring to some administrative action taken by a Minister and he takes his name, there should be no objection. I have allowed the use of personal names when making speeches during the debate. I think there is no harm in it.”²

(215)

MEMBERS

¹Punjab Assembly Debates, 5 June 1985, Vol-III, No.9, pp. 856-57.

²West Pakistan Legislative Assembly Debates, 23 May 1956, p. 194.

OATH — CONSTITUTION: after the revival of the Constitution with effect from 10 March 1985, members are required to take oath under the Constitution.

Rana Phool Muhammad Khan, MPA raised a point of order on 14 March 1985 seeking clarification whether the oath of Members was to be made under Article 7 of the Houses of Parliament and Provincial Assemblies (Election) Order, 1977 or the same was to be made under Article 65 of the Constitution read with rule 5 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973; and also whether the Election of Speaker and Deputy Speaker was to be held under P.O.No.5 of 1977 or under Article 53 of the Constitution read with rules 8 & 9 of the said Rules.

The President¹ ruled that as the Constitution had been revived with effect from 10 March 1985, the oath had been legally and validly made by the Members under Article 65 read with Rule 5 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973. Rana Phool Muhammad Khan, having not been satisfied with the ruling, raised the point time and again during subsequent sittings of the Assembly. As such the Speaker Mian Manzoor Ahmed Wattoo gave his detailed ruling on 29 May 1985, as under:-

“A question has been raised, once again, as to whether the oath of members was to be made under Article 7 of the Houses of Parliament and Provincial Assemblies (Elections) Order, 1977 or was to be made under Article 65 of the Constitution read with rule 5 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973; and similarly whether the election of Speaker and Deputy Speaker was to be held under Presidential Order No.5 of 1977 or under Article 53 of the Constitution read with rules 8 and 9 of the said Rules. Although the objections have already been ruled out, I propose to deal with these matters in somewhat detail.

The revival of the Constitution of 1973 Order, 1985 (P.O.14 of 1985) was promulgated on the 2nd of March, 1985. Its Article 4 provided that the provisions of the Constitution shall stand revived on such date as the President may by notification in the Official Gazette appoint. It also provided that different days may be so appointed in respect of different provisions. The President issued the notification on 10.3.1985 reviving whole of the Constitution except Articles 6,8 to 28, 101(2)(A), 199, 213 to

¹On 14 March 1985, Ch Faiz Ahmed, the senior-most Member was nominated by the Governor to preside at the first meeting of the Assembly after the General Elections of 1985.

216 and 270-A. This means that whole of the Constitution except the said Articles stood revived on and from 10.3.1985. There can be no denying the fact that the Constitution is the super statute. No doubt during the Martial Law the various Martial Law Orders could over-ride all or some provisions of the Constitution but when the revival was made through a Presidential Order carrying the force of Martial Law, the Constitution stood revived with its own strength and power. All other laws became subordinate and subservient to the Constitution. Similarly, P.O. No.5 of 1977 became subordinate to the Constitution and the Constitution had over-riding effect over it. This would clearly mean that on the revival of the Constitution, the provisions of the Constitution and of the Rules of Procedure framed thereunder had to apply in preference to the provisions contained in P.O.5 of 1977. Therefore, oath by the members had to be made under Article 65 read with rule 5 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973.

Let me examine this matter from another aspect. Article 7 of P.O.5 provides that the oath shall be made by the Members before a person appointed by the Election Commission and shall be made in the form set out in the Third Schedule. The form given in the said schedule prescribes an oath under the Proclamation of the fifth day of July, 1977 (CMLA's Order No.1 of 1977) which means that under Article 7, the oath had to be taken under the Martial Law. After the election of the National Assembly and the Provincial Assemblies, taking of oath under the Martial Law would have been a funny affair.

This situation was realized well in time but at the last moment, and the Constitution was revived on 10th of March, 1985 through a Notification issued on the said date by the President. Similarly, the oath under Article 7 was required to be made before a person other than a Member of the House or before a person who was a stranger to the House. The sanctity of a House is well recognized for a long time in this sub-continent and for centuries in other countries where Parliamentary system of Government prevails. I may point it out here that in the House of Commons a convention prevailed till 1972 that the meeting for the election of the Speaker was presided over by no one and it was the Clerk of the Parliament (Secretary of the Assembly) who controlled the proceedings and virtually presided thereon. However, no stranger was allowed to come and to preside including a Monarch. In 1973 the position was changed and it was provided that a Member with the longest standing in the House of

Commons will preside over the proceedings of the House of Commons till the election of the Speaker. I may point out here that it was also provided and it is the practice of the House of Commons that the Speaker, on being elected, himself and alone takes the oath before the House and nobody administers the oath to him. This is provided at pages 265-268 of May's Parliamentary Practice (19th Edition). This will make it clear that the sanctity of a House requires that no stranger to the House should come and preside over a meeting thereof. It was for this purpose that Article 53 of the Constitution read with Rule 5 of the Rules of Procedure provided that a Member nominated by the Governor will preside over the meeting convened for the purpose of making of oath by the members and for election of Speaker.

The revival of the Constitution for similar reasons meant that the Speaker and the Deputy Speaker had also to be elected under the Constitution and not under the P.O. No.5 of 1977 and similarly the meeting relating to their election was to be presided over by the Presiding Officer, a Member of the Assembly, nominated by the Governor.

The mode of making of the oath by Members, Speaker and Deputy Speaker has also been provided in Article 53 and Article 65 of the Constitution and in Rules 5 and 9 of the Rules of Procedure. The oath is to be made by them before the House and is not to be made by them before a specified person. The distinction of making the oath before the House and before the specified person is significant. For this purpose, I will refer to the oath of Prime Minister which is to be made before a specified person i.e. the President under Article 90(3) of the Constitution. Similarly, the oath of the Federal Minister is to be made before the President, of the Governor before the Chief Justice, of the Chief Minister before the Governor, of the Provincial Ministers before the Governor, of the Chief Justice of Supreme Court before the President, of the Judges of the Supreme Court before the Chief Justice of that Court, of the Chief Justice of a Provincial High Court before the Governor, of the Judges of a High Court before the Chief Justice of that Court, of the Chief Justice and Judges of the Federal Shariat Court before the President or a person nominated by him and of the Auditor General before the Chief Justice of Pakistan. This would mean that when an oath is to be made before a specified person, even that person has to be specified in the Constitution itself. Similarly, if the oath by the Members, the Speaker and the Deputy Speaker was to be made before a specified person, the said person should

have been specified in the Constitution itself. However, Article 53 and Article 65 thereof do not specify any such person. On the other hand the said Articles of the Constitution provide that the oath has to be made before the House and not before any specified person. A House is constituted as soon as the Members elected in General Elections are gathered in a meeting in the House and even before they have themselves made the oath. It may be added that Article 65 debars the Members only from voting till they have made the oath and not from participating in ancillary proceedings relating to the making of the oath. In this respect reference may be made to Article 255 of the Constitution which provides that where under the Constitution a person is required to make an oath before he enters upon his office, he shall be deemed to have entered upon the office on the day on which he makes the oath. For the offices mentioned above it is provided in the Constitution itself that they shall be required to make the oath before entering upon their offices. The only exception relates to the members because, in Article 65 it is no-where provided that a member shall make the oath before he enters his office as Member. Therefore, a Member enters into his office before he makes the oath but he is debarred from voting till he has made the oath. As such the members elected through a General Election constitute the House when the oath was made by them before the House.

It was also objected that the oath should have been made after the election of women Members. The position is otherwise according to the Constitution. The Members constitute an electoral college for election of women Members. According to Article 65 of the Constitution they cannot vote till they have made the oath. Therefore, when they are exercising their right of vote for the election of women Members, it was essential for them to make the oath required to be made under Article 65.

A point was also raised that the election of the Speaker and the Deputy Speaker should have been held at the first-meeting held on the 12th of March, 1985. This objection has no substance. Under Article 3 of the P.O.No.14 of 1985 the meeting for 12th of March, 1985 was fixed constitutionally only for the election of the Members to fill seats reserved for women and of the Members of the Senate. Under Rule 8 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973 it is provided that at the first meeting of the Assembly after the General Elections and after the persons elected have made the oath, the Assembly shall elect the Speaker (and the Deputy Speaker). This first meeting relates to a meeting

which is held after the Members elected have made the oath. This would mean that the first meeting for purposes of rule 8 and for purposes of Article 53 of the Constitution is a meeting which is held after the Members have taken the oath. For that purpose the first meeting also means a meeting which takes place after the women Members have also taken the oath. The oath ceremonies were completed from 12th to 14th of March, 1985. The first meeting thereafter took place on the 9th of April, 1985 and the Assembly on that day proceeded to elect Speaker and a Deputy Speaker and their election results were announced on 10.4.1985 and they also made the oath on the same day. It may also be mentioned that Article 20 to 23 of P.O. 5 stood omitted w.e.f. 19.3.1985, and at the time of the election of the Speaker and the Deputy Speaker, no provision of the order held the field. Therefore, their election was legal and valid.

The objections relating to the time and mode of making the oath, the time and mode of election and of making the oath of Members, Speaker and the Deputy Speaker are ruled out and it is held that the oaths were made and the elections were held legally and validly.”¹

(216)

MEMBERS

OATH — HOUSE: the Constitution provides that the oath has to be made before the House and not before any specified person.²

(217)

MEMBERS

OATH — VOTING: the Members are debarred from voting till they have made the oath.³

(218)

MEMBERS

POLITICAL COUNSELLOR—PRIVILEGES: must relate to a privilege granted by the Constitution, law or rules and the matter must require

¹Punjab Assembly Debates, 29 May 1985, Vol-III, No.3, pp. 86-89.

²For details, see Decision No.215, pp. 244-48.

³For details, see *ibid.*

the intervention of the Assembly — it was observed that the appointment of a non-elected person as Political Counsellor by the Chief Minister, being an administrative matter, did not involve any breach of privilege.¹

(219)

MEMBERS

PRIVILEGES — ABSENCE: may be kept pending in the absence of the mover if his request is received either in writing or on telephone or through any member.²

(220)

MEMBERS

PRIVILEGES — ADMINISTRATIVE COMMITTEES: Government has the right to constitute Administrative Committees comprising such members as may be nominated by it; and the members do not have any vested right to be included in such Committees — it was observed that the inclusion of members from treasury benches and non-inclusion of members from opposition in Anti-corruption Committees constituted by the Government did not involve a breach of privilege.³

(221)

MEMBERS

PRIVILEGES — ARREST OR CONVICTION: no breach of privilege is involved if intimation of the arrest or conviction of a member is furnished to the Assembly within reasonable time.⁴

(222)

MEMBERS

PRIVILEGES — CONDUCT: insulting or derogatory remarks against a member or a Committee even by a member of the House *prima facie* involve a breach of privilege — the privilege motion against the remarks of a member that the second Select Committee had not applied its

¹For details, see Decision No.295, pp. 323-25.

²For details, see Decision No.288, p. 319.

³For details, see Decision No.306, pp. 336-37.

⁴For details, see Decision No.312, pp. 342-43.

independent mind but had thumb-impressed the report of the first Select Committee was held in order and referred to the relevant Committee.¹

(223)

MEMBERS

PRIVILEGES — JAIL: no breach of privilege is involved in a case of the denial of the facilities admissible to a member under the Jail Manual *inter alia* because the remedy lies with the courts.²

(224)

MEMBERS

PRIVILEGES — SPEECHES: sarcastic or taunting remarks by anyone, including a member or an officer of the House, in respect of the speeches of the members, may not be countenanced.³

(225)

MEMBERS

QUORUM: it is the duty of the members to attend the session on time; still, under the rules, the Assembly Secretariat is not required to release a list of absentees to the press.⁴

(226)

MEMBERS

QUORUM — PRIVILEGES: all the members of the Assembly are equally responsible for representing their respective constituencies and maintaining the quorum. If, however, the members break the quorum, it would be deemed to be an act of the Assembly and such an act does not give rise to any breach of privilege.⁵

(227)

MEMBERS

¹For details, see Decision No.313, pp. 343-44.

²For details, see Decision No.314, pp. 344-46.

³For details, see Decision No.315, pp. 346-48.

⁴For details, see Decision No.375, p. 417.

⁵For details, see Decision No.330, pp. 368-69

SPEAKER: REFLECTIONS on his conduct tantamount to the breach of privilege of the House.¹

(228)

MEMBERS

SPEECHES: Government Departments should not criticise the speeches made by members in the House.

With reference to the notice of a privilege motion regarding the criticism of the speeches of Members, the Speaker, Sheikh Faiz Muhammad, informed the House that as the motion handed over to him was unsigned, he did not put it to the House. However, emphasising that the speeches made by the hon'ble members in the House were privileged, he ruled that no Government officer should offer scathing criticism of such speeches.²

(229)

MEMBERS

VOTING — DISQUALIFICATION: a minister or a member has a right to sit in the House and to vote unless he is finally disqualified by the competent authority

On 12 July, 1963, Mr Muhammad Ishaq Khan Kundi, Acting Speaker, gave the following ruling relating to the voting by the ministers who had, under the decision of the Courts, ceased to be the members of the Assembly:-

“Mr Iftikhar Ahmad Khan, Member from Jhang, raised a question by way of point of order that as the Ministers of the Provincial Government, sitting in this House, have incurred the penalty prescribed under clause (3) of Article 104 of the Constitution, they should be made to pay the same after due assessment of their liability. This point of order was based on the situation arising out of the judgement of Dacca High Court, dated 5th April, 1963 on a writ petition filed against Ministers of Central Government, whereby the Presidential Order No.34 of 1962 was held void and ineffective. That order had sought to amend Article 104 of the Constitution by permitting the Ministers to retain their seats in the

¹For details, see Decision No.398, pp. 485-87.

²West Punjab Legislative Assembly Debates, 22 January 1948, Vol-I, p. 449.

Assemblies, even after their appointment as Ministers, and was issued under the purported exercise of powers under Article 224 of the Constitution. After the Presidential Order was issued the Ministers went on exercising all the rights and privileges of a Member of the Assembly, including the right of vote.

The validity of P.O.No.34 of 1962 being questioned, it was declared beyond the powers of the President available under Article 224 of the Constitution and Article 104 was restored to its original and truly constitution form. It was held that Ministers had ceased to be Members of their respective Houses immediately upon their appointment as Ministers. This interpretation of the Constitution was upheld by the Supreme Court on 13th May, 1963. Under the terms of Article 100 of the Constitution, the decision of the Dacca High Court was binding, besides the parties to the case, on all the courts subordinate to it in as much as it did decide important question of law that is the scope and extent of Presidential powers under Article 224 of the Constitution. When the appeal was rejected and the decision was affirmed by the Supreme Court of Pakistan, the decision on the point of law, became binding on all the Courts in Pakistan by virtue of Article 63 of the Constitution. Before the Supreme Court had delivered its judgement a separate writ petition was filed in the West Pakistan High Court against the Provincial Ministers.

After the decision of the Supreme Court, the status of Ministers did not remain in doubt and there is no record or proof of any of the Provincial Ministers having voted in the West Pakistan Provincial Assembly afterwards. They, however, did exercise the right of vote in the period between the Dacca judgement and the decision of the Supreme Court (5th April, 1963 to 13th May, 1963). They had constitutional right to sit and otherwise take part in the proceedings under Article 75 of the Constitution, which is still available to them. In order to become liable to the penalty under Article 104(3) of the Constitution it is necessary to come to a finding that they voted knowing that they are disqualified from being a Member of the Assembly.

Incidentally a matter of some importance came under discussion in the House, namely, whether the Speaker of the Assembly was the proper authority to take the necessary decision under Article 104(3) of the Constitution. It was pointed out by the learned Advocate General that as Article 111(3) of the Constitution excluded the jurisdiction of the Courts

in like matters, this was left in the hands of the House and the Speaker. By the Rules of Procedure [Rule 3(4), Rule 156], the Speaker is empowered to decide all points of order. It follows that the Speaker is within his powers in coming to a decision on all the matters involved in a Point of Order. This position was accepted by the House without dissent.

The Chair had the benefit of hearing the learned Advocate General and many Members of the Assembly. From the trend of discussion in the House it appeared that the controversy centered around the period between the announcement of the Dacca judgement and the decision of the Supreme Court on the appeal. The question that arose for discussion was how far are we justified in holding that in that interregnum, the Ministers knew that they were disqualified from being Members of the Assembly, yet voted despite this knowledge and thus became liable to penalty under Article 104(3).

Before arriving at a finding, whether the Ministers could be fairly described as having voted in the Assembly knowing that they were disqualified from doing so in the relevant period, it is necessary to restate certain well established elements in the situation. The Ministers of the West Pakistan Province were not parties to the Dacca Case and the Judgement in that case was not final, but subject to appeal, as a matter of right, to the Supreme Court of Pakistan. Indeed an appeal was filed thereafter. It was open to anybody, including the parties to refuse to accept the correctness of that decision, till the Supreme Court had given its final verdict. There is even no authority for the view that any one canvassing the finality and infallibility of such judgements and publicising it, when the matter is under appeal to the High Court, runs the risk of being held guilty of contempt of the Court. Thus nobody can compel another to acquiesce in the validity of such a judgement. More so, if he is not a party to the case; till the court of higher jurisdiction in the land has expressed itself.

It was argued from some quarters that the Dacca Decision was a judgement *in rem* and not a judgement *in persona*. The argument was that in this case the Dacca decision was also binding on West Pakistan Ministers, for it had decided a Constitutional point of law which was of universal application. This contention is deprived of its force, if it had any, by the fact that the judgement was under appeal to the Supreme Court whose verdict alone was final and binding on all. It will be of some

interest to note the position under American Constitutional Law where a statute is declared *ultra vires* of Constitution.

In Sheppard versus Wheeling, the Court observed:-

‘The Court does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognise it and determines the rights of the parties just as if such statute had no application. The Court may give its reasons for ignoring or disregarding the statutes, but that decision affects the parties only and there is no judgement against the statute. The opinions or reasons of a Court may operate as a precedent for the determination of any other similar cases, but it does not strike statute from the statute book, it does not repeal statute. The parties to the suit are concluded by the judgement, but no one else is bound. Now litigant may bring a new suit, based on the very same statute and the former decision cannot be pleaded as an estoppel, but can be relied on only as a precedent. This constitutes the basis and reason of the fundamental rule that a Court will never pass upon the constitutionality of a statute unless it is absolutely necessary to do so in order to decide the case before it.’ (Quoted in Brohi’s Fundamental Law of Pakistan, page 324).

How far the terms of Article 63 and Article 100 of our Constitution can be considered as modifying the rules just stated need not detain us. By the force of these Articles, if the decision communicates a principle of law it becomes binding on all the courts of the Province in case of a High Court, and throughout Pakistan in case of the Supreme Court of Pakistan. Article 100 which relates to the binding effect of the High Court’s decision is expressly made subject to Article 63, which deals with the Supreme Court.

With this background of the case we revert to the question whether the Ministers had voted with the knowledge that they were disqualified from doing so in the period intervening between the Dacca Decision and the announcement of Supreme Court verdict on an appeal. Now ‘knowledge’ is a positive state of mind, much stronger than that is conveyed by the phrase ‘reason to believe’ and is a much higher level of cognition. It cannot co-exist with a doubting mind. In the context of the surrounding circumstances and the deliberate and positive acts of the persons concerned it is not possible to hold that whilst it was perfectly open to them to refuse to accept the validity of the Dacca Judgement till the Supreme Court had expressed itself and were acting and voting in accordance with that frame of mind, yet they still entertained a secret

knowledge that they were disqualified from doing so and that the Dacca Judgement was after all correct. If a penal provision is to receive a strict construction, it is all the more difficult to arrive at the conclusion that the Ministers voted in the Assemblies with the knowledge that they were disqualified from doing so. The position after the Supreme Court Decision is clear and does not invite any consideration in this case.

I am of the opinion that the Ministers of the Provincial Government, West Pakistan, who were Members of the Assembly before their acceptance of office, did not incur any penalty under Article 104(3). The point of order raised by Nawabzada Iftikhar Ahmad Khan thus falls to the ground.

I may incidentally point out in passing, although it is not necessary for the decision of this point of order, that under the American Constitutional Law and Practices, although an unconstitutional statute does not create any rights or impose any obligations, if an individual in good faith should have acted to this detriment under statute believed to be valid and moral, an equitable obligation on the part of the State may be created sufficient to support an appropriation of public money for its identification (see U.S. Versus Realty Co., 1886, page 324). It is a matter of some interest to speculate whether in such a case even if the penalty was held in order and incurred the Provincial Government would have found it equitable to realize this debt.”¹

(230)

MEMBERS

WEAPON: members are not allowed to bring any weapon, or any such thing, including a stick, into the Assembly building.

(text on next page)

Referring to a revolver incident in the cloak room, the Speaker, Dr Khalifa Shauja-ud-Din declared as under:-

“Before I take up the budget, I wish to invite the attention of hon’ble members to one very unfortunate incident reported to have taken place today on the ground floor of the House. One hon’ble member, it seems, brought a revolver with him and deposited it in the cloak room. Then through the carelessness of the man incharge of the cloak room, the revolver was fired. Luckily, however, no damage was done. I have to invite the attention of hon’ble members to the fact that according to the

¹West Pakistan Assembly Debates, 12 July 1963, Vol-IV, No.29, pp. 42-44.

rules of this Chamber no member is allowed to bring anything with him, not even a stick. Therefore, if in future any member happens inadvertently to bring with him any revolver, he is requested to deposit it with the Sub-Inspector Incharge of police below to avoid recurrence of such a thing.

If any Hon'ble member happens to possess any revolver now at the moment, he is requested to go down and deposit it with the Sub-Inspector."¹

¹Punjab Legislative Assembly Debates, 12 March 1952, Vol-III, p. 665.

MINISTERS

(231)

MINISTERS

AMENDMENT — BILL: a Minister may move an amendment in a Government bill.¹

(232)

MINISTERS

ASSURANCE — PRIVILEGES: the non-implementation of an assurance does not constitute a breach of privilege.²

(233)

MINISTERS

QUESTIONS — ANSWER: the Minister or the Parliamentary Secretary concerned must answer the questions in the House; however, the Speaker, in exceptional circumstances, may allow the same be answered by some other Minister or Parliamentary Secretary.³

Malik Allah Yar Khan raised a point of order on 27 October 1987 whether or not a Minister could answer the questions relating to the department of another Minister while the concerned Minister was present in the House.

The Minister for Law replied that if any Minister was not present in the House due to pre-occupation, any other Minister or Parliamentary Secretary to whom the function was delegated or assigned could answer the questions in the House. He pointed out that there were a number of precedents and rulings on this point that even if the concerned Minister was present in the House, the answers could be given by another Minister with the approval of the Chair. In case neither was the concerned Minister present nor were the powers delegated to some other Minister, there were precedents that the Minister for Law replied the questions.

Mian Manzoor Ahmed Wattoo, Speaker ruled as under —

“A question has arisen whether a Minister can answer the questions relating to the Department of another Minister while the concerned Minister is

¹For details, see Decision No.98, p. 93.

²For details, see Decision No.303, pp. 332-34.

³The decision is no longer applicable as under rule 55(4) of the Rules of Procedure of the Provincial Assembly of the Punjab 1997, the Minister or the Parliamentary Secretary concerned alone may answer the questions.

present in the House. I have given careful consideration to this point. I am of the view that in the absence of the concerned Minister due to health reason or being on tour, the answers to the Questions can be given by any Minister or Parliamentary Secretary acting on behalf of Government. But in the presence of the concerned Minister it does not seem to be proper and fair that some other Minister should answer the Questions.

The Institution of Questions is a very valuable privilege of the Members under our existing Rules, and I would like that Questions are fully answered. If I would disallow Questions being answered by other Ministers and Parliamentary Secretaries, in the absence of the Minister or the Parliamentary Secretary concerned, many Questions may remain unanswered, especially the Supplementary Questions and the Members may be deprived of information which they sought. But, if, on the other hand, I give a *carte blanche* to all Ministers and Parliamentary Secretaries to answer questions on each other's behalf, detailed and proper information, which Members try to elicit through Supplementary Questions, may not be forthcoming for obvious reasons. I would, therefore, urge upon the Ministers and Parliamentary Secretaries to remain present to answer questions relating to their Departments; but in exceptional circumstances, I would permit other Ministers or Parliamentary Secretaries to answer those Questions with my prior permission.”¹

(234)

MINISTERS

QUESTIONS — PRIVILEGES: incorrect statement or information may entail a breach of privilege if such statement or information is intentionally or deliberately furnished.²

(235)

MINISTERS

QUESTIONS — PRIVILEGES: incomplete or incorrect information by a Minister does not constitute a breach of privilege unless there is deliberate and conscious attempt to mislead the House.³

¹Punjab Assembly Debates, 28 October 1985, Vol-IV, No.12, 13, pp. 914-15 & 978. The decision is no longer applicable as under rule 55(4) of the Rules of Procedure of the Provincial Assembly of the Punjab 1997, the Minister or the Parliamentary Secretary concerned alone may answer the questions.

²For details, see Decision No.327, pp. 362-65.

³For details, see Decision No.328, pp. 365-66.

(236)

MINISTERS

QUESTIONS — PRIVILEGES: a breach of privilege may arise only if the Minister makes a false statement or an incorrect statement willfully, deliberately and knowingly.¹

(237)

MINISTERS

VOTING — DISQUALIFICATION: a minister or a member has a right to sit in the House and vote unless he is finally disqualified by the competent authority.²

¹For details, *see* Decision No.329, pp. 366-68.

²For details, *see* Decision No.229, pp. 251-55.

MOTION

(238)

MOTION

DISTINCTION — NOTICE AND MOVING THEREOF: *‘giving of a notice’* and *‘moving of a motion’* are two different things — a notice is only an intimation from a member that he would move a particular motion; however, such an intimation is not enough for treating it as moved. Even after giving such a notice, the member may opt not to move the motion.¹

(239)

MOTION

IDENTICAL — REPETITION: the bar on moving a repetitive motion is applicable only if a question decided by the Assembly is again raised in the same session and is substantially identical.²

(240)

MOTION

MOVING THEREOF: if a motion or an amendment is not moved, it shall be deemed to have been withdrawn.³

(241)

MOTION

NOTICE — MOVING: *‘giving of a notice’* and *‘moving of a motion’* are two different things — a notice is only an intimation from a member that he would move a particular motion; however, such an intimation is not enough for treating it as moved. Even after giving such a notice, the member may opt not to move the motion.⁴

¹For details, *see* Decision No.102, pp. 104-6.

²For details, *see* Decision No.257, pp. 281-82.

³For details, *see* Decision No.102, pp. 104-6.

⁴For details, *see ibid.*

(242)**MOTION**

REPETITION — IDENTICAL: the bar on moving a repetitive motion is applicable only if a question decided by the Assembly is again raised in the same session and is substantially identical.¹

(243)**NAME (PERSONAL)**

MEMBERS: there is no rule against using personal name of a member during debates; still, the same may be avoided as far as possible.²

¹For details, see Decision No.257, pp. 281-82.

²For details, see Decision No.214, p. 243.

NOTICE

(244)

NOTICE

ADJOURNMENT MOTION: may be disallowed if the notice is not given in triplicate.¹

(245)

NOTICE

ADJOURNMENT MOTION: if different members have given notices of adjournment motions on the same subject, all of them may be allowed to read or move the same in the House.²

(246)

NOTICE

AMENDMENT: ordinarily, an amendment to a bill must satisfy the condition of two-clear days' notice before the day on which the bill, the relevant clause or the schedule is to be considered unless the Speaker allows the amendment to be moved in special circumstances.³

(247)

NOTICE

AMENDMENT: the period of notice envisaged for amendment to a bill has no nexus with the date of the notification whereby the Assembly is summoned *inter alia* for the reason that a notice of amendment in respect of a pending bill may be given even during the interval between the two sessions.⁴

(248)

NOTICE

CUT MOTION: the notice must indicate the particulars of the policy which are proposed to be discussed.⁵

(249)

¹For details, see Decision No.34, pp. 26-29.

²For details, see Decision No.41, p. 35.

³For details, see Decision No.99, pp. 93-96.

⁴For details, see *ibid.*

⁵For details, see Decision No.134, p. 131.

NOTICE

DISTINCTION: ‘giving of a notice’ and ‘moving of a motion’ are two different things — a notice is only an intimation from a member that he would move a particular motion; however, such an intimation is not enough for treating it as moved. Even after giving such a notice, the member may opt not to move the motion.¹

(250)**NOTICE**

MOVING THEREOF: a notice is only an intimation from a member that he would move a particular motion; however, such an intimation is not enough for treating it as moved. Even after giving such a notice, the member may opt not to move the motion.²

(251)**NOTICE**

QUESTIONS: a Parliamentary Secretary, being part of the Government can, neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.³

(252)**NOTICE**

QUESTIONS: a Parliamentary Secretary, being part of the Government, can neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.⁴

¹For details, see Decision No.102, pp. 104-6.

²For details, see *ibid.*

³For details, see Decision No.361, pp. 406-8.

⁴For details, see Decision No.362, p. 408.

OATH

(253)

OATH

MEMBERS — CONSTITUTION: after the revival of the Constitution with effect from 10 March 1985, members are required to take oath under the Constitution.¹

(254)

OATH

MEMBERS — HOUSE: the Constitution provides that the oath has to be made before the House and not before any specified person.²

(255)

OATH

MEMBERS — VOTING: the Members are debarred from voting till they have made the oath.³

¹For details, *see* Decision No.215, pp. 244-48.

²For details, *see ibid.*

³For details, *see ibid.*

ORDINANCE

(256)

ORDINANCE

APPROVAL: Provincial Assembly, under the Constitution of the Islamic Republic of Pakistan (1962), could approve or disapprove an Ordinance but it had no power to approve it with amendments or modifications.¹

Rao Khurshid Ali, Member raised a point of order whether or not the Assembly could approve of an Ordinance issued by the Governor under Article 79(1) of the 1962 Constitution, with certain modifications. The Speaker, Mr Mobinul Haq Siddiqui, ruled as under:-

“On Saturday, the 8th December, 1962, a very important question of interpretation of the constitution arose in the House. The point at issue was whether the Assembly could approve of an Ordinance issued by the Governor under Article 79(1) of the constitution with certain modifications. Notice had been given of Motions to amend the resolution placed before the Assembly by a Minister that the West Pakistan Maintenance of Public Order (Amendment) Ordinance, 1962, promulgated by the Governor of West Pakistan on the 25th September 1962, be approved by the Assembly. These motions sought to amend the resolution in question by adding that the Assembly do approve the resolution with certain amendments. If amendments are allowed to be moved to the resolution for the approval of an Ordinance the effect of such an amendment, if carried, would be that the Assembly would be approving of the Ordinance with certain modifications.

It was contended by one side of the House that if amendments were allowed to be moved to the resolution for the modification of the Ordinance, it would amount to legislation by means of resolution. The other side contended that "the whole included the part" was a fundamental principle of law and if the Assembly could disapprove of the Ordinance in toto it also had power to disapprove certain parts of it and could approve the Ordinance with certain modifications. Lengthy arguments were advanced by both sides of the House to which I have given my earnest

¹Under the present Constitution (1973), the situation is, however, different. An Ordinance, having been laid in the House under Article 128, is deemed to be a bill introduced in the Assembly and may be passed by it with or without amendments and modifications.

consideration. The situation is a novel one as a provision on the lines of Article 79(3) of the Constitution of 1962 does not exist in any other Constitution of the world. We have, therefore, to determine the question ourselves and no help can be had from any precedent of any other country. It is one of the cardinal rules of interpretation that all parts of an enactment should be construed together and not each part by itself, and where the language is not unambiguous but is capable of bearing more than one meaning and historical investigation as to the prior legislation does not afford any key to the true sense of the words used, the internal evidence afforded by the several parts of the statute may supply an important clue to the meaning, import and scope of any provision. This means that a statute should be so construed as to make no part of it absurd or void.

The Constitution has laid down a certain procedure for effecting legislation. The procedure is that a Bill comes before the Assembly and it is passed by the Assembly and it is submitted to the Governor for his assent. The Governor has the right to assent to the Bill, to withhold his assent from the Bill or to return the Bill to the Assembly with a message to the Assembly that any amendments specified by him should be considered by the Assembly. In case the Governor withholds his assents from Bill the Assembly would be competent to reconsider the Bill and if the Bill is again passed by the Assembly by the votes of not less than two-third of the total number of Members of the Assembly, the Bill would again be presented to the Governor for his assent. If the Governor returns a Bill to the Assembly, the Assembly is to reconsider it and can again pass it with amendments recommended by the Governor or with amendments not recommended by the Governor and if in the latter case the Bill is passed by the votes of not less than two-third of the total number of Members of the Assembly the Bill is again to be presented to the Governor. The Governor on being presented the Bill again can either assent to the Bill or request the President to refer the "Bill to the National Assembly as a matter with respect to which a conflict has arisen between the Governor and the Assembly of the Province in which case the National Assembly is to determine the issue. That is the procedure when a Bill is placed before the Assembly and is passed by it. When the Assembly is not in Session and the Governor is satisfied that circumstances exist which render immediate legislation necessary he may promulgate an Ordinance and such Ordinance would have the same force of law as an Act of the

Provincial Legislature, subject to Article 79(1) of the Constitution. Such an Ordinance would have a life of 180 days and if within this period the Assembly does, not by a resolution approve of the Ordinance, it shall cease to have effect on the expiry of the prescribed period. If the Assembly passes a resolution disapproving the Ordinance at any time after its promulgation, the Ordinance would cease to have effect. These are the only two methods of legislation mentioned in the Constitution. In the first case when the Governor has assented to or is deemed to have assented to a Bill passed by the Assembly it becomes law and is to be known as an Act of the Provincial Legislature. In the second case an Ordinance promulgated by the Governor has the same force of law as an Act of the Provincial Legislature unless it is disapproved by the Assembly or 180 days expire. If, however, before the expiry of 180 days the Assembly, by a resolution approves of the Ordinance it is deemed to have become an Act of Legislature. Article 132 of the Constitution gives power to make laws for the Province to the Provincial Legislature. The Provincial Legislature under Article 70 of the Constitution, consists of the Governor of Province and one House to be known as the Assembly of the Province. A law, can be enacted by the Provincial Legislature only in one of the two ways mentioned above, viz., the Governor giving his assent or being deemed to have given his assent to a Bill passed by the Assembly or an Assembly approving by means of a resolution, an Ordinance issued by the Governor. It is thus clear that the Assembly alone cannot make a law and neither can the Governor alone except for a brief interregnum between the two sessions of the Assembly.

Now, if the Assembly were to approve of a resolution placed before it under Article 79(3) of the Constitution, subject to certain modifications, it is obvious that there is no provision in the Constitution under which Governor's assent could be asked for to such a resolution passed by the Assembly. And, if it were to be contended that the Ordinance as modified by the Assembly on a resolution of approval would become an Act of the Provincial Legislature without the Governor's assent would mean that only one part of the Legislature would be making a law and not the whole of the Legislature viz., the Assembly alone would be legislating for the whole of the Legislature which consists of the Governor and the Assembly.

That leads to an absurd result. It cannot, therefore, be reasonably held that the framers of the Constitution intended that in certain circumstances only part of the legislature should be making laws.

Now I come to the contention made by a section of the House in regard to the Rules of Procedure relating to the moving of resolutions. The Rules of Procedure are merely the mechanism for regulating the procedure of the Assembly and are subject to the Constitution itself. They cannot, in any manner, be interpreted to over-ride or modify the provisions of the Constitution. Chapter XI of the Rules of Procedure relating to resolutions refers to resolutions on matters of general public interest and a special procedure has been laid down for resolutions of this kind. There is another kind of resolutions which the Constitution has prescribed. Under Article 42(2) of the Constitution the Assembly can, by resolution approve or disapprove of expenditure specified in a Project Statement for any subsequent year or may approve of such lesser expenditure for the year to which the Project Statement relates as is specified in the resolution. The Constitution in the case of resolutions, under Article 42(2) has clearly provided that the Assembly can approve of lesser expenditure for the year to which a Project Statement relates. This is one kind of resolution visualized by the Constitution. Another kind of resolution is visualized by Article 79 of the Constitution. These are the resolutions for approval or disapproval of an Ordinance promulgated by the Governor. As shown above, if it were to be held that rule 82 of the Rules of Procedure applied to such resolutions and that the Assembly by means of resolution under this Article could approve of an Ordinance with modification, the result would be an absurdity. It is clear, therefore, that rule 82 of the Rules of Procedure applied to such resolutions and that if the Assembly by means of resolution under this Article could approve of an Ordinance with modification, the result would be an absurdity. It is clear, therefore, that rule 82 of the Rules of Procedure would not apply to resolutions of this kind as it would amount to the rules over-riding the Constitution.

There is only one conclusion which one can arrive at as a result of consideration of the various provisions of the Constitution and the rules and it is that under Article 79(3) of the Constitution the Assembly has either to approve of an Ordinance in toto or to disapprove of it in toto and there can be no question of approval of an Ordinance with modifications. The amendments given notice of to the resolution for the approval of the

West Pakistan Maintenance of Public Order (Amendment) Ordinance, 1962, are therefore, ruled out of order.”¹

(257)

ORDINANCE

BILL: A bill withdrawn in an earlier session does not preclude the promulgation of an ordinance on the same subject or its presentation in a subsequent session.

Kh Muhammad Safdar, Leader of Opposition, on a point of order, objected to the moving of a resolution for ratification of the ‘The Ghulam Muhammad Barrage Betterment Tax Ordinance’. He explained that ‘The Ghulam Muhammad Barrage Betterment Tax Bill’ which, in its subject matter and contents, was identical with the Ordinance in hand, had been withdrawn by the Government in the previous session. Under rule 143 read with rule 86 of the Rules of Procedure, the said resolution could not be moved within a period of six months. Ghulam Nabi Muhammad Varyal Memon, Minister for Law opined that the objection was not valid as the matter could not be called ‘identical’. The question before the Assembly at that time was the permission of the House to allow the member to withdraw the Bill; however, the motion in hand sought the ratification of the Ordinance.

Ch Muhammad Anwar Bhinder, Speaker, observed as under:-

“Khawaja Muhammad Safdar has raised a point of order that in the last session of the Assembly ‘The Ghulam Muhammad Barrage Betterment Tax Bill’ was withdrawn by the learned Minister for Revenue and now that law has been brought before the House in the shape of an Ordinance and as the matter proposed to be discussed in this Ordinance is substantially identical, under rule 143 this Ordinance cannot be discussed in the House.

I have given my consideration to this matter and I have heard the learned Leader of the Opposition and the learned Law Minister. The question for determination is whether rule 143 applies under the circumstances at this stage. I see that in rule 143 the words used are —

‘Except as otherwise provided for by the Rule, a motion shall not raise a question substantially identical with one on which the Assembly has given a decision in the same session.’

¹West Pakistan Assembly Debates, 10 December 1962, Vol-II, No.8, pp. 668-71.

Firstly, I am in agreement with the Law Minister that the decision in the same session does not mean the decision in the last session, and therefore it cannot be held that the decision in this regard was given in this session.

Secondly, I am also in agreement with the learned Law Minister that the motion does not raise a question which is substantially identical.

Thirdly, so far as rule 86 is concerned to which Khawaja Muhammad Safdar has referred, it deals with resolutions and says —

‘When a resolution has been moved and the decision of the Assembly given on it, or when a resolution has been withdrawn, no resolution or amendment raising substantially the same question shall be moved within six months of the decision or withdrawal.’

So far as the previous motion was concerned, that was not a resolution. Now the resolution has been moved by the learned Minister for Revenue and this is a resolution, but the first motion was not a resolution, and, therefore, it is not hit by rule 86 of the Rules of Procedure.

I, therefore, rule out the point of order raised by Khawaja Muhammad Safdar.”¹

(258)

ORDINANCE

EXTENSION OF LIFE: the appropriate legislature is competent to pass a bill which aims at extending the life of an ordinance.

On 28 February 1973, the rules were suspended so as to consider the Punjab Ordinances Temporary Enactment Bill, 1973. The Bill aimed at extending the life of certain Ordinances mentioned therein. Makhdoomzada Syed Hassan Mahmood raised two objections — (a) that the Assembly could not arrogate to itself certain functions and responsibilities which had not been entrusted to it by the Interim Constitution of Pakistan; and (b) the Assembly was not competent to extend the period of the Ordinances. Mr Rafiq Ahmed Sheikh, Speaker, observed:-

“I had considered that point. The courts have decided that this can be done. There was a similar enactment in the East Bengal Legislature and the East Bengal Legislature extended life of the ordinances by a similar enactment in 1949, and the name of that Act is ‘East Bengal Ordinances

¹West Pakistan Assembly Debates, 1 June 1964, Vol-VI, No.2, pp. 40-41.

Re-enactment and Enactment Act'. It was scrutinised by the courts and it was held valid to the extent of extensions by that House. It twice came before the courts and the courts held that it was a valid legislation. It actually made two provisions, one provision was that the legislature extended the duration of those ordinances by six months and it further provided that if the Government found it necessary it could extend it by another six months. The courts held that the one extension by the legislature itself by six months was valid but the provision authorising the Government to extend it by another six months was not valid. It is very clear ... it came twice before the courts in 1949 and in 1951 and the courts held that it was in accordance with the law and the provision in the Act of 1935 and the provision in the present Constitution are the same.”¹

(259)

ORDINANCE

GOVERNOR is empowered to issue an ordinance under Article 128 of the Constitution, except when the Assembly is in session; however, the promulgation of ordinances may be resorted to sparingly in situations requiring immediate action when the Assembly is not expected to meet at an early date or cannot be summoned at short notice.

On 21 May 1992, Mr Farid Ahmad Piracha raised a point of order that whereas by his order of 17 May 1992, the Governor of the Punjab had summoned the Assembly on 21 May 1992, he promulgated the Punjab Undesirable Cooperative Societies (Dissolution) Ordinance, 1992 on 16 May 1992. According to him, the promulgation of the Ordinance by the Governor a couple of days prior to the commencement of the session of the Assembly was *ultra vires* the spirit of the Constitution.

The Minister for Law informed the House that the Governor was empowered under Article 128 of the Constitution to promulgate an Ordinance as and when deemed expedient, except when the Assembly was in session. He emphasised that the Ordinance in question had been issued before the commencement of the Assembly session and as such the Governor had acted in accordance with Article 128 of the Constitution.

Mian Manzoor Ahmed Wattoo, Speaker, ruled as under —

¹Punjab Assembly Debates, 28 February 1973, Vol-III, No.26, pp. 3717-18.

“I have come across a past ruling of the Speaker of Indian Lok Sabha on this point whereby on November 22, 1971, a similar issue was agitated in the Lok Sabha and the Speaker ruled: ‘All I can say is that I do not approve of an Ordinance just at the time when the House is almost to meet’. Again on November 13, 1973, the Speaker Lok Sabha observed: ‘Ordinances by themselves are not very welcome, specially so when the date for summoning of the House is very clear. It is not only clear but is also near. In such cases unless there are very special reasons, Ordinances should be avoided.’

In this instant case, Article 128 of the Constitution empowers the Governor to promulgate an Ordinance, except when the Assembly is in session, if he is satisfied that circumstances exist rendering it necessary to take immediate action. Question of satisfaction of the Governor cannot be questioned. The Governor may legitimately find it necessary to promulgate or re-promulgate an Ordinance in the given situation. Issuance of the said Ordinances is technically correct and no breach of privilege is involved, but it would be highly appreciated, if recourse of the Legislature for the purpose of legislation is made a normal practice and promulgation of Ordinances is resorted to sparingly in situations requiring immediate action when the Assembly is not expected to meet at an early date or cannot be summoned at short notice.”¹

(260)

ORDINANCE

GOVERNOR may promulgate an ordinance under Article 128 of the Constitution ‘except when the Provincial Assembly is in session’. The Assembly is in session from the first day of its sitting till the it is prorogued or dissolved. The mere signing of the order summoning the Assembly prospectively does not denude the Governor of his powers under the said Article.²

(261)

ORDINANCE

GOVERNOR: an ordinance cannot be promulgated during the time the Assembly is in session; however, the Constitution does not prevent

¹Punjab Assembly Debates, 25 June 1992, Vol-VIII, No.21, pp. 44-46.

²For details, see Decision No.263, pp. 288-89.

the Cabinet from discussing and even approving a proposed legislation during the time the Assembly is in session.¹

(262)

ORDINANCE

LAW: An ordinance promulgated by the Governor has the same force of law as an Act of Legislature: thus, where a tax can be levied by an Act of Legislature, it may also be levied by an ordinance.

On 29 November 1963, Mr Muhammad Hanif Siddiqui raised a point of order that the Governor was not competent to levy a tax through the West Pakistan Finance (Amendment) Ordinance, 1963. The Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

“During the discussion of the resolution for the approval of West Pakistan Finance (Amendment) Ordinance, 1963, Mr Muhammad Hanif Siddiqui raised a Point of Order that the Ordinance in question sought to levy a tax for the purposes of the Provincial Government and that under Article 90 of the Constitution of the Republic of Pakistan, the Governor of the Province was not competent to levy a tax through an Ordinance and that it was only through an Act of the Provincial Legislature that a tax could be levied in the Province.

Khawaja Muhammad Safdar, Leader of the Opposition, Mr Ahmad Saeed Kirmani, Mian Abdul Latif, Nawabzada Iftikhar Ahmad and Allama Rahmat Ullah Arshad also supported the point of order raised by Mr Muhammad Hanif Siddiqui and contended that the words used in Article 90 of the Constitution were ‘*An Act of the Provincial Legislature*’ and that in the presence of these words it was only through an Act of the Legislature that a tax could be levied. They further contended that under Article 78 of the Constitution, when the Governor of a Province has assented to or is deemed to have assented to a bill passed by the Assembly of a Province, it becomes law and then only is called ‘*An Act of the Provincial Legislature*’. Therefore, the levying of a tax is only possible if a bill to this effect is presented to the Assembly, is passed by it and is subsequently assented to by the Governor. They further developed their point by referring to Article 70 of the Constitution and contended that under the said Article the Provincial Legislature of a Province consists of the Governor of the Province and one House to be known as the Assembly of

¹For details, see Decision No.380, pp. 441-46.

the Province. Therefore, an Act levying a tax should be passed by a Provincial Legislature as defined in Article 70 and that is possible only if a bill is presented in the Assembly, considered and passed by it and then is assented to by the Governor. On the authority of these constitutional provisions they contended that a tax cannot be levied by means of an Ordinance promulgated by the Governor.

On the other hand, it has been contended that under Article 79 of the Constitution '*if, at a time when the Assembly of a Province stands dissolved or is not in Session and the Governor of the Province is satisfied that circumstances exist which render immediate legislation necessary, he may subject to this Article, make and promulgate such Ordinance as the circumstances appear to require and any such Ordinance shall, subject to this Article, have the same force of law as an Act of the Provincial Legislature.*' Under clause (5) of Article 79, the Governor has the power to make laws by promulgating Ordinances on any subject within the legislative competence of the Provincial Legislature. The levying of a tax is definitely within the legislative competence of the Provincial Legislature and as such it is within the competence of the Governor to issue an ordinance making provisions for the levying of a tax.

It has been contended that the framer of the Constitution had deliberately and specifically included Article 90 and had thus sought to provide that taxation should only be possible through an Act of the Provincial Legislature and not otherwise. Taxation is no doubt an important matter, but the other matters involving the life and liberty of the people are no less important; and if in those matters the power of legislation has been given to the Governor through Ordinance then it would be a farfetched argument that in respect of taxation the framer of the Constitution did not intend to confer on the Governor, the power to promulgate ordinances.

Mr Ahmad Saeed Kirmani has also contended that Article 90 of the Constitution is a special provision in respect of the levying of a tax and that it must over-ride the general provision contained in Article 79 of the Constitution. It is true that a separate Article in the Constitution has been provided in respect of imposition of a tax, but to my mind it only means that the levying of a tax has not been left to an executive authority but has been assigned to an authority exercising the powers of a legislature.

The word 'legislature' has been defined by the Constitution as 'the Central Legislature, each Provincial Legislature and any other authority or person

empowered by or under the Constitution to make laws or to issue instruments having the force of Law.’ Taking in view this definition of the word ‘legislature’, the Governor of a Province is definitely a legislature because he is the only person in the Province who is empowered by the Constitution to issue instruments having the force of law, *i.e.*, Ordinances. And if he is the legislature, then decidedly he is the Provincial Legislature because his authority extends to the whole of the Province and the Ordinances promulgated by him are enforced throughout the Province. It may be said that even if the Governor can be said to be the Provincial Legislature within the meaning of Article 90 of the Constitution, then he is not a person competent to pass an Act as laid down in that Article and as such the Ordinance promulgated by him is not an Act of the Provincial Legislature within the meaning of this Articles. But Article 79 of the Constitution clearly says that an Ordinance issued by the Governor shall have the same force of law as an Act of the Provincial Legislature. Therefore, an Ordinance promulgated by the Governor would clearly mean an Act of the Provincial Legislature within the meaning of Article 90 of the Constitution.

It has been contended by Khawaja Muhammad Safdar, Leader of the Opposition, that if it is held that the Governor can issue an Ordinance in respect of the levying of a tax, then this finding will amount to holding that even the Budget can be passed through an Ordinance. I am not in agreement with this contention. A separate procedure for the presentation of the Budget has been provided in Articles 40 to 47 of the Constitution. The expenditure charged upon the Provincial Consolidated Fund may be discussed in the Assembly and the new expenditure is subject to the vote of the Assembly.

Article 79 of the Constitution gives an unfettered power to the Governor of Province to make laws by making and promulgating Ordinance in respect of the matters which are within the legislative competence of the Legislature of a Province. The levying of a tax being a matter within the legislative competence of a Provincial Legislature, it is also within the legislative competence of the Governor to issue an Ordinance in respect of the levying of a tax. I, therefore, hold that under the Constitution, the Governor has the power to promulgate an Ordinance even in respect of levying of a tax and the action of the Governor in respect of the issuing of the West Pakistan Finance (Amendment) Ordinance, 1963, is not *ultra*

vires of the Constitution. The objection raised by Mr Muhammad Hanif Siddiqi is, therefore, over-ruled.”¹

(263)

ORDINANCE

PROMULGATION: Governor may issue an ordinance under Article 128 of the Constitution ‘except when the Provincial Assembly is in session’ — the Assembly is in session from the first day of its sitting till it is prorogued or dissolved; the mere signing of the order summoning the Assembly prospectively does not denude the Governor of his powers under the said Article.

Disposing of a point of order that the Governor, by promulgating an Ordinance during the time the Assembly was in session, had violated the Constitution, Ch Parvez Elahi, Speaker observed as under —

“The Governor of the Punjab summoned the Provincial Assembly of the Punjab to meet on April 7, 1997. On April 10, 1997, Mr Saeed Ahmed Khan Manais MPA referred to a news-item appearing the same day in *Nawa-e-Waqat* and pointed out that, in clear violation of the Constitution, the Governor had revalidated the expired Agricultural Income Ordinance, even though the Assembly was in session. Later, Mr Saeed Akbar Khan MPA reiterated the same point and requested for a ruling on the point whether or not the Governor was competent to have re-issued an Ordinance when the Assembly was in session. Since the point raised required verification of the news-item and involved interpretation of Article 128 of the Constitution, the ruling was reserved.

Under Article 128 of the Constitution, the Governor, subject to his satisfaction as to urgency, may promulgate an ordinance except when the Assembly is in session. The term ‘*when the Assembly is in session*’ has been defined in May’s Parliamentary Practice and Procedure (20th Edition), p.271 in the following terms —

‘a session is the period of time between the meeting of a Parliament whether after a prorogation or a dissolution, and its prorogation.’

The said definition has been approved by the Supreme Court of Pakistan in the case — Presidential Reference No.1 of 1988, reported as PLD 1989 Supreme Court 75, at p.107.

¹West Pakistan Assembly Debates, 3 December 1963, Vol-V, No.5, pp. 88-90.

The above verdict of the Supreme Court is, no doubt, in respect of Article 89 which relates to the President's powers of issuing an Ordinance, it is squarely applicable to Article 128 which pertains to the Governor's similar powers. Viewed in that context, the phrase — '*except when the Provincial Assembly is in session*' means the period from the first day of its sitting till the Assembly is prorogued or dissolved. The mere signing of the summoning order by the Governor or even its notification does not originate the session prior to the date fixed for the purpose by the Governor.

The Governor, by his order dated April 2, 1997, summoned the Assembly to meet on April 7, 1997; and, signed the Punjab Agricultural Income Ordinance 1997 (XIII of 1997) the next day *i.e.* on April 3, 1997, when the Assembly was not in session. However, for some reasons, its publication was deferred for about 13 days and it was, finally, published on April 16, 1997, after the prorogation of the session.

Under Article 128 of the Constitution read with sections 3 and 28 of the Punjab General Clauses Act 1956 (VI of 1956), an ordinance is deemed to have been promulgated only when it is published in the in the gazette. Thus, the ordinance in question became law on April 16, 1997 when it was so published. Since on that day the Assembly was not in session, in the strict sense of the term, the case does not involve a breach of the Constitution.¹

(264)

ORDINANCE

PROMULGATION: an ordinance cannot be promulgated during the time the Assembly is in session; however, the Constitution does not prevent the Cabinet from discussing and even approving a proposed legislation during the time the Assembly is in session.²

¹Punjab Assembly Debates, 12 June 1997, Vol-V, No.4, pp. 340-42.

²For details, *see* Decision No.380, pp. 441-46.

**PARLIAMENTARY
SECRETARY**

(265)

PARLIAMENTARY SECRETARY

APPOINTMENT: history of the office recounted.¹

(266)

PARLIAMENTARY SECRETARY

APPOINTMENT: Speaker is not required to determine the constitutional validity of an appointment of Parliamentary Secretary.²

(267)

PARLIAMENTARY SECRETARY

DISCRIMINATION: allowing more time to a parliamentary secretary enabling him to discharge some additional responsibilities cannot be treated an act of discrimination under the Constitution.³

(268)

PARLIAMENTARY SECRETARY

QUESTIONS — ANSWER: the Minister or the Parliamentary Secretary concerned must answer the questions in the House; however, the Speaker, in exceptional circumstances, may allow the same be answered by some other Minister or Parliamentary Secretary.⁴

(269)

PARLIAMENTARY SECRETARY

QUESTIONS — NOTICE: a Parliamentary Secretary, being part of the Government, can neither give notice of, nor ask a starred or

¹For details, *see* Decision No.317, pp. 348-52.

²For details, *see ibid.*

³For details, *see ibid.*

⁴For details, *see* Decision No.233, pp. 259-60.

unstarred question from a Minister or another Parliamentary Secretary.¹

(270)

PARLIAMENTARY SECRETARY

QUESTIONS — NOTICE: a Parliamentary Secretary can neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.²

¹For details, *see* Decision No.361, pp. 406-8.

²For details, *see* Decision No.362, p. 408.

PARLIAMENTARY YEAR

(271)

PARLIAMENTARY YEAR

ASSEMBLY: for purposes of calculating total number of meetings of the Assembly in a year, the year shall be reckoned from the day the Assembly has its first sitting after general election.¹

PREAMBLE

(272)

PREAMBLE

BILL: cannot be deemed to be out of order if it does not contain any preamble or the same has not been adequately worded.²

(273)

PREAMBLE

BILL: a preamble, no doubt, illustrates the reasons and intended effects of the proposed legislation yet the scope and import of a particular bill can be determined on the basis of the whole bill.³

¹For details, *see* Decision No.77, pp. 80-81.

²For details, *see* Decision No.114, pp. 115-116.

³For details, *see* Decision No.101, pp. 97-103.

POINT OF ORDER

(274)

POINT OF ORDER

SCOPE: defined and illustrated. Precisely to say a point of order is a pure question of procedure or irregularity raised only when something happens in the course of proceedings which is considered to be a technical defect in formal and procedural matters; it should not be frivolous or irrelevant, and, should not aim at obstructing the proceedings of the House. The decision of the Speaker on a point of order is final, and is not open to discussion, debate or criticism.

Dr Khalifa Shuja-ud-Din, Speaker having noticed irrelevant, frivolous and meaningless points of order being frequently raised by the members, clarified the position under the rules and precedents in terms of the following —

“It was a matter of great regret for me to find that some honourable members of the House are not able to comprehend the true scope and significance of a point of order. Several so-called ‘points of order’ were raised on Friday last which did not come within the meaning of the phrase, but I imposed no limitation on honourable members, because I felt that I must explain the position before doing so.

A point of order is a pure question of procedure under the rules. It is either an alleged irregularity in what a speaker is saying at the moment or an allegation that a motion on the agenda is defective, e.g. *ultra vires*. May, in his parliamentary practice, describes it as a ‘form of the House’. It is raised only when something happens in the course of proceedings which is considered to be a technical defect in formal and procedural matters, and when raised, the Speaker gives his decision which is final. Redlich and Ilbert, in their Procedure of the House of Commons, have stressed the fact that there is no debate whatever on points of order, as the ordinary interpretation of the rules and customs of the House is the function of the Speaker himself. Neither is any discussion allowed nor is any debate or criticism of his decision permissible. Our own Rules of Procedure give the Speaker ‘all powers necessary for the purpose of enforcing his decisions on all points of order’.

According to the practice of the American House of Representatives, the Speaker may require that a point of order be presented to him in writing.

This practice seems to have been followed in this House also by a very illustrious predecessor of mine and I also propose to adopt it whenever, in my opinion, the circumstances of the case require that this should be done.

There is another very important aspect of the problem to which I must invite the attention of honourable members before I conclude. This relates to the unnecessary and wholly inexcusable expenditure of the time of the House involved in raising so called points of order which are simply frivolous and quite irrelevant. These can only be characterised as attempts to obstruct the business of the House by persistently and willfully obstructing the business of the House, that is to say, a member who without actually transgressing any of the rules of debate uses his right of speech for the purpose of obstructing the business of the House, or obstructs the business of the House by misusing the forms of the House..... is guilty of a contempt of the House and may be named. It must be realised that anything that appears on the order paper of the day, is the property of the House and the business stated therein must be transacted. While it is the Speaker's duty to see that the majority of the House does not oppress the minority, it is equally his duty to see that the minority does not obstruct the business of the House and that its entire proceedings are conducted in a manner consistent with its own dignity as well as with the dignity of its members.

I am confident that this brief exposition of the constitutional position will suffice and will induce hon'ble members to extend to me their whole-hearted co-operation in the performance of my duties. I would also like to express the hope that no occasion will arise for me to exercise any unpleasant power of the kind referred to by May, which I should like to assure the House, is wholly unpalatable to me and which I wish to avoid exercising as far as possible."¹

(275)

POINT OF ORDER

SCOPE: must relate to the interpretation or enforcement of rules of procedure or such Articles of the Constitution as relate to the business of this Assembly.

(text on next page)

¹Punjab Legislative Assembly Debates, 8 December 1952, Vol-V, p. 94.

Over-ruling the objection that the Punjab Acquisition of Land (Housing) Bill, 1973 could not be considered for want of the consent of the Governor, Mr Rafique Ahmed Sheikh, Speaker, observed as under —

“Haji Muhammad Saifullah Khan, a Member from Rahimyar Khan has raised a point of order that as the Punjab Acquisition of Land (Housing) Bill, 1973 is a ‘Money Bill’ and is not accompanied by Governor’s recommendation, it cannot be considered by the House. He has further contended that the House having passed the Punjab Ordinance Temporary Enactment Act, 1973, has extended the life of the Punjab Acquisition of Land (Housing) Ordinance, 1973, by six months during the current session. He argues that as the Punjab Acquisition of Land (Housing) Ordinance, 1973 is substantially the same as the Punjab Acquisition of Land (Housing) Bill, 1973, it cannot be considered in view of the provisions of Rule 165 of the Rules of Procedure.

As regards the first point raised by Haji Muhammad Saifullah Khan, the House is now considering the Bill clause by clause under Rule 81 of the Rules of Procedure and the stage of introduction when any such objection could have been raised, has passed long ago. Though, *ex-facie*, the bill appears to be a ‘Money Bill’ it is not necessary at this stage to decide whether it is a ‘Money Bill’ and if so, whether it carries the required recommendation of the Governor. Article 144 of the Interim Constitution of the Islamic Republic of Pakistan has contemplated such situations whereby it has been provided that no Act of a Provincial Legislature and no provision in any such Act shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given, where the previous sanction or recommendation required was that of the Governor, either by the Governor or by the President.

The other point that the bill under consideration raises a question substantially identical with one on which the Assembly has given a decision in the same session is not correct. The Punjab Ordinance Temporary Enactment Act, 1973, has a life of only six months whereas the legislation under consideration is of indefinite duration and whatever be their provisions, it cannot be said that the present bill raises a question substantially identical with one on which the Assembly has given its decision earlier.

The Member has also expressed his worry about the fate of the various Ordinances whose life has been extended by six months by the Punjab Ordinances Temporary Enactment Act, 1973. I am not called upon to answer this question, as a point of order shall relate to interpretation of enforcement of Rules of Procedure or such Articles of Constitution as relate to the business of this Assembly. This point is not covered by the provisions of Rules of Procedure. Hence it is ruled out of order.”¹

(276)**POINT OF ORDER**

SCOPE: a point of order may be raised only in respect of the matter which is before the Assembly at the relevant time and it must relate to the interpretation or enforcement of the rules or the relevant Articles of the Constitution.²

(277)**POINT OF ORDER**

SPEAKER is the authority to decide a point of order.³

¹Punjab Assembly Debates, 22 March 1973, Vol-III, No.37, pp. 5075-76.

²For details, see Decision No.37, pp. 31-32.

³For details, see Decision No.229, pp. 251-55.

PRIVATE MEMBERS

(278)

PRIVATE MEMBERS

AGENDA: if a private members' day for which agenda has already been issued, is utilised by the House for transacting official business, the agenda for the next private members' day is required to be determined afresh under the rules.

Although the agenda for the private members' day falling on 10 January 1952 had been issued, the House decided to utilise that day for transacting official business. The agenda for subsequent private members' day falling on 17 January 1952 had also been issued, but the House decided to take up the said agenda on 15 January 1952, and thereafter adjourn the Assembly *sine die*. The notice of a resolution given Chaudhry Muhammad Shafiq, Member was on the agenda for 10 January but it did not find place in the agenda for 17 January. The hon'ble member pointed out that the business of the day was not in order. The reason advanced was that when the normal business fixed for 10 January was interrupted, due to any reason and when the interruption was over and the private members' business was taken up on 15 January, the business already brought on to the agenda for 10 January ought to have been taken up on 15 January.

Rejecting the point of order, Dr Khalifa Shauja-ud-Din, Speaker announced the following ruling:-

“I have heard the hon'ble member at great length and have no hesitation in overruling the point raised by him. I am fortified in this view by some of the rulings cited by [the member] himself. Reference to the Procedure of the House of Lords regarding the business of that House and to May's Parliamentary Practice does not help us at all in the decision of this matter. The ruling given by the President of the Indian Legislative Assembly quoted by the hon'ble member and cited in the Selection from the Decisions of the Chair at No.387 goes definitely against him. It says —

‘The Government may exercise its own discretion in taking what non-official business it chooses’.

The Hon'ble Leader of the House in making a motion with regard to fixing today as the day for non-official business meant that the non-official business, which is to be taken today was that fixed for the 17th.

The House having agreed to it without any objection from any quarter, it is not open to the hon'ble member to raise this point now. Several other rulings have also been referred to, which I find are more or less irrelevant. The ruling at page 416 in this very book Selection from the Decisions from the Chair was given in view of the fact that the President of the Assembly considered that it was not fair to take members by surprise and to place before them a matter of which they had no notice. Even if the agenda of the 10th instant were to be taken for consideration today, it contained almost the same material as that fixed for today. There are two bills which appear in both the agendas. The resolution about Kashmir is also to be found in both; of course, there are one or two other things which do not find place in the agenda of today. Anyhow, that is a matter which need not engage our attention, in view of what I have already said with regard to the House having agreed to take up the agenda of the 17th today. It may, perhaps, be pertinent to point out that according to the Rules of Procedure of this Assembly, resolutions and bills submitted for consideration on a non-official day have to be balloted and if the resolutions or bills which have been balloted do not come up for discussion, then they lapse. Therefore, all the bills and resolutions which were balloted for the 10th have lapsed altogether and cannot be taken into consideration unless they or some of them have been selected in the ballot again for the 17th. In view of this I consider that the point of order cannot be given effect to.”¹

(279)

PRIVATE MEMBERS

QUESTIONS — ALTERNATIVE DAY: if the alternative day allotted in lieu of Tuesday for private members' business has no question hour under the rules, there will be no question hour on such a private members' day.²

¹Punjab Legislative Assembly Debates, 15 January 1952, Vol-II, pp. 965-66.

²For details, see Decision No.356, pp. 403-4.

POLICE

(280)

POLICE

ASSEMBLY — PRESENCE: their presence, with the consent of the Speaker, in the galleries, boxes or anywhere else in the Assembly building in connection with security and safety of the building and the members does not involve any breach of privilege.¹

(281)

POLICE

PRIVILEGES — MISCONDUCT: the police Inspector who had slapped a member, while checking his car and documents, was held guilty of the breach of privilege and was sentenced by the House to imprisonment till the prorogation of the session.²

(282)

POLICE

PRIVILEGES — OPPOSITION: raids on the houses and offices of Opposition members cannot be agitated through a privilege motion as the Assembly cannot intervene in such matters *inter alia* because the remedy is available under the law of the land.³

¹For details, *see* Decision No.301, pp. 329-32.

²For details, *see* Decision No.323, pp. 357-59.

³For details, *see* Decision No.296, pp. 325-26.

PRESS

(283)

PRESS

ASSEMBLY PROCEEDINGS — PRIVILEGES: derogatory and contemptuous remarks by the Press about the proceedings of the House tantamount to a breach of its privilege.¹

(284)

PRESS

ASSEMBLY PROCEEDINGS — PUBLICATION: the duty of the Press to publish a correct and authentic report of parliamentary proceedings emphasised.²

(285)

PRESS

BILL (QUESTION OR RESOLUTION): the contents may not be released to the press or otherwise published until the Speaker has admitted the same.³

(286)

PRESS

SPEAKER — CONDUCT: reflections in the Press on his conduct and decisions tantamount to gross breach of privilege.⁴

(287)

PRESS

SPEAKER: REFLECTIONS on his conduct tantamount to the breach of privilege of the House.⁵

¹For details, *see* Decision No.322, pp. 355-57.

²For details, *see* Decision No.346, pp. 393-94.

³For details, *see* Decision No.352, pp. 395-96.

⁴For details, *see* Decision No.335, pp. 372-73.

⁵For details, *see* Decision No.398, pp. 485-87.

PRIVILEGES

(288)

PRIVILEGES

ABSENCE — MEMBER: may be kept pending in the absence of the mover if his request is received either in writing or on telephone or through any member.

On 19 March 1987, the Speaker called upon M/s Usman Ibrahim, Sarfraz Nawaz and Maulana Manzoor Ahmed Chinioti one after the other, to move their privilege motions but as none of them was present in the House, the Speaker allowed their motions to be kept pending until they attended the House the same day or subsequently.

The Minister for Agriculture, Ch Abdul Ghafoor, sought ruling whether it would be fair to keep the motions of those members pending who did not care to be present in the House for moving the same. Their absence, without any intimation, meant that they did not intend to pursue the matter. As such, their privilege motions would be treated as disposed of.

The Speaker observed that although the rules were silent on the point, yet it had been the practice in this House to keep such motions pending till the arrival of the movers. However, the Speaker invited the House to discuss the matter to reach a consensus for future course of action.

After due debate, Mian Manzoor Ahmed Wattoo, Speaker decided that if a member was unable to attend on a particular day, he had to make a request, in writing, to the Speaker to pend his motion. If, for reasons, he was unable to do so, he had to convey the message on telephone or through any other member.¹

(289)

PRIVILEGES

ADMINISTRATION: there arises no breach of privilege of members if an authority exercises its administrative powers — pending the passage of the law by the Assembly, the constitution of the Murree Kahuta Development Authority by an executive order was held to be in order, giving rise to no breach of privilege.

¹Punjab Assembly Debates, 19 March 1987, Vol-IX, No.1, p. 15.

On 16 December 1986, Syed Tahir Ahmad Shah moved a privilege motion stating that the Murree Kahuta Development Authority Bill, 1986 was introduced in the Assembly on 2 October 1986 and the same was referred to the concerned Standing Committee for report. The Committee presented its report to the House on 23 October 1986; however, pending consideration of the report by the Assembly, the Governor of the Punjab, through an Executive order, constituted the Murree Kahuta Development Authority. The Authority had become functional before the enforcement of the law on the subject. He maintained that all the expenditure of the Murree Kahuta Development Authority was without lawful authority and unconstitutional. According to the mover, the privilege of the House had been breached.

Supporting the motion, Mr Riaz Hashmat Janjua stressed that the power of the Assembly to authorise expenditure from the Provincial exchequer had also been usurped by the Government in that case.

Replying to the privilege motion, the Minister for Industries, Mr Ghulam Haider Wyne, quoted Articles 129 and 137 of the Constitution, providing that “the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws” and that “the executive authority of the Province shall vest in the Governor and shall be exercised by him either directly or through officers subordinate to him.” The Minister, on the basis of the said Articles, emphasised that the constitution of the Murree Kahuta Development Authority by an executive order was constitutional. Moreover, the said order had been made on 2 March 1986 and as such the matter had ceased to be of recent occurrence under rule 55 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973.

The Speaker, Mian Manzoor Ahmed Wattoo, ruled that the Governor, under Article 129 read with Article 137 of the Constitution, had the power to constitute the Murree Kahuta Development Authority by an executive order. Moreover, the Murree Kahuta Development Authority was constituted in March 1986 whereas the privilege motion had been moved in the session held in December 1986. As the mover had not availed himself of the first available opportunity, the motion did not relate to a matter of recent occurrence under rule 55(iii) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973. The motion was, therefore, disallowed.¹

¹Punjab Assembly Debates, 16 December 1986, Vol-VIII, No.3, pp. 305-27.

(290)

PRIVILEGES

ADMINISTRATION: an order passed by the competent authority under the law to run the day to day affairs of the Province does not give rise to a breach of privilege.

On 22 June 1992, Rana Ikram Rabbani (Leader of the Opposition) raised a question of privilege pointing out that the Prime Minister of Pakistan had appointed Mr Hafeez Ullah Ishaq as Director General, LDA after selecting him out of the panel of four officers recommended for the post. He further stated that the LDA had been established under the Lahore Development Authority Act, 1975 and section 8 of that Act provided that 'the Director General shall be appointed by the Government of the Punjab'. He alleged that the appointment of Director General, LDA by the Prime Minister was a clear intervention in the affairs of the Province of the Punjab, and involved a breach of privilege.

The Minister for Law pointed out that the appointment of the Director General, LDA was made strictly in accordance with the rules and procedure by the competent authority and there had been no violation of any rules. The Parliamentary Secretary for Law and Parliamentary Affairs, while clarifying the position, informed the House that in fact the names of four officers had been under consideration by the Punjab Government for appointment as Director General, LDA and finally the name of Mr Hafeez Ullah Ishaq was approved and a notification to that effect was issued by the Punjab Government on 22 February 1992. He maintained that there had been no violation of the rules or intervention from any quarter whatsoever.

The Speaker, Mian Manzoor Ahmed Wattoo, ruled as under —

“After going through the statement of the mover, the counter statements of the Parliamentary Secretary Law and the Law Minister I have come to the conclusion that there had been no violation of the rules, any law or the Constitution. The appointment appears to have been made strictly in accordance with the rules without any outside intervention. Moreso, the notification was issued by the Punjab Government which is a sufficient evidence to show that the appointment was made by the Punjab Government legally and validly.

I, therefore, rule out the motion being misconceived.”¹

(291)

PRIVILEGES

ADMISSIBILITY (CONDITIONS): must relate to a privilege granted by the Constitution, law or rules — it was observed that the nomination of a non-elected person in preference to an elected member as Chairman District Allotment Committee under the Punjab Jinnah Abadies Act 1986 could not be construed as a breach of privilege.

Mian Muhammad Rafiq raised a point of privilege stating that the Chief Minister, by nominating Mr Muhammad Azhar (defeated by the mover in 1985 election), as Chairman of Allotment Committee, Toba Tek Singh, in preference to the mover, had violated his privilege. Opposing the motion on technical grounds, the Minister for Colonies, Mr Muhammad Arshad Khan Lodhi, referred to rule 55(i) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973 and stressed that the motion be ruled out as no privilege granted to the Member under the Constitution, any Law or Rules had been violated.

The Minister for Law also opposed the motion on similar grounds and stated that constitutional violation and privileges of Members of the Assembly were two separate things. If the Member felt that his right had been infringed under any provision of the Constitution, he could seek legal remedy from a court and could not require the Assembly to intervene.

The Speaker, Mian Manzoor Ahmed Wattoo cited, with approval, the following decision of the National Assembly —

“What is the duty of the Speaker when a Privilege Motion is sought to be moved? He is not to decide whether there has been a breach of privilege. He is not to decide whether the Privilege Motion contains something which is very serious for the prestige and dignity of the House. He is only to decide whether the whole thing is in order according to the Rules of Procedure.”

The Speaker ruled “that this House had already passed the Jinnah Abadies Act, 1986 empowering the Government to make rules for carrying out the purposes of the Act. According to the Rules notified by the Governor, the Chairman of the Allotment Committee shall be nominated by the Chief

¹Punjab Assembly Debates, 25 June 1992, Vol-VIII, No.21, pp. 42-43.

Minister or by any other person so authorised by him, from amongst public representatives or other respectables. Since the Chief Minister had been empowered to nominate the Chairman, the motion was not in order.”¹

(292)

PRIVILEGES

ADMISSIBILITY (CONDITIONS): must relate to a privilege granted by the Constitution, law or rules — it was observed that the appointment of a non-elected person as Political Counsellor by the Chief Minister did not involve a breach of privilege.²

(293)

PRIVILEGES

ADMISSIBILITY — (CONDITIONS): the question of privilege must be raised at the earliest occasion.³

(294)

PRIVILEGE

ADMISSIBILITY (CONDITIONS) — GOVERNMENT FUNCTIONARY: the exercise of lawful authority by any functionary of the Government does not involve any breach of privilege, even though the members have a different point of view — since the President had the constitutional powers to prescribe the impugned method of election, the privilege motion raising objection against the same was not entertained.⁴

(295)

PRIVILEGES

ADMISSIBILITY (CONDITIONS) — INTERVENTION OF THE ASSEMBLY: the matter may be such as requires the intervention of the Assembly and must relate to a privilege granted by the Constitution, law or rules — it was observed that the appointment of a non-elected person

¹Punjab Assembly Debates, 16 October 1986, Vol-VII, No.9. pp. 893-94.

²For details, see Decision No.295, on this very page.

³For details, see Decision No.327, pp. 362-65.

⁴For details, see Decision No.21, pp. 16-18.

as Political Counsellor by the Chief Minister, being an administrative matter, did not require the intervention of the Assembly.

Nawabzada Ghazanfar Ali Gul moved A privilege motion on 31 March 1990 stating that through a Notification issued by the Chief Secretary, Government of the Punjab on 2 January 1990, the Chief Minister Punjab had appointed Mr Naveed Malik as Political Counsellor to the Chief Minister with the rank and status of Advisor with immediate effect. The mover contended that the Chief Minister was not competent to make that appointment as there was no mention of the post of Political Counsellor in any law or rules on the subject. He particularly mentioned Article 129 of the Constitution and Schedule VII of the Punjab Government Rules of Business, 1974 to stress that if those provisions were read together, the outcome would be that the executive authority for such appointments vested in the Governor and not in the Chief Minister. He further argued that as the Chief Minister had acted in excess of his constitutional powers, his action in appointing Mr Naveed Malik as Political Counsellor was *ultra vires* the Constitution and Government of the Punjab Rules of Business, 1974. He, therefore, alleged that by that unlawful action of the Punjab Government his privilege had been violated.

Contesting the motion, the Minister for Law and Parliamentary Affairs pointed out that the Chief Minister was the Chief Executive of the Province and was fully competent to create any additional post in any cadre he liked. He further informed the House that Mr Naveed Malik had been appointed on contract basis by creating a special post for him. He was of the opinion that there was no need to submit the case to the Governor for his consent or approval. He also emphasised that the Assembly was not the proper forum to agitate the matter and if the mover had any grievance about the legality of the appointment made by the Chief Minister, he could go to a court of law for redressal. He pleaded that the motion, being unfounded and baseless, be ruled out of order.

Mian Manzoor Ahmed Wattoo, Speaker ruled as under —

“I have gone through the contents of the Privilege Motion as well as the short statement made by the mover in the House. I have also carefully read Article 129 of the Constitution and Schedule VII of the Punjab Government Rules of Business, 1974. In fact the mover has not been able to correctly appreciate the position. What I have gathered is that since the

Chief Minister is competent to make appointments of his Advisors he is equally competent to create any other executive post equivalent to the rank and status of Advisors and make appointment against it. As such I hold that the question does not relate to a privilege granted by the Constitution, any law or rules and the matter is not . I, therefore, hold the motion out of order.”¹

(296)

PRIVILEGES

ADMISSIBILITY (CONDITIONS) — INTERVENTION OF THE ASSEMBLY: the raids on the houses and offices of Opposition members cannot be agitated through a privilege motion as the Assembly cannot intervene in such matters *inter alia* because the remedy is available under the law of the land.

Mian Manzoor Ahmed Mohal, Deputy Speaker, presiding the sitting, ruled as under —

“This order will dispose of the following Privilege Motions —

- a. Privilege Motion No.2 moved by Mr. Arshad Imran Sulehri
- b. Privilege Motion No.3 moved by Mr Usman Ibrahim
- c. Privilege Motion No.4 moved by Mr. Usman Ibrahim
- d. Privilege Motion No.5 moved by Mr. S.A. Hameed
- e. Privilege Motion No.8 moved by Ch Pervaiz Elahi
- f. Privilege Motion No.11 moved by Mr. Imtiaz Ahmad
- g. Privilege Motion No.12 moved by Mr. Shahid Riaz Satti
- h. Privilege Motion No.14 moved by Sardar Zulfiqar Ali Khan Khosa
- i. Privilege Motion No.17 moved by Mr. Inamullah Khan Niazi
- j. Privilege Motion No.18 moved by Mr. Muhammad Saqib Khurshid
- k. Privilege Motion No.22 moved by Mr. Abdur Rauf Moghal
- l. Privilege Motion No.23 moved by Mr. Obaidullah Sheikh
- m. Privilege Motion No.24 moved by Raja Sultan Azmat Hayat
- n. Privilege Motion No.25 moved by Kh. Muhammad Islam
- o. Privilege Motion No.19 moved by Syed Zafar Ali Shah, Ch Tanvir Khan and Raja Muhammad Basharat.

¹Punjab Assembly Debates, 25 June 1990, Vol-II, No.8, p. 27.

The common question raised in all the said motions is whether or not the alleged acts of misbehavior and forcible ingress of the police into the houses/offices of the movers to counter the wheel jam strike call made by the Opposition constitute a breach of privilege. The motions have been opposed by the Government.

The Minister for Law and Parliamentary Affairs pointed out that the avowed objective of the strike was to topple the constitutionally established Government by trying to paralyze the normal activities of the citizens; by creating a sense of terror among them through acts of violence; and, by creating the impression that the Government was incapable of maintaining law and order and giving protection to the citizens. In these circumstances it was the legal duty of the Government to have taken appropriate measures in accordance with law for the safety and protection of the public. The state action complained against in the privilege motions pertains to the discharge of its legal obligations/duty by the Government. There is nothing in the Constitution or the law providing immunity to an MPA from such an action on the ground of privilege.

I have carefully considered the matter. The motions do not involve any breach of privilege granted by the Constitution or the law. The acts complained against can at best be regarded as violation of the ordinary law of the land. The law provides various forums for the redress of these grievances. Even otherwise the nature and magnitude of the cases is such that it may be beyond the capacity of the Assembly to handle their hearing and investigation in a proper way. Consequently the intervention of the Assembly in these matters is neither possible nor required.

In view of the above findings the privilege motions are barred by rule 55(i) and 55(iv) of Rules of Procedure of the Provincial Assembly of the Punjab 1973 and are ruled out of order.”¹

(297)

PRIVILEGES

ADMISSIBILITY (CONDITIONS) — QUESTION: must be raised at the earliest opportunity.²

(298)

¹Punjab Assembly Debates, 1 November 1994, Vol-XII No.4, pp. 127-30.

²For details, see Decision No.330, pp. 368-69.

PRIVILEGES

ADMISSIBILITY (CONDITIONS) — QUESTION: must be raised at the earliest opportunity.

Khawaja Muhammad Safdar moved a privilege motion on 31 May 1967 contending that the Minister for Basic Democracies and Local Government had made a conflicting statement in the House *vis-à-vis* the answer to starred question No.5359 regarding taking over of rural dispensaries by the Government. After hearing the mover and the Minister of Basic Democracies and Local Government, the Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

“Khawaja Muhammad Safdar has given notice of a motion alleging that a breach of privilege of the House has taken place in so far as the Minister for Basic Democracies and Local Government has willfully made an incorrect statement in the House on 24th May, 1967 and has thereby committed a breach of privilege of this House.

During the discussion on The Greater Lahore Water Supply Sewerage and Drainage Ordinance, 1967, Khawaja Muhammad Safdar remarked that the Provincial Government was taking over dispensaries and this news had appeared in the press more than a month ago. The Minister for Basic Democracies, rising on a point of order, remarked that the news had been contradicted.

Khawaja Muhammad Safdar contends that the above-said statement of the Minister conflicts with the answer to starred question No.5359 given by him on 27th of May, 1967.

The minister for Basic Democracies and Local Government has opposed this motion on the following two grounds, namely —

- (i) that no incorrect statement has been made by him and the information given in reply to Question No. 5359 is not relevant to the matter discussed on 24th May; and
- (ii) that the matter has not been raised at the earliest possible opportunity.

Minister for Basic Democracies has produced the original issue of the daily Pakistan Times, Lahore wherein it has been reported that the Government of West Pakistan has decided to take over rural dispensaries from the District Councils in the Province. He has also produced the next issue dated 29th April, 1967 of the same paper wherein the news of taking over the rural dispensaries by the Government was officially denied and

the news appeared on the front page. A perusal of both the issues clearly shows that the news of taking over the rural dispensaries by the Government was contradicted on 29th of April. The fact of contradiction has been admitted by Khawaja Muhammad Safdar, but he has referred to an official letter of 3rd November, 1966 whereby the Director, Health Services, Lahore Region had issued directions to all the District Health Officers that efforts should be made to transfer the rural dispensaries to the Government. In response to this letter, according to Khawaja Muhammad Safdar, the District Council Lahore, vide its resolution No. 9, had actually recommended for the transfer of three dispensaries in Lahore District to the Government. Khawaja Muhammad Safdar wants to prove that actually the Government is pursuing the policy of provincialisation of the rural dispensaries.

I think that in view of the categorical official contradiction published in the newspaper dated 29th April, 1967 and the statement of the Minister in this behalf on the floor of the House it cannot be said that the Government has decided to take over the rural dispensaries. Moreover, I have carefully gone through the answer to starred question No.5359 which deals with the hospital at Tehsil Headquarters Fort Abbas. Answer to part (e) of this question relates to the question of provincialising of the local body hospital located at Tehsil Headquarters (including the Hospital at Fort Abbas). It was stated that the question of provincialising of the local body hospitals located at Tehsil Headquarters was under the consideration of the Health Department in consultation with the Finance Department. This answer, therefore, relates only to the hospitals located at Tehsil Headquarters and not to rural dispensaries as has been presumed by Khawaja Muhammad Safdar. It is, therefore, clear that the news stood contradicted and the answer to question No.5359 related to the provincialisation of the local body hospitals located at Tehsil Headquarters and as such no incorrect information had been supplied to the House by the Minister for Basic Democracies and Local Government.

The next objection of the Minister for Basic Democracies is that the motion has not been given notice of at the earliest possible opportunity. The notice of this motion was given on 30th of May whereas the alleged information was furnished on the 27th of May. 30th May was a holiday and 29th was a working day. The motion was not tabled on the 29th and it has not been explained why it was not tabled on that day. I am, therefore, constrained to hold that the matter should have been raised on the 29th of

May, and agree with the learned Minister for Basic Democracies that the matter has not been raised at the earliest possible opportunity.

Therefore, on both the grounds I hold neither any incorrect information has been furnished to the House nor the motion has been raised at the earliest possible opportunity. I, therefore, hold the motion out of order.”¹

(299)

PRIVILEGES

ADMISSIBILITY (CONDITIONS) — RECENT OCCURRENCE: must relate to a matter of recent occurrence.²

(300)

PRIVILEGES

ADMISSIBILITY (CONDITIONS) — SUB JUDICE: the matter which is *sub judice* may not be raised through a privilege motion.³

(301)

PRIVILEGES

ARMY: the presence of army personnel, with the consent of the Speaker, in the galleries, boxes or anywhere else in the Assembly building in connection with security and safety of the building and the members does not involve a breach of privilege.

Disposing of a question of privilege arising from the presence of Army Officers in the Galleries, the Box and the Committee room, Dr Khalifa Shauja-ud-Din, Speaker, explained the position as under —

“Mr C.E.Gibbon has given notice of the following motion on a question of privilege, namely:

‘You will recollect that, on a point of order, I drew attention to your office letter No.1180, dated the 13th March 1953 and observed that a stranger was seated in the Galleries. On the advice of the Secretary of the Assembly you informed the House that the person seated in the Galleries was an official on duty. Later, I found that this person was not an official

¹West Pakistan Assembly Debates, 5 June 1967, Vol-V, No.12, pp. 3242-45.

²For details, see Decision No.289, pp. 319-20.

³For details, see Decision No.310, pp. 340-41.

of the Punjab Legislative Assembly Department but a Military Officer, in uniform. He was in possession of a seating plan and was taking notes of the proceedings.

On coming out of the Chamber, I saw a Military Officer, in civilian clothes, enter the Chamber from the Speaker's entrance and take his seat in the box on the floor to the right of the throne.

I also saw a number of armed Military personnel in Committee Room 'B'. It would appear from these incidents that an armed Military Force was in occupation of the Punjab Legislative Assembly Building and I am to request you to please inform the House why and under whose authority an Armed Force was permitted to occupy the building and to be seated in the Galleries; in a box on the floor of the House and in the Committee Room 'B' particularly when, in exercise of the authority vested in you under Rule 79 of the Punjab Legislative Assembly Rules of Procedure you had ordered that no visitors will be allowed to enter the Assembly Chamber Building or its Galleries during the Budget Session of the Punjab Legislative Assembly commencing on Monday, the 16th March, 1953.'

This privilege motion seems to be based on some misunderstanding. The usual procedure adopted by the Assembly Department in connection with the meetings of this Honourable House is that the Secretary informs the Senior Superintendent of Police and the Deputy Inspector-General of the Criminal Investigation Department to make such arrangements as they feel advised in connection with the security of the building and the protection of the honourable Ministers and of honourable members of this House as well as the control of traffic outside the Chamber. A similar question arose in the year 1946 when an honourable member of the Assembly invited the attention of the then Speaker to the fact that while entering the House he had noticed a certain room in the Assembly Building marked for the Superintendent of Police. The then Speaker ruled out the privilege motion on the ground that it was done on his own orders. I may quote his words. He said —

'Even before, during my predecessor's time, rooms have been allotted in the Assembly precincts to Secretaries to Government and others. The presence of Police in the precincts of the Chamber, as you know, is already recognised not only by usages of Parliament but by the usage adopted in this House and the Central Assembly.'

I find from a reference to Parliamentary Practice that even in the House of Commons a similar procedure is adopted. To quote from May —

‘To facilitate the attendance of Members without interruption, both Houses, at the commencement of each session, by order, give directions that the Commissioner of Police of the metropolis shall keep, during the session of Parliament, the streets leading to the House of Parliament free and open, and that no obstruction shall be permitted to hinder the passage thereto of the Lords or Members. The police accordingly give every facility to Members and Officers of the two Houses to cross the streets and approach the Houses of Parliament without interruption and where necessary hold up the traffic for this purpose.’

Honourable members are aware that now-a-days we are living under Martial law. The position under Martial Law as stated by Dicey is this. He says:-

‘Martial Law means the suspension of ordinary law and the temporary Government of a country or parts of it by military tribunals.’

The same authority again at a later stage says:-

‘The authority ordinarily vested in the civil power for the maintenance of order and police passes entirely to the army.’

On the Continent of Europe a state of Martial Law is described as the ‘Declaration of the State of Siege’ and constitutional authorities there have stated that it means that the constitutional Governments are for the time being suspended. Consequently the duties ordinarily performed by the police in connection with the safety of this Chamber and the protection of members have passed to the Military and the officers who are to be seen here have been posted on my advice. No question, therefore, of a breach of privilege arises.

As regards the seating plan I may mention that the seating plan as well as the order paper are always supplied by the Department to distinguished visitors in order to enable them to follow the proceedings with intelligence. Some of them want to know who is the person speaking. Therefore, this supply of the seating plan is in no way a breach of the privilege of this House.”¹

(302)

PRIVILEGES

¹Punjab Legislative Assembly Debates, 18 March 1953, Vol-VI, pp. 113-14.

ARMY: officers of the army and police on duty with any dignitary may sit in uniform, but without arms, in galleries.¹

(303)

PRIVILEGES

ASSURANCE: the non-implementation of an assurance does not constitute a breach of privilege.

On 7 October 1986, Sardar Nasrullah Khan Dreshak, MPA moved a Privilege Motion stating that he along with his brother-in-law went to Commissioner, D.G. Khan, at his residence in connection with a problem of urgent public importance. The Officer, as stated by the Member, declined to see the member and sent a message condemning the activities of the Public representatives. The mover alleged that the highly objectionable behaviour of the Commissioner, D.G. Khan amounted to breach of his privilege and that of the House.

The Minister for Cooperative opposed the motion. Thereafter, replying the motion, Mr Ghulam Haider Wyne, Minister for Industries, quoted rule 55(ii) and (iii) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973 and contended that the motion was not admissible as it did not relate to a single specific matter of recent occurrence. Ch. Ghulam Rasul, MPA quoted rule 55(i) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973, and pointed out that no privilege granted to the Member under the Constitution, any law or rules had been violated.

The Leader of the House, Mr Nawaz Sharif, however, assured the House that he would look into the matter and if any Officer was found guilty, he would be brought to book. He further stated that he had directed the administration to tackle the issue under the law. On the assurance of the Chief Minister, the Mover did not press his Privilege Motion.

Sardar Nasrullah Khan Dreshak, MPA moved another Privilege Motion on 16 October 1986 on more or less the same subject and alleged that in spite of the assurance given by the Leader of the House on 7 October 1986, he had again been subjected to victimization by the Government through underhand methods adopted by it.

The Speaker, Mian Manzoor Ahmed Wattoo, ruled as under —

¹For details, see Decision No.319, pp. 353-54.

“The Privilege Motion moved by Sardar Nasrullah Khan Dreshak, MPA is basically within the same context as Privilege Motion moved by him earlier on 7.10.1986. The Leader of the House had given assurance on that motion to the effect that no Hon’ble Member of the House would be unnecessarily harassed and action against the concerned persons shall be taken under the law. The mover had not pressed the motion after the assurance given by the Leader of the House. The Minister for Industries has opposed the motion on the ground that the matter raised therein does not relate to a single specific matter and, therefore, the motion may be ruled out under rule 55(i) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973.

I am afraid that I do not feel inclined to agree with the Minister for Industries, as, to my mind, the matter raised in the motion pertains to one specific issue. However, since the second motion has been based on the non-compliance of the assurance given by the Leader of the House, I would like to examine the matter from this angle. As to assurances, our Rules are very clear and I quote rule 156(3) for the convenience of the House, which reads as under —

‘Any Member, who feels that an assurance or a promise given to him or an undertaking made by a Minister or a Parliamentary Secretary has not been implemented within a reasonable time, he may in writing, propose that the matter may be referred to the Committee by the Speaker. If the Speaker is satisfied that a reasonable time has elapsed and that the matter should be gone into by the Committee on Assurances, he may refer the matter to the Committee.’

Again, I have to quote an extract from the Indian Parliamentary Practice as follows —

‘Non implementation of an assurance given by a Minister on the floor of the House is neither a breach of Privilege nor a contempt of the House, for the process of implementation of a policy matter is conditional on a number of factors contributing to such policies. In the Import Licences case, the Speaker ruled that the House has various remedies available to it to call the Government to account and secure compliance with its direction but inadequate compliance of an assurance or delay in its fulfillment will not constitute a breach of privilege.’

Keeping in view the relevant provision of the Rules and the precedents on the subject, I hold that there has been no breach of Privilege of the

Member or that of the House if the statement made or assurance given by the Leader of the House (Chief Minister) has not been implemented.

I, therefore, over rule the motion.¹

(304)

PRIVILEGES

BUDGET: the leakage of the budget proposals before their presentation in the Assembly does not *per se* entail a breach of privilege; however, the Assembly may inquire into the circumstances in which the leakage occurred.

The text of the ruling announced in this behalf on 19-6-1991 by the Speaker, Mian Manzoor Ahmed Wattoo, is given below —

“Rana Ikram Rabbani, MPA, moved a Privilege Motion on 5-6-1991 alleging that the Governor of the Punjab had fixed the 4th of June, 1991 as the date for the presentation of the Budget for the year 1991-92. But, the Budget proposals were leaked out and published in the Newspapers on 3-6-1991. He contended that the Budget documents being the property of the House and being classified, were required to be kept secret before their presentation in the Assembly. Since the Budget proposals were made public a day before their presentation in the House, the privilege of the mover as well as of the whole House had been infringed.

The Finance Minister, Makhdoomzada Shah Mahmood Hussain Qureshi, replying to the assertions made in the Privilege Motion, maintained that the motion was unfounded on the ground that the figures reported in the Newspapers were quite different from those contained in the Budget proposals presented in the House. In this connection, he quoted that the revenue receipts level had been published in the Newspapers amounting to Rs.3851.90 crore, whereas according to the Budget presented in the House the revenue receipt level was shown at Rs.3856.67 crore. Again, the size of surplus which the mover had given amounted to Rs.177.74 crore as against Rs.250.00 crore shown in the Budget presented in the Assembly. Moreover, there was no mention about resource mobilisation efforts in the Newspapers whereas in the Budget documents presented in the House on 4.6.1991 there was a specific mention of important steps taken by the

¹Punjab Assembly Debates, 16 October 1986, Vol-VII, No.9, pp. 897-911.

Government regarding resource mobilisation, as meaning, revision of the evaluation tables and withdrawal of exemption on the stamp duty. He further pointed out that there was no indication in the Newspapers reporting about the steps and measures adopted by the Government. Further, the operational shortfall according to the mover, amounted to Rs.123.04 crore whereas in the Budget documents it depicted as Rs.50.78 crore. In other words, according to the figures given by the mover each operational shortfall should have been 11.72% while the actual shortfall came to 4.84%.

The above facts and figures clearly show that the figures reported by the Newspapers or the mover were concocted, fictitious and baseless. The Finance Minister requested the House that the Privilege Motion may be ruled out of order being misconceived.

I have weighed the arguments given for and against the Privilege Motion and conclude that, in the first instance the Privilege Motion is not tenable on the ground that the figures given by the Newspapers and appearing in the Budget documents do not tally at all. Moreover, I am supported by a number of rulings on the point that Budget proposals if leaked out before their presentation to the Assembly do not constitute a breach of Privilege of the Members. In this connection, I would like to quote an extract from the ruling of the Speaker of Lok Sabha, India, as follows —

‘The prevailing view is that until the financial proposals are placed before the House, they are an official secret ... Though the leakage of the Budget proposals may not constitute a breach of privilege of the House, Parliament has ample power to inquire into the conduct of a Minister in suitable proceedings in relation to the leakage and the circumstances in which the leakage occurred ...’

I, therefore, rule out the motion as misconceived.”¹

(305)

PRIVILEGES

BILL — INTRODUCTION: non-supply of copies of a Government Bill in advance or immediately at the time of introduction does neither make the introduction of the bill invalid nor does it entail any breach of

¹Punjab Assembly Debates, 19 June 1991, Vol-V, No.17, pp. 1311-12.

privilege; however, it is a desirable practice that copies of a bill are made available to the members latest at the time of its introduction.¹

(306)

PRIVILEGES

COMMITTEES — ADMINISTRATIVE: Government has the right to constitute Administrative Committees comprising such members as may be nominated by it. The members do not have any vested right to be included in such Committees — the inclusion of members from treasury benches and non-inclusion of members from opposition in Anti-corruption Committees constituted by the Government did not involve a breach of privilege.

Mian Manzoor Ahmed Wattoo, Speaker, enunciated the relevance of the question of privilege in relation to certain Committees as under —

“Mr Riaz Hashmat Janjua, MPA raised a question involving a breach of Privilege on 12.5.1986, stating that while constituting Anti-Corruption Committees, by the Provincial Government, MPAs from Government party have alone been nominated to these Committees and the MPAs from the Opposition Group have been denied representation.

Besides taking into account the merits of the case, I have to examine this Privilege Motion purely on technical grounds. The right to raise a question of privilege is governed by the following conditions —

- (a) a member wishing to raise a question of privilege shall give notice in writing and if the question raised is based on a document, the notice shall be accompanied by such document;
- (b) the question shall relate to a privilege granted by the Constitution, any Law or Rules made under any law;
- (c) the question shall relate to a specific matter of recent occurrence;
- (d) the matter shall be such as requires the intervention of Assembly; and
- (e) the matter is being raised at the earliest opportunity.

Judging on the basis of above criteria, the motion is deficient of pre-requisite essential ingredients. Moreover, the MPA has failed to attach or produce a copy of the Notification constituting Anti-Corruption Committees referred to in his Motion, in order to ascertain whether the

¹For details, see Decision No.109, pp. 110-13.

question relates to a specific matter of recent occurrence and the MPA has availed first opportunity available to him.

Apparently the question does not relate to a privilege granted by the Constitution or any law or rules made thereunder.

In case such Committees had been constituted, it appears that it was an administrative action of the Provincial Government to streamline the administration. It does not confer any right on any MPA to be nominated on these Committees. These Committees are not the Parliamentary Committees of the Assembly and it does not seem appropriate to interfere in every action of the executive unless the Law so requires.

In view of the above, I am of the opinion that *prima-facie* the question raised does not involve a breach of privilege. I, therefore, withhold my consent and rule it out of order.¹

(307)

PRIVILEGES

COMMITTEE — REFERENCE: under the Rules of Procedure of the Assembly read with the West Pakistan Government Rules of Business, as they were in force at that time, a question of privilege was required to be referred to the Standing Committee on Law and Parliamentary Affairs.²

On a point of order raised by Khawaja Muhammad Safdar on 3 April 1963 that the question of privilege could not be referred to the Standing Committee on Law and Parliamentary Affairs, Mr Mobin ul Haq Siddiqui, Speaker ruled as under —

“Yesterday Khawaja Muhammad Safdar raised a point of order that the question of privilege raised by Major (Retd) Abdul Majid Khan could not be referred to the Standing Committee on Law and Parliamentary Affairs as in accordance with Rule 177 of the Rules of Procedure it had either to be referred to the Committee on Rules of Procedure and Privileges or considered by the Assembly itself. I had heard both sides of the House on this question at length and reserved my ruling for today. The position in this regard is that the Governor of West Pakistan by virtue of his order

¹Punjab Assembly Debates, 19 May 1986, Vol-VI, No.5, pp. 221-22.

²Under the Rules of Procedure of the Provincial Assembly of the Punjab 1997, the position is now different. A question of privilege may either be decided by the House or it may be referred to the Privileges Committee — see rule 73.

issued under Article 231 of the Constitution of the Republic of Pakistan, which was published in the Extraordinary issue of the Gazette of West Pakistan dated 8th June, 1962, has adopted the Rules of Procedure of the National Assembly of Pakistan as the Rules of Procedure of the Provincial Assembly of the West Pakistan with certain modifications. One of the modifications made is that, instead of Standing Committees mentioned in Rule 100 of the National Assembly of Pakistan Rules, the Standing Committees mentioned in the Governor's order dated, 8th June, 1962, referred to above shall be constituted for the Provincial Assembly of West Pakistan to deal with the subjects assigned in the West Pakistan Government Rules of Business to the Department or Departments mentioned against each. Rule 177 mentions the name of the Standing Committees to which a question of Privilege shall be referred as the Committee on Rules of Procedure and Privileges. This is one of the Standing Committee mentioned in Rule 100 of the National Assembly Rules of Procedure. The list of Standing Committees which are to be constituted for the Provincial Assembly by virtue of the Governor of West Pakistan order dated the 8th June, 1962 does not contain the name of any such Committee. Instead, for the Provincial Assembly, the provision made is that a question arising in the Assembly which requires reference to a Standing Committee shall be referred to the Standing Committee which deals with the subject matter of the question involved according to the assignment made to various Departments of Government in the West Pakistan Government Rules of Business. The subject matters relating to the Provincial Legislature is assigned by the West Pakistan Government Rules of Business to the law Department and the Standing Committee to deal with the subjects assigned to the Law Department is the Committee on Law and Parliamentary Affairs. Therefore where the committee on Rules of Procedure and Privileges is mentioned in Rule 177 of the Rules of Procedure for it we have to read the Standing Committee on Law and Parliamentary Affairs. The reference of the question of privilege of Major (Retd) Abdul Majid Khan has, therefore, been correctly made and the point of order raised by Khawaja Muhammad Safdar has no force. I, therefore, rule out the point of order in question.”¹

(308)

¹West Pakistan Assembly Debates, 4 April 1963, Vol-III, No.21, pp. 2117-18.

PRIVILEGES

CONDUCT — MEMBERS: insulting or derogatory remarks against a member or a Committee even by a member of the House *prima facie* involve a breach of privilege — the privilege motion against the remarks of a member that the second Select Committee had not applied its independent mind but had thumb-impressed the report of the first Select Committee was held to be in order and referred to the relevant Committee.¹

(309)

PRIVILEGES

CONSTITUTION: the non-implementation of any mandatory provision of the Constitution may give rise to a question of privilege; however, the privilege motion regarding failure of Government in adopting Urdu as official language within fifteen years as envisaged by Article 251 of Constitution was ruled out because the said period had not by that time exhausted.

On 15 June 1987, Begum Najma Tabish Alwari moved a privilege motion alleging that the Government had failed to fulfill its constitutional responsibility under Article 251 of the Constitution by not completely switching over to Urdu language in Government Offices etc.

While replying to her motion, the Minister for Law pointed out that in terms of Article 251, the responsibility of the Government was to make arrangements in this connection within a period of fifteen years, and the same period would expire on 14 August 1987; therefore, the motion was pre-mature. He further argued that Article 254 clearly lays down that ‘when any act, or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act, or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period.’ He added that in spite of the clear protection provided by the Constitution, the Government had throughout been endeavouring to see that Urdu was replaced with English in the country as soon as possible.

At that juncture, Mian Muhammad Afzal Hayat, Leader of the Opposition, intervened and stated that it was not correct to say that the Government

¹For details, see Decision No.313, pp. 343-44.

was very vigilant about its obligation; rather, the position was otherwise in as much as no tangible progress had been made by it in that direction even after the lapse of a number of years.

The Minister for Industries supported Minister for Law and assured the House that the Government was itself very keen to fulfill constitutional requirements and that it had already taken major steps to achieve the objective.

The Speaker, Mian Manzoor Ahmed Wattoo observed that the question of privilege of a member might arise if some constitutional provision was not implemented. However, he ruled out the motion on the ground that the period of fifteen years had not yet exhausted and at that time it could not be said that the constitutional provision had not been implemented.¹

(310)

PRIVILEGES

FUNDAMENTAL RIGHTS: the violation of fundamental rights of ordinary citizens is justiciable in the courts and, as such, it does not entail a breach of privilege.

On 22 October 1987, Syed Tahir Ahmed Shah moved a privilege motion regarding a news item in daily 'Jang' dated 14 October 1987 that female students of Medical Colleges had taken out a procession demanding equal treatment with male students in the matter of admission in the Medical Colleges. He explained that, according to the newspaper, the processionists pointed out that 667 seats were allocated for the male students whereas only 214 seats in various Medical Colleges had been reserved for female students. Out of 214 seats, 66 seats stood allocated to the Federal Government. As to the merit, the male students got admission with 700 marks while the merit for the girl students was at least 800 marks. Relying on Articles 25, 34 and 37 of the Constitution, the mover pointed out that the discrimination on the basis of sex in contravention of the Fundamental Rights granted by the Constitution had resulted in breach of privilege of the mover and that of the House.

Supporting the mover, Mian Riaz Hashmat Janjua emphasised that Article 25(1) envisaged that all citizens were equal before law while clause (2)

¹Punjab Assembly Debates, 15 June 1987, Vol-X, No.9, p. 476.

thereof did not recognize any discrimination on the basis of sex alone. He invited the attention of the Speaker to Article 34 which ensured full participation of women in all spheres of national life. He also mentioned clause (c) of Article 37 envisaging that technical and professional education shall be generally available and higher education, equally accessible to all on the basis of merit. He inferred that by discriminating between the male and female students in the matter of admission, there had been a gross disregard of the constitutional provisions. Hence, according to him, the motion did merit consideration.

The Minister for Law stated that the provisions referred to related to the Fundamental Rights for which the remedy lay with the courts and not with the Legislature. He stated that no violation of the Constitution had taken place and that the admission of male and female students was being made under the relevant law and rules made by the Government. He informed the House that the question raised in the motion was pending adjudication in the Supreme Court and the stay granted to the female students had already been vacated by the Supreme Court. Since the matter was also *sub-judice* it could not be agitated in the House under rule 55(iv) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1973. He requested that the motion be ruled out.

Mian Manzoor Ahmed Wattoo, Speaker ruled out the motion on the grounds that — (a) the motion dealt with the Fundamental Rights granted to the ordinary citizens in the Constitution and had no nexus with the privileges of the House, its committees or members; therefore, the appropriate forum was the courts and not the Assembly; (b) the matter was *sub-judice*.¹

(311)

PRIVILEGES

MEMBERS — ARREST: not immune from arrest on a criminal charge.

On 2 December 1963, Mr Iftikhar Ahmad Khan raised a question of privilege arising from the arrest of Amir Habibullah Khan Saadi on the 5th of November 1963. He contended that the Hon'ble member was arrested as a consequence of the honest and fair discharge of his duties as

¹Punjab Assembly Debates, 22 October 1987, Vol-XI, No.15, pp. 2205-6.

a member of the House during the last session; and, that the circumstances conclusively revealed that his arrest and the attempt falsely to implicate him was part of the scheme to stop Members of the Opposition from participating in the deliberations of the House. The Minister for Law opposed the motion *inter alia* arguing that as the matter was *sub judice*, it could not be discussed in the House; and, as the action had been taken under the law of the land it did not involve any breach of privilege.

After hearing the Members and the Law Minister, the Speaker, Ch Muhammad Anwar Bhinder, ruled as under —

“Amir Habibullah Khan Saadi, MPA, was arrested by the Lahore Police on 5th of November, 1963 on the allegations of committing offences under sections 307, 395, 332, 147, 148, 149, 427, 454, 124-A and 153-B of Pakistan Penal Code. As I have held previously, a Member of the Provincial Assembly is not immune from arrest or detention if he commits an offence punishable under the law. Amir Habibullah Khan Saadi was arrested in the ordinary administration of law and as such there is no breach of privilege. This privilege motion is, therefore, ruled out of order.”¹

(312)

PRIVILEGES

MEMBERS — ARREST OR CONVICTION: no breach of privilege is involved if intimation of the arrest or conviction of a member is furnished to the Assembly within reasonable time.

On 29 November 1963, Kh Muhammad Safdar moved a privilege motion stating that the District Magistrate Mekran had failed to transmit complete information to the Speaker about the arrest and conviction of Mr Abdul Baqi Baloch, MPA as required under rule 184 of the Rules of Procedure. The Minister for Law replied that the arrest of Mr Abdul Baqi Baloch and his conviction on a substantive offence had been duly notified in the prescribed form under rule 184. Hence, no question of the breach of privilege was involved. Ch Muhammad Anwar Bhinder, Speaker observed as under —

“Mir Abdul Baqi Baloch, MPA was arrested in Karachi on 31st October, 1963 and an intimation to this effect was received from District Magistrate, Karachi, on 4th November, 1963. Under Rule 186 of the Rules of Procedure, this fact was intimated to all the Members of the Provincial Assembly on 5th of November, 1963.

¹West Pakistan Assembly Debates, 2 December 1963, Vol-V, No.4, pp. 68-78.

On 13th November, 1963 Mir Abdul Baqi Baloch was asked by the Deputy Commissioner, Mekran, to execute a bond for rupees one Lakh with ten sureties in like amount for good behaviour and desist from further dissemination of sedition for a period of three years as contemplated under section 40 F.C.R. He was further ordered that he should be detained in prison for a period of three years or until he furnished the required security. This intimation was received by the Assembly Secretariat on 22nd November, 1963, and the Members were informed through a letter dated 25th of November, 1963.

Again, an intimation from Deputy Commissioner, Mekran, was received on 26th November, 1963 that Mir Abdul Baqi was also tried by him for an offence under Section 434/109 PPC and 11 FCR at Turbat and that he was convicted and sentenced to one year rigorous imprisonment and fined Rs.1,000/-. In default of the payment of fine, he was to undergo three months rigorous imprisonment. This intimation was read in the House yesterday. In view of all the intimations referred to above and the reasons of arrest and detention given, I do not think that the District Magistrate, Mekran has failed to comply with the provisions of Rule 184 of the Rules of Procedure in respect of the arrest and conviction of Mir Abdul Baqi Baloch. I, therefore, rule the motion out of order.”¹

(313)

PRIVILEGES

MEMBERS — CONDUCT: insulting or derogatory remarks against a member or a Committee even by a member of the House *prima facie* involve a breach of privilege — the privilege motion against the remarks of a member that the second Select Committee had not applied its independent mind but had thumb-impressed the report of the first Select Committee was held to be in order and referred to the relevant Committee.

On 2 June 1966, Minister for Law intended to move a privilege motion on the ground that Mr Munawar Khan, while speaking on the West Pakistan Land Revenue Bill, 1965, had remarked that while considering the Bill, the Members of the second Select Committee had not applied their independent mind and had merely reproduced the report of the Select Committee. The said remarks tantamount to lowering the dignity and

¹West Pakistan Assembly Debates, 29 November 1963, Vol-V, No.3, p. 48.

prestige of the Members of the Select Committee. Mr Munawar Khan, however, contended that he had the right to criticise not only the conduct of his colleagues but also of the Ministers, if any one of them was at fault. The Members of the House were not prevented from expressing free opinion in the House, and that included the right to criticise.

The Speaker, Ch Muhammad Anwar Bhinder, observed that in addition to the privileges enunciated in the Provincial Assembly of West Pakistan Privileges Act, 1964, certain privileges were available under the precedents and conventions. Notwithstanding that the instant privilege was not mentioned in the Act, it was the privilege of every member of the House that no insulting or derogatory remarks were passed against him. Since in the case in hand, the objection had been taken not only by the Law Minister but also by Mr Muhammad Yousaf Khan, who was member of the second Select Committee, and since the impugned remarks had not been refuted by the Member, it was *prima facie* a case requiring further probe. However, whether or not a breach of privilege had, in fact, occurred was for the Committee to determine. With the said remarks, the Speaker declared that technically speaking the motion was in order and allowed the same to be moved.¹

(314)

PRIVILEGES

MEMBERS — JAIL: no breach of privilege is involved in a case of the denial of the facilities admissible to a member under the Jail Manual *inter alia* because the remedy lies with the courts.

Disposing of the point relating to the alleged denial of facilities to the Leader of the Opposition confined in jail, Mr Muhammad Haneef Ramay, Speaker ruled as under —

“Syed Zafar Ali Shah and 85 other Members from the Opposition moved Privilege Motion No.3, maintaining that the privilege of the Leader of the Opposition as well as that of the Provincial Assembly of the Punjab has been breached because Mian Muhammad Shahbaz Sharif, Leader of the Opposition is not being provided health and other facilities, admissible to him under the law and the Jail Manual, and restrictions have been imposed on visits.

¹The Opposition members staged a walk-out against the decision of the Speaker. However, the privilege motion was admitted and referred to the relevant Committee for report — see West Pakistan Assembly Debates, 2 June 1966, Vol-III, No.9, pp. 1796-99.

In his short statement, Syed Zafar Ali Shah, MPA dilated upon the basis of the motion. Minister for Law, in his reply, stressed that all the facilities and amenities admissible under the Jail Manual to the class of prisoners to which Mian Muhammad Shahbaz Sharif belongs are being provided to him without any let or reserve. Highlighting the said facilities, he emphasised that two servants, one cook and one attendant have been provided to the Leader of the Opposition; books, journals and newspapers are being regularly supplied; health facilities under the expert advice are being extended to him and he has since been examined by the Eye Surgeon and Orthopaedic Surgeon as also at PIMS; he is free to use the courtyard of about three kanals in front of his Cell; there are no restrictions on the members of his family or legal advisors to visit him; however, in view of persistent violations of rules 265 and 561 of the Jail Manual, certain reasonable restrictions have been imposed on other visitors so that the visits are not used for political purposes. The Law Minister further stressed that a prisoner in a jail is governed by the provisions of the Jail Manual. Different facilities are admissible to various categories of the prisoners. He also placed on record a judgement by which the Honourable High Court has passed orders regarding the facilities to the Leader of the Opposition. He was of the view that no breach of the privilege was involved and the intervention of the Assembly was not necessary in the matter.

I have given my anxious thought to the matter in hand, especially because it relates to the Leader of the Opposition in the Punjab Assembly and has been moved by 86 members.

Mian Muhammad Shahbaz Sharif, Leader of the Opposition is confined in jail on account of certain criminal cases. In jail, he is entitled to the facilities that are admissible to the class of the prisoners to which he belongs. I have not been able to find out any provision in the Jail Manual or in any other law or rules, whereby an MPA, confined in jail on a criminal charge, is made entitled to any privileges over and above those admissible to other prisoners in the same class. The Law Minister has informed the House that all the facilities admissible to the 'B' class prisoners are being provided to the Leader of the Opposition. Legal advisors or the members of his family are free to visit him under the Jail Manual. Certain restrictions on other visitors have however been imposed under the rules for persistent violation of the provisions of the Jail Manual.

I am of the view that no breach of privilege either of the Leader of the Opposition or of the House is involved in this case. Any denial of the facilities

to the Leader of the Opposition admissible under the Jail Manual cannot be construed to be the breach of the Privilege. In case there is any violations of the provisions of the Jail Manual at any time, he may approach the competent forums. In fact, the Honourable Court, in Crl.Misc.474-B/1996 — Mian Muhammad Shahbaz Sharif vs the State, has already passed an appropriate order in the matter. The relevant portion reads —

‘Since the persons who are desirous of having an interview with the petitioner are men of status in the society and one of them is ex-Governor of the Province of Punjab, we see no harm in granting the application and direct the Jail Authorities to provide an opportunity to them to see the petitioner in jail once a week. The family members of the petitioner are also allowed to see him on every alternate day if so requested by them but their number shall not exceed as provided in the Jail Manual. The Jail Authorities are directed to provide to the petitioner all the available management/treatment in jail and to arrange his physiotherapy in P.I.M.S., Islamabad as may be advised by the specialists.’

On the basis of the aforementioned facts, I hold the motion to be out of order.”¹

(315)

PRIVILEGES

MEMBERS — SPEECHES: sarcastic or taunting remarks by anyone, including a member or an officer of the House, in respect of the speeches of the members, may not be countenanced.

On 29 April 1952, Ch Muhammad Shafiq raised a point of privilege as under —

“Sir, I rise on a point of privilege and it is this that during the last session after a point of order had been raised by me and decided upon by the Deputy Speaker, who was in the Chair at that time, the Secretary of the Assembly approached me and while coming at my side told me in a taunting tone that ‘I should write a new parliamentary book’ and then he went back. My point of privilege is that it was not the duty or function of the Secretary to approach a member of this House sitting inside the House to make a remark in a taunting tone. Parliamentary Practice shows that the members have full freedom to say anything inside this House and nobody

¹Punjab Assembly Debates, 14 March 1996, Vol-XXXI, No.6, pp. 3-6.

can challenge or make taunting remarks even outside the House. You have been taking action even against newspapers which had criticised the members of this House or the speeches in this House. Here an officer of this House has got some specific duties to perform and this was not one of his duties to advise the members. He can advise the members outside the House; but not inside the House; that too when it is sitting near about me, he made taunting remarks which, I think, if allowed to go unchallenged, will create a wrong Parliamentary Practice in this House. If I leave this thing it will reflect very badly upon the prestige of the members and it would mean that tomorrow anybody else who is not a member of this House can make any such remarks. Under the circumstances, I submit and request you to give a ruling on this point so that a bad practice may not be created in this House.”

The Speaker, Dr Khalifa Shauja-ud-Din, gave the following ruling —

“So far as the question raised by the honourable member is concerned, it is a pity that it was not decided at the time when this incident took place. The honourable member had invited my attention to this fact at an earlier stage and I said that I would look into it. I did look into it. It is, no doubt, true that privileges of members must be preserved and that is the only manner in which the dignity of this House can be maintained. No remarks of a taunting nature can be permitted even by one member to another, much less by an officer of this House. But from the conversation that I had with the officer concerned I found that there was some misunderstanding in the matter and I was assured that no taunt was intended; and, I do not see why I should not accept the word of a gentleman. But I do want to make it clear that no taunt of any kind either by a member to another member or by any officer of the Assembly can be permitted and therefore, I think that so far as the point raised by the honourable member is concerned, the dignity of the honourable member as well as of the House is vindicated.”¹

(316)

PRIVILEGES

¹Punjab Legislative Assembly Debates, 29 April 1952, Vol-IV, p. 69.

MEMBERS — SPEECHES: Government Departments should not criticise the speeches made by members in the House.¹

(317)

PRIVILEGES

PARLIAMENTARY SECRETARY — APPOINTMENT: Governor's act of appointing Parliamentary Secretaries, conferring certain functions on them and making provision in the rules for yielding them more time for debate does not involve a breach of privilege.

Disposing of a point of order relating to the appointment of Parliamentary Secretaries, conferment of certain functions on them, and provision for yielding them more time for debate, Mr Rafiq Ahmed Sheikh, Speaker, ruled as under —

“Syed Tabish Alwari, a Member from Bahawalpur, has given notice of a Privilege Motion (Privilege Motion No.62) alleging a specific matter of recent occurrence. The matter according to the mover is that recently the Governor of the Punjab by amending the Rules of Procedure of the Assembly has bestowed special rights on the Parliamentary Secretaries, to enable them to take part in the proceedings of the House *i.e.* to move Government Bills and allotment of more time to address the House as against other Members. According to this motion, creation of the office of Parliamentary Secretary has no constitutional backing and also that no law has been enacted making provision for the appointment of the Parliamentary Secretaries or even specifying the conditions of their eligibility. It is, therefore, contended that the recent amendment in the Rules of Procedure of the Assembly and that the appointment of Parliamentary Secretaries is against the provision of the Constitution and law and amounts to undue interference in the affairs of the Assembly. The mover contends that it amounts to a breach of the privilege of the Assembly as well as its Members.

To my mind, the motion on the face of it did not involve breach of privilege and, therefore, I did not give my consent to raise this question. But withholding consent at that stage did not mean that I would not give my consent if I was satisfied at some stage that the matter did involve the breach of privilege. In view of the importance of the matter I sought the

¹For details, *see* Decision No.228, pp. 251.

assistance of the House as well as the Advocate General to determine whether it was a question fit for giving my comment. Consequently, the learned Advocate-General addressed the House on 8th of October, 1974 and was followed by Haji Muhammad Saifullah Khan, Syed Tabish Alwari, Mr Abdul Hafiz Kardar, Mr. M.K. Khakwani and Ch. Muhammad Yaqoob Awan. One of the points raised in the motion relates to the appointment of Parliamentary Secretaries.

Parliamentary Secretaries were first appointed in the various provinces of Indo-Pakistan sub-continent after the introduction of the provincial autonomy under the Government of India Act, 1935. As the nomenclature does itself indicate, Parliamentary Secretaries have invariably been members of the concerned Provincial Assembly.

The Government of India Act, 1935 did not itself provide for the office of Parliamentary Secretary. Even the holder of this office was not saved from disqualification from being a member of the House as it was not amongst the offices which were not to be treated as office of profit under the Government of India Act, 1935. However, the Provincial Assemblies did enact laws whereby they saved Parliamentary Secretaries from disqualification from being Members of the respective Provincial Assemblies. However, neither did such a legislation authorise the appointment of Parliamentary Secretaries nor did it provide for the creation of such an office. This position continued till 1956.

For the first time, the Constitution of the Islamic Republic of Pakistan, 1956 specifically provided for the office of Parliamentary Secretary. Under the Constitution of the Islamic Republic of Pakistan, 1962, the same provision was repeated. There was no such provision, however, in the Interim Constitution and when the Constitution of Islamic Republic of Pakistan 1973 was passed, there was no provision about the office of Parliamentary Secretary in it. Later on, by an amendment in Article 260 of the Constitution it is provided that amongst various other offices, the office of the Parliamentary Secretary will not be included in the service of Pakistan and so a Parliamentary Secretary has been saved from disqualification from being elected to or from being a member of the Assembly.

It is evident that for about 20 years Parliamentary Secretaries were appointed without any provision in the Constitution and without any provision authorising the creation and appointment of Parliamentary

Secretaries by any law. It has also been brought to my notice that the Interim Constitution did not create and also did not authorise the creation of the office of Advisor, yet a number of Members of the N.W.F.P. Assembly were appointed as Advisors and enjoyed almost all the privileges of a Minister in and outside the Assembly. It has been brought to my notice that the only reference in the Constitution or any law concerning the office of the Advisor was a provision in the Interim Constitution saving an Advisor from disqualification from being a Member of the Assembly.

It has also been brought to my notice that there is no constitutional provision for the Leader of the House in an Assembly and for the Leader of the Opposition and that only by precedent and practice, these offices continue to exist in our parliamentary life and they both enjoy certain privileges and rights which other Members of the Assembly do not. The Advocate-General has also put before the House the relevant parts of constitutional history of U.K, U.S.A., Australia and Bharat. But in view of my approach on the subject I need not refer this constitutional history.

I have summed up some of the arguments advanced or brought to my notice against the privilege motion on the point stated above. Whatever be the legal position, I feel that I am not required to decide this point and therefore, I refrain from giving a ruling in this matter. The constitutionality or otherwise of an executive action like the appointment of a Parliamentary Secretary need not be determined by me. Moreover, the Assembly will have its say when the allocation of funds for the Parliamentary Secretary are demanded by the Government.

The other objection which I have been requested to deal with is that Parliamentary Secretary has been given more privileges than the other Members of the Assembly on account of the recent amendment by the Governor in the Rules of Procedure. The amendment authorises a Parliamentary Secretary to introduce an official bill and also entitles him to take more time during a debate on an adjournment motion. It is contended that this discrimination is unconstitutional and against law and so, there has been a breach of the privilege of the House as well as that of the Members. While addressing the House, the participants did not indicate as to what provision of the Constitution or of any law has been infringed by these amendments.

According to Article 4 of the Constitution ‘to enjoy the protection of law and to be treated in accordance with law is an inalienable right of every citizen’ and ‘no action detrimental to life, liberty, body, reputation or property of any person is allowed except in accordance with law’. The amendment does not infringe this provision of the Constitution. Again Article 25 of the Constitution provides that —

‘All citizens are equal before law and are entitled to equal protection of law.’

The amendment does not violate this provision of equality before law and of equal protection of law. Again Article 66 of the Constitution provides that subject to the Constitution and to the rules of procedure of the Assembly there shall be freedom of speech in the Assembly and no Member shall be liable to any proceedings in any court and in respect of anything said or any vote given by him in the Assembly and that in other respects, the powers, immunities and privileges of the Members of the Assembly shall be such as may from time to time be defined by law. By the recent amendment, neither is this constitutional provision infringed nor is there any breach of privilege of the members defined by law. The amendment only enables Parliamentary Secretary to discharge the additional responsibilities entrusted to him.

Moreover, according to Article 67 read with Article 127 of the Constitution, a House may make rules for regulating its procedure and the conduct of business and until rules are so made, the procedure and conduct of business in the House shall be regulated by the Rules of Procedure made by the Governor. A plain reading of this provision will show that the Governor is acting on behalf of the Provincial Assembly and if the Provincial Assembly be of the view that rules made by the Governor are not in accordance with the wishes of the House, there is nothing to stop them from amending or changing them or from making fresh rules. As stated earlier, enabling a Member, who has been appointed a Parliamentary Secretary, to move a Government Bill is not a privilege. It is entrustment of a responsibility. As to the allotment of time, the Rules authorise the Speaker of the Assembly to allow more time to a Member in his own discretion and a provision in the Rules to the same effect allowing more time to a member enabling him to discharge some additional responsibilities, cannot be treated an act of discrimination. I, therefore, withhold my consent under Rule 53 of the Rules of Procedure.”¹

¹Punjab Assembly Debates, 21 October 1974, Vol-XII, No.9, pp. 926-32.

(318)**PRIVILEGES**

PARTY DECISIONS: the Drafting Committee constituted by a political party for its internal supervision and administration or management is not comparable with the Drafting Committee envisaged by the Rules of Procedure; hence, it does not entail a breach of privilege.

Mr C.E. Gibbon raised a question of privilege on the basis of the news item regarding nomination of certain members of the Muslim League Party as members of Permanent Drafting Committee of the Assembly. He was of the view that as the appointment of such a Committee was the sole prerogative of the Speaker or the House, the nomination of the Committee by the Muslim League Party involved a breach of privilege of the Assembly. Dr Khalifa Shuja-ud-Din, Speaker, decided the matter as under —

“The House will recollect that Mr C.E. Gibbon, M.L.A., raised a point of privilege on Saturday the 10th May 1952, the last day of the last Session of the Assembly, drawing attention to a news item that had appeared in the Press to the effect that the honourable Leader of the House had nominated certain members of the Punjab Muslim League Assembly party ‘as members of the Permanent Drafting Committee of the Punjab Legislative Assembly.’ Mr Gibbon pointed out that as the news item was likely to convey the impression that the privileges of the honourable members of the Assembly, who alone could appoint a Drafting Committee, had been infringed by the Honourable Leader of the House the point might be looked into and clarified.

I agreed to look into this matter and clear the position in due course. I have since made necessary inquiries and have found that the Drafting Committee referred to in the news item in question (published in the Pakistan Times of the 2nd May 1952) was appointed by the Leader of the Muslim League Assembly Party and the functions of this Committee were to consider the non-official bills, amendments, etc., given notice of by the members of the Muslim League Party and to suggest such changes in the drafting thereof as would precisely express the intentions of the party as well as bring those bills, amendments, etc., into conformity with the Rules of Procedure of the House. This Drafting Committee is a purely organizational arrangement of the Muslim League Assembly Party and has no connection whatever with the Drafting Committee which are to be

appointed under the direction of the Speaker to consider bills under rule 103(2) of the Assembly Rules of Procedure.

It will, therefore, be seen that no infringement of the privileges of this House is involved by the appointment of the Drafting Committee referred to in the news item in question and I am sure this clarification will satisfy the honourable member in particular and the House in general.”¹

(319)

PRIVILEGES

POLICE — ASSEMBLY: officers of the police and army on duty with any dignitary may sit in uniform, but without arms, in galleries.

On 17 June 1987, Mr Riaz Hashmat Janjua moved a privilege motion alleging that during the Assembly Session the officials of secret agencies had been seen occupying seats in the galleries and lobbies of the House watching the activities of the members and preparing secret reports of their speeches. In their presence, the Members could not perform their functions freely.

The Minister for Agriculture explained that it was an old tradition that security staff was deployed for the safety of the Assembly premises and the MPAs. Therefore, the motion did not reflect factual position. The mover was asked by the Speaker to quote a specific instance to prove that the mover was checked by any police official or his statement was noted down by him. The mover could not pin-point any specific incident. On 2 June 1987, the Speaker, Mian Manzoor Ahmed Wattoo, ruled as under —

“Mr. Riaz Hashmat Janjua, MPA, has raised a question of Privilege that Policemen in uniform have been seen in the galleries of the Assembly Building and that the officials of secret agencies have also been noticed preparing secret reports of their speeches and other activities, which is against the Parliamentary practices and also creates hindrance in the free performance of duties by the members. It was further pointed out that the Sergeant-at-Arms should not be allowed to sit in the House in uniform. Though the Privilege Motion has not been pressed by the honourable member, yet I have decided to give my ruling on the points raised by the member.

So far as the question of admission of armed police officials in uniform into the Assembly Building or preparation of secret diaries by them is concerned, it is beyond any doubt that such officials cannot enter into the

¹Punjab Legislative Assembly Debates, 5 December 1952, Vol-V, p. 52.

Assembly Building. The mover has not pointed out any specific instance in this respect. However, Policemen on duty may be allowed to have access to the reception office near the main gate so that they may contact their higher officers, magistrates etc., in order to cope with any emergent situation with regard to the safety of the Assembly Building and the members. But, the police officials are not allowed to come on the first floor of the building. However, officers of the Army and police on duty with any dignitary, may sit in Galleries in uniform but without arms.

Regarding presence of the Sergeant-at-Arms in the House in a ceremonial dress, he had been allowed to sit there in that dress in keeping with the practice obtaining in the National Assembly.”¹

(320)

PRIVILEGES

POLICE — ASSEMBLY: the presence of police personnel, with the consent of the Speaker, in the galleries, boxes or anywhere else in the Assembly building in connection with security and safety of the building and the members does not involve a breach of privilege.²

(321)

PRIVILEGES

POLICE — OPPOSITION: the raids on the houses and offices of Opposition members cannot be agitated through a privilege motion as the Assembly cannot intervene in such matters *inter alia* because the remedy is available under the law of the land.³

(322)

PRIVILEGES

PRESS: derogatory and contemptuous remarks by the Press about the proceedings of the House tantamount to a breach of its privilege.

On 14 March 1952, Chaudhry Muhammad Afzal Cheema moved the following privilege motion in the House —

“I invoke your Honour’s protection against the derogatory and contemptuous observations made in the Editorial column of today’s issue

¹Punjab Assembly Debates, 2 July 1987, Vol-X, No. 23, pp. 1708-09.

²For details, see Decision No.301, pp. 329-31.

³For details, see Decision No.296, pp. 325-26.

of the Civil & Military Gazette *i.e.*, the 14th March 1952. The Editorial opens like this 'The budget debate on Education in the Punjab Assembly was confined to stock-charges of neglect against the Government and set answers by the latter.' It goes on to say 'Like the six blind men of Hindustan in the story who went to see what an elephant was like, the critics as well as the Government spokesman rose one by one to talk about a subject which none of them knew ...' This appears to me to be highly objectionable and amounts to a clear contempt of the House. The Editorial makes no exception either in case of Government or the Opposition, in the use of objectionable words. It is, therefore, derogatory of the House as such. About the Opposition the following words are brought to your notice 'the Opposition members played mostly to the gallery'. About a dutiful honourable member belonging to the Government Party the Editorial makes the following comment 'Mr Abu Saeed Anwar seems to be holding a brief for some publisher.'

Sir, you are the custodian of the privileges of this House. This House is proud to include among its members such talented educationist as yourself and also the Honourable Minister of Education and last but not the least the Honourable Chief Minister himself.

Such sweeping remarks about the House that 'like six blindmen of Hindustan both sides of the House talked about a subject which none of them knew', should not go unnoticed.

With these words Sir, I give notice of a privilege motion under Rule 37 of the Punjab Assembly Rules of Procedure."

The Speaker, Dr Khalifa Shauja-ud-Din gave the following decision the next day —

"... I must express my regret at the fact that the honourable member giving the notice could not resist the temptation of having a sarcastic fling at another honourable member belonging to a party other than his own. I have no desire to elaborate this point as I think it sufficient to suggest that by adopting and maintaining a dignified attitude in speech and manner as well as in their written communications addressed to the Speaker, honourable members would be raising not only their own prestige but also the prestige of the House.

I have read the leading Article of the Civil & Military Gazette of the 14th instant more than once. After giving the matter a careful consideration, I have no hesitation in saying that it is not couched in language which can

be said to show the respect and deference due to the Legislative Assembly of the province.

In 1701, the House of Commons resolved that to print or publish any books or labels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities offered to the House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the House in the performance of their functions by diminishing the respect due to them. Reflections upon members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.

Following the precedents of the House of Commons, I must hold that the Article does, no doubt, constitute a grave breach of the privileges of this House. So far as the question of the action to be taken is concerned, it is not free from difficulty. The only statutory provision on the subject is to be found in section 71 of the Government of India Act, 1935 (as adapted for Pakistan). Sub-section (2) thereof says —

‘The privileges of members of a Provincial Legislative Assembly shall be such as may from time to time be defined by Act of the Provincial Legislature.’

The Punjab Legislative Assembly has not so far passed any Act defining the privileges of this House or of its members, and in the absence of any legislation defining the privileges of members, it is not clear how the Assembly can punish the offending newspaper. In the circumstances the only remedy that is open to me is either to debar the representative of the paper from admission to the Press Gallery or to take notice of the offending article and name the paper. The second alternative amounts to a moral condemnation of the offence and will, I hope, have the desired effect. I adopted the latter course in two similar cases before, which form part of the record of the proceedings of the House, and I propose to do the same now.

Before leaving the subject I must make it clear that there is no intention on my part to impose any restriction on the freedom of the press to offer a wholesome criticism of the level of debate in this House and of the policy underlying actions of Government. Such criticism is a healthy check and a source of inspiration for the Government and legislatures of the whole world. But at the same time I would request the Press to refrain from

expressing their views in a language which may be considered disrespectful to the House as such and might amount to a breach of the privileges of the Legislature as commonly conceived by the Parliamentary Practice of the House of Commons. So far as defamatory statements made in the Press against individual members of this House are concerned, it is obvious that the members concerned can seek such legal redress as is open to them under the ordinary law of the land. I might make it further clear that the speeches made in this House by Hon'ble members and printed in official debates are protected. No defamatory statement with reference to the Hon'ble members of this House or the speeches made in this House appearing in newspapers or other public documents are, however, protected according to the Constitutional Law. I must also advise the House that a privilege motion is a privilege which should be very rarely exercised and that too only with respect to matters of grave constitutional impropriety and to flagrant breaches of the Rules of Procedure or privileges which have been defined by Statutory Provisions.

I am sure that the members of the House as well as the Press will co-operate with me in maintaining the dignity of the House.”¹

(323)

PRIVILEGES

PUNISHMENT — POLICE: the police Inspector who had slapped a member, while checking his car and documents, was held guilty of the breach of privilege and was sentenced by the House to imprisonment till the prorogation of the session.

(text on next page)

Ch Manzoor Ahmed moved a privilege motion on 5 December 1986 stating that when he was travelling by his personal car from Faisalabad to Lahore, with his two servants, his car was stopped by a police party headed by Inspector Muhammad Ajmal Gondal at Khundamore in the jurisdiction of Police Station Mangatanwala. The Inspector abused him, dragged him out of the car and slapped him. One of his servants protested against that act but was severely beaten by eleven constables. The Inspector, then, took him to the police station, seemingly for registering a

¹Punjab Legislative Assembly Debates, 15 March 1952, Vol-III, pp. 877-78.

case. However, the Inspector offered him tea and allowed him go on the assurance that he would not take any action against the Inspector.

The motion was moved in the House on 11 December 1986 and referred to a Special Committee headed by Mian Muhammad Afzal Hayat, Leader of Opposition. The committee, after a detailed enquiry, made the following recommendations to the House —

“We are convinced that a breach of privilege has taken place and accordingly we would request the House to make recommendations to the Provincial Government to take appropriate action against the defaulter. We have regard for bureaucracy but for only those who act within limit set forth by law or who consider them to be public servants and not the masters. Sovereignty vests in God Almighty and then in the people. A member of the Provincial Assembly represents nearly one lac people of his constituency and by virtue of this they do command proper respect. Government Servants on the other hand are thus to serve the people and to perform duties assigned to them. They are also to be respected provided they were within the limits of their authority. If they try to assume powers which are not due to them or do acts which are unlawful or illegal then they forego their rights. In this particular case the accused overstepped the limits and thus made himself liable for an appropriate departmental punishment which should be an eye opener for others also”

The report of the Special Committee was presented to the House on 21 December 1986, and was considered by the House the next day. Advocate General Punjab also addressed the House in the matter. After detailed discussion, the House unanimously agreed that the Assembly was the judge of its own privilege and could punish persons for breach of its privilege.

Certain members proposed the following amendment in the recommendations of the Special Committee —

“In addition to the departmental action, the House in exercise of its inherent powers, sentence the said inspector to imprisonment till prorogation of the current session and if he is not arrested during this period then for the period of the next session.”

The report of the Special Committee, including the above amendment, was adopted by the House.¹

¹Punjab Assembly Debates, 22 December 1986, Vol-VIII, No.7, pp. 745-51, 754-75 and 799-802.

(324)

PRIVILEGES

QUESTIONS — REPLY: no question of breach of privilege is involved if the statement of the Minister is correct.¹

(325)

PRIVILEGES

QUESTIONS — REPLY: no question of breach of privilege is involved if the answer to a Question is substantially correct.

Mr Hamza raised a question of privilege on the ground that the reply given in the House by Parliamentary Secretary (Health) was incorrect. The Speaker, Ch Muhammad Anwar Bhinder, in the circumstances of the case, decided the matter as under —

“Mr. Hamza had given notice of a privilege motion that the Parliamentary Secretary (Health) had given an incorrect answer to part (c) of his question No.5455 dated 9th January, 1964, and as such had committed the breach of the privilege of this House. The Parliamentary Secretary had replied in part (c) that none of employees of the Hospital was the member of the Union as Government servants could not form Unions or become their members. He had clarified the position that under the West Pakistan Government Servants (Efficiency and Discipline) Rules, 1960, Government servants could not form a Union and had also produced a copy of the letter from the Secretary to Government of West Pakistan, Health Department wherein the decision of the Government was communicated to Administrator, Mayo Hospital, Lahore, to the effect that no class of Government employees could form Trade Unions as they were subject to Government Servants (Efficiency and Discipline) Rules, 1960. Moreover, the advice of the Law Department to the similar effect was also produced. The different letters produced by Mr. Hamza which are written by different officers of the Health Department to the Secretary of the Employees’ Union are previous to the instructions issued by the Secretary Health, on 14th November, 1963. In view of the decision of the Government and the documents produced by the Parliamentary Secretary, the answer to the question put by Mr. Hamza cannot be held to be

¹For details, see Decision No.298, pp. 327-29.

incorrect and *prima facie* there has been no breach of privilege. The motion is, therefore, ruled out of order.”¹

(326)

PRIVILEGES

QUESTIONS — REPLY: to constitute a contempt of the House or a breach of privilege of the House, it must be proved that the Minister deliberately or negligently furnished false information to the House.

On 29 June 1967, Mr Hamza moved a privilege motion alleging that whereas Minister for Finance, on 28th June 1967, had expressed on the floor of the House that two mobile X-Ray machines were working in the Mayo Hospital, Minister of Health, in reply to starred question No.7569, had stated, on 26th June 1967, that there was no such machines available in the Mayo Hospital. After hearing the Minister for Finance and the mover, the Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

“Mr. Hamza has given notice of a motion raising a question involving the breach of privilege of this august House in as much as according to him, the Minister for Finance had made an incorrect statement on the floor of the House on 28th June, 1967, while winding up the debate on Estimates of Projects, on saying that it would not be incorrect to say that two mobile X-Ray machines were working in the Mayo Hospital at that moment.

Mr. Hamza has contended that the Minister for Health in reply to his starred question No.7569 which was answered by her on 26-6-1967, had stated that there was no mobile X-Ray machine available in the Mayo Hospital. On the basis of the statement of the Minister for Health, Mr. Hamza has moved this privilege motion and has alleged that the Minister for Finance has made an incorrect statement on the floor of the House on 28th June, 1967.

The Minister for Finance has opposed this motion on the ground that no incorrect statement was made by him, nor did he intend to furnish incorrect information to the House at any time. He has categorically stated that he has always tried to furnish full and accurate information to the House and he has never imagined to furnish incorrect information to the House.

I have gone through the answer to starred question No.7569 which was furnished by the Minister for Health on 26th June, 1967 and the statement of the Finance Minister dated 28th June, 1967. In the answer to question

¹West Pakistan Assembly Debates, 27 February 1964, Vol-V, No. 36, pp. 60-61.

No.7569 the Minister for Health had given a list of hospitals in which mobile and portable X-Ray machines had been provided and it was mentioned in that list at serial No.8 that there was no mobile machine in Mayo Hospital, Lahore but there were two portable X-Ray machines in that Hospital. The Finance Minister had, however, stated that it would not be incorrect to say that two mobile X-Ray units were working in the Mayo Hospital at present.

Now, according to the answer by the Minister for Health, two kinds of X-Ray machines are provided in the Hospital; one is the mobile and the other is portable. According to her statement although there is no mobile machine working in the Mayo Hospital, there are two portable machines working there. The Finance minister has stated that two mobile X-Ray units are working in the Mayo Hospital. The contention of the Finance Minister is that a portable machine is mobile and as such if two portable machines are working in the Mayo Hospital, we cannot say that they are not mobile. Every portable machine, according to him, is mobile. Technically speaking, there is said to be a difference between a mobile X-Ray machine and a portable X-Ray machine. But it would be too much to expect from non-technical persons or a Minister, at that who is not directly in-charge of the portfolio of Health, to know all the technical terms of the medical profession. The Minister for Finance has clarified that by two X-Ray units he meant the portable X-Ray machine which can also be termed as mobile. To rigidly interpret and stretch the statement of the Minister for Finance according to the technicalities of the medical profession would not be quite fair. Moreover, it has been held in the National Assembly of Pakistan debates dated 14th December, 1963 at page 999 that in order to constitute a contempt of the House or constitute a breach of privilege of the House it must be proved that the Minister has deliberately told a lie and has made a false statement. Relying on this ruling I have also held on a previous occasion (PLAD Vol-V. No.64 page 89 dated 8-4-1964) that if a Minister has not given an incorrect information deliberately, then it would not amount to breach of privilege of the House.

Therefore, in view of the above authorities it is clear that only such statements can give rise to the breach of privilege of the House whereby deliberately or negligently false information is furnished to the House. In the present case I think no deliberate attempt has been made to furnish

wrong information to the House and as such there has been no breach of privilege of this House. The motion is ruled out of order.”¹

(327)

PRIVILEGES

QUESTIONS — REPLY: incorrect statement or information may entail a breach of privilege if such statement or information is intentionally or deliberately furnished.

On 6 April 1964, Mr Hamza moved a Privilege Motion about the incorrect statement made by Minister for Education while opposing an Adjournment Motion. After hearing the Members and Minister for Education, the Speaker, Ch Muhammad Anwar Bhinder gave the following ruling —

“Mr Hamza gave notice of a motion to raise a question involving the breach of the privilege of the House as well as its Members caused by the alleged incorrect statement made by Mian Muhammad Yasin Khan Wattoo, Minister for Education, on 27th March, 1964 while opposing adjournment motion No.306 when he stated that Khan Abdul Ghaffar Khan was not under detention at that time.

Mr Hamza had given notice of an adjournment motion to discuss the action of the Government in not providing adequate medical facilities at Rawalpindi to Khan Abdul Ghaffar Khan and while opposing this motion the Minister for Education giving the facts had stated that Khan Abdul Ghaffar Khan was not under detention at that time; rather he was in his village and he had been permitted to go to Rawalpindi and get himself medically treated.

Mr Hamza asserts that under sub-section (9) of Section 3 of the West Pakistan Ordinance No.XXXI of 1960, Khan Abdul Ghaffar Khan was released subject to the condition that he would not leave the revenue limits of his native village except with the permission, in writing, of the District Magistrate Peshawar and that this restriction constitutes “detention” within the meaning of Section 491(1)(b) of the Criminal Procedure Code as laid down in a ruling (PLD 1963 West Pakistan Lahore, page 109). In view of the order passed by the Government and the authority mentioned above, Mr Hamza asserts that Khan Abdul Ghaffar Khan was still under detention and the statement made by the Education Minister that Khan

¹West Pakistan Assembly Debates, 4 July 1967, Vol-V, No. 34, pp. 8690-91.

Abdul Ghaffar Khan was not under detention was incorrect and as such the breach of the privilege of this august House has been committed by the Minister for Education.

Mian Muhammad Yasin Khan Wattoo, Minister for Education, has opposed this motion on two grounds. Firstly, he has objected that the question has not been raised at the earliest possible opportunity; and secondly, he asserts that there has been no breach of privilege as no incorrect information was supplied to the House.

The Minister for Education stated that under Section 3, sub-section (9) of Ordinance No.XXXI of 1960, Government may at any time, subject to such conditions as it may think fit to impose, release a person detained under this Section and may require him to enter into a bond, with or without sureties, for the due observance of the conditions. The order passed by the Provincial Government on 29th of January, 1964 releasing Khan Abdul Ghaffar Khan placed some restrictions on his movement which the Provincial Government is competent to impose under Section 5 of the said Ordinance. These restrictions, according to the Minister for Education, can be imposed under Section 3(9) 'at the time of the release of a person detained', which means that at the time the restrictions are imposed under section 5 may be immediately at the time of the release, the person concerned cannot be considered to be 'under detention' because within the meaning of Section 3, sub-section (9) a detainee, when released, cannot be considered to be 'under detention' and the words used 'release a person detained under this Section' mean that after release a detainee cannot be said to be a person detained under this Section.

This question has been amply discussed in the Ruling PLD 1963 West Pakistan (Lahore), page 109 cited by Mr Hamza wherein it has been held that an order passed under Section 5 restricting the movements of a person and ordering him to reside or remain in any area specified in the order amounts to 'detention' and an order under Section 491 of the Code of Criminal Procedure may be passed for his release. The Minister for Education has tried to differentiate this ruling on the ground that it considers an order under Section 5 of the Ordinance as 'detention' only in relation to proceedings under Section 491 of the Code of Criminal Procedure. But when an order under Section 5 of the Ordinance has clearly been held by a Full Bench of the West Pakistan High Court as 'detention', I see no reason not to hold it so only on the ground that it has

been held so on a petition under Section 491 of the Code of Criminal Procedure.

However, before arriving at a positive conclusion whether *prima facie* an incorrect information has been furnished to the House or not, we shall also have to see whether any deliberate attempt has been made by the Education Minister to furnish an incorrect information. On 14-12-1963, the Acting Speaker of the National Assembly of Pakistan held on a Privilege Motion of Maulvi Farid Ahmad, M.N.A., that in order to prove a breach of privilege or contempt of the House, it must be proved that the Minister had deliberately told a lie or made a false statement. In the present case, the release order passed under Section 3(9) of the Ordinance does not show that Khan Abdul Ghaffar Khan was still under detention; rather it shows that some restrictions have been placed on him which the Government is empowered to do under Section 5 and the word 'detention' has nowhere been used in Section 5 of the said Ordinance. Therefore, reading Section 3(9) and Section 5 of the Ordinance without the help of the authority quoted by Mr Hamza one can legitimately think that Section 3 deals with detention while confining a person under Section 5 only relates to imposition of restrictions. Mr Hamza's contention is that being an eminent lawyer, our Education Minister must be knowing the ruling cited by him, but in my opinion it would not be fair to presume that the Education Minister deliberately tried to furnish an incorrect statement in the light of an authority where the term 'detention' along with other legal issues had been interpreted. His reply that Khan Abdul Ghaffar Khan is not under detention and that he is in his village clearly shows that by detention he meant 'detention in jail' and not detention within the meaning of the ruling cited by Mr Hamza. It cannot, therefore, be said that the Education Minister deliberately gave an incorrect information to the House.

The motion has also been objected to on the ground that it has not been raised at the earliest possible opportunity. The reply was given on 27th March, 1964 and this motion has been moved on 6th of April. Mr Hamza has explained that after the receipt of the information he tried to confirm the authenticity and the correctness of the information and he received a reply on the 3rd April and on the next working day *i.e.* on the 6th he gave notice of this motion. Mr Hamza has based his motion solely on the ruling referred to in his motion and on that ground alone he asserts that the information was wrong. In that case when Mr Hamza presumes the Education Minister to be in the knowledge of the ruling cited by him he is all the more presumed to have the knowledge of this ruling even on the

day the information was furnished and he should have, therefore, raised this question on the next working day *i.e.* 30th of March. The information supplied by the Education Minister has only been termed as 'incorrect' by Mr Hamza on the ground of the interpretation of the word 'detention' as given in the ruling cited by him and no fact was, therefore, to be ascertained from somebody else. The matter, therefore, cannot be said to have been raised at the earliest opportunity as envisaged in rule 174 of the Rules of Procedure.

I hold that neither an incorrect information has been deliberately given by the Education Minister nor the question has been raised at the earliest opportunity. I, therefore, rule the motion out of order.”¹

(328)

PRIVILEGES

QUESTIONS — REPLY: incomplete or incorrect information by a Minister does not *per se* constitute a breach of privilege unless there is deliberate and conscious attempt to mislead the House.

Mian Mahmood Ahmed, MPA gave notice of Privilege Motion No.27 alleging that in reply to his Starred Question No.633, the Minister for Agriculture failed to give complete information on the floor of the House on 26.5.1986 and omitted answer to a part of Question referred to above. By doing so, not only his privilege but the privilege of the House had also been breached.

The motion was moved in the House on 3-6-1986 and the arguments of the Minister for Agriculture were heard. He conceded that the answer to a part of Question was omitted un-intentionally by the Department and it was not a deliberate act. Replying to the remaining portion of the Question, he asserted that the position as stated in answer to the question earlier, remained the same and it did not tend to mischief. He further stated that owing to lack of time the question could not be answered on that day but was laid on the table; otherwise, he could have made good the deficiency.

The Speaker Mian Manzoor Ahmed Wattoo, ruled as under —

“If any statement is made on the floor of the House by a Member or a Minister which other Member believes to be un-true, incomplete or

¹West Pakistan Assembly Debates, 8 April 1964, Vol-V, No. 64, pp. 88-90.

incorrect, it does not constitute a breach of privilege. In order to constitute a breach of privilege of the House, it has to be proved that the statement was not only wrong or misleading but it was also made deliberately to mislead the House. A breach of privilege can arise only when the member or the Minister makes a false statement willfully, deliberately and knowingly. Other lapses and mistakes do not come under this category. I may quote National Assembly Ruling dated 11.7.1975 on a similar issue in support of my above findings —

‘Since the statement of the Minister was based on an information supplied by a Provincial Government and he did not make a false statement deliberately, there was no breach of privilege of the House or any of its Members.’

It may be made clear that the responsibility of supplying correct information to the Questions etc., on the floor of the House devolves on the Ministers and no allowance can be given if they make false or incorrect statement willfully, deliberately and knowingly. The Ministers must, therefore, be cautious and ensure that the information being supplied or statement being made on the floor of the House is free from errors or omissions in all respects.

In the subject case, I have no reason to disbelieve the statement of Minister for Agriculture and I am convinced that the information was not suppressed deliberately.

In view of the position as stated above, I am of the view that there has been no breach of Privilege of the House or any of its Member.”¹

(329)

PRIVILEGES

QUESTIONS — REPLY: a breach of Privilege may arise only if the Minister makes a false statement or an incorrect statement willfully, deliberately and knowingly.

Disposing of a privilege motion based on the alleged incorrect answer to a Question, Mian Manzoor Ahmed Wattoo, Speaker observed as under —

“Mr. Muhammad Asghar Chaudhry, MPA gave notice of a question of Privilege alleging that the Minister for Local Government, while answering Assembly Question No.1261, on 5.10.1986, provided incorrect

¹Punjab Assembly Debates, 4 June 1986, Vol-VI, No.17, pp. 1367-68.

information resulting in breach of Privilege of the House. He referred to the delegation of powers conferred by the Governor Punjab on the Divisional Commissioner and stated that it was he alone who was competent to pass a Stay Order and not the Minister for Local Government.

The facts of the case as stated in the motion are that the Minister for Local Government stayed auction on an application submitted by Thara Association, Municipal Committee, Lala Musa, District Gujrat for which, according to him, he was competent. In support of his arguments he referred to rule 6 of the Rules of Business, 1974 and section 156(c) of the Punjab Local Government Ordinance, 1979, Which is briefly quoted as under —

‘(a) A Minister shall be responsible for the policy matters and for the conduct of business of his Department.’

Section 156 of the Punjab Local Government Ordinance, 1979 is as under —

‘If, in the opinion of the Government, anything done or intended to be done by or on behalf of a Local Council is not in conformity with law or is in any way against public interest, Government for reasons to be recorded may —

- (a) quash the proceedings;
- (b) suspend the execution of any resolution passed or order made by the Local Council; and
- (c) prohibit the doing of anything proposed to be done.’

The Minister for Industries also based his argument on the above quoted law and rules and asserted that the Minister for Local Government was fully competent to pass the Stay Order on the application and that auction was against the public interest. It was further argued that the delegated powers to the Commissioner do not in any case take away the inherent powers of Government to exercise those powers itself.

I have given my careful consideration to this issue and am of the opinion that the matter is of difference and interpretation of law as to whether a Minister is a Government or not. This is a matter which I am not supposed to interpret.

On privilege Motion No.21, it was held that a breach of Privilege can arise only if the Minister makes a false statement or an incorrect statement willfully, deliberately and knowingly. The mover has not been able to substantiate it.

In view of the above, I hold the Privilege Motion out of order.”¹

(330)

PRIVILEGES

QUORUM: if the members break the quorum, it would be deemed to be an act of the Assembly and such an act does not give rise to a breach of privilege.

On 20 March 1964, Allama Rehmat Ullah Arshad moved a privilege motion that the Minister for Law and some Parliamentary Secretaries, during the debate on the National Language Bill on 18th March, 1964 deliberately induced the members to break the quorum in the House and thereby caused hindrance in the passage of the Bill. After hearing the Members and the Minister for Law, the Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

“Allama Rehmatullah Arshad gave notice of a privilege motion alleging that Minister for Law and Parliamentary Affairs and some Parliamentary Secretaries, during the debate on the National Language Bill on 18-3-1964, deliberately induced the members to break the quorum in the House and thereby caused hindrance in the passage of the above said Bill. He attached a copy of the daily Imroze dated 19th of March, wherein the alleged incident had been reported under the heading “a Drama”.

The admissibility of this privilege motion was objected to by the learned Law Minister on two grounds, namely:

- (i) that the matter had not been raised at the earliest opportunity;
- (ii) that no breach of privilege had taken place.

Rule 174 [sub-rule (3)] lays down that a question of privilege should be raised at the earliest opportunity. The alleged breach of privilege in this case, according to the mover, took place on 18th of March and as stated by Khawaja Muhammad Safdar, the Leader of the Opposition, the matter should have been raised there and then on 18th of March. The matter having not been raised there and then on 18th of March, notice of the breach of privilege, if any, should have been given at the latest on 19th of March before 8.00 a.m., *i.e.* one hour before the commencement of the sitting, under Rule 173. But this notice was received on the 19th sometime after the commencement of the sitting on that day. The mover of this

¹Punjab Assembly Debates, 23 October 1986, Vol-VII, No.13, pp. 1431-33.

motion had stated that on 19th of March he got the motion typed and then delivered it to the Assembly Secretariat on the same day. In my opinion, this is not a ground on which the requirement of Rule 174(3) should be dispensed with and under the circumstances it cannot be said that the question has been raised at the earliest opportunity.

In connection with the allegation that the Minister for Law and Parliamentary Affairs deliberately persuaded the Members to break the quorum, the Minister concerned had denied the facts and stated that he entered the Assembly chamber just to call out another Member of the Assembly whom he required in connection with some other business. There is no reason to disbelieve this explanation. Moreover, it has been held vide Legislative Assembly debates dated 18th of August, 1943 pages 659 and 660 by the President, as *‘I do not think the House would like me to hold that it is the duty of the Government Members and Members nominated by Government alone to attend the House regularly and in proper time and that an equal duty does not devolve on the Members who have been elected by constituencies. If I were to lay down any such ruling, it would mean that the constituencies need not look to their elected Members to attend the Assembly and carry on the business of the House. I should be very loath to lay down any such ruling.’* The motion was held out of order. It is, therefore, clear that the Members on either side of the House are equally responsible for maintaining the quorum and they are at liberty not to break it if they themselves do not desire to do so. But if they break the quorum, then it would be deemed to be an act of the Assembly and there can be no breach of privilege by an act of the Assembly itself.

In view of the denial of the facts by the learned Law Minister and on account of the fact that the motion has not been raised at the earliest opportunity, it is ruled out of order.”¹

(331)

PRIVILEGES

REPORTS — DELAY: delay in the submission of reports on the accounts of the Province by the Auditor General of Pakistan may not involve a breach of privilege.

¹West Pakistan Assembly Debates, 26 March 1964, Vol-V, No.55, pp. 72-73.

Disposing of a privilege motion complaining against the delay in the submission of the reports of the Auditor General, the Speaker, Mian Manzoor Ahmed Wattoo, ruled as under —

“Mr Riaz Hashmat Janjua, MPA invoking the provisions of Article 171 of the Constitution raised a privilege motion on 1.10.1987 to the effect that the Reports of the Auditor General of Pakistan for the years 1984-85, 1985-86 and 1986-87 had not been laid before the House. He pressed that by not placing the said Reports before the House, breach of Privilege of the MPA and that of the House had taken place.

The Minister for Law & Parliamentary Affairs opposed the motion on the ground that the provisions of Article 171 were not attracted as no time limit had been specified in this Article. Therefore, there had been no violation of the Constitutional provisions. He further explained that the Report for the year 1984-85 had been laid before the House and assured that the Reports for the years 1985-86 and 1986-87 would be laid before the House as soon as they were received from the Auditor General of Pakistan.

The Leader of the Opposition, Mian Muhammad Afzal Hayat, while interpreting Article 171, expressed the view that although no time limit had been given, yet the intention underlying the aforesaid Article was that in the absence of any specified period, the Reports shall be presented before the Assembly within a reasonable time, but neither the Report for the year 1984-85 nor for the years 1985-86 and 1986-87 had been laid before the Assembly within a reasonable time. He supported the mover saying that as the Reports had not been presented within a reasonable time, there had been a breach of the privilege of the member as well as of the House.

Raja Khaliq Ullah Khan, MPA, participating in the discussion, supported the Law Minister that the intention of the framers of the Constitution was clear as no time limit had been fixed for the presentation of the said Reports to the House.

I am of the view that there is no dispute about it that no time limit has been prescribed in Article 171 of the Constitution about the presentation of these Reports. Plain reading of Article 171 would reveal that the report relating to the accounts of a Province has to be submitted by the Auditor General to the Governor who in turn has to lay it before the Provincial Assembly. Under Article 170 of the Constitution, the Auditor General has been ordained to maintain the accounts of the province in the manner to be prescribed by him and he has to submit the said Report to the Governor under Article 171. It has

not been established by the mover or any other member that the delay in laying the Reports before the Assembly is attributable to the Governor. During the course of the discussion, the Law Minister has enumerated the stages which have necessarily to be gone through before the Reports are ready for submission to the Governor. This might well have been the reason why the framers of the Constitution did not fix any time limit for the submission of the Reports. The delay, if any, may have taken place in the Office of the Auditor General for which the Government of the Punjab cannot be held answerable.

In my opinion, therefore, there has been no breach of privilege either of the House or of any member by not laying the said Reports before the House. I, therefore, withhold my consent and rule it out of order.”¹

(332)

PRIVILEGES

SERGEANT-AT-ARMS: may sit in the House in ceremonial dress.²

(333)

PRIVILEGES

SEATING PLAN: providing the seating plan to distinguished visitors or others to facilitate them to follow the proceedings does not involve a breach of privilege.³

¹Punjab Assembly Debates, 26 October 1987, Vol-XI, No.17, pp. 2418-20.

²For details, see Decision No.319, pp. 353-54.

³For details, see Decision No.301, pp. 329-31.

(334)

PRIVILEGES

SECURITY: arrangements made, including the closure of doors and windows of the Assembly, do not *per se* constitute a breach of privilege of the House, unless the same have the effect of impeding, in any way, the free ingress and egress of the members.

Ch Muhammad Afzal Cheema, through the notice of a privilege motion, objected to the presence of Military Officers inside the Assembly Chamber, restrictions imposed on the entry of the honourable members into the House and compulsory closure of the windows and doors. The Speaker, Dr Khalifa Shuja-ud-Din, disposed of the motion with the following observations:-

“So far as the first part of this motion is concerned, it has already been dealt with in connection with Mr Gibbon’s privilege motion.¹ As regards ‘restrictions imposed upon the entry of the honourable members into the House’ and so on, it would be sufficient to say that the old practice of the issue, by the Secretary of the Assembly, of admission cards to honourable members to facilitate their free entry into the building has been revived in order to safeguard them against unnecessary molestation by the Officers appointed by the Martial Law Administrator, round about the Assembly Building. Closure of the doors and windows is in the interest of the security of the Building and has no effect whatsoever on the meetings of the Assembly. The motion is, therefore, ruled out of order. I should like, however, to point out that I would welcome suggestions from honourable members in this behalf which may tend to further facilitate their ingress and egress into and out of this Chamber. I shall be available for this purpose for half an hour today after the hour of interruption of business.”²

(335)

PRIVILEGES

SPEAKER — CONDUCT: reflections in the Press on his conduct and decisions tantamount to gross breach of privilege.

¹ In that ruling the Speaker observed that the presence, with the consent of the Speaker, of army personnel in the galleries, boxes or anywhere else in the assembly building in connection with security and safety of the building and the members did not involve any breach of privilege — *see* Decision No.301, pp. 329-31.

² Punjab Legislative Assembly Debates, 18 March 1953, Vol-VI, pp. 115.

On 1 June 1956, the Chief Minister, Dr Khan Sahib drew the attention of the House towards the statement said to have been issued by the Leader of Opposition, Khan Sardar Bahadur Khan, and published in 'The Pakistan Times' dated 31st May, 1956, wherein motives had been imputed to the chair and reflections cast on the decision of the chair. He stated that it was a well established parliamentary convention that no action of the chair could be criticised except in the House itself and that too on a substantive motion of 'No-Confidence' and not incidentally during a debate. In no democratic country actions of the chair and its partiality were impugned by a member of the House in the press. That, in fact, was the gravest breach of privilege of the House known to parliamentary traditions. In parliamentary form of government, parties always clash but confidence in the impartiality of the Speaker was an indispensable condition of the successful working of parliamentary Government. He urged that as the breach of privilege of the House committed by the Leader of Opposition by criticising the actions and impartiality of the chair in the press was the first of its kind in the life of the Legislative Assembly, the House had to take a serious view of the matter.

Chaudhry Fazal Elahi, Speaker gave his ruling as under —

“If any member had any grievance against the Speaker, it should be ventilated in the House. The Assembly records will bear me out that the Rules of Procedure are being violated by one section of the House. Whether a ruling is palatable or not, the Speaker is bound to follow the Rules of Procedure. I can assure the House that there is not one instance when the Rules of Procedure have been flouted by the chair. Even then you rush to the press, I cannot do the same. There is no doubt that it is gross breach of privilege.”¹

(336)

PRIVILEGES

SPEAKER: CONSENT to the moving of a privilege motion may be withheld in Chamber.

Regarding the power of the Speaker to withhold consent to the moving of a privilege motion, Mr Muhammad Haneef Ramay, Speaker ruled as under —

¹West Pakistan Legislative Assembly Debates, 1 June 1956, Vol-I, No.14, pp. 824-26.

“This order will dispose of the point of order raised by Mr. S.A. Hameed, MPA in respect of Privilege Motion Nos.6 & 7.

Privilege Motion No.5 was moved by Syed Zafar Ali Shah, MPA and Mian Usman Ibrahim, MPA on the question that Ch. Pervaiz Elahi, Acting Leader of Opposition, had been illegally declared proclaimed offender to restrain him from attending the session. After hearing the movers and the Minister for Law, the said motion had been ruled out of order as the act of declaring Ch. Pervaiz Elahi as proclaimed offender was part of judicial proceedings and did not involve any breach of privilege of any member.

Since the subject matter of Privilege Motion No.6 from Mr. S.A. Hameed and Syed Tabish Alwari, MPAs and Privilege Motion No.7 from Mian Imran Masood, MPA was substantially identical, I ruled them out because I could not have come to a different conclusion even though these had been moved.

Mr. S.A. Hameed, MPA has objected on the ground that the motions could not be ruled out without allowing the members an opportunity to move them and to substantiate them through short statements.

This contention is not supported by the rules. According to rule 53 of the Rules of Procedure of the Provincial Assembly of the Punjab 1973, a member may raise a question of privilege with the consent of the Speaker. Under rule 168 of the said rules, a motion shall not raise a question substantially identical with one on which a decision has already been given in the same session. Since I had ruled out of order Privilege Motion No.5, the identical privilege motion Nos. 6 & 7 could not be allowed to be moved. The point of order is thus without substance and is answered accordingly.”¹

(337)

PRIVILEGES

SPEAKER — RULING: must be relevant to the matter before the Assembly and must confine to the provincial subjects — it was held that the ruling of the Speaker preventing the member from commenting on the imposition of martial law did not breach the privilege of freedom of speech in the House *inter alia* because martial law was a central subject and its discussion in the Provincial Assembly could not be allowed under the rules.

¹Punjab Assembly Debates, 11 January 1995, Vol-XVI, No. 4, pp. 4-5.

Dilating upon the rule that the debate in the House ought to be relevant and confined to the provincial area of operation, the Speaker, Dr Khalifa Shuja-ud-Din, gave the following ruling:-

“I have received notice of the following motion from Mr. C.E. Gibbon, M.L.A:-

‘I beg to move a motion of privilege, in that the rulings given by you yesterday on my motion of privilege, tend to restrict the following privileges heretofore enjoyed by the Members of the Punjab Legislative Assembly —

1. freedom of access to all parts of the Punjab Legislative Assembly Building;
2. freedom of speech subject to the restrictions imposed under Rule 68(2) of the Punjab Legislative Assembly Rules of Procedure;
3. freedom from arrest and/or censure in respect of any thing said or any vote given by an hon’ble Member in the Legislative Assembly.

These privileges are guaranteed under Section 71 of the Government of India Act (as adapted) and nothing in any existing Pakistan Laws can deprive the hon’ble Members of this House of these privileges and I am to request you to please clarify the rulings given by you on the 18th March, 1953, in this behalf.’

This privilege motion is obviously based on a misunderstanding both of my ruling given yesterday and the statutory provision referred to therein. Section 71 of the Government of India Act (as adapted for Pakistan) defines the privileges of members. All that it says is:-

‘... there shall be freedom of speech in every Provincial Legislature and no member of the Legislature shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of Provincial Legislative Assembly of any report, paper, votes or proceedings.’

Then in sub-section (2) it is said:-

‘In other respects the privileges of members of a Provincial Legislative Assembly shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of that Assembly, or in the case of East Bengal and the Punjab, by members of the Provincial Legislative Assemblies of Bengal and the Punjab, respectively.’

So that it would appear that unless this Assembly lays down the privileges of the members of the House, the only privileges to which members are entitled are the freedom of speech and freedom from arrest in consequence of any speech made in the House. And until these privileges are further defined, all that can be claimed are the privileges which were enjoyed by the members of this Assembly before partition. The ruling that I gave yesterday was not intended to and does not in fact put any restriction on the privilege of freedom of speech. All that I said was that the members in their speeches should refrain from saying anything about the imposition or the administration of the Martial Law for the reason that those subjects could not be discussed in this Assembly because they are central subjects and would have, therefore been irrelevant.

Rule 68 to which the honourable member has referred itself says:-

‘The matter of every speech shall be strictly relevant to the matter before the Assembly.’

Therefore, a reference to the imposition or the administration of Martial Law would not be relevant because of its being a Central subject. I was perfectly within my rights to invite the attention of honourable members to this rule of relevancy.

So far as the freedom from arrest or censure in respect of anything said or any vote given by an honourable member in the Assembly is concerned, there is nothing in my ruling which has the least reference to this point.

So far as the freedom of access to all parts of the Assembly building is concerned, that matter again was not touched in my ruling.

Therefore, I rule this privilege motion out of order.”¹

(338)

PRIVILEGES

VISITORS: Speaker has the power to ban admission of members of the public into galleries of the House in any particular session. Such an order does not constitute the indignity of the House or a breach of privilege.

Sheikh Mabub Ilahi gave notice of a privilege motion objecting to the ban imposed on members of public to visit galleries of the House which, according to him, constituted an indignity of the House. Dr. Khalifa Shuja-ud-Din, Speaker, on 18 March 1953, disposed of the question in terms of the following —

¹Punjab Legislative Assembly Debates, 19 March 1953, Vol-VI, pp. 188-89.

“The honourable member is obviously unaware of the rules of procedure of this Assembly. Rule 78 says:-

‘The admission to the Assembly Chamber of visitors and representatives of the Press during the sittings of the Assembly shall be regulated in accordance with orders made by the Speaker.’

I myself decided that there should be no visitors in this Session and therefore, there is no question of any indignity to the House. The privilege motion is, therefore, ruled out of order.”¹

¹Punjab Legislative Assembly Debates, 18 March 1953, Vol-VI, p. 115.

PROCEDURE

(339)

PROCEDURE

ADJOURNMENT MOTION: the procedural basics for moving an adjournment motion explained.¹

(340)

PROCEDURE

POINT OF ORDER — SCOPE defined and illustrated. Precisely to say, a point of order is a pure question of procedure or irregularity raised only when something happens in the course of proceedings which is considered to be a technical defect in formal and procedural matters; it should not be frivolous or irrelevant; should not aim at obstructing the proceedings of the House; and the decision of the Speaker on a point of order is final, and is not open to discussion, debate or criticism.²

(341)

PROCEDURE

RULES: the Rules of Procedure made by the Governor in 1973 shall remain in force and applicable to the successor Assemblies until the Assembly makes its own rules.³

On 25 May 1985, Makhdoomzada Syed Hassan Mahmood raised a point of order that the Rules of Procedure of the Provincial Assembly of the Punjab, 1973, made by the Governor under Article 67 read with Article 127 of the Constitution were applicable only to the Assembly constituted in 1973 and the same were not applicable to the present Assembly constituted as a result of the General Elections 1985. He argued that for regulating the conduct of business by the present Assembly, the present

¹For details, see Decision No.42, p. 36.

²For details, see Decision No.274, pp. 301-2.

³The Provincial Assembly of the Punjab, in its meeting held on 25 June 1997, adopted the Rules of Procedure of the Provincial Assembly of the Punjab 1997, made by the Governor *vide* Notification No.PAP-Legis-1(94)/96/11, dated 29 January 1997, and these rules are now deemed to have been made by the Provincial Assembly of the Punjab in terms of clause (1) of Article 67 read with Article 127 of the Constitution of the Islamic Republic of Pakistan. The 1997 rules had earlier repealed the 1973 rules.

Governor would either have to make fresh rules or issue a fresh notification to make the said rules applicable to the present Assembly; otherwise, the proceedings so far conducted or to be conducted in future would be *ultra vires* of the Constitution. Malik Allah Yar Khan and Sardarzada Zafar Abbas supported him.

The Law Minister commented that the Rules of Procedure once made by the Governor under Article 67 read with Article 127 of the Constitution, would continue to be in force until the Assembly made rules to conduct its business under the said Article.

Mian Manzoor Ahmed Wattoo, Speaker, ruled that as pointed out by the Minister for Law, the Rules of Procedure of the Provincial Assembly of the Punjab 1973, made by the Governor and notified on 10 September 1973, would remain in existence and were legally and validly applicable to the present Assembly until the Rules were made by the Assembly itself as envisaged in Article 67 read with Article 127 of the Constitution.¹

(342)

PROCEDURE

RULES: the Rules of Procedure merely regulate the procedure of the Assembly and, being subject to the Constitution, they cannot, in any manner, be interpreted to over-ride or modify the provisions of the Constitution.²

(343)

PROCEDURE

RULES: the Governor is empowered to frame rules on behalf of the Assembly; still, the Assembly is not prevented from amending or changing such rules or from making new rules.³

¹Punjab Assembly Debates, 25 May 1985, Vol-III, No.1, pp. 24-25.

²For details, see Decision No.256, pp. 278-80.

³For details, see Decision No.317, pp. 348-52.

PUBLIC INTEREST

(344)

PUBLIC INTEREST

QUESTIONS — REPLY: Government may not disclose such information as may be against public interest.¹

¹For details, *see* Decision No.369, p. 410.

PUBLIC OPINION

(345)

PUBLIC OPINION

NOTICES — ALTERNATIVE AMENDMENTS, seeking circulation for eliciting opinion and reference to a Select Committee, may be given by the same members; however, the member who moves or speaks in favour of the motion for eliciting public opinion cannot move or speak in respect of the second motion concerning reference to the Select Committee and *vice versa*.¹

¹For details, *see* Decision No.102, pp. 104-6.

PUBLICATION

(346)

PUBLICATION

ASSEMBLY PROCEEDINGS — PRESS: the duty of the Press to publish a correct and authentic report of parliamentary proceedings emphasised.

On 8 December 1952, Dr Khalifa Shuja-ud-Din, Speaker, taking cognizance of an incorrect reporting of the proceedings of the House in the daily Pakistan Times dated 6 December 1952 and Imroze dated 8 December 1952, ruled as under —

“I have noticed the report of the proceeding of this Honourable House in the issue of ‘Pakistan Times’ dated the 6th December, 1952, and comments thereupon in the issue of ‘Imroze’, dated the 8th December, 1952, with great surprise and disappointment. It may be due to the ignorance of the Rules of the Procedure of this Honourable House on the part of the Reporters of these papers or perhaps it is due to a deliberate mis-representation of facts with a view to making the proceedings of this House suit their own way of thinking. It has been reported in this issue of the ‘Pakistan Times’ cited above that the Leader of the House Mian Mumtaz Muhammad Khan Daultana moved ‘a motion to postpone discussion on the food crisis in the Province to Saturday, December 13, 1952’. This obviously implies that there was a motion before the House of which the notice had been given to me, to the effect that the discussion of the food crisis in the Province should take place earlier and that the Speaker allowed the Hon’ble Leader of the House to anticipate the discussion on this motion by allowing him to move his motion. This clearly is a reflection on the Chair and a wrong statement.

So far as the contents of the order paper of the Assembly dated the 5th December, 1952, are concerned, I had received no notice of any substantive motion to discuss the food crisis in the Province on a date earlier than the 13th December, 1952. The only substantive motion of which notice had been received by me was that of the Honourable Chief Minister for discussing food crisis in the Province on December 13, 1952. I take a very strong objection to such reports in the Press as reflect on the conduct of the business of this House for the normal transaction of which I am responsible and I expect that the representatives of the ‘Pakistan Times’ and the ‘Imroze’ sitting in the Press Gallery will realise their responsibility and will in the interest of journalism itself issue a correct report of the proceedings in question in order to undo the mischief that the report of the proceeding of the

5th December, 1952, and the comment thereupon are bound to do to the integrity of the Chair and the constitutional position of the Hon'ble Leader of the House. The press has ample opportunities of criticizing the policy of the Government if it chooses to do so. But I must warn the representatives of the Press sitting in the Press Gallery of this House that reporting a correct version of the Proceedings of this House is a sacred duty which should be performed by them with truthful accuracy and a high sense of constitutional propriety".¹

(347)

PUBLICATION

ASSEMBLY PROCEEDINGS — EXPUNCTION: the proceedings which are expunged by the Chair cannot be published in any manner whatsoever. Doing so is gross violation of the law as well as the rules of procedure.²

(348)

PUBLICATION

ASSEMBLY PROCEEDINGS — PRIVILEGES: derogatory and contemptuous remarks by the Press about the proceedings of the House tantamount to a breach of its privilege.³

(349)

PUBLICATION

BILL (RESOLUTION OR QUESTION): the contents may not be released to the press or otherwise published until the Speaker has admitted the same.⁴

(350)

PUBLICATION

PRESS: the duty of the Press to publish a correct and authentic report of parliamentary proceedings emphasised.⁵

(351)

PUBLICATION

¹Punjab Legislative Assembly Debates, 8 December 1952, Vol-V, pp. 94-95.

²For details, see Decision No.80, pp. 81-83.

³For details, see Decision No.322, pp. 355-57.

⁴For details, see Decision No.352, pp. 395-96.

⁵For details, see Decision No.346, pp. 393-94.

QUESTION (RESOLUTION OR BILL): the contents may not be released to the press or otherwise published until the Speaker has admitted the same.¹

(352)

PUBLICATION

RESOLUTION (BILL OR QUESTION): its contents may not be released to the press or otherwise published until the Speaker has admitted the same.

Referring to the news item published in different newspaper in respect of the Bill moved by Mr Abdul Sattar Khan Niazi, the Speaker, Sheikh Faiz Muhammad, ruled as under —

“With a view to avoiding a possible misunderstanding, I consider it necessary to explain the position in regard to something which has appeared in today’s papers. It is reported that I have disallowed Mr Abdus Sattar Khan Niazi’s Bill which sought to make punishable with fine and imprisonment non-observance of purdah by Muslim women. For the information of the House I wish to make it clear that I declined to admit the Bill in question on a technical ground without expressing any opinion on the merits or demerits of the purdah system.

Further I wish also to impress upon the hon’ble members that it is, to say the least, undesirable on their part to release the contents of their Bills, Resolutions and Questions before such Bills, Resolutions and Questions have been admitted by the Speaker. Proceedings before the admission stage are in the nature of correspondence between the members concerned and the Speaker, and as such should be treated as confidential in the interest of the dignity of the House, and also in the interest of persons to be affected by the proposed legislation, etc. If honourable members exercise on themselves the restraint I am suggesting, a good deal of unnecessary controversy would be avoided. To make the position further clear I may also state that Bills, Resolutions and Questions which have not been admitted by the Speaker are to all intents and purposes non-existent and should not see the light of the day much less find their way to the press”.²

Emphasising the same point afresh, the Speaker again ruled as under —

¹For details, see Decision No.352, on this very page (pp. 395-96).

²West Punjab Legislative Assembly Debates, 16 March 1948, Vol-II, p. 21.

“I have noted a tendency among certain members of this House to give publicity in the press to questions, resolutions or motions of which they have given notice to the Assembly Office before these are admitted by me. In this connection, I wish to invite the attention of the House to the Punjab Legislative Assembly Rules of Procedure according to which the Speaker is empowered to allow or admit questions and resolutions or not to do so. Before it can be allowed or admitted, a question or a resolution must satisfy certain conditions laid down by the rules of procedure and not all questions or resolutions of which notice is received by the Assembly Office are allowed or admitted. I can very well appreciate the desire of honourable members to make their parliamentary activities known to the public in general and their constituents in particular, but the manner in which this is done is open to objection, for it sometimes happens that motions or resolutions and questions are framed and sent to the Assembly Office and the press simultaneously. Some of these may be inadmissible and may have to be disallowed in accordance with the rules of procedure. But their previous publication in the press may have done a mischief, which it may not be possible to undo at a later stage, not to speak of the loss of dignity of this House involved in the process.

It is for this reason that a very healthy convention has been established in this Province according to which no question or motion or resolution of which notice is given is released to the press before it is allowed or admitted by the Speaker. The same convention is observed much more rigorously in the Mother of Parliaments. Indeed even the proceedings of a committee of the House are not allowed to be published there before they are reported to and considered by the House. It should be the duty of every one of us to safeguard the dignity and privileges of this House as well of its members and not to do anything which may, in any way impair that dignity. I would, therefore, request honourable members to follow the parliamentary practice and send to the press only such questions or motions as have been duly admitted by the Speaker.”¹

¹Punjab Legislative Assembly Debates, 17 December 1951, Vol-II, p. .66.

PUNISHMENT

(353)

PUNISHMENT

PRIVILEGES — POLICE: the police Inspector who had slapped a member, while checking his car and documents, was held guilty of the breach of privilege and was sentenced by the House to imprisonment till the prorogation of the session.¹

¹For details, *see* Decision No.323, pp. 357-59.

QUESTIONS

(354)

QUESTIONS

BAR: a Parliamentary Secretary, being part of the Government, can neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.¹

(355)

QUESTIONS

GOVERNMENT — BAR: a Parliamentary Secretary, being part of the Government, can neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.²

(356)

QUESTIONS

HOUR — ALTERNATIVE DAY: if the alternative day allotted in lieu of Tuesday for private members' business has no question hour under the rules, there will be no question hour on such a private members' day.

Mr Muhammad Haneef Ramay, Speaker clarified the position of the Question Hour on an alternative private members' day as under —

“On 18.6.1994 Rana Aftab Ahmad Khan, MPA raised a point of order that since the Saturday had been fixed as Private Members' Day, the question hour should have been included therein as admissible on a Private Members' Day.

In consultation with the Government and the Opposition, Saturday, the 18th June 1994 had been fixed for Private Members' Business in lieu of Tuesday, the 21st June 1994 which had been allotted for general discussion on the Budget in terms of rule 23 of the Rules of Procedure of the Provincial Assembly of the Punjab.

According to item (b) of the proviso to rule 35 of the Rules of Procedure of the Provincial Assembly of the Punjab, there shall be no Question Hour on a

¹For details, see Decision No.361, pp. 406-8.

²For details, see *ibid*.

Thursday, Friday, Saturday or a holiday if the sitting of the Assembly is held on such a day. Rule 23 *ibid* has fixed Tuesday for Private Members' Business. The said rule also provides that if any Tuesday is appointed by the Governor for the presentation of the Budget or is allotted by the Speaker for any stage of the Budget referred to in rule 110, a day in lieu of such Tuesday shall be set apart by the Speaker for Private Members' Business.

The question that arises for consideration is whether or not the provision of item (b) of the proviso to rule 35 which excludes the Question Hour on a Saturday will remain applicable in case a Saturday is set apart by the Speaker for Private Members' Business under rule 23.

Strictly speaking, under rule 24(2), the Private Members' Business includes only resolutions and the bills. The Question Hour is not specifically related to a Private Members' Day but is an independent item of the agenda which can be included on the day fixed for the Government business as well as on the day fixed for the Private Members' Business. As such, the specific provisions of the Rules of Procedure as contained in rule 35(b) dealing with the allotment of days for questions will strictly apply regardless of the fact whether on such a day Government business or Private Members' Business is transacted.

Thus, under the rules there could be no Question Hour on Saturday, the 18th June, 1994.”¹

(357) QUESTIONS

HOURLY — DURATION: one full hour is to be allowed for questions and answers; therefore, the time spent in conducting any other business such as recitation or swearing in of members must be excluded.

Clarifying that full one hour need be allocated for Questions, Dr Khalifa Shuja-ud-Din, Speaker observed as under —

“Yesterday, an honourable member of the House invited my attention to the fact that the proceedings did not begin exactly at 1.00 p.m. and that consequently the members did not get full one hour for putting their questions. I said that I would consider the matter.

The complaint is no doubt well-founded because some time is spent in waiting for the quorum of the House and recitation from the Holy Quran. The

¹Punjab Assembly Debates, 23 June 1994, Vol-X, No.10, pp. 51-53.

practice in every Legislature is to devote the first hour of the proceedings to questions. In the House of Commons this period extends for 45 minutes, but begins after the Prayers.

The question hour is one of Parliament's most valuable institutions and affords to the private member almost his only opportunity of supervising the administration of Government. I feel, therefore, that it should not be curtailed so far as possible and that members should have full 60 minutes for putting their questions. I am fortified in this view by rule 26 of our own Rules of procedure, which reads as follows:-

'Except as provided in the Rules, the first hour of every sitting after the swearing in of members, if any, shall be available for oral answers to questions.'

Even this rule implies that if any time is spent in conducting any other business such as swearing in of members, it shall be excluded from the question hour which shall begin only after such proceedings have finished.

In view of both the facts mentioned above, I shall henceforth allow full one hour for questions."¹

(358)

QUESTIONS

HOUR — DURATION AND COMMENCEMENT: if the Assembly meets late the question hour shall be shortened.

On 17 March 1957, a point was raised that as the question hour started at twenty minutes past eight, it should not end at 9:00 as the questions had to be taken up for one hour. Ch Fazal Elahi, Speaker observed as under —

“Even if we start at ten minutes to nine O'clock, the question hour will end at nine. It is for the Members to come in time. If the Assembly meets late on account of lack of quorum, the question hour will be shortened.”²

(359)

QUESTIONS

NOTICE: a Parliamentary Secretary, being part of the Government, can neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.¹

¹Punjab Legislative Assembly Debates, 23 November 1954, Vol-IX, p. 87.

²West Pakistan Legislative Assembly Debates, 17 September 1957, Vol-IV, No.4, p. 200. This ruling had not been followed; rather, it was over-ruled — see Decision No.357, pp. 404-5.

(360)**QUESTIONS**

NOTICE: a Parliamentary Secretary, being part of the Government, can neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.²

(361)**QUESTIONS**

PARLIAMENTARY SECRETARY: a Parliamentary Secretary, being part of the Government, can neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.

On a point of order whether or not a Parliamentary Secretary could ask an Assembly question, Ch Muhammad Anwar Bhinder, Speaker gave the following ruling —

“A few days back, Mian Ghulam Muhammad Khan Maneka, Parliamentary Secretary, had urged that since the Speaker of the National Assembly had held that a Parliamentary Secretary could ask a question, the Parliamentary Secretaries in our Assembly should be allowed to ask starred and unstarred questions. I had reserved my ruling as I wanted to ascertain the correct position from the Secretariat of the National Assembly of Pakistan. I have made enquiries in this respect and have learnt that in the National Assembly, in the last Budget Session which has recently concluded on the 30th of June, one Member gave a notice to ask a starred question, but subsequently he was appointed Parliamentary Secretary and on the day the question was to be asked he was participating in the proceedings of the day as a Parliamentary Secretary and the question arose as to whether he could ask his question of which he had given notice as a private Member. The Speaker of the Assembly held that there being no specific bar in the Rules disabling a Parliamentary Secretary from asking a question which had already been given notice of and admitted by the Speaker, he was entitled to ask the question.

¹For details, see Decision No.361, pp. 406-8.

²For details, see Decision No.362, p. 408.

This case is distinguishable from the proposition put forth by Mian Ghulam Muhammad Ahmed Khan Maneka. The Parliamentary Secretary in the National Assembly of Pakistan had given notice of the question as a private Member and he being present in the House as a member as well as a Parliamentary Secretary does not stand disqualified from asking a question but to ask questions, or to give notice of starred or unstarred questions as a Parliamentary Secretary is a separate and an independent issue. In our Rules of Procedure there is no specific provision disabling a Parliamentary Secretary from asking questions from the Ministers or other Parliamentary Secretaries and, therefore, this issue shall have to be determined in the light of the Parliamentary practice and precedents. In the Parliamentary history of the India-Pakistan Sub-continent there is no instance of asking a question by a Parliamentary Secretary from a Minister. In the Punjab Legislative Assembly this question arose and Chaudhri Shahab-ud-Din, the Speaker of the Assembly remarked as under (PLAD 1938/Vol-II/page 361) —

‘The other day a Parliamentary Secretary, Mir Maqbool Mahmood, put a question to a Minister which was duly answered. A point of order was raised whether a Parliamentary Secretary was in order to ask questions. I reserved my ruling. I have considered the matter and come to the conclusion that a Parliamentary Secretary cannot ask questions or supplementary questions.’

Even in the Mother Parliament the members who form part of the Government do not ask questions. Messrs. D.N. Chester and Nona Bowring in their book ‘Questions in Parliament’ (1962 Edition) at page 192 have remarked: “Including the Government whips there were 68 Members who being Ministers or otherwise part of the Government did not ask questions. Mr. Speaker, the Chairman and Deputy Chairman of Ways and Means do not ask questions.” Again, at page 197 they have remarked, “we have now identified two groups of Members. At one extreme there are those who do not put questions on the Paper: Mr. Speaker, the Chairman and the Deputy Chairman of Ways and Means, the senior and junior Ministers and other Members forming part of the Administration, and the Leader of the Opposition.” It is, therefore, clear that the Members who form part of the Administration or who are part of the Government do not ask questions. A Parliamentary Secretary is a part of the Government inside the House and acts on behalf of a Minister. He represents his Department in the House in the absence of the Minister. He is appointed under Article 84 of the Constitution and performs such functions in relation to a Department as the Governor may direct. In short, in the absence of the Minister-in-charge a Parliamentary

Secretary represents him in the Provincial Assembly and may generally act and speak on his behalf in relation to the matters concerning the Parliamentary aspect of the activities of the Department concerned. For all practical purposes, therefore, he is a part of the Government inside the House and in view of the well-established parliamentary conventions and in the absence of a tradition allowing the Parliamentary Secretaries to ask questions I rule that a Parliamentary Secretary can neither give notice of nor ask a starred or an unstarred question from a Minister or another Parliamentary Secretary on the floor of the House.”¹

(362)

QUESTIONS

PARLIAMENTARY SECRETARY: a Parliamentary Secretary can neither give notice of, nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary.

Disposing of the point whether or not a Parliamentary Secretary could ask questions from another Parliamentary Secretary or a Minister, Ch Muhammad Anwar Bhinder, Speaker ruled as under —

“On 7th July, Sardar Muhammad Ashraf Khan, Parliamentary Secretary, Health had raised a point of order that the Speaker of the National Assembly had held that a Parliamentary Secretary could ask questions from another Parliamentary Secretary or a Minister and that I should also give my ruling on this point.

In the previous Assembly, a similar point was urged by Mian Ghulam Muhammad Ahmed Khan Maneka, Parliamentary Secretary, and I had in a detailed ruling observed that a Parliamentary Secretary could neither give notice of nor ask a starred or unstarred question from a Minister or another Parliamentary Secretary on the floor of the House. The relevant citation is Provincial Assembly of West Pakistan Debates dated 3rd July, 1964 (Volume VI No.29) Pages 2 and 3.

I am still of the same view and do not think of revising my previous ruling.”²

(363)

QUESTIONS

¹West Pakistan Assembly Debates, 3 July 1964, Vol-VI, No.29, pp. 2-3.

²West Pakistan Assembly Debates, 12 July 1966, Vol-III, No.40, p. 6858 read with West Pakistan Assembly Debates, 3 July 1964, Vol-VI, No.29, pp. 2-3 — see Decision No.361, pp. 406-8.

PRIVILEGES — REPLY: no question of breach of privilege is involved if the answer to a Question is substantially correct.¹

(364)

QUESTIONS

PRIVILEGES — REPLY: incomplete or incorrect information by a Minister does not constitute a breach of privilege unless there is deliberate and conscious attempt to mislead the House.²

(365)

QUESTIONS

PRIVILEGES — REPLY: no question of breach of privilege is involved if the statement of the Minister is correct.³

(366)

QUESTIONS

PRIVILEGES — REPLY: to constitute a contempt of the House or a breach of privilege of the House, it must be proved that the Minister has deliberately or negligently furnished false information to the House.⁴

(367)

QUESTIONS

PRIVILEGES — REPLY: a breach of Privilege may arise only if the Minister makes a false statement or an incorrect statement willfully, deliberately and knowingly.⁵

(368)

QUESTIONS

¹For details, *see* Decision No.325, pp. 359-60.

²For details, *see* Decision No.328, pp. 365-66.

³For details, *see* Decision No.298, pp. 327-29.

⁴For details, *see* Decision No.326, pp. 360-62.

⁵For details, *see* Decision No.329, pp. 366-68.

PRIVILEGES — REPLY: incorrect statement or information may entail a breach of privilege if such statement or information is intentionally or deliberately furnished.¹

(369)

QUESTIONS

PUBLIC INTEREST: Government may not disclose such information as may be against public interest.

On 20 January 1969, Minister for Home informed the House that the information sought vide Question No.15026 was secret in nature and it was not in the public interest to place the same on the table of the House. Malik Muhammad Akhtar raised a point of order that the Government could not claim any privilege about the question which had been admitted for reply. The Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

“So far as this information is concerned, this cannot be withheld from the House on the plea that it was secret information. To that extent I uphold your point of order but since the Minister for Home has made clear that the disclosure of that information is not in the public interest that is upto the Government and he can very well make that statement.”²

(370)

QUESTIONS

PUBLICATION: the contents may not be released to the press or otherwise published until the Speaker has admitted the same.³

(371)

QUESTIONS

REPLY: the Minister or the Parliamentary Secretary concerned must answer the questions in the House; however, the Speaker, in exceptional circumstances, may allow the same to be answered by some other Minister or Parliamentary Secretary.

Malik Allah Yar Khan raised a pint of order on 27 October 1987 whether or not a Minister could answer the questions relating to the department of another Minister while the concerned Minister was present in the House.

¹For details, see Decision No.327, pp. 362-65.

²West Pakistan Assembly Debates, 20 January 1969, Vol-VIII, No.14, p. 2592.

³For details, see Decision No.352, pp. 395-96.

The Minister for Law replied that if any Minister was not present in the House due to pre-occupation, any other Minister or Parliamentary Secretary to whom the function was delegated or assigned could answer the questions in the House. He pointed out that there were a number of precedents and rulings on this point that even if the concerned Minister was present in the House, the answers could be given by another Minister with the approval of the Chair. In case neither was the concerned Minister present nor were the powers delegated to some other Minister, there were precedents that the Minister for Law replied the questions.

Mian Manzoor Ahmed Wattoo, Speaker ruled as under —

“A question has arisen whether a Minister can answer the questions relating to the Department of another Minister while the concerned Minister is present in the House. I have given careful consideration to this point. I am of the view that in the absence of the concerned Minister due to health reason or being on tour, the answers to the Questions can be given by any Minister or Parliamentary Secretary acting on behalf of Government. But in the presence of the concerned Minister it does not seem to be proper and fair that some other Minister should answer the Questions.

The Institution of Questions is a very valuable privilege of the Members under our existing Rules, and I would like that Questions are fully answered. If I would disallow Questions being answered by other Ministers and Parliamentary Secretaries, in the absence of the Minister or the Parliamentary Secretary concerned, many Questions may remain unanswered, especially the Supplementary Questions and the Members may be deprived of information which they sought. But, if, on the other hand, I give a *carte blanche* to all Ministers and Parliamentary Secretaries to answer questions on each other's behalf, detailed and proper information, which Members try to elicit through Supplementary Questions, may not be forthcoming for obvious reasons. I would, therefore, urge upon the Ministers and Parliamentary Secretaries to remain present to answer questions relating to their Departments; but in exceptional circumstances, I would permit other Ministers or Parliamentary Secretaries to answer those Questions with my prior permission.”¹

¹Punjab Assembly Debates, 28 October 1985, Vol-IV, No.13, pp. 914-15 & 978. Under rule 55(4) of the Rules of Procedure of the Provincial Assembly of the Punjab 1997, the position has now changed in as much as that under rule 55(4) the Minister or the Parliamentary Secretary concerned alone may answer the questions.

QUORUM

(372)

QUORUM

ADJOURNMENT: the House cannot be adjourned unless the requirements of the rule including the ringing of the quorum bells are fulfilled.¹

(373)

QUORUM

DUTY: all the members of the Assembly are equally responsible for representing their respective constituencies and maintaining the quorum.²

(374)

QUORUM

INDICATION: may be pointed out at any time after the commencement of a sitting of the Assembly. Strictly speaking, the sitting commences with the starting of the recitation of the Holy Qur'an; however, out of the highest regard and respect for the holy book, it is desirable that a point of order as to the quorum may be raised after the recitation and its translation.

Clarifying the term '*commencement of sitting*' and the appropriate time for raising a question of quorum, the Speaker, Ch Muhammad Anwar Bhinder, gave the following ruling —

On 31st March, 1964, “when I occupied the chair and before the Qari started the recitation from the Holy Quran, Mian Abdul Latif drew my attention to the fact that the House was not in quorum. Thereupon, a count was taken and as less than 40 members were present in the House, the bells were rung for five minutes as required by rule 154 of the Rules of Procedure and as there was still no quorum, therefore, the House was adjourned for 15 minutes. After 15 minutes, the House re-assembled and after the recitation from the Holy Quran, Mr Ahmad Mian Soomro raised a Point of Order that the sitting of the Assembly commenced after the

¹For details, see Decision No.418, pp. 494-96.

²For details, see Decision No.330, pp. 368-69.

recitation of the Holy Quran was over and before that the attention of the Speaker could not be drawn to the fact that the House was not in quorum.

Mian Abdul Latif was of the view that the sitting commenced as soon as the Speaker occupied the chair and his attention could be drawn to the fact that the House was not in quorum. The learned Law Minister argued that the word 'sitting' had been defined as 'meeting of the Assembly between the hours fixed by the Speaker for the transaction of business of the Assembly.' Since during the recitation no business is transacted, therefore, before or during the recitation the question of quorum could not be raised.

I have given full consideration to this matter. Rule 154(1) lays down that if at any time during a sitting of the Assembly the attention of the Speaker is drawn to the fact that there are less than forty members present he shall order the bells to be rung for a period of five minutes and if after the said period there is still no quorum, he shall order the names of the Members present to be recorded and thereafter adjourn Assembly for fifteen minutes. It is, therefore, only during the sitting of the Assembly that the question of quorum can be raised. The word 'sitting' has been defined in Rule 1 as 'the meeting of the Assembly between the hours fixed by the Speaker for the transaction of business ...'. The hours of sitting are fixed by the Speaker and under Rule 18, a sitting of the Assembly commences at such hour as the Speaker appoints. Now, the hours of sitting of this Assembly have been fixed from 9-00 a.m. to 1-30 p.m. Therefore, the sitting commences at 9-00 A.M. and the proceedings commence with the recitation from the Holy Quran.

In the House of Commons even, as laid down at page 338 of May's Parliamentary Practice, at the commencement of the sitting the Lord Chancellor, preceded by the Mace and the Purse and followed by his Train Bearer, enters the Chamber from the Bar on the temporal side and proceeds to the Woolsack and Prayers are then read and at page 337 while giving the Table of Precedence of Business, item No.1 is Prayers. The sitting, therefore, even in the House of Commons commences with the Prayers. In our Assembly, the recitation from the Holy Quran starts immediately after the Speaker occupies the chair. The sitting of the Assembly shall, therefore, be deemed to have commenced immediately the Qari starts the recitation. Before the Qari starts the recitation, there are no proceedings in the House and only the Speaker occupies the chair. The proceedings, therefore, start as soon as the Qari starts recitation and under Rule 154 the attention of the Speaker can be drawn to want of quorum

only after the commencement of the sitting i.e. after the Qari starts the recitation. But I am in full agreement with Sardar Inayat-ur-Rehman Khan Abbasi and Allama Rahmat Ullah Arshad that when the recitation of the Holy Quran is going on in the House, not to speak of not raising a Point of Order, we should not even raise a feeble voice and out of the highest regard and respect which we all have for the Holy Book, we must listen to it with our hearts and souls in it. A point of order regarding the lack of quorum should, therefore, be raised only after the recitation from the Holy Quran and its translation by the Qari is over.”¹

(375)

QUORUM

MEMBERS: it is the duty of the members to attend the session on time; still, under the rules, the Assembly Secretariat is not required to release a list of absentees to the press.

On 26 February 1964, Sardar Inayat-ur-Rehman Khan, on a point of order, stated that it was being repeatedly reported in the press that the meetings of the Assembly started late due to lack of quorum. Besides the requirements of the rules, the members were also under moral obligation to be punctual. He suggested that all out efforts be made to curb the tendency of late coming and in this respect the Secretary Assembly should be directed to prepare a list of absentees immediately after the recitation and release it to the press.

The Speaker, Ch Muhammad Anwar Bhinder observed that so far as the suggestion of the honourable member was concerned that the Members should observe punctuality so that meetings of the Assembly should start in time, he fully agreed to it and would impress upon the members, to come on time. But so far as the matter of releasing the absentee statement to the press was concerned, it required amendment in the Rules of Procedure and if the member desired so, he should give the requisite notice for such amendment.²

¹West Pakistan Assembly Debates, 1 April 1964, Vol-V, No.59, pp. 80-82.

²West Pakistan Assembly Debates, 26 February 1964, Vol-V, No.35, p. 3.

REFERENCE

(376)

REFERENCE

DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the reference on the basis of the alleged defection within the meaning of the Political Parties Act 1962 was withheld *inter alia* because the Constitution (1973) did not envisage any such disqualification in respect of the first Provincial Assembly.

Disposing of a Reference for disqualification of 17 members of the Assembly on the ground of defection, Mr Rafique Ahmed Sheikh, Speaker observed as under —

“In his application Makhdoomzada Syed Hassan Mahmood, Member from Rahimyar Khan, on 3.10.1974 requested me to refer to the Election Commissioner the question of disqualification of 17 Members of the Provincial Assembly who had recently changed their political parties and joined the Pakistan Peoples Party.

The note put up by the office on the application did not agree with the contention of Makhdoomzada Syed Hassan Mahmood. However, before determining whether a question about disqualification of these 17 Members as contemplated by Article 63(2) of the Constitution has arisen and I am required to refer the question to the Chief Election Commissioner. I thought it proper to ask the Advocate General for his opinion.

During proceedings in the House, on 9.10.1974, Makhdoomzada Syed Hassan Mahmood wanted me to tell him as to what was being done to his application. He was informed by me that before determining whether a question had arisen, I had sought the opinion of the Advocate General in the matter and that I would hear him after the opinion had been received by me. However, Makhdoomzada Syed Hassan Mahmood insisted and I heard him on the subject on 9.10.1974. Again on 16th October, 1974, I received a letter from Makhdoomzada Syed Hassan Mahmood. It runs over 5 pages. He has repeated his argument in this letter. He desires me not to wait for the opinion of the Advocate General. He has made indirect aspersion about me too but I do not propose to take a serious view of this. Accordingly I now propose to dispose of the matter.

The contention of Makhdoomzada Syed Hassan Mahmood is that according to Article 63(3) read with Article 127 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the Constitution) if a question about the disqualification of a Member arises the Speaker shall refer the question to the Chief Election Commissioner. I do not think that there is any dispute over this proposition. He further contends that according to Article 273(1)(b) of the Constitution the qualifications and disqualifications for being elected and for being a Member of a first Provincial Assembly shall be the same as were provided in the Interim Constitution of the Islamic Republic of Pakistan, 1972 (hereinafter referred to as the Interim Constitution). As according to the Article 273(1)(b) of the Constitution the qualification and disqualification for being elected to or for being a member of the first Provincial Assembly are the same as were provided in the Interim Constitution, we have to find out as to what were the disqualifications for being a Member of the Provincial Assembly in the Interim Constitution.

Makhdoomzada Syed Hassan Mahmood desires me to agree with him that change of Political Party disqualifies a person from being a Member of the Assembly under the Political Parties Act, 1962. According to him as the Political Parties Act was included in the 1st Schedule of the Interim Constitution it became a part of the Interim Constitution and as such the provisions of the Political Parties Act are provisions in the Interim Constitution. I fear that I cannot agree with this proposition propounded by Makhdoomzada Syed Hassan Mahmood. It has been further contended that as in his personal explanation, Mian Khurshid Anwar, Member from Multan, has admitted that he was elected to the Assembly on the Muslim League (Council) Ticket and has now joined Pakistan Peoples Party, the allegations contained in the application have been prima facie established.

The fact about change of Political Party is established but it is not material. The question is if the change of Political Party disqualifies a Member. If the law requires me to refer to the Chief Election Commissioner a complaint about the change of Political Party by a Member, for his opinion that Member has been disqualified, I will not go into the facts alleged in complaint. Decision about the allegation of change of Political Party will be something in the exclusive jurisdiction of the Chief Election Commissioner. But before referring any such complaint to Chief Election Commissioner. I have to determine if the facts alleged therein require me to refer the complaint to Chief Election Commissioner.

As seen earlier, Article 273(1)(b) of the Constitution provides that the qualifications and disqualifications for being elected and for being a Member of a Provincial Assembly shall be the same as were provided in the Interim Constitution. Here I would like to reproduce Article 273(1)(b) of the Constitution in full:-

‘273(1)(b) — the qualifications and disqualifications for membership of the first Assembly of a Province shall except in case of members filling casual vacancies after the commencing day, be the same as were provided in the Interim Constitution of the Islamic Republic of Pakistan:

Provided that no person holding an office of profit in the service of Pakistan shall continue to be a member of the Assembly after the expiration of three months from the commencing day.’

Article 116(1) of the Interim Constitution may be reproduced. It reads:-

‘116(1) A person shall be disqualified from being elected as, and from being a member of Provincial Assembly, if —

- (a) he is of unsound mind and has been so declared by a competent court; or
- (b) he is an undischarged insolvent; or
- (c) he has been, after the twentieth day of December, 1971, on conviction for any offence, sentenced to transportation for any term or to imprisonment for a term of not less than two years, unless a period of five years, or such less period as the President may allow in any particular case, has elapsed since his release; or
- (d) he has been dismissed for misconduct from the service of Pakistan, unless a period of five years, or such less period as the President may allow in any particular case, has elapsed since his dismissal; or
- (e) he whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a Member of a Hindu undivided family has any share or interest in a contract not being a contract between a cooperative society and Government for the supply of goods to, or for the execution of any work or the performance of any service undertaken by, Government.’

When Makhdoomzada Syed Hassan Mahmood was advancing his arguments in support of his contention he read Art. 116 of the Interim Constitution. He admitted that the case of these 17 Members was not covered by Art. 116 and as stated earlier he relied on the Political Parties Act and wanted me to treat its provisions as provisions in the Interim Constitution. I have not been able to lay my hand on any rule of interpretation which may help me in making the same as has been done by Makhdoomzada Syed Hassan Mahmood. It is quite evident that there is nothing in the Interim Constitution to the effect that change of Political Party would disqualify a Member of a Provincial Assembly. Similarly it is very clear that the disqualification contained in the Political Parties Act was not a disqualifications provided in the Interim Constitution. The Provision about qualifications and disqualifications of the Members of the 1st Provincial Assemblies is not about qualifications and disqualifications contained in any law immediately before the commencement of the Constitution as Makhdoomzada Syed Hassan Mahmood would like me to read. Whenever a constitutional provision so desires it has always been able to find proper and unambiguous words and phrases and I have not been able to convince myself to come to the conclusion that Makhdoomzada Syed Hassan Mahmood desires me to arrive at.

I am, therefore, of the considered view that in the application of Makhdoomzada Syed Hassan Mahmood no question arises about the disqualification of any of the 17 Members of the Provincial Assembly, mentioned in the application. I, therefore, hold that, on the application of Makhdoomzada Syed Hassan Mahmood alleging that 17 Members of the Assembly who recently changed their Political Parties and joined Pakistan Peoples Party, no reference to the Chief Election Commissioner is called for.”¹

(377)

REFERENCE

DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — it was observed that no question of disqualification of the three members had arisen on their joining a

¹Punjab Assembly Debates, 21 October 1974, Vol-XII, No.9, pp. 932-37.

political party which was not registered with Election Commission at the time of elections but was registered subsequently.

Mian Manzoor Ahmed Wattoo, Speaker, disposing of a reference for disqualification, observed as under —

“Makhdoomzada Syed Hassan Mahmud, MPA has raised a Constitutional issue that Mr. Muhammad Nawaz Sharif, the Chief Minister, Mr. Ghulam Haider Wyne, Minister for Industries and Mr. Muhammad Azam Cheema, MPA, having joined Pakistan Muslim League on 30.1.1986 and having been elected respectively the President, the General Secretary and the Information Secretary of the Punjab Provincial Muslim League have ceased to be the Members of the Provincial Assembly of the Punjab by virtue of Section 10(2)(b)(7a) of the Houses of Parliament and Provincial Assemblies (Election) Order, 1977 and that their cases be referred to the Chief Election Commissioner under Article 63(2) of the Constitution for his decision.

The Minister for Law & Parliamentary Affairs objected to the moving of such an issue as, according to him, there was no such provision in the Rules of Procedure of the Provincial Assembly of the Punjab, 1973. He maintained that the mover should indicate the provision of the Rules of Procedure in clear terms. Makhdoomzada Syed Hassan Mahmud, MPA answered that he was raising a Constitutional issue, which he could raise at any time without any reference to the Rules of Procedure which are sub-servient to the Constitution. Since he had not raised the question as a Point of Order or as a Privilege Motion or as any other motion permissible under the Rules, the raising of such a question was out of order. Mr. Hassan Mahmud clarified the position and contended that he had raised it as a Constitutional issue. The Law Minister was of the view that inside the House, a matter can be raised only in accordance with the Rules of Procedure of the Provincial Assembly of the Punjab.

In respect of the question raised by Mr. Hassan Mahmud, no decision of the Assembly is required. The question is neither to be debated by the House nor is it to be put before the House for decision. All the same this matter relates to the constitution of House itself and the presence of certain Members in the House. Their right to sit and vote in the Assembly is also involved. Therefore, this question can be raised by a Member on the floor of the House for decision.

Under Article 63(2) read with Article 127 of the Constitution, if any question arises whether a Member has become disqualified from being a Member, the Speaker shall refer the matter to the Chief Election Commissioner. If the Chief

Election Commissioner is of the opinion that the Member has become disqualified he shall cease to be a Member and his seat shall become vacant.

Under this provision of the Constitution, a question can be raised inside or outside the House by any person. The only requirement is that the disqualification of a Member should be brought to the notice of the Speaker along with the relevant material. If the Speaker is satisfied, he may refer the question for the decision of the Chief Election Commissioner. No specific procedure has been laid down in the Constitution or the Rules of Procedure for raising such a question. In the absence of any specific procedure a Member can raise the question regarding the disqualification of another Member by inviting the attention of the Speaker through a written representation, a Point of Order or by any other recognized mode of intimation. An important question like this cannot be ignored or over-looked on the technical ground of the mode of moving. I, therefore, over-rule the objection of the learned Minister for Law and hold that Mr. Hassan Mahmud could raise this point as a Constitutional issue.

Before considering the validity of the point raised by Mr. Hassan Mahmud, it would be necessary to find out as to how the Speaker has to act and make reference to the Chief Election Commissioner under Article 63(2) of the Constitution. Mr. Hassan Mahmud was of the view that the scope in this regard is very limited and whenever such a question arises or is raised, it would be incumbent on the Speaker to refer it for the decision of the Chief Election Commissioner. If this interpretation is accepted then in every case, foul or frivolous, the Speaker would be required to refer the question to the Chief Election Commissioner.

I am afraid this cannot be the intention of the framers of the Constitution. If that would have been so, there was no need of introducing the Speaker in between a complainant and the Chief Election Commissioner. It could be provided that any person may represent to the Chief Election Commissioner that a particular Member has become disqualified from being a Member. The Speaker is required to refer the question to the Chief Election Commissioner and a reference is not invariably made in routine; it is made when there is a prima facie case for reference or there is some material to substantiate the contention of a complainant or a mover. Therefore, in my opinion, before making a reference to the Chief Election Commissioner, there must be a prima facie case of disqualification of a Member. The ultimate decision shall of course rest with the Chief Election Commissioner.

Now I would deal with the question which has been raised on merits and consider the arguments advanced before me.

Makhdoomzada Syed Hassan Mahmud has relied upon the following provisions of Constitution and law —

(1) Article 63(1)(p) (Constitution of Islamic Republic of Pakistan 1973) —

‘A person shall be disqualified from being elected or chosen as and from being a Member of the Majlis-e-Shoora (Parliament) if ...’

(p) he is for the time being disqualified from being elected or chosen as a Member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.

(2) Article 63(2) —

‘If any question arises whether a Member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall refer the question to the Chief Election Commissioner and if the Chief Election Commissioner is of the opinion that the Member has become disqualified, he shall cease to be a Member and his seat shall become vacant.

(3) P.O.No.5 of 1977- section 10(2)(b)(7a) —

‘He is a Member of a Political Party which is not eligible under the Political Parties Act, 1962 (III of 1962), to participate in an election to a seat in a House of Parliament or a Provincial Assembly or to nominate or put-up a candidate at any such election’.

(4) Political Parties Act, 1962, section 3B(6) —

‘A Political Party which has not been registered under sub-section (3), or the registration of which has been cancelled under sub-section (4) shall not be eligible to participate in an election to a seat in a House of Parliament or a Provincial Assembly or to nominate or put up a candidate at any such election.’

Invoking the above provisions of Law and the Constitution, Makhdoomzada Syed Hassan Mahmud has challenged that Mian Nawaz Sharif, Chief Minister, Mr. Ghulam Haider Wyne, Minister for Industries and Ch. Muhammad Azam Cheema, MPA who were elected President, General Secretary and Information Secretary of the Punjab Branch of the Pakistan Muslim League joined un-registered Political Party, namely, ‘Pakistan Muslim League’ on 30.1.1986 whereas Pakistan Muslim League was registered on 9.2.1986. As such they have become disqualified under Section 10(2)(B)(7a) of P.O.5 read with Article

270-A of the Constitution, Section 3B(6) of the Political Parties Act, 1962, read with sub-clause (p) of clause (1) of Article 63. He is not sure about the other Members, but in respect of the aforementioned persons as Members of an unregistered Political Party and its office bearers under the aforesaid provisions of law, of a non-registered Political Party have become disqualified and the Speaker of the Provincial Assembly has no option but to refer the matter to the Chief Election Commissioner as required under Article 63(2) *ibid*.

The Minister for Law, while arguing the case, contended —

- (i) that the question to attract the provisions of Article 63(2) could only arise if a Member has become disqualified and that the provisions of sub-clause (p) of clause (1) of Article 63 are not applicable in the present case;
- (ii) that the law for the time being in force is Political Parties Act, 1962, which provides for the disqualifications for being a Member of a Provincial Assembly, under the provisions contained in Section 8(1) and (2);
- (iii) that P.O.5 of 1977 was promulgated for the holding of elections and Section 10(2)(b)(7a) applied to persons taking part in the elections;
- (iv) that elections held under P.O.5 were deemed to have been held under the Constitution as required under Article 270-B of the Constitution;
- (v) that under Section 3B of Political Parties Act, 1962, it was incumbent on a Political Party to submit a copy of the Constitution, a list of the names of its office-bearers at National level and a list of its total membership in each Province to the Election Commissioner before getting its registration;
- (vi) that fundamental rights of the citizen have been restored and under Article 4 and Article 17 read with Section 3B(2) every Political Party has to give the names of its office-bearers before registration and that the joining of certain individuals in a Political Party was a lawful political activity.

Mr Ghulam Haider Wyne, Minister for Industries and Labour referred to section 4 of Political Parties Act, 1962, which reads as under:-

‘Subject to the provisions of section 3, it shall be lawful —

- (1) for anybody of individuals or association of persons to form, organize or set up a Political Party.’

He further maintained that before registration of Pakistan Muslim League they had formed an association of persons to set up a Political Party and that they assumed the party office only after the Punjab Muslim League had been registered. He asserted that under the fundamental rights which have been restored they were competent to form an association of persons.

The Advocate General was of the view that P.O.5 is a continuing law. It covers both pre-election and post-election situation but para (7a) of sub-section (2) of section 10 touches pre-election period and that it deals only with the holding of election. As for Political Parties Act, 1962, he stated that Section 8 of the aforesaid Act deals with disqualifications from being a Member of Provincial Assembly and that sub-sections (1) and (2) of Section 8 having no relevance with the issue and sub-sections (3) and (4) which were promulgated under Ordinance No.III of 1985 on 12.1.1985 having been omitted vide Ordinance No.VI of 1985 dated 17.1.1985 is no longer in operation as that was the only provision which could have been attracted.

Now in view of the contention of Mr. Hassan Mahmud and the Law Minister it is to be seen whether the three Members mentioned above have actually incurred any disqualification and have ceased to be Members of this Assembly.

To come to a correct decision, it would be necessary to keep it in mind that the Punjab Branch of the Pakistan Muslim League is said to have been established on 30.1.1986 and its office bearers, namely, the Chief Minister as President, Mr. Ghulam Haider Wyne as General Secretary and Mr. Muhammad Azam Cheema, MPA as Information Secretary, were elected on 30.1.1986. However, the Pakistan Muslim League was reportedly registered by the Election Commissioner on 9-2-1986.

The precise contention of Mr. Hassan Mahmud is that as soon as the above named three Members had joined the Pakistan Muslim League on 30.1.1986 and were elected as its office-bearers, they had ceased to be the Members of this Assembly as on that date Pakistan Muslim League had not yet been registered and being the Members of an un-registered political party they were disqualified to be members under Article 10(2)(b)(7a) of P.O.5 of 1977. This provision lays down that a person shall be disqualified from being elected or chosen and from being a Member of the Assembly if he is a Member of the Political Party which is not eligible under the Political Parties Act, 1962 to participate in an election to a seat in the Provincial Assembly. Under Section 3B(6) of the Political Parties Act, 1962, a Political Party which has not been registered under sub-section (3) shall not be eligible to participate in election to a seat in a Provincial Assembly.

The Political Parties Act lays down the procedure for the formation and registration of a Political Party. The Political Party is required to submit a copy of its Constitution, the list of its office bearers and a copy of the manifesto to the Election Commission before registration. It pre-supposes the joining of the

members and the election of the office-bearers before the formation and registration of a Political Party.

Before I give my finding on the law points, I would like to emphasize that while arriving at correct interpretation, I have kept the following principles in view —

- (i) The cardinal principle of the interpretation of Statutes is that the interpretation must not lead to absurdity.
- (ii) A Ruling cannot be given in a manner that it would amount to creating a vacuum, crisis, or would hamper the lawful political process.

If the interpretation of Mr. Hassan Mahmud is adopted then it would mean that a Member of the Provincial Assembly cannot be a Member of a Political Party without losing his seat in the Assembly; whereas another person living in the country can become its Member.

This cannot be the intention of the Law. A perusal of Article 10(2)(b)(7a) of P.O. 5 of 1977 envisages that only the Members of a registered Political Party could take part in the election. After the dissolution of the Political Parties by MLR 48, now the Political Parties are being formed afresh and if the elected Members are declared ineligible to join without running the risk of losing their seats, it would hamper the formation of the Political Parties and as such it would be against the spirit of the Political Parties Act, 1962.

Under Section 3B(6) *ibid*, a Political Party which has not been registered under sub-section (3) or the registration of which has been cancelled under sub-section (4), is not eligible to participate in an election. The language shows that this provision relates to such a Political Party which has not been registered. It applies to a party which has applied for registration and whose registration has been refused. Sub-section (6), therefore, does not apply to the Political Party which is in the process of formation as was the case of the Muslim League.

The contention of Mr. Hassan Mahmud that during 30.1.1986 and 8.2.1986 (9.2.1986) by joining the Pakistan Muslims League, the three Members have become disqualified is again not tenable because during this period it could not be said that the Pakistan Muslim League was a party not eligible to fight election as it was not a registered Political Party. The eligibility of a party was yet to be determined and it was pre-mature to say that the Pakistan Muslim League was a party not eligible to fight elections. After the refusal of the registration only it could be said so but not earlier.

Even if for the sake of argument we assume that the said three Members had incurred any disqualification on account of Pakistan Muslim League being not a registered party on 30.1.1986, it is clear that the said disqualification stood removed on 9.2.1986 when the party was registered with the Election Commission.

The point was raised on 17.2.1986 and on that date the disqualification was no longer in existence. If at all there was any disqualification that was only from 30.1.1986 to 8.2.1986 (9.2.1986) during which period neither any question was raised nor any representation was made by anybody to me. After 9.2.1986 when the Pakistan Muslim League was registered, the disqualification stood removed.

It could not be said on 17.2.1986 that any particular Member was disqualified from being a Member on that account. Article 63(2) of the Constitution only speaks of an existing disqualification and not a past disqualification. The words used are that if a question arises whether a Member of the Provincial Assembly has become disqualified from being a member, the Speaker shall refer the question to the Chief Election Commissioner. The disqualification should, therefore, be an existing one and not a past disqualification.

In PLD 1969 Supreme Court 42 (Dr. Kamal Hussain and others vs Muhammad Siraj-ul-Islam and others) it was held that the disqualification attached to certain persons for election of elective bodies under the Elective Bodies Disqualification Order itself was intended to disappear on a certain date, there is no point in the argument that disqualification was to persist in respect of the bodies that may be established even after the cessation of the disqualification. In this case the Members of the Pakistan Bar Council were under some disqualification till 31st December, but on the expiry of that date they were to shed their disqualification and became eligible for election to any elective body which may have been established before the order, at the time of the order or thereafter.

Similarly, in another judgement i.e. AIR 1954 Allahabad High Court, (Page 227) a Member of the Election Tribunal was not qualified to act as a Member on the date of his appointment but on the date of hearing of the petition he had become so qualified and there was nothing to bar his reappointment. The High Court has refused to entertain application under Article 226 of the Constitution on the ground that on the date of hearing of the Election Petition he had become so qualified and the disqualification had ceased to exist.

Again in PLD 1967 LAH 227 (A.M. Khan Laghari vs Government of Pakistan) it was held that relief under Article 98 of the Constitution is no longer available because whatever disqualification existed has been removed by the impugned legislation. The principle of law propounded is that if the alleged disqualification had ceased to exist, no relief can be granted to a Petitioner alleging or complaining such disqualification. Similarly, in the instant case on 17.2.1986, when the point was raised before me, there was no existing disqualification and, as such, it could not be said that at the time the question was raised the above three Members were disqualified from being Members of the Provincial Assembly.

It is further pointed out that under the Political Parties Act, 1962, the main Section that provides for disqualification is Section 8. No provision of this Section is attracted to the instant matter.

In view of the above discussion, I rule out the constitutional point raised by Mr. Hassan Mahmud and hold that no *prima facie* case has been made out to refer the case of Mian Nawaz Sharif, Mr. Ghulam Haider Wyne and Ch. Muhammad Azam Cheema to the Chief Election Commissioner under Article 63(2) of the Constitution.”¹

(378)

REFERENCE

DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed the Reference against himself on the ground that his assuming office of Acting Governor *prima facie* did not entail any disqualification from being member of the Assembly.

“On April 10, 1995, Syed Zafar Ali Shah, MPA (PP-1, Rawalpindi) (hereinafter referred to as ‘the petitioner’) filed a petition along with a Reference against the undersigned (hereinafter referred to as ‘the Speaker’), seeking that the Reference may be transmitted to the Chief Election Commissioner (hereinafter referred to as ‘the CEC’) for appropriate proceedings under clause (2) of Article 63 of the Constitution of the Islamic Republic of Pakistan. The petitioner has prayed to the CEC that —

- (a) the seat of the Speaker as Member of the Provincial Assembly of the Punjab from PP-118 (Lahore) be declared vacant;

¹Punjab Assembly Debates, 27 February 1986, Vol-V, No.9, pp. 837-47.

- (b) the election schedule to fill the said vacancy be announced; and
- (c) the Governor of the Punjab be directed to fix a date for the election of a new Speaker of the Provincial Assembly of the Punjab.

The Reference hinges on the sole argument that with his entering upon office of Acting Governor on April 5, 1995, the Speaker ceased to be a member of the Provincial Assembly of the Punjab in terms of clause (2) of Article 103 read with Article 63(1)(p) of the Constitution, and the office of Speaker of the Provincial Assembly of the Punjab, being dependent on the membership of the Assembly, became vacant at that point of time.

On May 18, 1995, the matter was discussed in detail with the petitioner, Mr. R.M. Khurshid, Secretary Law and Mian Abdul Sattar Najam, Advocate General Punjab. They have rendered valuable contribution towards a thorough exposition of the legal points germane to the Reference and their assistance is gratefully acknowledged.

The petitioner contends that the Governor appointed under clause (1) of Article 101 and the Acting Governor appointed under Article 104 are not two different entities or offices. The Acting Governor is the Governor for all intents and purposes and is subject to all such limitations and stipulations, including the operation of clause (2) of Article 103 of the Constitution, as are relevant to the Governor appointed under clause (1) of Article 101 inter alia because —

- (a) according to the definition of Governor given in Article 260, the term ‘Governor’ used in the Constitution includes any person for the time being acting as the Governor of a Province;
- (b) the Acting Governor enjoys all the powers vesting in and can perform all the functions of, the Governor appointed under Article 101;
- (c) no person can be appointed as Acting Governor under Article 104 unless he possesses the qualifications enumerated in clause (2) of Article 101; and
- (d) no separate oath for the Acting Governor has been prescribed in the Constitution and before entering upon office, he has to make before the Chief Justice the same oath under Article 102 read with the Third Schedule as is required to be made by the Governor appointed under Article 101.

Another limb of his reasoning is that clause (2) of Article 103 provides that if a member of a Provincial Assembly is appointed as Governor, his seat in that Assembly falls vacant with his assuming the office of the Governor. Since there is no distinction between the ‘Governor’ and the ‘Acting Governor’, the

Speaker, with the assumption of the office of Acting Governor on April 5, 1995, ceased to be the member of the Assembly and, as imperative aftermath, he also ceased to hold office of the Speaker; however, since the Speaker is still executing his office, the case falls within the mischief of para (p) of clause (1) of Article 63. According to him, the clear mandate of the Constitution in clause (2) of Article 103 that a member of the Assembly ceases to be a member the moment he enters upon office of the Governor is, in fact, 'law' within the meaning of the aforesaid para (p); therefore, the present Reference under clause (2) of Article 63 is the only remedy available to the petitioner. Even if it is assumed for the sake of arguments that the 'Governor' and the 'Acting Governor' are two separate positions, it would not improve the case of the Speaker because in the relevant Notification the word 'appoint' has been used.

Still another contention of the petitioner is that although the Speaker is not merely to act as a post office in the case of a Reference, the Reference in hand stands on a different footing on the ground that the facts of the case are not disputed; the legal position is quite explicit; and, the Speaker, then acting as Governor, himself acknowledged in a press statement that the question raised by the petitioner is of constitutional importance. So the Speaker has no other option but to dispatch the Reference to the CEC.

The petitioner is also of the view that the decision of the Lahore High court Lahore dated May 4, 1995 in the case *Pakistan Tehrik-e-Inqilab vs Chief Election Commissioner of Pakistan and Others* (Writ Petition No.4917/95) has no impact on the Reference because the petitioner was not a party to the said proceedings and the question of disqualification can be heard and determined only by the CEC.

The contention of Mian Abdul Sattar Najam, Advocate General Punjab is that the definition of 'Governor' given in Article 260 is pertinent to the performance of the functions of the Governor by the Acting Governor, and is applicable only if the context does not otherwise require. The provisions of clause (1) of Article 101 and Article 104 stand on independent footing and that is why, as articulated in *Messrs Pervez Industrial Corporation v Messrs New Lahore Transport Company and Others* (PLD 1975 Karachi 88), *Syrya Narain Choudhry vs Union of India and Others* (AIR 1982 Rajasthan 1) and *Arun Kumar vs Union of Indian and Others* (AIR 1982 Rajasthan 67), a person directed to act as Governor cannot be considered to have been appointed as Governor within the meaning of clause (1) of Article 101 and clause (2) of Article 103. The term 'appoint' used in clause (1) of Article 101 and the phrase 'direct to act as Governor' employed in Article 104 imply two different

situations, having diverse implications inter alia for the reason that whereas the appointment of a Governor under clause (1) of Article 101 can be made only if there is a vacancy caused due to resignation, removal or death of the Governor, the President can make temporary arrangements for the execution of that office by directing any person to act as the Governor under Article 104.

The Advocate General has also stressed that it is manifest from a combined reading of various provisions of the Constitution, especially Articles 49 and 104 that the spirit and scheme rather the mandate of the Constitution is that the Speaker of a Provincial Assembly, if available, must invariably be preferred and directed to act as Governor under Article 104.

Another argument of the Advocate General is that the present Reference under clause (2) of Article 63 does not lie for the reason that clause (2) of Article 103 is of the nature of a 'decision' or 'judgment' of the Constitution which has itself declared that a member who assumes office of the Governor shall lose his seat in the Assembly. No decision in the matter is required to be made by the CEC. However, under clause (2) of Article 63, the CEC has to decide if a member has incurred any of the disqualifications mentioned in clause (1) of Article 63. According to him, the legal issues embodied in the Reference in hand have since been resolved by the Lahore High Court Lahore in the case *Pakistan Tehrik-e-Inqilab vs Chief Election Commissioner of Pakistan and Others* (Writ Petition No.4917/95, decided on May 4, 1995).

Secretary Law, while fully endorsing the opinion of the Advocate General, has emphasised that the Constitution, when interpreted, must be read as a whole. Article 104 conceives a temporary arrangement and the definition of the Governor given in Article 260 cannot be imported to infer that a person directed to act as Governor under Article 104 is, in fact, a Governor within the meaning of clause (1) of Article 101 read with clause (2) of Article 103. According to him, the expressions 'means' and 'includes' used in the definition of Governor in Article 260 have different connotations and envisage two distinct positions.

I have carefully weighed and considered the Reference in the backdrop of the arguments advanced before me. My findings, in brief, are given below.

In the case of a Reference under clause (2) of Article 63, the Speaker is not required to act as post office merely to transmit the Reference to the CEC. It is a settled principle of interpretation of the Constitution that it should be read as an organic whole and every effort should be made to reconcile different provisions of the Constitution and to assign meaning to each word of the

Constitution. Clause (2) of Article 63 stipulates that the Reference must be sent to the CEC through the Speaker. The rationale in the back of this provision is that the Speaker may have an opportunity to examine whether or not, on the basis of the facts indicated in the Reference, any question of disqualification requiring a Reference to the CEC has prima facie arisen. The provision aims at shielding the members from facing uncalled for and fake References on flimsy grounds or on no grounds at all. If it is assumed that the Speaker cannot apply his mind to the facts of the case, it will create an anomalous situation as the requirement of sending the Reference through him would be rendered nugatory and meaningless. Such a situation could not have been conceived by the framers of the Constitution. In fact, the word 'shall' used in clause (2) of Article 63 would have different implications in varying circumstances. In some situations, it may have to be construed as 'may'; however, it is the duty of the Speaker to act judiciously, and if, on an objective analysis of the case, he is of the view that a prima facie case is made out, he must convey the Reference to the CEC for disposal on merit and vice versa.

This view is partly admitted by the petitioner as well; however, he thinks that the Reference in question stands on a different footing because the facts of the case are not disputed; the legal position is quite explicit; and, the Speaker, then acting as Governor, had himself conceded in a press statement that the question raised by the petitioner was of constitutional importance. So the Speaker must send the Reference to the CEC without further deliberations. It is difficult to agree with the petitioner because any statement of the Speaker in response to a general question from the Press about the importance of the question raised by the petitioner can in no way be construed to mean an admission by the Speaker that for purposes of clause (2) of Article 63, 'a question has in fact arisen'. Even though the facts of the case are not disputed, the Speaker must apply his mind and decide if, in the given circumstances, a reference to the CEC is imperative. There is nothing in the Constitution to deny the Speaker of this constitutional right.

The expression 'appointed by the President' used in clause (1) of Article 101 and the phrase 'direct to act as Governor' used in Article 104 conceive two distinct positions. Clause (1) of Article 101 is attracted when the office of Governor is vacant on permanent basis due to death, resignation or removal of the Governor. In case the Governor is absent from Pakistan or is unable to perform the functions of his office due to any cause, the office of the Governor does not, in fact, fall vacant for purposes of Article 101. The expression 'is unable to perform the functions of his office' signifies that notwithstanding his

absence, the Governor continues to hold office; but, for the given constraints, he cannot actually perform his functions, and such other person as may be determined by the President acts as Governor pro tempore for the interim period. A combined reading of both the Articles would show that an Acting Governor does not replace the Governor appointed under clause (1) of Article 101.

Even otherwise, the view that the Acting Governor, after making oath replaces the Governor and himself becomes the Governor is anomalous as well. In that case, the Governor, to return to his office, would need a new commission of appointment and a fresh oath; however, this is not the case. So long as the original appointment of the Governor is in tact and he is in a position to perform his functions, he may return at will and is at liberty to recommence in his office at any time. With his return to office, the Acting Governor automatically recedes. A fresh Commission of Appointment and a new oath are not required. In fact, Article 104 envisages a transient arrangement. If the opinion of the petitioner is accepted, it would create unsurmountable difficulties in the country and it will have the effect of making Article 104 otiose.

The view that the appointment of Governor under Article 101 and directing a person to act as Governor under Article 104 are two dissimilar situations so far as the operation of clause (2) of Article 103 is concerned, is further substantiated by clause (2) of Article 101 read with Article 104. Whereas, a person appointed as Governor under clause (1) of Article 101 must be qualified to be elected as a member of the National Assembly and should not be less than 35 years of age, no such qualifications have been prescribed for a person who is directed to act as Governor. The President, acting on the advice of the Prime Minister or the Cabinet, has the authority to direct 'any other person' to act as Governor.

The legal position that — (a) a person directed to act as Governor under Article 104 cannot be deemed to have been appointed as Governor under clause (1) of Article 101; and (b) that the Acting Governor is not required to have the same qualifications as are prescribed for the Governor, has been clearly enunciated in the case *Messrs Pervez Industrial Corporation v Messrs New Lahore Transport Co and Others*, (PLD 1978 Karachi 88). With regard to almost identical provisions, the same view has been taken in *Syrya Narain Choudhry v Union of India and Others* (AIR 1982 Rajasthan 1) and *Arun Kumar v Union of India and Others* (AIR 1982 Rajasthan 67).

The contention of the petitioner that the use of the word ‘appoint’ in the relevant Notification clearly supports his view that the Governor and the Acting Governor are not two different offices, cannot also be upheld. Government of Pakistan, Cabinet Secretariat, Cabinet Division Notification No. 2-6/95-MIN.II, dated 5th April 1995, whereby the Speaker was appointed to act as Governor reads as under —

‘In exercise of the powers conferred by the Article 104 of the Constitution of the Islamic Republic of Pakistan, the President has been pleased to appoint Mr. Muhammad Haneef Ramay, Speaker of the Provincial Assembly of Punjab, to act as Governor of the Province of Punjab during the absence abroad of Ch. Muhammad Altaf Hussain, Governor of the Punjab.’

The word ‘appoint’, if read in the context of the Notification especially the phrase ‘to act as Governor’ and the provisions of Article 104 can only be construed to mean that the Speaker was, in fact directed by the President to act as Governor during the absence abroad of the Governor. The use of the word ‘appoint’ cannot impinge on the requirements of Article 104.

Regarding the issue of oath raised by the petitioner, it is correct that the Constitution has not prescribed any separate oath for the Acting Governor; however, it may be pointed out that in the Commission of Appointment, the President had directed the Speaker to make oath, before assuming office of the Acting Governor, in the form appended to the said Commission of Appointment: the relevant extracts of which reads as under —

‘I. I do by this Commission appoint you, the said Mr. Muhammad Haneef Ramay, to be during my pleasure, Acting Governor of Punjab

III. And I do hereby further direct that before assuming the said office you shall make an oath before the Chief Justice of the High Court of the Province of Punjab in the form hereto appended before you shall have entered upon your office as such Acting Governor

It is a matter of record that the Speaker had made oath in the form appended to the Commission of Appointment, and not the oath prescribed for the Governor in the Third Schedule of the Constitution. The said oath pertained to the office of the Acting Governor and not the Governor.

The view that the Acting Governor is not Governor for purposes of clause (2) of Article 103 is also strengthened by the definition of Governor given in Article 260 —

‘Governor’ means the Governor of a Province and includes any person for the time being acting as the Governor of a Province.

The term ‘means’ restricts the scope of the word to what is indicated in Article 101; however, the term ‘includes’ has the effect of enlarging the meaning of the word ‘Governor’ to enable a person who is not Governor but who has been directed to act as Governor under Article 104, to perform the functions of the office of the Governor. This definition, too, shows that the Governor and the Acting Governor are two different positions, especially for purposes of clause (2) of Article 103.

In the circumstances, I am of the considered view that the provisions of clause (2) of Article 103 do not apply to a person directed by the President to act as the Governor or even appointed as Acting Governor. Thus, notwithstanding his entering upon office of Acting Governor, the Speaker did not cease to be the member of the Provincial Assembly of the Punjab and continues to be the Speaker of that Assembly.

The case can also be seen from another angle. There is considerable weight in the plea of the Advocate General that the present Reference under clause (2) of Article 63 is not competent. The reason is that some of the Articles of the Constitution embody in themselves the ‘decision’ or ‘judgment’ or a consequence of a particular act and it has not been left to anyone to give any verdict about such matters; but, in many cases, the Constitution has simply conceived certain specific situations and the determination of such situations and facts and the decision thereon has been left to the relevant Authority. Clause (2) of Article 63 applies to the cases where the CEC, on the basis of facts available, has to decide whether or not the member has incurred any of the disqualifications spelled out in clause (1) of the said Article; however, clause (2) of Article 103 is a self-executory provision, and has itself declared that in an eventuality mentioned in that clause, the seat of the member shall automatically fall vacant and no determination by the CEC or by any other authority is required. Thus, whether or not the member who has entered upon the office of Acting Governor has ceased to be such a member within the meaning of clause (2) of Article 103 is a question of interpretation of different provisions of the Constitution. That is the sole prerogative of the Superior Courts. A Reference under clause (2) of Article 63 for this purpose is not proper.

The matter of the appointment of the Speaker as Acting Governor was raised in *Pakistan Tehrik-e-Inqilab v Chief Election Commissioner of Pakistan* and

Others (Writ Petition No.4917/95). The Single Bench of the Hon'ble High Court vide short Order dated May 4, 1995, inter alia held that —

- '(i) The Governor and the Acting Governor are two different legal entities. A person with the prescribed qualifications can be appointed as Governor ... under Article 101 of the Constitution when the office of Governor is vacant, while in the case of Acting Governor, any person can be required to perform the functions of Governor under Article 104 of the Constitution by way of temporary arrangement during his absence or when he is unable to perform his functions as Governor due to any cause.
- (ii) It is only in the case of appointment of a member of the Parliament or a Provincial Assembly as Governor under Article 101 that he ceases to be such member under clause (2) of Article 103 of the Constitution. But in the case of an Acting Governor such a result does not follow ... Mr. Muhammad Haneef Ramay, the Speaker of the Punjab Assembly was required under Article 104 of the Constitution ... to perform functions as Acting Governor...and the oath was also administered to him ... as Acting Governor ... he did not lose his seat in the Provincial Assembly.'

In the backdrop of the above discussion, I hold that —

- (a) whereas Ch. Muhammad Altaf Hussain continued to hold office of Governor, in his absence abroad, his functions were performed by the Speaker as Acting Governor;
- (b) the provisions of clause (2) of Article 103 are not attracted to the facts of the case and, therefore, the Speaker continues to be the member of the Punjab Assembly; and
- (c) the Reference under clause (2) of Article 63 is not competent and the Speaker, under the said clause cannot take cognizance of the matter and cannot refer the same to the CEC.

In the circumstances, the Reference is without substance and is filed. A copy of this order may be sent to the petitioner.¹

(379)

REFERENCE

DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed the Reference against certain members

¹Decision given on 21 May 1995, see File No.PAP-Legis-1(10)/95, pp. 29-40.

who had allegedly criticised the conduct of the Judges of the Lahore High Court as *prima facie* no question of disqualification had arisen.

On 16 May 1994, Mr. Muhammad Kabir Khan, MNA (NA-20) filed a Reference with Mr Muhammad Haneef Ramay, Speaker, Provincial Assembly of the Punjab against M/s Abdur Rashid Bhatti, Nazim Hussain Shah, Amanullah Khan, Wasi Zafar, Farooq Saeed Khan, Khalil-ur-Rehman Chishti and Rana Aftab Ahmad Khan, MPAs, seeking that the question of disqualification of the said Members be referred to the Chief Election Commissioner under Article 63(2) of the Constitution of the Islamic Republic of Pakistan, 1973.

The petitioner had contended that all the Respondents had violated Article 114 of the Constitution in so far as they insisted on holding a discussion on the floor of the House with respect to the conduct of the learned judges of the Lahore High Court Lahore in the discharge of their duties as Judges. That had rendered all of them liable to immediate disqualification. He further contended that the conduct of the respondents fell within the mischief of high-treason as defined in Article 6 of the Constitution and they are also liable to be punished for high-treason under the law framed under Article 6 *ibid*.

The Speaker, Mr Muhammad Haneef Ramay observed that under Article 66(1) read with Article 127 and Article 69 of the Constitution, the House (Punjab Assembly) enjoyed complete immunity in respect of its proceedings. Admittedly the applicant, Mr Muhammad Kabir Khan, MNA was not a Member of the Provincial Assembly of the Punjab. No outsider was entitled, directly and indirectly, to question or otherwise bring the Assembly proceedings under any kind of process of a court or Tribunal or any other forum. In the circumstances, no action on the petition reference is called for.”¹

(380)

REFERENCE

DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed the Reference against the Chief Minister that he stood disqualified from being the member of the Assembly as he had been acting in a manner prejudicial to public morality as *prima facie* the facts mentioned in the Reference did not have even the remotest nexus with the grounds touching disqualification of the members.

¹Decision given on 13 June 1994, *see* File No.PAP-Legis-1(17)/94, p. 4.

Disposing of a Reference for disqualification of the Chief Minister, Mian Manzoor Ahmad Wattoo, Mr Muhammad Haneef Ramay, Speaker decided as under —

“On May 21, 1995, Syed Tabish Alwari, MPA (PP-222, Bahawalpur) (hereinafter referred to as ‘the petitioner’) filed a Petition/Reference against Mian Manzoor Ahmad Wattoo, Chief Minister Punjab (hereinafter referred to as ‘the Chief Minister’), requesting that the same may be sent to the Chief Election Commissioner (hereinafter referred to as ‘the CEC’) for declaration that the Chief Minister had become disqualified from being a member of the Provincial Assembly of the Punjab.

The contention of the petitioner is that the Chief Minister is under an oath to discharge his duties and perform his functions honestly and faithfully in accordance with the Constitution/law, and to preserve, protect and defend the Constitution. On May 1, 1995 the Chief Minister had a Cabinet meeting in which the draft Ordinance relating to an amendment in the local councils law was approved (The Cabinet meeting was, in fact, held on April 30, 1995). Since at that time, the Assembly was in session and remained so up to May 4, 1995, a Bill, pursuant to the decision of the Cabinet, should have been introduced in the Assembly. Instead, the Chief Minister advised the Governor, at the time the Assembly was in session, to promulgate the Ordinance immediately on its prorogation. The Governor, in his statement on May 3, 1995 also confirmed that the Ordinance would be enforced after the prorogation of the Assembly. The Chief Minister, thus, misused his authority and violated his oath as well as the Constitution, which conduct amounts to acting contrary to ‘morality’. A question of his ‘disqualification’ from being a member of the Assembly has, therefore, arisen, requiring decision by the CEC.

On May 30, 1995, I discussed the case with the petitioner who, in addition to raising a preliminary objection as to the authority of the Speaker in relation to a Reference under clause (2) of Article 63, pointed out that the Chief Minister had incurred disqualification in terms of para (g) of clause (1) of the said Article.

According to the petitioner, the Reference filed by him is precise and specific and must straight away be transmitted to the CEC who, under clause (2) of Article 63 of the Constitution, has the exclusive authority to decide a question of disqualification. As enunciated in *Mian Muhammad Nawaz Sharif v President of Pakistan* (PLD 1993 SC 473), the word ‘shall’, wherever used, is imperative and has a peremptory meaning, especially in the case of a

constitutional provision. In the matter of disqualification, the Speaker is merely to act as post office because the phrase 'shall refer the question', employed in clause (2) of Article 63, commands him immediately to convey the reference to the CEC. He has no authority under the Constitution to conduct a preliminary enquiry or register any opinion. The logic in the backdrop of this provision is that the question of disqualification in relation to an elected member, which is a serious matter, must be determined by a natural authority such as the CEC, and not by any other elected member or office, including the Speaker. A Reference is required to be routed through him merely for his information. In support of his view, the petitioner also referred to the cases cited as PLD 1991 Karachi 164, PLD 1974 Note 87 and 1991 CLC 571.

At the outset, it may be pointed out that there can be no dispute about the clear mandate of the Constitution that under clause (2) of Article 63 read with Article 113, the CEC has the exclusive authority to determine whether or not a member has become disqualified; however, for the reasons that follow, it is difficult for me to subscribe to the view of the petitioner that in the case of a Reference under the aforesaid provision, the Speaker is just to transmit the Reference to the CEC as a post office.

It is a settled principle of the interpretation of 'Constitution' that it should be read as an organic whole and must be construed harmoniously; every effort should be made to reconcile its various provisions; and, if possible, to assign meanings to each word used therein. Clause (2) of Article 63 stipulates that the question relating to the disqualification of a member must be sent to the CEC through the Speaker who may have an opportunity to examine whether or not, on the basis of the facts before him, any question of disqualification requiring decision by the CEC has prima facie arisen or whether or not the allegations mentioned in the Reference are relatable to any of the disqualifications enumerated in clause (1) of Article 63 of the Constitution. The provision aims at shielding the members from facing uncalled for and fake References on flimsy grounds or on no grounds at all. If the view of the petitioner that the Speaker cannot at all apply his mind to the facts of the case is allowed to prevail, it will put us to an anomalous situation inter alia because the requirement of sending the Reference through the Speaker would be rendered nugatory and meaningless. Such a situation could not have been conceived by the framers of the Constitution.

It is correct that as articulated in *Mian Muhammad Nawaz Sharif v President of Pakistan* (PLD 1993 SC 473), the word 'shall' is generally imperative or mandatory and has the peremptory meaning; but that, in my view, does not

entirely rule out the possibilities and circumstances in which the word 'shall' may have to be construed as 'directory' or 'contingent' or even in the sense of 'may'. This may, for example, be true of a case in which the obligation charged on a person by the word 'shall' is conditional on the existence of some other eventuality or stipulated occurrences. The case in hand falls in this category.

Clause (2) of Article 63 of the Constitution which, by virtue of Article 113, is also applicable to the members of a Provincial Assembly, reads as under —

‘(2) If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall refer the question to the Chief Election Commissioner and, if the Chief Election Commissioner is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.’

If read between the lines, it would be seen that the phrase 'shall refer the question' is conditional on the words 'if any question arises'. Undoubtedly, both the expressions are correlated and must be construed as such. The ascertainment whether or not a question of disqualification has *prima facie* arisen is one thing, to be evaluated by the Speaker; but, whether or not the member, in fact, stands disqualified on the basis of such a question is entirely a different matter, to be determined by the CEC. Viewed in this context, it would be clear that the ultimate decision, comes into mandatory operation only if a question of disqualification has, in fact, arisen. Such a question may arise in the mind of the Speaker either *suo motto* or at the instance of somebody else, including a member of the Assembly. To promote the spirit underlying the necessity of making a Reference via the Speaker, he must be persuaded that there is a genuine controversy necessitating a reference to the CEC. For the purpose, it is his responsibility to take on the essential sifting and probe to satisfy himself that the alleged grounds of disqualification are *prima facie* relatable to any of the disqualifications enumerated in clause (1) of Article 63; however, his function is clearly of a limited character to weigh whether or not a question of disqualification has arisen. But, it is the duty of the Speaker to act judiciously and must apply his mind and analyse the given facts objectively and in good faith. As soon as he comes to the conclusion that a question has arisen, it is obligatory on him to send the reference to the CEC for further necessary action.

The cases cited by the petitioner (para 4 refers) cannot be pressed into service to determine the nature and extent of the authority of the Speaker vis-à-vis a

Reference relating to the disqualification of a member because such a question was neither in dispute nor was it discussed or authoritatively determined in those cases. The legal proposition expounded in the said cases that the CEC has the exclusive jurisdiction to determine whether or not a member has become disqualified, is not a point at issue before me. On the other hand, with reference to an identical provision in the 1962 Constitution, the Division Bench of the Lahore High Court held in Ghulam Muhammad Mustafa Khar v Chief Election Commissioner of Pakistan (PLD 1969 Lahore 602 at pp. 611-12), that if on application of his mind to the matter brought to his notice with reference to the disqualification of a member, the Speaker is of the view that prime facie a case is made out, he must transmit the Reference to the CEC; however, if he comes to the conclusion that the information upon which he is required to make a reference is not relatable to any of the grounds of disqualification, he would be entitled to refuse to make a reference to the CEC. The cases cited as PLD 1963 SC 486, PLD 1991 Lahore 202 and PLD 1969 Lahore 602 are also of help in this regard.

So far as the facts of the case are concerned, in my view none of the allegations mentioned in the petition are relatable to any of the grounds given in clause (1) of Article 63. The petitioner contends that the Chief Minister did act in a manner prejudicial to the 'morality', within the meaning of sub-clause (g) of clause (1) of Article 63 of the Constitution, by withholding from the Assembly a draft Ordinance approved by the Cabinet and advising the Governor at the time when the Assembly was in session to enforce the same through an Ordinance immediately on the prorogation of the Assembly. I have carefully considered the matter. Under Article 128 read with Article 105 of the Constitution, the Governor, on the advice of the Chief Minister or the Cabinet, is empowered to promulgate an Ordinance at any time, except when the Assembly is in session, if he is satisfied that circumstances exist which render it necessary to take immediate action. An Ordinance promulgated by the Governor has the same force as an Act of Provincial Assembly. I have not been able to spot any provision in the Constitution preventing the Cabinet from discussing and even approving a proposed legislation during the time the Assembly is in session; however, the law so approved cannot be enforced as an Ordinance during the time the Assembly is in session.

The session of the Assembly was prorogued on May 4, 1995. A copy of the relevant summary obtained from the Law and Parliamentary Affairs Department shows that the Punjab Local Government (Amendment) Ordinance 1995 was signed by the Governor on May 5, 1995 on an advice recorded by the

Chief Minister the same day. The allegation that the Chief Minister advised the Governor during the time the Assembly was in session, to promulgate the Ordinance immediately after the prorogation of the Assembly is, therefore, not substantiated from the record. The action of the Chief Minister in this respect was perfectly in consonance with Article 128 of the Constitution. True, that the Ordinance was promulgated only a day after the prorogation of the Assembly; however, even by stretch of law or imagination, that alone cannot be construed to mean any breach of the Constitution or misuse of authority by the Chief Minister. The grounds mentioned in the Reference do not have even the remotest nexus with any of the grounds of disqualification, including the ground of 'acting in a manner prejudicial to morality', specified in sub-clause (g) of clause (1) of Article 63.

In the circumstances, I am of the view that no question of disqualification against the Chief Minister, requiring determination by the CEC, has arisen in this case. I, therefore, refuse to send it to the CEC. The Reference is filed as without substance. The petitioner may be informed accordingly.¹

(381)

REFERENCE

DISQUALIFICATION: the question of disqualification of the member of the Assembly and former Chief Minister Punjab was referred to the Chief Election Commissioner as *prima facie* such a question had arisen in the backdrop that on account of the abuse of official authority, LDA and Government had been subjected to substantial pecuniary loss.

Haji Mian Shaukat Ali Advocate, Mr Khalid Iqbal Randhawa, MPA(PP-180) and Haji Muhammad Ismail, MPA (PP-59) filed identical petitions with Mr Muhammad Haneef Ramay, Speaker requesting that the question of disqualification of Mian Manzoor Ahmad Wattoo, MPA be referred to the Chief Election Commissioner. It had been alleged in the petitions that Mian Manzoor Ahmed Wattoo, in his capacity as the Chief Minister Punjab and Chairman L.D.A. had caused a wrongful loss to the Lahore Development Authority to the tune of Rs.1,14,82,400/- by exerting his authority and undue influence for providing a wrongful gain to his friend Mr Javaid A. Zia and also to himself in connection with the Sun Flower Housing Scheme which was sponsored by Mr Javaid A. Zia.

¹Decision given on 4 June 1995, see File No.PAP-Legis-1(18)/95, pp. 92-103.

It was emphasised that Mian Manzoor Ahmad Wattoo masterminded the deal and had been pressurising the L.D.A. to deliver the L.D.A. land at a throw away price to his friend Mr Javaid A. Zia causing financial loss of millions of rupees to the L.D.A. The petitioners relied upon certain documents available in the L.D.A. to prove that Mian Manzoor Ahmad Wattoo by misusing his official position as Chief Minister Punjab was instrumental to the deal, thereby causing a pecuniary loss of Rs.1,14,82,400/- to the Government and L.D.A with ulterior motive.

Mr Muhammad Haneef Ramay, Speaker decided the matter as under —

“Having applied my mind, I feel that this question has arisen whether Mian Manzoor Ahmad Wattoo has become disqualified or not from the membership of the Punjab Assembly. The case, therefore, be referred to the Chief Election Commissioner of Pakistan, with a forwarding letter from me.”¹

(382)

REFERENCE

DISQUALIFICATION: a question of disqualification of the member of the Assembly may not be referred to the Chief election Commissioner if *prima facie* such a question has not arisen — the reference against the former Chief Minister Punjab on the ground that he had spent public money on the renovation of his private house was filed.

Ch Ali Muhammad, Advocate and Ch Muhammad Munir Azhar MPA filed identical references against Mian Manzoor Ahmad Wattoo former Chief Minister Punjab for causing wrongful loss to Government by spending Rs.91,530/- on the improvement and beautification of his private property and residence situated at 63-D Model Town Lahore.

The Speaker, Mr Muhammad Haneef Ramay, did not forward the reference to the Chief Election Commissioner on the ground that no question of disqualification had arisen on the basis of the facts mentioned in the reference.²

(383)

REFERENCE

DISQUALIFICATION: the question of disqualification of the member of the Assembly and former Chief Minister Punjab was referred to the Chief

¹Decision given on 17 September 1996, see File No.PAP-Legis-1(70)/96/4708, p. 46.

²Decision given on 19 September 1996, see File No.PAP-Legis-1(71)/96, p. 5.

Election Commissioner as *prima facie* such a question had arisen on the ground that the member as Chief Minister had caused the public exchequer heavy financial loss in the surreptitious deal of the purchase of an aircraft.

On 16 September 1996, Mr Muhammad Arif Chatha MPA (PP-78) filed a reference alleging that Mian Manzoor Ahmad Wattoo, member of the Assembly had incurred disqualification on the ground of subjecting the Government to substantial financial loss with *mala fide* intention. Laying emphasis on his Reference, he pointed out that —

- (a) Mian Manzoor Ahmad Wattoo MPA, while holding office of Chief Minister Punjab, had a Cessna II aircraft in a fit and working condition. However, without any need or technical evaluation or advertisement or tenders the purchase order was directly placed with Pakistan General Aviation Ltd. for the delivery of the executive jet aircraft in spite of the fact that agents of Cessna Citation-5, Beechjet 400-A and Learjet 31-A were available in Pakistan and abroad.
- (b) The Finance Department approved the purchase and provided special supplementary budgetary allocation of Rs.22.36 crore. The amount of Rs.22.36 crore as price of Beechjet 400 was quite excessive. An amount of US\$ 6,30,000/- was made in violation of Rule 7.14 (b) of OAD Manual Vol-I and instructions on the subject. Moreover, because of adopting unusual mode of delivery, an additional sum of Rs.1.27 crore was paid on account of storage, insurance and interest.
- (c) The allocation of funds was split over two fiscal years which resulted in excess expenditure of Rs.2.12 crore. An additional sum of Rs.14.35 lac was incurred for reasons of mismanagement of the delivery of the Aircraft at Lahore.
- (d) The actual cost as per purchase contract was 6.143 millions US dollars; however, an amount of 0.630 millions US dollars (Rs.2,79,00,000/-) was paid over and above the purchase price.
- (e) That M/s Pakistan General Aviation (Pvt.) Ltd. was run by Mr Javed A. Zia and his other family members, who was a fast friend of Mian Manzoor Ahmad Wattoo. In fact, the firm was established in connivance with Mian Manzoor Ahmad Wattoo to secure unlawful gain inter alia through the purchase of Beechjet 400-A. The firm had no experience relevant to the sale or purchase of aircraft
- (f) the whole deal was pre-meditated with mala fide intention to obtain unlawful financial benefit at the cost of public exchequer.

- (g) Mian Manzoor Ahmad Wattoo pressurised the S&GAD to make payment for the purchase of the Jet in Pakistani currency and M/S General Aviation (Pvt.) Ltd. converted the currency into dollars privately. Neither was the permission of the Federal Government obtained nor was the payment made in foreign currency through State Bank of Pakistan.
- (h) Mian Manzoor Ahmad Wattoo as Speaker of the Assembly had previously been gaining undue benefits through the said Mr Javed A. Zia. For example, they initiated a private housing Scheme adjacent to M.A. Johar Scheme of L.D.A. Mian Manzoor Ahmad Wattoo pressurised the LDA Officers to sell very valuable plots of LDA to Javed A. Zia at the rate of Rs.99,000/- per kanal and thereby caused loss to the LDA of more than rupees one crore.
- (i) Mian Manzoor Ahmad Wattoo, dishonestly and fraudulently, did cause heavy wrongful loss to the public exchequer and wrongful gain to M/s Pakistan General Aviation (Pvt.) Ltd. and himself. He has thus proved to be dishonest and not 'Amin' within the meanings of Article 62 and 63 of the Constitution.

The Speaker, Mr Muhammad Haneef Ramay forwarded the Reference to the Chief Election Commissioner with the following observation —

“I have applied my mind in the matter and have come to the conclusion that a question has arisen whether Mian Manzoor Ahmad Wattoo, M.P.A. is disqualified or not under Article 63(2) of the Constitution of the Islamic Republic of Pakistan. The petition, therefore, may be referred to the Chief Election Commissioner of Pakistan for decision.”¹

(384)

REFERENCE

DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the reference against minority member was filed *inter alia* because no such question had arisen.

Maulana Manzoor Ahmad Chinioti MPA raised a question that Malik Naeemud-Din Khalid MPA had participated in the General Elections 1997 as a contestant for the seat of a Member of the Punjab Assembly in violation of the instructions of the President of Anjuman-e-Ahmadia Rabwah. The said Malik

¹Decision given on 19 September 1996, see File No.PAP-Legis-1(75)/96/4740, pp. 39.

Naeem-ud-Din Khalid had, therefore, rendered himself liable to disqualification from being a Member of the Punjab Assembly by disobeying the orders and dictates of his leader. The petitioner, Maulana Manzoor Ahmad Chinioti, solicited that a reference against Malik Naeem-ud-Din Khalid be sent to the Chief Election Commissioner for declaring the seat of Malik Naeem-ud-Din Khalid vacant on the above said ground.

Ch Parvez Elahi, Speaker observed that no question of disqualification had prima facie arisen inter alia because the matter ought to have been raised at the relevant time before appropriate forum.¹

¹Decision given on 25 March 1997, see File No.PAP-Legis-1(17)/97, p. 9.

REPORTS

(385)

REPORTS

PRIVILEGES: delay in the submission of reports on the accounts of the Province by Auditor General of Pakistan does not involve a breach of privilege.¹

¹For details, *see* Decision No.331, pp. 370-71.

REQUISITION

(386)

REQUISITION

SUMMONING: may not be summoned until the business to be transacted at the requisitioned session is indicated.¹

¹For details, *see* Decision No.95, pp. 87-88.

RULES

(387)

RULES

PROCEDURE: the Rules of Procedure merely regulate the procedure of the Assembly and, being subject to the Constitution, they cannot, in any manner, be interpreted to over-ride or modify the provisions of the Constitution.¹

(388)

RULES

PROCEDURE: the Rules of Procedure made by the Governor in 1973 shall remain in force and applicable to the successor Assemblies until the Assembly makes its own rules.²

¹For details, *see* Decision No.256, pp. 277-80.

²For details, *see* Decision No.341, pp. 381-82.

SEATING PLAN

(389)

SEATING PLAN

PRIVILEGES: providing the seating plan to distinguished visitors or others to facilitate them to follow the proceedings does not involve a breach of privilege.¹

¹For details, *see* Decision No.301, pp. 329-31.

SECURITY

(390)

SECURITY

PRIVILEGES: arrangements made, including the closure of doors and windows of the Assembly, do not *per se* constitute a breach of privilege of the House, unless the same have the effect of impeding, in any way, the free ingress and egress of the members.¹

¹For details, see Decision No.334, p. 372.

SERGEANT-AT-ARMS

(391)

SERGEANT-AT-ARMS

PRIVILEGES: may sit in the House in ceremonial dress.¹

¹For details, *see* Decision No.319, pp. 353-54.

SESSION

(392)

SESSION

ASSEMBLY: notwithstanding that the summoning order is signed earlier, the Assembly is deemed to be in session from the first day of its sitting till it is prorogued or dissolved.¹

¹For details, *see* Decision No.263, pp. 288-89.

SITTING

(393)

SITTING

COMMENCEMENT: a sitting of the Assembly commences with the starting of the recitation of the Holy Qur'an.¹

¹For details, *see* Decision No.374, pp. 415-17.

SPEAKER

(394)

SPEAKER

ACTING GOVERNOR — REFERENCE: the Speaker is not disqualified on his having assumed office of Acting Governor during the absence of the Governor.¹

(395)

SPEAKER

ADJOURNMENT — CONSENT: cannot be read in the House unless the Speaker decides its admissibility.²

(396)

SPEAKER

ADJOURNMENT MOTION — CONSENT: the Speaker must decide the fate of an adjournment motion according to the rules as they exist unless the same are suspended by the House.³

(397)

SPEAKER

ADJOURNMENT MOTION — CONSENT: an adjournment motion may be moved with the consent of the Speaker; his decision in this behalf cannot be questioned in the House either with regard to the subject-matter of the notice or the reasons for withholding consent.⁴

(398)

SPEAKER

CONDUCT — PRIVILEGES: REFLECTIONS on his conduct tantamount to the breach of privilege of the House.

Disapproving of a press statement by an Hon'ble member describing the election by the Assembly for the Punjab seats in the Constituent Assembly of Pakistan as 'political chicanery', the Speaker, Sheikh Faiz Muhammad, announced the following ruling —

¹For details, see Decision No.378, pp. 432-40.

²For details, see Decision No.45, pp. 37-38.

³For details, see Decision No.13, pp. 10-11

⁴For details, see Decision No.37, pp. 31-33.

“Before I call up the next item of business I have one or two things to say. The first is that my attention has been drawn to a Press Statement issued by an honourable member of this House in connection with the election held by this Assembly in October last for six of the Punjab seats in the Constituent Assembly of Pakistan. In this statement the honourable member described the election as ‘political chicanery’ and took it upon himself gratuitously to offer advice to the Speaker about the course of action that should have been adopted. In fact, he was good enough to outline the entire procedure which according to him should have been followed. In a subsequent statement issued after the election, he said that he and his party members ‘regarded this election as a farce’ and that they had on various occasions protested against this farce as well as the procedure followed in connection therewith.

Honourable members are no doubt aware that elections to the Constituent Assembly of Pakistan are held on the requisition by the honourable President of the Constituent Assembly of Pakistan and all that the Speaker of this Assembly has to do is to appoint a Returning Officer and announce a time table of dates for the various stages of the election. The procedure for holding the elections is defined by the Constituent Assembly of Pakistan Rules of Procedure and the Speaker of this Assembly is bound to act in accordance with those Rules. In these circumstances the statement issued by the honourable member cannot but be regarded as an indirect insinuation of partiality against the Speaker. It is, or should be, within the knowledge of honourable members that the making and publication of any insinuation of partiality against the Chair constitutes a breach of the privilege of this House, and, in keeping with parliamentary traditions, a very severe notice has to be taken of any and every such breach. I refrain from doing so because I am inclined to think that the present lapse is due to ignorance of parliamentary procedure as well as of the relevant Rules. It must however be mentioned that confidence in the impartiality of the Chair is an indispensable condition of the successful working of parliamentary institutions. The Speaker would be failing in his duty if he does not only maintain strict impartiality but also ensures that his impartiality is generally recognized. Reflections in the Press on the conduct or action of the Speaker have been treated and punished as breaches of privilege in the mother of Parliaments and I am bound to take a very serious view of any such reflection in future.

The Speaker is the representative of the House and is always available to honourable members if they wish to bring any matter to his notice. But

this should be done by submitting the question to him by private notice. According to Parliamentary Practice, no written or public notice of questions addressed to the Speaker is permissible. Honourable members should, therefore, refrain from resorting to the Press or the Platform and should take care that nothing is said or done which is calculated even in the slightest degree to cast reflection on, or to make an insinuation against, the Chair either directly or indirectly, Needless to say that I shall be always ready and willing to receive honourable members and discuss all matters with them personally whenever they wish to do so.

In conclusion, I would appeal to the honourable members scrupulously to maintain the dignity and prestige of this House.”¹

(399)

SPEAKER

CONDUCT — PRIVILEGES: reflections in the Press on his conduct and decisions tantamount to gross breach of privilege.²

(400)

SPEAKER

CONDUCT — PRIVILEGES: the conduct and decisions of the Chair cannot be criticised.

On 14 October 1986, Mian Manzoor Ahmed Wattoo, Speaker, after a lengthy debate as to the admissibility of a privilege motion regarding the non-inclusion of members in various committees constituted by the Government, declared the same to be out of order. Raising a point of order, Mian Mukhtar A. Sheikh reminded the Speaker that a few days before the Chair had informed the House that the admissibility of adjournment motions and privilege motions would be decided in the Chamber; still, a considerable time had been wasted in deciding the admissibility of the said privilege motion in the House, and requested the Speaker to adopt a uniform policy in that behalf.

Mian Manzoor Ahmed Wattoo, Speaker rejected the point of order and, on the basis of the precedents and rulings, observed that —

¹Punjab Legislative Assembly Debates, 17 December 1951, Vol-II, p. 65.

²For details, see Decision No.335, pp. 372-73.

- (a) the conduct of the Chair could be criticised; and
 (b) the Chair was not required to explain its conduct as to why and how a particular decision was taken.¹

FURTHER CLARIFICATION OF THE DECISION

On 24 November 1998, Mr Saeed Ahmad Khan Manais, Leader of the Opposition, rising on a point of order, began to criticise the decision of the Chair given on 23 November 1998. On the said day, when the Punjab Local Government (Second Amendment) Bill 1998 was under consideration, Mr Sultan Alam Ansari, presiding the sitting as member of the Panel of Chairmen, adjourned the House somewhat before time, resulting in the postponement of further consideration of the Bill till the next day. The Leader of the Opposition alleged that the Chair had, in fact, adjourned the House under the pressure of the Government and with *mala fide* intention to avert an embarrassing situation. He emphasised that had the House not been adjourned betimes, the Government could not have moved a crucial amendment in the said Bill for want of the requisite notice of two days.

Mr Muhammad Basharat Raja, Minister for Law pointed out that although the Leader of the Opposition was well within his rights to criticise the Ministers and the Government, it was unprecedented, rather it amounted to creating an ugly precedent, that the conduct or decision of the Chair is criticized. Ch Muhammad Iqbal, Minister for Irrigation and Power supported him.

Sardar Hassan Akhtar Mokal, Deputy Speaker, then presiding the sitting, ruled out the point of order on the ground that the member presiding a sitting enjoyed the same rights and privileges as the Speaker when presiding a sitting and his decision, being the decision of the Chair, could not be criticised inside or outside the Assembly.²

(401)

SPEAKER

DECISIONS — DEBATE: no discussion is permissible on a decision or ruling of the Speaker.³

(402)

SPEAKER

¹Punjab Assembly Debates, 14 October 1986, Vol-VII, No.7, pp. 731-32.

²Punjab Assembly Debates, dated 24 November 1998, Vol-XII, No.6, pp. 548-54, read with Punjab Assembly Debates, 23 November 1998, Vol-XII, No.7, pp. 544-45.

³For details, see Decision No.136, pp. 133-34.

DECISIONS — CRITICISM: the decisions and conduct of the Chair cannot be criticised.¹

(403)

SPEAKER

ELECTION — FIRST MEETING: the first meeting for purposes of election of the Speaker and the Deputy Speaker means the meeting after the members have taken oath after general election, the election to the reserved seats, if any, has been completed and the members so elected have also made oath.²

(404)

SPEAKER

FIRST SITTING: in the absence of a continuing Speaker, the Governor is empowered to appoint any person to preside over the first sitting of the Assembly and till such time that the new Speaker assumes office.

Mian Muhammad Shafi, on a point of order, contended that the appointment of a member as Speaker, by the Governor, to take oath from members, was illegal. He explained that section 67 of the Government of India Act, 1935 provided that “every member of a Provincial Assembly shall, before taking his seat, make and subscribe before the Governor, or some person appointed by him, an oath”, while Article 87(3) of the Constitution did not contain any corresponding provision to that effect. The said Article only provided that “while the office of Speaker is vacant, or the Speaker is for any reason unable to perform the duties of his office, those duties shall be performed by the Deputy Speaker, or if the office of the Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for this purpose and”. He stressed that Article 87(3) visualised a situation after the members had taken oath and the Rules of Procedure had been framed, and not a situation where members had yet to take oath.

Mr Mumtaz Hassan Qizalbash, who had been appointed by the Governor to act as Speaker under Article 87(3) of the Constitution, disposed of the objection in terms of the following —

“The provision of clause (3) Article 87 of the Constitution is analogous to the provision contained in sub-section (3) of section 65 of the Government of India Act, 1935. Following the statutory provision in the United Kingdom, that the

¹For details, see Decision No.400, pp. 487-88.

²For details, see Decision No.215, pp. 244-48.

Speaker should not vacate his office on dissolution of the Parliament until immediately before the first meeting of the next Parliament, a similar provision is contained in our Constitution as proviso to Clause (2) of Article 87, and the same was contained as proviso to sub-section (2) of section 65 of the Government of India Act, 1935. Where there was a Speaker continuing under the proviso to sub-section (2) of section 65 of the Government of India Act, 1935, he could continue up to the moment immediately before the meeting of the new Assembly but could not preside over the first meeting of the new Assembly in which oath was taken by the Members. Even in those cases the Governor had to appoint a Speaker for the purpose of presiding over the Assembly till the Assembly had elected its permanent Speaker. It is clear that where a Speaker was continuing under the proviso to sub-section (2) of section 65 of the Government of India Act, the office of the Speaker fell vacant immediately before the meeting of the new Assembly and the Governor appointed a Speaker for the purpose of presiding over the Assembly. In the present case, no Speaker was continuing as the Offices of the Speakers of the various integrating units of West Pakistan ceased to exist on the 13th October, 1955, on coming into force of the Establishment of West Pakistan Act [Section 11(7)]. The practice, therefore, is of long continuity and is perfectly legal. I, therefore, hold that my appointment as Speaker is valid and legal and the meeting of the Assembly being held is a valid meeting.

I rule out the point of order raised.”¹

(405)

SPEAKER

PRIVILEGES — CONDUCT: reflections in the Press on his conduct and decisions tantamount to gross breach of privilege.²

(406)

SPEAKER

POINT OF ORDER — SCOPE defined and illustrated; viz.— a point of order is a pure question of procedure or irregularity raised only when something happens in the course of proceedings which is considered to be a technical defect in formal and procedural matters; it should not be frivolous or irrelevant should not aim at obstructing the proceedings of the House; and

¹West Pakistan Legislative Assembly Debates, 19 May 1956. Vol-I, pp. 4-5.

²For details, see Decision No.335, pp. 372-73.

the decision of the Speaker on a point of order is final, and is not open to discussion, debate or criticism.¹

(407)

SPEAKER

POINT OF ORDER: the Speaker is the final authority to decide a point of order.²

(408)

SPEAKER

PRIVILEGES: CONSENT to the moving of a privilege motion may be withheld in the Chamber.³

(409)

SPEAKER

PROCEEDINGS — DUTY: while it is the Speaker's duty to see that the majority of the House does not oppress the minority, it is equally his duty to see that the minority does not obstruct the business of the House and that its entire proceedings are conducted in a manner consistent with its own dignity as well as with the dignity of its members.⁴

(410)

SPEAKER

QUESTIONS — ANSWER: the Minister or the Parliamentary Secretary concerned must answer the questions in the House; however, the Speaker, in exceptional circumstances, may allow the same to be answered by some other Minister or Parliamentary Secretary.⁵

(411)

SPEAKER

REFERENCE — DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question

¹For details, see Decision No.274, pp. 301-2.

²For details, see Decision No.229, pp. 251-55.

³For details, see Decision No.336, pp. 373-74.

⁴For details, see Decision No.274, pp. 301-2.

⁵For details, see Decision No.371, pp. 410-11. The ruling is no longer applicable under rule 55(4) of the Provincial Assembly of the Punjab Rules of Procedure 1997, as the answers may be given by the Minister or Parliamentary Secretary concerned.

of disqualification has not arisen — the reference on the basis of the alleged defection within the meaning of the Political Parties Act 1962 was withheld *inter alia* because the constitution (1973) did not envisage any such disqualification in respect of the first Provincial Assembly.¹

(412)

SPEAKER

REFERENCE — DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — it was observed that no question of disqualification of the three members had arisen on their joining a political party which was not registered with Election Commission at the time of elections but was registered subsequently.²

(413)

SPEAKER

REFERENCE — DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Reference against certain members who had allegedly criticised the conduct of the Judges of the Lahore High Court was filed as *prima facie* no question of disqualification had arisen.³

(414)

SPEAKER

REFERENCE — DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed a Reference against himself on the ground that his assuming office of Acting Governor *prima facie* did not entail any disqualification from being member of the Assembly.⁴

(415)

¹For details, see Decision No.376, pp. 421-24.

²For details, see Decision No.377, pp. 424-32.

³For details, see Decision No.379, pp. 440-41.

⁴For details, see Decision No.378, pp. 432-40.

SPEAKER

REFERENCE — DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the Speaker filed the Reference against the Chief Minister that he stood disqualified from being the member of the Assembly as he had been acting in a manner prejudicial to public morality as *prima facie* the facts mentioned in the Reference did not have even the remotest nexus with the grounds touching disqualification of the members.¹

(416)**SPEAKER**

DISQUALIFICATION — REFERENCE: a question of disqualification of the member of the Assembly may not be referred to the Chief election Commissioner if *prima facie* such a question has not arisen — the reference against the former Chief Minister Punjab on the ground that he had spent public money on the renovation of his private house was filed.²

(417)**SPEAKER**

REFERENCE — DISQUALIFICATION: the Speaker may not forward a Reference to the Chief Election Commissioner if *prima facie* a question of disqualification has not arisen — the reference against minority member was filed *inter alia* because no such question had arisen.³

(418)**SPEAKER**

REMOVAL: the Speaker cannot preside a sitting in which the resolution for his removal is under consideration; the same principle applies to the Deputy Speaker

On 4 July 1963, the Speaker, Mr Mobin-ul-Haq Siddiqui, occupied the chair at 9.9 a.m. and ordered that “as the House is not in quorum, the

¹For details, see Decision No.380, pp. 441-46.

²For details, see Decision No.382, p. 447.

³For details, see Decision No.384, pp. 449-50.

House is adjourned till 8.00 a.m. tomorrow.” A Minister pointed out that the House was in quorum, but the Speaker, re-affirming that there was no quorum in the House, left the House.

The Assembly re-assembled at 11.20 a.m., with the Senior Deputy Speaker, Mr Ishaq Khan Kundi, in the chair. The Minister for Law, Malik Qadir Bukhsh, pointed out that according to the agenda for the day, the item immediately after the question hour was the motion of no-confidence against the Speaker and objected to the adjournment of the House by the Speaker. Citing the rules, he maintained that “if there is an item relating to the removal of the Speaker or a Deputy Speaker in the agenda of a sitting, the sitting shall not be adjourned until the resolution has been disposed of.” Since the Assembly had to sit from 8.00 a.m. to 1.00 p.m., the Speaker had no power to adjourn the House. Even though the House was not in quorum, he was required to have ordered the ringing of the quorum bells for fifteen minutes before deciding to adjourn the House. He remarked that as the Speaker had acted against the rules and in an unprecedented manner, his order adjourning the House was *ab initio* void.

The Minister for Finance, Sheikh Masood Sadiq, added that the House was itself competent to set aside an illegal order of the Speaker to adjourn the House. The Minister for Railway, Mr Abdul Waheed Khan, Mr Ghulam Nabi Muhammad Variyal Memon, Mian Muhammad Yasin Khan Wattoo and others also supported the point of order.

The Advocate General, Mr Khalid M. Ishaq, advising the House, pointed out that the provisions of the Constitution aimed at enabling the democratic process to work itself. The House had been empowered to make legislation and to regulate its business. The House elected a Speaker and conferred on him certain powers. Wherever a person who had been given any direction or functions under the rules tended to make use of the rules to defeat the major objectives of the constitutional provisions, importance had to be given to the functions of the Assembly, and attempts by persons who wanted to defeat that objective, had to be discarded. The Advocate General referred to rule 3 of the Rules of Procedure which provided that “In addition to the specific functions and powers provided by these rules and subject to clause (3) of rule 10, the Speaker shall take Chair at every sitting.” Clause (3) of rule 10 provided that the Speaker would not take the chair when the particular motion of his removal was under consideration. The Speaker had no power to defeat the consideration of the matter by using his powers in proceedings, which

were antecedents to the actual proceedings. As such any step taken by the Speaker to avoid consideration of motion of his removal, was void. The Chair was competent to make a decision in that behalf.

Senior Deputy Speaker, informed the House that he wanted to put before the House two communications received by him, one from the Speaker and the other from the Secretary. First he read the letter sent to him by the Secretary. It stated —

“The House is in quorum at 11.10 a.m. I have requested Mr Speaker to come and take the chair. He refuses to take the chair. In the face of the refusal of Mr Speaker I request Mr Deputy Speaker to come and take the chair in the absence of Mr Speaker.”

The other letter sent by the Speaker was to the effect —

“I have already adjourned the House for 8 a.m. tomorrow. Therefore, I would request you not to preside over this illegal meeting of the Assembly.”

After hearing the members and the Advocate General, the Senior Deputy Speaker, Mr Muhammad Ishaq Khan Khundi announced the following decision —

“In my opinion powers of adjournment given to the Speaker under Rule 19 are to be read along with Rule 10. Rule 10 limits his powers of adjournment in certain specific cases and one of them is sub-rule (4) which reads —

‘(4) If there is an item relating to the removal of the Speaker or a Deputy Speaker on the agenda of a sitting, the sitting shall not be adjourned until the resolution has been disposed of.’

Now as the resolution has not been disposed of I hold that the sitting still continues.

My next decision is under sub-rule (3), which reads —

‘At any sitting of the Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of a Deputy Speaker from his office is under consideration, the Deputy Speaker concerned shall not preside.’

As we are about to take into consideration the resolution given notice of by Mr Nabi Bakhsh Zehri, I am here presiding in my own right in this House. So I hold that the House is properly constituted and is in order.”¹

¹Thereafter, the motion for removal of Mr Mobin-ul-Haq Siddiqui, from the office of Speaker was moved, discussed and carried — see West Pakistan Assembly Debates, 4 July 1963, Vol-IV, No.22, p. 10.

SPEECHES

(419)

SPEECHES

MEMBERS — PRIVILEGES: sarcastic or taunting remarks by anyone, including a member or an officer of the House, in respect of the speeches of the members, may not be countenanced.¹

(420)

SPEECHES

MEMBERS — PRIVILEGES: Government Departments should not criticise the speeches made by members in the House.²

¹For details, *see* Decision No.315, pp. 346-48.

²For details, *see* Decision No.228, p. 251.

SUMMONING

(421)

SUMMONING

ASSEMBLY: the Governor may summon a session of the Assembly even though a requisition from the members for the purpose is pending with the Speaker.¹

(422)

SUMMONING

ASSEMBLY: the Provincial Assembly may be summoned simultaneously with the National Assembly.²

(423)

SUMMONING

ASSEMBLY — REQUISITION BY MEMBERS: may not be summoned until the business to be transacted at the requisitioned session is indicated.³

¹For details, *see* Decision No.95, pp. 87-88.

²For details, *see ibid.*

³For details, *see ibid.*

SUPPLEMENTARY BUDGET

(424)

SUPPLEMENTARY BUDGET

EXPENDITURE not mentioned in the Annual Schedule of Authorised Expenditure for a financial year may be legally incurred in anticipation of the approval of the Assembly through supplementary grants; authorisation of the Assembly may be obtained at the appropriate time through Supplementary Budget Statement; and the expenditure is deemed to have been duly authorised if the same is mentioned in the Supplementary Schedule of Authorised Expenditure laid before the Assembly.¹

(425)

SUPPLEMENTARY BUDGET

CUT MOTION: the notice must indicate the particulars of the policy which are proposed to be discussed.²

(426)

SUPPLEMENTARY BUDGET

CUT MOTION — TOKEN CUT: the notice must specify the particular grievance to be discussed — the cut motion for ‘token cut’ was held to be inadmissible as it did not contain the particular grievance to be discussed.³

(427)

SUPPLEMENTARY BUDGET

REQUIREMENTS: Supplementary Budget Statement is required to be laid in the House in the same manner as is applicable to the Annual Budget Statement.⁴

¹For details, *see* Decision No.143, pp. 138-40.

²For details, *see* Decision No.134, p. 131.

³For details, *see* Decision No.135, pp. 132-33.

⁴For details, *see* Decision No.142, pp. 137-38.

SUB JUDICE
MATTERS

(428)

SUB JUDICE MATTER

ADJOURNMENT MOTION: the matter which is *sub judice* cannot be made the basis thereof — the adjournment motion regarding the action of Home Secretary withholding a petition sent by Sardar Shaukat Hayat khan to Supreme Court of Pakistan was ruled out on that score.¹

(429)

SUB JUDICE MATTER

ADJOURNMENT MOTION: the matter which is *sub judice* cannot be made the basis thereof — the adjournment motions regarding the alleged maltreatment meted out to Mian Tufail Muhammad were ruled out of order.²

¹For details, see Decision No.29, p. 21.

²For details, see Decision No.30, pp. 21-22.

TAXATION

(430)

TAXATION

ORDINANCE: where a tax can be levied by an Act of legislature, it may also be levied by an ordinance, as an ordinance has the same force of law as an Act of Legislature.¹

¹For details, *see* Decision No.262, pp. 285-87.

TEMPORARY ACT

(431)

TEMPORARY ACT

CONTINUITY: if given continuity by the Constitution, such an Act shall not be deemed to have expired at the completion of its life indicated in the Act itself.¹

¹For details, *see* Decision No.97, pp. 91-92.

VISITORS

(432)

VISITORS

GALLERIES: Speaker has the power to ban admission of members of public into galleries of the House in any particular session; such an order does not constitute the indignity of the House or breach of privilege.¹

¹For details, *see* Decision No.338, pp. 366-67.

VOTING

(433)

VOTING

ASSEMBLY — DISQUALIFICATION: a minister or a member has a right to sit in the House and to vote unless he is finally disqualified by the competent authority.¹

¹For details, *see* Decision No.229, pp. 251-55.

WEAPON

(434)

WEAPON

MEMBERS — ASSEMBLY: members are not allowed to bring any weapon, or any such thing, including a stick, into the Assembly building.¹

¹For details, *see* Decision No.230, pp. 255-56.

INDEX

ADJOURNMENT, 3-5

Assembly

- no confidence, 3
- sine die*, 3
- timings, 4

ADJOURNMENT MOTION, 7-41

Admissibility (conditions)

- administration of law, 7, 8
- administrative matters, 8
- alternative remedy, 9, 10
- arguments, 10
- consent, 10
- definite matter, 12
- discussed earlier, 12, 14
- frivolous matter, 14
- notice, 15
- policy matter, 15
- provincial concern, 16
- public interest, 18
- recent occurrence, 19, 20
- specific matter, 20
- sub judice* matter, 21

Budget session, 22, 24

- exceptions, 26, 29

Consent, 10, 31

General Discussion, 33

Moving of, 35

Notice, 35

Procedure, 36, 37

Purpose, 37

Speaker's Consent, 10, 37, 38, 41

ADMINISTRATION, 45-46

Adjournment Motion

- restrictions, 45

Members

- privileges, 45

Privileges

- restrictions, 45, 46

ADMINISTRATION OF LAW, 46-54

Adjournment Motion, 46

Meanings Explained, 47

Privileges

- restrictions, 54

AGENDA, 57

Private Members' Day, 57

AMENDMENT, 61-62

Bill

- expired law, 61
- Government, 61
- notice, 61
- notice and summoning, 61
- relevant, 61
- alternative amendments, 62

Moving Thereof, 62

Notice

- alternative amendments, 62
- joint, 62

ARMY, 65

Assembly

- presence, 65

ARREST, 69

Privileges, 69

ASSURANCE, 73

Privileges, 73

ASSEMBLY, 77-88

Adjournment, 77

- no confidence, 78
- sine die*, 77
- timings, 78

Army

- privileges, 79

Galleries

- visitors, 79

- Members**
 quorum, 79
 reflections, 80
- Parliamentary Year, 80**
- Police**
 privileges, 81
- Press**
 proceedings, 81
- Proceedings**
 expunction, 81
 publication, 84
- Privileges**
 members' arrest or conviction, 84
 party decisions, 84
 press, 84
 question and reply, 84
- Quorum, 85**
 members, 85
- Seating Plan**
 privileges, 65
- Security**
 privileges, 86
- Session**
 summoning order, 86
- Sitting**
 commencement, 86
- Summoning, 86**
 requisition by members, 87, 88
- BILLS, 91-121**
- Amendment**
 expired law, 91
 Government, 93
 notice, 93, 96
 relevant, 97
- Consideration**
 alternative motions, 104
- Continuance Bill**
 amendment, 106
- Fundamental Rights**
 violation thereof, 107
- Government**
 introduction, 107
- pendency of a private members' bill, 107
- Governor's sanction or recommendation, 108, 114**
- Introduction, 108**
 copy (supply of), 110
- Lapse Thereof, 113**
- Money**
 Governor's sanction or recommendation, 114
- Notices**
 amendments, 93, 96, 114
- Ordinance, 114**
- Preamble, 115, 116**
- Private Members**
 introduction, 116
- Public Opinion, 117**
 alternative motion, 117
- Publication, 117**
- Report, 117**
- Select Committee**
 alternative motions, 117
 date (report), 118, 120
- Temporary Act, 121**
- BUDGET, 125-40**
- Adjournment Motion, 125**
 exceptions, 125
- Annual Budget Statement, 126**
- Committee, 129**
- Contents**
 estimates, 129
- Cut Motion, 131**
 token cut, 132
- Demands, 133**
- Discussion**
 supplementary, 134
 time limit, 134
- Privileges, 135**
- Session, 136**
- Supplementary Budget, 136, 137, 138**
- CHIEF MINISTER, 143**
- Disqualification**
 reference, 143

COMMITTEES, 147-50**Election, 147****Members**

privileges, 148

Privileges

members, 148

Report, 149

presentation thereof, 149

Bill, 150**Notices**

alternative amendments, 150

CONSTITUTION, 153**Discrimination, 153****Privileges, 153****Rules of Procedure, 153****Speaker, 153****Supreme Law, 153****COURTS, 157****Members**

immunity, 157

Privileges, 157*sub judice* matter, 157**CUT MOTIONS, 161****Notice, 161****Budget, 161****DEBATE, 165-69****Limitation**

provincial subjects, 165, 169

Budget

supplementary, 169

DEMANDS, 173**Budget, 173****DEPUTY SPEAKER, 177****Removal, 177****DETENTION, 179****Members, 181****DISQUALIFICATION, 185-87****Chief Minister**

Reference, 143

Members

reference, 185, 186, 187

Voting, 187**DOCUMENTS, 191-92****Laying, 191****ELECTION, 195****Committees, 195****FUNDAMENTAL RIGHTS, 199****Bill**

violation thereof, 199

Privileges, 199**GALLERIES, 203****Assembly**

visitors, 203

GENERAL DISCUSSION, 207**Adjournment Motion, 207****GOVERNMENT, 211-12****Departments**

members, 211

Ordinance, 211**Money Bill**

sanction or recommendation, 211

Rules, 212**Speaker**

reference, 212

GOVERNOR*see* Government**IMMUNITY, 215****Members**

courts, 215

INTRODUCTION, 219**Bill, 219****LAW AND ORDER, 223****Discussion, 223**

LAYING IN ASSEMBLY, 227

Documents, 227

LAPSE, 231

Bill, 231

MARTIAL LAW, 235

Implications, 235
in aid of civil administration, 235

MEMBERS, 239-56**Arrest**

privileges, 239

Committees

privileges, 239

Detention, 239**Disqualification**

reference, 239, 240, 241

Duty

quorum, 242

Immunity, 242**Name (Personal), 243****Oath**

constitution, 244

House, 248

voting, 248

Political Counsellor

privileges, 249

Privileges

absence, 249

administrative committees, 249

arrest or conviction, 249

conduct, 250

jail, 250

speeches, 250

Quorum, 250

privileges, 250

Speaker

reflections, 251

Speeches, 251**Voting**

disqualification, 251

Weapon, 255**MINISTERS, 259-61****Amendment**

bill, 259

Assurance

privileges, 259

Questions

answer, 259

privileges, 260, 261

Voting

disqualification, 261

MOTION, 265-66**Distinction**

notice and moving thereof, 265

Identical

repetition, 265

Moving thereof, 265**Notice**

moving, 265

Repetition

identical, 266

Name (Personal)

Members, 266

NO CONFIDENCE, 3**NOTICE, 269-70****Adjournment Motion, 269****Amendment, 269****Cut Motion, 269****Distinction, 270****Moving thereof, 270****Questions, 270****OATH, 273****Members**

constitution, 273

House, 273

voting, 273

ORDINANCE, 277-89**Approval, 277****Bill, 281****Extension of life, 282****Governor, 283, 284****Law, 285**

Promulgation, 288, 289

PARLIAMENTARY

SECRETARY, 293-94

Appointment, 293

Discrimination, 293

Questions

answer, 293

notice, 293, 294

PARLIAMENTARY YEAR, 294

Assembly, 294

PREAMBLE, 297

Bill, 297

POINT OF ORDER, 301-4

Scope, 301, 302, 304

Speaker, 304

PRIVATE MEMBERS, 307-8

Agenda, 307

Questions

alternative day, 308

POLICE, 311

Assembly

presence, 311

Privileges

misconduct, 311

opposition, 311

PRESS, 315

Assembly Proceedings

privileges, 315

publication, 315

Bill, 315

Speaker

conduct, 315

reflections, 315

PRIVILEGES, 319-77

Absence

member, 319

Administration, 319, 321

Admissibility (conditions), 322, 323

Government functionary, 323

intervention of the assembly, 323, 325

questions, 326, 327

recent occurrence, 329

sub judice, 329

Army, 329, 332

Assurance, 332

Budget, 334

Bill

introduction, 336

Committees

administrative, 336

reference, 337

Conduct

members, 339

Constitution, 339

Fundamental rights, 340

Members

arrest or conviction, 342

conduct, 343

jail, 344

speeches, 346, 348

Parliamentary Secretary

appointment, 348

Party Decisions, 352

Police

Assembly, 353, 354

Opposition, 354

Press, 355

Punishment

police, 357

Questions

reply, 359, 360, 362, 365, 366

Quorum, 368

Reports

delay, 370

Sergeant-at-Arms, 371

Seating plan, 371

Security, 372

Speaker

conduct, 372

consent, 373

ruling, 374

- Visitors, 376
- PROCEDURE**, 381-82
Adjournment Motion, 381
Point of Order
 scope, 381
Rules, 381, 382
- PUBLIC INTEREST**, 385
Questions
 reply, 385
- PUBLIC OPINION**, 389
Notice
 alternative amendments, 389
- PUBLICATION**, 393-96
Assembly Proceedings
 press, 393
 expunction, 394
 privileges, 394
Bill, 394
Press, 394
Question, 395
Resolution
 (bill or question), 395
- PUNISHMENT**, 399
Privileges
 police, 399
- QUESTIONS**, 403-11
Bar, 403
Government
 bar, 403
Hour
 alternative day, 403
 duration, 404
 duration and commencement, 405
Notice, 405, 406
Parliamentary Secretary, 406, 408
Privileges
 reply, 408, 409
Publication Interest, 410
- Publication**, 410
Reply, 410
- QUORUM**, 415-17
Adjournment, 415
Duty, 415
Indication, 415
Members, 417
- REFERENCE**, 421-50
Disqualification, 421, 424, 432, 440-1, 446-7, 449
- REPORT**, 453
Privileges, 453
- REQUISITION**, 457
Summoning, 457
- RULES**, 461
Procedure, 461
- SEATING PLAN**, 465
Privileges, 465
- SECURITY**, 469
Privileges, 469
- SERGEANT-AT-ARMS**, 473
Privileges, 473
- SESSION**, 477
Assembly, 477
- SINE DIE ADJOURNMENT**, 3
- SITTING**, 481
Commencement, 481
- SPEAKER**, 485-96
Acting Governor
 reference, 485
Adjournment
 consent, 485

- Adjournment Motion**
 - consent, 485
- Conduct**
 - privileges — reflections, 485, 487
- Decisions**
 - criticism, 489
 - debate, 488
- Election**
 - first meeting, 489
- First sitting**, 489
- Privileges**
 - conduct, 485, 487, 490
- Point of Order**
 - scope, 490-1
- Privileges**
 - consent, 491
- Proceedings**
 - duty, 491
- Questions**
 - answer, 491

- Reference**
 - disqualification, 492, 493
- Removal**, 494

- SPEECHES**, 499
 - Members**
 - privileges, 499

- SUMMONING**, 503
 - Assembly**, 503
 - requisition by members, 503

- SUPPLEMENTARY BUDGET**, 507
 - Expenditure**, 507
 - Cut Motion**, 507
 - token cut, 507
 - Requirements**, 507

- SUB-JUDICE MATTERS**, 511
 - Adjournment motion**, 511

- TAXATION**, 515
 - Ordinance**, 515

- TEMPORARY ACT**, 519
 - Continuity**, 519

- TIMINGS**
 - Assembly**, 78

- VISITORS**, 523
 - Galleries**, 523

- VOTING**, 527
 - Assembly**
 - disqualification, 527

- WEAPON**, 531
 - Members**
 - assembly, 531