



PROVINCIAL ASSEMBLY OF THE PUNJAB

RULING OF THE CHAIR

IN RESPECT OF POINT OF ORDER RAISED BY MR. AFTAB AHMAD KHAN, MPA (PP-108) REGARDING GRANTING OF ASSENT TO THE PUNJAB DEFAMATION BILL 2024 BY THE SPEAKER AS THE ACTING GOVERNOR

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Facts of the Point of Order:

On Thursday June 20, 2024, Rana Aftab Ahmad Khan, MPA (PP-108) raised a point of order that the granting of the assent to the Punjab Defamation Bill 2024 by the Speaker as Acting Governor is immoral and hit by the principle of conflict of interest. He contended that that it was a violation of the principles of separation of powers and checks and balances. He asserted that he was not challenging the legal position of this action of Speaker, rather he was only questioning it on moral grounds. I had reserved my ruling on the point of order in order to give serious and detailed consideration to the matter. Having given due deliberation to the matter in the light of the Constitution, our Rules and prevalent practices, political morality and the principles of parliamentary supremacy, I hereby rule as under:

Ruling

The point of order raised by Rana Aftab sb., relies on two points, i.e., (i) conflict of interest; and (ii) morality.

I. Jurisdiction:

Before addressing both the objections, it is imperative to take up the validity of the point of order from jurisdictional aspect.

Rule 209 of the Rules of Procedure of the Provincial Assembly of Punjab, 1997, (the “Rules”) provides the full scope of the point of order. Even from a cursory consideration of the said Rule, especially, sub-rule (1) and (2), it evident that it can *only* relate to the business of the Assembly, not any business outside the Assembly. The key point here is that point of order is a parliamentary tool designed to ensure that business of the House, in the Assembly, is conducting according the Rules and only those constitutional provisions that “regulate the business of the Assembly”. Insofar as the instant point of order is concerned, the same raises no questions that require interpretation or enforcement of the Rules, nor any Article of the Constitution that “regulate the business of the Assembly” has been referred to.

The instant point of order is raised on the grounds that the actions of the Speaker in his capacity as the Acting Governor are questionable on moral grounds. The same neither relates to the Rules of Procedure, nor does it raise any concerns regarding the articles of the Constitution that relate to the regulation of the conduct of business in the Assembly. The assent of the Governor to a bill passed by the Assembly is clearly outside the scope of both the Rules, and the Articles of the Constitution governing the regulation of conduct of business *in* the Assembly, thereby not qualifying for a point of order under the provisions of Rule 209 of the Rules. Effectively, the instant point of order remains completely out of jurisdiction of the power vested in me.

II. Ruling on Merits:

However, even on merits, the point of order does not have a substance.

A. Role of the Acting Governor:

Firstly, it is crucial to note that the Speaker in the absence of the Governor is required to perform the functions of the Governor of the Province by the Constitution under **Article 104** of the Constitution. Article 104 stipulates that “When the Governor, by reason of absence from Pakistan or for any other cause, is unable to perform his functions, the Speaker of the Provincial Assembly and in his absence any other person as the President may nominate shall perform the functions of Governor until the Governor returns to Pakistan or, as the case may be, resumes his functions”. In this context, **Article 260** of the Constitution defines the office of Governor as, “Governor of a Province and

includes any person for the time being **acting as the Governor of a Province**". Therefore, from a collective reading of the Article 104 and Article 260, it is evident that the Speaker acting as the Governor has same powers as the regular Governor. This interpretation has been also advanced by the constitutional courts of Pakistan in a number of judgments, particularly, in judgment titled as ***Aurangzeb Shah Burki vs. Province of Punjab (2011 PLD 198 Lahore)***:

This function [of giving assent] can always be performed by the Acting Governor. To interpret the provisions differently would nullify the very concept of the appointment of the Acting Governor to carry out day to day functions and would result in total paralysis of the Provincial Government in case of temporary absence of Governor which could-never be the intention of the Law Maker."

The Punjab Defamation Bill 2024 was passed by the Provincial Assembly of the Punjab on May 20, 2024 and was sent to the Governor for action under Article 116 of the Constitution. It was received in Governor's Secretariat on May 28, 2024. As per Article 116, the Governor had two options, either assent to it or return it to the Assembly within 10 days, i.e., by June 7, 2028. The Bill remained in the office of Governor from May 28 to June 6, 2024 when I assumed the charge of Governor in terms of Article 104 of the Constitution. I had only two options mentioned hereinbefore, and had only one day, i.e., June 7, 2028 for taking action under Article 116. Since, I, as Speaker, was bound by the Constitution to send a Bill passed by the Assembly to the Governor for assent and after assuming charge of Acting Governor, I was also bound by the Constitution to take action under Article 116, hence, I acted according to the Constitutional authority vested in me and assented to the Bill. I could not have waited for return of the Governor as the time of ten days stipulated by the Constitution would have lapsed.

B. Conflict of Interest:

Secondly, I find no factual basis for the 'conflict of interest' in the exercise of constitutional duty. I was not party to the Bill. As a Speaker, I only performed my job as the custodian of the House, diligently observed the rules and procedure for the passage of the bill, refereed it the Special Committee, allowed time for debate in the Assembly. I played a role of impartial referee and did not vote for the Bill. There is no factual basis for conflict of interest.

C. Political Ethics/Morality:

Thirdly, from the perspective of political morality¹ I hold that political morality required me give assent to the will of the people, not impede it. Political ethics (also known as political morality or public ethics) is the practice of making moral judgments about political action and political agents.² From the perspective political theory and the development of historic arc of parliamentary supremacy in our country, the non-elected executive/Governor's role has been progressively curtailed, especially, after the 18th Amendment to the Constitution. The offices of the President and Governor, previously, Viceroy and Lt. Governor, are colonial institutions. Governor's office was originally designed to rule over the people and later modified to control the elected representatives of the people. From Council of the Lieutenant Governor of the Punjab (1897), to Punjab Legislative Council (1921), to Punjab Provincial Assembly (Government of India Act 1935) to Provincial Assembly of the Punjab (post-18th Amendment), the people of the Punjab have come a long way through democratic struggle to empower the elected houses of the people, not one individual, even though he may be the Governor. After the 18th Amendment, the office of the Governor is required to effectuate the will of the elected representatives, during the exercise of the powers vested in him. Politically and constitutionally, the Governor is required to facilitate the will of the people not create hurdles.

As a custodian of the House and head of the legislative branch of the Government, political morality/ethic, democratic values required that I uphold the sanctity of the will of the Assembly while exercising any further powers vested in me by the Constitution. Ensure that the executive functionaries, such as the Governor, do not impede on the legislative domain, and in effect the parliamentary sovereignty is upheld. Therefore, in giving the assent I have upheld and advanced the will of the Assembly without creating any hurdles, as is my constitutional and democratic duty. My acts, as the acting Governor, required me to either assent to the bill or return it for reconsideration. I chose the former as it remained consistent with the will of the Assembly without

¹ I assume that Rana Aftab had political morality in mind, not just morality; because neither this House is suitable forum nor point of order is a suitable parliamentary tool for discussion on morals and ethics.

² Thompson, Dennis F. (2013-02-01), "Political Ethics", *International Encyclopedia of Ethics*, Oxford, UK: Blackwell Publishing Ltd, doi:10.1002/9781444367072.wbiee633, ISBN 978-1-4051-8641-4, S2CID 243708205

requiring any reconsideration, which was the less invasive with the will of the Assembly, of the two options available to me.

D. Precedents:

Lastly, it is pertinent to mention that assenting to of Acts passed by our Assembly by the Acting Governor is not a novel example; at least six (06) laws passed by the Assembly 2008-13, seven (07) by the Assembly 2013-18 and one (01) by the Assembly 2018-23 were assented to by the Acting Governor. There is not a single example that anyone challenged assenting of these laws by the Acting Governor on any ground whatsoever.

III. Conclusion:

With the aforementioned reasoning, the point of order raised by hon'ble Rana Aftab Ahmad Khan, MPA (PP-108) is ruled out of order both on jurisdictional grounds and merits.

(Malik Muhammad Ahmad Khan)
Speaker

Announced: _____, 2024