



RULING OF THE CHAIR

In the present case, this Ruling stems from the following amongst other facts and grounds, which were confirmed by the Hon'ble Minister for Law and Justice, in the House, during the course of his arguments in the sitting of the 250th Session of the Senate on 21st July, 2016.

2. The National Command Authority (Amendment) Ordinance, 2016, (Ordinance No.1 of 2016) herein after referred to as, "the Ordinance", was promulgated on the 13th March, 2016. It was laid in the National Assembly on the 14th June, 2016, and in the Senate on the 15th June, 2016. "the Ordinance", was to expire on the 11th of July, 2016. The National Assembly, where "the Ordinance" was first laid, on the 20th June, 2016, extended its life by the way of a Resolution for 120 days with affect from the 11th July, 2016, the date of its expiry. Therefore, "the Ordinance" is now valid till the 8th November, 2016.

3. The Hon'ble Law Minister, stated the reason for the delay in "the Ordinance" being laid before Parliament, was a difference of opinion between the sponsoring Ministry i.e. the Ministry of Defence and the Ministry of Law, as to whether it was a Money Bill or not. The Attorney General for Pakistan was also consulted and the final conclusion was that it is not a Money Bill, as a consequence a certificate to this affect was issued on 9th June, 2016. "The Ordinance" was laid before Parliament on the dates mentioned hereinabove.

4. From the foregoing facts, it emerges that "the Ordinance" which was notified in the official Gazette on 15th March, 2016, was laid in terms of clause (2) of Article 89 of the Constitution, 1973, in the Senate on 15th June, 2016 after a delay of 92 days and in the National Assembly on the 14th June, 2016 after a delay of 91 days.

5. From the admitted facts, the point thus falls for determination is, **"what is the effect of an Ordinance being laid after 92 days of its promulgation on the rights, privileges and functions of the Members of Parliament?"** In order to determine this question, in the Senate sitting of the 249th Session dated 15th June, 2016, I issued Notice to the learned Leader of the Opposition, Senator Barrister Aitzaz Ahsan, the Hon'ble Federal Minister for Law and Justice Mr. Zahid Hamid, MNA, Mr. Ashtar Ausaf, Attorney General for Pakistan, Senator Muzaffar Hussain Shah, Senator Barrister Saif, Senator Javed Abbasi, Chairman, Standing Committee on Law and Justice and Senator Dr. Zaheer-ud-Din Babar Awan to assist the Chair in the sitting on the 21st July, 2016.

6. Subsequently on 13th July, 2016, the Senate Secretariat issued reminder Notices to the aforesaid and, in the sitting on the 20th July, 2016, I repeated the Notice in the House.

7. Senator Barrister Saif, being out of the country, sent his written arguments with reference to the question hereinabove, through e-mail. The learned Attorney General for Pakistan is out of the country and will not return before the 23rd July, 2016, Senator Muzaffar Hussain Shah is also out of the country while Senator Javed Abbasi was present in the House on the said date but choose to leave before the question was taken up. The Hon'ble Minister for Law and Justice, Mr. Zahid Hamid, and the learned Leader of the Opposition, Barrister Aitzaz Ahsan assisted the Chair.

8. The gist of arguments of the Hon'ble Minister for Law and Justice, the learned Leader of the Opposition and the written synopsis of the arguments of Barrister Saif are reproduced herein asunder;

i) Hon'ble Federal Minister for Law and Justice, Mr. Zahid Hamid

The Constitution itself does not lay down a time period for laying of the Ordinance before the Houses, Rule 145 of this august House says that "as soon as may be on the commencement of a session but not later than ten days after the commencement". So that is the time period given under Rule 145. The relevant rule of the National Assembly, which is Rule 170 and that is titled Resolution for disapproval of Ordinances. i) as soon as may be after the commencement of a session. So, here the ten day rule is not there, this is the only difference between the two. Both say as soon as may be but in the case of the Senate, there is a further time period of ten days. Reference is made to rule 66 of the Rules of Procedure and Conduct of the Business in the Rajya Sabha 8th edition wherein there is the further requirement, not only should an Ordinance be laid at the commencement following the promulgation of the Ordinance but also a statement explaining the circumstances which had necessitated legislation by Ordinance shall be laid on the Table.

The Ordinance in question was the National Command Authority (Amendment) Ordinance 2016, it was promulgated on the 13th March, 2016. Sir, it was laid in the 64 National Assembly on the 14th June, 2016 and in this august House on the 15th June, 2016. It was due to expire on the 11th July and by a resolution of the National Assembly where the Ordinance was first laid on the 22nd June, it was extended for another hundred and twenty days with effect from the 11th July, the date of expiry.

There was a difference of opinion between the sponsoring Ministry and Ministry of Law as to whether this particular Bill was a Money Bill or not and the delay took place between the promulgation of the Ordinance and the actual placing or laying before the National Assembly and this august House. That difference was required to be resolved for which the Attorney General was involved and finally a decision was taken wherein it was decided that it is not a Money Bill and therefore, the proper certificate was provided on 9th June, 2016 and as soon as that certificate was provided, it was laid before this House.

The other relevant factual points are that when it could have been placed at least before this august House and the 247th session lasted, as I told you the promulgation was on the 13th March, the next session after that was on 65 the 14th April and that session lasted for eight days till the 22nd April. So, it is possible that had there been no difference of opinion, that it could have been filed in that eight day period. On the other hand, if you apply the ten day rule, when it

only lasted for eight days, when you go to the next session which is 248th session and that lasted from the 9th May till the 20th May and then certainly it should have been filed in that day. Except that the difference of opinion was not resolved till June and therefore, it could not be filed till the 249th session.

The Ordinance stands extended by another 120 days, therefore, the opportunity perhaps was short. It is difficult to justify these things but I have made a good effort. Hundred and twenty (120) days don't expire till the 8th of November. So there was an ample time for any honourable member and I hope that they do not wish to move a motion for its disapproval.

ii) The learned Leader of the Opposition Barrister Aitzaz Ahsan

The law and the Constitution must be followed and the Constitution is based on the pillars of federalism, democracy and Parliament. The Preamble to the Constitution itself says, "wherein the state shall exercise its powers and authority through the chosen representatives of the people". The chosen representatives of the people or the people elected to Parliament but it is Parliament which is the embodiment of the chosen representatives of the people. When we look at two Articles, very initial stages, Article 4 and 5, the crucial word is law "To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan". Article 5 (2) provides that "Obedience to the Constitution and law is the [inviolable] obligation of every citizen wherever you may be and of every other person for the time being within Pakistan" Article 50, Constitution, 1973, provides that there shall be a Parliament and two Houses and the President. This is the embodiment of the democratic and the federal principle in the Constitution. The National Assembly, is provided in Article 51 and the Senate in Article 59.

We take the authority of this Parliament, as constituted from Articles 69 and 70, constitution, 1973. Article 69 (1). "The validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure". (2) "No officer or member of Majlis-e-Shoora (Parliament) in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in Majlis-e-Shoora (Parliament), shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers". There is immunity for Parliamentary proceedings given by the Constitution. There is another immunity and that is contained in Article 66 Clause (1) of Article 66. Clause (2) refers to other privileges or immunities that are provided by law but the

Constitution itself provide. Article (1). "Subject to the Constitution and to the rules of procedure of Majlis-e-Shoora (Parliament), there shall be freedom of speech in Majlis-e-Shoora (Parliament) and no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Majlis-e-Shoora (Parliament), and no person shall be so liable in respect of the publication by or under the authority of Majlis-e-Shoora (Parliament) of any report, papers, votes or proceedings". There is a sanctity given to the proceeding of Parliament. There are then eight important other articles 70 to 77 which deal with the legislative process and invest in Parliament itself the exclusive right to make laws. Laws that are given a place of primacy in Article-4, our laws formulated and adopted by Parliament. Article-70 is how bills are introduced, Article-71 is omitted procedure in Joint Sittings and Article-72 is, Article-73 with respect to Money Bills, Article-74 Federal Government's consent when required. The President's assent to bills, President is being a part of Parliament, a component of Parliament his assent under Article-75. Bills not to lapse on prorogation and Article-77 another crucial article, no tax shall be levied for the purposes of the Federation except by or under the authority of Act of Parliament. This is high pedestal at which Parliament is placed and the legislation and legislative process are put then there is a maverick article, an article seeks to provide an exception to the solemn act and process of making laws for the Federation, a solemn and sacred duty of Parliament of making laws.

There is an exception, now the exception has to be restrictively interpreted and that exception is in Article-89, Constitution, 1973. Article-89 is itself a narrow article, the President may, now there are conditionalities attached to what the President may do, except, when the Senate or National Assembly is in Session, if the Senate and National Assembly are in Session, he may not, he cannot but there are other conditions, if he is satisfied, not he is of the belief or not he is of the opinion which are lesser levels of mind and the judgment of the mind. He has to be satisfied, objectively satisfied and satisfied about what that circumstances exist which render it necessary to take immediate action. Now, this phrase itself has three important components, the circumstances must exist, objective opinion, in the objective opinion of the President the circumstances must exist. So, in the days that Parliament or either House is not available immediate action is required, there is an emergency, there are the crisis then the President may make and promulgate an ordinance and that too as the circumstances may require so, it has to be tailored to the emergency to the crisis. We can't just opt for any legislation just because the two Houses are not in Session, he can pass and promulgate an ordinance. All these conditions have

to be satisfied and under Article-5 even the President and the Prime Minister on whose advice, he acts is under an obligation to obey the Constitution.

There are two other limitations on the life of an ordinance, I would say, if the law has been made, an ordinance has been passed, there are two other specific conditionalities and limitations and there is a terminus at call for that Ordinance. 120 days is the maximum and in the 18th amendment provided for, even a limit on that but this was in fact a reflection of supreme Parliament's disapproval of the ordinances and genre of the ordinances of the category of law making through ordinances. So, 120 days from its promulgation or if before the expiration of the period a resolution disapproving it is passed by either House upon the passing of that resolution.

Article-67 may be seen how this Constitution is put into operation, it is important, subject to the Constitution a House may make a rules for regulating its procedure and conduct of its business and shall have power to act notwithstanding any vacancy in membership thereof and any proceedings of the House shall not be invalid on ground of some persons who were not entitle to do so sat voted or otherwise. Subject to the Constitution a House may make rules for regulating its procedure and conduct of its business. So, the rules is a constitutional rule, it is not subordinate legislation, it is superior to subordinate legislation, it derives from the Constitution itself, from Article-67 and how is the Constitution to be operated. these rules are in fact become adjunct to the Constitution itself, and becoming an adjunct and facilitating the working of the Constitution. Rule 145 of the Rules of procedure and Conduct of business in the Senate, 2012, provides that on the commencement of a session, as soon as may be but not 72 later than ten days after the commencement of the session, all Ordinances referred to in sub-paragraph (ii) of paragraph (a) of clause (2) of Article 89 of the Constitution, made after prorogation of the last session, shall be laid on the Table. Now the excuse is that the Law Ministry or the Agency that piloted and who was responsible for this legislation/ ordinance, was not aware whether it was money bill or not. That it should have been aware of, that is no excuse, that cannot be forgiven, when they draft the law/ ordinance that is the stage at which it should be clear in the mind of the executive whether they consider it a money bill or not.

Parliament is the supreme legislator, in fact it is the sole legislator, no permanent law can be made without the will and majority of Parliament. It is being deprived of that privilege by Article 89. It is the privilege of entire Parliament, not of any member alone, it is the privilege of Parliament that if there is an encroachment on its field, a tress-pass, like Article 89, then that tress-pass must be reported to Parliament within ten days of the session. If it is a nine days

session, that again does not give a licence to wait for the ten days, that still does not give a licence.

Now 92 days later, people of Pakistan are subjected to a law that was only the privilege of Parliament alone to formulate. Privilege has been violated and Article 5 of the Constitution must be given full play. It should be given full play not only with respect to every individual, every citizen of Pakistan, but with respect to the highest, sovereign, representative body of this country and that is the Parliament of Pakistan.

iii) **Written synopsis of arguments of Senator Barrister Saif.**

Article 89 of the Constitution provides about the time for which an Ordinance can remain effective. The said Article makes it mandatory to lay the Ordinance before the both Houses of Parliament after promulgation of the Ordinance. However it is pertinent to note that this Article does not provide about the time within which an Ordinance is to be laid. This time has been provided in sub-rule (1) of Rule 145 of the Rules of Procedure and Conduct of Business Senate 2012. According to this rule, on commencement of session as soon as may be but not later than 10 days the Ordinances as mentioned in Article 89, after their promulgation, must be laid on the Table.

In the present instance, it can be clearly seen that the government has laid the National Command Ordinance after an unreasonable delay of 90 days, which is a blatant violation of the Senate rules of procedure and conduct of business 2012. I believe that this inaction on part of government is against the spirit of Constitution as well. This inordinate delay speaks volumes about the non-seriousness of the government in discussing the Ordinance in the House. It shows that the treasury benches are not willing to acknowledge the role of this August House in assessing the Ordinance in question.

Article 67 of the Constitution provides that a House is authorized to make its own rules for regulating its procedure and conduct its business. The Senate Rules of Procedure and Conduct of Business 2012 have been made in pursuance of the aforesaid Article. The Constitution thus gives the Senate to make its own rules and those rules are of binding nature. Once these rules have been formulated they must be adhered to.

Rule 70 of the Senate Rules of Procedure and Conduct of Business 2012 provides the grounds for the breach of privilege of a member or of a committee or of the House. In case of existence of any of aforementioned circumstances there would be a breach of privilege and the Chairman Senate

would take the necessary action against such breach. The relevant provision in the present case is *part (xviii) of rule 70*, which provides about the failure of government to lay before the House any report or document which is required to be laid before the House under the Constitution or the law. The Constitution is clear regarding the laying of Ordinances before the House. Article 67 of the Constitution also authorizes a House to make its own rules of procedure. The Senate Rules of Procedure and Conduct of Business 2012 provides for laying of Ordinance within 10 days of the commencement of session after promulgation of the Ordinance. Therefore the present case attracts rule 70, and it is quite clear that the inordinate delay on part of the government in presenting the National Command Ordinance is a case of breach of privilege of this House. The Government after the promulgation of the National Command Ordinance should have laid it before the House within 10 days after the commencement of the session. The delay on part of the government is a breach of privilege.

9. I have heard the learned Members of Parliament to whom Notice was issued at length. The power of the President to promulgate Ordinances has a historical background. The British Parliament in The East India Company Act, 1773, through section 26, empowered the Governor General and the Council to make Ordinances from time to time with the consequential power of repeal. This was continued by The Indian Council Act, 1861 (section 23), The Government of India Act, 1915 (Section 72) and The Government of India Act, 1935, (section 42) provided the same. Similarly provisions exist in the Constitution of India (Article 123), Malaysia (section 150), Nepal (Article 57) and Philippines (Section 26). - **Reference: PLD-1999, Lahore, 320.**

10. The Constitution of 1956, through Article 69 provided similar provisions as Article 89 of the Constitution, 1973. The Constitution, 1962, and the Interim Constitution of 1972 (Article 94) also empowered the President to promulgate Ordinances.

11. The common thread running through the discussion is that an Ordinance promulgated by the President under Article 89 of the Constitution, 1973, is required to be laid before the National Assembly, in case of a Money Bill, under sub-para (i) of para (a) of clause (2) of Article 89 and before both Houses of Parliament if it does not relate to matter specified in clause (2) of Article 73, in terms of sub-para (ii) of para (a) of clause (2) of Article 89 of the Constitution, 1973. Before I pick up the threads of these

discussion's to knit together a definite finding, for the sake of convenience the relevant constitutional provision i.e. Article 89 and the relevant Rules i.e. Rule 145 of the Rules of Procedure and Conduct of Business in the Senate, 2012, and Rule 170 of the Rules of Procedure and Conduct of Business of the National Assembly, 2007, are reproduced as under;

"Article 89.

"89. Power of President to promulgate Ordinances.- (1) The President may, except when the (Senate or) National Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of [Majlis-e-Shoora (Parliament)] and shall be subject to like restrictions as the power of [Majlis-e-Shoora (Parliament)] to make law, but every such Ordinance—

(a) shall be laid —

(i) before the National Assembly if it [contains provisions dealing with all or any of the matters specified in clause (2) of Article 73], and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution;

Provided that the National Assembly may by a resolution extend the Ordinance for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution:

Provided further that extension for further period may be made only once.

- (ii) before both Houses if it ⁸⁶[does not contain provisions dealing with any of the matters referred to in sub-paragraph (i)], and shall stand repealed at the expiration of (one hundred and twenty days) from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution;

Provided that either House may by a resolution extend it for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by a House, upon the passing of that resolution:

Provided further that extension for a further period may be made only once; and)

- (b) may be withdrawn at any time by the President.
- (3) Without prejudice to the provisions of clause (2),
 - (a) an Ordinance laid before the National Assembly under sub-paragraph (i) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the National Assembly; and
 - (b) An Ordinance laid before both Houses under sub-paragraph (ii) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the House where it was first laid."

"Rule 145, Rules of Procedure and Conduct of Business in the Senate, 2012"

"145. Resolution for the disapproval or extension of Ordinances.- (1) On the commencement of a session, as soon as may be but not later than ten days after the commencement of the session, all Ordinances referred to in sub-paragraph (ii) of

paragraph (a) of clause (2) of Article 89 of the Constitution, made after prorogation of the last session, shall be laid on the Table.

(2) A member may move a resolution for disapproval of an Ordinance or a member or a Minister may move a resolution for extension of an Ordinance under subparagraph (ii) of paragraph (a) of clause (2) of Article 89 of the Constitution after giving three working days' notice of his intention to do so _ _ _ _ _."

"Rule 170 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007."

"170. Resolution for disapproval of Ordinances.- (1) As soon as may be after the commencement of a session, all Ordinances made and promulgated after the prorogation of the last session shall be laid on the Table.

(2) A member may move a resolution for disapproval of an Ordinance after giving three clear days notice of his intension to do so _ _ _ _ _."

12. While arranging the knitting needles, I tend to agree with the pattern set by the learned Leader of the Opposition, Barrister Aitzaz Ahsan, in his arguments when he connects the Preamble, Articles 4, 5, 50 , 67,69,70-77 and 89, of the Constitution, 1973, to establish that in a Federal Parliamentary form of a Government more particularly under the Constitution, 1973, legislation is essentially the domain of Parliament except for those matter which fall within the purview of clause (2) of Article 73 where the National Assembly legislates. The power conferred on the President under Article 89 of the Constitution, 1973, is co-extensive with the power of the Parliament to make the law. Clause (2) of Article 89, states that an Ordinance shall have the same force and affect as an Act of Parliament and shall be subject to like restriction as the power of Parliament to make laws. This means that in exercise of Ordinance making powers the President cannot over reach the Parliament to do what the Parliament cannot do in exercise of its legislative powers. Further Article 260 of the Constitution, 1973, defines an Act of Parliament or a Federal Law includes an Ordinance promulgated by the President. This is a legislative power and not an executive fiat, that the President exercises only when both Houses of Parliament are not in session. Further, the President has to be satisfied

that, "circumstances exist" which make it "necessary to take immediate action", therefore, it is not an unbridled power but has caveats. The purpose being that when both the Houses are not in session or the National Assembly has been dissolved and, a situation arises where immediate and necessary legislation is required, in order to prevent a legal vacuum, the President has been made a part of Parliament, through Article 50 of the Constitution, 1973 and conferred this power. **Reference:** (i) PLD 1979, Lahore, 91. (ii) CLC 2005, 452. (iii) PLD 1995, SC-66. (iv) PLD 2012, SC-106.

13. On scrutiny of Article 89 of the Constitution, 1973, further fetters are placed on an Ordinance promulgated by the President in as much as such, it can be promulgated only when;

- i) Both Houses of Parliament are not in session, clause (1) of Article 89, Constitution, 1973.
- ii) Shall be laid before the National Assembly if it pertains to matters dealing with all or any matter specified in clause (2) of Article 73, under sub-para (i) of para (a) of clause (2) of Article 89, Constitution, 1973.
- iii) Shall stand repealed at the expiration of 120 days from its promulgation or, if before the expiration of that period a Resolution disapproving it is passed by the Assembly, upon passing of that Resolution, and, the National Assembly may by a Resolution extend the Ordinance for a period of 120 days only.
- iv) Be laid before both Houses of Parliament if it does not pertain to matters dealt with under clause (2) of Article 73, Constitution, 1973, and,
- v) shall stand repealed at the expiration of 120 days from its promulgation or if before the expiration of that period a Resolution disapproving it is passed by either House, upon passing of that Resolution, and provided that either House may by a Resolution extend for a further period of 120 days and it shall stand repealed at the expiration of the extended period, sub-para (ii) of para (a) of clause (2) of Article 89, Constitution, 1973, or

- vi) If before the expiration of that period a Resolution disapproving it is passed by either House, upon the passing of that Resolution.
- vii) Provided further that extension for a further period may be made only once.

It appears that the rationale behind providing an outer limit of 120 days for an Ordinance seems to be that even if the National Assembly or a Provincial Assembly stand dissolved at the time of prorogation of an Ordinance, the election to it is to take place within 90 days from the date of its dissolution in terms of clause (5) of Article 48 of the Constitution. **Reference:** (i) 1992, SCMR-602. (ii) PLD-1995, SC-66.

14. It is pertinent to note that under Article 89, Constitution, 1973, the power to re-promulgate an Ordinance has been restricted to a one time re-promulgation for 120 days, by way of a Resolution to be passed by either House or the National Assembly in case it carries provisions pertaining to or dealing with clause (2) of Article 73, Constitution, 1973, by the 18th Constitutional Amendment. The intent of the law makers, was to restrict governance through Ordinances. It withdrew the prerogative of re-promulgation, from the Executive, which was without any limit. The upshot of this discussion is, that an Ordinance is extraordinary legislation which is to be resorted to, when circumstances require immediate action and Parliament is not in session or the National Assembly is dissolved. Furthermore, after promulgation, an Ordinance shall to be laid before both Houses of Parliament, as soon as, they reassemble, for parliamentary scrutiny and legislation. This intent is collaborated by the amendments made in Article 89, Constitution, 1973, by the Constitution (Eighteenth Amendment) Act, 2010.

15. I now take up Rules 145 and 170, the Rules of Procedure and Conduct of Business in the Senate, 2012, and the Rules of Procedure and Conduct of Business in the National Assembly, 2007, respectively. The said Rules have been framed under clause (1) of Article 67, Constitution, 1973, for regulating the procedure and conduct of business, in the Houses. As the said Rules flow from the Constitution, therefore, they are at a higher pedestal. In fact it has been held that as these Rules flow from Article 67,

Constitution, 1973, have the status of law deriving direct mandate from the Constitution. In this case reliance is placed on *PLD 2014 SC 131*. Rule 145 of the Senate Rules, deals with Resolutions for the disapproval or extension of Ordinances and provides, that "On the commencement of a session, as soon as may be but not later than ten days after the commencement of the session, all Ordinances referred to in subparagraph (ii) of paragraph (a) of clause (2) of Article 89 of the Constitution, made after prorogation of the last session shall be laid on the table". **(emphasis provided)**.

While Rule 170 provides, "As soon as may be after the commencement of a session all Ordinances made and promulgated after prorogation of the last session shall be laid on the table" **(emphasis provided)**.

Article 89 provides that an Ordinance shall be laid before both Houses of Parliament, it lays down no time frame, but the Rules framed under Article 67, Constitution, 1973, to regulate the procedure of both the Houses lay down, "as soon as may be" while the Senate Rule goes further and qualifies, "not later than 10 days after the commencement of the session." There are a string of Judgments which define the term "as soon as may be" to mean 24 hours. **Reference: (i) PLD-1967, Peshawar, 195. (ii) CrLJ 1978, 341. (iii) CrLJ 1979, 62. (iv) CrLJ 1986, 2988.**

16. In international parliamentary practice, it is stated as under;

"Ordinance promulgated by the President are required to be laid before both Houses of Parliament. Normally Ordinance are laid on the 1st day of the sitting of the House held after the promulgation of the Ordinance on which formal business is transacted." **Reference: Sixth Edition of Practice and Procedure of Parliament by M N Kaul and SL Shakhder at Page 650.**

17. Before arriving at a final conclusion, there is another factual aspect of the instant case, it was argued by the Hon'ble Minister for Law and Justice, Mr. Zahid Hamid, that the delay in laying "the Ordinance" before both Houses of Parliament in terms of sub-para (ii) of para (a) of clause (2) of Article 89, Constitution, 1973, was a controversy

between the Ministry that initiated "the Ordinance" and the Ministry of Law the difference of opinion was if the Ordinance was a Money Bill in terms of clause (2) of Article 73 or otherwise. If this line of arguments is accepted then I will be forced to draw a conclusion that the Rules of Business, 1973 (as Amended) of the Federal Government were violated when "the Ordinance" was promulgated. Because Rule 27, Rules of Business, 1973, provides that legislation when initiated by any Ministry or Division, is to be vetted by the Ministry of Law and Justice, therefore, this controversy should have been nipped in the bud i.e. at the stage of vetting by the Ministry of Law. Further if a dispute still existed it should have been settled under Rule 27 and 30 of the Rules of Business, 1973 (as Amended) when "the Ordinance" was placed before the Cabinet for its approval or when the Prime Minister was tendering his advice to the President to promulgate "the Ordinance". Such intra-ministerial disputes cannot be allowed to deny Members of Parliament and Parliament from discharging their Constitutional duties and obligations. As discussed in earlier paragraphs, this is a special power conferred upon the President by the Constitution when Parliament is not in session or the National Assembly is dissolved. In the Indian jurisdiction the Executive is required to provide reasons for the promulgation of an Ordinance while laying it before both Houses of Parliament. Therefore, this argument is not sustainable. Referenc (i) Rules of Lok Sabha (ii) M N Kaul and SL Shakhder.

18. The Senate remained in session during the following periods:-

- i) 14th April, 2016 to 22nd April, 2016 i.e. 247th Session.
- ii) 9th May, 2016 to 20th May, 2016 i.e. 248th Session.
- iii) 2nd June, 2016 to 17th June, 2016 i.e. 249th Session, during the course of which "the Ordinance" was laid on the 15th June, 2016.

The Law Minister, has himself stated that if the controversy was not there "the Ordinance" should have been laid in the aforesaid sessions.

19. In view of the legal and factual position read with the intent of the legislature, the question specified in paragraph 5 hereinabove, is answered in the following terms:-

- i) A Member of Parliament, has a right to move for disapproval of an Ordinance, when it does not contain provisions relating to clause (2) of Article 73 of the Constitution, 1973, which can only be exercised after it has come to the knowledge of the Parliament that an Ordinance has been promulgated when the House was not in session, or;
- ii) A Member of the National Assembly has the right to move for disapproval of Ordinance, when it falls within the ambit of clause (2) of Article 73 of the Constitution, 1973, which can only be exercised after it has come to the knowledge of the National Assembly that an Ordinance has been promulgated when the House was not in Session,
- iii) Delay of each day results in denying the right to move for disapproval of an Ordinance, which amounts to restricting Members to discharge their constitutional duties and obligations, hence, amounts to breach of Privilege of the House or Houses and its Members.

20. In view of the above, the Government is directed to in future adhere to the Constitution and the Rules framed therein, while laying an Ordinance in terms of clause (2) of Article 89 of the Constitution, 1973:-

- i) An Ordinance shall be laid on the first day of the sitting of the House held after the promulgation of the said Ordinance on which formal Government business is to be transacted.
- ii) The Government shall lay alongwith the Ordinance reasons that necessitated the President to promulgate the Ordinance.
- iii) The House can condone the delay in laying the said Ordinance, however, such delay shall not be more than 10 days for which reasons for delay of each day in laying of the Ordinance shall be explained by the Minister concerned in the House.

21. Before parting with this Ruling, the Secretariat is directed to send copies of the same to the President of Pakistan, the Prime Minister of Pakistan, the Minister for Law and Justice and the Minister for Parliamentary Affairs.



(MIAN RAZA RABBANI)
NI
CHAIRMAN

Dictated in the Chamber
Announced in the House on 25th July, 2016.